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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 300, 600, and 679

RIN 0648-BI65

Fisheries of the Exclusive Economic Zone Off Alaska; Authorize Retention of Halibut in Pot Gear in the Bering Sea Aleutian Islands; Amendment 118

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 (Council) submitted Amendment 118 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) (Amendment 118) to the Secretary of Commerce (Secretary) for review. If approved, Amendment 118 would prohibit the use of pot gear in the Pribilof Islands Habitat Conservation Zone (PIHCZ) and a regulatory amendment would authorize the retention of halibut in pot gear under the Individual Fishing Quota (IFQ) and Western Alaska Community Development Quota (CDQ) Programs in the Bering Sea and Aleutian Islands (BSAI). Amendment 118 is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the FMP, the Northern Pacific Halibut Act of 1982 (Halibut Act), and other applicable laws.

DATES: Comments must be received no later than [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2018-0134, 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-2018-0134, 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. 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 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).

Electronic copies of Amendment 118 to the FMP, the Environmental Assessment/Regulatory Impact Review prepared for this action (the Analysis), and the

Finding of No Significant Impact prepared for this action may be obtained from www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Stephanie Warpinski, 907-586-7228 or stephanie.warpinski@noaa.gov.

SUPPLEMENTARY INFORMATION: The Council has submitted Amendment 118 to the FMP to the Secretary for review. If approved, Amendment 118 would prohibit the use of pot gear in the Pribilof Islands Habitat Conservation Zone (PIHCZ). The regulatory amendment associated with Amendment 118 would authorize the use of pot gear, in addition to currently authorized fishing gear, to fish IFQ or CDQ halibut in the BSAI and would authorize the retention of halibut in pots in the IFQ or CDQ sablefish fishery in the BSAI. Provided a permit holder on board the fishing vessel also holds an IFQ or CDQ halibut permit with sufficient unused IFQ or CDQ halibut, the permit holder would be required to retain legal-size halibut. This action is necessary to improve information for future conservation and management measures, improve efficiency of the IFQ and CDQ sablefish and halibut fleets, and reduce bycatch and fishery interactions with whales and seabirds. Amendment 118 is intended to promote the goals and objectives of the Magnuson-Stevens Act, the FMP, the Halibut Act, and other applicable laws.

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. The Magnuson-Stevens

Act also requires that NMFS, upon receiving a fishery management plan amendment, immediately publish a document in the **Federal Register** announcing that the amendment is available for public review and comment. This document announces that proposed Amendment 118 to the FMP is available for public review and comment.

The Council prepared, and the Secretary approved, the FMP under the authority of section 302(h)(1) and 303(b) of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* The FMP is implemented by Federal regulations governing U.S. fisheries at 50 CFR parts 600 and 679. The Council is authorized to prepare and recommend an FMP amendment for the conservation and management of a fishery covered under the FMP. The conservation and management needs of BSAI groundfish are directly related to the management of the Pacific halibut (*Hippoglossus stenolepis*) fishery by the International Pacific Halibut Commission (IPHC). Under the FMP, Pacific halibut is not a target species but is managed as a prohibited species. Many of the management measures contained in the FMP are for the express purpose of mitigating adverse effects from the trawl and fixed gear groundfish fisheries on the halibut resource.

Sablefish (*Anoplopoma fimbria*) is managed as a groundfish species under the FMP, as well as under the IFQ Program for the fixed gear Commercial Fisheries for Pacific Halibut and Sablefish in Waters in and off Alaska (IFQ Program). The IFQ Program is a limited access privilege program implemented by Amendment 15 to the FMP in 1995 (58 FR 59375, November 9, 1993). The IFQ Program allocates halibut and sablefish harvesting privileges in terms of quota share (QS) among U.S. fishermen. The FMP specifies requirements for the initial allocation of quota share in 1995, as well as

transfer, use, ownership, and general provisions. A QS holder's allocation is given effect annually through issuance of an IFQ permit. The ratio of a person's QS to the total number of QS is multiplied by the fixed gear sablefish total allowable catch (TAC) or halibut annual commercial catch limit to arrive at the annual IFQ. The IFQ permit specifies the amount of halibut or sablefish that each QS holder may harvest in pounds.

