

reviewed information regarding stock status. This stock status information was not available when the Council deliberated 2009 TAL options in August, nor was the information available when NMFS published the proposed rule in October. The DPWG concluded its work in early December. As previously stated in the preamble, when final DPWG reports regarding stock are available in early 2009, NMFS may take additional action to modify the 2009 scup specifications implemented by this final rule. The Alternative 1 TAL for summer flounder is sufficiently risk-averse, providing a high probability that the rebuilding F rate and an even higher probability that the overfishing threshold (F<sub>35 percent</sub>) will not be exceeded in 2009. Given the regulatory and statutory requirements, Alternative 1 minimizes, to the extent practicable, the economic impacts on small entities that participate in the summer flounder fishery. The black sea bass quota in Alternative 1 was selected because it is consistent with the TAL calculation methodology of the rebuilding plan and results in a measure that will adequately constrain harvest in 2009, and provide continued rebuilding of the overfished stock. The scup TAL contained in Alternative 3 provides the maximum harvest level analyzed by the Council and is consistent with the revised stock status information verbally endorsed for management advice by the DPWG peer review panel. In addition, the scup Alternative 3 TAL remains consistent with F rate contained in the Amendment 14 scup rebuilding plan, which remains effective until formal advice is conveyed in the final DPWG reports.

The revenue decreases associated with the RSA program are expected to be minimal, and are expected to yield important benefits associated with improved fisheries data. It should also be noted that fish harvested under the RSA program would be sold, and the profits would be used to offset the costs of research. As such, total gross revenues to the industry will not decrease substantially, if at all, as a result of this final rule authorizing RSA for 2009.

#### *Small Entity Compliance Guide*

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall

explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide will be sent to all holders of Federal permits issued for the summer flounder, scup, and black sea bass fisheries. In addition, copies of this final rule and guide (*i.e.*, permit holder letter) are available from NMFS (see **ADDRESSES**) and at the following Web site: <http://www.nero.noaa.gov>.

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

Dated: December 24, 2008.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 071106673-8011-02]

RIN 0648-XM47

#### **Fisheries of the Exclusive Economic Zone Off Alaska; Inseason Adjustment to the 2009 Bering Sea Pollock Total Allowable Catch Amount**

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

**ACTION:** Temporary rule; inseason adjustment; request for comments.

**SUMMARY:** NMFS is adjusting the 2009 total allowable catch amount (TAC) for the Bering Sea pollock fishery. This action is necessary because NMFS has determined this TAC is incorrectly specified. This action will ensure the Bering Sea pollock TAC does not exceed the appropriate amount based on the best available scientific information for pollock in the Bering Sea subarea. This action is consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP).

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), December 29, 2008, through 2400 hrs, A.l.t., December 31, 2009, unless otherwise modified or superceded through publication of a notification in the **Federal Register**.

Comments must be received at the following address no later than 4:30 p.m., A.l.t., December 29, 2008.

**ADDRESSES:** Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by "RIN 0648-XM47," by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal website at <http://www.regulations.gov>.

- Mail: P. O. Box 21668, Juneau, AK 99802.

- Fax: (907) 586-7557.

- Hand delivery to the Federal Building: 709 West 9<sup>th</sup> Street, Room 420A, Juneau, AK.

All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

**FOR FURTHER INFORMATION CONTACT:** Mary Furuness, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the Bering Sea and Aleutian Islands (BSAI) according to the FMP prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2009 pollock TAC in the Bering Sea subarea was set at 1,000,000 metric tons (mt) by the 2008 and 2009 harvest specification for groundfish in the BSAI (73 FR 10160, February 26, 2008).

In December 2008, the Council recommended a 2009 pollock TAC of 815,000 mt for the Bering Sea subarea. This amount is less than the 1,000,000 mt established by the final 2008 and 2009 harvest specification for groundfish in the BSAI (73 FR 10160, February 26, 2008). The TAC recommended by the Council is based on the Stock Assessment and Fishery Evaluation report (SAFE), dated November 2008, which NMFS has

determined is the best available scientific information for this fishery.

Steller sea lions occur in the same location as the pollock fishery and are listed as endangered under the Endangered Species Act (ESA). Pollock is a principal prey species for Steller sea lions in the BSAI. The seasonal apportionment of pollock harvest is necessary to ensure the groundfish fisheries are not likely to cause jeopardy

of extinction or adverse modification of critical habitat for Steller sea lions. The regulations at § 679.20(a)(5)(i)(A) specify how the pollock TAC shall be apportioned.

In accordance with § 679.25(a)(2)(i)(B), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that, based on the November 2008 SAFE report for this fishery, the current Bering

Sea pollock TAC is incorrectly specified. Consequently, the Regional Administrator is adjusting the 2009 pollock TAC to 815,000 mt in the Bering Sea subarea.

Pursuant to § 679.20(a)(5), Table 3 of the final 2008 and 2009 harvest specifications for groundfish in the BSAI (73 FR 10160, February 26, 2008) is revised for the 2009 pollock TACs consistent with this adjustment.

