

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 the Agency from responding to the most recent fisheries data in a timely fashion and, thus, preventing the full utilization of the 2004 interim TAC of pollock in statistical area 630 of the GOA.

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.

Without this inseason adjustment, NMFS could not allow the 2004 interim TAC of pollock in Statistical Area 630 of the GOA to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until March 10, 2004.

This action is required by §§ 679.20 and 679.25 and is exempt from review under Executive Order 12866.

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

Dated: February 23, 2004.

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. 031124287-4060-02; I.D. 111703C]

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands; Final 2004 Harvest Specifications for Groundfish

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

ACTION: Final 2004 harvest specifications for groundfish; apportionment of reserves; closures.

SUMMARY: NMFS announces final 2004 harvest specifications and prohibited species catch (PSC) allowances for the groundfish fishery of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to establish harvest limits for groundfish during the 2004 fishing year and to accomplish the goals and objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Management Area (FMP). The intended effect of this action is to conserve and manage the groundfish resources in the BSAI.

DATES: The final 2004 harvest specifications and associated apportionment of reserves are effective at 1200 hrs, Alaska local time (A.l.t.), February 27, 2004, through 2400 hrs, A.l.t., December 31, 2004.

ADDRESSES: Copies of the Final Environmental Assessment (EA) and Final Regulatory Flexibility Analysis (FRFA) prepared for this action are available from Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Durall. The Final 2003 Stock Assessment and Fishery Evaluation (SAFE) report, dated November 2003, are available from the North Pacific Fishery Management Council, West 4th Avenue, Suite 306, Anchorage, AK 99510-2252 (907-271-2809) or from its Home page at <http://www.fakr.noaa.gov/npfmc>.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907-586-7228 or e-mail mary.furuness@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

Federal regulations at 50 CFR part 679 that implement the FMP govern the groundfish fisheries in the BSAI. The Council prepared the FMP and NMFS approved it under the Magnuson-Stevens Fishery Conservation and Management Act. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The FMP and its implementing regulations require NMFS, after consultation with the Council, to specify annually the total allowable catch (TAC) for each target species and for the "other species" category, the sum of which must be within the optimum yield range of 1.4 million to 2.0 million metric tons (mt) (*see* § 679.20(a)(1)(i)). Also specified are apportionments of TACs, and Community Development Quota (CDQ) reserve amounts, PSC allowances, and prohibited species

quota (PSQ) reserve amounts. Regulations at § 679.20(c)(3) further require NMFS to consider public comment on the proposed annual TACs and apportionments thereof and the proposed PSC allowances, and to publish final specifications in the **Federal Register**. The final specifications set forth in Tables 1 through 17 of this action satisfy these requirements. For 2004, the sum of TACs is 2 million mt.

The proposed BSAI groundfish specifications and PSC allowances for the groundfish fishery of the BSAI were published in the **Federal Register** on December 3, 2003 (68 FR 67642). Comments were invited and accepted through January 2, 2004. NMFS received one letter of comment on the proposed specifications. This letter of comment is summarized and responded to in the Response to Comments section. NMFS consulted with the Council during the December 2003 Council meeting in Anchorage, AK. After considering public comments, as well as biological and economic data that were available at the Council's December meeting, NMFS is implementing the final 2004 groundfish harvest specifications as recommended by the Council.

Regulations at § 679.20(c)(2)(ii) establish the interim amounts of each proposed initial TAC (ITAC) and allocations thereof, of each CDQ reserve established by § 679.20(b)(1)(iii), and of the proposed PSC allowances and PSQ reserves established by § 679.21 that become available at 0001 hours, A.l.t., January 1, and remain available until superseded by the final specifications. NMFS published the interim 2004 groundfish harvest specifications in the **Federal Register** on December 8, 2003 (68 FR 68265). Regulations at § 679.20(c)(2)(ii) do not provide for an interim specification for either the hook-and-line or pot gear sablefish CDQ reserve or for sablefish managed under the Individual Fishing Quota (IFQ) management plan. The final 2004 groundfish harvest specifications, PSC allowances and PSQ reserves contained in this action supersede the interim 2004 groundfish harvest specifications.

Acceptable Biological Catch (ABC) and TAC Specifications

The final ABC levels are based on the best available scientific information, including projected biomass trends, information on assumed distribution of stock biomass, and revised technical methods used to calculate stock biomass. In general, the development of ABCs and overfishing levels (OFLs) involves sophisticated statistical analyses of fish populations and is

based on a successive series of 6 levels, or tiers, of reliable information available to fishery scientists. Tier one represents the highest level of information and tier six the lowest level of information available.

In December 2003, the Scientific and Statistical Committee (SSC), Advisory Panel (AP), and Council reviewed current biological information about the condition of groundfish stocks in the BSAI. This information was compiled by the Council's Plan Team and is presented in the final 2003 SAFE report for the BSAI groundfish fisheries, dated November 2003. The SAFE report contains a review of the latest scientific analyses and estimates of each species' biomass and other biological parameters, as well as summaries of the available information on the BSAI ecosystem and the economic condition of groundfish fisheries off Alaska. From these data and analyses, the Plan Team estimates an ABC for each species or species category.

In December 2003, the SSC, AP, and Council reviewed the Plan Team's recommendations. Except for Bogoslof pollock, northern rockfish, and the "other species" category, the SSC, AP, and Council endorsed the Plan Team's ABC recommendations. For 2004, shortraker and rougheye rockfish will be managed as separate species with OFLs, ABCs and TACs at the BSAI-wide management area. For northern rockfish, the SSC recommended a BSAI-wide ABC instead of separate ABCs for the Bering Sea subarea and the Aleutian Islands subarea based on the limited genetic evidence to support separate stocks by subarea. For Bogoslof pollock, the SSC recommended using a procedure that reduces the ABC proportionately to the ratio of current stock biomass to target stock biomass. For "other species", the SSC recommended using tier 6 management for the sharks and octopus species, which calculated lower ABCs, instead of the Plan Team recommended tier 5 management. The Plan Team also recommended separate OFLs and ABCs for the species in the "other species" category, however, the current FMP specifies management at the group level. For the 6th year, the SSC recommended a procedure that moves gradually to a higher ABC for "other species" over a 10-year period instead of a large increase in one year. For all species, the

AP endorsed the ABCs recommended by the SSC, and the Council adopted them.

The final TAC recommendations were based on the ABCs as adjusted for other biological and socio-economic considerations, including maintaining the total TAC within the required optimum yield (OY) range of 1.4 million to 2.0 million mt. The Council adopted the AP's TAC recommendations, except for pollock in the Bering Sea subarea and Aleutian Islands subarea, Pacific cod and the "other species" category. The Council increased the Bering Sea subarea pollock TAC by 240 mt, the Pacific cod TAC by 500 mt, the "other species" TAC by 500 mt and decreased the Aleutian Islands subarea pollock TAC by 1,240 mt. None of the Council's recommended TACs for 2004 exceed the final ABC for any species category. NMFS finds that the recommended OFLs, ABCs, and TACs are consistent with the biological condition of groundfish stocks as described in the 2003 SAFE report that was approved by the Council.

Changes From the Proposed 2004 Harvest Specifications in the BSAI

In October 2003 the Council's recommendations for the proposed 2004 harvest specifications (68 FR 67642, December 3, 2003) were based largely upon information contained in the final 2002 SAFE report for the BSAI groundfish fisheries, dated November 2002. The Council recommended that OFLs and ABCs for stocks in tiers 3 and above be based on biomass projections as set forth in the 2002 SAFE report and estimates of groundfish harvests through the 2003 fishing year. For stocks in tiers 4 and below, for which projections could not be made, the Council recommended that OFL and ABC levels be unchanged from 2003 until the final 2003 SAFE report could be completed. The final 2003 SAFE report (dated November 2003), which was not available when the Council made its recommendations in October 2003, contains the best and most recent scientific information on the condition of the groundfish stocks and was considered in December by the Council in making its recommendations for the final 2004 harvest specifications. Based on the final 2003 SAFE report, the sum of the 2004 recommended final TACs for the BSAI (2,000,000 mt) is greater by 1,557 mt than the sum of the proposed TACs (1,998,443 mt). This represents a

.08-percent increase overall. Those fisheries for which the final 2004 TACs are lower than the proposed 2004 TAC are rock sole (decreased to 41,000 mt from 44,000 mt), greenland turbot (decreased to 3,500 mt from 4,000 mt), flathead sole (decreased to 19,000 mt from 20,000 mt), Pacific ocean perch (decreased to 12,580 mt from 13,932 mt), northern rockfish (decreased to 5,000 mt from 6,000 mt), "other rockfish" (decreased to 1,094 mt from 1,594 mt), squid (decreased to 1,275 mt from 1,970 mt), and "other species" (decreased to 27,205 mt from 32,309 mt). Those species for which the final 2004 TACs are higher than the proposed 2004 TAC are pollock (increased to 1,493,050 from 1,492,810 mt), Pacific cod (increased to 215,500 mt from 207,500 mt), sablefish (increased to 6,000 mt from 5,500 mt), Atka mackerel (increased to 63,000 mt from 59,111 mt), yellowfin sole (increased to 86,075 mt from 83,750 mt). Also, the Zone 1 red king crab limit increased to 197,000 crab from 97,000 crab. As mentioned in the 2004 proposed specifications, NMFS is separating the shortraker and rougheye rockfish group and apportioning the amounts shown in Table 2 from the non-specified reserve to increase several target species.

The 2004 final TAC recommendations for the BSAI are within the OY range established for the BSAI and do not exceed ABCs for any single species/complexes. Compared to the proposed 2004 harvest specifications, the Council's final 2004 TAC recommendations increase fishing opportunities for species for which the Council had sufficient information to raise TAC levels, most notably, pollock, Pacific cod, sablefish, Atka mackerel, and yellowfin sole, while providing greater protection for several species, most notably rockfish, squid and "other species", by lowering TAC levels. The changes recommended by the Council were based on the best scientific information available, consistent with National Standard 2 of the Magnuson-Stevens Act, and within a reasonable range of variation from the proposed TAC recommendations.

Table 1 lists the final 2004 OFL, ABC, TAC, ITAC and CDQ reserve amounts of groundfish in the BSAI. The apportionment of TAC amounts among fisheries and seasons is discussed below.

TABLE 1.—2004 OVERFISHING LEVEL (OFL), ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC), AND COMMUNITY DEVELOPMENT QUOTA (CDQ) RESERVE ALLOCATION OF GROUNDFISH IN THE BSAI¹

[Amounts are in metric tons]

Species	Area	OFL	ABC	TAC	ITAC ²	CDQ reserve ³
Pollock ⁴	Bering Sea (BS)	2,740,000	2,560,000	1,492,000	1,342,800	149,200
	Aleutian Islands (AI)	52,600	39,400	1,000	1,000	
	Bogoslof District	39,600	2,570	50	50	
Pacific cod	BSAI	350,000	223,000	215,500	183,175	16,163
Sablefish ⁵	BS	4,020	3,000	2,900	2,393	399
	AI	4,620	3,450	3,100	2,519	523
Atka mackerel	Total	78,500	66,700	63,000	53,550	4,725
	Western AI		24,360	20,660	17,561	1,550
	Central AI		31,100	31,100	26,435	2,333
	Eastern AI/BS		11,240	11,240	9,554	843
Yellowfin sole	BSAI	135,000	114,000	86,075	73,164	6,456
Rock sole	BSAI	166,000	139,000	41,000	34,850	3,075
Greenland turbot	Total	19,300	4,740	3,500	2,975	263
	BS		3,162	2,700	2,295	203
	AI		1,578	800	680	60
Arrowtooth flounder	BSAI	142,000	115,000	12,000	10,200	900
Flathead sole	BSAI	75,200	61,900	19,000	16,150	1,425
Other flatfish ⁶	BSAI	18,100	13,500	3,000	2,550	225
Alaska plaice	BSAI	258,000	203,000	10,000	8,500	750
Pacific ocean perch	BSAI	15,800	13,300	12,580	10,693	944
	BS		2,128	1,408	1,197	106
	AI Total		11,172	11,172	9,496	838
	Western AI		5,187	5,187	4,409	389
	Central AI		2,926	2,926	2,487	219
	Eastern AI		3,059	3,059	2,600	229
Northern rockfish	BSAI	8,140	6,880	5,000	4,250	375
Shortraker rockfish	BSAI	701	526	526	447	39
Rougheye rockfish	BSAI	259	195	195	166	15
Other rockfish ⁷	BS	1,280	960	460	391	35
	AI	846	634	634	539	48
Squid	BSAI	2,620	1,970	1,275	1,084	96
Other species ⁸	BSAI	81,150	46,810	27,205	23,124	2,040
Total		4,193,736	3,620,535	2,000,000	1,774,570	187,696

¹ These amounts apply to the entire BSAI management area unless otherwise specified. With the exception of pollock, and for the purpose of these specifications, the Bering Sea subarea includes the Bogoslof District.

