

A.I.t., May 15, 1991 (56 FR 22829; May 17, 1991).

The directed sablefish hook-and-line fisheries in the Central Regulatory Area as well as in the Southeast Outside/East Yakutat and West Yakutat Districts of the Eastern Regulatory Area have been closed (56 FR 24351; May 30, 1991 for the Southeast Outside/East Yakutat District of the Eastern Regulatory Area—56 FR 27465; June 14, 1991 for the West Yakutat District of the Eastern Regulatory Area—56 FR 28499; June 21, 1991 for the Central Regulatory Area). Therefore, the Regional Director is no longer requiring Daily Production Reports from processor vessels and shoreside processing facilities as of 12 noon, A.I.t., July 15, 1991.

Classification

This action is taken under § 672.5(c)(3) and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fish, Fisheries, Reporting and recordkeeping requirements.

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

Dated: July 15, 1991.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

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50 CFR Part 675

[Docket No. 910483-1155]

RIN 0648-AD49

Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to implement Amendment 16a to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands (FMP). These regulations: (1) Establish Pacific herring bycatch management measures for the groundfish trawl fisheries; (2) authorize the NMFS 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 non-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.

EFFECTIVE DATES: Amendments to §§ 675.2 and 675.21 and redesignation of figures are effective July 12, 1991. Amendments to §§ 675.20 and 675.24 are effective August 12, 1991.

ADDRESSES: Copies of Amendment 16a and the environmental assessment/regulatory impact review/final regulatory flexibility analysis (EA/RIR/FRFA) may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, Alaska 99510.

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

SUPPLEMENTARY INFORMATION: 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.

The Council approved Amendment 16a for review by the Secretary under section 304(b) of the Magnuson Act. The Secretary received Amendment 16a for review on March 7, 1991. The Magnuson Act requires the Secretary, or his designee, to approve, disapprove, or partially disapprove FMPs or FMP amendments before the close of the 95th day following receipt. Following receipt of Amendment 16a, the Regional Director immediately commenced a review of the amendment to determine whether it was consistent with the provisions of the Magnuson Act and other applicable law. A notice of availability of Amendment 16a was published in the *Federal Register* (56 FR 10527; March 13, 1991). It invited review of, and comment on, the amendment through May 6, 1991. A proposed rule was published in the *Federal Register* on April 15, 1991 (56 FR 15063). The proposed rule invited comments through May 28, 1991. This final rule implementing Amendment 16a takes comments received into account. Comments received are summarized and

responded to below (see Public Comments Received).

The preamble to the proposed rule described and presented the reasons for each measure contained in Amendment 16a. The Regional Director has reviewed each measure and the reasons for it. During his review, the Regional Director considered comments received from the public, including fishing associations. He has determined that each measure is consistent with the Magnuson Act and other applicable law and has approved the measures contained in Amendment 16a as authorized under section 304 of the Magnuson Act.

The following is a summary of each approved measure under Amendment 16a:

(1) Management measures are implemented to reduce Pacific herring bycatch in the groundfish trawl fisheries. These measures include a prohibited species catch (PSC) limit framework and a series of timed area closures (Herring Savings Areas) that are triggered by the attainment of the herring PSC limit. The PSC limit is established at one percent of the established herring biomass. For the 1991 fishing year, the herring PSC limit is 834 metric tons (mt). The 1991 herring PSC limit is apportioned to the following domestic trawl fisheries based on each fishery's anticipated bycatch of herring:

Fishery category as defined in / § 675.21(b)(4)	1991 ¹
Midwater pollock.....	584
DAP Greenland turbot.....	8
DAP Rock sole.....	0
DAP Flatfish.....	83
DAP other fishery.....	159
Total.....	834

¹ Herring bycatch allowance (mt).

A fishery's herring bycatch since the beginning of the 1991 fishing year is credited against its apportionment of the 1991 herring PSC limit. Fisheries that are apportioned a zero amount of the 1991 herring PSC limit are prohibited from fishing in the Herring Savings Areas.

Two Summer Herring Savings Areas and one Winter Herring Savings Area are established to protect seasonal concentrations of herring from those fisheries that have attained their annual apportionment of the herring PSC limit. A description of Herring Savings Areas is found under § 675.2.

(2) "Hot-spot closure authority" is established that allows the Regional Director to close temporarily areas to directed groundfish fishing to avoid high bycatch rates of prohibited species specified under § 675.20(c).

