

directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to prevent exceeding the amount of the 2001 A season Pacific cod TAC specified for the inshore component in the Central Regulatory Area constitutes 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)(3)(B) and 50 CFR 679.20(b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly the need to implement these measures in a timely fashion to prevent exceeding the 2001 A season Pacific cod TAC specified for the inshore component in the Central Regulatory Area constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: March 2, 2001.

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. 991207325-0063-02; I.D. 100699A]

RIN 0648-AJ52

Fisheries in the Exclusive Economic Zone Off Alaska; A Cost Recovery Program for the Individual Fishing Quota Program; Correction

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

ACTION: Final rule; correction.

SUMMARY: This document corrects regulatory text in the final rule that implements a cost recovery program for the Individual Fishing Quota (IFQ) program for fixed gear halibut and sablefish fisheries in waters in and off of Alaska, which was published in the **Federal Register** on March 20, 2000.

DATES: Effective March 15, 2000.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907-586-7008.

SUPPLEMENTARY INFORMATION:

Background

A final rule was published in the **Federal Register** on March 20, 2000 (65 FR 14919), to implement the IFQ cost recovery program. In the regulatory text portion of the final rule, the procedure described for payment of IFQ fees incorrectly included notarizing the fee payment section.

Need for Correction

As published, the final rule contained an error that must be corrected:

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

Accordingly, 50 CFR part 679 is corrected by making the following correcting amendment:

1. The authority for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

§ 679.5 [Corrected]

2. In § 679.5, paragraph (l)(7)(ii)(C)(4)(i) is correctly revised to read as follows:

* * * * *

(l) * * *

(7) * * *

(ii) * * *

(C) * * *

(4) *Fee payment and certification section—(i) Information required.* An IFQ permit holder with an IFQ landing must provide his or her NMFS person identification number and must sign and date the Fee Payment section and record the following: his or her printed name; the total annual fee amount as calculated and recorded on the Fee Calculation page; the total of any pre-payments submitted to NMFS that apply to the total annual fee amount; the remaining balance fee; and the enclosed payment amount.

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Dated: February 27, 2001.

William T. Hogarth,

Deputy Asst. Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 01-5559 Filed 3-6-01; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000629198-1038-02; I.D. 051500D]

RIN 0648-AM72

Fisheries of the Exclusive Economic Zone Off Alaska; Western Alaska Community Development Quota Program

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule implementing Amendment 66 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) and defining directed fishing for pollock CDQ. Amendment 66 removes the allocation of squid to the Western Alaska Community Development Quota (CDQ) Program to prevent the catch of squid from limiting the catch of pollock CDQ. The regulatory amendment defining directed fishing for pollock CDQ implements the intent of the American Fisheries Act (AFA) that only pollock caught while directed fishing for pollock CDQ accrue against the pollock CDQ allocation. Pollock caught incidentally in other groundfish CDQ fisheries will accrue against the pollock incidental catch allowance (ICA) established under the AFA. In addition, this definition allows NMFS to enforce closures to directed fishing for pollock CDQ in areas such as Steller Sea Lion conservation area or the Chinook Salmon Savings Area. This action is necessary to implement Amendment 66 and the CDQ Program-related provisions of the AFA. NMFS expects it to further the goals and objectives of the FMP.

DATES: Effective April 6, 2001.

ADDRESSES: Copies of Amendment 66 to the FMP, the two Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analyses (EA/RIR/IRFA), or the single Final Regulatory Flexibility Analysis (FRFA) prepared for these actions are available

from NMFS, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, or by calling the Alaska Region, NMFS, at 907-586-7228. Send comments on any ambiguity or unnecessary complexity arising from the language used in this final rule to the Administrator, Alaska Region, P.O. Box 21668, Juneau, AK 99802-1668.

FOR FURTHER INFORMATION CONTACT:

Sally Bibb, 907-586-7389,
sally.bibb@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

NMFS manages fishing for groundfish by U.S. vessels in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) according to the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing fishing by U.S. vessels appear at 50 CFR parts 600 and 679.

Amendment 66 was approved by NMFS on August 30, 2000. This amendment removes the allocation of 7.5 percent of the BSAI squid total allowable catch (TAC) to the CDQ Program to prevent the catch of squid CDQ from limiting the catch of pollock CDQ. Amendment 66 was adopted by the Council at its June 1999 meeting without objection. NMFS published a notice of availability of the FMP amendment at 65 FR 34434, May 30, 2000, and invited comments on the FMP amendment through July 31, 2000. One letter of comment was received on the FMP amendment. The comments from this letter are summarized below in "Response to Comments." NMFS published a proposed rule to implement Amendment 66 and to define "directed fishing for pollock CDQ" on July 17, 2000 (65 FR 44018). Public comments were requested through August 31, 2000. No comments were received on the proposed rule.

