

Dated: July 25, 2011.

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Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

RIN 0648-BA18

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Management Area; Limited Access Privilege Program

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: Amendment 93 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) would amend the Bering Sea and Aleutian Islands Amendment 80 Program to modify the criteria for forming and participating in a harvesting cooperative. This action is necessary to encourage greater participation in harvesting cooperatives, which enable members to more efficiently target species, avoid areas with undesirable bycatch, and improve the quality of products produced. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Fishery Management Plan, and other applicable law.

DATES: Comments on the amendments must be submitted on or before September 26, 2011.

ADDRESSES: Send comments to James W. Balsiger, Ph.D., Administrator, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by "RIN 0648-BA18," by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal Web site at <http://www.regulations.gov>.

- *Mail:* P.O. Box 21668, Juneau, AK 99802.

- *Fax:* (907) 586-7557.

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

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 (e.g., name, address) 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). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

Copies of Amendment 93, the Environmental Assessment (EA), Regulatory Impact Review (RIR), and the Initial Regulatory Flexibility Analysis (IRFA)—collectively known as the Analysis—for this action are available from the Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Gwen Herrewig, (907) 586-7091.

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 amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce (Secretary). 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.

The Amendment 80 Program for Bering Sea and Aleutian Islands Management Area (BSAI) groundfish fisheries was recommended by the North Pacific Fishery Management Council (Council) in June 2006 as Amendment 80 to the FMP. NMFS published a final rule to implement Amendment 80 on September 14, 2007 (72 FR 52668), and fishing began under the Amendment 80 Program in 2008.

The Amendment 80 Program is commonly known as a limited access privilege program. Eligible fishery participants may receive exclusive access to specific fishery resources if specific conditions are met. Under the Amendment 80 Program, NMFS issues a quota share (QS) permit to a person holding the catch history of an original qualifying non-American Fisheries Act trawl catcher/processor that met specific criteria designated by Congress under the Capacity Reduction Program (CRP) (Pub. L. 108-447). NMFS determined

that 28 vessels met the criteria specified in the CRP. These vessels comprise the originally qualifying Amendment 80 vessels. Each of the 28 originally qualifying Amendment 80 vessels may be issued a QS permit by NMFS based on their catch history of the six Amendment 80 species (Atka mackerel, Aleutian Islands Pacific ocean perch, flathead sole, Pacific cod, rock sole, and yellowfin sole) in the BSAI, if the Amendment 80 vessel owner applies to NMFS to receive a QS permit.

Under the Amendment 80 Program, NMFS allocates a specific portion of the BSAI total allowable catch (TAC) for harvest by QS holders, the Amendment 80 sector, for each of the six defined Amendment 80 species. In addition, NMFS allocates a specific portion of the allowable bycatch of BSAI halibut, Bristol Bay red king crab, snow crab, and Tanner crab to the Amendment 80 sector. This allowable bycatch is commonly known as prohibited species catch (PSC) because these species may not be retained, but are known to be incidentally taken in BSAI trawl fisheries.

Each year, a person assigns each QS permit, Amendment 80 vessel, and any associated license limitation program (LLP) licenses to either an Amendment 80 cooperative, or the Amendment 80 limited access fishery. Generally, the Amendment 80 Program is intended to facilitate the formation of cooperatives that will receive exclusive harvest privileges for a portion of the Amendment 80 species TAC and PSC known as cooperative quota (CQ). A person who does not choose to join a harvesting cooperative must fish in the Amendment 80 limited access fishery, without an exclusive harvest privilege, and must continue to race for fish with other participants in that fishery.

In order to form a cooperative, the cooperative must apply for a CQ permit by November 1 of the year prior to fishing. The cooperative must be comprised of:

- At least three unique persons not affiliated with one another through direct or indirect ownership of more than 10 percent; and
- At least nine (of the 28 potentially available) QS permits in the Amendment 80 sector must be assigned to the cooperative.

Amendment 93 would result in two modifications to the Amendment 80 Program. First, it would allow a cooperative to form with a minimum of two unique persons holding seven QS permits. The current requirement is that a minimum of three unique persons and nine QS permits must be assigned to a cooperative. Reducing the number of

unique persons and number of QS permits can provide additional opportunities for QS holders to establish cooperative relationships that could reduce the number of participants engaged in the race for fish.

Second, Amendment 93 would require that a person holding multiple QS permits, Amendment 80 vessels, and LLP licenses assign all of those QS permits, vessels, and LLP licenses to either one or more cooperatives or the limited access fishery. Under this proposed change, an Amendment 80 QS permit holder would be prohibited from assigning some QS permits to one or more cooperatives and some to the limited access fishery. Under the current provisions, a vessel owner participating in both a cooperative and the limited access fishery has an incentive to exclude participants in the limited access fishery from joining an existing cooperative or creating an additional cooperative because the vessel owner could lose access to fish that would otherwise be available in the Amendment 80 limited access fishery. This provision would reduce the

incentive for a cooperative member to exclude another person from forming a cooperative in order to force them into a race for fish in the limited access fishery. If approved, this provision would not be applicable until the first fishing year 2 years after the effective date of the final rule implementing Amendment 93. For example, if the final rule became effective in October 2011, this requirement would not apply until the start of the 2014 fishing year and QS holders would have to assign all QS permits and vessels to either a cooperative or the limited access fishery by the Amendment 80 annual cooperative application deadline of November 1, 2013.

Public comments are being solicited on proposed Amendment 93 through the end of the comment period (see **DATES**). NMFS intends to publish a proposed rule in the **Federal Register** for public comment that would implement Amendment 93, following NMFS evaluation under the Magnuson-Stevens Act procedures. Public comments on the proposed rule must be received by the close of the comment

period on Amendment 93 to be considered in the approval/disapproval decision on Amendment 93. All comments received by the end of the comment period on Amendment 93, whether specifically directed to the FMP amendment or the proposed rule, will be considered in the approval/disapproval decision on Amendment 93. Comments received after the end of the public comment period for Amendment 93, even if received within the comment period for the proposed rule, will not be considered in the approval/disapproval decision on the Amendment. To be considered, comments must be received by NMFS, not just postmarked or otherwise transmitted, by the close of business on the last day of the comment period.

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108-447.

Dated: July 25, 2011.

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Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
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