

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 910483-1083]

RIN 0648-AD49

Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.**ACTION:** Proposed rule; request for comments.

SUMMARY: NOAA proposes a rule that would implement Amendment 16a to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands (FMP). This proposed rule would: (1) Establish Pacific herring bycatch management measures for the groundfish trawl fisheries; (2) authorize the NMFS Regional Director, Alaska Region (Regional Director), to temporarily prohibit directed fishing for specified groundfish species in all or part of a Federal statistical area to reduce high bycatch rates of prohibited species; and (3) authorize the Regional Director to limit the amount of pollock that may be taken in the directed trawl fishery for pollock using other than pelagic trawl gear. These actions are necessary to promote management and conservation of groundfish and other fish resources. They are intended to further the goals and objectives contained in the FMP that govern these fisheries.

DATES: Comments are invited through May 28, 1991.

ADDRESSES: Comments may be sent to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802. Individual copies of Amendment 16a and the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510. Comments on the environmental assessment are particularly requested.

FOR FURTHER INFORMATION CONTACT: Susan J. Salvesson, Fishery Management Biologist, NMFS, (907)586-7230.

SUPPLEMENTARY INFORMATION:**Background**

The domestic and foreign groundfish fisheries in the Exclusive Economic Zone (EEZ) of the Bering Sea and Aleutian Islands Area (BSAI) are managed by the Secretary of Commerce

(Secretary) according to the FMP prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMP is implemented by regulations for the foreign fishery at 50 CFR part 611 and for the U.S. fishery at 50 CFR part 675. General regulations that also pertain to the U.S. fishery appear at 50 CFR part 620.

Groundfish trawl fisheries use non-selective harvesting techniques resulting in incidental catches (bycatch) of prohibited species such as crab, halibut, and herring. Although prohibited species are required to be immediately returned to the sea, the rigor of groundfish trawl operations on species caught in standard trawl gear results in high bycatch mortality. The level of bycatch varies as a function of a number of factors, including time and area, target species, gear, fishing strategies, and oceanographic conditions. Conflicts arise when bycatch in one fishery is perceived to reduce the resources available to another fishery. Bycatch of crab, halibut, and herring in the groundfish fisheries is particularly contentious because fishermen value the use of these species very differently, depending on the fishery they pursue.

During 1990, the Council adopted the following three FMP amendments that address prohibited species bycatch in the BSAI groundfish fisheries:

(1) Amendment 16 was implemented January 18, 1991 (56 FR 2700, January 24, 1991), and continues the bycatch management regime for Pacific halibut, red king crab, and *C. bairdi* Tanner crab that had expired December 31, 1990, under Amendment 12a (54 FR 34642, August 9, 1989). A portion of Amendment 16 that would have authorized a vessel incentive program to reduce crab and halibut bycatch rates was disapproved by the Secretary. During a November 15, 1990, teleconference call, the Council adopted a revised vessel incentive program for Secretarial review.

(2) Revised Amendment 16 was approved February 1, 1991, and establishes the authority to implement incentive programs to reduce prohibited species bycatch rates in the groundfish trawl fisheries. An interim final rule to implement this amendment is undergoing Secretarial review.

(3) At its September 25-29, 1990, meeting, the Council adopted Amendment 16a for submission to the Secretary for review and approval under section 304(b) of the Magnuson Act. The proposed rule to implement this

amendment is the subject of this action. If approved, Amendment 16a would:

(a) Implement management measures to limit Pacific herring bycatch in the groundfish trawl fisheries;

(b) Authorize the Regional Director to temporarily prohibit directed fishing for specified species in all or part of a Federal statistical area to reduce high bycatch rates of prohibited species ("hot-spot closure authority"); and

(c) Authorize the Regional Director to limit the amount of pollock that may be harvested in the directed trawl fishery for pollock using other than pelagic trawl gear.

A description of, and the reasons for, each of the management measures proposed under Amendment 16a follow.

(1) Implement Management Measures to Reduce Pacific Herring Bycatch in the Groundfish Trawl Fisheries

The Council has adopted measures to control the bycatch of herring in the BSAI groundfish trawl fisheries after considering recent declines in eastern Bering Sea herring stocks, reduced or eliminated inshore herring fisheries, and the issue of maintaining traditional subsistence herring fisheries. These measures include a framework of prohibited species catch (PSC) limit and a series of timed area closures that would be triggered by the attainment of the PSC limit.

