fees. Only two fee items on the 1984 schedule would change: Fee Item (42), a notice petition to discontinue passenger train service, and Fee Item (44), an application for use of terminal facilities or other applications under 49 U.S.C. 11103. Fee Item (42) should have been established at $6,200 rather than $6,300 and Fee Item (44) should have been established at $5,200 rather than $5,300. Anyone who filed either type of application between July 2, 1984, and November 4, 1985—when the 1984 schedule was in effect—would be entitled to a refund of $100 upon adoption of the changes. No changes would be required in our 1985 Schedule as a result of the modification of the operations overhead cost factor.

Upon re-examination, the direct labor cost for processing tariff filings has been calculated at $3.35. The fully allocated cost level for 1984 shall have been $5.98. Thus, our calculations of $4.88 in our 1984 decision (which produced a fee of $4.00) was lower than the actual costs. The tariff filing fee increased to $5.00 in 1985, when fees were adjusted to reflect the 1985 costs of services. Based upon the change in direct labor noted above and taking into consideration update factors for 1985, we now propose to increase the fee to $6.00, because our fully allocated costs for tariff filing is now $6.17.

The Commission is required to recalculate its costs for providing services to the public annually and to update its fees accordingly 49 CFR 1002.3. This year there has been no increase in direct labor costs because there was no governmental general schedule wage increase. Our general and administrative expenses have decreased slightly this year. As a result our fully distributed costs for providing service decreased slightly this year: However, the decrease is not substantial enough to cause any reductions in fees. Our calculations of 1986 fees appear as Appendix C in the Commission’s full decision. Adoption of the 1986 fee update will be deferred until a final decision is issued with respect to the reopening of the 1984 and 1985 Fee Decisions.

Additional information about the calculations that led to these proposed revisions in our fee schedule is contained in the Commission’s full decision. A copy of the full decision is available upon request from the Office of the Secretary, Room 2215, Interstate Commerce Commission Building, Washington, DC 20423 or call (202) 275–7428.

This decision should not have a significant impact upon the quality of the human environment or the consumption of energy nor should it have a significant effect on a substantial number of small entities.

List of Subjects in 49 CFR Part 1002
Administrative practice and procedures, and Common carriers.

It is ordered:

1. The Commission’s decisions of April 25, 1984 and September 19, 1985 are reopened for comment.
3. This decision is effective on the date served.
Decided: December 8, 1986.
By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.
Noreta R. McGee,
Secretary.

Appendix
Title 49 of the Code of Federal Regulation is proposed to be amended as follows:

PART 1002—FEES

1. In Part 1002 the authority citation would continue to read as follows:
2. In § 1002.2, paragraph (f)(74), is proposed to be revised to read as follows:
§ 1002.2 Filing fees.
(f)...
(74) The filing of tariffs, rate scheduled, and contracts including supplements—6.00 per series transmitted.

[FR Doc. 86-28349 Filed 12-17-86; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
50 CFR Parts 811 and 675
[Docket No. 61225–6222]

Groundfish of the Bering Sea and Aleutian Islands Area
AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.
ACTION: Proposed rule.
SUMMARY: NOAA issues a proposed rule to implement Amendment 10 to the Fishery Management Plan for the
Groundfish Fishery in the Bering Sea and Aleutian Islands Area (FMP). The amendment would: (1) Close an area of the exclusive economic zone (EEZ) in the Bering Sea to all commercial fishing trawl gear, set limits on incidental catches (bycatch) of Tanner and red king crabs and Pacific halibut in Bering Sea foreign and domestic fisheries for yellowfin sole and other flatfish, and require that these fisheries cease when the incidental catch limits are reached; (2) revise weekly reporting requirements for catcher/processor and mothership vessels to require that they report weekly regardless of when their catch is landed; (3) provide authority for the Secretary of Commerce (Secretary) to make certain inseason changes to gear regulations, seasons, and harvest quotas, and (4) provide the Secretary with inseason authority to reapportion surplus amounts of groundfish within the domestic allowable harvest category. These measures are intended to respond to biological, socioeconomic, and administrative problems that have been identified by the North Pacific Fishery Management Council (Council).

DATES: Comments on the amendment and proposed rule are invited until January 22, 1987.
ADDRESSES: Comments should be addressed to Robert W. McVey, Director, Alaska Region (Regional Director), National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802. Individual copies of the amendment, the environmental assessment, and the regulatory impact review/initial regulatory flexibility analysis may be obtained by contacting the North Pacific Fishery Management Council, P.O. Box 103138, Anchorage, Alaska 99501, 907–274–4563.
Comments on the collection-of-information requirement should be directed to the Office of Information and Regulatory Affairs of OMB, Washington, DC 20503, Attention: Desk Office for NOAA.


SUPPLEMENTARY INFORMATION: Domestic and foreign groundfish fisheries in the EEZ in the Bering Sea and Aleutian Islands (BSAI) area are managed in accordance with the FMP. The FMP was developed by the Council under authority of the Magnuson Fishery Conservation and Management Act, as amended (Magnuson Act), and is implemented by regulations appearing at 50 CFR 611.93 and Part 675.

The Council solicits management proposals annually from the general
public, other agencies and staff between September and December. Proposals for inclusion in Amendment 10 were requested by the Council between the September and December 1985 Council meetings. After receiving proposals, the Council's Plan Team reviews and ranks each proposal. At its meeting on January 15-17, 1986, the Council reviewed the recommendations of the Plan Team, the Scientific and Statistical Committee (SSC), and the Advisory Panel (AP), and selected five proposals for inclusion in Amendment 10. The Council's Plan Team then prepared drafts of an environmental assessment and a regulatory impact review of the proposals for public comment as required by the National Environmental Policy Act of 1969, Executive Order 12291, and NOAA policy. The Council reviewed these documents at its meeting on March 19–21, 1986, and released them for public comment. In response to comments, the Plan Team revised the draft documents for consideration by the Council at its meeting on June 25–27, 1986. The Council, AP and SSC reviewed the documents, heard further public comment, and the Council decided to further revise the documents by dropping one part of the amendment and releasing them for another 30-day comment period prior to the Council's September meeting. At its meeting on September 24–26, 1986, the Council approved the four parts of the amendment for submission to the Secretary.

