



## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 679**

#### **RIN 0648-XF852**

### **Fisheries of the Exclusive Economic Zone Off Alaska; Halibut Bycatch Management in the Groundfish Fisheries of the Bering Sea and Aleutian Islands**

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

**ACTION:** Notice of intent to prepare an environmental impact statement; request for written comments.

**SUMMARY:** NMFS, in consultation with the North Pacific Fishery Management Council (Council), announces its intent to prepare an Environmental Impact Statement (EIS) on a new halibut bycatch management program for groundfish fisheries in the Bering Sea and Aleutian Islands (BSAI), in accordance with the National Environmental Policy Act of 1969 (NEPA). The proposed action would create a new method of managing halibut bycatch that links halibut prohibited species catch (PSC) limits for the groundfish fisheries to data on halibut abundance. The proposed action is intended to provide a responsive approach for managing halibut bycatch at varying levels of halibut abundance. The new program would minimize halibut bycatch to the extent practicable while achieving, on a continuing basis, optimum yield from the groundfish fisheries. The new management program also could provide additional opportunity for the directed halibut fishery at low levels of halibut abundance compared to the status quo and promote conservation of the halibut spawning stock biomass, particularly at low levels of abundance. The

EIS will analyze the impacts to the human environment resulting from the proposed bycatch management program. NMFS will accept written comments from the public to identify the issues of concern and assist the Council in determining the appropriate range of management alternatives for the EIS.

**DATES:** Written comments will be accepted through February 16, 2018.

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS-2017-0144, 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-2017-0144](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0144), click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- **Mail:** Submit 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.

Instructions: 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 by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

**FOR FURTHER INFORMATION CONTACT:** Glenn Merrill, (907) 586-7228 or email [glenn.merrill@noaa.gov](mailto:glenn.merrill@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

**Authority for Action**

Under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the United States has exclusive fishery management authority over all living marine resources found within the exclusive economic zone (EEZ). The management of these marine resources, with the exception of marine mammals and birds, is vested in the Secretary of Commerce. The Council has the responsibility to prepare fishery management plans for the fishery resources that require conservation and management in the EEZ off Alaska. Management of the Federal groundfish fisheries in the BSAI is carried out under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). The FMP, its amendments, and implementing regulations (found at 50 CFR part 679) are developed in accordance with the requirements of the Magnuson-Stevens Act and other applicable Federal laws and executive orders, notably the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA).

The Pacific halibut (*Hippoglossus stenolepis*) resource is fully utilized in Alaska and is a target species in subsistence, personal use, recreational (sport), and commercial fisheries. Halibut have significant social, cultural, and economic importance to fishery participants and fishing communities throughout the geographical range of the resource. Halibut are also incidentally taken as bycatch in groundfish fisheries. The Magnuson-Stevens Act defines bycatch as fish which are harvested in a fishery, but which are not sold or kept for personal use, and includes economic

discards and regulatory discards. The term does not include fish released alive under a recreational catch and release fishery management program. 16 U.S.C 1802 3(2).

The International Pacific Halibut Commission (IPHC) and NMFS manage Pacific halibut fisheries through regulations established under the authority of the Northern Pacific Halibut Act of 1982 (Halibut Act) (16 U.S.C. 773-773k). The IPHC adopts regulations governing the target fishery for Pacific halibut under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979). For the United States, regulations governing the fishery for Pacific halibut developed by the IPHC are subject to acceptance by the Secretary of State with concurrence from the Secretary of Commerce. After acceptance by the Secretary of State and the Secretary of Commerce, NMFS publishes the IPHC regulations in the *Federal Register* as annual management measures pursuant to 50 CFR 300.62. The final rule implementing IPHC regulations for 2017 published on March 7, 2017 (82 FR 12730).

