

provider sought to collect in violation of § 447.20(a).

3. Section 447.45 is amended by revising paragraphs (f)(1) and (f)(2) to read as follows:

§ 447.45 Timely claims payment.

(f) *Prepayment and postpayment claims review.* (1) For all claims, the agency must conduct prepayment claims review consisting of—

(i) Verification that the recipient was included in the eligibility file and that the provider was authorized to furnish the service at the time the service was furnished;

(ii) Checks that the number of visits and services delivered are logically consistent with the recipient's characteristics and circumstances, such as type of illness, age, sex, service location;

(iii) Verification that the claim does not duplicate or conflict with one reviewed previously or currently being reviewed;

(iv) Verification that a payment does not exceed any reimbursement rates or limits in the State plan; and

(v) Checks for third party liability within the requirements of § 433.137 of this chapter.

(2) The agency must conduct post-payment claims review that meets the requirements of parts 455 and 456 of this chapter, dealing with fraud and utilization control.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: August 10, 1989.

Louis B. Hays,

Acting Administrator, Health Care Financing Administration.

Approved: December 18, 1989.

Louis W. Sullivan,

Secretary.

[FR Doc. 90-947 Filed 1-12-90; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 675

[Docket No. 91046-0006]

Groundfish of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final notice of initial specifications of groundfish for 1990;

reapportionment of reserves; prohibition of directed fishing; request for comments.

SUMMARY: NOAA announces final specifications of total allowable catches (TACs) and initial apportionments for each category of groundfish in the Bering Sea and Aleutian Islands (BSAI) area for the 1990 fishing year. This action also reapportions some of the reserve to U.S. fishing vessels working in joint ventures with foreign processing vessels (JVP) and solicits comments on this reapportionment. Additionally, this action prohibits JVP directed fishing for several groundfish species, because their JVP apportionments will be needed for bycatch in other targeted JVP fisheries receiving much larger apportionments.

This action is necessary to establish harvest limits for groundfish in the 1990 fishing year. This action is based on public comments, the best available information on the biological condition of groundfish stocks, the socioeconomic condition of the fishing industry, and consultation with the North Pacific Fishery Management Council (Council) at its meeting of December 5-8, 1989. The intended effect of this action is the conservation and management of groundfish resources in the BSAI area.

DATES: Effective at 0901 Greenwich Mean Time (GMT or 0001 Alaska Standard Time (AST)) on January 1, 1990, through 0900 GMT on January 1, 1991 (2400 AST, on December 31, 1990), or until changed by subsequent notice in the Federal Register.

Comments on the reapportionment part of this notice are invited until January 24, 1990.

ADDRESS: Send comments to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802-1668. The final Stock Assessment and Fishery Evaluation (SAFE) report may be requested from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone 907-271-2809.

FOR FURTHER INFORMATION CONTACT: Jay J. C. Ginter, Fishery Management Biologist, NMFS, 907-586-7229.

SUPPLEMENTARY INFORMATION: Groundfish fisheries in the BSAI area are governed by Federal regulations (at 50 CFR 611.93 and part 675) which implement the Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands Area (FMP). The FMP was developed by the Council and approved by the Secretary of Commerce (Secretary) under the

Magnuson Fishery Conservation and Management Act (Magnuson Act).

The FMP and implementing regulations require the Secretary, after consultation with the North Pacific Fishery Management Council (Council), to annually specify the TAC, initial domestic annual harvest (DAH), and initial TALFF for each target species and the "other species" category as soon as practicable after December 15 (§ 675.20 (a)(7)). The sum of the species' TACs must be within the optimum yield (OY) range of 1.4 million to 2.0 million metric tons (mt) (§ 675.20 (a)(2)). For 1990, this sum of TACs is equal to 2.0 million mt, as indicated in Table 1.

A notice specifying preliminary initial TAC, reserve, DAH, and TALFF amounts for the 1990 fishing year was published on November 7, 1989, and comments were invited through December 1, 1989 (54 FR 46748). One written comment was received and is summarized and responded to below. In addition, oral comments were heard and public consultation with the Council occurred during the Council's December 5-8, 1989 meeting in Anchorage, Alaska. Council recommendations made at this meeting account for differences between the preliminary specifications and those published in this notice.

