

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 660****[I.D. 081103A]****RIN 0648-AR36****Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Amendment 16-1**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of availability of an amendment to a fishery management plan; request for comments.

**SUMMARY:** NMFS announces that the Pacific Fishery Management Council (Council) has submitted Amendment 16-1 to the Pacific Coast Groundfish Fishery Management Plan (FMP) for Secretarial review. Amendment 16-1 would set a process and standards by which the Council will specify rebuilding plans for groundfish stocks declared overfished by the Secretary of Commerce. Amendment 16-1 is intended to ensure that Pacific coast groundfish overfished species rebuilding plans meet the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) in particular National Standard 1 on overfishing and § 304(e), which addresses rebuilding overfished fisheries. Amendment 16-1 is also intended to partially respond to a Court order in which NMFS was ordered to provide Pacific Coast groundfish rebuilding plans as FMPs, FMP amendments, or regulations, per the Magnuson-Stevens Act.

**DATES:** Comments on Amendment 16-1 must be received on or before October 17, 2003.

**ADDRESSES:** Comments on Amendment 16-1 or supporting documents should be sent to D. Robert Lohn, Administrator, Northwest Region, National Marine Fisheries Service, Sand Point Way NE., BIN C15700, Seattle, WA 98115-0070; or to Rodney McInnis, Acting Administrator, Southwest Region, National Marine Fisheries Service, 7700 NE Ambassador Place, Portland, OR 97220, phone: 503-820-2280.

Copies of Amendment 16-1 and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) are available from Donald McIsaac, Executive Director, Pacific Fishery

Management Council, 2130 SW Fifth Ave., Suite 224, Portland, OR 97201.

**FOR FURTHER INFORMATION CONTACT:**

Yvonne deReynier (Northwest Region, NMFS), phone: 206-526-6150; fax: 206-526-6736 and; e-mail: [yvonne.dereynier@noaa.gov](mailto:yvonne.dereynier@noaa.gov).

**SUPPLEMENTARY INFORMATION:****Electronic Access**

This **Federal Register** document is also accessible via the internet at the website of the Office of the **Federal Register's** website at: [http://www/access/gpo.gov/su\\_docs/aces140.html](http://www/access/gpo.gov/su_docs/aces140.html).

The Magnuson-Stevens Act requires each regional fishery management council to submit fishery management plans or plan amendments to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires NMFS, immediately upon receiving a fishery management plan or plan amendment, to publish notification in the **Federal Register** that the fishery management plan or plan amendment is available for public review and comment. At the end of the comment period, NMFS considers the public comments received during the comment period described above in determining whether to approve, partially approve, or disapprove the fishery management plan or plan amendment.

Amendment 16-1 would set a process and standards by which the Council will specify rebuilding plans for groundfish stocks declared overfished by the Secretary of Commerce. Amendment 16-1 is intended to ensure that Pacific Coast groundfish overfished species rebuilding plans meet the requirements of the Magnuson-Stevens Act in particular National Standard 1 on overfishing and § 304(e), which addresses rebuilding overfished fisheries. Amendment 16-1 is also intended to partially respond to a Court order in *Natural Resources Defense Council, Inc. v. Evans*, 168 F. Supp. 2d 1149 (N.D. Cal 2001,) in which NMFS was ordered to provide Pacific Coast groundfish rebuilding plans as FMPs, FMP amendments, or regulations, per the Magnuson-Stevens Act. Amendment 16-1 will be followed by Amendment 16-2, which was adopted by the Council at its June 2003 meeting. If approved, Amendment 16-2 would implement rebuilding plans for canary rockfish, darkblotched rockfish, lingcod, and Pacific ocean perch.

Under Amendment 16-1, initial rebuilding plans for overfished species would be incorporated into the FMP via FMP amendments and implemented through Federal regulations. The two

rebuilding parameters that control the establishment of the annual or biennial optimum yield of each overfished species would be codified in the Code of Federal Regulations. If, after a new stock assessment, the Council and NMFS conclude that these should be revised, the revision will be done through a notice and comment rulemaking, and the updated values codified in the Code of Federal Regulations. Amendment 16-1 would also set standards for the frequency of Council review of rebuilding plans such that whenever the species in question has a new stock assessment, the plan will be reviewed for whether it is expected to achieve the population size and structure to support maximum sustainable yield within the plan's rebuilding period. Rebuilding plans would be reviewed at least every 2 years for their effects on fishing communities, for their distribution of conservation burdens, for the need to protect habitat, and for public awareness of rebuilding programs. Individual species rebuilding plans would also identify plan-specific standards for determining whether and when the progress of rebuilding for that particular species has been adequate. Finally, Amendment 16-1 requires that, if a species managed under a rebuilding plan is listed under the Endangered Species Act (ESA), jeopardy standards or a recovery plan under the ESA would take precedence over the rebuilding plan if they were to establish higher rebuilding and/or recovery standards than those in the rebuilding plans. Beyond these substantive revisions to the FMP, Amendment 16-1 also includes a series of lesser, primarily editorial, changes to the FMP. These minor technical additions, corrections, and changes update FMP definitions, update references to management parameters, re-arrange portions of different FMP chapters so that they read more logically, and update different sections of the FMP to require in the FMP, rather than just in Federal regulations, the existing federal observer program for groundfish fisheries.

