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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 180713633-9174-02]

RTID 0648-XY059

Fisheries of the Exclusive Economic Zone Off Alaska; Inseason Adjustment to the 2020 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 2020 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. 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.), December 31, 2019, until the effective date of the final 2020 and 2021 harvest specifications for BSAI groundfish, unless otherwise modified or superseded through publication of a notification in the **Federal Register**.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., January 17, 2020.

ADDRESSES: Submit your comments, identified by NOAA-NMFS-2018-0089, by either of the following methods:

- *Federal e-Rulemaking Portal:* Go to www.regulations.gov#!/docketDetail;D=NOAA-NMFS-2018-0089, 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: Records. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.

Instructions: NMFS may not consider comments if they are sent by any other method, to any other address or individual, or received after the comment period ends. All comments received are a part of the public record, and NMFS will post the comments 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 2019 and 2020 harvest specifications for groundfish in the BSAI (84 FR 9000, March 13, 2019) set the 2020 Aleutian Islands (AI) pollock TAC at 19,000 metric tons (mt), the 2020 Bering Sea (BS) pollock TAC at 1,420,000 mt, the 2020 BSAI Atka mackerel TAC at 53,635 mt, the 2019 BS Pacific cod TAC at 124,625 mt, and the 2019 AI Pacific cod TAC at 14,214 mt. Also set was a 2020 AI pollock ABC of 55,125 mt and a Western Aleutian Islands limit for Pacific cod at 15.7 percent of the AI Pacific cod ABC minus the State of Alaska's guideline harvest level. In December 2019, the North Pacific Fishery Management Council (Council) recommended a 2020 BS pollock TAC of 1,425,000 mt, which is more than the 1,420,000 mt TAC established by the final 2019 and 2020 harvest specifications for groundfish in the BSAI. The Council also recommended decreasing the AI pollock ABC to 55,120 mt from 55,125 mt. This decreases some 2020 area and seasonal limits for AI pollock. The Council also recommended a 2020 BSAI Atka mackerel TAC of 59,305 mt, which is more than the 53,635 mt TAC established by the final 2019 and 2020 harvest specifications for groundfish in the BSAI. Furthermore, the Council recommended a 2020 BS Pacific cod TAC of 141,799 mt, and an AI Pacific cod TAC of 13,796 mt, which is more than the BS Pacific cod TAC of 124,625 mt, and less than the AI Pacific cod TAC of 14,214 mt established by the final 2019 and 2020 harvest specifications for groundfish in the BSAI. In addition to changes in TACs, the Council recommended the same percentage limit of

Western Aleutian Islands Pacific cod of 15.7 percent of the AI Pacific cod ABC minus the State of Alaska's guideline harvest level. The Council's recommended 2020 TACs, and the area and seasonal apportionments, are based on the Stock Assessment and Fishery Evaluation report (SAFE), dated November 2019, which NMFS has determined is the best available scientific information for these fisheries.

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 pollock, Atka mackerel, and Pacific cod 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) and (iii) specify how the BS and AI 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 2019 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 2020 BS pollock TAC to 1,425,000 mt, the 2020 BSAI Atka mackerel TAC to 59,305 mt, the 2020 BS Pacific cod TAC to 141,799 mt, and the 2020 AI Pacific cod TAC to 13,796 mt. Therefore, Table 2 of the final 2019 and 2020 harvest specifications for groundfish in the BSAI (843 FR 9000, March 13, 2019) is revised consistent with this adjustment.

Pursuant to § 679.20(a)(5)(i) and (iii), Table 5 of the final 2019 and 2020 harvest specifications for groundfish in the BSAI (84 FR 9000, March 13, 2019) is revised for the 2020 BS and AI allocations of pollock TAC to the directed pollock fisheries and to the Community Development Quota (CDQ) directed fishing allowances consistent with this adjustment. For AI pollock, harvest limits are set 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 2020 A season pollock harvest limit is no more than 30 percent, or 16,536 mt, of the AI ABC of 55,120 mt. In Area 542, the 2020 A season pollock harvest limit is no more than 15 percent, or 8,268 mt, of the AI ABC of 55,120 mt. In Area 543, the 2020 A season pollock harvest limit is no more than 5 percent, or 2,756 mt, of the AI pollock ABC of 55,120 mt.