NMFS proposed a method for determining whether a vessel operator was directed fishing for pollock CDQ to implement the intent of the AFA with respect to pollock CDQ accounting. The AFA establishes the pollock CDQ allocation as a "directed fishing allowance," which means that only pollock caught while directed fishing for pollock CDQ accrue against the pollock CDQ allocation. Pollock caught by vessels CDQ fishing, but not directed fishing for pollock CDQ, accrue against the pollock ICA. Based on the

recommendation of the Council, NMFS proposed that the determination of whether a vessel operator was directed fishing for pollock CDQ would be based on the percent of pollock in each haul by a catcher/processor and each delivery by a catcher vessel. Hauls and deliveries in which pollock represented 60 percent or more of the total weight of groundfish would be considered directed fishing for pollock CDQ. In this final rule, NMFS revises the basis of determining directed fishing for pollock CDQ by catcher vessels from the definition that was included in the proposed rule. The revision is explained below in the section titled "Changes from the Proposed Rule."

Additional information about the objective of, and the impacts of Amendment 66 and the specific method for determining whether a vessel operator is directed fishing for pollock CDQ are described in the Classification section of this final rule and in the proposed rule (65 FR 44018, July 17, 2000).

Pollock Catch in the 2000 CDQ Fisheries

In 2000, 113,900 mt of pollock and 148 mt of squid were allocated to the CDQ Program. Through December 18, 2000, approximately 113,554 mt of pollock accrued against the pollock CDQ allocation because they were caught in hauls or deliveries in which pollock represented 60 percent or more of the catch. Approximately 469 mt of pollock accrued against the pollock ICA because they were caught in hauls or deliveries in which pollock represented less than 60 percent of the total catch. NMFS allocated approximately 51,255 mt of pollock to the 2000 pollock ICA for pollock caught incidentally in the CDQ and non-CDQ groundfish fisheries. Therefore, the incidental catch of pollock in the CDQ fisheries has, thus far in 2000, represented less than 1 percent of the amount of pollock available in the ICA.

Approximately 51 mt of squid have been caught in the CDQ fisheries through December 18, 2000. This amount represents about 34 percent of the 2000 squid CDQ allocation of 148 mt.

Response to Comments

NMFS received one letter of comment on Amendment 66 from the Center for Marine Conservation (CMC). Although the CMC does not specifically recommend that NMFS disapprove Amendment 66, it raises several concerns about the rationale for Amendment 66 and the management of squid in general.

Comment 1: The CMC questions NMFS' apparent interpretation that section 206(a) of the AFA requires NMFS to ensure that the CDQ groups harvest their 10 percent allocation of the pollock TAC. The CMC believes that NMFS is inappropriately prioritizing full harvest of the pollock CDQ allocations over the Magnuson-Stevens Act requirements to minimize bycatch. Furthermore, the CMC asserts that Amendment 66 sets a bad precedent by removing an allocation of a species from the CDQ Program to prevent the bycatch of that species from limiting the CDQ groups' harvest of a target species.

Response: The CMC correctly states that NMFS and the Council have interpreted that when Congress increased the allocation of pollock to the CDQ Program under the AFA, it intended that the CDQ groups harvest this increased allocation. In light of the increased allocation of pollock CDQ under the AFA, the Council re-evaluated the impact of the strict quota accountability requirements of the CDQ Program increasing the pollock CDQ allocation, which increased the chance that the 7.5 percent squid CDQ allocation would be reached before the pollock CDQ allocation was caught. In doing so, the Council and NMFS considered the trade-offs between the amount of squid bycatch in the CDQ fisheries and the importance of the pollock CDQ allocation in achieving the goals of the CDQ Program.

Section 301 of the Magnuson-Stevens Act requires that fishery management plans and their amendments be consistent with the national standards. As the CMC stated, national standard 9 requires that conservation and management measures shall, to the extent practicable, minimize bycatch and the mortality of such bycatch. Squid is a bycatch species in the BSAI groundfish fisheries and is caught primarily in the pollock fisheries. Removing squid as a CDQ species could, under some circumstances, result in a higher total catch of squid in the CDQ fisheries than would have occurred under the status quo. However, under both Amendment 66 and the status quo, the total catch of squid in the CDQ and non-CDQ fisheries combined is limited by the squid TAC, acceptable biological catch (ABC), and overfishing level (OFL). The total catch of squid in the CDQ and non-CDQ fisheries has been below the squid TAC since 1997, when new OFL definitions were implemented.

