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An appropriate amendment to 39 CFR 111.3 will be published to reflect these changes.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[I.D. 101498C]

RIN 0648-AJ50

#### Fisheries of the Exclusive Economic Zone Off Alaska; Amendment 56 to the Fishery Management Plan for Groundfish of the Gulf of Alaska and Amendment 56 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area

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

**ACTION:** Approval of fishery management plan amendments.

**SUMMARY:** NMFS announces the approval of Amendment 56 to the Fishery Management Plan for Groundfish of the Gulf of Alaska and Amendment 56 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. These amendments revise the definition of overfishing levels (OFL) for groundfish species or species groups in these fishery management plans (FMPs). This action is necessary to revise the definition of OFL for compliance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and is intended to advance the ability of the North Pacific Fishery Management Council (Council) to achieve, on a continuing basis, the optimum yield from fisheries within its geographical area of authority.

**DATES:** The amendments were approved January 27, 1999.

**ADDRESSES:** Copies of Amendments 56/56 and the Environmental Assessment (EA) and related analyses are available from the Council, 605 West 4th Avenue, Suite 306, Anchorage, AK 99501-2252; telephone 907-271-2809.

**FOR FURTHER INFORMATION CONTACT:** James Hale, 907-586-7228.

## SUPPLEMENTARY INFORMATION:

### Background

Section 301(a) of the Magnuson-Stevens Act establishes national standards for fishery conservation and management. All FMPs prepared under the authority of the Magnuson-Stevens Act must be consistent with those standards. National standard 1 requires conservation and management measures to "prevent overfishing while achieving, on a continuing basis, the optimum yield" from fisheries in Federal waters. National standard 2 requires that conservation and management measures be based on the best scientific information available.

Prior to its amendment in 1996, the Magnuson-Stevens Act did not define overfishing. Advisory national standard guidelines for the development of FMPs and amendments, pursuant to section 301(b) of the Magnuson-Stevens Act, required that each FMP specify an objective and measurable definition of overfishing for each managed stock or stock complex. The guidelines further required that an overfishing definition (1) have sufficient scientific merit; (2) be likely to protect the stock from closely approaching or reaching an overfished status; (3) provide a basis for objective measurement of the status of the stock against the definition; and (4) be operationally feasible. The Council developed such an objective and measurable definition of overfishing and, in 1991, implemented that definition under Amendments 16 and 21 to the Alaska groundfish FMPs (56 FR 2700, January 24, 1991).

In 1996, with increased understanding of the reference fishing mortality rates used to determine Acceptable Biological Catches (ABCs) and OFLs, the Council recommended, and NMFS approved, the existing definition of overfishing—a six-tiered system accommodating different levels of reliable information available to fishery scientists for determining OFLs. Fishery scientists use the equations from an appropriate tier to determine when a stock is overfished according to the reliability of information available. The six-tiered system accomplishes three basic functions: (1) It compensates for uncertainty in estimating fishing mortality rates at a level of maximum sustainable yield (MSY) by establishing fishing mortality rates more conservatively as biological parameters become more imprecise; (2) it relates fishing mortality rates directly to biomass for stocks below target abundance levels, so that fishing mortality rates fall to zero should a stock become critically depleted; and (3)

it maintains a buffer between ABC and the overfishing level. Further information and background on the OFL definition contained in Amendments 44/44 may be found in the notice of availability published at 61 FR 54145 on October 17, 1996.

### Revised definition of OFL

On October 11, 1996, the President signed into law the Sustainable Fisheries Act (Pub.L. 104-297), which made numerous amendments to the Magnuson-Stevens Act. The amended Magnuson-Stevens Act now defines the terms "overfishing" and "overfished" to mean a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce MSY on a continuing basis (section 3(29)), and requires that all FMPs:

Specify objective and measurable criteria for identifying when the fishery to which the plan applies is overfished (with an analysis of how the criteria were determined and the relationship of the criteria to the reproductive potential of stocks of fish in that fishery) and, in the case of a fishery which the Council or the Secretary has determined is approaching an overfished condition or is overfished, contain conservation and management measures to prevent overfishing and rebuild the fishery (section 303 (a)(10)).

The Magnuson-Stevens Act required all regional fishery management councils to submit amendments, by October 11, 1998, that would bring their FMPs into compliance.

In April 1998, the Council and its Advisory Panel and Scientific and Statistical Committee (SSC) reviewed a draft analysis of alternatives for revising the existing OFL definitions and, in June 1998, the Council recommended the preferred alternative as Amendments 56/56 to the groundfish FMPs. These amendments revise the definition of overfishing for consistency with the requirements of the Magnuson-Stevens Act.

NMFS published a notice of availability for proposed Amendments 56/56, describing the proposed amendments and inviting public comments, in the **Federal Register** at 63 FR 57094 on October 26, 1998. NMFS received one written comment opposing the proposed definition of overfishing contained in Amendments 56/56. NMFS responds to the comment in the following paragraphs.