Section 773c(c) of the Halibut Act also provides the Council with authority to develop regulations that are in addition to, and not in conflict with, approved IPHC regulations. The Council has exercised this authority in the development of Federal regulations for the halibut fishery such as 1) subsistence halibut fishery management measures, codified at § 300.65; 2) the limited access program for charter vessels in the guided sport fishery, codified at § 300.67; and 3) the Individual Fishing Quota (IFQ) Program for the commercial halibut and sablefish fisheries, codified at 50 CFR part 679, under the authority of section 773 of the Halibut Act and section 303(b) of the Magnuson-Stevens Act.

## **Background**

The Council is examining abundance-based approaches for halibut PSC limits in the BSAI groundfish fisheries. Currently, halibut PSC limits are a fixed amount of halibut mortality in metric tons. When halibut abundance declines, halibut PSC becomes a larger proportion of total halibut removals and can result in lower catch limits for directed halibut fisheries. Both the Council and the IPHC have expressed concern about the impacts of lower catch limits on directed halibut fisheries at low levels of halibut abundance under the status quo. The Council identified abundance-based halibut PSC limits as a potential management approach to address this concern by linking halibut PSC limits to halibut abundance and potentially providing additional opportunity for the directed halibut fisheries compared to the status quo at low levels of halibut abundance.

NMFS and the Council have determined the preparation of an EIS may be required for this action because abundance-based halibut PSC limits may have effects on target and bycatch species and their users that are uncertain or unknown and may result in significant impacts on the human environment not previously analyzed. Thus, NMFS and the Council are initiating scoping for an EIS in the event an EIS is needed.

NMFS and the Council are seeking information from the public through the EIS scoping process on the range of alternatives to be analyzed, and on the environmental, social, and economic issues to be considered in the analysis. Written comments generated during this scoping process will be provided to the Council and incorporated into the EIS for the proposed action.

## **Halibut Bycatch Management in the BSAI Groundfish Fisheries**

The Magnuson-Stevens Act authorizes the Council and NMFS to manage groundfish

fisheries in the Alaska EEZ that take halibut as bycatch. The groundfish fisheries cannot be prosecuted without some level of halibut bycatch because groundfish and halibut occur in the same areas at the same times, and no fishing gear or technique has been developed that can avoid all halibut bycatch. However, the Council and NMFS have taken a number of management actions over the past several decades to minimize halibut bycatch in the BSAI groundfish fisheries. Most importantly, the Council has designated Pacific halibut and several other species (herring, salmon and steelhead, king crab, and Tanner crab) as “prohibited species” (Section 3.6.1 of the FMP). By regulation, the operator of any vessel fishing for groundfish in the BSAI must minimize the catch of prohibited species (§ 679.21(b)(2)(i)).

Although halibut is taken as bycatch by vessels using all types of gear (trawl, hook-and-line, pot, and jig gear), halibut bycatch primarily occurs in the trawl and hook-and-line groundfish fisheries. NMFS manages halibut bycatch in the BSAI by 1) establishing halibut PSC limits for trawl and non-trawl fisheries; 2) apportioning those halibut PSC limits to groundfish sectors, fishery categories, and seasons; and 3) managing groundfish fisheries to prevent PSC from exceeding the established limits.

Consistent with National Standard 1 and National Standard 9 of the Magnuson-Stevens Act, the Council and NMFS use halibut PSC limits in the BSAI groundfish fisheries to minimize bycatch to the extent practicable while achieving, on a continuing basis, optimum yield from the groundfish fisheries. Halibut PSC limits in the groundfish fisheries provide an additional constraint on halibut PSC mortality and promote conservation of the halibut resource. With one limited exception for the Bering Sea midwater pollock fishery described in § 679.21(e)(3)(ii)(C), groundfish fishing is prohibited once a halibut PSC limit has been reached for a particular sector or

season. Therefore, halibut PSC limits must be set to balance the needs of fishermen, fishing communities, and U.S. consumers that depend on both halibut and groundfish resources.

