

Dated: February 12, 1998.

Rolland A. Schmiten,
Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

2. Effective February 19, 1998, in § 622.39, paragraph (c)(1)(ii) is revised to read as follows:

§ 622.39 Bag and possession limits.

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(c) * * *

(1) * * *

(ii) Gulf migratory group king mackerel—2.

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3. Effective February 19, 1998, in § 622.42, paragraphs (c)(1)(i) and (c)(2)(ii) are revised to read as follows:

§ 622.42 Quotas.

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(c) * * *

(1) * * *

(i) *Gulf migratory group.* The quota for the Gulf migratory group of king mackerel is 3.39 million lb (1.54 million kg). The Gulf migratory group is divided into eastern and western zones separated by 87°31'06" W. long., which is a line directly south from the Alabama/Florida boundary. Quotas for the eastern and western zones are as follows:

(A) *Eastern zone*—2.34 million lb (1.06 million kg), which is further divided into quotas as follows:

(1) *Florida east coast subzone*—1.17 million lb (0.53 million kg).

(2) *Florida west coast subzone*—1.17 million lb (0.53 million kg), which is further divided into quotas by gear types as follows:

(i) 585,000 lb (265,352 kg) for vessels fishing with hook-and-line gear.

(ii) 585,000 lb (265,352 kg) for vessels fishing with run-around gillnets.

(3) The Florida east coast subzone is that part of the eastern zone north of 25°20.4' N. lat., which is a line directly east from the Dade/Monroe County, FL, boundary, and the Florida west coast subzone is that part of the eastern zone south and west of 25°20.4' N. lat.

(B) *Western zone*—1.05 million lb (0.48 million kg).

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(2) * * *

(ii) *Atlantic migratory group.* The quota for the Atlantic migratory group of Spanish mackerel is 4.00 million lb (1.81 million kg).

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4. Effective March 23, 1998, in § 622.44, paragraph (a)(1) introductory text is added and paragraph (a)(1)(iii) is revised to read as follows:

§ 622.44 Commercial trip limits.

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(a) * * *

(1) *Atlantic group.* The following trip limits apply to vessels for which commercial permits for king mackerel have been issued, as required under § 622.4(a)(2)(iii):

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(iii) In the area between 28°47.8' N. lat. and 25°20.4' N. lat., which is a line directly east from the Dade/Monroe County, FL, boundary, king mackerel in or from the EEZ may not be possessed on board or landed from a vessel in a day in amounts exceeding 50 fish from April 1 through October 31.

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5. Effective February 24, 1998, in § 622.44, paragraph (a)(2)(i) is revised to read as follows:

§ 622.44 Commercial trip limits.

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(a) * * *

(2) * * *

(i) *Florida east coast subzone.* In the Florida east coast subzone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel for which a commercial permit for king mackerel has been issued, as required under § 622.4(a)(2)(iii), from November 1 each fishing year until the subzone's fishing year quota of king mackerel has been harvested or until March 31, whichever occurs first, in amounts not exceeding 50 fish per day.

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6. Effective February 24, 1998, in § 622.44, the first sentence of paragraph (b)(2) is revised to read as follows:

§ 622.44 Commercial trip limits.

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(b) * * *

(2) For the purpose of paragraph (b)(1)(ii) of this section, the adjusted quota is 3.75 million lb (1.70 million kg). * * *

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[FR Doc. 98-4093 Filed 2-18-98; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 970703166-8021-02; I.D. 060997A]

RIN 0648-AH65

Fisheries of the Exclusive Economic Zone Off Alaska; Multispecies Community Development Quota Program; Eastern Gulf of Alaska No Trawl Zone

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement part of Amendment 5 to the Fishery Management Plan for the Commercial King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands (BS/AI), part of Amendment 39 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI), and part of Amendment 41 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA). In implementing part of Amendment 5, this rule establishes a BS/AI crab Community Development Quota (CDQ) program. In implementing part of Amendment 39 this rule establishes CDQ reserves for the Multispecies CDQ (MS CDQ) program. In implementing part of this rule, Amendment 41 establishes a no-trawl zone in the eastern GOA. These measures are necessary to implement the amendments submitted by the North Pacific Fishery Management Council (Council) and approved by NMFS. They are intended to accomplish the objectives of these Fishery Management Plans (FMPs) with respect to the management of the BSAI and GOA groundfish fisheries and the BS/AI crab fisheries.