TABLE 5—FINAL 2020 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	2020 Allocations	2020 A season ¹		2020 B season ¹
		A season DFA	SCA harvest limit ²	B season DFA
Bering Sea subarea TAC ¹	1,425,000	n/a	n/a	n/a
CDQ DFA	142,500	64,125	39,900	78,375
ICA ¹	47,453	n/a	n/a	n/a
Total Bering Sea non-CDQ DFA	1,235,048	555,771	345,813	679,276
AFA Inshore	617,524	277,886	172,907	339,638
AFA Catcher/Processors ³	494,019	222,309	138,325	271,710
Catch by C/Ps	452,027	203,412	n/a	248,615
Catch by CVs ³	41,992	18,896	n/a	23,095

Unlisted C/P Limit ⁴	2,470	1,112	n/a	1,359
AFA Motherships	123,505	55,577	34,581	67,928
Excessive Harvesting Limit ⁵	216,133	n/a	n/a	n/a
Excessive Processing Limit ⁶	370,514	n/a	n/a	n/a
Aleutian Islands subarea ABC	55,120	n/a	n/a	n/a
Aleutian Islands subarea TAC ¹	19,000	n/a	n/a	n/a
CDQ DFA	1,900	1,900	n/a	-
ICA	2,400	1,200	n/a	1,200
Aleut Corporation	14,700	14,700	n/a	-
Area harvest limit ⁷	n/a	n/a	n/a	n/a
541	16,536	n/a	n/a	n/a
542	8,268	n/a	n/a	n/a
543	2,756	n/a	n/a	n/a
Bogoslof District ICA ⁸	75	n/a	n/a	n/a

¹ Pursuant to § 679.20(a)(5)(i)(A), the Bering Sea subarea pollock TAC, after subtracting the CDQ DFA (10 percent) and the ICA (3.7 percent), is allocated as a DFA as follows: inshore sector – 50 percent, catcher/processor sector (C/P) – 40 percent, and mothership sector – 10 percent. In the Bering Sea subarea, 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), the annual Aleutian Islands pollock TAC, after subtracting first for the CDQ DFA (10 percent) and second for the ICA (2,400 mt), is allocated to the Aleut Corporation for a pollock directed fishery. In the Aleutian Islands subarea, the A season is allocated up to 40 percent of the ABC for AI pollock.

² In the Bering Sea subarea, pursuant to § 679.20(a)(5)(i)(C), no more than 28 percent of each sector's annual DFA may be taken from the SCA before noon, April 1.

³ Pursuant to § 679.20(a)(5)(i)(A)(4), 8.5 percent of the DFA allocated to listed C/Ps shall be available for harvest only by eligible catcher vessels with a C/P endorsement delivering to listed C/Ps, unless there is a C/P sector cooperative for the year.

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

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

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

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

⁸ Pursuant to § 679.22(a)(7)(B), the Bogoslof District is closed to directed fishing for pollock. The amounts specified are for incidental catch 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 2019 and 2020 harvest specifications for groundfish in the BSAI (84 FR 9000, March 13, 2019) is revised for the 2020 seasonal and spatial allowances, gear shares, CDQ reserve, incidental catch allowance, jig, BSAI trawl limited access, and Amendment 80 allocations of the BSAI Atka mackerel TAC consistent with this adjustment.

TABLE 7—FINAL 2020 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}	2020 allocation by area		
		Eastern Aleutian District/Bering Sea	Central Aleutian District ⁵	Western Aleutian District
TAC	n/a	24,535	14,721	20,049
CDQ reserve	Total	2,625	1,575	2,145
	A	1,313	788	1,073
	Critical Habitat	n/a	473	644
	B	1,313	788	1,073
	Critical Habitat	n/a	473	644
Non-CDQ TAC	n/a	21,910	13,146	17,904
ICA	Total	800	75	20
Jig ⁶	Total	106	-	-
BSAI trawl limited access	Total	2,100	1,307	-
	A	1,050	654	-
	Critical Habitat	n/a	392	-
	B	1,050	654	-
	Critical Habitat	n/a	392	-
Amendment 80 sector	Total	18,904	11,764	17,884
	A	9,452	5,882	8,942
	Critical Habitat	n/a	3,529	5,365
	B	9,452	5,882	8,942
	Critical Habitat	n/a	3,529	5,365

