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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

RIN 0648-BB76

Fisheries of the Exclusive Economic Zone Off Alaska; Fisheries of the Gulf of Alaska; Amendment 89 to the Fishery Management Plan for Groundfish of the Gulf of Alaska

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: The North Pacific Fishery Management Council has submitted Amendment 89 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). Amendment 89 would modify the FMP in two ways, if approved. First, Amendment 89 would establish a protection area in Marmot Bay, northeast of Kodiak Island, and close that area to fishing with trawl gear except for directed fishing for pollock with pelagic trawl gear to reduce bycatch of Tanner crab (*Chionoecetes bairdi*) in Gulf of Alaska (GOA) groundfish fisheries. Second, Amendment 89 would require the use of modified nonpelagic trawl gear when directed fishing for flatfish in the Central Regulatory Area of the GOA and would provide authority in the FMP to specify in regulation the modifications that are required to raise portions of the gear off the sea floor. The use of modified nonpelagic trawl gear in these fisheries would reduce the unobserved injury and mortality of Tanner crab and the potential adverse impacts of

nonpelagic trawl gear on bottom habitat. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable law. Comments from the public are encouraged.

DATES: Comments on the amendment must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2011-0294, by any of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2011-0294, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- Mail: Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.
- Fax: Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to 907-586-7557.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address) submitted voluntarily by the sender will 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 or Excel, WordPerfect, or Adobe PDF file formats only.

Electronic copies of Amendment 89, the EA/RIR/IFRA prepared for the Area Closures for Tanner Crab Protection in Gulf of Alaska Groundfish Fisheries (Area Closures EA/RIR/IRFA), and the EA/RIR/IRFA for Trawl Sweep Modification in the Flatfish Fishery in the Central Gulf of Alaska (Trawl Sweep EA/RIR/IRFA) are available from <http://www.regulations.gov> or from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Tom Pearson, 907-481-1780.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the exclusive economic zone under the Fishery Management Plan for Groundfish of the GOA (FMP). The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 et seq. Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600 and 679.

The 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. 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. This notice announces that proposed Amendment 89 to the FMP is available for public review and comment.

Background

Since the implementation of the FMP in 1978, the Council and NMFS have adopted measures intended to control the catch of species taken incidentally in groundfish fisheries. Certain species are designated as “prohibited” in the FMP, because they are the target of other fully utilized domestic fisheries. The FMP and implementing regulations at § 679.21 require that catch of these species and species groups must be avoided while fishing for groundfish, and when incidentally caught, they must be immediately returned to sea with a minimum of injury. These species include Pacific halibut, Pacific herring, Pacific salmon, steelhead trout, king crab, and Tanner crab. The incidental catch of prohibited species under § 679.21 require prohibited species to be discarded at sea with minimum injury, or retained but not sold under the Prohibited Species Donation Program at § 679.26. The Magnuson-Stevens Act refers to species which must be discarded by regulation as “bycatch.”

The Council has recommended in both the Bering Sea and Aleutian Islands Management Area (BSAI) and GOA, and NMFS has implemented, measures to: (1) close areas with a high occurrence of prohibited species, or where there is a relatively high level of prohibited species catch; (2) require the use of gear specifically modified to minimize prohibited species catch and effects on bottom habitat; and (3) establish prohibited species catch (PSC) limits in specific Alaska groundfish fisheries. A summary of these measures is in Section 1 of the Area Closures EA/RIR/IRFA (see ADDRESSES).

The Council has recommended, and NMFS has implemented, closure areas to protect king crab stock in the GOA. These area closures limit the use of gear that fish on or close to the sea floor, such as nonpelagic trawl and pot gears, to minimize the bycatch of crab species and adverse impacts on crab habitat. Specifically, in the Central GOA, regulations implementing Amendment 15 to the FMP (52 FR 12183, April 15, 1987) established closures near Kodiak, AK, to protect king crab habitat. These closure areas were subsequently expanded and revised under regulations implementing Amendment 26 to the FMP (58 FR 503, January 6, 1993). Time and areas closures to the use of nonpelagic trawl gear have been shown to reduce injury and mortality to crab species in both the BSAI and GOA. For this reason, NMFS is proposing closure to vessels using trawl gear except for vessels directed fishing for pollock with pelagic trawl gear to protect Tanner crab in a portion of the Central GOA.