TABLE 3—2008 AND 2009 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA)<sup>1</sup>

[Amounts are in metric tons]

Area and sector	2008 Allocations	2008 A season <sup>1</sup>		2008 B season <sup>1</sup>	2009 Allocations	2009 A season <sup>1</sup>		2009 B season <sup>1</sup>
		A season DFA	SCA harvest limit <sup>2</sup>	B season DFA		A season DFA	SCA harvest limit <sup>2</sup>	B season DFA
Bering Sea subarea	1,000,000	n/a	n/a	n/a	815,000	n/a	n/a	n/a
CDQ DFA	100,000	40,000	28,000	60,000	81,500	32,600	22,820	48,900
ICA <sup>1</sup>	31,500	n/a	n/a	n/a	25,673	n/a	n/a	n/a
AFA Inshore	434,250	173,700	121,590	260,550	353,914	141,566	99,096	212,348
AFA Catcher/Processors <sup>3</sup>	347,400	138,960	97,272	208,440	283,131	113,252	79,277	169,879
Catch by C/Ps	317,871	127,148	n/a	190,723	259,065	103,626	n/a	155,439
Catch by CVs <sup>3</sup>	29,529	11,812	n/a	17,717	24,066	9,626	n/a	14,440
Unlisted C/P Limit <sup>4</sup>	1,737	695	n/a	1,042	1,416	566	n/a	849
AFA Motherships	86,850	34,740	24,318	52,110	70,783	28,313	19,819	42,470
Excessive Harvesting Limit <sup>5</sup>	151,988	n/a	n/a	n/a	123,870	n/a	n/a	n/a
Excessive Processing Limit <sup>6</sup>	260,550	n/a	n/a	n/a	212,348	n/a	n/a	n/a
Total Bering Sea DFA	868,500	347,400	243,180	521,099	707,829	283,130	198,192	424,697
Aleutian Islands subarea <sup>1</sup>	19,000	n/a	n/a	n/a	19,000	n/a	n/a	n/a
CDQ DFA	1,900	760	n/a	1,140	1,900	760	n/a	1,140
ICA	1,600	800	n/a	800	1,600	800	n/a	800
Aleut Corporation	15,500	15,500	n/a	0	15,500	15,500	n/a	0
Bogoslof District ICA <sup>7</sup>	10	n/a	n/a	n/a	10	n/a	n/a	n/a

<sup>1</sup>Pursuant to § 679.20(a)(5)(i)(A), the Bering Sea subarea pollock, after subtraction for the CDQ DFA (10 percent) and the ICA (3.5 percent), is allocated as a DFA as follows: inshore sector – 50 percent, catcher/processor sector (C/P) – 40 percent, and mothership sector – 10 percent. In the Bering Sea subarea, 40 percent of the DFA is allocated to the A season (January 20–June 10) and 60 percent of the DFA is allocated to the B season (June 10–November 1). Pursuant to § 679.20(a)(5)(iii)(B)(2)(i) and (ii), the annual AI pollock TAC, after subtracting first for the CDQ directed fishing allowance (10 percent) and second the ICA (1,600 mt), is allocated to the Aleut Corporation for a directed pollock fishery. In the AI subarea, the A season is allocated 40 percent of the ABC and the B season is allocated the remainder of the directed pollock fishery.

<sup>2</sup>In the Bering Sea subarea, no more than 28 percent of each sector's annual DFA may be taken from the SCA before April 1. The remaining 12 percent of the annual DFA allocated to the A season may be taken outside of SCA before April 1 or inside the SCA after April 1. If less than 28 percent of the annual DFA is taken inside the SCA before April 1, the remainder will be available to be taken inside the SCA after April 1.

<sup>3</sup>Pursuant to § 679.20(a)(5)(i)(A)(4), not less than 8.5 percent of the DFA allocated to listed catcher/processers shall be available for harvest only by eligible catcher vessels delivering to listed catcher/processers.

<sup>4</sup>Pursuant to § 679.20(a)(5)(i)(A)(4)(iii), the AFA unlisted catcher/processers are limited to harvesting not more than 0.5 percent of the catcher/processers sector's allocation of pollock.

<sup>5</sup>Pursuant to § 679.20(a)(5)(i)(A)(6), NMFS establishes an excessive harvesting share limit equal to 17.5 percent of the sum of the non-CDQ pollock DFAs.

<sup>6</sup>Pursuant to § 679.20(a)(5)(i)(A)(7), NMFS establishes an excessive processing share limit equal to 30.0 percent of the sum of the non-CDQ pollock DFAs.

<sup>7</sup>The Bogoslof District is closed by the final harvest specifications to directed fishing for pollock. The amounts specified are for ICA only and are not apportioned by season or sector.

**Classification**

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is

impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would allow for harvests that exceed the appropriate allocations for pollock based on the best scientific information available. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of December 19, 2007, and additional

time for prior public comment would result in conservation concerns for the ESA-listed Steller sea lions.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Under § 679.25(c)(2), interested persons are invited to submit written

comments on this action to the above address until January 13, 2008.

This action is required by § 679.22 and § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: December 24, 2008.

**Alan D. Risenhoover,**

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

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