NMFS believes that Amendment 66 is consistent with the Magnuson-Stevens Act section 301 requirement that fishery management plans be consistent with all national standards, including

national standard 9. The stipulation "to the extent practicable" in national standard 9 requires the Council to consider minimizing bycatch together with other objectives. In recommending approval of Amendment 66, the Council and NMFS also considered consistency with all of the national standards. Specifically, national standard 1 requires that we prevent overfishing while achieving optimum yield and national standard 8 requires that management measures take into account the importance of fishery resources to fishing communities. Amendment 66 will increase the ability of the CDQ groups to fully harvest their pollock CDQ allocation, which is consistent with the objective of achieving optimum yield of the pollock TAC and the allocations provided under the AFA. With respect to national standard 8, the primary purpose of the CDQ allocations is to assist residents of 65 fishing communities in western Alaska to develop fisheries-based economies. Royalties received by the CDQ groups from their pollock CDQ allocation represented approximately 80 percent of the \$25 million in royalties from the groundfish and crab CDQ allocations in 1999. Therefore, a management measure that increases the ability of the CDQ groups to fully harvest their pollock allocations is consistent with the objectives of national standard 8.

Comment 2: The CMC states that the EA does not adequately address Endangered Species Act and Marine Mammal Protection Act considerations with respect to Steller sea lions and the impact of squid harvests on the ecosystem. In addition, the CMC believes that NMFS should use more precaution in the procedure for setting OFL, ABC, and TAC for squid.

Response: The CMC's comments on the adequacy of the EA appear to be directed more toward the impact of the catch of the squid TAC in general than on Amendment 66. Amendment 66 addresses only the amount of squid that may be caught in the CDQ fisheries and the process used to account for squid catch in the CDQ and non-CDQ fisheries. Therefore, the CMC's concerns about the need for more information about squid, the process used to establish the squid TAC and OFL, the impact of squid harvests on Steller sea lions, or the impact on the ecosystem probably would not be alleviated by disapproval of Amendment 66. These concerns are more appropriately addressed in the annual specifications process through analysis documents required under the National Environmental Policy Act and the Endangered Species Act.

NMFS recognizes that the comments about the inadequacy of the EA for Amendment 66 are related to the U.S. District Court's July 13, 1999, remand order for the 1998 Final Supplemental Environmental Impact Statement (SEIS) NMFS prepared on setting TAC specifications and prohibited species catch limits. NMFS is preparing a programmatic SEIS for the GOA and BSAI groundfish fishery management plans in their entirety in accordance with the 1999 remand order. The EA prepared for Amendment 66 summarizes the biological and catch information for squid contained in the annual stock assessments documents and relies upon the information and conclusions of the 1998 SEIS for the groundfish fisheries off Alaska. The squid TAC, ABC, and OFL are determined annually through the groundfish specifications process. This process utilizes the best available scientific information on the status of the resource.

The finding of no significant impact as a result of Amendment 66 is based on the determination that, although the catch of squid in the CDQ fisheries may increase in some years, the total catch of squid in the BSAI CDQ and non-CDQ groundfish fisheries combined will continue to be limited by the squid TAC, ABC, and OFL. In many years, Amendment 66 will have no impact on the total catch of pollock or squid in the BSAI because the catch of squid in the CDQ fisheries will be less than 7.5 percent of the squid TAC.

On November 30, 2000, NMFS released a comprehensive biological opinion under the ESA (available from NMFS, see **ADDRESSES**). The biological opinion analyzed the impacts of the commercial groundfish fishery in the BSAI and GOA on Steller sea lions and other ESA listed species present in the area. In the biological opinion, NMFS determined that squid was an important component of the Steller sea lion diet. However, pollock, Pacific cod, and Atka mackerel were identified as the most important food sources. The fishery management measures recommended by NMFS to protect Steller sea lions focused on limiting the catch of pollock, Pacific cod, and Atka mackerel in critical habitat areas and during critical times of the year. Approximately 93 percent of the 384 mt of squid caught in the Bering Sea and Aleutian Islands groundfish fisheries in 2000 were caught in directed fisheries for pollock. Therefore, any limitations imposed on the directed fishery for pollock to protect Steller sea lions will similarly affect the catch of squid in critical

habitat areas or during critical times of the year.