(3) Regulatory authority is established that allows the Regional Director to limit the amount of pollock total allowable catch (TAC) that may be taken in the directed trawl fishery for pollock using non-pelagic trawl gear to reduce the amount of prohibited species taken in this fishery.

Changes From the Proposed Rule in the Final Rule

1. In § 675.21, paragraph (d)(1) of the proposed rule is revised so that when the midwater pollock fishery attains its herring bycatch allowance, directed fishing for pollock using trawl gear will be prohibited in the Herring Savings Areas. Under the proposed rule, once the midwater pollock fishery attained its herring bycatch allowance, only directed fishing for pollock with pelagic trawl gear would have been prohibited in the Herring Savings Areas. This closure language would have been unenforceable and easily circumvented by vessel operators by simple modifications to pelagic trawl gear (e.g., adding a single bobbin) that would enable continued midwater fishing for pollock with non-pelagic trawl gear once a closure was triggered. Such gear modifications would result in further herring bycatch being attributed to the "DAP other fishery," and undermine the intent of the Council to limit herring bycatch in the midwater pollock fishery once the herring PSC allowance specified for this fishery had been reached.

2. In § 675.21, paragraph (d)(4) of the proposed rule is revised to reflect changes to regulations made under revised Amendment 16 (56 FR 21619; May 10, 1991). Revised Amendment 16 changed the closure specifications for the "DAP other fishery" so that when a prohibited species bycatch allowance is reached, further directed fishing for Pacific cod with trawl gear and for pollock with non-pelagic trawl gear is prohibited.

3. In § 675.24, technical edits are made to paragraph (c) to clarify and separate gear limitations for sablefish and pollock fisheries. Specifically, paragraph (c)(3) of the proposed rule is redesignated as paragraph (c)(2), and paragraphs (c), (c)(1), and (c)(2) are redesignated as paragraphs (c)(1), (c)(1)(i), and (c)(1)(ii), respectively.

Public Comments Received

Two letters containing comments were received during the comment period. Comments also were received from the North Pacific Fishery Management Council during its April 22-27, 1991, meeting. Comments focused on PSC limits, herring bycatch

management measures, the "hot spot" authority, and the apportionment of the pollock TAC between pelagic and non-pelagic trawl gear. The comments received are summarized and responded to in the following paragraphs.

Comment 1. The proposed rule is flawed because it does not provide an opportunity for public comment on the PSC limits implicitly imposed by Amendment 16a. Specifically, neither the amendment nor its supporting documentation addresses alternatives to the existing fixed PSC caps for halibut and crab. Under NMFS's own guidelines, one of the purposes of the National Environmental Policy Act (NEPA) and Executive Order 12291 is to ensure that the public is provided adequate opportunity to review and comment on major Federal actions and that regulations not be implemented unless the potential benefits outweigh the potential costs to society. The process followed by the Council in adopting fixed halibut and crab PSC limits under Amendment 16 and 16a undermines NMFS's own guidelines as far as PSC limits are concerned because all reference to alternative limits and cost/benefit tradeoffs has been deleted from the EA/RIR/IRFA and from the Federal Register notice of proposed rulemaking for Amendment 16a. As a consequence, the Secretary and the Office of Management and Budget have no basis to make the findings required by Executive Order 12291 regarding costs and benefits of the proposed rule based on alternative PSC limits. This process is defective and the proposed rule should be rejected until an analysis of alternative PSC limits can be prepared and submitted for Secretarial review and public comment.

Response: Amendment 16a to the FMP addresses herring bycatch limits, but does not include PSC limits for halibut and crab. Amendment 16 to the FMP (56 FR 2700; January 24, 1991) maintained the fixed PSC limits for halibut and crab that expired at the end of 1990 under Amendment 12a to the FMP (54 FR 32642; August 9, 1989). During preparation of Amendment 16a, the Council conducted an analysis of alternative halibut and crab PSC limits. This analysis was completed, included in the Amendment 16a draft EA/RIR/IRFA for distribution to the public for review and comment, and presented to the Council at its September 1990 meeting. The Council reviewed the analysis for alternative halibut and crab PSC limits in the draft EA/RIR/IRFA and received public testimony on the analysis. After consideration of the information presented to it at the September meeting, the Council

declined to adopt halibut and crab PSC limits as part of Amendment 16a. The halibut and crab PSC limit analysis was subsequently deleted from the Amendment 16a EA/RIR/IRFA when the amendment was submitted for Secretarial review because Amendment 16a does not include adoption of these PSC limits.