A description of and reasons for each part of Amendment 10 are as follows:

1. Protection of one of the Tanner crabs, Chionoecetes bairdi; Paralithodes camtschatica, red king crab; and Hippoglossus stenolepis, Pacific halibut in the Eastern Bering Sea.

At its meeting of January 15–17, 1986, the Council determined that two species of commercially important crabs, C. bairdi and red king crab, in the Bering Sea subarea were dangerously low in population abundance. Concern was expressed that commercial trawl fishing for groundfish, particularly yellowfin sole and other flounder species, contributed to the mortality of Tanner and king crabs through incidental capture in, and mutilation from, trawl gear as it passes over the sea bottom. Additional concern was expressed about incidental catches of halibut from trawl fishing. Although regulations governing foreign trawl fishing in this area provide certain closed areas and prohibited species catch (PSC) limits for Pacific halibut, and Tanner and king crabs, domestic trawl fishing vessels have not been similarly restricted.

Domestic trawl fishing for groundfish includes U.S. vessels working in joint ventures with foreign processing vessels (JVP) and U.S. vessels processing their catch on board or delivering it to U.S. processors (DAP). Together, JVP and DAP fisheries account for the domestic annual harvest (DAH) of groundfish.

The Council recommended that the Secretary promulgate emergency regulations that would: (1) Close a part of the Bering Sea subarea to all commercial trawling (except for domestic trawl fishing for Pacific cod under certain conditions), (2) establish PSC limits for C. bairdi, red and blue king crab, and Pacific halibut, (3) close a fishery that reaches a PSC limit, and (4) provide for NMFS-approved observers on domestic fishing vessels in certain areas. With few minor exceptions and the deletion of blue king crab and Pacific halibut, the Secretary implemented the Council's recommendations.

2. Establishment of a temporary emergency closure for 90 days beginning on June 3, 1986 (June 6, 1986, 51 FR 20652). This emergency rule was extended on September 3, 1986 (September 11, 1986, 51 FR 32334) until December 2, 1986.

At the Council’s meeting of September 24–26, 1986, the AP and the majority of public testimony recommended that the Council approve the emergency rule, as promulgated by the secretary, as a part of Amendment 10 with the addition of a PSC limit of 828,000 Pacific halibut applicable to JVP fishing for yellowfin sole and other flatfish in the entire BSAI management area. It was further recommended that when the halibut PSC limit is reached, only the area designated as Zone 1 would close to further trawling by JVP vessels. The Council adopted these recommendations in approving Amendment 10 but specified that all provisions of this part of Amendment 10 would expire on December 31, 1988. During this two year period, the Council expects to continue its efforts to develop a more comprehensive approach to bycatch management in the BSAI area.

The area proposed to be closed to foreign and domestic trawl fishing is that part of the EEZ north of the Alaska Peninsula, south of 58° N. latitude, west of 160° W. longitude, and east of 162° W. longitude (Area B in Figure 2). Within that area, however, the Secretary may allow domestic trawling for Pacific cod in that portion lying south of a straight line approximating the 25 fathom depth contour, provided that such fishing is conducted under a data gathering program approved by the Regional Director after consultation with the Council. The data gathering program is to provide data useful for management of the trawl fishery, the Pacific halibut, Tanner and king crab fisheries, and is to prevent overfishing of Pacific halibut. Tanner and king crab stocks in the area. All fishing with trawl gear will cease when a PSC limit of 12,000 red king crabs has been taken in that portion of the closed area.

The area proposed to be closed by this action contains the highest concentrations of red king and legal male and large female C. bairdi. The closure will protect about 70 percent of the mature female red king crab spawning stock according to NMFS scientists. The closure will effectively keep the incidental fishing mortality rate of these crabs to a minimum.

Closing this area is expected to result in substantial changes in distribution of groundfish fishing effort. Historically, a relatively large part (47 percent in 1985) of the joint venture yellowfin sole and other flatfish fishery has taken place within the area proposed for total closure. However, the probable cost to groundfish fishermen, and particularly DAH yellowfin sole and other flatfish fishermen, as reflected in potential reductions in catch, may be much less than past catch distributions imply.

NMFS trawl surveys indicate equivalent or higher concentrations of yellowfin sole and other flatfish outside the area as those found within. Furthermore, under the 1986 emergency rule, joint ventures took a record 150,000 metric tons (mt) of yellowfin sole fishing outside of the proposed closed area.

Although benefits, in the form of protection of crab and halibut within the closed area, are anticipated from the closure, there will be costs. Prohibiting trawl fishing in the area, which has been important to the developing DAH groundfish fisheries for yellowfin sole and other flatfish, will require changes and adjustments on the part of the affected operators which cannot be fully anticipated. The closure will require fishermen to leave preferred and familiar grounds. It will impose costs in the form of exploration time to locate new grounds, extended running time in transit between port and prospective fishing areas, and logistical adjustments to coordinate refueling and transferring of crews and observers. While all of these represent costs directly attributable to the proposed action, no experience exists within the industry upon which to judge the magnitude of these likely impacts.