Herring that spawn along the eastern shore of the Bering Sea migrate to wintering areas near the western edge of the Bering Sea continental shelf, north and west of the Pribilof Islands. During this annual migration, an aggregate of nine Bering Sea herring stocks pass through areas in which groundfish vessels are trawling; herring from these stocks are incidentally caught during trawl operations. Because herring are easily damaged when they come into contact with trawl nets, trawl mortality approaches 100 percent.

The nine herring stocks, as identified by their spawning grounds, are from Port Moller, Togiak, Security Cove, Goodnews Bay, Cape Avinof, Nelson Island, Nunivak Island, Cape Romanzof, and Norton Sound. Herring bycatch exploitation fractions (the percentage of the herring population taken annually by trawlers) have increased from less than 2 percent in 1983 to 4 to 7 percent in 1989. Although herring caught by domestic and joint venture groundfish trawlers are a designated prohibited species and may not be retained, the amount of herring that may be incidentally taken is not limited.

The inshore herring fisheries are managed by the State of Alaska under

harvest policies established by the Alaska Board of Fisheries. State management of eastern Bering Sea herring stocks provides for full utilization of these stocks in the inshore sac roe, food/bait, and traditional subsistence fisheries. Alaska state harvest policies establish a maximum exploitation fraction of 20 percent on each distinct spawning stock, and specify that exploitation be reduced when herring stock abundance is low or when commercial fisheries occur in areas traditionally exploited by herring subsistence fisheries. Abundance thresholds also are established below which no commercial harvests are allowed. When the Alaska Board of Fisheries reviewed the increases in herring bycatch exploitation fractions for trawl gear at its November 1989 meeting, it found the maximum allowable herring bycatch exploitation fractions stated in its herring harvest policy had been exceeded.

Herring stocks are declining in all Bering Sea areas except Norton Sound. The very strong 1977-78 year classes sustained most eastern Bering Sea herring stocks through the 1980s. These year classes were aged 12 and 13 in 1990 and are rapidly approaching senescence. Except in Norton Sound, no substantial year classes have recruited to eastern Bering Sea herring stocks since the 1977-78 year classes. Herring biomass was below the threshold for a commercial harvest at Nunivak Island in 1990 and was only very slightly above threshold at Nelson Island. Nelson Island and Nunivak Island herring stocks are projected to be below threshold biomass levels in 1991.

Recent declines in the abundance of Bering Sea herring stocks have prompted additional concern over the effect of herring bycatch in the groundfish trawl fisheries on the western Alaska subsistence fisheries. Subsistence utilization of herring is an important part of the culture of the residents of many western Alaskan coastal villages, particularly at Nelson Island. The importance of herring to the traditional culture and economy of the central Yup'ik Eskimo of the Nelson Island area is described in the appendix to the EA/RIR/IRFA prepared for Amendment 16a. The small commercial harvests from these stocks comprise the basis of the cash economies in the coastal villages. While transfer payments from the Government also are an important source of income, the payments consist primarily of payments in kind rather than cash payments.

Given the declines in eastern Bering Sea herring stocks, the reduced or

eliminated inshore herring fisheries, and the concern for maintaining traditional subsistence herring fisheries, the Council adopted measures to control the bycatch of herring in the BSAI groundfish trawl fisheries. These measures include a frameworked PSC limit and a series of timed area closures that would be triggered by the attainment of the PSC limit. Only areas along the herring migration route would be closed if the PSC limit is attained and only for the period of time that herring are present.

Frameworked PSC Limits for Herring

A flexible or "frameworked" herring PSC limit is proposed to address anticipated fluctuations in the Bering Sea herring biomass. The PSC limit would be based on 1 percent of the annual eastern Bering Sea herring stock biomass. This proposal would accommodate infrequent periods of very strong recruitment that have resulted in dramatic stock fluctuations over the last decade. The frameworked procedure would require an annual determination of the eastern Bering Sea herring stock biomass and an annual establishment of the PSC limit as 1 percent of the herring stock size. This procedure would result in higher herring PSC limits when herring are abundant, and would reduce PSC limits when herring are scarce.

Initial herring bycatch rates in the groundfish fishery of 1 percent of the herring biomass for a given fishing year would likely approach historical herring bycatch exploitation fractions of 2 to 3 percent by the end of a fishing year. This would occur because even though the proposed Herring Savings Areas would be closed once the 1 percent herring bycatch limit was reached, additional herring bycatch would occur outside of the Herring Savings Areas.