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 50 CFR 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 Steller sea lion critical habitat; section 679.20(a)(8)(ii)(C)(1)(ii) equally divides the annual TACs between the A and B seasons as defined at § 679.23(e)(3); and section 679.20(a)(8)(ii)(C)(2) requires the TAC in Area 543 shall be no more than 65 percent of ABC in Area 543.

⁶Section 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 the ICA. NMFS sets the amount of this allocation for 2020 at 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 2019 and 2020 harvest specifications for groundfish in the BSAI (84 FR 9000, March 13, 2019) is revised for the 2020 gear shares and seasonal allowances of the BSAI Pacific cod TAC consistent with this adjustment.

TABLE 9—FINAL 2020 GEAR SHARES AND SEASONAL ALLOWANCES OF THE BSAI PACIFIC COD TAC

[Amounts are in metric tons]					
Gear sector	Percent	2020 share of gear sector total	2020 share of sector total	2020 seasonal apportionment	
				Seasons	Amount
BS TAC	n/a	141,799	n/a	n/a	n/a
BS CDQ	n/a	15,172	n/a	see § 679.20(a)(7)(i)(B)	n/a
BS non-CDQ TAC	n/a	126,627	n/a	n/a	n/a
AI TAC	n/a	13,796	n/a	n/a	n/a
AI CDQ	n/a	1,476	n/a	see § 679.20(a)(7)(i)(B)	n/a
AI non-CDQ TAC	n/a	12,320	n/a	n/a	n/a
Western Aleutian Island Limit	n/a	2,166	n/a	n/a	n/a
Total BSAI non-CDQ TAC ¹	100	138,946	n/a	n/a	n/a
Total hook-and-line/pot gear	60.8	84,479	n/a	n/a	n/a
Hook-and-line/pot ICA ²	n/a	400	n/a	see § 679.20(a)(7)(ii)(B)	n/a
Hook-and-line/pot sub-total	n/a	84,079	n/a	n/a	n/a
Hook-and-line catcher/processor	48.7	n/a	67,346	Jan 1-Jun 10	34,347
				Jun 10-Dec 31	33,000
Hook-and-line catcher vessel ≥ 60 ft LOA	0.2	n/a	277	Jan 1-Jun 10	141
				Jun 10-Dec 31	136
Pot catcher/processor	1.5	n/a	2,074	Jan 1-Jun 10	1,058
				Sept 1-Dec 31	1,016
Pot catcher vessel ≥ 60 ft LOA	8.4	n/a	11,616	Jan 1-Jun 10	5,924
				Sept 1-Dec 31	5,692
Catcher vessel < 60 ft LOA using hook-and-line or pot gear	2.0	n/a	2,766	n/a	n/a
Trawl catcher vessel	22.1	30,707	n/a	Jan 20-Apr 1	22,723
				Apr 1-Jun 10	3,378

				Jun 10-Nov 1	4,606
AFA trawl catcher/processor	2.3	3,196	n/a	Jan 20-Apr 1	2,397
				Apr 1- Jun 10	799
				Jun 10-Nov 1	-
Amendment 80	13.4	18,619	n/a	Jan 20-Apr 1	13,964
				Apr 1- Jun 10	4,655
				Jun 10-Nov 1	-
Jig	1.4	1,945	n/a	Jan 1-Apr 30	1,167
				Apr 30-Aug 31	389
				Aug 31-Dec 31	389

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 will 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 400 mt for 2020 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 9, 2019, and additional time for prior public comment would result in conservation concerns for the ESA-listed Steller sea lions.

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

Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until January 17, 2020.

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: December 19, 2019.

Jennifer M. Wallace,

Acting Director,

Office of Sustainable Fisheries,

National Marine Fisheries Service.

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