Most foreign fishing in this area is already prohibited under provisions of the foreign fishing regulations which established a pot sanctuary for domestic
crab fishermen closed to foreign trawling. This proposal closes a small area adjacent to the pot sanctuary in the northwest corner of the closed area between 167° W. longitude and 166° W. longitude. The impact on foreign vessels of this additional closure will be small. Only 7 mt of groundfish were harvested there by foreign trawlers in 1985.

The PSC limit of 12,000 red king crabs in that portion of the closed area remaining open for domestic Pacific cod fishing should not unduly constrain this fishery. The bycatch rate of red king crab in this area under the 1986 emergency rule was about 0.5 crab/mt of groundfish, and the total bycatch was significantly below the limit of 12,000 red king crabs. However, the requirement that participants in the Pacific cod fishery in the excepted area comply with a data gathering program will impose costs on the participants. During the 1986 fishery, the Secretary required an onboard data gatherer, provided by the fisherman, on every vessel. If this requirement were repeated in the future, the average cost per vessel of carrying an onboard data gatherer would be $5,400 per month for an average of about 2 months or $10,800.

A PSC limit of 80,000 C. bairdi and 135,000 red king crabs is proposed in the EEA north of the Alaska Peninsula, south of 58° N. latitude, and east of 165° W. longitude applicable to the DAH fishery for yellowfin sole and other flatfish (Area A in Figure 2). Area A, defined as Zone 1, is important to directed fishing for yellowfin sole and other flatfish, especially during April, May, and June, when sea ice permits fishing further north. Although the area closed to all trawling by this action protects the highest concentrations of red king and legal male and large female C. bairdi, significant numbers of these crabs occur outside of the closed area but east of 165° W. longitude. The PSC limits for this area will provide necessary additional protection for these crabs. Foreign fishing with trawl gear is already prohibited in a large portion of this area known as the pot sanctuary under § 611.93(c)(2)(ii).

A PSC limit of 326,000 C. bairdi applicable to the DAH fishery for yellowfin sole and other flatfish is proposed in the area of the EEA bounded by straight lines beginning at 54°30' N. latitude, 165° W. longitude, then north to 58° N. latitude, 165° W. longitude, then west to 58° N. latitude, 171° W. longitude, then north to 60° N. latitude, 171° W. longitude, then west to 60° N. latitude, 179°21' W. longitude, then south to 59°25' N. latitude, 179°20' W. longitude, then extending on a straight diagonal line southeast to the intersection of 54°30' N. latitude, 167° W. longitude, and finally eastward along 54°30' N. latitude to 168° W. longitude (Area C in Figure 2).

This area, defined as Zone 2, encompasses the majority of the small female and pre-recruit male C. bairdi population. The combined PSC limits applicable to DAH fisheries in Zones 1 and 2 (406,000 C. bairdi) will provide protection for 98 percent of the C. bairdi stocks. A PSC limit of 64,000 C. bairdi applicable to the foreign directed fisheries for yellowfin sole and other flatfish is proposed in the combined areas of Zones 1 and 2. NOAA has made a minor technical change to the regulations approved by the Council by providing for the apportionment of this PSC limit among foreign nations based on a nation's share of the total TALFF of yellowfin sole and other flatfish. The purpose of this change is to equitably control the impact of foreign vessels on-foreign vessels of this area known as the pot sanctuary.

This proposed rule would give the Secretary some discretion in carrying out closures due to PSC limits. The purpose of this discretionary authority is to provide some management latitude, with respect to PSC limits, in imposing restrictions on domestic fishermen in areas and under circumstances where continued fishing can be determined to have insignificant deleterious effects on either crab stock. The discretionary authority provided by this action will allow assessment and consideration of existing conditions within domestic fisheries before enacting a closure due to a PSC limit.
fisheries and the biological and socioeconomic risks involved will be made and relevant findings published before this discretionary authority can be fully exercised. This authority does not extend to foreign fisheries.

The closure of either or both Zones 1 and 2 due to achievement of a PSC limit will not preclude either the DAH or foreign fishery from continuing to fish for yellowfin sole and other flatfish elsewhere in the BSAI management area. For DAH fisheries, there will be no PSC limits outside of Zones 1 and 2, while the BSAI area-wide PSC limits for foreign fisheries will continue to apply outside of Zones 1 and 2.

The purpose of these restrictions on fishing vessels trawling for yellowfin sole and other flatfish species is to reduce the deleterious effects of this fishing on C. bairdi, and red king crab. Recent data suggest that C. bairdi and red king crab have declined to extremely low abundances (source: Report to Industry on the 1985 Eastern Bering Sea Crab Survey, NMFS Northwest and Alaska Fisheries Center Processed Report 85–20, November 1985). A description and summary of these data can be found in the emergency interim rule published by the Secretary (50 FR 20652, June 6, 1986).

A PSC limit of 828,000 Pacific halibut is proposed to be applicable to the JVP yellowfin sole and other flatfish fisheries within the entire BSAI management area. Reaching the PSC limit would result in closure of Zone 1 and 2. The Council derived this limit from an estimated annual average of 3,100 mt of halibut taken as bycatch in all non-halibut fisheries over the past 5 years. From this number, 500 mt were subtracted to account for crab and shrimp fisheries bycatches of halibut and another 300 mt were subtracted to account for bycatches in foreign trawling fisheries.

Assuming an average weight of 5 pounds per halibut caught incidentally in other fisheries, the remaining 2,240 mt were calculated to be equivalent to 9,877,392 animals. Ten percent of this amount was subtracted to account for halibut bycatches in the DAP travel fishery and another 80,000 animals were subtracted to account for halibut bycatches in non-flatfish JVP fisheries. Hence, the remaining number, rounded to 828,000, was specified as the PSC limit for halibut applicable only to the JVP fishery for yellowfin sole and other flatfish.