² Except for pollock and the portion of the sablefish TAC allocated to hook-and-line and pot gear, 15 percent of each TAC is put into a reserve. The ITAC for each species is the remainder of the TAC after the subtraction of these reserves.

³ Except for pollock, squid, and the hook-and-line or pot gear allocation of sablefish, one half of the amount of the TACs placed in reserve, or 7.5 percent of the TACs, is designated as a CDQ reserve for use by CDQ participants (see §§ 679.20(b)(1)(iii) and 679.31).

⁴ Under § 679.20(a)(5)(i)(A)(1), the annual Bering Sea pollock TAC, after subtraction for the CDQ reserve—10 percent and the ICA—3.0 percent, is further allocated by sector as directed fishing allowances as follows: inshore—50 percent; catcher/processor—40 percent; and motherhips—10 percent. The entire Aleutian Islands and Bogoslof District pollock ITAC is allocated as an incidental catch allowance.

⁵ The ITAC for sablefish reflected in Table 1 is for trawl gear only. Regulations at § 679.20(b)(1) do not provide for the establishment of an ITAC for the hook-and-line and pot gear allocation for sablefish. Twenty percent of the sablefish TAC allocated to hook-and-line gear or pot gear and 7.5 percent of the sablefish TAC allocated to trawl gear is reserved for use by CDQ participants (see § 679.20(b)(1)(iii)).

⁶ "Other flatfish" includes all flatfish species, except for halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, arrowtooth flounder and Alaska plaice.

⁷ "Other rockfish" includes all *Sebastes* and *Sebastolobus* species except for Pacific ocean perch, northern, shortraker, and rougheye rockfish.

⁸ "Other species" includes sculpins, sharks, skates and octopus. Forage fish, as defined at § 679.2, are not included in the "other species" category.

Reserves and the Incidental Catch Allowance (ICA) for Pollock

Regulations at § 679.20(b)(1)(i) require that 15 percent of the TAC for each target species or species group, except for pollock and the hook-and-line and pot gear allocation of sablefish, be placed in a non-specified reserve. Regulations at § 679.20(b)(1)(iii) require that one-half of each TAC amount placed in the non-specified reserve (7.5 percent), with the exception of squid, be allocated to the groundfish CDQ reserve

and that 20 percent of the hook-and-line and pot gear allocation of sablefish be allocated to the fixed gear sablefish CDQ reserve. Regulations at § 679.20(a)(5)(i)(A) also require that 10 percent of the Bering Sea subarea pollock TAC be allocated to the pollock CDQ reserve. The entire Aleutian Islands subarea and Bogoslof District pollock TAC is allocated as an ICA (see § 679.20(a)(5)(i)(A)(1)). With the exception of the hook-and-line and pot gear sablefish CDQ reserve, the

regulations do not further apportion the CDQ reserves by gear. Regulations at § 679.21(e)(1)(i) also require that 7.5 percent of each PSC limit, with the exception of herring, be withheld as a PSQ reserve for the CDQ fisheries. Regulations governing the management of the CDQ and PSQ reserves are set forth at §§ 679.30 and 679.31.

Under regulations at § 679.20(a)(5)(i)(A)(1), NMFS allocates a pollock ICA of 3.0 percent of the Bering Sea subarea pollock TAC after

subtraction of the 10 percent CDQ reserve. This allowance is based on an examination of the incidental catch of pollock in target fisheries other than pollock from 1998 through 2003. During this 6-year period, the incidental catch of pollock ranged from a low of 3 percent in 2003, to a high of 5 percent in 1999, with a 6-year average of 3.6 percent.

The regulations do not designate the remainder of the non-specified reserve by species or species group, and any amount of the reserve may be apportioned to a target species or to the "other species" category during the year, providing that such apportionments do not result in overfishing (see § 679.20(b)(1)(ii)). The Administrator of the Alaska Region for NMFS (Regional Administrator), has determined that the

ITACs specified for the species listed in Table 2 need to be supplemented from the non-specified reserve because U.S. fishing vessels have demonstrated the capacity to catch the full TAC allocations. Therefore, in accordance with § 679.20(b)(3), NMFS is apportioning the amounts shown in Table 2 from the non-specified reserve to increase the ITAC to an amount that is equal to TAC minus the CDQ reserve.

TABLE 2.—APPORTIONMENT OF RESERVES TO ITAC CATEGORIES

[Amounts are in metric tons]

Species—area or subarea	Reserve amount	Final ITAC
Atka mackerel—Western Aleutian District	1,550	19,111
Atka mackerel—Central Aleutian District	2,333	28,768
Atka mackerel—Eastern Aleutian District and Bering Sea subarea	843	10,397
Other flatfish—BSAI	225	2,775
Alaska plaice—BSAI	750	9,250
Pacific ocean perch—Western Aleutian District	389	4,798
Pacific ocean perch—Central Aleutian District	219	2,706
Pacific ocean perch—Eastern Aleutian District	229	2,829
Pacific cod—BSAI	16,163	199,338
Shortraker rockfish—BSAI	39	486
Rougheye rockfish—BSAI	15	181
Northern rockfish—BSAI	375	4,625
Other rockfish—Bering Sea subarea	35	426
Total	23,165	285,690

Allocation of Pollock TAC Under the AFA

Regulations at § 679.20(a)(5)(i)(A) require that 10 percent of the BSAI pollock TAC be allocated as a directed fishing allowance to the CDQ program. The remainder of the BSAI pollock TAC, after the subtraction of an allowance (3.0 percent) for the incidental catch of pollock by vessels, including CDQ vessels, catching other groundfish species, is allocated as follows: 50 percent to catcher vessels harvesting pollock for processing by AFA inshore processors, 40 percent to catcher/processors and catcher vessels harvesting pollock for processing by catcher/processors, and 10 percent to catcher vessels harvesting pollock for processing by AFA motherships. These amounts are listed in Table 3.

The regulations also contain several specific requirements concerning

pollock and pollock allocations under § 679.20(a)(5)(i)(A)(4). First, 8.5 percent of the pollock allocated to the catcher/processor sector will be available for harvest by AFA catcher vessels with catcher/processor sector endorsements, unless the Regional Administrator receives a cooperative contract that provides for the distribution of harvest between AFA catcher/processors and AFA catcher vessels in a manner agreed to by all members. Second, AFA catcher/processors not listed in the AFA are limited to harvesting not more than 0.5 percent of the pollock allocated to the catcher/processor sector. Table 3 lists the 2004 allocations of pollock TAC. Other provisions of the AFA, including inshore pollock cooperative allocations and listed catcher/processor and catcher vessel harvesting sideboard limits, are found in Tables 10 through 17.

Table 3 also lists seasonal apportionments of pollock and harvest limits within the Steller Sea Lion Conservation Area (SCA). The harvest within the SCA, as defined at § 679.22(a)(7)(vii), is limited to 28 percent of the annual directed fishing allowance (DFA) until April 1. The remaining 12 percent of the annual DFA allocated to the A season may be taken outside of the SCA before April 1 or inside the SCA after April 1. If the 28 percent of the annual DFA is not taken inside the SCA before April 1, the remainder is available to be taken inside the SCA after April 1. The A season pollock SCA harvest limit will be apportioned to each industry sector in proportion to each sector's allocated percentage of the DFA as set forth in the AFA. These amounts, by sector, are listed in Table 3.

TABLE 3.—2004 ALLOCATIONS OF THE POLLOCK TAC AND DIRECTED FISHING ALLOWANCE (DFA) TO THE INSHORE, CATCHER/PROCESSOR, MOTHERSHIP, AND CDQ RESERVES ¹

[Amounts are in metric tons]

Area and sector	2004 allocations	A season ¹		B season ¹
		A season DFA (40% of annual DFA)	SCA harvest limit ²	B season DFA (60% of annual DFA)
Bering Sea subarea	1,492,000	.....	.....	.....
CDQ reserve	149,200	59,680	41,776	89,520

TABLE 3.—2004 ALLOCATIONS OF THE POLLOCK TAC AND DIRECTED FISHING ALLOWANCE (DFA) TO THE INSHORE, CATCHER/PROCESSOR, MOTHERSHIP, AND CDQ RESERVES ¹—Continued

[Amounts are in metric tons]

Area and sector	2004 allocations	A season ¹		B season ¹
		A season DFA (40% of annual DFA)	SCA harvest limit ²	B season DFA (60% of annual DFA)
ICA ¹	43,641	.....	.....	.....
AFA Inshore	649,580	259,832	181,882	389,748
AFA Catcher/Processors ³	519,664	207,865	145,506	311,798
Catch by C/Ps	475,492	190,197	.....	285,295
Catch by CVs ³	44,171	17,669	.....	26,503
Unlisted C/P Limit ⁴	2,598	1,039	.....	1,559
AFA Motherships	129,916	51,966	36,376	77,950
Excessive Harvesting Limit ⁵	227,353	.....	.....	.....
Excessive Processing Limit ⁶	389,748	.....	.....	.....
Total Bering Sea DFA	1,492,000	579,343	405,540	869,016
Aleutian Islands ICA ⁷	1,000	.....	.....	.....
Bogoslof District ICA ⁷	50	.....	.....	.....

¹ Under § 679.20(a)(5)(i)(A), after subtraction for the CDQ reserve—10 percent and the incidental catch amount (ICA)—3.0 percent, the pollock TAC is allocated as a DFA as follows: inshore sector—50 percent, catcher/processor sector—40 percent, and mothership sector—10 percent. The A season, January 20—June 10, is allocated 40 percent of the DFA and the B season, June 10—November 1, is allocated 60 percent of the DFA.

² 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 28 percent of the annual DFA is not taken inside the SCA before April 1, the remainder is available to be taken inside the SCA after April 1.

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

⁴ Under § 679.20(a)(5)(i)(A)(4)(iii), the unlisted AFA catcher/processors are limited to harvesting not more than 0.5 percent of the catcher/processor sector allocation of pollock.

⁵ Under § 679.20(a)(5)(i)(A)(6), NMFS establishes an excessive harvesting share limit equal to 17.5 percent of the sum of the pollock DFAs.

⁶ Under § 679.20(a)(5)(i)(A)(7), NMFS establishes an excessive processing share limit equal to 30.0 percent of the sum of the pollock DFAs.

⁷ The Aleutian Islands subarea and the Bogoslof District are closed to directed fishing for pollock. The amounts specified are for ICA only, and are not apportioned by season or sector.

Allocation of the Atka Mackerel TAC

Under § 679.20(a)(8)(i), up to 2 percent of the Eastern Aleutian District and the Bering Sea subarea Atka mackerel ITAC may be allocated to jig gear. The amount of this allocation is determined annually by the Council based on several criteria, including the anticipated harvest capacity of the jig gear fleet. The Council recommended, and NMFS approved, a 1-percent allocation of the Atka mackerel ITAC in the Eastern Aleutian District and the

Bering Sea subarea to the jig gear fleet in 2004. Based on an ITAC and a reserve apportionment which together total 10,397 mt, the jig gear allocation is 104 mt.

Regulations at § 679.20(a)(8)(ii)(A) apportion the Atka mackerel ITAC into two equal seasonal allowances. After subtraction of the jig gear allocation, the first seasonal allowance is made available for directed fishing from January 1 (January 20 for trawl gear) to April 15 (A season), and the second seasonal allowance is made available

from September 1 to November 1 (B season)(Table 4).

Under § 679.20(a)(8)(ii)(C)(1), the Regional Administrator will establish a harvest limit area (HLA) limit of no more than 60 percent of the seasonal TAC for the Western and Central Aleutian Districts. A lottery system is used for the HLA Atka mackerel directed fisheries to reduce the amount of daily catch in the HLA by about half and to disperse the fishery over two districts (*see* § 679.20(a)(8)(iii)).

TABLE 4.—2004 SEASONAL AND SPATIAL APPORTIONMENTS, GEAR SHARES, AND CDQ RESERVE OF THE BSAI ATKA MACKEREL TAC ¹

[Amounts are in metric tons]

Subarea and component	TAC	CDQ reserve	CDQ reserve HLA limit	ITAC	Seasonal allowances ²			
					A season ³		B season ³	
					Total	HLA limit ⁴	Total	HLA limit ⁴
Western Aleutian District	20,660	1,550	930	19,111	9,555	5,733	9,555	5,733
Central Aleutian District	31,100	2,333	1,400	28,768	14,384	8,630	14,384	8,630
Eastern AI/BS subarea ⁵	11,240	843	.....	10,397	.....	.....	.....	.....
Jig (1%) ⁶ .....	.....	.....	.....	104	.....	.....	.....	.....
Other gear (99%) .....	.....	.....	.....	10,293	5,147	.....	5,147	.....
Total	63,000	4,725	2,329	58,275	29,086	.....	29,086	.....

¹ Regulations at §§ 679.20(a)(8)(ii) and 679.22(a)(8) establish temporal and spatial limitations for the Atka mackerel fishery.