Changes from the Proposed Rule

In the final rule, NMFS is not implementing a stand-alone definition of directed fishing for pollock CDQ, as was proposed in the proposed rule. Rather, NMFS is adding a paragraph to the general definition of "directed fishing" in § 679.2 to include a reference to the calculation of directed fishing for the CDQ fisheries under § 679.20(f)(3). The specific method of calculating directed fishing for pollock CDQ using the 60 percent threshold is in this new paragraph § 679.20(f)(3).

This organization of the regulations is consistent with how directed fishing under the license limitation program and the American Fisheries Act fisheries is defined. NMFS expects to be required to define additional directed fisheries under the CDQ Program in future rulemakings. The organization established in this final rule provides a more logical regulatory base for adding new CDQ directed fishing calculations than having separate definitions in § 679.2 for each CDQ directed fishery.

The definition of directed fishing for pollock CDQ in the proposed rule was as follows:

Directed fishing for pollock CDQ means, for purposes of determining whether pollock caught while CDQ fishing accrues against the pollock CDQ allocation or the pollock incidental catch allowance, a vessel operator using trawl gear is directed fishing for pollock CDQ if pollock represents 60 percent or more of the total catch of groundfish species by weight in a haul by a catcher/processor or a delivery by a catcher vessel. The groundfish species used to calculate total catch includes all species categories defined in Table 1 of the annual BSAI specifications.

In the final rule, NMFS removes reference to "for purposes of determining whether pollock caught while CDQ fishing accrues against the pollock CDQ allocation or the pollock incidental catch allowance." In addition, NMFS revises the wording of the calculation of directed fishing for pollock CDQ for catcher vessels. In the proposed rule, the calculation of directed fishing for pollock CDQ was based on the percent of pollock in the delivery by a catcher vessel. CDQ Program quota accounting for catcher vessels is done at the time of delivery. Therefore, the definition in the proposed rule accomplished the objective of the AFA to properly account for the catch of pollock against the pollock CDQ or the pollock ICA.

In the time since the proposed rule was initiated, additional regulations have been implemented that require NMFS to be able to determine whether

a vessel is directed fishing for pollock CDQ at any time during a fishing trip. This determination is necessary to enforce closures of areas to directed fishing for pollock CDQ. Two areas that currently can be closed to directed fishing for pollock CDQ are the Steller sea lion conservation area (65 FR 3892; January 25, 2000) and the Chinook Salmon Savings Area (65 FR 60587; October 12, 2000). The definition in the proposed rule would have allowed the determination of whether a catcher vessel operator was directed fishing for pollock CDQ only at the time a delivery was made. It would not have allowed a determination to be made while the vessel was participating in a CDQ fishery, before it delivered its catch.

In this final rule, NMFS bases the calculation of directed fishing for pollock CDQ by a catcher vessel on the percent of pollock in the total catch of groundfish onboard the vessel at any time. This revision allows the determination of whether an operator of a catcher vessel is directed fishing for pollock CDQ at any time during a fishing trip, including at the time of delivery. Thus, NMFS can use the 60 percent threshold for both quota accounting under the AFA and for determining whether a vessel is directed fishing for pollock CDQ for purposes of enforcing time and area closures implemented through other rulemaking.

For catcher/processors, calculating directed fishing on the basis of the percent of pollock in a haul allows the determination of directed fishing at any time while the vessel operator is fishing or after fishing has been completed. Therefore, no revision is made to text from the proposed rule related to the method of calculating directed fishing for catcher/processors.

The final rule adds § 679.32(a)(2) and (e) with a minor change from the proposed rule to correct the reference to § 679.20(f)(3). Section 679.32(a)(2) is a reference to the location of the pollock CDQ catch accounting regulations at paragraph (e). Section 679.32(e) contains the requirements that pollock caught while directed fishing for pollock CDQ accrue against the pollock CDQ allocation. All other catch of pollock in the CDQ fisheries accrue against the pollock ICA. Paragraph (e) also reiterates that 100 percent of all pollock caught in the groundfish CDQ fisheries, regardless of the percent of pollock in the haul or delivery, would be retained under the Improved Retention/Improved Utilization (IR/IU) regulations at § 679.27.

The following regulatory amendments to 50 CFR part 679 are implemented by

this final rule with no change from the proposed rule:

1. In § 679.20, paragraph (b)(1)(iii)(A) is revised to remove the allocation of 7.5 percent of the squid TAC to the CDQ Program.

2. In § 679.31(f), the reference to the squid CDQ is removed from the paragraph describing the non-specific CDQ reserve. Squid will no longer be allocated to the CDQ Program, so NMFS could not allocate a portion of the squid CDQ to each CDQ group's non-specific CDQ reserve.

