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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 150916863-6211-02]

RIN 0648-XF108

Fisheries of the Exclusive Economic Zone Off Alaska; Inseason Adjustment to the 2017 Bering Sea and Aleutian Islands Pollock, Atka Mackerel, and Pacific cod Total Allowable Catch Amounts

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

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

SUMMARY: NMFS is adjusting the 2017 total allowable catch (TAC) amounts for the Bering Sea and Aleutian Islands (BSAI) pollock, Atka mackerel, and Pacific cod fisheries. This action is necessary because NMFS has determined these TACs are incorrectly specified, and will ensure the BSAI pollock, Atka mackerel, and Pacific cod TACs are the appropriate amounts based on the best available scientific information.

Also, NMFS is announcing the Aleutian Islands Catcher Vessel (CV) Harvest Set-Aside and Bering Sea Trawl CV A-Season Sector Limitation will not be in effect for 2017, and TACs in this inseason adjustment will apply for 2017. This action is consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), [*insert date of filing for public inspection at the Office of the Federal Register*], until the effective date of the final 2017 and 2018 harvest specifications for BSAI groundfish, unless otherwise modified or superseded through publication of a notification in the **Federal Register**.

Comments must be received at the following address no later than 4:30 p.m., A.l.t., [*insert date 15 days after publication in the FEDERAL REGISTER*].

ADDRESSES: You may submit comments on this document, identified by *NOAA-NMFS-2015-0118*, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0118*, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- **Mail:** Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

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

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

The final 2016 and 2017 harvest specifications for groundfish in the BSAI (81 FR 14773, March 18, 2016) set the 2017 Aleutian Island (AI) pollock TAC at 19,000 metric tons (mt), the 2017 Bering Sea (BS) pollock TAC at 1,340,643 mt, the 2017 BSAI Atka mackerel TAC at 55,000 mt, the 2017 BS Pacific cod TAC at 238,680 mt, and the AI Pacific cod TAC at 12,839 mt. Also set was an AI pollock ABC of 36,664 and a Western Aleutian Island limit for Pacific cod at 26.3 percent of the AI Pacific cod TAC. In December 2016, the North Pacific Fishery Management Council (Council) recommended a 2017 BS pollock TAC of 1,345,000 mt, which is more than the 1,340,643 mt TAC established by the final 2016 and 2017 harvest specifications for groundfish in the BSAI. The Council also recommended decreasing the AI pollock ABC to 36,061 mt from 36,664 mt. This in turn reduces some area and seasonal limits for AI pollock. The Council also recommended a 2017 BSAI Atka mackerel TAC of 65,000 mt, which is more than the 55,000 mt TAC established by the final 2016 and 2017 harvest specifications for groundfish in the BSAI. Furthermore, the Council recommended a 2017 BS Pacific cod TAC of 223,704 mt, and an AI Pacific cod TAC of 15,695 mt,

which is less than the BS Pacific cod TAC of 238,680 mt, and more than the AI Pacific cod TAC of 12,839 mt established by the final 2016 and 2017 harvest specifications for groundfish in the BSAI. In addition to changes in TACs, the Council recommended changing the percentage limit of Western Aleutian Island Pacific cod to 25.6 percent of the AI Pacific cod ABC, from the 26.3 percent of the AI Pacific cod TAC. The Council's recommended 2017 TACs, and the area and seasonal apportionments, are based on the Stock Assessment and Fishery Evaluation report (SAFE), dated November 2016, which NMFS has determined is the best available scientific information for these fisheries.

Amendment 113 to the FMP (81 FR 84434, November 23, 2016) and regulations at § 679.20(a)(7)(viii) require NMFS to announce whether the Aleutian Islands incidental catch allowance, directed fishing allowance, CV Harvest Set-Aside, and Unrestricted Fishery, as well as the Bering Sea Trawl CV A-Season Sector Limitation will be in effect for 2017. NMFS received notification from Adak and Atka that neither will be processing Aleutian Islands Pacific cod in 2017. Therefore, the Pacific cod TACs in Table 9 of this inseason adjustment will be effective for 2017 and the harvest limits in Table 8A (81 FR 84434, November 23, 2016) will not apply in 2017.