In 2015, the Council revised halibut PSC management in the BSAI groundfish fisheries by recommending Amendment 111 to the FMP. Amendment 111 reduced halibut PSC limits for the BSAI groundfish fisheries by 21 percent. NMFS implemented Amendment 111 on May 27, 2016 (81 FR 24714). In February 2015, in conjunction with review of the analysis prepared for Amendment 111, the Council also requested an initial evaluation of possible approaches to link BSAI halibut PSC limits to data or model-based abundance estimates of halibut. The Council reviewed this initial evaluation at its December 2015 meeting and requested additional information on appropriate indices for use in indexing halibut abundance to PSC limits in the BSAI.

In April 2016, the Council reviewed additional information on abundance-based approaches for halibut PSC limits and unanimously adopted a purpose and need statement to establish abundance-based halibut PSC limits for the BSAI groundfish fisheries. The Council refined the purpose and need statement at subsequent meetings in 2016 and 2017:

The current fixed yield based halibut PSC caps are inconsistent with management of the directed halibut fisheries and Council management of groundfish fisheries, which are managed based on abundance. When halibut abundance declines, PSC becomes a larger proportion of total halibut removals and thereby further reduces the proportion and amount of halibut available for harvest in directed halibut fisheries. Conversely, if halibut abundance increases, halibut PSC limits could be unnecessarily constraining. The Council is considering linking PSC limits to halibut abundance to provide a responsive management approach at varying levels of halibut abundance. The Council is considering abundance-based PSC limits to control total halibut mortality, provide an opportunity for the directed halibut fishery, and protect the halibut spawning stock biomass, particularly at low levels of abundance. The Council recognizes that abundance-based halibut PSC limits may increase and decrease with changes in halibut abundance.

In October 2016, the Council identified the following objectives for establishing

abundance-based halibut PSC limits to guide the development of appropriate management measures and the tradeoffs among them:

1. Halibut PSC limits should be indexed to halibut abundance.
2. Halibut spawning stock biomass should be protected especially at lower levels of abundance.
3. There should be flexibility provided to avoid unnecessarily constraining the groundfish fishery particularly when halibut abundance is high.
4. Provide for directed halibut fishing operations in the Bering Sea.
5. Provide for some stability in PSC limits on an inter-annual basis.

In October 2017, The Council requested a preliminary analysis using specific elements and options it intends to consider in developing alternatives for abundance-based halibut PSC limits. The Council and NMFS also agreed to initiate scoping to prepare an EIS for the proposed action to establish abundance-based halibut PSC limits in the BSAI groundfish fisheries. Additional information on the Council's development of abundance-based halibut PSC limits is available on the Council's web site at <http://www.npfmc.org/>.

### **Proposed Action**

The EIS will analyze the proposed action to establish halibut PSC limits for the BSAI groundfish fisheries that can vary with changes in halibut abundance. Abundance-based halibut PSC limits would replace current PSC limits that establish a fixed amount of halibut PSC as the limit for each groundfish sector in the BSAI. The proposed action would apply to participants in Federal groundfish fisheries prosecuted in the BSAI using trawl and non-trawl (fixed) gear. This area is defined at § 679.2 and shown in Figure 1 to 50 CFR part 679.

## **Alternative Elements and Options for Abundance-Based Halibut PSC Limits**

NMFS, in coordination with the Council, will evaluate a range of alternative methods for establishing abundance-based halibut annual PSC limits for the groundfish fisheries in the BSAI. NMFS and the Council recognize that implementation of abundance-based halibut PSC limits could result in substantial changes to many of the current management measures for halibut PSC in the groundfish fisheries. The EIS will analyze these changes and the likely impacts of those changes on groundfish stocks and participants in the groundfish fisheries. The EIS also will analyze the likely impacts of an abundance-based halibut PSC limits on the halibut stock and on participants in directed halibut fisheries. Alternatives may be formulated based on two elements critical to establishing abundance-based halibut PSC limits: 1) A halibut abundance index, and 2) a control rule informed by abundance index data that results in a halibut PSC limit for the trawl and fixed gear groundfish fisheries in the BSAI. The Council has identified the following index and control rule options for preliminary analysis.

