

action apportions the fixed gear portion of the Bering Sea and Aleutian Islands Management Area (BSAI) Pacific cod total allowable catch (TAC) among the fixed gear sectors. In addition, this action further splits the pot sector share of the TAC between pot catcher/processors and pot catcher vessels and changes how the 2 percent annual BSAI Pacific cod allocation to jig gear is seasonally apportioned and how unused portions are reallocated to other gear types. Amendment 77 and its implementing regulations are necessary to maintain the stability of the fixed gear Pacific cod fishery. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the FMP, and other applicable laws.

DATES: Effective January 1, 2004.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this action may be obtained from the Alaska Region, NMFS, P.O. Box 21668, Juneau, AK, 99802, Attn: Lori Durall; or by calling 907-586-7247.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the exclusive economic zone of the BSAI 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 the groundfish fishery of the BSAI appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

Background

The Council submitted Amendment 77 to NMFS for review and a Notice of Availability of the FMP amendment was published in the **Federal Register** on July 22, 2003 (68 FR 43342), with comments on the FMP amendment invited through September 22, 2003. The Secretary of Commerce approved Amendment 77 on October 20, 2003. The proposed rule to implement Amendment 77 was published on August 18, 2003 (68 FR 49416). The public comment period on the proposed rule ended on October 2, 2003. NMFS received letters from ten persons on either the FMP amendment, the proposed rule, or both. NMFS responds to these letters in "Response to Comments," below.

Allocation of the BSAI Pacific cod TAC among gear types began in 1994,

with the passage of Amendment 24 to the FMP. Amendment 24, and subsequently Amendment 46, allocated the Pacific cod TAC among vessels using jig gear, trawl gear, and fixed gear (hook-and-line and pot.) Under Amendment 46, which was implemented in 1997, 2 percent of the TAC was reserved for jig gear, 51 percent for fixed gear, and 47 percent for trawl gear. The amendment further split the trawl apportionment equally between catcher vessels and catcher/processors, but the fixed gear allocation was not split among the fixed gear sectors until passage of Amendment 64 in 2000 (65 FR 51553, August 24, 2000). Amendment 64 and its implementing regulations are scheduled to expire on January 1, 2004.

Amendment 64 allocated the fixed gear portion of the BSAI Pacific cod TAC among its four sectors as follows:

- 80.0 percent to hook-and-line catcher/processors;
- 0.3 percent to hook-and-line catcher vessels;
- 18.3 percent to pot vessels; and
- 1.4 percent to catcher vessels less than 60 ft (18.3 m) length overall (LOA), including pot and hook-and-line vessels (hereafter referred to as small catcher vessels).

Additional background on the prior history of Pacific cod allocations among different fishery sectors and the development of Amendment 77 is contained in the preamble to the proposed rule. Amendment 77 and its implementing regulations supersede Amendment 64.

This final rule allocates the fixed gear portion of the BSAI Pacific cod TAC among the fixed gear sectors. Vessels using hook-and-line or pot gear receive 51 percent of the Pacific cod TAC in the BSAI, under existing regulations at § 679.20(a)(7)(i)(A). Of this 51 percent, this final rule will allocate the TAC as follows:

- 80.0 percent to hook-and-line catcher/processors;
 - 0.3 percent to hook-and-line catcher vessels;
 - 3.3 percent to pot catcher/processors;
 - 15.0 percent to pot catcher vessels; and
 - 1.4 percent to small catcher vessels.
- This preserves the allocation implemented under Amendment 64, but splits the pot vessel share further between pot catcher/processors and pot catcher vessels.

Amendment 77 directs that "specific provisions for the accounting of these directed fishing allowances and the transfer of unharvested amounts of these allowances to other vessels using hook-

and-line or pot gear will be set forth in regulations."

Hence, the final rule maintains status quo provisions, except for a change in the way the 2 percent annual BSAI Pacific cod allocation to the jig gear sector is seasonally apportioned and how unused portions of the jig gear share are reallocated (rolled over) to other gear types. The jig gear quota will be apportioned through the annual TAC-setting process on a four-month basis, 40 percent, 20 percent, and 40 percent respectively for the periods January through April, May through August, and September through December. Unused jig allocations in each four-month period will be reallocated to small catcher vessels. If the small catcher vessels are unable to harvest the rolled over jig allocation, NMFS may reallocate the unused TAC to the hook-and-line catcher/processor fleet under § 679.20(a)(7)(ii)(B) of this final rule.

This reallocation policy has been contentious because the previous policy was to reallocate all unused jig gear to the hook-and-line catcher/processors. The new rollover provision represents a partial reallocation of unused jig gear from the hook-and-line catcher/processors to smaller catcher vessels. The new rollover provision was a compromise among the alternatives analyzed, because some or all of the allocation from the third four-month period probably will not be harvested by the small catcher vessels and will instead be reallocated to hook-and-line catcher/processors. The small boat fleet is most capable of fishing in the spring and summer when the weather is better than in the fall and winter. Also, the small pot catcher vessels only need a separate quota between the A and B seasons established under Steller sea lion protection measures (between June 10 and September 1), when the Pacific cod fishery is closed to pot vessels greater than or equal to 60 ft (18.3 m) LOA. At other times, the small pot catcher vessels can fish off the general 15 percent pot catcher vessel quota. Hook-and-line vessels of any size normally are prohibited from fishing for Pacific cod in the summer between June 10 and August 15, because they typically receive no halibut bycatch under the annual harvest specifications during this time period. Without a bycatch allowance, they cannot fish. Pot and jig gear vessels would be the only fixed gear vessels with access to the Pacific cod resource during this period.

Response to Comments

With one exception, all of the letters received by NMFS commenting on