Steller sea lions occur in the same location as the pollock, Atka mackerel, and Pacific cod fisheries and are listed as endangered under the Endangered Species Act (ESA). Pollock, Atka mackerel, and Pacific cod are a principal prey species for Steller sea lions in the BSAI. The seasonal apportionment of pollock, Atka mackerel, and Pacific cod harvest is necessary to ensure the groundfish fisheries are not likely to cause jeopardy of extinction or adverse modification of critical habitat for Steller sea lions. NMFS published regulations and the revised harvest limit amounts for Atka mackerel,

Pacific cod, and pollock fisheries to implement Steller sea lion protection measures to insure that groundfish fisheries of the BSAI are not likely to jeopardize the continued existence of the western distinct population segment of Steller sea lions or destroy or adversely modify their designated critical habitat (79 FR 70286, November 25, 2014). The regulations at § 679.20(a)(5)(i) specify how the BS pollock TAC will be apportioned. The regulations at § 679.20(a)(7) specify how the BSAI Pacific cod TAC will be apportioned. The regulations at § 679.20(a)(8) specify how the BSAI Atka mackerel TAC will be apportioned.

In accordance with § 679.25(a)(1)(iii), (a)(2)(i)(B), and (a)(2)(iv), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that, based on the November 2016 SAFE report for this fishery, the current BSAI pollock, Atka mackerel, and Pacific cod TACs are incorrectly specified. Pursuant to § 679.25(a)(1)(iii), the Regional Administrator is adjusting the 2017 BS pollock TAC to 1,345,000 mt, the 2017 BSAI Atka mackerel TAC to 65,000, the 2017 BS Pacific cod TAC to 223,704 mt, and the AI Pacific cod TAC to 15,695 mt. Therefore, Table 2 of the final 2016 and 2017 harvest specifications for groundfish in the BSAI (81 FR 14773, March 18, 2016) is revised consistent with this adjustment.

Pursuant to § 679.20(a)(5)(i), Table 5 of the final 2016 and 2017 harvest specifications for groundfish in the BSAI (81 FR 14773, March 18, 2016) is revised for the 2017 BS allocations of pollock TAC to the directed pollock fisheries and to the Community Development Quota (CDQ) directed fishing allowances consistent with this adjustment. The Steller sea lion protection measure final rule (79 FR 70286, November 25, 2014), sets harvest limits for pollock in the A season (January 20 to June 10) in Areas

543, 542, and 541, see § 679.20(a)(5)(iii)(B)(6). In Area 541, the 2017 A season pollock harvest limit is no more than 30 percent, or 10,818 mt, of the AI ABC of 36,061 mt. In Area 542, the 2017 A season pollock harvest limit is no more than 15 percent, or 5,409 mt, of the AI ABC of 36,061 mt. In Area 543, the 2017 A season pollock harvest limit is no more than 5 percent, or 1,803 mt, of the AI pollock ABC of 36,061 mt.

TABLE 5–FINAL 2017 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA)¹

[Amounts are in metric tons]

Area and sector	2017 Allocations	2017 A season ¹		2017 B season ¹
		A season DFA	SCA harvest limit ²	B season DFA
Bering Sea subarea TAC ¹	1,345,000	n/a	n/a	n/a
CDQ DFA	134,500	60,525	37,660	73,975
ICA ¹	47,210	n/a	n/a	n/a
Total Bering Sea non-CDQ DFA	1,163,291	523,481	325,721	639,810
AFA Inshore	581,645	261,740	162,861	319,905
AFA Catcher/Processors ³	465,316	209,392	130,289	255,924
Catch by C/Ps	425,764	191,594	n/a	234,170
Catch by CVs ³	39,552	17,798	n/a	21,754
Unlisted C/P Limit ⁴	2,327	1,047	n/a	1,280
AFA Motherships	116,329	52,348	32,572	63,981
Excessive Harvesting Limit ⁵	203,576	n/a	n/a	n/a
Excessive Processing Limit ⁶	348,987	n/a	n/a	n/a
Aleutian Islands subarea ABC	36,061	n/a	n/a	n/a
Aleutian Islands subarea TAC ¹	19,000	n/a	n/a	n/a
CDQ DFA	1,900	760	n/a	1,140
ICA	2,400	1,200	n/a	1,200
Aleut Corporation	14,700	12,464	n/a	2,236
Area harvest limit ⁷ 541	10,818	n/a	n/a	n/a
542	5,409	n/a	n/a	n/a
543	1,803	n/a	n/a	n/a
Bogoslof District ICA ⁸	500	n/a	n/a	n/a

¹Pursuant to § 679.20(a)(5)(i)(A), the BS subarea pollock, after subtracting the CDQ DFA (10 percent) and the ICA (3.9 percent), is allocated as a DFA as follows: inshore sector - 50 percent, catcher/processor sector (C/P) - 40 percent, and mothership sector - 10 percent. In the BS subarea, 45 percent of the DFA is allocated to the A season (January 20-June 10) and 55 percent of the DFA is allocated to the B season (June 10-November 1). Pursuant to § 679.20(a)(5)(iii)(B)(2)(i) and (ii), the annual AI pollock TAC, after subtracting first for the CDQ directed fishing allowance (10 percent) and second the ICA (2,400 mt), is allocated to the Aleut Corporation for a pollock directed fishery. In the AI subarea, the A season is allocated 40 percent of the ABC and the B season is allocated the remainder of the pollock directed fishery.