This PSC limit will not be immediately constraining on the JVP flatfish fisheries because the 1985 halibut bycatch in the yellowfin sole and other flatfish joint ventures was only 265,000 fish and the 1986 bycatch, at the time of the September Council meeting, was only 354,000 fish. It is intended primarily as an upper limit, which if achieved, would result in closure of an area (Zone 1) that is known to contain a high abundance of juvenile halibut. Given the expected bycatches of halibut in the DAP and foreign groundfish fisheries and the crab pot fisheries, this PSC limit is intended to ensure that the total halibut bycatch from all fisheries in the BSAI area does not exceed recent historical levels.

A definition of directed fishing is proposed to be added to § 611.93 for purposes of enforcing prohibitions against directed fishing for yellowfin sole and other flatfish, after a PSC limit is reached.

2. Revision of reporting requirements for domestic catcher/processor and mothership/processor vessels. The Council approved a proposal to revise an existing reporting requirement at § 675.3(a)(3) which requires that any catcher/processor vessel that retains its catch for more than 14 days from the time it is caught, or any mothership/processor which receives groundfish from a domestic fishing vessel and retains it for more than 14 days from the time it is received, submit to the Regional Director at weekly catch or receipt report for each weekly period, Sunday through Saturday, during which groundfish were caught or received at sea. The Council has proposed that all catcher/processor and mothership/processor vessels be required to submit weekly catch reports regardless of how long their catch is retained before landing. Weekly catch reports are necessary because the large amounts of catches that might be on board these vessels would not otherwise be reported on State of Alaska fish tickets until the fish were landed, often weeks or months later.

Under the current regulation, catcher/processor and mothership/processors that land fish within 14 days are not required to submit a weekly catch report to the Regional Director. This exception to the weekly catch report requirement was allowed under the assumption that any catch landed within 14 days and reported on an Alaska Department of Fish and Game (ADF&G) fish ticket would be incorporated into the catch monitoring data base in a relatively short period of time. In practice, the catch information is not received quickly due to delays in submitting the tickets by vessel operators or processors. When receipt-of-catch information is delayed, fishery managers may have to make critical management decisions based on incomplete information. For fisheries operating on small quotas and over short time periods, incomplete information becomes an acute management problem. Large catcher/processor can harvest amounts of a quota while remaining at sea for long periods. Incorrect management decisions, as a result of incomplete catch and effort information, could result in serious over or under harvest and substantial inconvenience and cost to the fishing industry. Compounding this problem is the fact that recent ADF&G budget cuts due to declining State revenues may result in ADF&G fish tickets being collected even more slowly.

The current reporting requirement also has resulted in lack of consistency of catch records for some vessels reporting weekly part of the time and submitting fish ticket information at other times when their landings were made within 14 days. This has resulted in some double counting of catch in trying to resolve catch information from the two reporting systems which has resulted in overestimates of harvest rates. This lack of consistent reporting has made enforcement of the reporting requirement nearly impossible because agents do not know, when a report is missed, whether the vessel landed and submitted an ADF&G fish ticket or whether it failed to report.

For these reasons, the Council approved this part of Amendment 10 which requires all catcher/processors and mothership/processors to submit weekly catch reports regardless of how long they retain their catch so that inseason harvest management decisions can be made using the best available information.

The expansion of the weekly reporting requirement to include periods when catch is landed within 14 days is not expected to significantly increase costs for affected vessels because they will have already established the infrastructure for reporting when catches are held beyond 14 days.

To aid identification of which fishing vessels are affected by the revised reporting requirement, a new definition of "processing" would be added to the domestic regulations. This definition defines processing as the preparation of fish to render it suitable for human consumption, industrial uses, or long-term storage, including, but not limited to, cleaning, canning, smoking, salting, drying, freezing, and rendering into meal or oil. Under this definition, any domestic fishing vessel "processing" any part of its catch or received fish on
board would be required to report its catches weekly to the Regional Director.

Proposed Technical Amendments

NOAA has proposed certain minor technical changes to the implementing regulations approved by the Council. These changes would not implement Amendment 10, but are modifications under existing authority in the FMP. Section 675.5(a)(3)(iv) would be changed to require catcher-processors and mothership/processors to submit a weekly catch or receipt report after checking into a fishing area under § 675.5(a)(3)(i), regardless of whether any groundfish were caught or received.

NOAA is also proposing certain technical changes to clarify domestic reporting requirements. Thus, in § 675.5, paragraph (a)(1) would be redesignated as paragraph (a)(2) and a new paragraph (a)(1) would be added to require submission of State of Alaska fish tickets to ADF&G when landing fish in Alaska. Landings in Alaska include those landings made to floating processors within the territorial sea. Renumbered paragraph (a)(2) would be revised to make it clear that landings made outside of Alaska include at-sea landings in the EEZ off the State of Alaska. This revision makes the original paragraph (a)(2) redundant; it would therefore be deleted.

3. Inseason Management Authority.

Harvest levels, gear restrictions, seasons, area restrictions, and other types of management measures are established by the Council for the groundfish fisheries based on the best available biological, ecological, and socioeconomic information. The Council recognized, however, that new information and data relating to stock status may become available to the Secretary and/or the Council during the course of a fishing year that justifies inseason adjustments to the harvest quotas or other management measures. Such changes in stock status may not have been anticipated or were not sufficiently understood at the time harvest levels and other management measures were being established. Such changes may become known from events within the fishery as it proceeds, or they may become known from new scientific survey data. Certain changes may justify swift action by the Secretary to protect the resource from overfishing by adjusting harvest levels or instituting other closures or restrictions.