Public comments on Amendment 16-1 must be received by October 17, 2003, to be considered by NMFS in the decision whether to approve, disapprove, or partially approve Amendment 16-1. A proposed rule to implement Amendment 16-1 has been submitted for Secretarial review and approval. NMFS expects to publish and request public comments on proposed regulations to implement Amendment 16-1 in the near future.

**Authority:** 16 U.S.C. 1801 *et. seq.*

Dated: August 13, 2003.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 030804191-3191-01; I.D. 071603A]

RIN 0648-AR31

#### Fisheries of the Exclusive Economic Zone Off Alaska; Allocation of Pacific Cod Among Fixed Gear Sectors

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS issues a proposed rule that would implement Amendment 77 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). If approved, Amendment 77 would continue to apportion the Bering Sea and Aleutian Islands Management Area (BSAI) Pacific cod total allowable catch (TAC) among the fixed gear sectors. In addition, this action would split the pot sector share of the TAC between pot catcher/processors and pot catcher vessels, change the way the 2-percent annual BSAI Pacific cod allocation to jig gear is seasonally apportioned, and change the way unused portions are reallocated to other gear types. Amendment 77 is intended to maintain the stability of the fixed gear Pacific cod fishery. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the FMP, and other applicable laws.

**DATES:** Comments must be received by October 2, 2003.

**ADDRESSES:** Comments may be sent to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK, 99802, Attn: Lori Durall, or delivered to room 420 of the Federal Building, 709 West 9th Street, Juneau, AK. Comments may also be sent via facsimile (fax) to 907-586-7557. Comments will not be accepted if submitted via e-mail or Internet. Copies

of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for the proposed rule may be obtained from the same address.

#### FOR FURTHER INFORMATION CONTACT:

Nina Mollett, 907-586-7462 or Nina.Mollett@noaa.gov.

**SUPPLEMENTARY INFORMATION:** The groundfish fisheries in the exclusive economic zone (EEZ) of the BSAI are managed under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801, *et seq.* Regulations implementing the FMP appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600. The Council submitted Amendment 77 for Secretary of Commerce review, and it published a Notice of Availability of the FMP amendment in the **Federal Register** on July 22, 2003 (68 FR 43342), with comments on the FMP amendment invited through September 22, 2003.

Comments may address the FMP amendment, the proposed rule, or both, but must be received by September 22, 2003 to be considered in the approval/disapproval decision on the FMP amendment. All comments received by that time, whether specifically directed to the FMP amendment or to the proposed rule, will be considered in the approval/disapproval decision on the FMP amendment.

#### Background

Amendment 77 is intended to respond to concerns that the stability of the fully utilized Pacific cod fishery is threatened by increased competition. This competition has been fueled in part by recent increases in the market value of Pacific cod products and in part by decreases in opilio crab guideline harvest level (GHL). Participants in the BSAI fixed gear Pacific cod fishery include hook-and-line and pot gear fishermen with extensive catch histories. Absent the current gear allocations under Amendment 64, which are set to sunset on December 31, 2003, no regulatory mechanism is in place that would prevent one sector from increasing its effort in the fishery and from eroding another sector's relative historical share. The proposed split between the two sectors of the Pacific cod pot gear fishery is similarly intended to prevent one sector from eroding the other's market share.

Formal allocation of the BSAI Pacific cod TAC among gear types began in

1994 with the passage of Amendment 24 to the FMP. Amendment 24 and subsequently Amendment 46 allocated the Pacific cod TAC among vessels using jig gear, trawl gear, and fixed gear (hook-and-line and pot). Under Amendment 46, which was implemented in 1997, 2 percent of the TAC was reserved for jig gear, 51 percent for fixed gear, and 47 percent for trawl gear. The amendment further split the trawl apportionment equally between catcher vessels and catcher/processors, but did not split the fixed gear allocation between hook-and-line and pot gear vessels.

At its April 1999 meeting, the Council initiated an analysis to examine the probable effects of further splitting the fixed gear allocation of Pacific cod. In October of that year, the Council approved Amendment 64, which allocated the fixed gear portion of the BSAI TAC among its four sectors as follows:

- 80 percent - hook-and-line catcher/processors;
- 0.3 percent - hook-and-line catcher vessels;
- 18.3 percent - pot vessels;
- 1.4 percent - catcher vessels less than 60 ft (18.3 m) length overall (LOA), using pot or hook-and-line gear.

The percentages were roughly based on the historical harvest shares of each gear sector from 1995 through 1998, with the exception of the allocation to catcher vessels less than 60 ft (18.3 m) LOA, which received more than their actual historical share.

Amendment 64 was approved by the U.S. Secretary of Commerce in July 2000 and became effective on September 1, 2000 (65 FR 51553, August 24, 2000). Amendment 64 and its implementing rule include a sunset date of December 31, 2003; the allocations established for the fixed gear sectors will expire at that time.

Amendment 77 and its implementing rule would supersede Amendment 64. It would remove the sunset provision for the fixed gear sector allocations established by Amendment 64. It would further allocate the pot sector's share between pot catcher vessels and pot catcher/processors. It would also change the rollover provisions for unused quota from the jig gear sector, in effect reallocating some quota that is typically allocated to the catcher/processor sector to the less than 60 ft (18.3 m) LOA catcher vessel sector. Each of these provisions is discussed below.

#### Preserving Allocation Among Fixed Gear Sectors

Hook-and-line and pot gear fishermen have expressed concern with the