Although a herring PSC limit equal to 1 percent of the eastern Bering Sea herring biomass is proposed, the Council considered alternative PSC limits of 2 and 4 percent of the annual herring biomass. The results of the bycatch simulation model used for the analysis presented in the EA/RIR/IRFA, however, indicated that a 1 percent herring PSC limit is superior to the status quo or to PSC limits of 2 or 4 percent in terms of estimated herring bycatch, total bycatch impact cost, and net revenue from the groundfish trawl catch minus bycatch impact costs. The Secretary, after consultation with the Council, would establish the herring PSC limit for an upcoming fishing year based on annual estimates of herring stock biomass. A source of biomass estimates based on aerial surveys of spawning stocks and other abundance index

parameters is the Alaska Department of Fish and Game (ADF&G); the estimates are available in the fall of each year. A preliminary notice of the herring bycatch limit for an upcoming year would be made available for public review and comment concurrently with the notice of preliminary initial specifications of the harvestable amount of groundfish required to be published by the Secretary in the **Federal Register** under § 675.20(a)(7). A final notice of the herring PSC limit for a fishing year also would be published in the **Federal Register** concurrent with the final notice of initial specifications.

At its December 3-7, 1990, meeting, the Council received a report from the ADF&G on the status of eastern Bering Sea herring stocks and associated biomass estimates. Based on spawn deposition surveys, aerial surveys of spawning stocks, and other age and abundance index parameters, ADF&G estimated current herring biomass to be 83,406 metric tons (mt). The Secretary determines that this estimate is derived from the best available scientific information. Under the proposed rule, therefore, the Secretary would establish a herring PSC limit for 1991 equal to 1 percent of the 1991 biomass estimate, or 834 mt.

Fishery Apportionments of the Herring PSC Limit

The annual herring PSC limit would be apportioned to domestic annual processing (DAP) and joint venture processing (JVP) trawl fisheries as prohibited species bycatch allowances. When a fishery attains its herring bycatch allowance, further directed fishing would be prohibited in the Herring Savings Areas described below. The establishment of fisheries eligible for separate herring bycatch allowances and the annual specification of those allowances would follow the same procedure as set forth for establishing and specifying halibut and crab bycatch allowances under the final rule implementing Amendment 16. As such, herring bycatch allowances would be apportioned to and monitored by the fishery definitions set forth in § 675.21(b) for purposes of PSC limit apportionments.

At times, in areas along the herring migration routes, herring bycatch in the midwater and non-pelagic trawl pollock fisheries and other fisheries may be significant and warrant separate herring bycatch allowances for the different fisheries. For purposes of monitoring prohibited species bycatch, the nonpelagic trawl pollock fishery is considered part of the "DAP other

fishery" category under § 675.21(b)(4) and would share the herring bycatch allowance apportioned to that fishery category. The Council recommended that the midwater pollock fishery be held accountable for its herring bycatch and receive a separate bycatch allowance of herring, attainment of which would close the Herring Savings Areas to further directed fishing for pollock by trawl vessels using pelagic trawl gear. Therefore, at the end of each weekly reporting period, a trawl vessel's catch of groundfish and associated herring bycatch during a weekly reporting period would be assigned to the midwater pollock fishery if pollock comprised 95 percent or more of the reported retained catch and discard amounts of groundfish species for which a total allowable catch (TAC) has been specified under § 675.20.

At its December meeting, the Council adopted the following fishery apportionments (annual herring bycatch allowances) of the 834 mt herring PSC limit based on each fishery's anticipated 1991 bycatch of herring:

Fishery category as defined in § 675.4(b)	1991 herring bycatch allowance (mt)
Midwater pollock.....	584
DAP Greenland turbot.....	8
DAP Rocksole.....	0
DAP Flatfish.....	83
DAP other fishery.....	159
Total.....	834

If the Secretary approves Amendment 16a, a fishery's herring bycatch since the beginning of the 1991 fishing year will be credited against its apportionment of the 1991 herring PSC limit. Fisheries that are apportioned a zero amount of the 1991 herring PSC limit would be prohibited from fishing in the Herring Savings Areas during the time periods specified in the definitions of those areas.