The need for adjustment may be related to several circumstances. For instance, certain target or bycatch groundfish species may have decreased in abundance. When new information indicates that a groundfish species has decreased in abundance, failure either to reduce the allowable harvest or to institute other measures designed to reduce the harvest of that species could result in overfishing. In the case of new information relating to the stock status of incidentally caught prohibited species (e.g., crab and halibut) may require the adjustment of PSC or season or gear modifications to prevent overfishing of those species. Information may become available in-season to indicate that the status of a groundfish or prohibited species stock is greater than was anticipated at the time harvest levels and other management measures were established, and that certain harvest levels or PSC limits are too low. In this case, closing a fishery at the originally specified harvest quota or PSC limit could result in underutilization of groundfish and fishermen would unnecessarily forego economic benefits unless the total allowable catch (TAC) or PSC limit were increased and the fishery allowed to continue. The proposed rule, however, would not authorize the Secretary to make inseason adjustments to TACs or PSCs which are not initially specified on the basis of biological stock status, unless an adjustment is necessary to prevent overfishing.

The Council approved inseason management authority for the Secretary, through determinations to be made by the Regional Director, to adjust harvest levels, season opening and closing dates, TACs and PSC limits. Such adjustments must be necessary to prevent overfishing or to change TACs or PSC limits which the Regional Director finds, as a result of the best available stock status information, to have been incorrectly specified.

The Regional Director is constrained, however, in his choice of management responses to prevent potential overfishing by having to select the least restrictive adjustments, from the following management measures, to achieve the purpose of the adjustment: (1) Any gear modification that would protect the species in need of conservation protection, but which would still allow fisheries to continue for other species; (2) a time/area closure which would allow fisheries for other species to continue in noncritical areas and time periods; and (3) total closure of the management area. An example of a potential gear restriction would be the closure of an area to nonpelagic trawling to prevent overfishing of a bottom dwelling species.

The exercise of the Secretary’s authority to adjust TAC or PSC limits requires a determination, based on the best available scientific information, that the biological status or condition of a stock is different from that on which the currently specified TAC or PSC limits were based. Any adjustments to a specified TAC or PSC limit must be reasonably related to the change in stock status.

For example, a PSC limit for a crab stock derived from a specific level of the crab biomass could be adjusted upwards or downwards if the new stock status information showed that the crab biomass had changed. If, however, a TAC or PSC limit were based on factors other than the biological stock status of that species, the Regional Director would be unable to make the determination that the TAC or PSC limits was incorrectly specified. For example, the red king crab PSC limit in Zone 1 of the eastern Bering Sea in 1986 was a negotiated level between representatives of the crab and trawl fishermen. In this instance, any change in the stock status of red king crab would not result in exercise of this authority since the PSC limit was not directly related to the stock status of red king crab. The only exception would be if new stock status information indicated that a negotiated PSC limit would result in overfishing.

The types of information which the Regional Director must consider in determining whether stock conditions exist that require an inseason management response are described as follows, although he is not precluded from using information not described but determined to be relevant to the issue.

(A) The effect of overall fishing effort within a regulatory area;

(B) Catch per unit of effort and rate of harvest;

(C) Relative abundance of stocks within the area;

(D) The condition of the stock within all or part of a regulatory area; and

(E) Any other factors relevant to the conservation and management of groundfish species or any incidentally caught species which are designated as a prohibited species or for which a PSC limit has been specified.

The Secretary will publish a notice of preliminary adjustments in the Federal Register before they are made final, unless the Secretary finds for good cause, not such notice not necessary or contrary to the public interest. If the Secretary determines that the prior comment period should be waived, he will still request comments for 15 days after the notice is made effective, and respond to any opposing comments by publishing in the Federal Register either notice of continued effectiveness or a
notice modifying or rescinding the adjustment.

Under the Magnuson Act, the Secretary is required to prevent overfishing. One of the major underlying concerns this part addresses is that management not be so shortsighted as to allow short term benefits to accrue in a fishery at the expense of a continuing stream of benefits for future generations. In season measures adjusting a gear restriction or season to reduce a TAC or PSC limit would be taken to preserve future benefits from the fishery by preventing overfishing. This would only occur in cases where FMP flexibility is inadequate to deal with the situation through normal processes. When in season management authority would be required to adjust a TAC or PSC limit upward, immediate benefits would be realized by the fishery due to the increased potential harvest in the target fishery and the sale of that harvest.

4. Inseason Reapportionment within DAH.

Currently, the FMP and its implementing regulations authorize the Regional Director to periodically reassess DAH during the year and determine if the initial DAH apportionments accurately reflect the intent and capacity of the DAH fisheries. If greater amounts of groundfish are needed by the domestic fisheries he is authorized to increase the DAH apportionment by transferring amounts of groundfish from the reserve. If any amounts of DAH will go unharvested, the Secretary may reapportion those amounts of DAH and any reserves not needed by the DAH fisheries to TALFF.

However, the FMP and the regulations are silent on transfers of amounts of groundfish within DAH (between DAP and JVP). Although the Secretary previously has made reapportionments within DAH based on the implied authority of the existing regulations and the Magnuson Act, NMFS and the Council concluded that the process would be less confusing to the public and the affected industry if the FMP and regulations specifically clarified that authority. This change is proposed as a clarification to remove any ambiguities in the existing FMP and regulations.

Priority access by the domestic fishing industry to Bering Sea groundfish resources, as provided by the Magnuson Act, would not be affected by this action.

Approval and implementation of this part will result in no undesirable or adverse impacts on the fishery. While current practice is fully consistent with the intent of the current regulations, implementation of this part would remove any ambiguity or uncertainty about reapportionments within DAH, reduce the potential for litigation, and assure the full and efficient utilization of groundfish by the domestic fishery.