Compliance Guide for Small Entities

The removal of the allocation of squid does not result in additional recordkeeping or reporting requirements that must be complied with by small entities or any other entity participating in the CDQ fisheries. Current CDQ recordkeeping and reporting requirements at § 679.5(n) require the CDQ groups and shoreside processors to report the weight of all "CDQ species" on the CDQ catch report and CDQ delivery report. Squid will no longer be defined as a CDQ species, so squid will no longer be required to be reported on the CDQ catch report or the CDQ delivery report. However, no changes will be made to the recordkeeping and reporting requirements because these requirements do not refer to individual species but rather the general category of "CDQ species." The CDQ groups and shoreside processors can comply with the removal of squid from the CDQ Program by no longer reporting squid catch on their CDQ catch reports and CDQ delivery reports. They also may continue to report squid on the CDQ catch report and the CDQ delivery report if they wish to do so, although the CDQ catch accounting computer programs will disregard squid weights for purposes of CDQ catch accounting. Squid catch will continue to be reported by observers and by industry on their logbooks and in weekly production reports. The squid catch in the CDQ fisheries will be subtracted from the overall squid TAC through separate computer programs (the "blend system") that account for catch in the non-CDQ fisheries.

Implementing a method for determining whether a vessel operator is directed fishing for pollock CDQ also will not result in any changes in the recordkeeping and reporting requirements. The CDQ groups and shoreside processors will continue to report the catch of all pollock while CDQ fishing. NMFS will use current computer programs to subtract only pollock that is caught in hauls or deliveries with 60 percent or more

pollock from the CDQ groups' pollock CDQ allocations and to accrue the remainder of the pollock against the pollock ICA.

Classification

The Administrator, Alaska Region, NMFS, determined that Amendment 66 is necessary for the conservation and management of the BSAI groundfish fisheries and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared a FRFA as required by the Regulatory Flexibility Act (RFA). A copy of this analysis is available from NMFS (see ADDRESSES) and is summarized below. The one letter of comment received on Amendment 66 did not address the IRFA or any issues associated with the impact of the action on small entities.

The objective of Amendment 66 and its removal of squid as a CDQ species is elimination of the possibility that CDQ groups will be unable to harvest all of their pollock CDQ allocations because they catch their squid CDQ allocation first. The incidental catch of squid in the 1998 pollock CDQ fisheries indicated that, at least in some years, the CDQ groups would catch their squid CDQ allocation of 148 mt before they harvested the full amount of their pollock CDQ allocations. Under existing CDQ catch monitoring and accounting regulations, as long as squid remains a CDQ species, the CDQ groups will be prohibited from exceeding their squid CDQ allocation even if this amount of squid CDQ is caught before the CDQ groups harvest all of their pollock CDQ. If the CDQ groups continue to fish for pollock CDQ after they reach their squid CDQ allocation, they likely will catch additional squid and increase their squid CDQ overage. Therefore, to avoid facing enforcement action due to a squid CDQ overage, the CDQ groups would have to stop pollock CDQ fishing before they reached their pollock CDQ allocation. If the CDQ groups are unable to fully harvest their pollock CDQ allocations, returns to the CDQ group in pollock royalty revenues will decrease.

The objective of the regulatory amendment to define directed fishing for pollock CDQ is to implement the intent of the AFA. The AFA requires that only pollock caught while directed fishing for pollock CDQ accrue against the pollock CDQ allocation. NMFS considered four alternatives for defining directed fishing for pollock CDQ. Alternative 1 is the status quo, which would not distinguish between pollock

caught while directed fishing for pollock CDQ from pollock caught incidentally to other groundfish CDQ fisheries. This alternative is not consistent with the AFA.

Alternative 2 would define directed fishing for pollock CDQ in the same manner as was implemented under an emergency rule in 1999. Pollock caught in hauls by a catcher/processor or deliveries by a catcher vessel in which pollock represents 40 percent or more of the total groundfish catch by weight would accrue against the pollock CDQ (the "40-percent threshold"). Pollock caught in hauls or deliveries in which pollock represents less than 40 percent of the total groundfish catch would accrue against the pollock ICA.

Alternative 3 is the same as Alternative 2 except that the threshold for defining directed fishing for pollock CDQ would be increased from 40 percent to 60 percent.