Comment 2. The use of a percentage of the herring stocks as the basis for the PSC limit presents two problems. Floating PSC limits: (1) Allow trawlers to increase their take of bycatch species when the stocks increase and (2) allow increased waste of fishery resources. PSC limits should provide for the progressive decrease of bycatch and a corresponding reduction of waste. Waste is inherently inconsistent with conservation principles, and must not be allowed to persist above levels that are the absolute minimum.

Response. The intent of variable PSC limits based on fluctuations of a prohibited species stock abundance is to adjust allowable bycatch levels in the groundfish fisheries with corresponding fluctuations in a prohibited species stock. Variable PSC limits will result in reduced PSC limits when herring biomass levels are low, providing protection to herring stocks that fixed PSC limits may not provide. Conversely, variable PSC limits allow more bycatch in groundfish fisheries when abundance levels of a prohibited species increase and a corresponding increase in incidental catch in the groundfish fisheries occurs. NMFS agrees that bycatch rates of prohibited species in groundfish operations should be reduced. Until a comprehensive incentive program is developed and implemented for all groundfish operations, management measures are restricted to less-effective bycatch controls. Once a comprehensive incentive program is implemented, a progressive decrease of PSC limits may be reasonable.

The "waste" associated with any discarded catch is of concern in all fisheries. The large volume of discards associated with the groundfish trawl fisheries has initiated Council consideration of management measures to limit such "waste." Although full utilization of fishery resources and a "minimization" of bycatch may be justifiable as a goal for fishery management, the economic and conservation aspects of unretained bycatch are less clear and must be fully analyzed prior to Council action to "minimize bycatch" or require full utilization of fishery resources.

Comment 3. Herring bycatch management measures should incorporate an individual incentive system, such as individual transferrable quotas (ITQ) of allowable bycatch, to reduce effectively the incidental take of herring. Without an individual incentive system, herring bycatch rates will remain high, bycatch allowances will be prematurely reached, and harvest shortfalls of the groundfish optimum yield will continue.

Response. NMFS acknowledges that individual accountability of bycatch under an ITQ program may be a long-term goal. An incentive program has been implemented for halibut and red king crab bycatch in selected groundfish fisheries. As NMFS gains experience with this program, and steps are taken to enhance the program, the expansion of the incentive program to other fisheries and bycatch species will be considered under subsequent regulatory action.

Comment 4. The sequence of time-area closures contemplated for herring bycatch management allows fishermen operating in one area of the Bering Sea to take disproportionate amounts of herring bycatch and trigger trawl closures in the Herring Savings Areas that affect trawl operations in a completely different area of the ocean. For example, inshore pollock fishermen could have a substantial herring bycatch, resulting in closure of the "Winter Herring Savings Area." This area is far removed from near-shore trawl operations, but important to offshore pollock operations. Such a system is inequitable and will result in tremendous economic costs.

Response. NMFS recognizes that increased costs could be incurred by operators of vessels who are forced to change fishing operations when the Herring Savings Areas are closed. Catcher/processor vessels that normally fish for pollock in the Winter Herring Savings Area would have to fish outside this area if it were closed due to attainment of the herring bycatch allowance by trawl vessels participating in the midwater pollock fishery. Alternatively, inshore vessels could be disproportionately affected from closures of the Summer Herring Savings Areas, especially if increased operating costs and distances to open fishing grounds prevent such vessels from fishing for groundfish during closures of these areas.

Although operators of certain vessels may incur increased operating costs or be unable to fish for groundfish during closures of the Herring Savings Areas, the analysis prepared for Amendment 16a concludes that the BSAI trawl fleet

could still harvest available groundfish quotas outside of the Herring Savings Areas.

Comment 5. To be effective, "hot-spot" closure authority requires timely closures of limited areas based upon current, inseason data. The "hot-spot" authority proposed under Amendment 16a will be too slow to have the desired effect if an impact analysis must be prepared for each closure action. Furthermore, closures of entire Federal statistical areas for 60 days, rather than some smaller portion of statistical areas for shorter periods of time, will unnecessarily constrain fishing operations in areas that may be fished with low bycatch rates.

Response. NMFS acknowledges that the "hot spot" authority implemented under Amendment 16a will require that an impact analysis be prepared for the specific restriction(s) imposed under a "hot-spot" closure action. Hot-spot closures implemented under Amendment 16a would not necessarily be broad in scope if available information could support closures of portions of statistical areas for less than 60 days. The time to prepare, review, and implement a hot-spot closure could be of a duration that would make such action ineffective for purposes of reducing bycatch rates. However, there may be other cases when hot-spot closures could be implemented within a timeframe that would reduce bycatch rates.