² The seasonal apportionment of Atka mackerel is 50 percent in the A season and 50 percent in the B season.

³ The A season is January 1 through April 15, however trawl gear is prohibited until January 20. The B season is September 1 through November 1.

⁴ Harvest Limit Area (HLA) limit refers to the amount of each seasonal allowance that is available for fishing inside the HLA (see § 679.2). In 2004, 60 percent of each seasonal allowance is available for fishing inside the HLA in the Western and Central Aleutian Districts.

⁵ Eastern Aleutian District and the Bering Sea subarea.

⁶ Regulations at § 679.20(a)(8)(i) require that up to 2 percent of the Eastern Aleutian District and the Bering Sea subarea ITAC be allocated to jig gear. The amount of this allocation is 1 percent. The jig gear allocation is not apportioned by season.

Allocation of the Pacific Cod TAC

Under § 679.20(a)(7)(i)(A), 2 percent of the Pacific cod ITAC is allocated to vessels using jig gear, 51 percent to vessels using hook-and-line or pot gear, and 47 percent to vessels using trawl gear. Under regulations at § 679.20(a)(7)(i)(B), the portion of the Pacific cod TAC allocated to trawl gear is further allocated 50 percent to catcher vessels and 50 percent to catcher/processors. Under regulations at § 679.20(a)(7)(i)(C)(1), a portion of the Pacific cod allocated to hook-and-line or pot gear is set aside as an ICA of Pacific cod in directed fisheries for groundfish using these gear types. Based on anticipated incidental catch in these fisheries, the Regional Administrator specifies an ICA of 500 mt. The remainder of Pacific cod is further allocated to vessels using hook-and-line or pot gear as the following DFAs: 80 percent to hook-and-line catcher/processors, 0.3 percent to hook-and-line

catcher vessels, 3.3 percent to pot catcher/processors, 15 percent to pot catcher vessels, and 1.4 percent to catcher vessels under 60 feet (18.3 m) length overall (LOA) using hook-and-line or pot gear.

Due to concerns about the potential impact of the Pacific cod fishery on Steller sea lions and their critical habitat, the apportionment of the ITAC disperses the Pacific cod fisheries into two seasonal allowances (*see* §§ 679.20(a)(7)(iii)(A) and 679.23(e)(5)). For pot and most hook-and-line gear, the first seasonal allowance of 60 percent of the ITAC is made available for directed fishing from January 1 to June 10, and the second seasonal allowance of 40 percent of the ITAC is made available from June 10 to December 31. No seasonal harvest constraints are imposed for the Pacific cod fishery by catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear. For trawl gear, the first season is January 20 to April 1 and is

allocated 60 percent of the ITAC. The second season, April 1 to June 10, and the third season, June 10 to November 1, are each allocated 20 percent of the ITAC. The trawl catcher vessel allocation is further allocated as 70 percent in the first season, 10 percent in the second season and 20 percent in the third season. The trawl catcher/processor allocation is allocated 50 percent in the first season, 30 percent in the second season, and 20 percent in the third season. For jig gear, the first season and third seasons are each allocated 40 percent of the ITAC and the second season is allocated 20 percent of the ITAC. Table 5 lists the 2004 allocations and seasonal apportionments of the Pacific cod ITAC. In accordance with §§ 679.20(a)(7)(ii)(D) and 679.20(a)(7)(iii)(B), any unused portion of a seasonal Pacific cod allowance will become available at the beginning of the next seasonal allowance.

TABLE 5.—2004 GEAR SHARES AND SEASONAL APPORTIONMENTS OF THE BSAI PACIFIC COD TAC
[Amounts are in metric tons]

Gear sector	Percent	Share of gear sector total	Subtotal percentages for gear sectors	Share of gear sector total	Seasonal apportionment ¹	
					Date	Amount
Total hook-and-line and pot gear allocation of Pacific cod TAC	51	101,662				
Incidental catch allowance				500		
Processor and Vessel subtotal		101,162				
Hook-and-line Catcher/Processors			80	80,930	Jan 1–Jun 10	48,558
					Jun 10–Dec 31	32,372
Hook-and-line Catcher Vessels			0.3	303	Jan 1–Jun 10	182
					Jun 10–Dec 31	121
Pot Catcher/Processors			3.3	3,338	Jan 1–Jun 10	2,003
					Sept 1–Dec 31	1,335
Pot Catcher Vessels			15	15,174	Jan 1–Jun 10	9,105
					Sept 1–Dec 31	6,070
Catcher Vessels <60 feet LOA using hook-and-line or pot gear			1.4	1,416		
Trawl gear total	47	93,689				
Trawl Catcher Vessel			50	46,844	Jan 20–Apr 1	32,791
					Apr 1–Jun 10	4,684
					Jun 10–Nov 1	9,369
Trawl Catcher/Processor			50	46,844	Jan 20–Apr 1	23,422
					Apr 1–Jun 10	14,053
					Jun 10–Nov 1	9,369
Jig	2	3,987			Jan 1–Apr 30	1,595
					Apr 30–Aug 31	797
					Aug 31–Dec 31	1,595
Total	100	199,338				

¹ For most non-trawl gear the first season is allocated 60 percent of the ITAC and the second season is allocated 40 percent of the ITAC. For jig gear, the first season and third seasons are each allocated 40 percent of the ITAC and the second season is allocated 20 percent of the ITAC. No seasonal harvest constraints are imposed for the Pacific cod fishery by catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear. For trawl gear, the first season is allocated 60 percent of the ITAC and the second and third seasons are each allocated 20 percent of the ITAC. The trawl catcher vessels' allocation is further allocated as 70 percent in the first season, 10 percent in the second season and 20 percent in the third season. The trawl catcher/processors' allocation is allocated 50 percent in the first season, 30 percent in the second season and 20 percent in the third season. Any unused portion of a seasonal Pacific cod allowance will be reapportioned to the next seasonal allowance.

Sablefish Gear Allocation

Regulations at § 679.20(a)(4)(iii) and (iv) require that sablefish TACs for the

Bering Sea and Aleutian Islands subareas be allocated between trawl and hook-and-line or pot gear. Gear allocations of the TACs for the Bering

Sea subarea are 50 percent for trawl gear and 50 percent for hook-and-line or pot gear and for the Aleutian Islands subarea are 25 percent for trawl gear and

75 percent for hook-and-line or pot gear. Regulations at § 679.20(b)(1)(iii)(B) require that 20 percent of the hook-and-line and pot gear allocation of sablefish be apportioned to the CDQ reserve.

Additionally, regulations at § 679.20(b)(1)(iii)(A) require that 7.5 percent of the trawl gear allocation of sablefish (one half of the reserve) be apportioned to the CDQ reserve. The

2004 gear allocations of the sablefish TAC and CDQ reserve amounts are specified in Table 6.

TABLE 6.—2004 GEAR SHARES AND CDQ RESERVE OF BSAI SABLEFISH TACS

[Amounts are in metric tons]

Subarea and gear	Percent of TAC	Share of TAC	ITAC ¹	CDQ reserve
Bering Sea				
Trawl ²	50	1,450	1,232	109
Hook-and-line/pot gear ³	50	1,450	(⁴)	290
Total	100	2,900	1,232	399
Aleutian Islands				
Trawl ²	25	775	659	58
Hook-and-line/pot gear ³	75	2,325	(⁴)	465
Total	100	3,100	659	523

¹ Except for the sablefish hook-and-line or pot gear allocation, 15 percent of TAC is apportioned to the reserve. The ITAC is the remainder of the TAC after the subtraction of these reserves.

² For the portion of the sablefish TAC allocated to vessels using trawl gear, one half of the reserve (7.5 percent of the specified TAC) is reserved for the CDQ program.

³ For the portion of the sablefish TAC allocated to vessels using hook-and-line or pot gear, 20 percent of the allocated TAC is reserved for use by CDQ participants. Regulations in § 679.20(b)(1) do not provide for the establishment of an ITAC for sablefish allocated to hook-and-line or pot gear.

⁴ NA.

Allocation of PSC Limits for Halibut, Salmon, Crab, and Herring

PSC limits for halibut are set forth in regulations at § 679.21(e). For the BSAI trawl fisheries, the limit is 3,675 mt of halibut mortality and for non-trawl fisheries, the limit is 900 mt of halibut mortality. For chinook salmon, regulations at § 679.21(e)(1)(vii) specify a scheduled reduction of the chinook salmon PSC limit and the final limit of 29,000 fish will be reached in 2004. Regulations at § 679.21(e)(1)(i) allocate 7.5 percent or 2,175 chinook salmon as the PSQ for the CDQ program and the remaining 26,825 chinook salmon to the non-CDQ fisheries. PSC limits for crab and herring are specified annually based on abundance and spawning biomass.

The red king crab mature female abundance is estimated from the 2003 survey data to be 29.7 million king crab and the effective spawning biomass is estimated to be 60.7 million pounds (27,500 mt). Based on the criteria set out at § 679.21(e)(1)(ii), the 2004 PSC limit of red king crab in Zone 1 for trawl gear is 197,000 animals as a result of the mature female abundance being above 8.4 million king crab and the effective spawning biomass estimate being greater than 55 million pounds (24,948 mt).

Regulations at § 679.21(e)(3)(ii)(B) establish criteria under which NMFS must specify an annual red king crab bycatch limit for the Red King Crab Savings Subarea (RKCSS). The

regulations limit the RKCSS to up to 35 percent of the trawl bycatch allowance specified for the rock sole/flathead sole/“other flatfish” fishery category and are based on the need to optimize the groundfish harvest relative to red king crab bycatch. The Council recommended, and NMFS approves, a red king crab bycatch limit equal to 35 percent of the trawl bycatch allowance specified for the rock sole/flathead sole/“other flatfish” fishery category within the RKCSS.

Based on 2003 survey data, the *Chionoecetes bairdi* crab abundance is estimated to be 448.8 million animals. Given the criteria set out at § 679.21(e)(1)(iii), the 2004 *C. bairdi* crab PSC limit for trawl gear is 980,000 animals in Zone 1 and 2,970,000 animals in Zone 2 as a result of the *C. bairdi* crab abundance estimate of over 400 million animals.

Under § 679.21(e)(1)(iv), the PSC limit for *C. opilio* crab is based on total abundance as indicated by the NMFS annual bottom trawl survey. The *C. opilio* crab PSC limit is set at 0.1133 percent of the Bering Sea abundance index. Based on the 2003 survey estimate of 2.63 billion animals, the calculated limit is 2,981,000 animals. Because this limit is less than 4.5 million, under § 679.21(e)(1)(iv)(B), the 2004 *C. opilio* crab PSC limit is 4,350,000 million animals.

Under § 679.21(e)(1)(vi), the PSC limit of Pacific herring caught while

conducting any trawl operation for groundfish in the BSAI is 1 percent of the annual eastern Bering Sea herring biomass. NMFS' best estimate of 2004 herring biomass is 187,648 mt. This amount was derived using 2003 survey data and an age-structured biomass projection model developed by the Alaska Department of Fish and Game. Therefore, the proposed 2004 herring PSC limit is 1,876 mt.

Under § 679.21(e)(1)(i), 7.5 percent of each PSC limit specified for halibut and crab is allocated as a PSQ reserve for use by the groundfish CDQ program. Regulations at § 679.21(e)(3) require the apportionment of each trawl PSC limit into PSC bycatch allowances for seven specified fishery categories. Regulations at § 679.21(e)(4)(ii) authorize the apportionment of the non-trawl halibut PSC limit into PSC bycatch allowances among five fishery categories. The fishery bycatch allowances for the trawl and non-trawl fisheries are listed in Table 7.

Regulations at § 679.21(e)(4)(ii) authorize exemption of specified non-trawl fisheries from the halibut PSC limit. As in past years, NMFS, after consultation with the Council, is exempting pot gear, jig gear, and the sablefish IFQ hook-and-line gear fishery categories from halibut bycatch restrictions because these fisheries use selective gear types that take few halibut compared to other gear types such as nonpelagic trawl. In 2003, total

groundfish catch for the pot gear fishery in the BSAI was approximately 20,420 mt with an associated halibut bycatch mortality of about 3 mt. The 2003 groundfish jig gear fishery harvested about 156 mt of groundfish. Most vessels in the jig gear fleet are less than 60 ft (18.3 m) LOA and thus are exempt from observer coverage requirements. As a result, observer data are not available on halibut bycatch in the jig gear fishery. However, a negligible amount of halibut bycatch mortality is assumed because of the selective nature of this gear type and the likelihood that halibut caught with jig gear have a high survival rate when released.

As in past years, the Council recommended the sablefish IFQ fishery be exempt from halibut bycatch restrictions because of the sablefish and halibut IFQ program (subpart D of 50

CFR part 679). The sablefish IFQ program requires legal-sized halibut to be retained by vessels using hook-and-line gear if a halibut IFQ permit holder or his or her hired master is aboard and is holding unused halibut IFQ. NMFS is approving the Council's recommendation. This provision results in reduced halibut discard in the sablefish fishery. In 1995, about 36 mt of halibut discard mortality was estimated for the sablefish IFQ fishery. Estimates for 1996 through 2003 have not been calculated; however, NMFS has no information indicating that it would be significantly different.