Alternative 4 would use maximum retainable amounts to define directed fishing for pollock CDQ, which is the method used to define directed fishing in all non-CDQ groundfish fisheries. A vessel operator would be directed fishing for pollock CDQ if the weight of pollock CDQ retained onboard the vessel was 20 percent or more of the weight of all retained CDQ species onboard the vessel.

Under Alternative 4, vessel operators could control whether they were directed fishing for pollock CDQ by discarding the amount of pollock that exceeded the maximum retainable amount. Under Alternatives 2 and 3, vessel operators cannot discard pollock to control whether they are directed fishing for pollock CDQ because they are required to retain all of their pollock under IR/IU regulations.

Amendment 66 and the accompanying regulatory amendments directly affect the six CDQ groups representing the 65 western Alaska communities that are eligible for the CDQ Program. The CDQ groups and the communities they represent all are small entities under the RFA.

The action also directly affects the owners of 10 trawl catcher/processors, one mothership, 22 trawl catcher vessels, and 3 shoreside processors that harvest and process pollock CDQ. None of these vessels or processors are small entities under the RFA for reasons explained more fully in the IRFAs and the FRFA.

Removing squid as a CDQ species will provide significant benefits to the CDQ groups and western Alaska communities they represent. It will allow the CDQ groups to more fully harvest their pollock CDQ allocations in years of high

squid bycatch. Without Amendment 66, some risk existed that the pollock CDQ fisheries would be constrained if the catch of squid in the CDQ fisheries reached the squid CDQ allocation. If this occurred, the CDQ groups would have lost the opportunity to harvest all of their pollock CDQ and the royalties associated with this pollock catch. Based on recent years' squid incidental catch rates, this potential loss to the CDQ groups could range from \$0 to \$8.4 million annually. In addition to the loss of royalty revenue, the CDQ groups also would lose profit sharing and employment opportunities associated with full harvest of the pollock CDQ.

NMFS expects no negative impacts on the small entities participating in the CDQ Program or on any small entities participating in the non-CDQ groundfish fisheries as a result of removing the allocation of squid to the CDQ Program. The only exception occurs if the overall squid catch reaches an overfishing level, in which case some CDQ and non-CDQ fisheries would have to be constrained to prevent overfishing. This is unlikely since, to date, no domestic groundfish fishery has been limited due to the catch of squid reaching TAC or overfishing.

The regulatory amendment defining directed fishing for pollock CDQ also will directly affect the CDQ groups and CDQ communities. It will determine whether pollock caught in the CDQ fisheries will accrue against the pollock CDQ allocation or the pollock ICA. The CDQ groups benefit more from alternatives that maximize the amount of pollock that accrues against the pollock ICA. Of the four alternatives considered, Alternative 2 has the most negative impact on the CDQ groups because it would result in the largest amount of pollock accruing against the pollock CDQ allocations and the least amount accruing against the pollock ICA. Alternative 4 has the least negative impact on the CDQ groups because it would allow the groups to determine which vessels are directed fishing for pollock CDQ and would allow the catch of pollock by any other CDQ vessels to accrue against the ICA. The preferred alternative, with its 60 percent threshold for determining directed fishing for pollock CDQ, has less potential negative impacts on the CDQ groups than does Alternative 2, but more potential negative impacts than Alternative 4. NMFS estimates that the royalty value of the pollock CDQ allocation to the CDQ groups is about \$22.1 million under Alternative 4. Depending on the value of the pollock CDQ harvested by vessels not intending to target on pollock under Alternative 2 and Alternative 3, NMFS estimates that

the value of the pollock CDQ allocation could either (1) not change relative to the value under Alternative 4, or could (2) decrease up to \$96,000 under Alternative 3 and decrease up to \$312,000 under Alternative 2.

The definition of directed fishing for pollock CDQ also may indirectly affect up to 20 catcher/processors, 3 motherships, 8 shoreside processors, and 120 catcher vessels that participate in the AFA pollock fisheries (the 10 trawl catcher/processors, 1 mothership, 22 trawl catcher vessels, and 3 shoreside processors listed above as participating in the CDQ fisheries and directly affected by the alternatives are among the vessels and processors that also are indirectly affected by the alternatives). NMFS estimates that none of the catcher/processors, motherships, or shoreside processors are small entities for the reasons described above. However, approximately 40 of the 120 catcher vessels that participate in the AFA pollock fisheries are small entities based on information presented in the EA/RIR/IRFA prepared for Amendment 61 to the BSAI FMP - regulations implementing the AFA.

The vessels and processors participating in the AFA fisheries are indirectly impacted by the definition of directed fishing for pollock CDQ. Any pollock from the CDQ fisheries that accrues against the pollock ICA reduces the pollock directed fishing allowances available to the inshore, offshore, and mothership sectors under the AFA.