²In the BS subarea, no more than 28 percent of each sector's annual DFA may be taken from the SCA before April 1.

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

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

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

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

⁷Pursuant to § 679.20(a)(5)(iii)(B)(6), NMFS establishes harvest limits for pollock in the A season in Area 541 no more than 30 percent, in Area 542 no more than 15 percent, and in Area 543 no more than 5 percent of the Aleutian Islands pollock ABC.

⁸The Bogoslof District is closed by the final harvest specifications to directed fishing for pollock. The amounts specified are for ICA only and are not apportioned by season or sector.

Note: Seasonal or sector apportionments may not total precisely due to rounding.

Pursuant to § 679.20(a)(8), Table 7 of the final 2016 and 2017 harvest specifications for groundfish in the BSAI (81 FR 14773, March 18, 2016) is revised for the 2017 seasonal and spatial allowances, gear shares, CDQ reserve, incidental catch allowance, and Amendment 80 allocation of the BSAI Atka mackerel TAC consistent with this adjustment.

TABLE 7—FINAL 2017 SEASONAL AND SPATIAL ALLOWANCES, GEAR SHARES, CDQ RESERVE, INCIDENTAL CATCH ALLOWANCE, AND AMENDMENT 80 ALLOCATIONS OF THE BSAI ATKA MACKEREL TAC

[Amounts are in metric tons]

Sector ¹	Season ^{2,3,4}	2017 allocation by area		
		Eastern Aleutian District/Bering Sea	Central Aleutian District ⁵	Western Aleutian District
TAC	n/a	34,500	18,000	12,500
CDQ reserve	Total	3,692	1,926	1,338
	A	1,846	963	669
	Critical Habitat	n/a	578	401
	B	1,846	963	669
	Critical Habitat	n/a	578	401
Non-CDQ TAC	n/a	30,809	16,074	11,163
ICA	Total	1,000	75	20
Jig ⁶	Total	149	0	0
BSAI trawl limited access	Total	2,966	1,600	0
	A	1,483	800	0
	Critical Habitat	n/a	480	0
	B	1,483	800	0
	Critical Habitat	n/a	480	0
Amendment 80 sectors	Total	26,694	14,399	11,143
	A	13,347	7,200	5,571
	B	13,347	7,200	5,571
Alaska Groundfish Cooperative	Total ⁶	15,191	8,552	6,853
	A	7,596	4,276	3,427
	Critical Habitat	n/a	2,566	2,056
	B	7,596	4,276	3,427
	Critical Habitat	n/a	2,566	2,056
Alaska Seafood Cooperative	Total ⁶	11,502	5,847	4,290
	A	5,751	2,924	2,145
	Critical Habitat	n/a	1,754	1,287
	B	5,751	2,924	2,145
	Critical Habitat	n/a	1,754	1,287

¹ Section 679.20(a)(8)(ii) allocates the Atka mackerel TACs, after subtracting the CDQ reserves, jig gear allocation, and ICAs to the Amendment 80 and BSAI trawl limited access sectors. The allocation of the ITAC for Atka mackerel to the Amendment 80 and BSAI trawl limited access sectors is established in Table 33 to part 679 and § 679.91. The CDQ reserve is 10.7 percent of the TAC for use by CDQ participants (see §§ 679.20(b)(1)(ii)(C) and 679.31).

² Sections 679.20(a)(8)(ii)(A) and 679.22(a) establish temporal and spatial limitations for the Atka mackerel fishery.

³ The seasonal allowances of Atka mackerel are 50 percent in the A season and 50 percent in the B season.

⁴ Section 679.23(e)(3) authorizes directed fishing for Atka mackerel with trawl gear during the A season from January 20 to June 10 and the B season from June 10 to December 31.

⁵Section 679.20(a)(8)(ii)(C)(1)(i) limits no more than 60 percent of the annual TACs in Areas 542 and 543 to be caught inside of critical habitat; (a)(ii)(C)(1)(ii) equally divides the annual TACs between the A and B seasons as defined at § 679.23(e)(3); and (a)(8)(ii)(C)(2) requires the TAC in Area 543 shall be no more than 65 percent of ABC.

⁶ Section 679.20(a)(8)(i) requires that up to 2 percent of the Eastern Aleutian District and the Bering Sea subarea TAC be allocated to jig gear after subtracting the CDQ reserve and ICA. The amount of this allocation is 0.5 percent. The jig gear allocation is not apportioned by season.