Recently, NMFS implemented regulations that require the use of modified nonpelagic trawl gear in the Bering Sea flatfish fisheries to reduce the bycatch of crab and minimize the impact of this gear on bottom habitat. See Amendment 94 to the FMP for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP) for additional detail (75 FR 61642, October 6, 2010). NMFS is proposing to also require the use of raised trawl sweeps in the GOA.

In 2005, the Council initiated a series of reviews on prohibited species bycatch in the GOA groundfish fisheries. These reviews led the Council to focus action on two prohibited species and two regulatory areas with potentially high bycatch levels: Chinook salmon (*Oncorhynchus tshawytscha*) bycatch in pollock fisheries in the Central and Western GOA, and Tanner crab bycatch in the Central GOA. The Council addressed

Chinook salmon bycatch in the GOA through Amendment 93 to the FMP (77 FR 42629, July 20, 2012). In October 2009, the Council initiated an analysis of potential protection measures for Tanner crab in the Central GOA. In April 2010, the Council initially reviewed alternative bycatch control measures, subsequently revised and refined these alternatives, and in October 2010, recommended that the FMP be amended to establish a protection area in Marmot Bay, northeast of Kodiak Island, and that the area be closed to fishing with trawl gear except for directed fishing for pollock with pelagic trawl gear.

When the Council recommended the Marmot Bay Area closure in October 2010, it directed its staff to review the practicality of requiring the use of modified nonpelagic trawl gear by vessels directed fishing for flatfish in the Central GOA. The Council recommended this review as a first step in considering additional measures to reduce the potential adverse effects of nonpelagic trawl gear on bottom habitat and to reduce unobserved Tanner crab injury and mortality. The Council's recommendation was based on past experience with the use of modified nonpelagic trawl gear to reduce potential adverse effects on bottom habitat in Bering Sea flatfish fisheries. In 2008, NMFS, the NMFS Office of Law Enforcement, and the fishing industry tested modified nonpelagic fishing gear in the Bering Sea under normal fishing conditions to determine if this gear could be used safely and effectively in ways that may reduce potential adverse effects on bottom habitat while maintaining effective catch rates for flatfish target species. These initial tests were successful, and in October 2009, the Council recommended Amendment 94 to the FMP for Groundfish of the BSAI, which requires vessels directed fishing for flatfish in the Bering Sea subarea to use modified nonpelagic trawl gear. In 2010, NMFS published final regulations implementing BSAI Amendment 94 (75 FR 61642, October 6,

2010).

In February 2012, the Council reviewed an analysis of potential impacts of expanding the required use of modified nonpelagic trawl gear to vessels in the Central GOA flatfish fisheries. After additional review in April 2012, the Council recommended requiring that vessels directed fishing for flatfish in the Central GOA use modified nonpelagic trawl gear. GOA Amendment 89 incorporates both of the Council's recommendations, intended to be taken as a suite of protection measures for Tanner crab in the Central GOA.

The Council identified several reasons for protection measures for Tanner crab in the GOA groundfish fisheries:

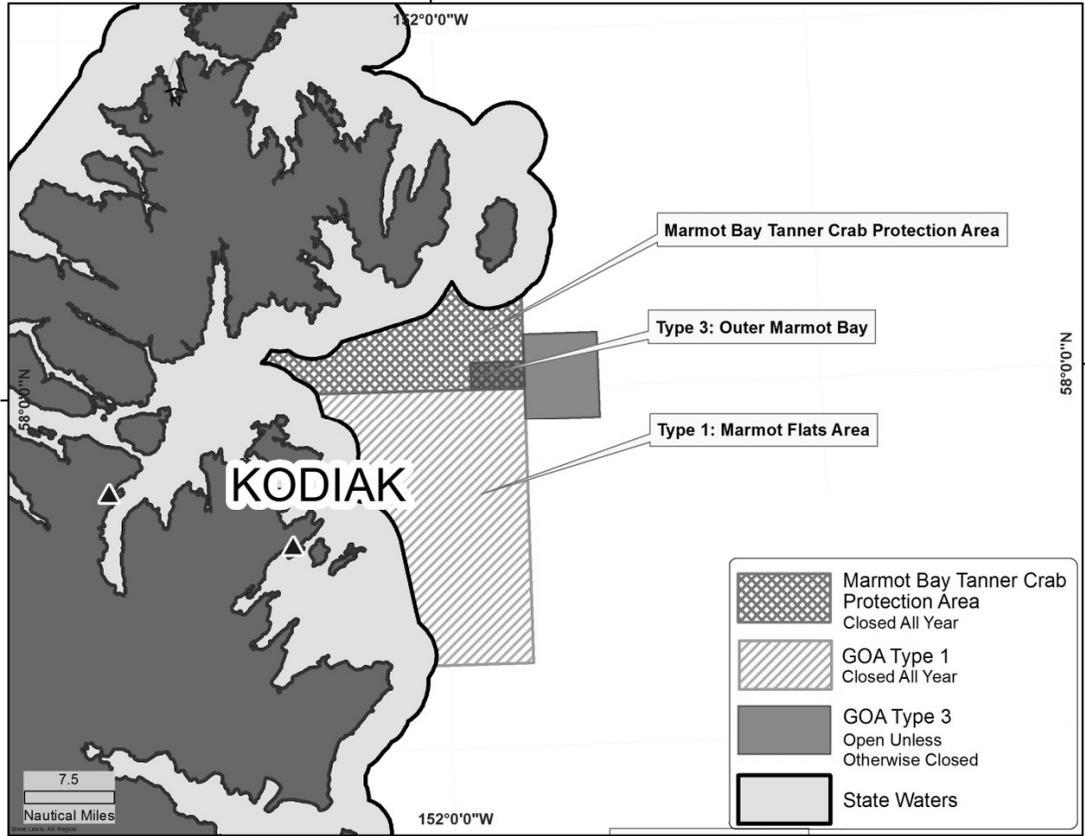
- Tanner crab is identified in the FMP as a prohibited species that is incidentally caught in the Central GOA groundfish trawl, pot, and longline fisheries. Tanner crab is incidentally caught in relatively high proportion by vessels using nonpelagic trawl gear in the Central GOA.
- Directed fisheries for Tanner crab in the Central GOA are fully allocated under the current limited entry system managed by the State of Alaska. Details of this crab fishery are described in Section 3.5 in the Area Closures EA/RIR/IRFA.
- No specific conservation measures exist in the Central GOA to address adverse interactions with Tanner crab by vessels using trawl gear to directed fish for groundfish.
- Tanner crab is a bottom-dwelling species, and limits on the use of nonpelagic trawl gear may reduce Tanner crab PSC and adverse effects on

Tanner crab habitat.

Proposed Action 1: Marmot Bay Tanner Crab Protection Area

Amendment 89 to the GOA FMP would establish an area called the Marmot Bay Tanner Crab Protection Area (Marmot Bay Area). The proposed Marmot Bay Area is northeast of Kodiak Island and would extend westward from 151 degrees 47 minutes W longitude to State waters between 58 degrees N latitude and 58 degrees 15 minutes N latitude. The proposed Marmot Bay Area would share borders with two existing areas, the Type 1 Marmot Flats Area and the Type 3 Outer Bay Area. The southern and eastern borders of the proposed Marmot Bay Area would be the same latitude and longitude as the northern and eastern borders, respectively, of the existing Marmot Flats Area. The Marmot Flats Area is closed to directed fishing with nonpelagic trawl gear (see § 679.22(b)(1)(i) and Figure 5 to part 679). Under current regulations, the Outer Marmot Bay Area is open to directed fishing with nonpelagic trawl gear unless otherwise closed. The proposed Marmot Bay Area and the existing Marmot Flats and Outer Marmot Bay Areas are shown in Figure 1. Where the proposed Marmot Bay Area overlaps the Type 3 Outer Marmot Bay Area, the more restrictive proposed regulation, the year round closure to the use of trawl gear (excepted as noted) in the Marmot Bay Area would apply. State of Alaska waters to the west of both the proposed Marmot Bay Area and the existing Marmot Flats Area are closed year-round to the use of nonpelagic trawl gear under existing state regulations (5 AAC 39.164).