Possible alternatives for the abundance-based halibut PSC management program could be constructed from one or more of the following options, in addition to those developed through the public scoping and Council processes:

1. *Abundance index and application:* Establish halibut abundance indices using the annual NMFS eastern Bering Sea trawl survey and the annual IPHC setline survey. Data from these indices may be applied separately or in combination to establish trawl and fixed gear halibut PSC limits.

2. *Control rule:* Using the selected abundance index, establish a control rule that results in annual halibut PSC limits for the trawl and fixed gear groundfish fisheries in the BSAI. The

control rule to establish halibut PSC limits may have one or more of the following features:

- *Control rule application:* The control rule could be applied through a mathematical formula to specify halibut PSC limits based on the abundance index data. The control rule also could be applied through a decision framework that identifies specific ranges of halibut abundance levels and the resulting halibut PSC limits. For example, the control rule could associate low, intermediate and high levels of the spawning biomass with low, intermediate and high PSC limits.
- *Responsiveness of control rule to abundance changes:* The control rule could result in halibut PSC limits that change proportionally with changes in the abundance index or PSC limits that change in different proportions relative to the abundance index to meet specific objectives. For example, a control rule could limit annual variability in halibut PSC limits, as determined by halibut abundance, to achieve the objective of stability in PSC limits on an inter-annual basis or to provide flexibility to avoid unnecessarily constraining the groundfish fishery, particularly when halibut abundance is high.
- *Starting point for PSC limit:* The control rule will have a PSC limit starting point to which the abundance index will be applied to determine halibut PSC limits for the groundfish fisheries in any given year. The starting point could be based on the current PSC limit or halibut PSC use.
- *Maximum and/or minimum PSC limits:* The control rule could establish a maximum and/or minimum value for the halibut PSC limit for groundfish fisheries. Maximum and/or minimum PSC limits would limit the total amount of halibut PSC that can be taken at varying levels of halibut abundance and could promote the objectives to protect the halibut spawning stock biomass and provide for directed halibut fishing operations in the Bering Sea.

## **Public Involvement**

Scoping is an early and open process for determining the scope of issues to be addressed in an EIS and for identifying the significant issues related to the proposed action. A principal objective of the scoping and public involvement process is to identify a range of reasonable management alternatives that, with adequate analysis, will delineate critical issues and provide a clear basis for distinguishing among those alternatives and selecting a preferred alternative. Through this document, NMFS is notifying the public that an EIS and decision-making process for this proposed action have been initiated so that interested or affected people may participate and contribute to the final decision.

NMFS is seeking written public comments on the scope of issues, including potential impacts, and alternatives that should be considered to establish abundance-based halibut PSC limits for the groundfish fisheries in the BSAI. Written comments should be as specific as possible to be the most helpful. Written comments received during the scoping process, including the names and addresses of those submitting them, will be considered part of the public record of this proposal and will be available for public inspection. Written comments will be accepted at the address above (see **ADDRESSES**). Please visit the NMFS Alaska Region Web site at <http://www.alaskafisheries.noaa.gov> for more information on the EIS to establish abundance-based halibut PSC limits for the BSAI groundfish fisheries and for guidance on submitting effective written public comments.

The public is invited to participate and provide input at Council meetings where the latest scientific information regarding the BSAI groundfish fisheries is reviewed and alternatives for abundance-based halibut PSC limits are developed and evaluated. Notice of future Council

meetings will be published in the *Federal Register* and on the Internet at <http://www.npfmc.org/>.

Please visit this Web site for information and guidance on participating in Council meetings.

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

Dated: December 7, 2017.

**Emily H. Menashes,**

*Acting Director,*

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**BILLING CODE 3510-22-P**

[FR Doc. 2017-26734 Filed: 12/11/2017 8:45 am; Publication Date: 12/12/2017]