The IPHC and NMFS manage fishing for halibut through regulations at 50 CFR part 300, subpart E, established under authority of the Halibut Act, 16 U.S.C. 773-773k. The Halibut Act authorizes the Council to develop halibut fishery regulations, including limited access regulations, that are in addition to, and not in conflict with, approved IPHC regulations (16 U.S.C. 773c(c)). The Council has exercised this authority in the development and advancement of the IFQ Program.

The CDQ Program was implemented in 1992, and in 1996, the Magnuson-Stevens Act was amended to include provisions specific to the CDQ Program. The purposes of the CDQ Program are 1) to provide eligible western Alaska villages with the opportunity to participate and invest in fisheries in the BSAI management area; 2) to support economic development in western Alaska; 3) to alleviate poverty and provide economic and social benefits for residents of western Alaska; and 4) to achieve sustainable and diversified local economies in western Alaska (16 U.S.C. 1855(i)(1)(A)).

If approved, Amendment 118 to the FMP would prohibit the use of pot gear in the PIHCZ. The regulatory amendment would authorize the use of pot gear to target BSAI IFQ or CDQ halibut and would authorize retention of halibut in longline and pot-and-line pot gear used in the new BSAI IFQ or CDQ halibut and existing IFQ or CDQ sablefish

fisheries. Currently, hook-and-line gear is the only authorized gear type in the IFQ and CDQ halibut fishery. Amendment 118 would authorize IFQ and CDQ fishermen to elect to use pot gear in the IFQ or CDQ halibut or IFQ or CDQ sablefish fisheries in the BSAI. In addition, if a permit holder on board the fishing vessel holds an IFQ or CDQ halibut permit with sufficient unused IFQ or CDQ halibut, the permit holder would be required to retain legal-size halibut.

In recommending Amendment 118 and the proposed rule to implement the Amendment, the Council determined, and NMFS agrees, that prohibiting the use of pot gear in the PIHCZ and authorizing halibut retention in pot gear in the BSAI is appropriate to improve efficiency in the fleet because fishermen would have more flexibility to use their quota opportunistically and minimize variable costs. In addition, the length of the IFQ season makes it much less likely that hook-and-line gear and longline pot gear conflicts would occur or that fishing grounds would be preempted for extended periods. The Council and NMFS therefore expect that gear conflicts and grounds preemption would occur in the same manner as previously analyzed by the Council and NMFS. Although hook-and-line and longline pot gear may catch slightly different sizes of halibut, the best available information indicates that the use of pot gear would not have a significant impact on the halibut resource (see Section 3.4 and 4.7.4 of the Analysis).

Due to concern over additional pot fishing activity in the PIHCZ and in the Pribilof Islands Blue King Crab (PIBKC) stock boundary area, the proposed regulatory amendment to implement Amendment 118 would require all vessels deploying pot gear

for retaining IFQ or CDQ halibut or sablefish in pot gear to use logbooks and VMS to ensure consistency in monitoring fishery behavior.

Pribilof Islands Blue King Crab (PIBKC) (*Lithodes aequispinus*) are overfished and experienced overfishing most recently in 2016. Rebuilding the PIBKC stock has been a Council priority since 2002, when NMFS notified the Council that the PIBKC stock was overfished. NMFS initiated a rebuilding plan in 2002, and when that rebuilding plan did not rebuild PIBKC, a new rebuilding plan was instituted in 2011. As part of the rebuilding plan, in October 2011 the Council recommended closing the PIHCZ year-round to directed fishing for Pacific cod with pot gear. In 2014, Amendment 103 to the FMP was published, prohibiting Pacific cod pot gear in the PIHCZ to promote bycatch reduction of PIBKC (79 FR 71344, December 2, 2014). No pot fishing for Pacific cod has occurred within the PIHCZ since 2015. Section 3.6 of the Analysis contains additional detail on the status of PIBKC and the rebuilding plans.