The Council is considering the development of a frameworked hot-spot closure authority that would routinely allow more efficient and effective time-area closures. To enable more effective closures of "hot-spots," inseason closure authority of these areas must be developed that sets forth specific threshold criteria in regulations which, when triggered, would allow closure of specific areas. This authority would allow the Regional Director to close predetermined areas and would be similar to closures due to attainment of a groundfish TAC or prohibited species bycatch allowance. Development of a refined hot-spot closure authority will require determination of appropriate threshold conditions (weekly prohibited species bycatch rates or amounts by area) and resulting time-area closures. These conditions would be published in the *Federal Register* for public review and comment prior to the beginning of a fishing year.

Comment 6. Proposed bycatch management regulations imposed on the pollock fishery should incorporate mortality-based incentives that provide credit for quick return of bycatch. For example; implementation of a program

that credits trawl fishermen with halibut returned to sea within 30 minutes after coming on deck would lessen bycatch impact through increased bycatch survival and increased harvest of target species.

Response. NMFS and the International Pacific Halibut Commission (IPHC) are investigating methods to reduce halibut mortality from handling in the groundfish trawl and longline fisheries. Before regulatory action is taken, information must be collected on how prohibited species are handled by crew on board the domestic trawl fleet. Furthermore, quantitative data analysis and research must be undertaken: (1) To identify factors affecting prohibited species bycatch mortality and viability, (2) to derive an objective index of halibut or crab condition, and (3) to quantify the potential savings of halibut that would result from alternative actions taken by groundfish fishermen to reduce mortality. NMFS intends to work with the fishing industry and the IPHC to explore feasible, practical measures to reduce bycatch mortality in the groundfish fisheries. Regulatory action to implement such measures is unlikely before mid-1992.

Comment 7. The existing definition of pelagic trawl gear as a management tool to reduce bycatch of prohibited species is ineffective, as evidenced by the success of certain groundfish fishermen to modify their trawl gear, circumvent the definition of pelagic trawl gear, and continue trawl operations at high bycatch rates. Given this experience, further use of the pelagic trawl gear definition to limit prohibited species bycatch in the pollock fisheries will be a useless management tool, unless a valid distinction between pelagic and non-pelagic trawl gear is established and enforced.

Response. NMFS is aware of the problems associated with enforcing the existing definition of pelagic trawl gear with respect to limiting trawl bycatch of prohibited species. In response, NMFS has implemented rulemaking to prohibit all trawling for Pacific cod once a prohibited species bycatch allowance specified for the "DAP other fishery" has been attained (56 FR 21619; May 10, 1991). The proposed rule for Amendment 16a also has been revised to prohibit all trawling for pollock in the Herring Savings Areas once the herring bycatch allowance specified for the midwater pollock fishery has been reached. Additional emergency rulemaking is being considered by NMFS that would further restrict the use of non-pelagic trawl gear once a fishery's prohibited

species bycatch allowance has been reached.

North Pacific Fishery Management Council Comments on Amendment 16a

Comment 8. The Council noted that 1991 harvests of pollock with non-pelagic trawl gear in the BSAI comprised 8 percent of the total pollock harvest taken with trawl gear through April, compared to 11 percent in 1990. Additional pollock harvests with non-pelagic trawl gear are expected to be minimal because of 1991 halibut bycatch constraints imposed on the directed fishery for pollock with non-pelagic trawl gear. Therefore, the Council recommended that quota constraints on the 1991 directed fishery for pollock using non-pelagic trawl gear are unnecessary for purposes of limiting halibut and crab bycatch in this fishery.

Response. NMFS concurs in the Council's recommendation and has not implemented a 1991 limitation of the amount of pollock that may be harvested in the directed fishery for pollock using non-pelagic trawl gear.

Comment 9. Recent (1983-1988) observer data indicate that the Winter Herring Savings Area may need adjustment to encompass areas of winter herring concentration. NMFS should review this information and develop recommendations for Council consideration.

Response. The Winter Herring Savings Area implemented under Amendment 16a incorporates the area of long-term, historical winter concentrations of herring. Over 80 percent of the commercial harvest of Bering Sea herring was taken from the Winter herring Savings Area during foreign directed fisheries; however, annual shifts of winter herring concentrations did occur. The 1983-1988 observer data on herring bycatch indicate that the midwinter fishing effort for pollock occurred primarily west and north of the Winter Herring Savings Area. To some extent, a shift in herring winter concentrations also could have accounted for relatively high bycatch rates outside historical areas of winter concentrations. An examination of 1989 and 1990 herring bycatch data shows that most of the winter herring bycatch occurred in the Winter Savings Area.

