by the Commission, Chairman Gradison. Vice Chairman Lambley, Commissioners Sterrett, Andre, and Simmons. Commissioner Andre concurred. Chairman Gradison concurred with a separate expression.

Noreta R. McGee,
Secretary.

Title 49 of the Code of Federal Regulations, Part 1052, is amended as follows:

PART 1052—[AMENDED]

1. The authority citation for 49 CFR Part 1052 continues to read:

2. The heading and text of §1052.3 are revised to read as follows:

§1052.3 Collection and remittance.

(a) Every common carrier of property subject to the Interstate Commerce Act, except as otherwise provided in §1052.1, which chooses to provide c.o.d. service may publish and maintain, or cause to be published and maintained for its account, a tariff or tariffs which set forth nondiscriminatory rules governing c.o.d. service and the collection and remittance of c.o.d. funds. Alternatively, any carrier that provides c.o.d. service, but does not wish to publish and maintain, or cause to be published and maintained, its own nondiscriminatory tariff, may adopt a rule requiring remittance of each c.o.d. collection directly to the consignor or other person designated by the consignor as payee within fifteen (15) days after delivery of the c.o.d. shipment to the consignee.

(b) For further information contact:
Thomas J. Barry, (202) 275-7540
Mark S. Shaffer, (202) 275-7291, TDD for hearing impaired: (202) 275-1721

SUPPLEMENTARY INFORMATION: These new rules are set forth below. Additional information is contained in the Commission’s decision. To purchase a copy of the decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357/4359 (DC Metropolitan area) (assistance for the hearing impaired is available through TDD services) or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters.

This action will not affect significantly the quality of the human environment or the conservation of energy resources.

The Commission certifies that adoption of the amendments will not have a significant economic impact on a substantial number of small entities because the amendments do not mandate that any action be taken, but they allow more flexible and individualized procedures.

List of Subjects for 49 CFR Part 1052

Motor carriers.

fishery management plans and plan amendments submitted by the Council. A notice of the Amendment’s availability was published in the Federal Register on August 8, 1987 (52 FR 30212) and proposed implementing regulations were published on September 1, 1987 (52 FR 32942). Both notices invited public review and comment on the amendment and proposed rule through October 15, 1987. Two letters of public comment and two letters of comment from other Federal agencies were received and considered in developing this final rule. A summary of, and response to, all comments received in given below.

Description

A description of, and reasons for, each part of Amendment 11, and NOAA’s regulatory amendment, are given in the preamble of the proposed rule. A summary follows of what is accomplished by this rule implementing Amendment 11 and NOAA’s regulatory amendment.

1. Split-season Apportionment of Pollock for JVP in the BSAI Management Area

Under this rule, the amount of the total allowable catch (TAC) of pollock apportioned to JVP will be divided into two parts. Part one will be equivalent to 40 percent of the sum of the initial JVP for pollock plus 15 percent of the TAC for pollock. Part one will be made available to the JVP fishery for pollock during the period January 15 through April 15. Part two will be equivalent to the remaining JVP for pollock and will be available during the period April 16 through December 31. This part of Amendment 11 and its implementing regulation will be effective only for the 1988 and 1989 fishing years.

This split-season apportionment rule provides interim biological protection to the BSAI area pollock resource from intensive harvesting pressure during the primary spawning period for this species. Roughly half of the initial amount of pollock apportioned to JVP will be made available to those fisheries during the first period of January 15 through April 15. Without this rule, it is likely that the entire pollock JVP, probably in excess of one million metric tons in 1988, would be harvested during the first three months of 1988. At this time of the year, and particularly during February and March, pollock are aggregated for spawning purposes. Fishing and spawning aggregations provide certain economic advantages such as increased catch-per-unit of effort and highly valued pollock roe. For competitive reasons, in recent years the JVP pollock fishery has become highly intensive and can remove 80 to 90 percent off the pollock TAC from the pollock spawning population. This may have long-term harmful effects on future pollock productions.