The specified TACs for each species are based on the most recent biological and socioeconomic information. The Council, its Advisory Panel (AP), and Scientific and Statistical Committee (SSC), at their September and December 1989 meetings, reviewed current biological information about the condition of groundfish stocks in the BSAI area. This information was compiled by the Council's BSAI groundfish Plan Team and presented in the SAFE report for the BSAI groundfish fisheries in the 1990 fishing year. The Plan Team annually produces such a document as the first step in the process of specifying TACs. The SAFE report contains a review of the latest scientific analyses and estimates of each species' biomass and other biological parameters. From these data and analyses, the Plan Team estimates an acceptable biological catch (ABC) for each species category.

A summary of preliminary ABCs for each species for 1990 and other biological data from the September 1989 draft SAFE report were provided in the notice of preliminary 1990 specifications (54 FR 46748, Nov. 7, 1989). The Plan Team's recommended ABCs were reviewed by the SSC, AP, and Council at their September 1989 meetings. Based on the SSC's comments on technical methods, and new biological data not

available in September, the Plan Team revised its ABC recommendations in the final SAFE report dated November 1989. The revised ABC recommendations were again reviewed by the SSC, AP, and Council at their December 1989 meetings to produce the Council's final ABC estimates. The Council then developed its TAC recommendations to the Secretary based on the final ABCs as adjusted for other biological and socioeconomic considerations. For each species category, the recommended TAC for 1990 is equal to or less than that species' final ABC. Therefore, the Secretary finds that the recommended TACs are consistent with the biological condition of groundfish stocks.

A principal consideration for the Council in developing its 1990 TAC recommendations was assuring that the sum of the species TACs did not exceed the maximum OY of two million mt. The Secretary finds also that the recommended TACs are consistent with socioeconomic goals and objectives of the FMP.

Apportionment of TAC

As required under § 675.20(a)(3), the amount of TAC for each species initially is reduced by 15 percent. The sum of these 15 percent amounts is designated as the reserve. This reserve is not species-specific and any amount of the reserve may be reapportioned to a target

species or the "other species" category during the year, providing that such reapportionments do not result in overfishing (§ 675.20(a)(3)).

The remaining 85 percent of TAC is the initial TAC (ITAC). This amount is apportioned between DAH and TALFF such that TALFF, for each target species and the "other species" category at the beginning of the year, equals the ITAC minus DAH. For 1990, initial TALFF is zero for all species because the DAH equals ITAC.

Each DAH amount is further apportioned between its two components, JVP and the expected domestic annual processing (DAP) category which includes U.S. vessels that process their catch onboard or deliver it to U.S. fish processors. The JVP equals DAH minus DAP to be consistent with the intent of the domestic processor preference amendments to the Magnuson Act (P.L. 95-354). The initial amounts of DAP and JVP are determined by the Director, Alaska Region, NMFS (Regional Director), in consultation with the Council. The initial DAP and JVP amounts for each target species and the "other species" category equal the actual DAP and JVP of the previous year plus any additional amounts the Regional Director projects will be used by the U.S. fishing industry during the coming year, subject to available TAC

and accommodation of DAP. This projection is based on the latest reliable information that is available, including industry surveys, market data and the stated intentions of U.S. fishing industry representatives (§ 675.20(a)(4)). The final TACs, ITACs, reserve and initial apportionments of groundfish between DAP and JVP in the BSAI area for 1990 are given in Table 1 of this notice.

Sablefish Gear Allocation

Amendment 13 to the FMP, approved by the Secretary on November 1, 1989, and implemented by a final rule published on December 6, 1989 (54 FR 50386), provides for the subdivision of the sablefish TACs for the Bering Sea and Aleutian Islands subareas between users of trawl and fixed fishing gears. Fixed fishing gear refers to either hook-and-line or pot gear. Gear allocations are specified at § 675.24 in the following proportions:

Bering Sea subarea: trawl gear—50 percent; fixed gear—50 percent, and *Aleutian Islands subarea:* trawl gear—25 percent; fixed gear—75 percent.