Figure 1 Proposed Marmot Bay Tanner Crab Protection Area and Adjacent Type 1 and 3 GOA Crab Areas



With one exception, Amendment 89 would close the Marmot Bay Area year-round to directed fishing for groundfish by vessels using trawl gear. The term “directed fishing” is defined in regulation at § 679.2. Directed fishing for pollock by vessels using pelagic trawl gear would be exempt from this closure. Overall, the effect of the proposed Marmot Bay Area closure would be to extend closures on the use of trawl gear to the north and east of State and Federal waters that are currently closed to nonpelagic trawl gear. The Marmot Bay Area closure also would prohibit the use of all trawl gear, other than pelagic trawl gear used in the directed fishery for pollock. The Council recommended this exemption due to the limited potential reductions of Tanner crab PSC that would occur if the pelagic trawl pollock fishery were subject to the closure. The use of pelagic trawl gear for species other than pollock was not identified in the Marmot Bay Area; therefore, no additional exemptions to the trawl closure were warranted. See Section 3.3.2 of the Area Closures EA/RIR/IRFA for additional detail.

The Council recommended the Marmot Bay Area trawl gear closure based primarily on the high observed rate of Tanner crab mortality by nonpelagic trawl gear in the Marmot Bay Area relative to other areas in the Central GOA. (See Section 3.3 of the Area Closures EA/RIR/IRFA for additional detail.) The areas with the greatest abundance of crab are the Marmot Bay Area, northeast of Kodiak Island; the Chiniak Gully east of Kodiak Island; and Alaska Department of Fish and Game (ADF&G) Statistical Areas 525702 and 525630, southeast of Kodiak Island. The Marmot Bay Area had the highest average mortality rate of crab per metric ton (mt) of groundfish catch by vessels using nonpelagic trawl gear in the Kodiak District between 2001 and 2009 (the most recent years of available data) at 7.68 crab/mt groundfish. (See Section 3.3 of the Area Closures

EA/RIR/IRFA for additional detail.)

The Council considered a range of alternative closure areas to limit the use of nonpelagic trawl gear and pot gear in the Marmot Bay Area, ADF&G Statistical Areas 525702 and 525630, and the Chiniak Gully. Ultimately, the Council recommended limiting the closure to most trawl gear in the Marmot Bay Area based on: (1) the high rate of Tanner crab mortality in the Marmot Bay Area relative to other areas; (2) the observation of mature male and female Tanner crab populations within the Marmot Bay Area; (3) the occurrence of known Tanner crab habitat within the Marmot Bay Area; (4) the high rate of Tanner crab bycatch by vessels using trawl gear relative to pot gear; and (5) the limited impact that the Marmot Bay Area closure would likely have on existing nonpelagic trawl participants relative to closures in other areas. See Section 3.1 of the Area Closures EA/RIR/IRFA for additional detail of the alternatives considered. The Council considered but rejected closing areas to pot, longline, and pelagic trawl gear used in the directed pollock fishery given the relatively small amount of Tanner crab bycatch by these gear types relative to nonpelagic trawl gear. (See Section 3.3.3 of the Area Closures EA/RIR/IRFA for additional detail.)

The Marmot Bay Area closure would be consistent with past measures the Council has recommended, and NMFS has implemented, to limit impacts of nonpelagic trawl gear on crab populations, directly by limiting injury and mortality, and indirectly by reducing potential adverse habitat impacts. Overall, observed Tanner crab mortality in the Central GOA accounts for less than one fifth of one percent of the assessed crab population in the Central GOA. See Section 3.3.3 of the Area Closures EA/RIR/IRFA for additional detail. Because overall crab bycatch in the GOA groundfish fisheries can

be small in relation to crab population, but potentially concentrated in certain areas or at certain times, time and area closures are more effective than Tanner crab PSC limits in reducing the potential impacts of nonpelagic trawl gear on crab stocks. The proposed closure for the Marmot Bay Area may assist in the conservation of the Tanner crab stock by reducing injury and mortality and potential adverse effects of nonpelagic trawl gear on bottom habitat used by Tanner crab.