Classification

The proposed rule is published under section 304(a)(1)(D)(ii) of the Magnuson Act, as amended by Pub. L. 99-659, which requires the Secretary to publish regulations proposed by a Council by the 15th day after receipt of the amendment and regulations. At this time the Secretary has not determined that the amendment these regulations would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making these determinations, will take into account the data and comments received during the comment period.

The Council prepared an environmental assessment (EA) for this amendment and concluded that there will be no significant impact on the environment 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 proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the regulatory impact review/initial regulatory flexibility analysis (RIR/IRFA) prepared by the Council. A copy of the RIR/IRFA may be obtained from the Council at the address above.

The Council prepared an initial regulatory flexibility analysis as part of the regulatory impact review which concludes that this proposed rule, if adopted, would have significant effects on small entities. These effects have been discussed earlier in this document relative to each specific action and in the RIR/IRFA. A copy of this analysis may be obtained from the Council at the address listed above.

This rule contains a modification to a collection-of-information requirement subject to the Paperwork Reduction Act (PRA). A request to collect additional information has been submitted to the Office of Management and Budget for review under section 3504(b) of the PRA.

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 has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

List of Subjects

50 CFR Part 611

Fisheries, Foreign fishing.

50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Dated: December 12, 1986.

Carmen J. Bloedin,

Deputy Assistant Administrator for Fisheries,


For the reasons set out in the preamble, 50 CFR Parts 611 and 675 are proposed to be amended as follows:

PART 611—[AMENDED]

1. The authority citation for 50 CFR Part 611 continues to read as follows:


2. Section 611.93 is amended by adding new paragraphs (b)(1)(iii), (c)(2)(ii)(E)(2)(iv), and (c)(2)(iii)(F) and (G), and figure 1 to read as follows:

§611.93 Bering Sea and Aleutian Islands groundfish fishery.

* * * * *

(b) * * * * *(1) * * * * *

(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 which amount to 20 percent or more of the total amount by weight of fish or fish products on board at any time. It will be rebuttable presumption that, when any species, stock, or other aggregation of fish comprises 20 percent or more by weight of the catch, take, or harvest, or 20 percent or more of the total amount by weight of fish products on board at any time, such fishing was directed fishing for such fish.

* * * * *

(c) * * * * *(2) * * * * *

(ii) * * * * *

(E) * * * * *

(2) * * * * *

(iv) When, during the fishing year, the trawl vessels of foreign nations conducting directed fishing for yellowfin sole and "other flatfish" in either Zone 1 or Zone 2 (areas A and C in figure 1) catch that nations share of the PSC limit of 64,000 C. bairdi, the Regional Director will publish a notice in the Federal Register prohibiting trawling by vessels of that nation for yellowfin sole and "other flatfish" in both of these areas for
the remainder of the fishing year. A nation's share of this PSC limit will be calculated by multiplying 64,000 by a percent that is equivalent to that nation's portion of the total TALFF of yellowfin sole and "other flatfish." At the beginning of the fishing year, a portion of this PSC limit will not be distributed to nations, because some of the total TALFF of yellowfin sole and "other flatfish" may not yet be allocated. The undistributed portion of this PSC limit will be subsequently distributed to nations in proportion to increases in their yellowfin sole and "other flatfish" allocations.

Apportionments of this PSC limit notwithstanding, the Regional Director will publish a notice in the Federal Register prohibiting all foreign trawling for yellowfin sole and "other flatfish" in Zones 1 and 2 when such trawling catches the PSC limit of 64,000 C. bairdi Tanner crabs in either zone. For this purpose, Zone 1 is defined as that part of the management area south of 58° N. latitude and east of 165° W. longitude exclusive of other closed areas specified under this part (area A in Figure 1), and Zone 2 is defined as that part of the management area bounded by straight lines connecting the following coordinates in the order listed and exclusive of other closed areas specified under this part (area C in Figure 1):

- 54°30 min. N. latitude, 165°00 min. W. longitude;
- 56°00 min. N. latitude, 165°00 min. W. longitude;
- 58°00 min. N. latitude, 171°00 min. W. longitude;
- 60°00 min. N. latitude, 171°00 min. W. longitude;
- 59°25 min. N. latitude, 179°20 min. W. longitude;
- 54°30 min. N. latitude, 167°00 min. W. longitude;
- 54°30 min. N. latitude, 165°00 min. W. longitude.

(F) At all times in the area enclosed by straight lines connecting the following coordinates: 57°30 min. N. latitude, 162°00 min. W. longitude; 58°00 min. N. latitude, 182°00 min. W. longitude; 58°00 min. N. latitude, 160°30 min. 30 sec. W. longitude; (area B in Figure 1).

(G) When the domestic fishery for yellowfin sole and "other flatfish" is prohibited under §675.21(b) of this chapter, the directed fishery for yellowfin sole and "other flatfish" is prohibited in the same area specified in §675.21(b) (Area A, Figure 1).
BILLING CODE 3510-22-C
PART 675—[AMENDED]

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

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

4. The Table of Contents is revised by adding new sections §675.21 and 675.22 to read as follows:

675.2 Definitions.

§675.2 Definitions.

Bycatch limitation zone 1 (Zone 1) means that part of the Bering Sea subarea that is south of 58°00' min. N. latitude and east of 165°00' min. W. longitude (areas A and B §675.21 Figure 2).

Bycatch limitation zone 2 (Zone 2) means that part of the Bering Sea subarea bounded by straight lines connecting the following coordinates in the order listed (area C in §675.21 Figure 2):

54°30' min. N. latitude, 185°00' min. W. longitude;
58°00' min. N. latitude, 185°00' min. W. longitude;
58°00' min. N. latitude, 171°00' min. W. longitude;
60°00' min. N. latitude, 171°00' min. W. longitude;
60°00' min. N. latitude, 170°20' min. W. longitude;
59°25' min. N. latitude, 170°20' min. W. longitude;
54°30' min. N. latitude, 167°00' min. W. longitude; and
54°30' min. N. latitude, 165°00' min. W. longitude.