Accordingly, for the 1990 fishing year, based on the specifications in Table 1, trawl gear and fixed gear catch limits of sablefish in each subarea are equivalent to the following shares of the TACs and ITACs.

Subarea	Gear	Percent of TAC	Share of TAC (mt)	Reserve, 0.15×TAC ¹	Gear share ²
Bering Sea	Trawl	50	1,350	203	1,147
Bering Sea	Fixed	50	1,350	203	1,147
Aleutian Islands	Trawl	25	1,125	169	956
Aleutian Islands	Fixed	75	3,375	506	2,869

¹ Calculation of reserve is rounded to the nearest whole mt.

² Sum of both gear shares in each subarea is equal to the ITAC in mt.

Prohibited Species Catch (PSC) Limit Apportionments

Crab and Halibut

Amendment 12A to the FMP (54 FR 32642, August 9, 1989; corrected at 54 FR 37469, September 11, 1989) established PSC limits on the bycatch of red king crab and *C. bairdi* Tanner crab in specific zones of the Bering Sea subarea, and for Pacific halibut throughout the BSAI area. These PSC limits are (50 CFR 675.21):

- 200,000 red king crabs applicable to Zone 1;
- One million *C. bairdi* Tanner crabs applicable to Zone 1;
- Three million *C. bairdi* Tanner crabs applicable to Zone 2;

- 4,400 metric tons (mt) of Pacific halibut (primary PSC limit) applicable to Zones 1 and 2H; and
- 5,333 mt of Pacific halibut (secondary PSC limit) applicable to the entire BSAI area.

Each PSC limit is apportioned into PSC allowances that are assigned to each of four specified fisheries. The PSC allowances in Table 2 of this notice were derived in consultation with the Council at its meeting of December 5-8, 1989, through the use of a mathematical prediction procedure based on statistical information on fishery performance in previous years. Fishing industry representatives (of DAP and JVP interests) then recommended modifications according to their mutual anticipation of fishery performance in the 1990 fishing year. Therefore, the final

PSC allowances given in Table 2 differ from the proposed PSC allowances due to differences in the groundfish apportionments from those proposed, differences between the September 1989 and December 1989 assumptions of timing and location of fisheries, and testimony of fishing industry representatives on an acceptable division of the PSC limits between DAP and JVP fisheries.

Groundfish

No PSC limits for groundfish species are specified in this notice. Amendment 12 to the FMP (54 FR 18519, May 1, 1989) provides for annual specification of PSC limits for groundfish species or species groups for which the TAC can be completely harvested by domestic (i.e. DAH) fisheries. In practice, these PSC

limits apply only to JVP fisheries for species which have a zero JVP apportionment. Proposed PSC limits for groundfish were published in Table 3 of the preliminary groundfish specifications notice (54 FR 46748); however, all anticipated JVP incidental catches of groundfish can be accommodated from the reserve. Reapportionment of groundfish from the reserve for this purpose will reduce waste by allowing such incidental catches to be retained and used since any JVP catch of groundfish for which there is a zero amount specified must be treated in the same manner as a prohibited species. No directed JVP fishing will be allowed on amounts of groundfish provided for bycatch purposes. No PSC limits are proposed for foreign fisheries since no allocations are recommended for foreign directed fishing.

Reapportionment

This action makes an initial reapportionment from reserve to JVP under authority of § 675.20(b)(1)(i) of amounts that are likely to be harvested incidentally during JVP directed fishing for yellowfin sole and other flatfish. The purpose of this action is to provide JVP fisheries with the option to retain this bycatch which otherwise would have to be treated in the same manner as prohibited species and be discarded. This reapportionment subtracts a total of 47,702 mt from reserve and adds it to the JVP species categories as follows:

Pollock in the Bering Sea subarea—22,451 mt; Pacific cod—7,025 mt; Arrowtooth flounder—33 mt; rock sole—16,359 mt; and "other species"—1,834 mt.