Herring Savings Areas

Two Summer Herring Savings Areas and one Winter Herring Savings Area are proposed to protect seasonal concentrations of herring from those fisheries that have attained their annual apportionment of the herring PSC limit. A description of these areas is as follows (See Figure 3 under § 675.2):

(1) *Summer Herring Savings Area 1* means that part of the Bering Sea subarea that is south of 57° N. latitude and between 162° and 164° W. longitude from 12:00 noon Alaska Local Time (ALT) June 15 through 12:00 noon ALT July 1 of a fishing year.

(2) *Summer Herring Savings Area 2* means that part of the Bering Sea subarea that is south of 56°30' N. latitude and between 164° and 167° W. longitude from 12:00 noon ALT July 1 through 12:00 noon ALT August 15 of a fishing year.

(3) *Winter Herring Savings Area* means that part of the Bering Sea subarea that is between 58° and 60° N. latitude and between 172° and 175° W. longitude from 12:00 noon ALT September 1 of the current year through 12:00 noon ALT March 1 of the succeeding fishing year.

The proposed Herring Savings Areas involve closures only for those areas and time periods where herring concentrations occur along the herring migration route. Based on the analysis presented in the EA/RIR/IRFA, closure of additional areas off the main migration route would not appreciably reduce herring bycatch compared to the smaller proposed closures.

When a fishery reaches its herring bycatch allowance, the Herring Savings Areas would be closed to that fishery. Consistent with existing crab and halibut bycatch management under § 675.21(c), only directed fishing for pollock and Pacific cod; in the aggregate, by trawl vessels using other than pelagic trawl gear would be prohibited in the Herring Savings Areas when the "DAP other fishery" reaches its herring bycatch allowance.

A fishery would be held accountable for its herring bycatch on the basis of a fishing year (January 1–December 31) because fishery apportionments of the annual herring PSC limits are based on a fishing year. Once a fishery reached its annual herring bycatch allowance during a fishing year, further fishing in the Summer and Winter Herring Savings Areas would be prohibited during that fishing year, and the Winter Herring Savings Area would remain closed to that fishery until March 1 of the following year to protect concentrations of herring during winter months. For example, if a fishery reached its herring bycatch allowance on June 25 of a fishing year, Summer Herring Savings Area 1 would be closed to further directed fishing for that fishery through July 1, Summer Savings Area 2 would be closed from July 1 through August 15, and the Winter Herring Savings Area would be closed for the 6-month period of September 1 of the current fishing year until March 1 of the following fishing year.

Under the provision for the Winter Herring Savings Area adopted by the Council, if a fishery reached its annual herring bycatch allowance prior to March 1 of a fishing year, the Winter

Herring Savings Area would not be closed to that fishery until September 1 of that fishing year and would remain closed until March 1 of the following fishing year. However, the probability that a fishery would attain its annual herring bycatch allowance prior to March 1 is small based on an examination of historic herring bycatch amounts in groundfish trawl fisheries. Historic data suggest only small amounts of herring are taken during January and February. During this period, trawl vessels typically do not operate in areas of high herring abundance (i.e., the area defined as the Winter Herring Savings Area) because ice cover and other logistic considerations often inhibit fishing operations.

(2) "Hot-spot Closure Authority"

The proposed "hot-spot closure authority" would allow the Regional Director to temporarily close areas to directed groundfish fisheries to avoid relatively high bycatch rates of prohibited species specified under § 675.20(c). If the best available scientific information indicates that groundfish operations in an area exhibit relatively high bycatch rates of one or more prohibited species, the Regional Director would have the authority to temporarily close that area to the fisheries that are shown to be responsible for the high bycatch rates. The closure would be in effect for a period of up to 60 days unless NMFS data indicate that either prohibited species distribution or fishing effort for groundfish requires an extended closure beyond 60 days. The procedures for "hot-spot" closures would be the same as the procedures set forth for inseason actions under § 675.20(g). An EA/RIR/IRFA generally would be prepared for public review and comment.

The Regional Director would make the determination that an interim closure is necessary based on information available from: (1) inseason observer reports, (2) estimates of fishing effort in an area, and (3) historical observer data that provide an index of seasonal distribution patterns of prohibited species and areas in which bycatch "hot spots" traditionally have occurred.