Regulations at § 679.21(e)(5) authorize NMFS, after consultation with the Council, to establish seasonal apportionments of PSC amounts in order to maximize the ability of the fleet to harvest the available groundfish TAC

and to minimize bycatch. The factors to be considered are: (1) Seasonal distribution of prohibited species, (2) seasonal distribution of target groundfish species, (3) PSC bycatch needs on a seasonal basis relevant to prohibited species biomass, (4) expected variations in bycatch rates throughout the year, (5) expected start of fishing effort, and (6) economic effects of seasonal PSC apportionments on industry sectors. In December 2003, the Council's AP recommended seasonal PSC apportionments in order to maximize harvest among gear types, fisheries, and seasons while minimizing bycatch of PSC based upon the above criteria.

The Council recommended, and NMFS approves, the PSC apportionments specified in Table 7.

TABLE 7.—2004 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NON-TRAWL FISHERIES

Prohibited species and zone	Trawl Fisheries					
	Halibut mortality (mt) BSAI	Herring (mt) BSAI	Red King Crab (animals) Zone 1 ¹	<i>C. opilio</i> (animals) COBLZ ²	<i>C. bairdi</i> (animals)	
					Zone 1 ¹	Zone 2 ¹
Yellowfin sole	886	171	33,843	2,776,981	340,844	1,788,459
January 20—April 1	262					
April 1—May 21	195					
May 21—July 4	49					
July 4—December 31	380					
Rock sole/other flat/flathead sole ⁴	779	25	121,413	969,130	365,320	596,154
January 20—April 1	448					
April 1—July 4	164					
July 4—December 31	167					
Turbot/arrowtooth/sablefish ⁵		11		40,238		
Rockfish						
July 4—December 31	69	9		40,237		10,988
Pacific cod	1,434	25	26,563	124,736	183,112	324,176
Midwater trawl pollock		1,456				
Pollock/Atka mackerel/other ⁶	232	179	406	72,428	17,224	27,473
Red King Crab Savings Subarea ³			42,495			
(non-pelagic trawl)						
Total trawl PSC	3,400	1,876	182,225	4,023,750	906,500	2,747,250
Non-trawl Fisheries						
Pacific cod—Total	775					
January 1—June 10	320					
June 10—August 15	0					
August 15—December 31	455					
Other non-trawl—Total	58					
May 1—December 31	58					
Groundfish pot and jig	exempt					
Sablefish hook-and-line	exempt					
Total non-trawl PSC	833					
PSQ reserve ⁷	342		14,775	326,250	73,500	222,750
PSC Grand total	4,575	1,876	197,000	4,350,000	980,000	2,970,000

¹ Refer to § 679.2 for definitions of areas.

² *C. opilio* Bycatch Limitation Zone. Boundaries are defined at 50 CFR part 679, Figure 13.

³ In December 2003, the Council proposed limiting red king crab for trawl fisheries within the Red King Crab Savings Subarea (RKCSS) to 35 percent of the total allocation to the rock sole, flathead sole, and other flatfish fishery category (see § 679.21(e)(3)(ii)(B)).

⁴ "Other flatfish" for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), greenland turbot, rock sole, yellowfin sole and arrowtooth flounder.

⁵ Greenland turbot, arrowtooth flounder, and sablefish fishery category.

⁶ Pollock other than pelagic trawl pollock, Atka mackerel, and "other species" fishery category.

⁷ With the exception of herring, 7.5 percent of each PSC limit is allocated to the CDQ program as PSQ reserve. The PSQ reserve is not allocated by fishery, gear or season.

Halibut Discard Mortality Rates

To monitor halibut bycatch mortality allowances and apportionments, the Regional Administrator will use observed halibut bycatch rates, assumed discard mortality rates (DMR), and estimates of groundfish catch to project when a fishery's halibut bycatch mortality allowance or seasonal apportionment is reached. The discard mortality rates are based on the best information available, including information contained in the annual SAFE report.

The Council recommended, and NMFS concurs, that the recommended halibut DMRs developed by the International Pacific Halibut Commission (IPHC) for the 2004 BSAI groundfish fisheries be used to monitor halibut bycatch allowances established for the 2004 groundfish fisheries (see Table 8). The IPHC recommended, and the Council and NMFS concurred, the 10-year mean DMRs for the 2004 through 2006 BSAI non-CDQ groundfish fisheries. Plots of annual DMRs against the 10-year mean indicated little change since 1990 for most fisheries. DMRs were more variable for the smaller fisheries which typically take minor amounts of halibut bycatch. The IPHC will analyze observer data annually and recommend changes to the DMRs where a fishery DMR shows large variation from the mean. The IPHC has been calculating the CDQ fisheries DMRs since 1998 and a 10-year mean is not available. The Council recommended, and NMFS concurs, the DMRs recommended by the IPHC for 2004 CDQ fisheries. The justification for these DMRs is discussed in Appendix A of the final SAFE report dated November 2003.

TABLE 8.—2004 ASSUMED HALIBUT DISCARD MORTALITY RATES FOR THE BSAI FISHERIES

Fishery	Preseason assumed mortality (percent)
Hook-and-line gear fisheries:	
Greenland turbot	15
Other Species	11
Pacific cod	11
Rockfish	16
Trawl gear fisheries:	
Atka mackerel	78
Flathead sole	67
Greenland turbot	72
Nonpelagic pollock	76
Pelagic pollock	85
Other flatfish	71
Other species	67

TABLE 8.—2004 ASSUMED HALIBUT DISCARD MORTALITY RATES FOR THE BSAI FISHERIES—Continued

Fishery	Preseason assumed mortality (percent)
Pacific cod	68
Rockfish	74
Rock sole	77
Sablefish	49
Yellowfin sole	78
Pot gear fisheries	
Other species	8
Pacific cod	8
CDQ trawl fisheries	
Atka mackerel	85
Flathead sole	90
Nonpelagic pollock	85
Pelagic pollock	89
Rockfish	90
Yellowfin sole	82
CDQ hook-and-line fisheries	
Greenland turbot	4
Pacific cod	11
CDQ pot fisheries	
Pacific cod	2
Sablefish	36

Directed Fishing Closures

In accordance with § 679.20(d)(1)(i), if the Regional Administrator determines that any allocation or apportionment of a target species or “other species” category has been or will be reached, the Regional Administrator may establish a directed fishing allowance for that species or species group. If the Regional Administrator establishes a directed fishing allowance, and that allowance is or will be reached before the end of the fishing year, NMFS will prohibit directed fishing for that species or species group in the specified subarea or district (see § 679.20(d)(1)(iii)). Similarly, under regulations at § 679.21(e), if the Regional Administrator determines that a fishery category's bycatch allowance of halibut, red king crab, *C. bairdi* crab or *C. opilio* crab for a specified area has been reached, the Regional Administrator will prohibit directed fishing for each species in that category in the specified area.

The Regional Administrator has determined that the remaining allocation amounts in Table 9 will be necessary as incidental catch to support other anticipated groundfish fisheries for the 2004 fishing year:

TABLE 9.—DIRECTED FISHING CLOSURES

[Amounts are in metric tons]

Area	Species	Incidental catch amount
Bogoslof District:		
	Pollock	50
Aleutian Islands sub-area:		
	Pollock	1,000
	“Other rock-fish”.	426
Bering Sea subarea:		
	Pacific ocean perch.	1,197
	“Other rock-fish”.	587
Bering Sea and Aleutian Islands:		
	Northern rock-fish.	4,625
	Shortraker rockfish.	486
	Rougheye rockfish.	181
	“Other Species”.	23,124

Consequently, in accordance with § 679.20(d)(1)(i), the Regional Administrator establishes the directed fishing allowances for the above species or species groups as zero.

Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing for these species in the specified areas and these closures are effective immediately through 2400 hrs, A.l.t., December 31, 2004.

In addition, the BSAI Zone 1 annual red king crab allowance specified for the trawl rockfish fishery (see § 679.21(e)(3)(iv)(D)) is 0 mt and the BSAI first seasonal halibut bycatch allowance specified for the trawl rockfish fishery is 0 mt. The BSAI annual halibut bycatch allowance specified for the trawl Greenland turbot/arrowtooth flounder/sablefish fishery categories is 0 mt (see § 679.21(e)(3)(iv)(C)). Therefore, in accordance with § 679.21(e)(7)(ii) and (v), NMFS is prohibiting directed fishing for rockfish by vessels using trawl gear in Zone 1 of the BSAI and directed fishing for Greenland turbot/arrowtooth flounder/sablefish by vessels using trawl gear in the BSAI effective immediately through 2400 hrs, A.l.t., December 31, 2004. NMFS is also

prohibiting directed fishing for rockfish outside Zone 1 in the BSAI through 1200 hrs, A.l.t., July 4, 2004.

Under authority of the interim 2004 harvest specifications (68 FR 68265, December 8, 2003), NMFS prohibited directed fishing for Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea of the BSAI effective 1200 hrs, A.l.t., January 22, 2004, through 1200 hrs, A.l.t., September 1, 2004 (69 FR 2850, January 21, 2004). NMFS opened the first directed fisheries in the HLA in area 542 and area 543 effective 1200 hrs, A.l.t., January 24, 2004. The first HLA fishery in area 542 remained open through 1200 hrs, A.l.t., February 2, 2004 (69 FR 5298, February 4, 2004) and in area 543 remained open through 1200 hrs, A.l.t., January 30, 2004. The second directed fisheries in the HLA in area 542 and area 543 opened effective 1200 hrs, A.l.t., February 4, 2004. The second HLA fishery in area 542 and area 543 remained open through 1200 hrs, A.l.t., February 13, 2004. NMFS prohibited directed fishing for CDQ

reserve amounts of shortraker/rougheye rockfish and northern rockfish in the Bering Sea subarea and "other species" in the BSAI effective 1200 hrs, A.l.t., January 1, 2004 (68 FR 75147, December 30, 2003). NMFS prohibited directed fishing for Pacific cod by catcher vessels 60 feet length overall and longer using pot gear in the BSAI, effective 12 noon, Alaska local time, February 15, 2004 (69 FR 7703, February 19, 2004). NMFS also prohibited directed fishing for rock sole/flathead sole/"other flatfish" by vessels using trawl gear in the BSAI, effective 12 noon, Alaska local time, February 24, 2004.

These closures remain effective under authority of these final 2004 harvest specifications. These closures supersede the closures announced under the authority of the 2004 interim specifications (68 FR 68265, December 8, 2003). While these closures are in effect, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a fishing trip. These closures to directed fishing are in addition to

closures and prohibitions found in regulations at 50 CFR 679. In the BSAI, "other rockfish" includes *Sebastes* and *Sebastolobus* species except for Pacific ocean perch, shortraker, rougheye, and northern rockfish.

Bering Sea Subarea Inshore Pollock Allocations

Regulations at § 679.4(l) set forth procedures for AFA inshore catcher vessel pollock cooperatives to apply for and receive cooperative fishing permits and inshore pollock allocations. Table 10 lists the pollock allocations to the seven inshore catcher vessel pollock cooperatives based on 2004 cooperative allocations that have been approved and permitted by NMFS for the 2004 fishing year. Allocations for cooperatives and vessels not participating in cooperatives are not made for the Aleutian Islands subarea because the Aleutian Islands subarea has been closed to directed fishing for pollock.