The TACs of these species are not expected to be fully used by DAP fisheries. Although the NMFS projected DAP capacity in 1990 for pollock in the Bering Sea subarea exceeds its TAC, the reserve amount reapportioned to JVP pollock in that subarea could be harvested by DAP fisheries in the Aleutian Islands subarea. The DAP of yellowfin sole in 1990 also is likely to be less than projected, unless significant new markets for DAP yellowfin sole develop in 1990. In this event, amounts of reserve could be reapportioned to DAP sufficient to satisfy DAP demand for this species. Therefore, based on expected DAP performance, NMFS anticipates that this initial reapportionment of reserve to JVP will not limit DAP fishing later in 1990.

Directed Fishing Prohibition

When the catch of a species approaches its TAC (or any apportionment of the TAC to DAP, JVP

or foreign fishing), the Secretary is directed under § 675.20(a)(8) to prohibit further directed fishing for that species. Directed fishing is defined at § 675.2. Retained bycatches are counted against the remaining TAC for that species. The purpose of this provision is to minimize the waste of groundfish resources from required discarding by slowing the harvest rate of any groundfish species as its total catch approaches its TAC. However, when the catch of a species reaches its TAC (or JVP apportionment, for example), any further bycatches of it may not be retained and must be treated in the same manner as a prohibited species (§ 675.20(a)(9)).

The Director, Alaska Region, has determined that the amounts of certain groundfish species apportioned to JVP are insufficient for directed fishing without excessive waste later in the fishing year from discard as "prohibited species" and that these amounts are necessary for bycatch in JVP fisheries for other groundfish species. These species and the amounts necessary for bycatch in other fisheries are the same as those reapportioned from the reserve by this notice.

Therefore, the Secretary prohibits JVP directed fishing for pollock in the Bering Sea subarea, and Pacific cod, arrowtooth flounder, rock sole, and "other species" in the BSAI management area for the remainder of the fishing year.

Comment and Response

One letter of comment was received on the preliminary 1990 specifications published November 7, 1989 (54 FR 46748). This comment is summarized and responded to as follows.

Comment: It is difficult to comment on proposed PSC allowances of crabs and halibut since they are a function of groundfish TACs and apportionments and certain bycatch assumptions. Since 1990 will be the first year in which comprehensive observer data will be available for the DAP fishery, the bycatch assumptions may prove to be inaccurate. There should be adequate provision for reapportioning PSC allowances during the fishing year so that groundfish harvests can be maximized within the prescribed PSC limits. As for groundfish PSC limits in JVP fisheries, species TACs should be set so as to fully exploit those species which are totally harvested by DAP fishermen. Hence, the TAC of a wholly-DAP species should not be reduced to accommodate the bycatch requirements of JVP fishermen. Specifically, the TAC for pollock should not be reduced to provide for a pollock bycatch in a JVP fishery for cod or yellowfin sole because

1990 will be the first year in which the DAP fishery will be able to harvest all of the pollock TAC. Finally, the pollock TAC should be set equal to the ABC for pollock because the best available scientific evidence indicates that the pollock biomass is currently above the level that will produce maximum sustainable yield and it is expected to decline due to natural causes. In addition, 150,000 mt should be added to the Bering Sea subarea pollock TAC to harvest the recently discovered "Bogoslof" stock which is not accounted for in the Bering Sea subarea estimate of ABC.

Response: New information developed between the annual drafting of the notice of preliminary initial specifications in September and the annual December Council meeting at which final recommendations to the Secretary are made is the basis for changes in PSC allowances of crabs and halibut from the preliminary to the final specifications notices. Such new information affecting final PSC allowances includes refined ABC estimates from data that were unavailable in September and data from the annual NMFS November survey of DAP performance expectations in the coming year. This annual process is designed in part to accommodate the development of new information from scientists, managers, and the public. However, tentative decisions, as in the notice of preliminary specifications, must be based on the best available information even if that information is likely to change.

Likewise, NOAA must use the best available information in establishing PSC allowances under Amendment 12A to the FMP. New information indicating that earlier assumptions, such as those used in the bycatch prediction model, are inaccurate may lead to incorrectly specified PSC allowances. In this event, the Secretary may reapportion PSC allowances under the inseason adjustment authority of the Amendment 12A implementing regulations (§ 675.20(e)(4)).