Inseason closures would be based primarily on observer reports of bycatch rates that are submitted on a weekly basis. These reports currently are aggregated by 3-digit Federal statistical areas. The existing information and communication systems employed by NMFS at this time do not allow for more refined weekly reports (e.g., latitude/longitude information on daily

groundfish effort). Specific haul locations are not collected from observers until debriefing operations; this information then is verified, keypunched, and entered into the observer database over a 6- to 12-month period.

Because of the nature of inseason observer information available to the Regional Director on a weekly basis, most inseason closures would be limited to statistical areas, rather than some smaller portions of a statistical area. Parts of statistical areas could be closed if the Regional Director could determine that bycatch rates within a statistical area could be reduced if only a portion of the area were closed on an interim basis.

An inseason closure of all or part of a statistical area would be based upon a determination that such a closure was necessary to prevent:

(a) A continuation of relatively high prohibited species bycatch rates within all or part of a statistical area;

(b) The take of an excessive share of PSC limits or bycatch allowances established for specified fisheries by vessels fishing within all or part of a statistical area;

(c) The closure of one or more directed fisheries for groundfish due to excessive bycatch rates occurring in a specified fishery operating within all or part of a statistical area; and

(d) The premature attainment of established PSC limits or bycatch allowances and associated loss of opportunity to vessels to harvest the groundfish optimum yield.

The Regional Director would be required to consider one or more of the following factors when making the above determinations:

(a) The effect of overall fishing effort within all or part of a statistical area;

(b) Relative distribution and abundance of stocks of target and bycatch species within all or part of a statistical area;

(c) Inseason observed bycatch rates of prohibited species within all or part of a statistical area;

(d) Historical bycatch rates observed in target fisheries within all or part of a statistical area;

(e) Economic impacts on affected fishing businesses; or

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

The intent of the proposed inseason closure authority is to reduce prohibited species bycatch rates and to provide

fishermen with a greater opportunity to harvest groundfish TAC amounts by guaranteeing a longer fishing period before PSC limits are reached and groundfish trawl effort is curtailed. An inseason closure of the type contemplated under this action would not directly affect established PSC limits. However, inseason authority to close "hot spots" should reduce overall average bycatch rates in the BSAI area and decrease the possibility of exceeding established PSC limits due to fast-paced fisheries operating in areas associated with high bycatch rates. Thus, the proposed "hot spot closure authority" could provide additional protection to prohibited species stocks to the extent that the inseason authority to close fisheries in areas that exhibit high bycatch rates will help maintain bycatch amounts within established limits.

(3) Limit the Amount of Pollock TAC That May Be Taken In the Directed Trawl Fishery For Pollock Using Other Than Pelagic Trawl Gear

Proposed regulations that would implement this bycatch management measure would authorize the Regional Director, after consultation with the Council, to limit the amount of Bering Sea and Aleutian Islands pollock TACs that could be harvested in the directed trawl fishery for pollock using other than pelagic trawl gear. The intent of the Council when it adopted this management measure was to restrict the amount of pollock that could be taken with non-pelagic trawl gear in order to reduce the amount of halibut and crab bycatch that typically occurs when non-pelagic trawl gear is used to fish for pollock.

Based on the analysis presented in the EA/RIR/IRFA, a redistribution of pollock catch from non-pelagic to pelagic trawl gear would tend to decrease the halibut and crab bycatch, and increase herring bycatch. Herring bycatch rates would increase in the midwater pollock fishery if the fishery were to continue to operate in areas of high historic herring bycatch. The closure of the Herring Savings Areas to the midwater pollock fishery upon attainment of its herring bycatch allowance is intended to limit herring bycatch to a level consistent with the annual herring PSC limit. Such a closure would still provide for midwater pollock operations outside of closed areas.

The annual specification process used to establish the groundfish TACs under § 675.20 also would be used to specify proposed and final limits on the amount of pollock that could be taken in the non-pelagic trawl pollock fishery. The

information that the Regional Director and the Council would consider when allocating pollock among pelagic and non-pelagic trawl gear includes the following:

(1) The PSC limits and PSC bycatch allowances;

(2) The projected bycatch of prohibited species that would occur with and without a limit in the amount of pollock TAC that may be taken with non-pelagic trawl gear;

(3) The effect, in terms of economic costs and benefits, on the non-pelagic and pelagic trawl fisheries of a limitation of pollock TAC that may be taken by the directed pollock fishery using non-pelagic trawl gear; and

(4) Other factors pertaining to consistency with the goals and objectives of the FMP.