TABLE 10.—2004 BERING SEA SUBAREA INSHORE COOPERATIVE ALLOCATIONS

[Amounts are in metric tons]

Cooperative name and member vessels	Sum of member vessel's official catch histories ¹	Percentage of inshore sector allocation	Annual cooperative allocation
<i>Akutan Catcher Vessel Association</i>	245,527	28.085	182,433
Aldebaran, Arctic Explorer, Arcturus, Blue Fox, Cape Kiwanda, Columbia, Dominator, Exodus, Flying Cloud, Golden Dawn, Golden Pisces, Hazel Lorraine, Intrepid Explorer, Leslie Lee, Lisa Melinda, Majesty, Marcy J, Margaret Lyn, Nordic Explorer, Northern Patriot, Northwest Explorer, Pacific Ram, Pacific Viking, Pegasus, Peggy Jo, Perseverance, Predator, Raven, Royal American, Seeker, Sovereignty, Traveler, Viking Explorer.			
<i>Arctic Enterprise Association</i>	36,807	4.210	27,348
Bristol Explorer, Ocean Explorer, Pacific Explorer.			
<i>Northern Victor Fleet Cooperative</i>	73,656	8.425	54,729
Anita J, Collier Brothers, Commodore, Excalibur II, Goldrush, Half Moon Bay, Miss Berdie, Nordic Fury, Pacific Fury, Poseidon, Royal Atlantic, Sunset Bay, Storm Petrel.			
<i>Peter Pan Fleet Cooperative</i>	18,693	2.138	13,889
Amber Dawn, American Beauty, Elizabeth F, Morning Star, Ocean Leader, Oceanic, Providian, Topaz, Walter N.			
<i>Unalaska Cooperative</i>	106,737	12.209	79,309
Alaska Rose, Bering Rose, Destination, Great Pacific, Messiah, Morning Star, Ms Amy, Progress, Sea Wolf, Vanguard, Western Dawn.			
<i>UniSea Fleet Cooperative</i>	202,479	23.161	150,447
Alsea, American Eagle, Argosy, Auriga, Aurora, Defender, Gun-Mar, Mar-Gun, Nordic Star, Pacific Monarch, Seadawn, Starfish, Starlite.			
<i>Westward Fleet Cooperative</i>	189,942	21.727	141,132
A.J., Alaskan Command, Alyeska, Arctic Wind, Caitlin Ann, Chelsea K, Dona Martita, Fierce Allegiance, Hickory Wind, Ocean Hope 3, Pacific Challenger, Pacific Knight, Pacific Prince, Starward, Viking, Westward I.			
<i>Open access AFA vessels</i>	395	0.045	294
Total inshore allocation	874,238	100	649,580

¹ According to regulations at § 679.62(e)(1), the individual catch history for each vessel is equal to the vessel's best 2 of 3 years inshore pollock landings from 1995 through 1997 and includes landings to catcher/processors for vessels that made 500 or more mt of landings to catcher/processors from 1995 through 1997.

According to regulations at § 679.20(a)(5)(i)(A)(3), NMFS must subdivide the inshore sector allocation

into allocations for cooperatives and for inshore open access. In addition, according to regulations at

§ 679.22(a)(7)(vii), NMFS must establish harvest limits inside the SCA and provide a set-aside so that catcher

vessels less than or equal to 99 ft (30.2 m) LOA have the opportunity to operate entirely within the SCA until April 1. Accordingly, Table 11 lists the apportionment of the Bering Sea subarea inshore pollock allocation into

allocations for vessels fishing in a cooperative and for vessels fishing for the inshore open access allocation and establishes a cooperative-sector SCA set-aside for AFA catcher vessels less than or equal to 99 ft (30.2 m) LOA. The SCA

set-aside for catcher vessels less than or equal to 99 ft (30.2 m) LOA that are not participating in a cooperative will be established inseason based on actual participation levels and is not included in Table 11.

TABLE 11.—2004 BERING SEA SUBAREA POLLOCK ALLOCATIONS TO THE COOPERATIVE AND OPEN ACCESS SECTORS OF THE INSHORE POLLOCK FISHERY

[Amounts are in metric tons]

	A season TAC	A season inside SCA ¹	B season TAC
Inshore cooperative sector:			
Vessels > 99 ft	n/a	156,242	n/a
Vessels ≤ 99 ft	n/a	25,558	n/a
Total	259,714	181,800	389,572
Open access sector	118	82 ²	176
Total inshore sector	259,832	181,882	389,748

¹ The Steller sea lion conservation area (SCA) is established at § 679.22(a)(7)(vii).

² The SCA limitations for vessels less than or equal to 99 ft LOA that are not participating in a cooperative will be established on an inseason basis in accordance with § 679.22(a)(7)(vii)(C)(2) which specifies that “the Regional Administrator will prohibit directed fishing for pollock by vessels greater than 99 ft (30.2 m) LOA, catching pollock for processing by the inshore component before reaching the inshore SCA harvest limit before April 1 to accommodate fishing by vessels less than or equal to 99 ft (30.2 m) inside the SCA until April 1.”

Listed AFA Catcher/Processor Sideboard Limits

Under regulations at § 679.64(a), the Regional Administrator restricts the ability of listed AFA catcher/processors to engage in directed fishing for groundfish species other than pollock to protect participants in other groundfish fisheries from adverse effects resulting

from the AFA and from fishery cooperatives in the directed pollock fishery. The basis for these sideboard limits is described in detail in the final rule implementing major provisions of the AFA (67 FR 79692, December 30, 2002). The 2004 catcher/processor sideboard limits are set out in Table 12. All groundfish other than pollock that are harvested by listed AFA catcher/

processors, whether as targeted catch or incidental catch, will be deducted from the sideboard limits in Table 12. However, groundfish other than pollock that are delivered to listed catcher/processors by catcher vessels will not be deducted from the 2004 sideboard limits for the listed catcher/processors.

TABLE 12.—2004 LISTED BSAI AMERICAN FISHERIES ACT CATCHER/PROCESSOR GROUND FISH SIDEBOARD LIMITS

[Amounts are in metric tons]

Target species	Area	1995–1997			2004 ITAC available to trawl C/Ps	2004 C/P sideboard limit
		Retained catch	Total catch	Ratio of Retained catch/Available TAC		
Pacific cod trawl	BSAI	12,424	48,177	0.258	46,844	12,080
Sablefish trawl	BS	8	497	0.016	1,232	20
	AI	0	145	0.000	659	0
Atka mackerel	Western AI					
	A season ¹	n/a	n/a	0.200	9,555	1,911
	HLA limit ²					1,147
	B season	n/a	n/a	0.200	9,555	1,911
	HLA limit					1,147
	Central AI					
	A season ¹	n/a	n/a	0.115	28,768	3,308
	HLA limit					1,985
	B season	n/a	n/a	0.115	28,768	3,308
	HLA limit					1,985
Yellowfin sole	BSAI	100,192	435,788	0.230	73,164	16,821
Rock sole	BSAI	6,317	169,362	0.037	34,850	1,300
Greenland turbot	BS	121	17,305	0.007	2,295	16
	AI	23	4,987	0.005	680	3
Arrowtooth flounder	BSAI	76	33,987	0.002	10,200	23
Flathead sole	BSAI	1,925	52,755	0.036	16,150	589
Alaska plaice	BSAI	3,243	9,438	0.344	9,250	3,178
Other flatfish	BSAI	3,243	52,298	0.062	2,775	172
Pacific ocean perch	BS	12	4,879	0.002	1,197	3
	Western AI	54	13,598	0.004	4,798	19
	Central AI	3	5,698	0.001	2,706	1
	Eastern AI	125	6,179	0.020	2,829	57
Northern rockfish	BSAI	91	13,040	0.007	4,625	32
Shortraker rockfish	BSAI	50	2,811	0.018	486	9
Rougheye rockfish	BSAI	50	2,811	0.018	181	3

TABLE 12.—2004 LISTED BSAI AMERICAN FISHERIES ACT CATCHER/PROCESSOR GROUND FISH SIDEBOARD LIMITS—Continued

[Amounts are in metric tons]

Target species	Area	1995–1997			2004 ITAC available to trawl C/Ps	2004 C/P sideboard limit
		Retained catch	Total catch	Ratio of Retained catch/Available TAC		
Other rockfish	BS	18	621	0.029	426	12
	AI	22	806	0.027	539	15
Squid	BSAI	73	3,328	0.022	1,084	24
Other species	BSAI	553	68,672	0.008	23,124	186

¹ The seasonal apportionment of Atka mackerel in the open access fishery is 50 percent in the A season and 50 percent in the B season. Listed AFA catcher/processors are limited to harvesting no more than zero percent in the Eastern Aleutian District and Bering Sea subarea, 20 percent of the annual available TAC in the Western Aleutian District, and 11.5 percent of the annual available TAC in the Central Aleutian District.

² Harvest Limit Area (HLA) limit refers to the amount of each seasonal allowance that is available for fishing inside the HLA (see § 679.2). In 2004, 60 percent of each seasonal allowance is available for fishing inside the HLA in the Western and Central Aleutian Districts.

Regulations at § 679.64(a)(5) establish a formula for PSC sideboard limits for listed AFA catcher/processors. These amounts are equivalent to the percentage of the PSC amounts taken in the groundfish fisheries for groundfish other than pollock by the AFA catcher/processors listed in subsection 208(e) and section 209 of the AFA from 1995 through 1997 (Table 13). These amounts were used to calculate the relative amount of PSC that was caught by pollock catcher/processors, that were

then used to determine the PSC sideboard limits for listed AFA catcher/processors in the 2004 groundfish fisheries for groundfish other than pollock.

PSC that is caught by listed AFA catcher/processors participating in any groundfish fishery for groundfish other than pollock listed in Table 13 would accrue against the 2004 PSC sideboard limits for the listed AFA catcher/processors. Regulations at § 679.21(e)(3)(v) authorize NMFS to

close directed fishing for groundfish other than pollock for listed AFA catcher/processors once a 2004 PSC sideboard limit listed in Table 13 is reached.

Crab or halibut PSC that is caught by listed AFA catcher/processors while fishing for pollock will accrue against the bycatch allowances annually specified for either the midwater pollock or the pollock/Atka mackerel/“other species” fishery categories under regulations at § 679.21(e)(3)(iv).

TABLE 13.—2004 BSAI AMERICAN FISHERIES ACT LISTED CATCHER/PROCESSOR PROHIBITED SPECIES SIDEBOARD LIMITS ¹

PSC species	1995–1997			2004 PSC available to trawl vessels	2004 C/P sideboard limit
	PSC catch	Total PSC	Ratio of PSC catch to total PSC		
Halibut mortality	955	11,325	0.084	3,400	286
Red king crab	3,098	473,750	0.007	182,225	1,276
<i>C. opilio</i>	2,323,731	15,139,178	0.153	4,023,750	615,634
<i>C. bairdi</i>					
Zone 1	385,978	2,750,000	0.140	906,500	126,910
Zone 2	406,860	8,100,000	0.050	2,747,250	137,363

¹ Halibut amounts are in metric tons of halibut mortality. Crab amounts are in numbers of animals.

AFA Catcher Vessel Sideboard Limits

Under regulations at § 679.64(a), the Regional Administrator restricts the ability of AFA catcher vessels to engage in directed fishing for groundfish species other than pollock to protect participants in other groundfish fisheries from adverse effects resulting from the AFA and from fishery

cooperatives in the directed pollock fishery.

Regulations at § 679.64(b) establish formulas for setting AFA catcher vessel groundfish and PSC sideboard limits for the BSAI. The basis for these sideboard limits is described in detail in the final rule implementing major provisions of the AFA (67 FR 79692, December 30,

2002). The 2003 AFA catcher vessel sideboard limits are shown in Tables 14 and 15.

All harvests of groundfish sideboard species made by non-exempt AFA catcher vessels, whether as targeted catch or incidental catch, will be deducted from the sideboard limits listed in Table 14.

TABLE 14.—2004 BSAI AMERICAN FISHERIES ACT CATCHER VESSEL SIDEBOARD LIMITS

[Amounts are in metric tons]

Species	Fishery by area/season/processor/gear	Ratio of 1995–1997 AFA CV catch to 1995–1997 TAC	2004 initial TAC	2004 catcher vessel sideboard limits
Pacific cod	BSAI .....	.....	.....	.....

TABLE 14.—2004 BSAI AMERICAN FISHERIES ACT CATCHER VESSEL SIDEBOARD LIMITS—Continued
[Amounts are in metric tons]

Species	Fishery by area/season/processor/gear	Ratio of 1995– 1997 AFA CV catch to 1995– 1997 TAC	2004 initial TAC	2004 catcher vessel sideboard limits
	jig gear	0.0000	3,987	0
	hook-and-line CV			
	Jan 1–Jun 10	0.0006	182	0
	Jun 10–Dec 31	0.0006	121	0
	Pot gear CV			
	Jan 1–Jun 10	0.0006	9,105	5
	Sept 1–Dec 31	0.0006	6,070	4
	CV < 60 feet LOA	0.0006	1,252	1
	using hook-and-line or pot gear			
	trawl gear CV			
	Jan 20–Apr 1	0.8609	32,791	28,230
	Apr 1–Jun 10	0.8609	4,684	3,608
	Jun 10–Nov 1	0.8609	9,369	7,217
Sablefish	BS trawl gear	0.0906	1,232	112
Atka mackerel	AI trawl gear	0.0645	659	43
	<i>Eastern AI/BS</i>			
	jig gear	0.0031	104	0
	other gear			
	Jan 1–Apr 15	0.0032	5,147	16
	Sept 1–Nov 1	0.0032	5,147	16
	<i>Central AI</i>			
	Jan–Apr 15	0.0001	28,768	3
	HLA limit	0.0001	8,630	1
	Sept 1–Nov 1	0.0001	28,768	3
	HLA limit	0.0001	8,630	1
	<i>Western AI</i>			
	Jan–Apr 15	0	9,555	0
	HLA limit	0.0000	5,733	0
	Sept 1–Nov 1	0	9,555	0
	HLA limit	0	5,733	0
Yellowfin sole	BSAI	0.0647	73,164	4,734
Rock sole	BSAI	0.0341	34,850	1,188
Greenland turbot	BS	0.0645	2,295	148
	AI	0.0205	680	14
Arrowtooth flounder	BSAI	0.0690	10,200	704
Alaska plaice	BSAI	0.0441	8,500	375
Other flatfish	BSAI	0.0441	2,550	112
Pacific ocean perch	BS	0.1000	1,197	120
	Eastern AI	0.0077	2,829	22
	Central AI	0.0025	2,706	7
	Western AI	0.0000	4,798	0
Northern rockfish	BS	0.0084	4,625	39
Shortraker rockfish	BSAI	0.0037	486	2
Rougheye rockfish	BSAI	0.0037	181	1
Other rockfish	BS	0.0048	426	2
	AI	0.0095	587	6
Squid	BSAI	0.3827	1,084	415
Other species	BSAI	0.0541	23,124	1,251
Flathead sole	BS trawl gear	0.0505	16,150	816

The AFA catcher vessel PSC limit for halibut and each crab species in the BSAI for which a trawl bycatch limit has been established will be a portion of the PSC limit equal to the ratio of aggregate retained groundfish catch by AFA catcher vessels in each PSC target category from 1995 through 1997 relative to the retained catch of all vessels in that fishery from 1995 through 1997. For the BSAI, the PSC

sideboard limits for AFA catcher vessels are listed in Table 15.

