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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

RIN 0648-AX89

Fisheries of the Exclusive Economic Zone Off Alaska; Chinook Salmon Bycatch Management Measures for Groundfish of the Bering Sea and Aleutian Islands Management Area; Amendment 91

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

ACTION: Notice of availability of fishery management plan amendment; request for comments.

SUMMARY: The North Pacific Fishery Management Council submitted Amendment 91 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) to NMFS for review. If approved, Amendment 91 would be a novel approach to managing Chinook salmon bycatch in the Bering Sea pollock fishery that combines a limit on the amount of Chinook salmon that may be caught incidentally with an incentive plan agreement and performance standard designed to minimize bycatch to the extent practicable in all years and prevent bycatch from reaching the limit in most years. This action is necessary to minimize Chinook salmon bycatch in the Bering Sea pollock fishery to the extent practicable while maximizing the potential for the full harvest of the pollock total allowable catch within specified prohibited species catch limits. Amendment 91 is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable laws.

DATES: Comments on the amendment must be received on or before April 19, 2010.

ADDRESSES: You may submit comments, identified by RIN 0648-AX89, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the

Federal eRulemaking Portal <http://www.regulations.gov>.

- Fax: (907) 586-7557, Attn: Ellen Sebastian
- Mail: P.O. Box 21668, Juneau, AK 99802.

- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Electronic copies of Amendment 91, the Final Environmental Impact Statement (EIS), the Final Regulatory Impact Review (RIR), and the Initial Regulatory Flexibility Analysis (IRFA) prepared for this action may be obtained from the Alaska Region website at <http://alaskafisheries.noaa.gov/regs/summary.htm>.

FOR FURTHER INFORMATION CONTACT: Gretchen Harrington or Seanbob Kelly, 907-586-7228.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit any fishery management plan or fishery management plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce. The Magnuson-Stevens Act also requires that NMFS, upon receiving a fishery management plan amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment.

This document announces that proposed Amendment 91 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) is available for public review and comment. The groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands Management Areas are managed under the FMP. The FMP was

prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*

The Bering Sea (BS) pollock fishery is managed under the American Fisheries Act (AFA) (16 U.S.C. 1851 note) enacted by Congress in October 1998. The AFA identifies vessels and processors eligible to participate in the directed pollock fishery and allocates pollock among the Community Development Quota (CDQ) Program, the catcher/processor sector, the mothership sector, and the inshore sector.

The BS pollock fishery is the largest single species fishery, by volume, in the United States. The first wholesale gross value of this fishery was over \$1.4 billion in 2008. Pollock is harvested with fishing vessels using trawl gear during two seasons: the A season (January 20 to June 10) and the B season (June 10 to November 1). Chinook salmon and pollock occur in the same locations in the BS. Consequently, Chinook salmon are accidentally caught in the nets as fishermen target pollock.

The BS pollock fishery catches up to 95 percent of the Chinook salmon taken incidentally as bycatch in the Bering Sea and Aleutian Islands groundfish fisheries. From 1992 through 2001, the average Chinook salmon bycatch in the BS pollock fishery was 32,482 Chinook salmon. This average increased substantially from 2002 to 2007, to 74,067 Chinook salmon. A historic high of approximately 122,000 Chinook salmon were taken in the BS pollock fishery in 2007. However, Chinook salmon bycatch has declined in recent years to 20,493 Chinook salmon in 2008 and 12,410 Chinook salmon through October 31, 2009, the end of the 2009 fishing year for pollock.

Chinook salmon is a culturally and economically valuable species, which is fully allocated and, in some cases, facing conservation concerns. Estimates vary, but more than half of the Chinook salmon bycatch in the BS pollock fishery may be destined for river systems in western Alaska. In general, western Alaska Chinook salmon stocks declined sharply in 2007 and remained low in 2008 and 2009. Consequently, the in-river harvest of western Alaska Chinook salmon has been severely restricted and, in some cases, river systems have not met escapement goals.

Chinook salmon is a prohibited species in the BS pollock fishery and is closely regulated. Over the past fifteen years, the Council and NMFS implemented several management measures to limit Chinook salmon bycatch in the BSAI trawl fisheries. In 1995, the Council adopted and NMFS

approved, Amendment 21b to the FMP. Amendment 21b established annual prohibited species catch (PSC) limits for Chinook salmon and specific seasonal no-trawling zones in the Chinook salmon savings area that would be triggered when the limits were reached (60 FR 31215; November 29, 1995). In 2000, the Council and NMFS implemented Amendment 58 to the FMP which reduced the Chinook salmon savings area closure limit, redefined the Chinook salmon savings area as two non-contiguous areas of the BSAI, and established new closure periods (65 FR 60587; October 12, 2000).

The Council adopted Amendment 84 in October 2005, to address increases in Chinook and non-Chinook salmon bycatch that were occurring despite PSC limits that triggered closure of the Chinook and chum salmon savings areas. Amendment 84 established the salmon bycatch intercooperative agreement (ICA) which allows vessels participating in the directed fisheries for pollock in the BS to utilize their internal cooperative structure to reduce Chinook and non-Chinook salmon bycatch using a method called the "voluntary rolling hotspot system" (VRHS). The VRHS provides real-time salmon bycatch information in time for the fleet to avoid areas of high Chinook or non-Chinook salmon bycatch rates. Regulations implementing Amendment 84 were approved in 2007 (72 FR 61070; October 29, 2007) and a salmon bycatch reduction ICA using the VRHS was approved by NMFS in January 2008.