The status quo (not a viable alternative) would allow no accrual of pollock from the CDQ fisheries to the pollock ICA. Alternative 2 increases potential costs to participants in the directed pollock fisheries because pollock in hauls or deliveries in which pollock is less than 40 percent of the total catch would accrue to the pollock ICA (estimated range of 807 mt to 5,040 mt of pollock would accrue to the pollock ICA). Alternative 3 further increases potential costs to the AFA fishery participants under the 60 percent threshold (estimated range of 937 mt to 6,120 mt of pollock). Among the alternatives considered, Alternative 4 would provide the maximum potential costs to the directed AFA fishery because it would allow the CDQ groups to identify which vessels were directed fishing for pollock and allow all pollock caught by other CDQ vessels to accrue to the pollock ICA (estimated range 1,018 mt to 6,600 mt).

Both the pollock CDQ allocation and any pollock incidental catch from the other CDQ and non-CDQ groundfish fisheries are subtracted from the pollock TAC before pollock allocations are made

to the AFA directed pollock fisheries. Therefore, the more pollock that is allowed as incidental catch in the CDQ fisheries, the larger the amount subtracted from the ICA, and the lower the amount available for the directed pollock fisheries. The 40 trawl catcher vessels (small entities) that participate in the BSAI pollock fisheries likely would prefer that no pollock CDQ allocations had been made. Instead, their preference would be that all of the BSAI pollock TAC were available to them as directed fisheries because direct harvest of pollock provides the highest net revenues to these vessels. However, the AFA authorizes some level of incidental pollock catch for the CDQ fisheries. The alternative that minimizes the amount of pollock that will accrue against the ICA (Alternative 2) results in the least negative impact on the 40 catcher vessels that participate in the AFA pollock fisheries, because it maximizes the amount of pollock available for the directed AFA fisheries. The preferred alternative provides a middle ground between Alternative 2, which minimizes the amount of pollock that accrues against the ICA and Alternative 4, which maximizes the amount of pollock that accrues against the ICA.

NMFS is not aware of any alternatives to removing squid as a CDQ species that would accomplish the objectives of the action and further minimize the impact on small entities. This action removes squid as a CDQ species, which would no longer require that the CDQ groups (small entities) account for their catch of squid against a CDQ allocation and remove the risk that the incidental catch of squid in the CDQ fisheries would prevent the CDQ groups from harvesting their full pollock CDQ allocation. Therefore, the preferred alternative provides the maximum relaxation of the current regulations and maximum benefits to small entities.

Alternatives increasing the amount of squid allocated to the CDQ Program are not practicable. Increasing the percentage of the TAC allocated to the CDQ reserve is not a viable alternative due to the moratorium on such increases at 16 U.S.C. 1855(i)(1)(c)(ii). Moreover, the option of increasing the squid TAC to provide more squid to the CDQ Program is not possible under the current process for setting OFLs, ABCs, and TACs, for the BSAI groundfish fisheries. Due to the lack of information about squid population dynamics and current biomass, the squid TAC is set based on the criteria in Tier 6 of the revised ABC and OFL definitions implemented through Amendment 44 to the BSAI FMP. Under this formula, the

OFL for squid is the average catch from 1978 through 1995, or 2,620 mt, and the ABC is 75 percent of the OFL, or 1,970 mt. The squid TAC is set equal to the ABC at 1,970 mt. No TAC can be set higher than its ABC. Therefore, the squid TAC cannot be increased above 1,970 mt.

NMFS believes that the EA/RIR/IRFA contains the range of reasonable alternatives that would accomplish the objective of the AFA to provide for some level of pollock incidental catch in the CDQ fisheries. The regulations implemented in this final rule meet the objectives of the AFA and the Magnuson-Stevens Act, to minimize any significant economic impact on small entities, and to balance the competing interests of two groups of small entities affected by the regulation - the CDQ groups and the small catcher vessels participating in the non-CDQ fisheries.

The Council could have recommended a definition of directed fishing for pollock CDQ that further increased the amount of pollock catch in the CDQ fisheries that would accrue against the pollock ICA, thereby increasing the benefits to the small entities. Alternative 4 would have allowed the CDQ groups to catch as much pollock as they wished while CDQ fishing and to discard amounts of pollock above the maximum retainable amounts. This alternative was not preferred by the Council or the CDQ groups because it would require regulatory discards of pollock catch that exceed the maximum retainable amounts. In addition, this alternative would have increased the potential negative impacts to another group of small entities affected by the proposed action - the 40 catcher vessels in the AFA pollock fisheries - because increases in the amount of pollock from the CDQ fisheries accruing against the pollock ICA would decrease the directed pollock allowance to the AFA fisheries.