Halibut and crab PSC that are caught by AFA catcher vessels participating in any groundfish fishery for groundfish other than pollock listed in Table 15 will accrue against the 2004 PSC sideboard limits for the AFA catcher vessels. Regulations at § 679.21(d)(8) and (e)(3)(v) provide authority to close directed fishing for groundfish for

groundfish other than pollock for AFA catcher vessels once a 2004 PSC sideboard limit listed in Table 15 for the BSAI is reached. PSC that is caught by AFA catcher vessels while fishing for pollock in the BSAI will accrue against the bycatch allowances annually specified for either the midwater pollock or the pollock/Atka mackerel/“other species” fishery categories under regulations at § 679.21(e).

TABLE 15.—2004 AMERICAN FISHERIES ACT CATCHER VESSEL PROHIBITED SPECIES CATCH SIDEBOARD LIMITS FOR THE BSAI¹

PSC species	Target fishery category ²	Ratio of 1995–1997 AFA CV retained catch to total retained catch	2004 PSC limit	2004 AFA catcher vessel PSC sideboard limit
Halibut	Pacific cod trawl	0.6183	1,434	887
	Pacific cod hook-and-line or pot	0.0022	775	2
	Yellowfin sole	0.1144	886	101
	Rock sole/flat. sole/other flatfish ⁵	0.2841	779	221
	Turbot/Arrowtooth/Sablefish	0.2327	0	0
	Rockfish	0.0245	69	2
	Pollock/Atka mackerel/Other species	0.0227	232	5
Red King Crab, Zone 1 ⁴	Pacific cod	0.6183	26,563	16,424
	Yellowfin sole	0.1144	33,843	3,872
	Rock sole/flat. sole/other flatfish ⁵	0.2841	121,413	34,493
	Pollock/Atka mackerel/Other species	0.0227	406	9
<i>C. opilio</i> , COBLZ ³ .	Pacific cod	0.6183	124,736	77,124
	Yellowfin sole	0.1144	2,776,981	317,687
	Rock sole/flat. sole/other flatfish ⁵	0.2841	969,130	275,330
	Pollock/Atka mackerel/Other species	0.0227	72,428	1,644
	Rockfish	0.0245	40,237	986
	Turbot/Arrowtooth/Sablefish	0.2327	40,238	9,363
<i>C. bairdi</i> , Zone 1.	Pacific cod	0.6183	183,112	113,218
	Yellowfin sole	0.1144	340,844	38,993
	Rock sole/flat. sole/other flatfish ⁵	0.2841	365,320	103,787
	Pollock/Atka mackerel/Other species	0.0227	17,224	391
<i>C. bairdi</i> , Zone 2.	Pacific cod	0.6183	324,176	200,438
	Yellowfin sole	0.1144	1,788,459	204,600
	Rock sole/flat. sole/other flatfish ⁵	0.2841	596,154	169,367
	Pollock/Atka mackerel/Other species	0.0227	27,473	624
	Rockfish	0.0245	10,988	269

¹ Halibut amounts are in metric tons of halibut mortality. Crab amounts are in numbers of animals.

² Target fishery categories are defined in regulation at § 679.21(e)(3)(iv).

³ *C. opilio* Bycatch Limitation Zone. Boundaries are defined at Figure 13 of 50 CFR part 679.

⁴ In December 2003, the Council recommended that red king crab bycatch for trawl fisheries within the RKCSS be limited to 35 percent of the total allocation to the rock sole/flathead sole/other flatfish fishery category (see § 679.21(e)(3)(ii)(B)).

⁵ "Other flatfish" for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), Greenland turbot, rock sole, yellowfin sole, arrowtooth flounder.

Sideboard Directed Fishing Closures

AFA Catcher/Processor and Catcher Vessel Sideboard Closures

The Regional Administrator has determined that many of the AFA catcher/processor and catcher vessel sideboard limits listed in Tables 12 and 14 are necessary as incidental catch to

support other anticipated groundfish fisheries for the 2004 fishing year. In accordance with § 679.20(d)(1)(iv), the Regional Administrator establishes the sideboard limits listed in Tables 12 and 14 as directed fishing allowances. The Regional Administrator finds that many of these directed fishing allowances will be reached before the end of the year.

Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing by listed AFA catcher/processors for the species in the specified areas set out in Table 16 and directed fishing by non-exempt AFA catcher vessels for the species in the specified areas set out in Table 17.

TABLE 16.—AMERICAN FISHERIES ACT LISTED CATCHER/PROCESSOR SIDEBOARD DIRECTED FISHING CLOSURES¹

[Amounts are in metric tons]

Species	Area	Gear types	Incidental catch amount
Sablefish trawl	BS	Trawl	20
	AI	Trawl	0
Rock sole	BSAI	all	1,300
Greenland turbot	BS	all	16
	AI	all	3
Arrowtooth flounder	BSAI	all	23
	BS	all	3
Pacific ocean perch	Western AI	all	19
	Central AI	all	1
	Eastern AI	all	57

TABLE 16.—AMERICAN FISHERIES ACT LISTED CATCHER/PROCESSOR SIDEBOARD DIRECTED FISHING CLOSURES¹—Continued

[Amounts are in metric tons]

Species	Area	Gear types	Incidental catch amount
Northern rockfish	BSAI	all	32
Shortraker rockfish	BSAI	all	9
Rougheye rockfish	BSAI	all	3
Other rockfish	BS	all	12
	AI	all	15
Squid	BSAI	all	24
"Other species"	BSAI	all	186

TABLE 17.—AMERICAN FISHERIES ACT CATCHER VESSEL SIDEBOARD DIRECTED FISHING CLOSURES¹

[Amounts are in metric tons]

Species	Area	Gear types	Incidental catch amount
Pacific cod	BSAI	hook-and-line	0
	BSAI	pot	9
	BSAI	jig	0
Sablefish	BS	trawl	112
	AI	trawl	43
Atka mackerel	Eastern AI/BS	jig	0
	Eastern AI/BS	other	16
	Central AI	all	3
	Western AI	all	3
Greenland Turbot	BS	all	148
	AI	all	14
Arrowtooth flounder	BSAI	all	704
Pacific ocean perch	BS	all	120
	Western AI	all	22
	Central AI	all	7
	Eastern AI	all	0
Northern rockfish	BSAI	all	39
Shortraker rockfish	BSAI	all	2
Rougheye rockfish	BSAI	all	1
Other rockfish	BS	all	2
	AI	all	6
Squid	BSAI	all	415
"Other species"	BSAI	all	1,251

Response to Comments

NMFS received one letter of comment in response to the EA and the SAFE reports for the 2004 harvest specifications. The letter contained 17 separate comments that are summarized and responded to below.

Comment 1. NMFS has only a revised draft Programmatic level Environmental Impact Statement (PSEIS) and will be implementing the 2004 harvest specifications without proper National Environmental Policy Act compliance. This is troubling considering the impacts of spatial, temporal, and bycatch trends of fisheries, especially in sensitive habitat areas subject to damage and in Northern fur seal and Steller sea lion habitat.

Response. NMFS prepared a Supplemental Environmental Impact Statement (SEIS) for Steller sea lions and is in the process of preparing a

PSEIS for Alaska Groundfish Fisheries and a SEIS for Essential Fish Habitat Identification and Conservation in Alaska, with records of decisions no later than September 1, 2004 and August 13, 2005, respectively. The EA for the 2004 TAC specifications has an extensive appendix on ecosystem considerations for 2004 which are increasingly drawn upon by individual stock assessment authors in the preparation of the EA that supports the annual harvest specifications. This takes into account the best and most recent scientific information available upon which to base decisions.

Trawl closures have been implemented to protect benthic habitat or reduce PSC. Some of the trawl closures are in effect year-round while others are seasonal. In general, year-round trawl closures have been implemented to protect vulnerable

benthic habitat. Seasonal closures are used to reduce PSC by closing areas where and when PSC rates had historically been high. Additional measures to protect the declining western stocks of the Steller sea lion began in 1991 with restrictions based on rookery and haulout location. In 2003 the current spatial and temporal protection measures were implemented (68 FR 204, January 2, 2003). The Council is also in the process of developing habitat areas of particular concern (HAPC) which are areas of special importance that may require additional protection from adverse effects. The Council accepted proposals for initial HAPC designations through January 10, 2004. Although designed to protect Steller sea lions and benthic habitat these protection measures will also protect fur seals from fishing effects.

Comment 2. NOAA Fisheries should “undertake a systematic review of rockfish management, and incorporate the recommendations of the nation’s leading fisheries biologists in the American Fisheries Society (AFS) Policy Statement 31d: Management of Pacific Rockfish.” In particular, this policy statement recommends:

- a. Collection of catch information on a single-species basis;
- b. Management targets on a single-species basis, including species taken as bycatch;
- c. Accurate studies of discards at sea, and reduction of rockfish discards;
- d. Adequate fishery-independent surveys;
- e. Marine protected areas (MPAs) to protect habitat and promote recovery of the stocks;
- f. Reductions on fishing mortality.

Response. NMFS recognizes the importance of these policy recommendations and is either consistent with or moving towards these management goals. Although the AFS policy statement (Parker *et al.* 2000) pertains to all “Pacific rockfish” in U.S. waters, including Alaska, it is important to recognize the specific policy recommendations above were largely influenced by the particular management structure and declining stocks off the coast of Washington, Oregon, and California (Parker *et al.* 2000), which differs considerably from the status of stocks and management procedures for rockfish in the EEZ off Alaska. NMFS recognizes the importance of collecting catch information and establishing management targets on a single species basis. For example, all of the species within the former “other red rockfish” category are now managed with single-species harvest quotas. Observer data are used to estimate discard amounts of these and other species and are included in the stock assessment methodology.

NMFS has conducted fishery independent surveys in the Aleutian Islands since 1990, and additional cooperative U.S.—Japanese surveys occurred in the 1980s. In general, rockfish stocks are difficult to survey with standard trawl gear and survey designs because of the patchiness of their distributions and, in some cases, the roughness of the habitat in which they live. These factors have combined to produce rockfish biomass estimates with high coefficients of variation and substantial year to year variability in biomass estimates. NMFS is exploring new survey methodology that uses hydroacoustic information to locate patches of rockfish, which can then be

used to influence the location of trawl tows. Some field work evaluating this method was conducted in the summer of 2003 near the Pribilof Islands, with the goal of evaluating the potential for improving estimates of eastern Bering Sea Pacific ocean perch and northern rockfish. Additional work must be done to evaluate this approach before it is adopted.

The AFS recommendation for reductions in fishing mortality is largely directed towards U.S. west coast rockfish stocks, as the AFS policy statement indicates that the Council “has taken a conservative approach to rockfish management and no species are considered overfished in Alaska” (Parker *et al.* 2000). Since the publication of the AFS policy statement on Pacific rockfish in 2000, management of BSAI rockfish has become more conservative due to the diminished use of multispecies assemblages.

Establishment of MPAs will require knowledge of the spatial distribution patterns for rockfish, particularly the pelagic larval stage. The creation of MPAs that are inconsistent with the mobility of rockfish would likely greatly reduce the effectiveness (Walters and Bonfil 1999), and little is known about the spawning locations or the extent of larval drift of Alaskan rockfish. Again, the reference to promoting recovery of stocks in the AFS recommendation for MPAs is directed towards west coast rockfish, as no species or species assemblage of rockfish in the EEZ off Alaska is currently overfished. As a management tool for reducing fishing mortality, it is unclear whether closed areas would simply redirect the same amount of fishing effort into smaller spatial areas, and thereby exacerbate the potential for localized depletions. The use of MPAs to protect habitat is recognized, and the Council has recently solicited proposals for closure areas that would protect Habitat Areas of Particular Concern (HAPC).