Assuming that the 1988 pollock fishery will progress at least at the same rate as in 1987, the first part of the 1988 JVP will be taken and then pollock pollock during the first three months of March under this rule. This will allow the pollock resource a respite from JVP fishing pressure for about six weeks before JVP fishing resumes on the second part of the 1988 JVP on April 16. If JVP fishing effort in 1988 is greater than in 1987, as anticipated, then the first period hiatus in the JVP fishery will be longer than six weeks. This six-week or longer hiatus will occur during a significant part of the primary pollock spawning period.

The biological significance of reducing the harvest from spawning aggregations is unknown. However, conventional conservation wisdom suggests that limiting the harvest of spawning fish is helpful in protecting the future reproductive potential of the stock. At least there can be no biological harm from such a limit. This rule will provide two years of relative protection during which the biological risk of an intensive fishery or spawning pollock can be further assessed.

In addition to this interim biological protection, the split-season rule will provide for some economic benefits to domestic fishermen processing their catch on board or delivering it to U.S. shore-based processors (DAP). The current DAP fishery for pollock in the BSAI area is small relative to the JVP fishery. The 1987 current pollock DAP accounts for about 15 percent of the pollock TAC. During the first period hiatus in JVP fishing for pollock, the DAP industries will have virtually exclusive access to the pollock resource. This will provide these industries with the same economic benefits from fishing spawning aggregations as have been realized by the JVP fishery in recent years. These benefits include high catch-per-unit of effort and the opportunity to produce high valued pollock roe. The potential biological risk of allowing continued DAP harvesting on spawning aggregations is insignificant due to the small scale of the DAP fishery relative to the JVP fishery.

2. Definition of Prohibited Species

This rule will change the prohibited species definition in the FMP and its implementing regulations to list those species or species groups which must be avoided while fishing for groundfish and, if caught incidentally, must be immediately returned to the sea with minimum injury. Listed species will include the traditional prohibited species of salmon, steelhead, halibut, herring, king and Tanner crabs for domestic and foreign groundfish fisheries plus other non-groundfish species for the foreign fishery only. Retention of any of these species would not be allowed unless authorized by other applicable law. Such authorization would allow, for example, domestic groundfish fishermen to retain halibut caught with hook and line gear during an open season for halibut specified by the International Pacific Halibut Commission.

The current definition of prohibited species in the FMP is flawed. Regulations implementing it suffer from confusing and imprecise language that may not be legally enforceable against every vessel fishing for groundfish in the EEZ off Alaska. The principal reason for this flaw is that the original FMP anticipated other fishery management plans for king crab, Tanner crab, and Pacific herring. However, these management plans ultimately failed to be implemented or were subsequently withdrawn. The rule implementing this part of Amendment 11 will correct this flaw. This is especially important for the protection of Tanner and king crab species which have significant incidental catches in the groundfish fisheries.

3. NOAA Regulatory Amendment to the Definition of Directed Fishing in the Foreign Fishing Regulations

This regulatory change is in addition to and does not implement Amendment 11. This change is a modification of regulations under existing law in the FMP. Under Amendment 10 to the FMP, a definition of directed fishing was added to the regulations governing foreign fisheries at 50 CFR 611.93(b)(1)(iii). The intention of that definition (originally proposed at 51 FR 45349), was to enable enforcement of directed fishing prohibitions after a prohibited species catch limit had been reached. In addition, NOAA intended that the definition of directed fishing governing foreign fisheries be consistent with that governing domestic fisheries. However, the first occurrence of the phrase, "20 percent or more of the catch, take or harvest or to," was inadvertently omitted from both the proposed and final rules for Amendment 10. Hence, NOAA proposed, and now makes final a change in the definition in the foreign fisheries regulations to indicate that this 20 percent or more of the catch, take, or harvest at any time also will be..."
considered in determining whether directed fishing is occurring. This change will make the BSAI area foreign fishery regulations consistent with the domestic fishery regulations pertaining to the BSAI area and the Gulf of Alaska.

Comments Received

Two letters of comment were received from fishing industry representatives and two additional letters of comment were received from other Federal agencies. A summary of both industry comments is given under Comment 1 while the government comments are summarized under Comments 2 and 3 below. A response to each comment follows.