Processing, or to process, means the preparation of fish to render it suitable for human consumption, industrial uses, or long-term storage, including, but not limited to, cooking, canning, smoking, salting, drying, freezing, and rendering into meal or oil.

6. In §675.5, paragraph (a)(3) is added, and newly redesignated paragraph (a)(2) and paragraphs (a)(3) introductory text. (a)(3) and (iv) are revised to read as follows:

§675.5 Reporting requirements.

(a) * * *

(2) Landing in Alaska. The operator of any fishing vessel regulated under this part who lands fish in the State of Alaska must, for each sale or delivery of groundfish caught in the Bering Sea and Aleutian Islands management area, be responsible for the submission to ADF&G of an accurately completed State of Alaska fish ticket. At the election of the vessel operator, the fish ticket required under paragraph (a)(1) of this section will be either:

(i) Submitted by the vessel operator directly to the ADF&G within one week after such fish are sold or delivered; or

(ii) Prepared, at the request of the operator, by the purchaser and submitted by the purchaser to ADF&G within one week after such fish are received by the purchaser. For the purposes of paragraph (a) of this section, a "purchaser" is any person who receives, from a fishing vessel regulated under this part, groundfish caught in the Bering Sea and Aleutian Islands management area.

(2) Landing outside Alaska. The operator of any fishing vessel regulated under this part who lands fish outside the State of Alaska, including the EEZ adjacent to the State of Alaska, must submit a completed State of Alaska fish ticket, or an equivalent document, containing all of the information required on an Alaska fish ticket. This information must be submitted to ADF&G within one week after the date of each sale or delivery of any groundfish taken in the Bering Sea and Aleutian Islands management area. The address to which these documents must be sent is: Director, Commercial Fish Division, Alaska Department of Fish and Game Headquarters, Support Building, Juneau, Alaska 99801.

(3) Catcher/processor and mothership/processor vessels. The operator of any fishing vessel regulated under this part processing any groundfish on board that vessel must, in addition to the requirements of paragraphs (a)(1) and (2) of this section, meet the following requirements:

(i) Twenty-four hours before starting and upon stopping fishing or receiving groundfish in any area, the operator of that vessel must notify the Regional Director of the date and hour in Greenwich mean Time (GMT) and the area of such activity.
adversely affect the conservation of groundfish or prohibited species or would have an adverse impact on the socioeconomic considerations set forth in paragraph (a)[2][i](B) of this section.

(c) Prohibited species. (1) Prohibited species, for the purpose of this part, means any species of fish caught while fishing for groundfish in the Bering Sea and Aleutian Islands management area, the retention of which is prohibited by other applicable law. Any catch of Pacific halibut by fishing vessels regulated under this part is a catch of a prohibited species, unless retention is authorized by regulations of the International Pacific Halibut Commission. Any catch of Tanner crab, king crab, or salmon by vessels regulated under this part must be treated in the same manner as a catch of a prohibited species.

(e) Inseason adjustments. (1) Inseason adjustments issued by the Secretary under this paragraph (e) of this section include:

(i) The closure, extension, or opening of a season in all or part of a management area;

(ii) Modification of the allowable gear to be used in all or part of a management area; and

(iii) The adjustment of TACs or PSC limits.

(2) Any inseason adjustment under paragraph (e) of this section must be based on a determination that such adjustments are necessary to prevent:

(i) The overfishing of any species or stock of fish or shellfish; or

(ii) The harvest of a TAC or PSC limit for any prohibited species, or the closure of any fishing for groundfish based on a TAC or PSC limit which on the basis of the best available scientific information is found by the Secretary to be incorrectly specified.

(3) The selection of the appropriate inseason management adjustments under paragraph (e)(1) (i) or (ii) of this section must be from the following authorized management measures and be based on an adjustment selected which is the least restrictive necessary to achieve the purpose of the adjustment:

(i) Any gear modification that would protect the species in need of conservation protection, but which would allow fisheries to continue for other species; or

(ii) A time-area closure which would allow fisheries for other species to continue in noncritical areas and time periods; or

(iii) Closure of a management area to all groundfish fishing for the remainder of the fishing year.

(4) The adjustment of a TAC or PSC limit for any species under paragraph (e)(1)(iii) of this section must be based on the best available scientific information concerning the biological stock status of the species in question and on the Regional Director’s determination that the currently specified TAC or PSC limit is incorrect. Any adjustment to a TAC or PSC limit must be reasonably related to the change in biological stock status.

(f) Data. All information relevant to one or more of the following factors may be considered in making the required determinations under paragraph (e)(2) of this section:

(1) The effect of overall fishing effort within a regulatory area;

(2) Catch per unit of effort and rate of harvest;

(3) Relative abundance of stocks within the area;

(4) The condition of the stock within all or part of a regulatory area; and

(5) Any other factors relevant to the conservation and management of groundfish species or any incidentally caught species which are designated as a prohibited species or for which a PSC limit has been specified.

(g) Procedure. (1) No inseason adjustment issued under paragraph (e) of this section may take effect until:

(i) The Secretary has filed the proposed adjustment with the Office of the Federal Register for public inspection; and

(ii) The Secretary has published the proposed adjustment for public comment for a period of thirty (30) days before it is made final, unless the Secretary finds for good cause that such notice and public comment is impracticable, unnecessary or contrary to the public interest.

(2) If the Secretary decides, for good cause, that an adjustment is to be made without affording a prior opportunity for public comment, public comments on the necessity for, and extent of, the adjustment will be received by the Regional Director for a period of fifteen (15) days after the effective date of the notice.