Comment 3. No real conservation measures have been put into place to address the shortcomings of conventional fisheries management with regard to rockfish species.

Response. Several changes have been implemented to improve fisheries management of rockfish species, particularly in the BSAI. First, harvest quotas no longer are being applied across the “other red rockfish” species complex, thus eliminating the possibility of disproportionate harvests across species within the complex. In fact, all species that formerly comprised the “other red rockfish” complex are now managed with single-species harvest quotas, consistent with the AFS

policy recommendations. This conservation measure has required substantial changes in the way some rockfish, such as shortraker and rougheye rockfish, have been classified by fishery observers. Associated with this change are improvements in assessment methodology that use more information to establish harvest recommendations, as discussed in the response to comment 2.

Second, only Pacific ocean perch is open to directed fishing in the BSAI, other rockfish species are closed to directed fishing. Retained catch of these species by vessels is limited by maximum retainable allowances, which constrain the amount of incidental catch that can be retained by a vessel as a percentage of the target species. Prior to 1998, the incidental catch allowance was applied to all rockfish in aggregate and was 15 percent of the target species. Since 1998, shortraker/rougheye were assigned their own maximum retainable allowance, which was lowered to 7 percent for deep water target fisheries and 2 percent for shallow water target fisheries. This conservation measure was put into place to reduce the likelihood of exceeding the ABC for rockfish complexes.

Comment 4. Population declines of BSAI shortraker and rougheye rockfish have not been addressed or tempered in any way.

Response. In assessments for previous years, the rougheye and shortraker rockfish biomass was estimated as an average of the recent survey estimates, and the survey estimates from the 1980s were not used in the biomass calculation. As discussed in the current assessment, the survey estimates from the 1980s were conducted with considerably different gear and methodology than the survey estimates beginning in 1990. Because the stock assessment has now evolved to fit a biological model to a time series of data, the data from the 1980s were used to obtain some information on stock size during the 1980s. However, the differences in survey methodology must be considered when evaluating this trend, as discussed in the current assessment. In any event, the recent biomass estimates are the most relevant to the current stock status, and the survey estimates from 1990 show a generally flat trend.

Comment 5. It is not clear why subarea TACs no longer exist for shortraker and rougheye rockfish in the BSAI.

Response. TACs are generally used to prevent disproportionate harvesting on a localized subpopulation. For rougheye and shortraker rockfish, it is not clear

whether fish in the Bering Sea subarea represent a distinct subpopulation separate from the Aleutian Islands subarea. As mentioned in the SAFE chapter, weak population structure has been observed for rougheye rockfish. However, caution should be exercised when making inferences on population units from genetic data which is based upon relatively low sample sizes (Gharrett, 2003). For shortraker rockfish, population structure has been observed roughly on the same scale as our current management areas, with a large Aleutian Islands group (Matala et al. in press). Bering Sea samples were not available for the analysis. Given the eastward flowing currents north of the Aleutian chain, one would not expect boundaries of genetic population units to coincide with the boundary of the Bering Sea and Aleutian Islands subareas.

Additionally, it is not clear that establishment of area-specific TACs would change operations within the fishery. An area-specific TAC would prevent targeting upon a species by prohibiting retention once the TAC has been reached. However, rougheye and shortraker rockfish are not subject to directed fisheries in either the Bering Sea or Aleutian Islands subareas.

Comment 6. The declining trend in rougheye biomass in the BSAI is due to overexploitation.

Response. As mentioned in the response to comment 4, recent survey estimates show a generally flat trend in rougheye biomass. In past years, rougheye rockfish were managed either as part of the "rougheye/shortraker" complex or the "other red rockfish" complex. However, the OFL for either of these complexes was not exceeded. NMFS recognizes the risk of disproportionate harvest within a species complex and has implemented the management changes outlined above; namely, single species harvest recommendations and more restrictive maximum retainable allowances. These efforts have reduced estimated rougheye rockfish mortality rates since 2001.

Comment 7. The Bering Sea subarea catch data for northern rockfish are omitted from the assessment, thus the implications of fishing without a separate Bering Sea subarea ABC, TAC, and OFL are difficult for the public to discern. It is unclear why the Council and the SSC aggregated the TAC BSAI-wide instead of separately for the Bering Sea and Aleutian Islands subareas.

Response. The catch of northern rockfish within the Bering Sea subarea is assessed in Table 12.1 in the SAFE report. The same considerations applied to the shortraker/rougheye example in comment 5 are pertinent here as well.

As discussed in the current assessment, the limited genetic information available for northern rockfish does not indicate population structure. The establishment of area-specific TACs would prevent retention once the TAC has been reached. However, northern rockfish are a bycatch species with very high discard rates in both the Bering Sea and Aleutian Islands subareas, so it would appear unlikely that the establishment of area specific TACs would alter fishing practices.

Comment 8. A comparison of Bering Sea subarea rockfish catch with potential Bering Sea subarea ABC and OFL levels reveals disproportionate harvests, and this comparison was omitted in the current assessment.

Response. The comparisons the comment refers to pertain to 2001 and earlier, when rockfish were managed with separate OFLs in the Bering Sea and Aleutian Islands subareas. Since that time, the view of the assessment authors, Plan Team, SSC, and Council has been that establishment of these separate OFLs and management units should be based upon biological information on population structure, and, as mentioned above, the available data do not suggest distinct populations between the Bering Sea and Aleutian Islands subareas. The commentator is correct in stating that disproportionate harvests may occur in some spatial areas within a single population. However, over 95 percent of both the catches and survey biomass occur within the Aleutian Islands subarea. The generally small population sizes in the Bering Sea subarea have resulted in increased uncertainty in population estimates in this area, and caution should be applied when comparing Bering Sea subarea catches with Bering Sea subarea survey biomass estimates for northern rockfish.

Comment 9. NMFS has failed to respond to the SSC's April 2003 discussion on whether a more conservative harvest rate (F50 percent) would be desirable for rockfish species in the GOA and BSAI, and the specific request that the agency evaluate the harvest strategy for rockfishes during the TAC setting process.

Response. An evaluation of the optimal rate for various rockfish species is dependent upon stock and recruitment data, and thus can only be applied to stocks for which age-structured models exist. In the BSAI, this includes Pacific ocean perch and northern rockfish. An analysis of this type was conducted for BSAI Pacific ocean perch and presented to the SSC and Council in December 2003, but the lack of contrast in estimated spawner stock size for BSAI northern rockfish

precluded any informative analysis using this method. An analysis of optimal harvest rates for GOA stocks for which age structured data exists is pending.

Including the analysis on BSAI Pacific ocean perch presented to the SSC in December 2003, several studies suggest that an F₄₀ percent harvest rate is not unduly aggressive for rockfish managed in the EEZ off Alaska (Dorn 2002, Ianelli and Heifetz 1995).

Comment 10. The SAFE authors reviewed an uncertainty correction factor for rockfish species that created higher ABCs. This is incongruous with the challenge posed to NMFS to assess whether current harvest strategy is sufficiently conservative.

Response. The applied uncertainty correction factor explicitly accounts for uncertainty in recruitment and stock size, and was part of a general process of evaluating potentially more conservative harvest rates for rockfish. The applied uncertainty correction factor was identical to that used in the Programmatic Supplemental Environmental Impact Statement. Although the control rule for applying the uncertainty correction factor did not result in a reduction of the FF_{abc} level, it did not cause an increase in the FF_{abc} level.

Comment 11. It is unclear why NMFS has not undertaken measures to address high discard rates of northern rockfish in the BSAI.

Response. From a biological perspective, the overriding concern is the effect of total removals from the fishery on the population, irrespective of the utilization of these removals. High levels of discards would certainly be problematic if they were not accounted for in the catch accounting methodology and led to underestimates of total harvest. However, the fishery observer coverage in the Aleutian Islands is generally thought to be sufficiently comprehensive to produce accurate records of total catch, including discards. Although it may be desirable to reduce northern rockfish bycatch in those fisheries where it occurs, this largely is an economic and utilization issue rather than a biological issue as long as total catch is below allowable harvest levels.

It should be pointed out that the level of information on BSAI northern rockfish is now substantially more detailed than is typical for a bycatch species with high discard rates, and is thus consistent with the AFS policy recommendation of single-species management targets, including those species taken as bycatch. In contrast to previous years, where only survey

biomass was considered, the northern rockfish assessment now includes information on growth, maturity, longevity, and age and size composition in establishing harvest recommendations. This level of detail was made possible only after reading all the archived northern rockfish otoliths collected in previous surveys. These efforts to improve the assessment data and methodology for northern rockfish were motivated not by their current economic value in the fishery, but rather the recognition of their sensitive life history and the important role they play in the Aleutian Islands ecosystem. As a result of this improvement to the assessment, we have observed the encouraging finding that several strong year classes of have occurred in recent years. For further information on rockfish, please see the following publications.

- Dorn, M.W. 2002. Advice on west coast rockfish harvest rates from Bayesian meta-analysis of stock-recruitment relationships. *N. Am. J. Fish. Aquat. Sci.* 22:280–300.
- Gharrett, A.J. 2003. Population structure of rougheye, shortraker, and northern rockfish based on analysis of mitochondrial DNA variation and microsatellites: completion. Juneau Center of Fisheries and Ocean Sciences, University of Alaska-Fairbanks. 136 pp.
- Ianelli, J.N. and J. Heifetz. 1995. Decision analysis of alternative harvest policies for Gulf of Alaska Pacific ocean perch fishery. *Fish. Res.* 24:35–63.
- Matala, A.P., A.K. Gray, J. Heifetz, and A.J. Gharrett. In press. Population structure of Alaskan shortraker rockfish, *Sebastes borealis*, inferred from microsatellite variation. *Env. Biol. Fish.*
- Parker, S.J. and 13 coauthors. 2000. Management of Pacific rockfish. *Fisheries* 25 (3): 22–30.
- Walters, C.J. and R. Bonfil. 1999. Multispecies spatial assessment models for the British Columbia groundfish trawl fishery. *Can. J. Fish. Aquat. Sci.* 56:601–628.

Comment 12. The BSAI SAFE report for “other rockfish” recommended assigning a separate OFL and ABC to shortspine thornyheads and leaving the remaining 7 rockfish species within the “other rockfish” complex but the Plan Team did not accept this recommendation in November because it was not raised in October. NMFS should break shortspine thornyheads out of the “other rockfish” category.

Response. The assessment authors’ recommendation was based on the fact

that shortspine thornyheads are the most abundant and valuable species in the complex and inhabit deeper regions of the shelf and slope than the other species. The authors recommend using Tier 5 criteria to assign separate ABCs and OFLs in the EBS and AI for shortspine thornyheads, and using Tier 6 (average catch from 1998–2002) criteria for the remaining species in the “other rockfish” complex. The Plan Team believes that this general approach has promise, however, the Plan Team did not endorse this method in 2004 because the Team requested more time to review this proposal and contemplate the implications of separating out shortspine thornyheads. The Plan Team recommends that the authors propose essentially the same method in September 2004 for the 2005 specification process. For 2004, the Plan Team recommended that the method used for 2003 be used. The SSC has determined that a reliable estimate of the natural mortality rate exists for this complex, thereby qualifying “other rockfish” for management under Tier 5.

Comment 13. BSAI squid and other species catch increased in 2002 and NMFS should manage the species in the “other species” category as separate shark, skates, squid and octopus.

Response. The “other species” fishery in the BSAI was open for directed fishing until 2003 when it was closed to directed fishing to prevent exceeding the TAC. This should reduce the incentive to target “other species”. The Plan Team did recommend to separate the “other species” category into sharks, skates, sculpin and octopus. However, this change would require an FMP amendment before it could be implemented because “other species” is defined in a manner that does not provide for species breakouts unlike other target and non target groundfish complexes. The Council must initiate the development of such an FMP amendment, although the schedule for Council consideration of the draft analysis is uncertain given limited staff resources and competing priorities.

Comment 14. The Atka mackerel fishery causes disproportionate impacts to coral and sponge reefs throughout the BSAI.

Response. The Atka mackerel fishery does not cause disproportionate impacts as demonstrated by fishery data. In 2003, the directed Atka mackerel fishery accounted for 54 percent of the total groundfish catch in the Aleutian Islands (Pacific cod accounted for 32 percent, Pacific ocean perch 12 percent, and the rest was taken in miscellaneous fisheries). The commentator highlights the average percentage of bycatch

species taken in the Atka mackerel fishery over the last five years. These data are cited from the Ecosystem Effects on BSAI Atka Mackerel section in the stock assessment. For example: “* * * in the last 5 years (1998–2002), the Atka mackerel fishery has taken on average about 50 percent and 40 percent, respectively, of the total Aleutian Islands trawl sponge and coral catches.” Proportionately, the directed Atka mackerel fishery is accounting for bycatch of sponges and coral in line with the percentage of total groundfish catch (in the Aleutians) taken by the Atka mackerel fishery.