In October 2010, the Council also recommended that NMFS incorporate statistically robust observer information from certain vessels using pot gear in the Marmot Bay Area and certain vessels using nonpelagic trawl or pot gear in two other specific areas near Kodiak, AK (ADF&G Statistical Area 525702 and Chiniak Gully). Overall, the intent of the Council's recommendation was to improve estimates of Tanner crab bycatch data in the GOA groundfish fisheries that occur within these areas. At the same meeting that the Council recommended enhanced observer coverage for these three areas, the Council also recommended Amendment 86 to the BSAI FMP and Amendment 76 to the GOA FMP which comprehensively restructured the funding and deployment of onboard observers under the North Pacific Groundfish Observer Program (Observer Program). The Council included as part of its recommendation for improved estimates of Tanner crab bycatch that NMFS "incorporate, to the extent possible, in [the restructured Observer Program], an observer deployment strategy that ensures adequate coverage to establish statistically robust observations" in the three specific areas near Kodiak, AK.

NMFS published a notice of availability for Amendments 86 and 76 to the FMPs on March 14, 2012 (77 FR 15019), and a proposed rule for the restructured Observer Program on April 18, 2012 (77 FR 23326). On June 7, 2012, the Secretary of Commerce

approved Amendments 86 and 76 to the FMPs for the restructured Observer Program in the Alaska groundfish fisheries, and the final rule to implement the amendments, effective January 1, 2013, was published on November 21, 2012 (77 FR 70062). Details of the restructured Observer Program are available in the proposed and final rules for that action.

The restructured Observer Program improves the quality of fisheries data, including Tanner crab bycatch information in the GOA groundfish fisheries. Vessels under the restructured Observer Program are either fully or partially observed. A detailed list of vessels in the full and partial observer coverage categories is provided in the restructured Observer Program proposed rule (77 FR 23326, April 18, 2012). A randomized system for the assignment of observer coverage throughout the GOA for partially observed vessels is used to reduce potential bias in the observer data. Selecting specific locations in the Central GOA for increased observer coverage would reduce the ability to randomize observer assignments and therefore potentially bias observer data. Because the restructured Observer Program incorporates an observer deployment strategy that ensures adequate coverage to establish statistically robust observations for the GOA, NMFS has determined that the Council's recommendation has been implemented by Amendments 86 and 76 and no additional measures are needed with Amendment 89. NMFS intends to use the regulations and deployment process established under the restructured Observer Program to obtain fishery catch and bycatch data without specific observer coverage requirements in specific areas in the GOA. In order to ensure that the Council's desire to obtain better observer data is being met, NMFS will present a deployment plan for observers annually for the Council's review.

Proposed Action 2: Modification of Nonpelagic Trawl Gear Used in the Central GOA
Directed Flatfish Fisheries

Amendment 89 would amend the FMP to require the use of modified nonpelagic trawl gear when directed fishing for flatfish in the Central GOA and would provide authority in the FMP to specify in regulation the modifications that are required to raise portions of the gear off the sea floor. In the GOA, the flatfish fisheries include the directed fisheries for shallow-water flatfish, deep-water flatfish, arrowtooth flounder, rex sole, and flathead sole, as defined in Table 10 to 50 CFR part 679.

While the proposed amendments to the FMP under Amendment 89 are general, the Council provided detailed recommendations on the specific modifications that would be required to nonpelagic trawl gear through regulation. The primary effect of the proposed rule to implement this aspect of Amendment 89 would be to require modifications to a specific component of the gear. Nonpelagic trawl gear uses a pair of long lines called “sweeps” to herd fish into the net. The sweeps drag across the bottom and may adversely impact benthic organisms (e.g., crab species, sea whips, sponges, and basket stars). Approximately 90 percent of the bottom contact of nonpelagic trawl gear used in directed fishing for flatfish is from the sweeps, which can be more than 1,000 feet (304.8 m) in length.