Note: Seasonal or sector apportionments may not total precisely due to rounding.

Pursuant to § 679.20(a)(7), Table 9 of the final 2016 and 2017 harvest specifications for groundfish in the BSAI (81 FR 14773, March 18, 2016) is revised for the 2017 gear shares and seasonal allowances of the BSAI Pacific cod TAC consistent with this adjustment.

TABLE 9—FINAL 2017 GEAR SHARES AND SEASONAL ALLOWANCES OF THE BSAI PACIFIC COD TAC
[Amounts are in metric tons]

Gear sector	Percent	2017 share of gear sector total	2017 share of sector total	2017 seasonal apportionment	
				Seasons	Amount
BS TAC	n/a	223,704	n/a	n/a	n/a
BS CDQ	n/a	23,936	n/a	see § 679.20(a)(7)(i)(B)	n/a
BS non-CDQ TAC	n/a	199,768	n/a	n/a	n/a
AI TAC	n/a	15,695	n/a	n/a	n/a
AI CDQ	n/a	1,679	n/a	see § 679.20(a)(7)(i)(B)	n/a
AI non-CDQ TAC	n/a	14,016	n/a	n/a	n/a
Western Aleutian Island Limit	n/a	4,018	n/a	n/a	n/a
Total BSAI non-CDQ TAC ¹	100	213,783	n/a	n/a	n/a
Total hook-and-line/pot gear	60.8	129,980	n/a	n/a	n/a
Hook-and-line/pot ICA ²	n/a	500	n/a	see § 679.20(a)(7)(ii)(B)	n/a
Hook-and-line/pot sub-total	n/a	129,480	n/a	n/a	n/a
Hook-and-line catcher/processor	48.7	n/a	103,712	Jan 1-Jun 10	52,893
				Jun 10-Dec 31	50,819
Hook-and-line catcher vessel ≥ 60 ft LOA	0.2	n/a	426	Jan 1-Jun 10	217
				Jun 10-Dec 31	209
Pot catcher/processor	1.5	n/a	3,194	Jan 1-Jun 10	1,629
				Sept 1-Dec 31	1,565
Pot catcher vessel ≥ 60 ft LOA	8.4	n/a	17,889	Jan 1-Jun 10	9,123
				Sept 1-Dec 31	8,765
Catcher vessel < 60 ft LOA using hook-and-line or pot gear	2	n/a	4,259	n/a	n/a
Trawl catcher vessel	22.1	47,246	n/a	Jan 20-Apr 1	34,962
				Apr 1-Jun 10	5,197
				Jun 10-Nov 1	7,087
AFA trawl catcher/processor	2.3	4,917	n/a	Jan 20-Apr 1	3,688
				Apr 1- Jun 10	1,229
				Jun 10-Nov 1	0
Amendment 80	13.4	28,647	n/a	Jan 20-Apr 1	21,485
				Apr 1- Jun 10	7,162
				Jun 10-Nov 1	0
Alaska Groundfish Cooperative	n/a	n/a	4,522	Jan 20-Apr 1	3,392
				Apr 1- Jun 10	1,131
				Jun 10-Dec 31	0
Alaska Seafood Cooperative	n/a	n/a	24,125	Jan 20-Apr 1	18,094
				Apr 1- Jun 10	6,031
				Jun 10-Dec 31	0
Jig	1.4	2,993	n/a	Jan 1-Apr 30	1,796
				Apr 30-Aug 31	599
				Aug 31-Dec 31	599

¹ The gear shares and seasonal allowances for BSAI Pacific cod TAC are based on the sum of the BS and AI Pacific cod TACs, after the subtraction of CDQ. If the TAC for Pacific cod in either the AI or BS is reached, then directed fishing for Pacific cod in that subarea may be prohibited, even if a BSAI allowance remains.

² The ICA for the hook-and-line and pot sectors will be deducted from the aggregate portion of Pacific cod TAC allocated to the hook-and-line and pot sectors. The Regional Administrator approves an ICA of 500 mt for 2017 based on anticipated incidental catch in these fisheries.

Note: Seasonal or sector apportionments may not total precisely due to rounding.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would allow for harvests that exceed the appropriate allocations for pollock, Atka mackerel, and Pacific cod in the BSAI based on the best scientific information available. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of December 20, 2016, and additional time for prior public comment would result in conservation concerns for the ESA-listed Steller sea lions.

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

Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until [*insert date 15 days after publication in the FEDERAL REGISTER*].

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

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

Dated: January 4, 2017.

Emily H. Menashes,
Acting Director,
Office of Sustainable Fisheries,
National Marine Fisheries Service.

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