*Comment:* Amendments 56/56 should not be approved for two reasons. First, the overfishing definition does not contain a minimum stock size threshold (MSST) as called for by NMFS' national standard guidelines. The guidelines, published at 50 CFR 600.305, are not discretionary and, hence, the absence of

an MSST amounts to a violation of the Magnuson-Stevens Act. An MSST is necessary to provide for rebuilding overfished stocks within the statutory 10-year time frame established by the Magnuson-Stevens Act. Based on the preamble to the final rule implementing the guidelines (63 FR 24218; May 1, 1998), a maximum fishing mortality threshold and an MSST are required because the function of the former is to end overfishing, but the function of the latter is to provide for rebuilding. Without an MSST, an overfishing definition would thus only partially comply with the Magnuson-Stevens Act's requirements regarding overfished stocks.

Second, the amendments should not be approved because the procedure for developing the amendments failed to comply with National Environmental Policy Act (NEPA) requirements that the environmental assessment (EA) consider a range of alternatives.

*Response:* NMFS reexamined the proposed amendments in relation to the national standard guidelines, and the Director, Alaska Science Center, NMFS, certified that the overfishing definition contained in Amendments 56/56 comply with the 50 CFR part 600 guidelines.

The guidelines require that overfishing determination criteria specify "a minimum stock size threshold or reasonable proxy thereof" (50 CFR 600.310(d)(2)(ii)). Although the amendments do not specify an MSST, NMFS has concluded that the overfishing definition contained in Amendments 56/56 does contain a reasonable proxy for MSST. This proxy takes the form of the parameter  $\alpha$  in the overfishing definition, which determines the relative stock size below which fishing is prohibited. Although the amendments set  $\alpha$  at a default value that does not require fishing to cease until a stock falls below 5 percent of the level required to produce MSY, the amendments allow for the Council to set  $\alpha$  on a case-by-case basis. Thus, in the event that a stock falls below the level that can produce MSY, and that an  $\alpha$  value of 0.05 percent does not result in an expectation that the stock will rebuild to that level within 10 years when fished at the minimum fishing mortality threshold, it would be

reasonable to consider such a stock overfished. Upon that determination, the SSC has the prerogative of adjusting  $\alpha$  to achieve rebuilding within 10 years.

Furthermore, NMFS disagrees that the overfishing definition contained in Amendments 56/56 is insufficient to satisfy the Magnuson-Stevens Act's requirements for rebuilding overfished stocks. The comment assumes that, with the present policy and the proposed amendments, the Council would rely solely on a reduction of fishing mortality rates to rebuild an overfished stock and that an MSST criterion would necessarily require additional measures be taken to rebuild overfished stocks. The MSST criterion, like the proxy for MSST contained in the amendments, simply provides a mechanism for designating the point at which a rebuilding plan must be instituted.

The use of a fishing mortality rate criterion for designating when overfishing occurs—while it automatically institutes one measure for rebuilding (a reduction of the fishing effort)—does not preclude the implementation of additional measures as deemed necessary for rebuilding. The Council's biomass-based policy currently operative in management of the groundfish fisheries off Alaska provides that rebuilding automatically begins by a reduction in fishing rates when stocks decrease in size. Additional actions for rebuilding within the statutory timeframe of 10 years established by the Magnuson-Stevens Act may be implemented as necessary by the Council and NMFS.

Also, NMFS disagrees that NEPA requirements for review of reasonable alternatives were not met in the development of the EA for this action. The initial draft EA submitted to the SSC and Council in April 1998 contained two alternatives to the status quo, each of which contained the MSST criterion. Discussion of these alternatives, labeled Alternatives 2 and 3 in the April draft of the EA, led the SSC to request that, due to the complexity of the issue, the third alternative be dropped in the interest of facilitating "more deliberative consideration" of "better alternatives" (SSC Minutes, April 1998, p. 6). The SSC also requested that a revised draft EA present the second alternative

without an MSST. The SSC further stated:

The Council policy of using a biomass-based policy that reduces fishing mortality as stocks decrease in size was deliberately selected to provide for automatic rebuilding. In contrast, the NMFS' guideline does not require action until stocks approach the MSST. There is substantial literature to indicate that a biomass-based policy is comparable to or better than a threshold policy. The added complexity of a threshold policy on top of a biomass-based policy serves no useful purpose, is harder to implement, and will be harder for the public to understand. The current stock assessment approach is sufficient to assure that the harvest levels provide for sufficient rebuilding within the specified period of 10 years found in the Magnuson-Stevens Act. (SSC minutes, April 1998, p. 6)

The alternatives contained in the initial draft EA and those contained in the revised draft EA constitute a reasonable range of alternatives such as required those under NEPA. Furthermore, the analysis of those alternatives contained in the draft EAs is sufficient to determine that an environmental impact statement is not necessary for these amendments. In order to provide all reasonable alternatives in one document and to reflect more fully the decision-making process that led to the proposed action, NMFS combined the April 1998 and June 1998 drafts into a revised and final EA that exhibits all the alternatives reviewed and discussed by the SSC and Council and considered by NMFS.

NMFS determined that Amendments 56/56 are consistent with the Magnuson-Stevens Act and other applicable law and approved Amendments 56/56 on January 27, 1999. Additional information on this action is contained in the October 26, 1998, Notice of Availability (63 FR 57094).

No regulatory changes are necessary to implement these FMP amendments.

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

Dated: March 1, 1999.

**Gary C. Matlock,**

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National Marine Fisheries Service.*

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