DATES: Sections 679.20(b)(1)(iii)(A), (B), and (C), 679.20(c)(1)(iii) and (c)(3)(iii), 679.21(e)(3) and (e)(7)(i), and 679.31(c) are effective February 13, 1998; all other sections of this final rule will be effective March 23, 1998.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) prepared for the amendments may be obtained from the North Pacific Fishery Management Council, Suite 306, 605 West 4th Avenue, Anchorage, AK 99501-2252; telephone: 907-271-2809.

FOR FURTHER INFORMATION CONTACT: David C. Ham, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

The U.S. groundfish fisheries of the GOA and the BSAI in the Exclusive Economic Zone (EEZ) are managed by NMFS pursuant to the FMPs for groundfish in the respective management areas. The BS/AI commercial king crab and Tanner crab fisheries are managed by the State of Alaska with Federal oversight, pursuant to the FMP for those fisheries. The FMPs were prepared by the Council, pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801, *et seq.*, and are implemented by regulations for U.S. fisheries at 50 CFR part 679. General regulations at 50 CFR part 600 also apply.

NMFS published a proposed rule to implement Amendments 39, 41, and 5 on August 15, 1997 (62 FR 43866). The proposed rule provided background for and described the MS CDQ Program and the License Limitation Program (LLP). NMFS approved these amendments on September 12, 1997. Comments on the proposed rule were invited through September 29, 1997. NMFS received numerous comments on the MS CDQ and LLP programs and anticipates that final rules for all the components of these programs will be published by April 1998.

Because of the size and complexity of the final rule to implement the MS CDQ and LLP programs, the need to respond to the large number of public comments received, and the need to respond to time critical events in the fishery, the LLP and MS CDQ programs will be implemented by means of three separate final rule documents. This final rule is the first of those documents, implementing the time critical components of the MS CDQ and LLP programs. The second and third final rule documents will implement the remaining portions of the LLP and the MS CDQ programs respectively. For the following reasons, three components of the MS CDQ and LLP programs—the crab CDQ program, the groundfish CDQ reserves, and the eastern GOA no-trawl zone—must be in place prior to April 1998 and are implemented under this final rule.

First, CDQ crab fishing is likely to occur in March 1998. In order for communities to realize the benefits of the CDQ crab program, authorizing regulations must be in place prior to March 1998. Second, NMFS must establish the groundfish CDQ reserves during the annual specification process to allow groundfish CDQ fishing to occur later in 1998. By implementing

the authority to establish groundfish CDQ reserves before the final annual specifications for 1998 are published, the groundfish CDQ reserves can be included in the final harvest specifications (§ 679.20(c)). With the groundfish CDQ reserves established at the beginning of the fishing year, non-CDQ groundfish fisheries can be conducted with little disruption later in the year when the full MS CDQ program is implemented. Third, the closure of the GOA east of 140° W. long. to vessels fishing for groundfish with gear other than non-trawl gear is implemented at this time because this measure is considered a separate, albeit related, action to the LLP and no reason exists to delay its implementation until the final rule for the LLP program is published.

Implementation of the Crab CDQ Program

The purpose and goals for expansion of the CDQ program are set forth in the preamble of the proposed rule. This final rule implements the crab CDQ program by establishing the crab CDQ reserve and authorizing the State of Alaska to allocate the crab CDQ reserve among CDQ groups and to manage crab harvesting activity of the BS/AI CDQ groups. As required by the Magnuson-Stevens Act, 3.5 percent of the guideline harvest level (GHL) specified by the State for BS/AI king and Tanner crab will be apportioned to the crab CDQ reserve in 1998. In 1999, the crab CDQ reserve percentage will change to 5.0 percent of the GHL, and, for the year 2000 and each year thereafter, the crab CDQ reserve will be 7.5 percent of the GHL.

Under this final rule, the State of Alaska will submit to NMFS its recommendations for approval of Community Development Plans (CDPs) and allocation of the crab CDQ reserve among CDQ groups. Because the current CDQ halibut and fixed-gear sablefish CDPs expired at the end of 1997, NMFS anticipates that, soon after the effective date of this final rule, the State of Alaska will forward its recommendations for approval of CDPs and allocations of the CDQ reserve established for fixed-gear sablefish, halibut, and crab. Assuming NMFS approves these CDPs, NMFS will publish a notice in the **Federal Register** announcing the approval and allocation percentages of the CDQ reserves as required by 50 CFR § 679.30(c). CDQ fishing for fixed-gear sablefish, halibut, and crab may begin at that time.