Bycatch of PIBKC in pot gear is a concern in the BSAI, particularly in areas where PIBKC are concentrated. The greatest concentration of PIBKC is within the PIHCZ, which encloses the Pribilof Islands. The PIHCZ, defined in § 679.22(a)(6) and shown in Figure 10 to 50 CFR part 679, is closed to all directed fishing for groundfish using trawl gear, and to directed fishing for Pacific cod using pot gear. This existing pot gear closure does not include fishing for halibut and sablefish pot gear. If approved, Amendment 118 would close the PIHCZ to all groundfish and halibut fishing with pot gear. Section 3.6 of the Analysis provides more information about PIBKC and the PIHCZ.

To help minimize the risk of overfishing PIBKC, regulations at § 679.25 provide NMFS with inseason management authority to make precise closures to BSAI fisheries that use bottom contact gear if a stock, in this case PIBKC, approaches its acceptable biological catch limit and is approaching the overfishing level (OFL) in the stock boundary area.

The IFQ and CDQ Programs already include requirements for participants to report specific information to NMFS and other management agencies for management, monitoring, and enforcement purposes. In general, vessels that fish IFQ and CDQ halibut and sablefish must adhere to many of the same requirements, although there are some differences. There is overlap in vessels that fish for IFQ halibut and sablefish and vessels that fish CDQ halibut and sablefish, particularly among the larger vessels. A vessel can retain both CDQ and IFQ species on the same trip.

The purpose of authorizing pot gear to target and retain halibut in the BSAI is to maximize the ability of permit holders to harvest their IFQ or CDQ by increasing catch per unit and reducing fishing costs. Some fishermen would like to use pot gear because it is less prone to whale depredation and seabird interactions than hook-and-line gear. Whales can remove fish from hook-and-line gear and damage the gear. This reduces catch rates, increases costs for IFQ and CDQ fishermen, and impacts fishing efficiency. Use of pot gear would minimize whale depredation and seabird interactions with fishing gear and would minimize adverse impacts on the IFQ fleet.

Killer whale (*Orcinus orca*) depredation is most common in the BSAI. Section 3.5 of the Analysis provides the most recent information on killer whale depredation in

the sablefish and halibut IFQ fishery, and Figure 11 in the Analysis shows a map of observed depredation on sablefish longline surveys. While depredation events are difficult to observe because depredation occurs near the ocean floor in deep water or during active gear retrieval, fishery participants have testified to the Council that depredation continues to be a major cost to the IFQ sablefish and halibut fishery, and appears to be occurring more frequently in the BSAI.

Participants in the BSAI IFQ fisheries indicated to the Council and NMFS that authorizing the use of pot gear for IFQ halibut fishing would reduce the adverse impacts of depredation for those vessel operators who choose to switch from hook-and-line to pot gear. The Council and NMFS agree that interactions with whales throughout the BSAI could affect the ability of IFQ permit holders to harvest sablefish and halibut by reducing catch per unit of effort and decreasing fishing costs.

If some portion of the IFQ or CDQ halibut fleet switches from hook-and-line gear to pot gear, interactions between killer whales and the halibut fishery would be expected to decrease, and unaccounted halibut mortality due to depredation would be expected to decline. Because the amount of depredation is not known with certainty, the potential effects of reduced depredation from this proposed rule cannot be quantified.

Section 1.2 of the Analysis provides additional information on the Council's development and recommendation of Amendment 118 and the proposed rule.

The Council and NMFS considered all the National Standards in section 301 of the Magnuson-Stevens Act (16 U.S.C. 1851), but five national standards figured prominently in their consideration of Amendment 118: National Standard 2, National

Standard 5, National Standard 8, National Standard 9, and National Standard 10. Section 5 of the Analysis provides more background on the National Standards.

National Standard 2. Amendment 118 would lessen a source of scientific uncertainty in the assessment of sablefish stock abundance and marginally improve the information available for future conservation and management measures, consistent with National Standard 2. To the extent fishery participants choose to use pot gear, this gear is likely to reduce the amount of unaccounted mortality that occurs when whales deplete on sablefish, halibut, and other fish hooked on hook-and-line gear.

National Standard 5. Amendment 118 considers efficiency consistent with National Standard 5 by providing the fleet with an additional tool, pot gear, to directly address reduced catch per unit of fishing effort and increased fishing costs due to whale depredation off of hook-and-line gear.