NMFS studies in the Bering Sea have shown that elevating the trawl sweeps can reduce the adverse effects of nonpelagic trawl gear on Tanner, snow, and red king crab by reducing the unobserved mortality and injury of these species. In addition, elevating the trawl sweeps can reduce impacts on benthic organisms, such as basketstars and sea whips. Further research was conducted in 2011 in the GOA to identify the appropriate

construction of modified nonpelagic trawl gear, and to identify and resolve any implementation issues specific to the GOA. Field testing in the GOA of the modified nonpelagic trawl gear demonstrated that the participants in the GOA flatfish fishery can meet the same performance standard and construction requirements that apply to the Bering Sea flatfish fishery under regulations at § 679.24(f). Additional information on these studies and tests is provided in Section 1.5.5 of the Trawl Sweep EA/RIR/IRFA.

Proposed regulations implementing Amendment 89 would require that vessels using nonpelagic trawl gear to directed fish for flatfish in the Central GOA meet the performance standard and construction requirements set forth in § 679.24(f), which require the use of elevating devices to raise the elevated section of the sweeps at least 2.5 inches. Elevating devices would be placed on the sweeps to meet this performance standard. Details of the performance standard and construction requirements are at § 679.24(f).

As noted in Section 1.8 of the Trawl Sweep EA/RIR/IRFA, it is not possible to quantify a benefit to crab stocks in the Central GOA from modified nonpelagic trawl gear without further testing to understand how sediment conditions in the Central GOA flatfish fishery compare to the areas in which the Bering Sea experiments occurred. However, the general similarity of GOA trawl gear to that used in the Bering Sea indicates that while the benefits may be smaller due to different sediment conditions in the GOA, they would still be substantial. While requiring this gear modification for vessels fishing in the Central GOA flatfish fishery could provide benefits to crab stocks by reducing unobserved injury and mortality, it would not be likely to change reported crab PSC totals from nonpelagic trawl fishing, which account only for crabs that come up

in the trawl net. As noted in Section 2.9 of the Trawl Sweep EA/RIR/IRFA, the proposed action is not expected to result in a net decrease in the target catch rates in the Central GOA flatfish fishery.

The Council considered but rejected alternatives that would have required the use of modified nonpelagic trawl gear in other nonpelagic trawl fisheries (e.g., Pacific cod), and the use of nonpelagic trawl gear in the Eastern and Western GOA flatfish fisheries. Flatfish fisheries in the Central GOA contribute the greatest proportion of Tanner crab PSC, while other nonpelagic trawl gear fisheries in the GOA account for only a modest proportion of Tanner crab PSC. See Sections 1.1 and 1.5 of the Trawl Sweep EA/RIR/IRFA for additional detail (see ADDRESSES). The Council's recommendation targets the specific fisheries that consistently have the highest bycatch of Tanner crab in the GOA.

Public Comments

NMFS is soliciting public comments on the proposed FMP amendment through [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]. A proposed rule that would implement Amendment 89 will be published in the Federal Register for public comment at a later date, following NMFS' evaluation pursuant to the Magnuson-Stevens Act. Public comments on the proposed rule must be received by the end of the comment period on Amendment 89 in order to be considered in the approval/disapproval decision on the amendment. All comments received on the amendment by the end of the comment period, whether specifically directed to the amendment or to the proposed rule, will be considered in the approval/disapproval decision. Comments received after that date will not be considered

in the approval/disapproval decision on the amendment. To be considered, comments must be received—not just postmarked or otherwise transmitted—by 1700 hours, A.D.T., on the last day of the comment period (See DATES and ADDRESSES).

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

Dated: May 29, 2013.

Emily H. Menashes,
Deputy Director,
Office of Sustainable Fisheries,
National Marine Fisheries Service.

[FR Doc. 2013-13050 Filed 05/31/2013 at 8:45 am; Publication Date: 06/03/2013]