Creation of the Groundfish CDQ Reserves

In implementing the MS CDQ program, this rule requires 7.5 percent of all BSAI total allowable catch (TAC) amounts not already covered by the CDQ program (pollock and fixed gear sablefish) plus 7.5 percent of each prohibited species catch (PSC) limit to be placed in separate CDQ and Prohibited Species Quota (PSQ) reserves. Under the existing fixed-gear sablefish CDQ program, 20 percent of the fixed-gear allocation of sablefish is placed in a fixed-gear sablefish CDQ reserve (§ 679.31(c)). With this rule, the MS CDQ program allocates an additional 7.5 percent of the trawl gear allocation of sablefish to a separate sablefish CDQ reserve. This final rule establishes these groundfish CDQ reserves so that they can be included in the 1998 BSAI groundfish harvest specifications (§ 679.20(c)). After publication of the final specifications, groundfish CDQ fishing in 1998 would be possible, pending timely publication of a final rule for the MS CDQ program.

GOA No-Trawl Zone

Amendment 41 restricts the type of gear that may be used in Federal waters of the GOA east of 140° W. long. (Southeast Outside District) to non-trawl gear. This management measure is intended to eliminate preemption conflicts between gear types, to prevent fixed gear loss, and to assist fishing communities dependent on the local fisheries in the Southeast Outside District by providing for their sustained participation and by minimizing the adverse impacts on them. Nontrawl gear is defined at 679.2 as hook and line gear, jig gear, longline gear and pot and line gear.

Three types of preemption can occur among competing gear types. First, direct preemption occurs when competing gear types target the same species. Examples of species that could be targeted by trawl gear and fixed gear fisheries in the Southeast Outside District are rockfish species, such as roughey, other slope rockfish, and thornyhead rockfish. Second, indirect preemption can occur when one gear type, by incidentally catching a species, precludes or diminishes a target fishery of that species by another gear type. Incidental catches of species made by trawl gear can severely limit or preclude fixed gear target fisheries that are critical to the socio-economic viability of small communities in Southeast Alaska. Third, grounds preemption can occur when the operator of a vessel using one type of gear chooses not to

fish in an area because of the gear type being used by the operator of another vessel in the same area. For example, an operator of a vessel using longline gear may be hesitant to deploy gear in an area in which trawl gear will be used because of the possibility of the longline gear being lost or damaged by the trawl gear. Finally, gear loss can occur when different gear types are used in the same area. Losing gear is costly to fishermen and can contribute to higher fishing mortality due to "ghost fishing." Ghost fishing is the term used to describe what occurs when fish are caught by gear that will remain unretrieved because it cannot be located by the operator who deployed it. Fixed gear can become unretrievable when trawl gear is towed over fixed gear sets and moves the sets to a different location or shears buoys from groundlines. Authorizing only non-trawl fishing gear in the Southeast Outside District eliminates direct, indirect, and grounds preemption and reduces the potential for gear loss and ghost fishing.

Small vessel fishermen from communities in Southeast Alaska depend on rockfish species, such as rougheye, other slope rockfish, and thornyhead rockfish, to supplement their incomes, derived mainly from the salmon, sablefish, and halibut fisheries. These small vessel fishermen use primarily fixed gear to catch rockfish species and experience economic hardship when they are deprived of these supplemental fisheries through preemption by trawl gear. The Magnuson-Stevens Act's national standard 8 requires that management measures take into account the importance of fishery resources to fishing communities by providing for the sustained participation of fishing communities and, to the extent practicable, by minimizing adverse economic impacts on fishing communities. Authorizing only non-trawl gear in the Southeast Outside District is intended to meet these requirements.

Changes From the Proposed Rule

NMFS is making five changes from the proposed rule in the final rule. First, the final rule references the *C. opilio* PSQ and the *C. opilio* Bycatch Limitation Zone. The final rule implementing Amendment 40 to the FMP for the Groundfish Fishery of the BSAI established *C. opilio* bycatch management measures (62 FR 66829, December 22, 1997).

