

New Jersey's Division of Fish and Wildlife, submitted an application for an EFP on April 11, 2001. NMFS has made a preliminary determination that the subject EFP contains all the required information and warrants further consideration. NMFS has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Federal horseshoe crab regulations and the Commission's Horseshoe Crab ISFMP.

The regulations at 50 CFR 600.745(b)(3)(v) authorize NMFS to attach terms and conditions to the EFP's consistent with the purpose of the exempted fishery, the objectives of the horseshoe regulations and fisheries management plan, and other applicable law. NMFS is considering terms and conditions such as:

(1) Allowing up to five vessels to collect horseshoe crabs from the Reserve. Five vessels are considered the maximum number because of the difficulty in enforcing the terms and conditions of the EFPs and the Reserve's regulations if more vessels are allowed to harvest horseshoe crabs from the Reserve;

(2) Requiring collection under an EFP to take place over approximately 20 days during the months of August, September, and October. Horseshoe crabs are readily available in harvestable concentrations nearshore earlier in the year, and offshore in the Reserve later in the year;

(3) Requiring a 5 and $\frac{1}{2}$ inch flounder net to be used by these vessels to collect the horseshoe crabs. This condition would allow for continuation of traditional harvest gear and adds to the consistency in the way horseshoe crabs are harvested for data collection;

(4) Limiting trawl tow times to 30 minutes as a conservation measure to protect sea turtles, which are expected to be migrating through the area during the collection period, and are vulnerable to bottom trawling;

(5) Limiting the number of horseshoe crabs collected by any one vessel to 500 per day and limiting the total number of horseshoe crabs to be taken out of the Reserve to no more than 10,000 per year;

(6) Restricting the hours of fishing to daylight hours only, approximately from 7:30 a.m. to 5:00 p.m. will aid law enforcement. NMFS also is considering a requirement that the State of New Jersey Law Enforcement be notified daily when and where the collection will take place; and

(7) Requiring that the collected horseshoe crabs be picked up from the fishing vessels at docks in the Cape May

Area and transported to local laboratories, bled for LAL, and released the following morning alive back to Lower Delaware Bay.

Also as part of the terms and conditions of the EFP, for all horseshoe crabs bled for LAL, NMFS is considering a requirement that EFP holders provide information on sex ratio, daily numbers, and tag 10 percent of the horseshoe crabs harvested. Also, EFP holders may be required to provide photographic documentation of physical appearance and to examine at least 200 horseshoe crabs for:

a. Morphometric data, by sex- e.g. interocular (I/O) distance and weight, and

b. Level of activity, as measured by a response or by distance traveled after release on a beach.

Based on the results of this EFP, this action may lead to future rulemaking.

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

Dated: August 8, 2001.

Dean Swanson,

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

[I.D. 080201E]

RIN 0648-AM40

Fisheries of the Exclusive Economic Zone Off Alaska; License Limitation Program for Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Notice of availability; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 67 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI). Amendment 67 is necessary to stabilize the fully utilized fixed gear Pacific cod fishery in the BSAI. This will be accomplished by issuing endorsements for exclusive access to longtime participants. The intended effect of Amendment 67 is to conserve and manage the Pacific cod resources in the BSAI in accordance with the Magnuson-

Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). NMFS is requesting comments from the public on Amendment 67, copies of which may be obtained from the Council (see **ADDRESSES**).

DATES: Comments on Amendment 67 must be submitted by October 15, 2001.

ADDRESSES: Comments on proposed Amendment 67 should be submitted to Sue Salvesson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK, 99802, Attn: Lori Gravel, or delivered to room 401 of the Federal Building, 709 West 9th Street, Juneau, AK. Comments will not be accepted if submitted via e-mail or Internet. Copies of Amendment 67 and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis prepared for Amendment 67 are available from the North Pacific Fishery Management Council, 605 West 4th Avenue, Suite 306, Anchorage, AK 99501; telephone 907-271-2809.

FOR FURTHER INFORMATION CONTACT: John Lepore, 907-586-7228 or e-mail at john.lepore@noaa.gov.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Act requires that each Regional Fishery Management Council submit any fishery management plan or plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, after receiving a fishery management plan or plan amendment, immediately publish a notice in the **Federal Register** that the fishery management plan or plan amendment is available for public review and comment. This action constitutes such notice for Amendment 67 to the BSAI FMP. NMFS will consider the public comments received during the comment period in determining whether to approve Amendment 67.

Background

The Council recommended, and NMFS approved, the License Limitation Program (LLP) to address concerns of excess capital and capacity in the groundfish and crab fisheries off Alaska. Fishing under the LLP began on January 1, 2000. More information on the specifics of the LLP and the problems it was designed to resolve can be found in the final rule implementing the LLP (63 FR 52642, October 1, 1998).

The LLP, as implemented on January 1, 2000, was always considered by the Council and NMFS as an initial stage in a multi-staged process designed to reduce capacity and capital in the

affected fisheries. The LLP requires that a person hold a license to participate in the groundfish fishery. Under the original provisions of the LLP, a groundfish license was specific as to the area in which a person could participate, but not as to the gear or species. The Council anticipated that specific fisheries within the LLP complex of fisheries would need further management controls to respond to concerns of overutilization. One such example is the fixed gear Pacific cod fisheries in the BSAI.

In 1996, the Council recommended Amendment 46 to the BSAI FMP. Amendment 46 allocated the total allowable catch (TAC) for BSAI Pacific cod among participants who used jig gear (2 percent), trawl gear (47 percent), and fixed gear (51 percent). Amendment 46 further split the trawl gear allocation equally between catcher vessels and catcher/processor vessels. Amendment 46 was approved by NMFS, and implemented in January 1997 (61 FR 59029, November 20, 1996).