(3) During any such 15-day period, the Regional Director will make available for public inspection, during business hours, the aggregate data on which an adjustment was based.

(4) If written comments are received during any such 15-day period which oppose or protest an inseason adjustment issued under this section, the Secretary will reconsider the necessity for the adjustment and, as soon as practicable after that reconsideration, will either:

(i) Publish in the Federal Register a notice of continued effectiveness of the adjustment, responding to comments received; or

(ii) Modify or rescind the adjustment.

(5) Notices of inseason adjustments issued by the Secretary under this paragraph (g) must include the following information:

(i) A description of the management adjustment;

(ii) The reasons for the adjustment and the determinations required by this part; and

(iii) The effective date and any termination date of the management adjustment. If no termination date is specified, the adjustment will terminate on the last day of the fishing year.

9. A new § 675.21 and Figure 2 are added to read as follows:

§ 675.21 Prohibited species catch (PSC) limitations.

(a) Tanner crab (C. bairdi). (1) If, during the fishing year, the Regional Director determines that vessels of the United States will catch the PSC limit of 80,000 C. bairdi while conducting directed fishing for yellowfin sole and “other flatfish” in Zone 1 (area A in Figure 2), he will publish a notice in the Federal Register prohibiting a directed fishery in Zone 1 by vessels of the United States for yellowfin sole and “other flatfish” for the remainder of the fishing year, subject to paragraph (d) of this section.

(2) If, during the fishing year, the Regional Director determines that vessels of the United States will catch the PSC limit of 335,000 C. bairdi while conducting directed fishing for yellowfin sole and “other flatfish” in Zone 2 (area C in Figure 2), he will publish a notice in the Federal Register prohibiting a directed fishery in Zone 2 by vessels of the United States for yellowfin sole and “other flatfish” for the remainder of the fishing year, subject to paragraph (d) of this section.

(b) Red king crab. If, during the fishing year, the Regional Director determines that vessels of the United States will catch the PSC limit of 135,000 red king crabs while conducting directed fishing for yellowfin sole and “other flatfish” in Zone 1 (area A in Figure 2), he will publish a notice in the Federal Register prohibiting a directed fishery in Zone 1 by vessels of the United States for yellowfin sole and “other flatfish” for the remainder of the fishing year, subject to paragraph (d) of this section.

(c) Pacific halibut. If during the fishing year, the Regional Director determines
that vessels of the United States will catch the PSC limit of 828,000 Pacific halibut while conducting directed fishing for yellowfin sole and "other flatfish" in the Bering Sea and Aleutian Islands management area for delivery to floating foreign processors, he will publish a notice in the Federal Register prohibiting directed fishing in Zone 1 for yellowfin sole and "other flatfish" by such vessels for the remainder of the fishing year, subject to paragraph (d) of this section.

(d) When the fishing vessels of the United States to which a PSC limit applies have caught an amount of prohibited species equal to that PSC limit (but less than an amount which would constitute overfishing), the Secretary may allow some or all of those vessels to continue or resume directed fishing for yellowfin sole and "other flatfish" under conditions which will limit fishing by permissible gear, areas, times, and other appropriate factors, and subject to other provisions of this part. Such other factors may include delivery of a vessel's catch to United States fish processors. In authorizing and conditioning such continued or resumed directed fishing by those vessels, the Secretary will take into account the following considerations:

(1) A determination by the Regional Director of the risk of biological harm to Pacific halibut, Tanner and king crab stocks and of socioeconomic harm to authorized halibut and crab users posed by authorizing continued or resumed directed fishing for yellowfin sole and "other flatfish";

(2) A determination by the Regional Director of the extent of incidental catches of Pacific halibut, Tanner and king crabs in specific areas;

(3) A determination by the Regional Director of the accuracy of the estimates of incidental catches of Pacific halibut, Tanner and king crabs;

(4) A determination by the Regional Director that adherence to the prescribed conditions can be assured in light of available enforcement resources; and

(5) A determination by the Regional Director that continued or resumed directed fishing for yellowfin sole and "other flatfish" will not lead to overfishing of prohibited species.

BILLING CODE 3510-22-M
A. Zone 1 area defined at § 675.2  
B. Closed area defined at § 675.2(a)  
C. Zone 2 area defined at § 675.2

10. A new § 675.22 is added to read as follows:

§ 675.22 Time and area closures.

(a) No fishing with trawl gear is allowed at any time in that part of Zone 1 in the Bering Sea subarea that is south of 58°00'00" min. N. latitude, east of 162°00'00" min. W. longitude and west of 160°00'00" min. W. longitude (area B in Figure 2).

(b) The Secretary may allow fishing for Pacific cod with trawl gear in that portion of the area described in paragraph (a) of this section that lies south of a straight line connecting the coordinates 56°43' min. N. latitude, 160°00' min. W. longitude, and 56°00' min. N. latitude, 162°00' min. W. longitude, Provided That, such fishing is in accordance with a data gathering program, approved by the Regional Director after consultation with the Council, designed to provide data useful in the management of the trawl fishery, the Pacific halibut, Tanner crab, and king crab fisheries, and which will be monitored to prevent overfishing of the Pacific halibut, Tanner and king crab stocks in the area.

(c) The owner or operator of each vessel which fishes in Area B pursuant to an approved data gathering program must agree with the Secretary to comply with all requirements of that program.

(d) If the Regional Director determines that vessels fishing with trawl gear in the area described in paragraph (a) of this section will catch the PSC limit of 12,000 red king crabs, he will immediately close all fishing with trawl gear in that area by notice in the Federal Register and will make reasonable attempts to notify all parties to each agreement referred to in paragraph (c) of this section that the program has terminated.

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