Although the management measures implemented under Amendment 84 provided the pollock fleet with tools to reduce salmon bycatch, these measures contained no effective limit on the amount of salmon bycatch that could occur in the BS pollock fishery. Therefore, the Council further evaluated measures to limit both Chinook and non-Chinook salmon bycatch.

In April 2009, the Council adopted Amendment 91 and recommended that NMFS develop regulations to implement that action. Amendment 91 would be a novel approach to managing Chinook salmon bycatch in the Bering Sea pollock fishery that combines a limit on the amount of Chinook salmon that may be caught incidentally with an incentive plan agreement and performance standard designed to minimize bycatch to the extent practicable in all years and prevent bycatch from reaching the limit in most years. The Council is currently considering a separate action to modify the non-Chinook salmon management

measures to minimize non-Chinook salmon bycatch.

In developing Amendment 91, the Council recognized that the number of Chinook salmon caught as bycatch in the BS pollock fishery is highly variable from year to year, from sector to sector, and even from vessel to vessel. Current information about Chinook salmon is insufficient to determine the reasons for high or low encounters of Chinook salmon in the pollock fishery or the degree to which encounter rates are related to Chinook salmon abundance or other conditions. The uncertainty and variability in Chinook salmon bycatch led the Council to create a program with a combination of management measures that together achieve its objective to minimize bycatch in all years while providing the fleet the flexibility to harvest the pollock total allowable catch (TAC).

Under Amendment 91, the PSC limit would be 60,000 Chinook salmon if some or all of the pollock industry participates in an industry-developed contractual arrangement, called an incentive plan agreement (IPA), that establishes an incentive program to minimize bycatch at all levels of Chinook salmon abundance. Participation in an IPA would be voluntary; however, any vessel or CDQ group that chooses not to participate in an IPA would be subject to a restrictive opt-out allocation (also called a backstop cap).

To ensure participants develop effective IPAs, participants would demonstrate to the Council through performance and annual reports that the IPA is accomplishing the Council's intent that each vessel does its best to avoid Chinook salmon at all times while fishing for pollock and that collectively, bycatch is minimized in each year. The Council believed that the addition of an IPA that could impose rewards for avoiding Chinook salmon bycatch, penalties for failure to avoid Chinook salmon bycatch at the vessel level, or both, would warrant setting the PSC limit at 60,000 Chinook salmon. The Council recognized that while the IPA should minimize bycatch in all years to a level far below the limit, a limit of 60,000 Chinook salmon would provide the industry the flexibility to harvest the pollock TAC in high encounter years when bycatch was extremely difficult to avoid.

A 47,591 Chinook salmon PSC limit would apply fleet-wide if industry does not form any IPAs. This PSC limit of 47,591 Chinook salmon is the approximate 10-year average Chinook salmon bycatch from 1997 to 2006. The Council determined that the 47,591 PSC

limit was an appropriate limit on Chinook salmon bycatch in the BS pollock fishery if no other incentives were operating to minimize bycatch below this level.

Both PSC limits would be divided between the A and B seasons and allocated to AFA sectors, cooperatives, and CDQ groups as transferable PSC allocations. Transferability is expected to mitigate the variation in the encounter rates of salmon bycatch among sectors, CDQ groups, and cooperatives in a given season by allowing eligible participants to obtain a larger portion of the PSC allocation in order to harvest their pollock allocation or to transfer surplus allocation to other entities. When a transferable PSC allocation is reached, the affected sector, inshore cooperative, or CDQ group would have to stop fishing for pollock for the remainder of the season even if its pollock allocation had not been fully harvested.

The sector-level performance standard is an additional tool to ensure that the IPA is effective and that sectors do not fully harvest the Chinook salmon PSC allocations under the 60,000 Chinook salmon PSC limit in most years. For a sector to continue to receive Chinook salmon PSC allocations under the 60,000 Chinook salmon PSC limit, that sector may not exceed its annual threshold amount in any 3 years within 7 consecutive years. If a sector fails this performance standard, it will permanently be allocated a portion of the 47,591 Chinook salmon PSC limit. The Council believed that the risk of bearing the potential economic impacts of a reduction from the 60,000 PSC limit to the 47,591 PSC limit would create incentives for fishery participants to cooperate in an effective IPA.

In selecting the appropriate Chinook salmon bycatch management program, the Council considered a wide range of alternatives to assess the impacts of minimizing Chinook salmon bycatch to the extent practicable while maximizing the potential for the full harvest of the pollock TAC within the PSC limit. In selecting these PSC limits, the Council considered the trade-offs between the potential Chinook salmon saved and the forgone pollock catch. The EIS, RIR, and IRFA contain a complete description of the alternatives and a comparative analysis of the potential impacts of the alternatives (see **ADDRESSES**).

Public comments are being solicited on proposed Amendment 91 to the BSAI FMP through the end of the comment period (see **DATES**). NMFS intends to publish in the **Federal Register** and seek public comment on a proposed rule that would implement Amendment 91,

following NMFS's evaluation of the proposed rule under the Magnuson-Stevens Act. The requirements governing the transfer and use of the proposed Chinook salmon PSC allocations, IPA application process, annual reporting requirements, and other aspects of Amendment 91 will be specified in the proposed rule implementing this action.

Public comments on the proposed rule must be received by the end of the comment period on Amendment 91 to

be considered in the approval/disapproval decision on Amendment 91. All comments received by the end of the comment period on Amendment 91, whether specifically directed to the FMP amendment or the proposed rule, will be considered in the FMP amendment approval/disapproval decision. Comments received after that date will not be considered in the approval/disapproval decision on the amendment. To be considered,

comments must be received, not just postmarked or otherwise transmitted, by the close of business on the last day of the comment period.

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

Dated: February 12, 2010.

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