Comment 1: The beginning of the second period under the proposed split-season apportionment of pollock for the JVP fishery should be changed from April 16 to June 15. Under the current open access system, the JVP quota is allocated on a first-come-first-served basis. Competitive pressure under this system will force JVP operations to harvest and process the available pollock as quickly as possible after the second period begins. The proposed April 16 beginning of the second period will cause intensive JVP fishing to occur when pollock may not have fully dispersed from their spawning aggregations. In addition, the quality of pollock flesh, for purposes of producing fillets and surimi, deteriorates during the spawning season and does not recover until about the middle of June. Again, because of competitive pressure in an open access fishery, U.S. harvesters will not have the option of waiting until the quality of the pollock flesh has improved. Changing the beginning of the second period to June 15 would solve both of these problems.

Response: NOAA recognizes the possibility that JVP fishing in the second period of the split seasons may begin promptly on April 16 while spawning aggregations of pollock remain susceptible to harvest. However, the amount of spawning activity that occurs in late April and May is significantly reduced from that which occurs in March and early April when the JVP fishing hiatus is expected. Nevertheless, NOAA will carefully monitor all pollock fishing effort and the condition of the pollock stocks over the two-year effective period of the split-season rule.

With respect to reduced product quality because of the April 16 start of the second period, NOAA notes that this split-season apportionment was proposed by industry and is supported by both DAP and JVP components. In addition, under this FMP, the determination of when to go fishing during an opening in order to maximize product quality is a matter of choice for individual fishermen and the processors buying their catch.

Comment 2: Maintenance of pollock stocks is extremely important for healthy populations of seabirds in the Bering Sea. One of the stated purposes of Amendment 11 is to address the concern that increased exploitation of spawning pollock may adversely affect the biological viability of the Bering Sea pollock stock. Scientific work indicates that spawning by pollock is greatly protracted in the Bering Sea with spawning observed in June near the Pribilof Islands and as late as August further north. Splitting of the JVP quota is reasonable to conserve spawning pollock, but to be effective, the second part should not be made available to the fishery until July 1. Delay of the second fishing period until this date better insures that commercial fishing does not deplete stocks below their present levels, thereby jeopardizing seabird populations.

Response: NOAA agrees that pollock stocks are an important element in the Bering Sea ecosystem. The split season rule implementing Amendment 11 does address the concern of intensive exploitation of spawning pollock by providing for an anticipated hiatus in JVP fishing for pollock during which its spawning activity is at or near its peak. Later spawning activity in May and June by comparison is significantly reduced. Nevertheless, NOAA will carefully monitor all pollock fishing effort and the condition of the pollock stocks over the two-year effective period of the split-season rule.

Comment 3: The definition of directed fishing in § 611.93(b)(1)(iii) should clearly state that the quantities of fish are determined by weight to avoid possible confusion over how the directed fishing percentage is determined.

Response: NOAA agrees that in current practice the term “amount” in the definition refers to the amount by weight, usually in metric tons. However, the term “by weight” is not added to the definition because it may be appropriate to interpret “amount” in other ways, such as by volume of fish in some instances. For example, it may be appropriate to determine “amount” by visual estimates of quantity during preliminary inspections at sea. Formal weights will be taken before a violation is charged. In addition, Council and NMFS staff recently have been reviewing the directed fishing definition and further changes to it may be recommended. This comment will be reconsidered in this event.

Classification

The Regional Director determined that this amendment is necessary for the conservation and management of the BSAI area groundfish fishery and that it is consistent with the Magnuson Act and other applicable law.

The Council prepared an environmental assessment (EA) for this amendment. The Assistant Administrator for Fisheries concluded that no significant impact on the human environment will occur as a result of this rule. A copy of the EA may be obtained from the Council at the address above.

The Administrator of NOAA determined that this rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the regulatory impact review/final regulatory flexibility analysis (RIR/FRFA) prepared by the Council. A copy of the RIR/FRFA may be obtained from the Council at the address above.

The RIR/FRFA prepared by the Council describes the effects this rule will have on small entities. The analysis contained in the RIR/FRFA is largely the same as that contained in the RIR/initial regulatory flexibility analysis which was summarized for each of the measures in the proposed rule. The Assistant Administrator of NOAA concluded that this final rule will have significant effects on small entities. A copy of the RIR/FRFA may be obtained from the Council at the address above.