The commentator fails to acknowledge the following sentence in the stock assessment: “It is unknown if the absolute levels of sponge and coral bycatch in the Atka mackerel fishery are of concern.” The average percentages of bycatch species taken in the recent Atka mackerel fisheries appear high, but they must be considered in the context that there are only a few major bottom trawl fisheries in the Aleutians, with Atka mackerel being one of the largest. Thus, it is to be expected that these few fisheries would be responsible for the bulk of the bycatch. The question remains whether the absolute levels of bycatch are of concern.

The stock assessment acknowledges that the Atka mackerel fishery impacts coral and sponge reefs, and also has bycatch of skates and sculpins. However, the Atka mackerel fishery is highly localized and focuses on a few, relatively small areas that provide high catch per unit effort of Atka mackerel.

Comment 15. The Atka mackerel fishery competes with the endangered Steller sea lions.

Response. The Atka mackerel fishery is regulated by Steller Sea Lion Protection Measures that include seasonal and spatial allocations of the quota, as well as harvest limits within critical habitat areas defined as Harvest Limit Areas (HLA). In 2003, 48 percent of the 60 percent limit was taken in the Central and Western Aleutian Islands HLA. Two observers are required to be on all Atka mackerel boats fishing in the HLA. The directed Atka mackerel fishery is one of the most highly regulated and monitored fisheries to accommodate Steller sea lion concerns.

Comment 16. Pacific cod should be managed as the Bering Sea subarea and Aleutian Islands subarea separately instead of the BSAI-wide.

Response. Currently, Pacific cod is not allocated by subarea. The SSC agreed with the SAFE report author that Pacific cod should be split between BS and AI and requests the assessment authors to evaluate the methods used to

split the ABC and their potential management implications, so that specific recommendations can be made to the Council on this issue in the future. The 2004 ABC was set at 223,000 mt, and if Pacific cod was allocated by subarea, the EBS and AI portions would be 191,000 mt and 32,000 mt, respectively. An AI ABC of 32,000 mt would be higher than the 2002 AI catch of 30,801 mt and similar to the 2004 catch of 31,129 mt and would not be expected to result in significant constraints on the existing fishery in 2004 or to be a conservation issue. The BSAI Pacific cod TAC is the most finely allocated TAC in the Federal fisheries off Alaska with twenty allocations between four gear types, three processing sectors, two vessel sizes and two seasons. Splitting the TAC between the BS and AI subareas under the current allocations will force vessels not currently fishing in the AI to fish there or forgo the AI amount of the TAC allocated to them. In 2003, the Aleutian Islands jig and pot directed Pacific cod catch was less than 1 mt. Trawl Pacific cod catch accounted for 97 percent of the Pacific cod catch in the AI (54 percent CV, 39 percent CP) and would have exceeded the 47 percent of their Aleutian Islands allocation. Also, 93 percent of the trawl catch was taken during the January 1 to April 1, 2003 season, which is limited in 2004 to 60 percent. In 2003, if there were a BS and AI subarea split, the hook-and-line catcher processors and pot catcher vessels would have reached their Bering Sea allocations earlier by at least one week and two weeks, respectively. The Council, the industry, and the public need to develop and review more analyses on how to manage the Pacific cod Aleutian Islands TAC.

Comment 17. The TAC setting process is lengthy and does not provide for sufficient opportunities to make meaningful public comment.

Response. Currently, numerous opportunities exist for public input including the September and November Plan Team meetings and the October and December Council meetings, as well as opportunity to submit comments to NMFS on the proposed specifications.

Nonetheless, NMFS and the Council agree that these opportunities could be enhanced further. In October, the Council approved a new process for establishing harvest specifications in future years under BSAI and GOA FMP Amendments 48/48. Objectives for the revised process include providing enhanced opportunity for informed public comment. The Council's preferred alternative is to establish harvest specifications for 18 months

(Year 1 and first half of Year 2) for BSAI and GOA groundfish. The new process would better assure that proposed harvest specifications and corresponding analysis, which are made available for public review and comment, provide the basis from which final harvest specifications are established.

Small Entity Compliance Guide

The following information is a plain language guide to assist small entities in complying with this final rule as required by the Small Business Regulatory Enforcement Fairness Act of 1996. This final rule's primary management measures are to announce final 2004 harvest specifications and prohibited species bycatch allowances for the groundfish fishery of the BSAI. This action is necessary to establish harvest limits and associated management measures for groundfish during the 2004 fishing year and to accomplish the goals and objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. This action affects all fishermen who participate in the BSAI fishery. The specific amounts of OFL, ABC, TAC and PSC amounts are provided in tabular form to assist the reader. NMFS will announce closures of directed fishing in the **Federal Register** and in information bulletins released by the Alaska Region. Affected fishermen should keep themselves informed of such closures.

Classification

This action is authorized under 50 CFR 679.20 and is exempt from review under Executive Order 12866.

A FRFA was prepared for the final 2004 harvest specifications to address the statutory requirements of the Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Fairness Act of 1996.

The proposed rule for the BSAI harvest specifications was published in the **Federal Register** on December 2, 2003 (68 FR 67642). An Initial Regulatory Flexibility Analysis (IRFA) was prepared for the proposed rule, and was described in the classifications section of the proposed rule. The IRFA is available on the NMFS Alaska Region Web site at <http://www.fakr.noaa.gov/sustainablefisheries/specs04/GOA63earirirfa1003.pdf>. The public comment period for the BSAI specifications rule ended on January 2, 2004. No comments were received on the economic impact of this rule.

The final 2004 harvest specifications establish harvest limits for the groundfish species and species groups

in the BSAI. This action is necessary to allow groundfish fishing in 2004. In all the waters off of Alaska, these harvest specifications may affect from 832 to 838 small catcher vessels, 30 to 33 small catcher/processors, and six small CDQ groups. In the BSAI, 105 small catcher vessels, and 19 small catcher-processors would experience small adverse impacts (estimated to be a fraction of a percent of entity gross revenues) from reductions in Greenland turbot harvests. Six small catcher/processors operating as head-and-gut trawlers would experience reductions in Pacific ocean perch, flathead sole, and rock sole, estimated to be 3 percent to 4 percent of entity gross revenues. Also, 188 small catcher vessels and 43 small catcher-processors would experience small adverse impacts (estimated to be a fraction of a percent of entity gross revenues) from reductions in other species harvests. Six CDQ groups would have small revenue reductions (estimated to be a small fraction of a percent) in fisheries for certain species (although these would be more than offset by revenue increases from other fisheries for CDQ groups).

The analysis examined four alternatives to the preferred. Alternative 1 would have set TACs in the BSAI to produce fishing mortality rates, F , that are equal to $\max F_{ABC}$, the maximum permissible value under the FMP (2,000,000 mt for OY). While this alternative would have a smaller adverse impact on small entities than the preferred, this alternative was rejected because the associated harvest limits are above biologically acceptable levels. Alternative 3, which sets TACs based on half the maximum levels, and Alternative 4, which sets TACs based on a five year average, were both rejected because they do not use the best and most recent scientific information on status of groundfish stocks, nor take into account socioeconomic benefits to the nation. Alternative 5, the no action alternative, was rejected because it would set TACs in the BSAI equal to zero. Alternatives 3, 4, and 5 would also cause negative impacts to small entities.

The action does not impose new recordkeeping or reporting requirements on small entities. The analysis did not reveal any Federal rules that duplicate, overlap or conflict with the proposed action.

Under the provisions of 5 U.S.C. 553(b)(B), an agency can waive the requirement for prior notice if for good cause it finds that such notice is impracticable, unnecessary, or contrary to public interest. Certain fisheries, such as those for Pacific cod, Atka mackerel, and Pacific ocean perch, are intensive

fast-paced fisheries. Others fisheries, such as those for flatfish and rockfish, are critical as directed fisheries and as incidental catch in other fisheries. U.S. fishing vessels have demonstrated the capacity to catch full TAC allocations in all these fisheries. Any delay in allocating full TAC in these fisheries would cause disruption to the industry and potential economic harm through unnecessary discards. For the foregoing reasons and pursuant to 50 CFR 679.20(b)(3) and 5 U.S.C. 553(b)(3B), NMFS makes an apportionment of a portion of the non-specified reserve to fisheries that it has determined appropriate (see Table 2) to allow for the orderly conduct and efficient operation of these fisheries and waives the requirement for prior notice for good cause because it is impracticable and contrary to the public interest.

Under the provisions of 5 U.S.C. 553(d)(1), an agency can waive a delay in the effective date of a substantive rule if it relieves a restriction. Unless this delay is waived, fisheries that are currently closed (See **SUPPLEMENTARY INFORMATION**) because the interim TACs were reached would remain closed until the final specifications became effective. Those closed fisheries are restrictions on the industry that can be relieved by making the final specifications effective on publication. Another relief from a restriction would be the elimination of discards of sablefish caught incidentally to Pacific halibut. If the final specifications are not effective by February 29, 2004, which is the start of the Pacific halibut season as specified by the IPHC, the longline sablefish fishery will not begin concurrently with the Pacific halibut season. This would cause disruption to the fishing industry, as both longline sablefish and Pacific halibut are managed under the same IFQ program, and as stated above, require sablefish that is caught with Pacific halibut to be discarded.

Under the provisions of 5 U.S.C. 553(d)(3), an agency can waive a delay in the effective date for good cause found and published with the rule. For all other fisheries not currently closed because the interim TACs were reached, the possibility exists for their closures prior to the expiration of a 30-day delayed effectiveness period because their interim TACs or PSC allowances could be reached. Determining which fisheries may close is impossible because these fisheries are affected by several factors that cannot be predicted in advance, including fishing effort, weather, movement of fishery stocks, and market price. Furthermore, the closure of one fishery has a cascading effect on other fisheries by freeing-up

fishing vessels, allowing them to move from closed fisheries to open ones, increasing the fishing capacity in those open fisheries and causing them to close at an accelerated pace. The interim specifications currently in effect are not sufficient to allow directed fisheries to continue predictably, resulting in unnecessary closures and disruption within the fishing industry and the potential for regulatory discards. The final specifications establish increased TACs and PSC allowances to provide continued directed fishing for species that would otherwise be prohibited under the interim specifications. These final specifications were developed as quickly as possible, given plan team review in November 2003, Council consideration and recommendations in December 2003, and NOAA Fisheries review and development in January–February 2004.

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; 16 U.S.C. 1540(f); Pub. L. 105–277, Title II of Division C; Pub L. 106–31, Sec. 3027; and Pub L. 106–554, Sec. 209.

Dated: February 23, 2004.

William T. Hogarth,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031125292–4061–02; I.D. 111703E]

Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska; Final 2004 Harvest Specifications for Groundfish

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

ACTION: Final 2004 harvest specifications for groundfish and associated management measures; closures.

SUMMARY: NMFS announces final 2004 harvest specifications for groundfish, reserves and apportionments thereof, halibut prohibited species catch (PSC) limits, and associated management measures for the groundfish fishery of the Gulf of Alaska (GOA). This action is necessary to establish harvest limits and associated management measures for groundfish during the 2004 fishing year and to accomplish the goals and

objectives of the Fishery Management Plan for Groundfish Fishery of the GOA (FMP). The intended effect of this action is to conserve and manage the groundfish resources in the GOA in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: The final 2004 harvest specifications and associated management measures are effective at 1200 hrs, Alaska local time (A.l.t.), February 27, 2004 through 2400 hrs, A.l.t., December 31, 2004.

ADDRESSES: Copies of the Final Environmental Assessment (EA) and Final Regulatory Flexibility Analysis (FRFA) prepared for this action and the Final 2003 Stock Assessment and Fishery Evaluation (SAFE) report, dated November 2003, are available from the North Pacific Fishery Management Council, West 4th Avenue, Suite 306, Anchorage, AK 99510 (907–271–2809) or from its homepage at <http://www.fakr.noaa.gov/npfmc>.

FOR FURTHER INFORMATION CONTACT: Tom Pearson, 907–481–1780 or e-mail at tom.pearson@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

NMFS manages the groundfish fisheries in the exclusive economic zone (EEZ) of the GOA under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801, *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600 and 679.

The FMP and its implementing regulations require NMFS, after consultation with the Council, to specify annually the total allowable catch (TAC) for each target species and for the “other species” category, the sum of which must be within the optimum yield (OY) range of 116,000 to 800,000 metric tons (mt) (see § 679.20(a)(1)(ii)). Regulations at § 679.20(c)(3)(i) further require NMFS to publish annually the final annual TACs, halibut PSC amounts, and seasonal allowances of pollock and inshore/offshore Pacific cod. The final specifications set forth in Tables 1 to 11 of this document satisfy these requirements. For 2004, the sum of the TAC amounts is 264,433 mt.

The proposed GOA groundfish specifications and Pacific halibut PSC allowances for the groundfish fishery of the GOA were published in the **Federal Register** on December 5, 2003 (68 FR 68002). Comments were invited and accepted through January 5, 2004. NMFS received one letter of comment