The Alaska Department of Fish and Game (ADF&G) manages commercial and subsistence herring fisheries in Alaska state waters. The Council has requested ADF&G to examine alternatives for an extended Summer Savings Area to provide further protection to migrating herring stocks. ADF&G has expressed an interest in expanding this analysis to examine the

adequacy of the Winter Savings Area based on recent domestic observer data and to develop alternative configurations for the Winter Savings Area. However, with the information available at this time, the Secretary deems the Winter Savings Area defined under Amendment 16a as adequate for protecting winter concentrations of herring based on long-term historical data from directed foreign fisheries and recent (1989-1990) distribution patterns of herring bycatch. The configurations of the Herring Savings Areas may be revised through a subsequent FMP amendment, pending Council action on the expanded ADF&G analysis of the Herring Savings Areas.

The Secretary concurs in the Council's adoption of Amendment 16a and has approved the amendment and its implementing regulations. The Secretary also concurs in the Council's recommendations for 1991 herring bycatch allowances as set forth in the notice of proposed rulemaking for Amendment 16a. The Secretary further concurs in the Council's recommendation to not limit the amount of 1991 pollock TAC available for harvest by the directed fishery for pollock using non-pelagic trawl gear. A regulatory limitation during 1991 is unnecessary because the directed fishery for pollock using non-pelagic trawl gear has taken only 8 percent of the total BSAI pollock catch to date and halibut PSC restrictions will prohibit significant harvests of pollock with non-pelagic trawl gear for the remainder of the year.

Classification

The Regional Director determined that Amendment 16a is necessary for the conservation and management of the groundfish fisheries in the BSAI and that is consistent with the Magnuson Act and other applicable law.

The Council prepared an environmental assessment (EA) for this amendment. The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), found that no significant impact on the quality of the human environment will occur as a result of this rule. A copy of the EA may be obtained from the Council (see "ADDRESSES").

The Assistant Administrator determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the EA/RIR/FRFA prepared by the Council. A copy of the EA/RIR/FRFA may be obtained from the Council (see "ADDRESSES").

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

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of Alaska. This determination was submitted to the responsible State agency for review under section 307 of the Coastal Zone Management Act. Since the appropriate State agency did not reply within the statutory time period, consistency is automatically inferred.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

Sections 675.2 and 675.21 of this rule must be effective as soon as possible to protect herring concentrations within the Herring Savings Areas in the event that fishery herring bycatch allowances are attained. The Summer Savings Areas extend from June 15 through August 15, and closure of these areas once a fishery has reached its herring bycatch allowance is necessary if the council's intent to limit 1991 herring bycatch is to be carried out. Consequently, the Assistant Administrator finds for good cause that it is contrary to the public interest to delay for 30 days the effective date of this rule under section 553(d) of the Administrative Procedure Act in order to implement the Summer Savings Areas as soon as possible. Sections 675.20 and 675.24 will be effective following a 30-day period of delayed effectiveness in accordance with section 553(d) of the Administrative Procedure Act.

List of Subjects in 50 CFR Part 675

Fisheries, Fishing vessels.

Dated: July 11, 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 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 areas as follows:

§ 675.2 Definitions

Herring Savings Areas means any of the following three areas:

(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.1.t.) June 15 through 12:00 noon A.1.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.1.t. July 1 through 12:00 noon A.1.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.1.t. September 1 of the current fishing year through 12:00 noon A.1.t. March 1 of the succeeding fishing year.

3. In § 675.20, paragraph (e)(2) introductory text, and paragraph (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) 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 on 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. The PSC limit will be apportioned into annual herring PSC allowances, by target fishery, 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 equivalent, 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

(A) Does not qualify as a "DAP midwater pollock fishery," and

(B) Results in retained amounts of any other combination of groundfish species

calculated in round weight equivalents that would not qualify as a "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 allowances, 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 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:

(A) Pollock by trawl vessels using non-pelagic trawl gear; and (B) Pacific cod by vessels using trawl gear.

5. In § 675.24, paragraphs (c) introductory text, (c)(1), and (c)(2) are redesignated as paragraphs (c)(1) introductory text, (c)(1)(i), and (c)(1)(ii), newly redesignated paragraph (c)(1) introductory text is revised, and new paragraphs (c) introductory text, and (c)(2) are added to read as follows:

§ 675.24 Gear limitations.