National Standard 8. Amendment 118 recognizes the importance of the sablefish and halibut fishery to BSAI communities and their residents, consistent with National Standard 8. Amendment 118 would provide fishery participants an option to use pot gear and would allow vessels fishing for sablefish with pot gear to retain their halibut, which would potentially improve fishing outcomes for vessels fishing for IFQ or CDQ halibut or sablefish. Amendment 118 would not alter the management measures that are designed to maintain the IFQ Program's diverse fleet; those measures include area-specific quota, different quota allocations for vessel size categories, quota share use caps, and vessel IFQ caps. Amendment 118 would sustain community participation by reducing uncertainty in

stock abundance estimation that results in improving long term management of the resource.

National Standard 9. Amendment 118 would minimize bycatch, to the extent practicable, consistent with National Standard 9. Amendment 118 would authorize the use of pot gear, a gear type that is evidenced to reduce overall bycatch across all species and physically protect bycatch species from whale depredation, thereby reducing one source of bycatch mortality. In addition, under Amendment 118, the PIHCZ would be closed to all pot fishing to protect the PIBKC stock from overfishing.

National Standard 10. Amendment 118 would promote the safety of life at sea, to the extent practicable, consistent with National Standard 10. All vessels over 79 feet would still be required to maintain and abide by their stability instructions for their vessel and gear. Vessels are not being required to carry any extra gear, and operators have the option to participate in the opportunity created by this action.

Amendment 118 would require that all IFQ halibut caught in pot gear used by a vessel to fish IFQ or CDQ halibut or IFQ or CDQ sablefish in the BSAI be retained when a permit holder on board the vessel also holds an IFQ or CDQ halibut permit with sufficient IFQ or CDQ to cover the halibut harvest. Regulations that implement the IFQ Program in conjunction with FMP-managed species are consistent with the Halibut Act and the Magnuson Stevens Act, respectively. Amendment 118 also notes that requirements for retaining, handling, and reporting halibut harvest are established in regulation and unchanged by this action.

The FMP recognizes that discarding incidental catches of fish is wasteful and should be minimized. The FMP also recognizes that halibut are not managed as a target species, but as a prohibited species, under the FMP. Therefore, to remove the incentive to covertly target halibut, the FMP prohibits retention of halibut caught in target groundfish fisheries, except for when authorized. In the evaluation of retention of IFQ or CDQ halibut in a pot gear fishery for IFQ or CDQ halibut or IFQ or CDQ sablefish in the BSAI, the Council balanced the tenets of minimizing halibut discard with the IFQ Program, and the Council recommended retention of halibut in pot gear used to fish IFQ or CDQ halibut or IFQ or CDQ sablefish. Retention of halibut caught with pot gear used to fish IFQ or CDQ halibut or IFQ or CDQ sablefish is consistent with general provisions of the FMP.

The Council's recommendation to require retention of halibut in pot gear was conditioned on the IPHC adopting complementary regulations that would allow NMFS to promulgate regulations implementing the requirements specified by the Council. The IPHC approved the annual Pacific Halibut Fishery Regulations in January 2019. The 2019 annual regulations recommended by the IPHC and approved by the U.S. include approval of harvest of halibut in pot gear as legal gear for the commercial halibut fishery in Alaska when NMFS regulations permit the use of this gear to retain halibut (84 FR 9243, March 14, 2019).

Amendment 118 to the FMP would amend Table ES-2 and section 3.5.2.1.1 in the FMP to prohibit all pot gear in the Pribilof Islands Habitat Conservation Zone. NMFS is soliciting public comments on proposed Amendment 118 through the end of the comment

period (see **DATES**). NMFS intends to publish in the **Federal Register** and seek public comment on a proposed rule that would implement Amendment 118, following NMFS's evaluation of the proposed rule under the Magnuson-Stevens Act. All comments received by the end of the comment period on Amendment 118, whether specifically directed to the FMP amendment or the proposed rule, will be considered in the approval/disapproval decision on Amendment 118. Comments received after that date may not be considered in the approval/disapproval decision on Amendment 118. To be certain of consideration, comments must be received, not just postmarked or otherwise transmitted, by the last day of the comment period.

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

Dated: August 16, 2019.

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