The final TAC specifications listed in Table 1 of this notice do not reduce the TAC of any species to accommodate JVP bycatch requirements. The proposed specification of groundfish PSC limits for JVP are now unnecessary because the initial amounts of groundfish available for JVP fishing in 1990 have been determined to be less than the Council or the Secretary originally perceived. In addition, the Secretary has determined that initial JVP bycatch requirements can be satisfied through reapportionments from the reserve.

without imposing constraints on DAP fisheries.

Neither the Council nor the Secretary agree that the pollock TAC should be specified as equal to its ABC.

Notwithstanding any biological conservation argument to the contrary, to do so under the OY limit of 2,000,000 mt would leave only 550,000 mt of all other species. In addition, the AP, Plan Team and the Council expressed concern for the apparent diminishing numbers of the northern (Steller) sea lion for which pollock is a known food source. Without suggesting a causal relationship between Steller sea lions and pollock harvests, the Secretary views a reduced pollock TAC as appropriately cautious. NOAA is aware of the incongruence between the

management areas of the Bering Sea and the scientific survey areas which lead to exclusion of "Bogoslof" area pollock from the Bering Sea subarea TAC. NOAA understands that an amendment to the FMP has been proposed to address this issue.

Classification

This action is authorized under 50 CFR 611.93(b) and 675.20 and complies with Executive Order 12291. The Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment on the reapportionment part of this notice. As immediate effectiveness of this action is necessary to benefit fishermen who would otherwise forego

harvestable amounts of groundfish, the 30-day delayed effectiveness provision is also waived. However, interested persons are invited to submit comments in writing on the reapportionment to the above address.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations.

50 CFR Part 675

Fisheries.

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

Dated: January 9, 1990.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

TABLE 1.—FINAL 1990 TOTAL ALLOWABLE CATCH (TAC) AND APPORTIONMENTS OF GROUND FISH IN THE BERING SEA (BS) AND ALEUTIAN ISLANDS (AI) AREA ¹

Species	TAC	Initial TAC ²	DAP ³	JVP ⁴	DAH ⁵	TALFF ⁶
Pollock:						
AI.....	1,280,000	1,088,000	1,088,000	0	1,088,000	0
BS.....	100,000	85,000	85,000	0	85,000	0
Pacific cod.....	227,000	192,950	192,950	0	192,950	0
Sablefish:						
BS.....	2,700	2,295	2,295	0	2,295	0
AI.....	4,500	3,825	3,825	0	3,825	0
Atka mackerel.....	21,000	17,850	17,850	0	17,850	0
Yellowfin sole.....	207,650	176,502	12,750	163,752	176,502	0
Rock sole.....	60,000	51,000	51,000	0	51,000	0
Greenland turbot.....	7,000	5,950	5,950	0	5,950	0
Arrowtooth flounder.....	10,000	8,500	8,500	0	8,500	0
Other.....	60,150	51,128	10,200	40,928	60,150	0
Pacific Ocean perch:						
BS.....	6,300	5,355	5,355	0	5,355	0
AI.....	6,600	5,610	5,610	0	5,610	0
Other rockfish:						
BS.....	500	425	425	0	425	0
AI.....	1,100	935	935	0	935	0
Squid.....	500	425	425	0	425	0
Other species.....	5,000	4,250	4,250	0	4,250	0
Totals.....	2,000,000	1,700,000	1,495,320	204,680	1,700,000	0

¹ Amounts in metric tons; apply to entire BSAI area unless otherwise specified.
² Initial TAC (ITAC) = 0.85 of TAC; initial reserve = TAC - ITAC = 300,000.
³ DAP = domestic annual processing.
⁴ JVP = joint venture processing.
⁵ DAH = DAP + JVP.
⁶ TALFF = total allowable level of foreign fishing.