This rule contains no collection of information requirements subject to the Paperwork Reduction Act.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of Alaska. This determination was submitted for review by the responsible State agency under section 307 of the Coastal Zone Management Act.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations. Reporting and recordkeeping requirements.

50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

HeinOnline -- 52 Fed. Reg. 45968 1987
For reasons set out in the preamble, 50 CFR Parts 611 and 675 are amended as follows:

PART 611-[AMENDED]

1. The authority citation for Part 611 continues to read as follows:


2. Section 611.93 is amended by removing paragraph (b)(1)(ii)(E) and revising paragraphs (b)(1)(ii) introductory text, (b)(1)(iii)(A), and (b)(1)(iii) to read as follows:

§ 611.93 Bering Sea and Aleutian Islands groundfish fishery.

(A) The term “prohibited species” means species for purposes of this section: Pacific halibut (Hippoglossus stenolepis), king crab (Paralithodes spp. and Lithodes spp.), and Tanner crab (Chionoecetes spp.). Except to the extent that their harvest is authorized under other applicable law, the catch or receipt of these species must be minimized and, if caught or received, they must be returned to the sea immediately.

(ii) Categories of species. Four categories of species are recognized for regulatory purposes and they are set forth in Table 1. The term “groundfish” means species in all categories except the “prohibited species” category.

Prohibited species, for the purpose of this part, means any of the species of Pacific salmon (Oncorhynchus spp.), steelhead trout (Salmo gairdneri or Parasalmo mykiss), Pacific halibut (Hippoglossus stenolepis), Pacific herring (Clupea harengus pallasi), king crab (Paralithodes spp. and Lithodes spp.), and Tanner crab (Chionoecetes spp.) caught or received, they must be returned to the sea immediately.

(b) Apportioning the reserve, surplus DAH, and JVP.

(j) Part One will be any unharvested amount of Part One plus the pollock JVP remaining after the first period and as adjusted by reapportionments from reserve and DAP in accordance with paragraphs (b)(1) and (2) of this section. When the Regional Director determines that the unharvested amount of Part Two is necessary for bycatch in JVP fisheries for other groundfish species during the second period, the Secretary shall publish a notice in the Federal Register prohibiting JVP directed fishing for pollock for the remainder of the second period.

PART 675-[AMENDED]

5. The authority citation for 50 CFR Part 675 continues to read as follows:

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

6. Section 675.20 is amended by revising the heading of paragraph (b), adding a new paragraph (b)(9), and revising paragraph (c)(1) to read as follows:

§ 675.20 General limitations.

(b) Apportioning the reserve, surplus DAH, and JVP.

(iii) Directed fishing, with respect to any species, stock or other aggregation of fish, means fishing that is intended or can reasonably be expected to result in the catching, taking or harvesting of quantities of such fish that amount to 20 percent or more of the catch, take or harvest, or to 20 percent or more of the total amount of fish or fish products on board at any time. It will be a rebuttable presumption that, when any species, stock or other aggregation of fish comprises 20 percent or more of the catch, take or harvest, or 20 percent or more of the total amount of fish or fish products on board at any time, such fishing was directed fishing for such fish.

3. Section 611.93(b)(1)(iii) is amended by revising, in Table 1, in the first column heading the word “Unallocated” to read “Prohibited”, revising the list of species in the same column to read: “Pacific halibut, Pacific herring, salmonids, king crab, Tanner crab, and other species for which there is no allocation, except “non-specified species” and by removing the column headed by “Groundfish”, and revising footnote 4 to read as follows:

* Must be treated in the same manner as “prohibited species” but no records are required.

* * * *

(iv) Seasonal apportionment of JVP pollock.

The initial amount of pollock apportioned to JVP for each subarea in accordance with paragraph (a)(4) of this section will be divided into two parts.

(i) Part One will be 40 percent of the sum: initial JVP plus 15 percent of the TAC for pollock. The JVP pollock harvest during the first period (defined in paragraph (b)(3)(iii) of this section) resulting from directed fishing.