At its December 1990 meeting, the Council recommended that 12 percent of the pollock TACs specified for the Bering Sea and Aleutian Islands be allocated to the directed trawl fishery for pollock using non-pelagic trawl gear. This allocation scheme was recommended because it:

(1) Represents the actual percentage of total 1990 pollock catch by non-pelagic trawl gear, and

(2) Satisfies the Council's intent to limit the amount of pollock that could be harvested with non-pelagic trawl gear.

Classification

Section 304(a)(1)(C) of the Magnuson Act, as amended by Public Law No. 99-659, requires the Secretary to publish regulations proposed by a Council within 15 days of receipt of the FMP amendment and regulations. At this time the Secretary has not determined that the FMP amendments which would be implemented by these regulations are consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

The Council prepared an environmental assessment (EA) for Amendment 16a that discusses the impact of this rule on the environment. A copy of the EA may be obtained from the Council at the address above, and comments on it are requested.

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), initially determined that the proposed rule is not a "major rule" requiring a regulatory impact analysis (RIR) under Executive Order 12291. The Council prepared an RIR that concludes that none of the proposed measures in

this rule would cause impacts considered major for purposes of this Executive Order. This proposed rule, if adopted, is not likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. A copy of the RIR is available from the Council (see **ADDRESSES**).

This proposed rule is exempt from the procedures of E.O. 12291 under section 8(a)(2) of that order. Deadlines imposed under the Magnuson Act, as amended, require the Assistant Administrator to publish this proposed rule 15 days after its receipt. The proposed rule is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that order.

The Council prepared an IRFA as part of the RIR that concludes that this proposed rule, if adopted, would have significant economic impacts on a substantial number of small entities. In general, the analysis presented in the EA/RIR/IRFA concludes that no impact would be expected on the BSAI trawl fleet's ability to harvest groundfish quotas as a result of herring bycatch limits and associated closures of the Herring Savings Areas. This finding was based on a bycatch impact model that did not allow for changes in vessel operating costs that may occur as a result of the changes in fishing patterns caused by closures of the Herring Savings Areas. The model also projected a total net benefit of \$400,000 (in increased gross exvessel values) to the halibut, crab, and herring fisheries.

Notwithstanding the findings of the bycatch impact model, the Secretary recognizes that any increased operating costs resulting from closures of the Herring Savings Areas could affect small trawl vessels that deliver to shoreside processing plants disproportionately compared to larger trawl vessels that process at sea. The small size of some vessels, together with increased operating costs of fishing greater distances from port, could effectively preempt many smaller vessels from fishing for groundfish during closures of the Summer Herring Savings Areas. The effect of the Summer Herring Savings Areas on shoreside operations, in terms of reduced groundfish harvests and production are

unknown, but could approach a five-percent reduction in annual gross revenues for some trawl operations. As such, these costs are considered to be significant for purposes of the Regulatory Flexibility Act.

This proposed rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

The Council determined that this rule, if adopted, will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal 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.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12812.

List of Subjects in 50 CFR Part 675

Fisheries, Fishing vessels.

Dated: April 9, 1991.

Michael F. Tillman,
Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 675 is proposed to be amended as follows:

PART 675—GROUND FISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

1. The authority citation for 50 CFR part 675 continues to read as follows:

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

2. In § 675.2, Figure 1 is redesignated as Figure 1 to part 675 and will appear at the end of the part and a definition for *Herring Savings Areas* is added in alphabetical order to read as follows:

§ 675.2 Definitions.

* * * * *

Herring Savings Areas means any of the three areas described as follows:

(1) *Summer Herring Savings Area 1* means that part of the Bering Sea subarea that is south of 57° N. latitude and between 162° and 164° W. longitude from 12:00 noon Alaska Local Time (A.l.t.) June 15 through 12:00 noon A.l.t. July 1 of a fishing year.

(2) *Summer Herring Savings Area 2* means that part of the Bering Sea subarea that is south of 56°30' N. latitude and between 164° and 167° W. longitude from 12:00 noon A.l.t. July 1 through 12:00 noon A.l.t. August 15 of a fishing year.

(3) *Winter Herring Savings Area* means that part of the Bering Sea

subarea that is between 58° and 60° N. latitude and between 172° and 175° W. longitude from 12:00 noon A.l.t. September 1 of the current fishing year through 12:00 noon A.l.t. March 1 of the succeeding fishing year.