* * *

(c) Gear allocations. (1) Vessels using gear types other than those specified in paragraphs (c)(1)(i) and (c)(1)(ii) of this

section must treat sablefish as a prohibited species.

* * *

(2) 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 non-pelagic 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:

BILLING CODE 3510-22-M

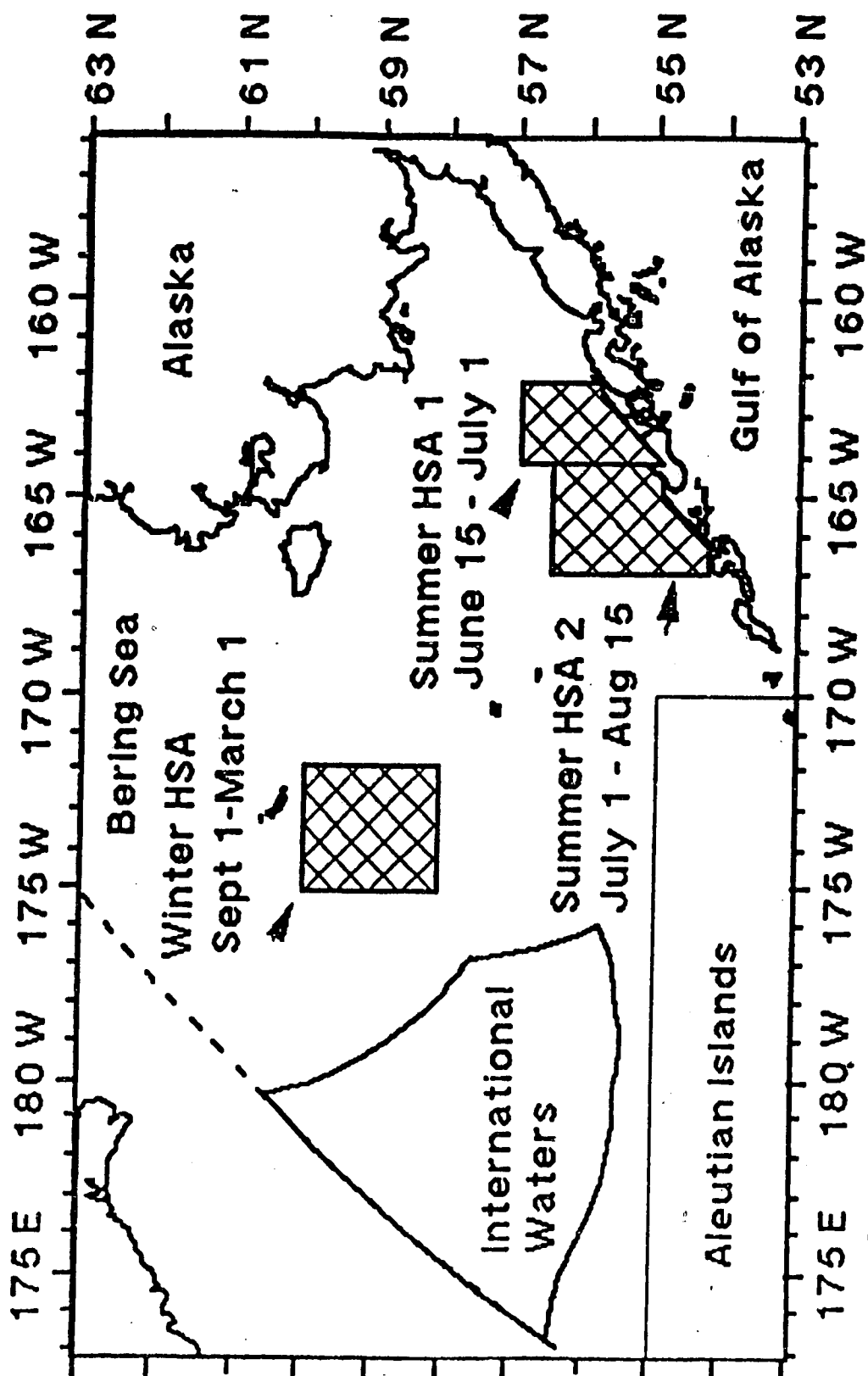


FIGURE 3.—Herring Savings Areas (HSAs) in the Bering Sea and Aleutian Islands Area.

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