The Council also considered an alternative that could have further minimized negative economic impacts on the 40 catcher vessels in the AFA pollock fisheries. Under Alternative 2, the 40-percent threshold, less pollock from the CDQ fisheries would accrue against the pollock ICA than would accrue under the preferred alternative. However, the Council considered the trade-off in impacts to the participants in the AFA pollock fisheries and the CDQ fisheries and determined that the amount of pollock that would accrue against the pollock ICA under the preferred alternative was not likely to significantly affect the 40 trawl catcher vessels or other participants in the AFA

fisheries. They recommended Alternative 3, which balances the impacts to the CDQ groups with the impacts to the participants in the non-CDQ fisheries.

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this proposed rule. Such comments should be sent to the Administrator, Alaska Region (see ADDRESSES).

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: February 28, 2001.

William T. Hogarth,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.* and 3631 *et seq.*

2. In § 679.2, in the definition for "Directed fishing," a new paragraph (4) is added to read as follows:

§ 679.2 Definitions.

* * * * *

Directed fishing * * *

(4) With respect to the harvest of CDQ species, directed fishing as calculated under § 679.20(f)(3).

* * * * *

3. In § 679.20, paragraph (b)(1)(iii)(A) is revised and a new paragraph (f)(3) is added to read as follows:

§ 679.20 General limitations.

* * * * *

(b) * * *

(1) * * *

(iii) * * *

(A) *Groundfish CDQ Reserve.* Except as limited by § 679.31(a), one half of the nonspecified reserve established by paragraph (b)(1)(i) of this section for all species except squid is apportioned to the groundfish CDQ reserve.

* * * * *

(f) * * *

(3) *CDQ fisheries*—(i) *General.* Directed fishing in the CDQ fisheries is determined based on the species composition of the total catch of

groundfish while harvesting groundfish CDQ species. For catcher/processors, the species composition of each haul is assessed to determine the directed fishery. For catcher vessels, the species composition of the catch onboard the vessel at any time is assessed to determine the directed fishery. The groundfish species used to calculate total catch of groundfish includes all species categories defined in Table 1 of the annual BSAI specifications.

(ii) *Directed fishing for pollock CDQ.* A vessel operator using trawl gear is directed fishing for pollock CDQ if pollock represents 60 percent or more of the total catch of groundfish species by weight in a haul by a catcher/processor or 60 percent or more of the total catch of groundfish species by weight onboard the catcher vessel at any time.

* * * * *

4. In § 679.31, paragraph (f) is revised to read as follows:

§ 679.31 CDQ reserves.

* * * * *

(f) *Non-specific CDQ reserve.* Annually, NMFS will apportion 15 percent of each arrowtooth flounder and "other species" CDQ for each CDQ group to a non-specific CDQ reserve. A CDQ group's non-specific CDQ reserve must be for the exclusive use of that CDQ group. A release from the non-specific CDQ reserve to the CDQ group's arrowtooth flounder or "other species" CDQ is a technical amendment to a community development plan as described in § 679.30(g)(5). The technical amendment must be approved before harvests relying on CDQ transferred from the non-specific CDQ reserve may be conducted.

5. In § 679.32, paragraph (a)(2) is revised and paragraph (e) is added to read as follows:

§ 679.32 Groundfish and halibut CDQ catch monitoring.

(a) * * *

(2) *Pollock CDQ.* Requirements for the accounting of pollock while CDQ fishing are at paragraph (e) of this section.

* * * * *

(e) *Pollock CDQ.*—(1) Directed fishing for pollock CDQ. Owners and operators of vessels directed fishing for pollock CDQ as calculated under § 679.20(f)(3) and processors taking deliveries from vessels directed fishing for pollock CDQ must comply with all applicable requirements of paragraphs (a) through (d) of this section. Pollock catch by vessels directed fishing for pollock CDQ will accrue against the pollock CDQ for the CDQ group.

(2) *Catch of pollock by vessels not directed fishing for pollock CDQ.* Pollock catch by vessels groundfish CDQ fishing, but not directed fishing for pollock CDQ as calculated under § 679.20(f)(3), will not accrue against the pollock CDQ for the CDQ group.

(3) Operators of all vessels participating in any CDQ fishery must retain all pollock caught while CDQ fishing as required at § 679.27 (IR/IU).

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