* * * * *

3. In § 675.20, paragraphs (e)(2), introductory text, and (f) are revised, paragraphs (e)(3) and (4) are redesignated as (e)(4) and (5), and new paragraphs (e)(1)(iv), (e)(3), and (e)(6) are added to read as follows:

§ 675.20 General limitations.

* * * * *

(e) * * *

(1) * * *

(iv) Interim closures of statistical areas, or portions thereof, to directed fishing for specified groundfish species.

(2) Any inseason adjustment taken under paragraphs (e)(1)(i), (ii), or (iii) of this section must be based on a determination that such adjustments are necessary to prevent:

* * * * *

(3) Any inseason closure of a statistical area, or portion thereof, under paragraph (e)(1)(iv) of this section must be based upon a determination that such closures are necessary to prevent:

(i) A continuation of relatively high bycatch rates of prohibited species specified under § 675.20(c) of this part in a statistical area, or portion thereof;

(ii) The take of an excessive share of PSC limits or bycatch allowances established under § 675.21 of this part by vessels fishing in a statistical area, or portion thereof;

(iii) The closure of one or more directed fisheries for groundfish due to excessive prohibited species bycatch rates occurring in a specified fishery operating within all or part of a statistical area; or

(iv) The premature attainment of established PSC limits or bycatch allowances and associated loss of opportunity to vessels to harvest the groundfish optimum yield (OY).

* * * * *

(6) The inseason closure of a statistical area, or a portion thereof, under paragraph (e)(1)(iv) of this section shall not extend beyond a 60-day period unless information considered under paragraph (f) of this section warrants an extended closure period. Any closure of a statistical area, or portion thereof, to reduce prohibited species bycatch rates requires a determination by the Regional Director that the closure is based upon the best available scientific information concerning the seasonal distribution and abundance of prohibited species and

bycatch rates of prohibited species associated with various groundfish fisheries.

(f) *Data*. All information relevant to one or more of the following factors may be considered in making the required determinations under paragraphs (e)(2) and (3) of this section:

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

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

(3) Relative distribution and abundance of stocks of groundfish species and prohibited species within all or part of a statistical area;

(4) The condition of a stock in all or part of a statistical area;

(5) Inseason prohibited species bycatch rates observed in groundfish fisheries in all or part of a statistical area;

(6) Historical prohibited species bycatch rates observed in groundfish fisheries in all or part of a statistical area;

(7) Economic impacts on fishing businesses affected; and

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

* * *

4. In § 675.21, paragraphs (b)(4)(i) through (v) are redesignated as paragraphs (b)(4)(ii) through (vi), paragraphs (c)(3) and (c)(4) are redesignated as paragraphs (e) and (f), paragraph (b)(4), introductory text, is revised, newly redesignated paragraphs (b)(4)(ii) through (v) are revised, the heading of paragraph (c) is revised, and new paragraphs (a)(6), (b)(4)(i), and (d) are added to read as follows:

§ 675.21 Prohibited species catch (PSC) limitations.

(a) * * *

(6) The PSC limit of Pacific herring caught while conducting any domestic trawl fishery for groundfish in the Bering Sea and Aleutian Islands management area is 1 percent of the annual eastern Bering Sea herring biomass. Annual herring PSC allowances, by target fishery, will represent apportionments of the annual Pacific herring PSC limit, and will be published along with the annual herring PSC limit in the **Federal Register** with the notices of proposed and final specifications defined in § 675.20(a)(7) of this part.

* * *

(b) * * *

(4) For purposes of this section six domestic fisheries are defined as follows:

(i) *DAP midwater pollock fishery* means DAP fishing with trawl gear during any weekly reporting period that results in a catch of pollock that is 95 percent or more of the total amount of groundfish caught during the week.

(ii) *DAP Greenland turbot fishery* means DAP fishing with trawl gear during any weekly reporting period that (A) results in retained amounts of Greenland turbot and arrowtooth flounder, in the aggregate, that are 20 percent or more of the total amount of other groundfish or groundfish products retained, calculated in round weight equivalents, and (B) does not qualify as a "DAP midwater pollock fishery."