Although Amendment 46 initiated a process to address issues regarding the allocation of BSAI Pacific cod fisheries among various participants, it did not address all issues. Issues that were not increased included prices for Pacific cod, reduced crab guideline harvest levels, shortened or cancelled crab seasons due to low resource abundance, and intensified use of Pacific cod resources by participants using pot gear.

In response to these issues, the Council recommended Amendment 64. Amendment 64, approved by NMFS and implemented by final rule in September 2000 (65 FR 51553, August 24, 2000), further divided the 51 percent of the TAC for BSAI Pacific cod allocated to fixed gear as follows: Hook-and-line catcher/processor vessels, 80 percent; hook-and-line catcher vessels, 0.3 percent; pot gear vessel, 18.3 percent; and hook-and-line or pot catcher vessels less than 60 ft (18.3 meters (m))(length overall (LOA), 1.4 percent. Amendment 64 also contained specific provisions for the accounting of directed fishing allowances and the transfer of unharvested amounts of these allowances.

Both Amendments 46 and 64 established allocations for different gear sectors of the BSAI Pacific cod fisheries. However, neither amendment prevented movement among those sectors or the entrance of new participants who held a groundfish license for the BSAI into BSAI Pacific cod fisheries.

In April 1999, the Council initiated an analysis to add Pacific cod endorsements to BSAI groundfish licenses to address the concern of new

participants and movement among fixed gear sectors. This analysis reviewed the status of Pacific cod stocks and catch, the history of Pacific cod allocations, and the economic, social, and environmental impacts of various limited access alternatives. A copy of this analysis can be obtained for further review (see **ADDRESSES**).

In April 2000, the Council recommended its preferred alternative for the BSAI Pacific cod fixed gear fisheries (Amendment 67). Amendment 67 is currently being reviewed by NMFS for approval.

Amendment 67

As explained, the BSAI fixed gear Pacific cod fisheries are fully utilized; therefore, any new participant increases the competition for an already fully utilized resource. Although new participants are often discouraged from entering a fishery that is already fully utilized, the current economics of the Pacific cod fishery and the downturn in the crab fisheries have provided incentives for new participants to enter the BSAI Pacific cod fixed gear fishery.

The Council reviewed various alternatives to limit entry into the BSAI Pacific cod fixed gear fisheries. These alternatives were designed to prevent a person who holds a groundfish license, but who has not participated in the BSAI fixed gear Pacific cod fisheries in the past, or who has not participated at a level that could constitute significant dependence on those fisheries, from participating in those fisheries in the future.

After receiving public testimony concerning this action, the Council recommended requiring a Pacific cod endorsement to harvest Pacific cod in the BSAI directed fishery with fixed gear. A Pacific cod endorsement would also be required to harvest Pacific cod in the commercial bait fishery. Eligibility for a Pacific cod endorsement would be based on past participation in the fishery. Four different endorsements would be available, depending on the fixed gear used to harvest the Pacific cod (longline or pot), and whether or not the Pacific cod was processed on board the harvesting vessel (catcher vessel or catcher/processor vessel).

The Council recommended that the years 1995 through 1999 be used as past participation for Pacific cod endorsements, except for hook-and-line catcher processors for which the qualifying years would be 1996, 1997, 1998, or 1999. The Council also recommended minimum landing amounts that had to be achieved in those years to qualify for a specific Pacific cod endorsement. Properly

documented harvests of Pacific cod, including commercial bait landings, would count toward the landing requirements for a Pacific cod endorsement. A Pacific cod endorsement would not be required to harvest Pacific cod for personal use bait.

The Council recommended several exemptions to the Pacific cod endorsement requirement. A license holder deploying a catcher vessel less than 60 ft (18.3 m) LOA to conduct directed fishing for BSAI Pacific cod with fixed gear does not need a Pacific cod endorsement on his or her groundfish license. The Council decided to exempt this class of vessels because of concern over the ability of small entities to compete under the current fishery management regime. Also, exemptions to the LLP apply to the Pacific cod endorsement. That means that a vessel that is exempt from the LLP does not need a groundfish license with a Pacific cod endorsement aboard to conduct directed fishing for BSAI Pacific cod with fixed gear. These exemptions include: (1) less than 32 ft (9.75 m)LOA general exemption to the LLP; and (2) the less than 60 ft (18.3 m)LOA jig vessel exemption to the LLP. Specific information concerning these exemptions can be found at 50 CFR 679.4 (k)(2).

The Council recommended that a person be allowed to combine catch histories only when the vessel that was used as the basis of eligibility for the original groundfish license sank and was replaced with another vessel. The Council decided not to allow any other combining of catch histories because of the potential of increasing participation in an already fully utilized resource. The Council determined that allowing for the combining of catch histories in the limited circumstances of sunken vessels would not greatly increase the number of participants. However, it would provide equitable consideration to those persons who would have participated if their vessels had not sunk.

Another provision recommended by the Council concerns unavoidable circumstances. This hardship provision is similar to one provided for general LLP eligibility and would enable a person to receive a Pacific cod endorsement even though that person would not qualify for an endorsement based on landings. Please refer to proposed Amendment 67 and the analysis for Amendment 67 for further details concerning eligibility requirements, exemptions, and other provisions (see **ADDRESSES**).

Public comments are being solicited on Amendment 67 through the end of

the comment period specified in this notice. A proposed rule that would implement Amendment 67 may be published in the **Federal Register** for public comment following evaluation by NMFS under Magnuson-Stevens Act procedures. All comments received by

the end of the comment period specified in this notice, whether specifically directed to Amendment 67 or to the proposed rule, will be considered in the decision to approve, disapprove, or partially approve Amendment 67.

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

Dated: August 8, 2001.

Richard W. Surdi,

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

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