TABLE 2.—PRELIMINARY 1990 PROHIBITED SPECIES CATCH ALLOWANCES

Fisheries	Zone 1	Zone 2	Zones 1+2H Primary	BSAI-wide secondary
Red king crab, animals				
DAP flatfish fisheries.....	138,600			
DAP other fisheries.....	11,400			
JVP flatfish fisheries.....	50,000			
JVP other fisheries.....	0			
C. bairdi Tanner crab, animals				
DAP flatfish fisheries.....	339,600	110,000		
DAP other fisheries.....	260,400	1,890,000		
JVP flatfish fisheries.....	400,000	1,000,000		
JVP other fisheries.....	0	0		
Pacific halibut, metric tons				
DAP flatfish fisheries.....			467	567
DAP other fisheries.....			3,273	3,966
JVP flatfish fisheries.....			660	800

TABLE 2.—PRELIMINARY 1990 PROHIBITED SPECIES CATCH ALLOWANCES—Continued

Fisheries	Zone 1	Zone 2	Zones 1+2H Primary	BSAI-wide secondary
JVP other fisheries.....	0		0	0

TABLE 3.—REAPPORTIONMENT OF RESERVE: REVISED 1990 TOTAL ALLOWABLE CATCH (TAC) AND APPORTIONMENTS OF GROUND FISH IN THE BERING SEA (BS) AND ALEUTIAN ISLANDS (AI) AREA ¹

Species	TAC	Initial TAC ²	DAP ³	JVP ⁴	DAH ⁵	TALFF ⁶
Pollock:						
BS.....	1,280,000	1,088,000	1,088,000	0	1,088,000	0
Change: Add.....	0	0	0	22,451	22,451	0
Revised.....	1,280,000	1,088,000	1,088,000	22,451	1,110,451	0
AI.....	100,000	85,000	85,000	0	85,000	0
Pacific cod.....	227,000	192,950	192,950	0	192,950	0
Change: Add.....	0	0	0	7,025	7,025	0
Revised.....	227,000	192,950	192,950	7,025	199,975	0
Sablefish:						
BS.....	2,700	2,295	2,295	0	2,295	0
AI.....	4,500	3,825	3,825	0	3,825	0
Atka mackerel.....	21,000	17,850	17,850	0	17,850	0
Yellowfin sole.....	207,650	176,502	12,750	163,752	176,502	0
Rock sole.....	60,000	51,000	51,000	0	51,000	0
Change: Add.....	0	0	0	16,359	16,359	0
Revised.....	60,000	51,000	51,000	16,359	67,359	0
Greenland turbot.....	7,000	5,950	5,950	0	5,950	0
Arrowtooth flounder.....	10,000	8,500	8,500	0	8,500	0
Change: Add.....	0	0	0	33	33	0
Revised.....	10,000	8,500	8,500	33	8,533	0
Other flatfish.....	60,150	51,128	10,200	40,928	60,150	0
Pacific Ocean perch:						
BS.....	6,300	5,355	5,355	0	5,355	0
AI.....	6,600	5,610	5,610	0	5,610	0
Other rockfish:						
BS.....	500	425	425	0	425	0
AI.....	1,100	935	935	0	935	0
Squid.....	500	425	425	0	425	0
Other species.....	5,000	4,250	4,250	0	4,250	0
Change: Add.....	0	0	0	1,834	1,834	0
Revised.....	5,000	4,250	4,250	1,834	6,084	0
Totals.....	2,000,000	1,700,000	1,495,320	204,680	1,700,000	0
Change: Add ⁷	0	0	0	47,702	47,702	0
Revised.....	2,000,000	1,700,000	1,495,320	252,382	1,747,702	0

¹ Amounts in metric tons; apply to entire BSAI area unless otherwise specified.

² Initial TAC (ITAC) = 0.85 of TAC; initial reserve = TAC - ITAC = 300,000.

³ DAP = domestic annual processing.

⁴ JVP = joint venture processing.

⁵ DAH = DAP + JVP.

⁶ TALFF = total allowable level of foreign fishing.

⁷ The total increase in JVP and DAH is subtracted from the reserve. Hence, the remaining reserve is 300,000 - 47,702 = 252,298.

[FR Doc. 90-890 Filed 1-9-90; 4:11 pm]

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