(iii) *DAP rock sole fishery* means DAP fishing with trawl gear during any weekly reporting period that (A) results in retained amounts of rock sole that are 20 percent or more of the total amount of other groundfish or groundfish products retained, calculated in round weight equivalents, and (B) does not qualify as a "DAP midwater pollock fishery" or "DAP Greenland turbot fishery."

(iv) *DAP flatfish fishery* means DAP fishing with trawl gear during any weekly reporting period that (A) results in retained amounts of yellowfin sole and "other flatfish," in the aggregate, that are 20 percent or more of the total amount of other groundfish or groundfish products retained, calculated in round weight equivalents, and (B) does not qualify as a "DAP midwater pollock fishery," "DAP Greenland turbot fishery," or "DAP rock sole fishery."

(v) *DAP other fishery* means DAP fishing with trawl gear during any weekly reporting period that results in retained amounts of any other combination of groundfish species calculated in round weight equivalents that would not qualify as a "DAP midwater pollock fishery," "DAP Greenland turbot fishery," "DAP rock sole fishery," or "DAP flatfish fishery."

* * *

(c) *Attainment of a PSC allowance for red king crab, *C. bairdi*, or Pacific halibut.* * * *

(d) *Attainment of a PSC allowance for Pacific herring*—(1) *By the midwater pollock fishery*. If, during the fishing year, the Regional Director determines that U.S. fishing vessels using trawl gear will catch the PSC allowance or seasonal apportionment of the allowance of Pacific herring while participating in the midwater pollock fishery as defined in paragraph (b)(4) of this section, the Secretary will publish a notice in the **Federal Register** closing the Herring Savings Areas to directed fishing for pollock with pelagic trawl gear.

(2) *By the DAP rock sole, DAP Greenland turbot, or the JVP flatfish fisheries*. If, during the fishing year, the Regional Director determines that U.S. fishing vessels using trawl gear will catch a PSC allowance or seasonal apportionment of a PSC allowance of Pacific herring while participating in either the DAP rock sole, DAP Greenland turbot, or JVP flatfish fisheries as defined in paragraph (b)(4) of this section, the Secretary will publish a notice in the **Federal Register** closing the Herring Savings Areas to directed fishing with trawl gear for rock sole, Greenland turbot, or JVP flatfish.

(3) *By the DAP flatfish fishery*. If, during the fishing year, the Regional Director determines that U.S. fishing vessels using trawl gear will catch a PSC allowance or seasonal apportionment of the PSC allowance of Pacific herring while participating in the DAP flatfish fishery as defined in paragraph (b)(4) of this section, the Secretary will publish a notice in the **Federal Register** closing the Herring Savings Areas to directed fishing with trawl gear for yellowfin sole and "other flatfish," in the aggregate.

(4) *By the DAP other fishery*. If, during the fishing year, the Regional Director determines that U.S. fishing vessels will catch the PSC allowance or seasonal apportionment of the PSC allowance of Pacific herring while participating in the "DAP other fishery" as defined in paragraph (b)(4) of this section, the Secretary will publish a notice in the **Federal Register** closing the Herring Savings Areas to directed fishing for pollock and Pacific cod, in the aggregate, by trawl vessels using other than pelagic trawl gear.

* * *

5. In § 675.24, paragraph (c)(3) is added to read as follows:

§ 675.24 Gear limitations.

* * *

(c) * * *

(3) The Secretary, in consultation with the Council, may limit the amount of pollock TAC that may be taken in the directed fishery for pollock using non-pelagic trawl gear.

(i) The Regional Director must consider the following information when limiting the amount of pollock TAC that is apportioned to the directed fishery for pollock using non-pelagic trawl gear:

(A) The PSC limits and PSC bycatch allowances established under § 675.21 of this part;

(B) The projected bycatch of prohibited species that would occur with and without a limit in the amount of pollock TAC that may be taken in the

directed fishery for pollock using nonpelagic trawl gear;

(C) The cost of a limit in terms of amounts of pollock TAC that may be taken with non-pelagic trawl gear on the non-pelagic and pelagic trawl fisheries; and

(D) Other factors pertaining to consistency with the goals and objectives of the FMP.

(ii) Proposed and final apportionment of pollock TAC to the directed fishery for pollock using non-pelagic trawl gear will be published in the **Federal Register** with the notices of proposed and final specifications defined in § 672.20(a)(7) of this part.

6. Figures 3 and 4 to part 675 are redesignated as Figures 4 and 5 and a new Figure 3 is added to read as follows:

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