Second, the final rule authorizes the Regional Administrator to reallocate any amount of the 1998 groundfish CDQ or PSQ reserve back to the non-Individual

Fishing Quota (IFQ) fisheries based on a determination that the reallocated amount will not be used by the 1998 CDQ program. For additional information on the rationale for this authorization, please refer to the response to comment 3.

Third, the regulations governing PSQ reserves are clarified including changing the salmon PSQ reserves from numbers to percentages to ensure consistency with the rest of that section.

Fourth, introductory text is added to § 679.31 for explanatory purposes. Because this final rule implements only the most time critical elements of the LLP/CDQ program, this rule does not include provisions for the non-specific CDQ reserve because it is not part of the specifications process. The non-specific CDQ reserve will be established in the final rule that implements the remainder of the MS CDQ program.

Fifth, § 679.7(j)(2) is redesignated as § 679.7(b) and clarified. Because the LLP will not be implemented prior to the effective date of the prohibition on use of gear other than non-trawl gear in the Southeast Outside District, the statement "regardless of the gear used to qualify for the license" is confusing and unnecessary to the management measure. Also, the phrase "any gear other than legal fixed gear" has been changed to "any gear other than non-trawl gear" for clarity.

Sixth, a technical correction is made in a final rule that was published on February 4, 1998 (63 FR 5836). The appendix heading, "Appendix A to Subpart F of Part 679," is changed to read, "Appendix A to Part 679."

Comments on the Proposed Rule

The comments below are those comments received by NMFS relating to the crab CDQ program, the 1998 groundfish CDQ reserves, and the eastern GOA trawl closure. All other comments received by NMFS on the proposed rule will be addressed in future final rule documents that will implement the remaining components of the MS CDQ program and LLP.

Comment 1: The analysis of the proposal to expand the CDQ program to include 7.5 percent of the groundfish TACs and crab harvests is inadequate. Specifically, it does not analyze the impact of the re-allocation of prohibited species bycatch from the groundfish fleet to the CDQ fleet nor does it analyze the economic impact of the CDQ program allocation on the non-CDQ fleet. In addition, the analysis makes incorrect statements and draws incorrect conclusions about the impact of the MS CDQ program on small entities.

Response: NMFS disagrees. The administrative record for this final rule contains adequate information concerning the economic impacts of expanding the CDQ program and the resulting reduction of the amount of groundfish, crab and PSC available to the non-CDQ fleet. Those economic impacts were considered by NMFS during the approval process. The analysis recognizes that the non-CDQ fleet will experience a reduction in the amount of groundfish available for harvest. However, the record also reflects the fact that CDQ communities work with harvesting partners. NMFS recognized that, based on historical performance in the CDQ fisheries, most, if not all, MS CDQ fisheries would be prosecuted by most of the same vessels currently in the fisheries. Under contract to the CDQ groups, owners and operators of those vessels will be required to pay the CDQ groups a fee for the privilege of harvesting the CDQ fish. In turn, the participating vessels will obtain the advantage of longer fishing seasons and possibly improved marketing possibilities. Although no significant dislocations are anticipated for the affected fleets, it is expected that their operations will be modified by the MS CDQ program. For example, the economics of the affected fisheries will be changed due to the royalties paid to the CDQ groups by vessels for the privilege of harvesting CDQ fish. Also, those vessels that are not harvesting for CDQ groups will experience a loss due to the allocation of 7.5 percent of the crab, groundfish, and PSC to the MS CDQ program. While these negative economic impacts were identified, net economic benefits will be derived from implementation of the MS CDQ program.

NMFS also disagrees with Comment 1 concerning the statements and conclusions on the impacts of the MS CDQ program on small entities. The Small Business Administration has defined all independently owned and operated fish-harvesting or hatchery businesses that are not dominant in their field of operation and whose annual receipts are not in excess of \$3,000,000 as small businesses. Additionally, seafood processors with 500 or fewer employees, wholesale industry members with 100 or fewer employees, not-for-profit enterprises, and government jurisdictions with a population of 50,000 or less are considered small entities. NMFS generally considers 20 percent of the total universe of small entities affected by a regulation to constitute a "substantial number." A regulation

would have a "significant economic impact" on these small entities if it reduced annual gross revenues by more than 5 percent, increased total costs of production by more than 5 percent, resulted in compliance costs for small entities that are at least 10 percent higher than compliance costs as a percent of sales for large entities, or caused approximately 2 percent of the affected small businesses to go out of business. NMFS assumes that catcher vessels participating in the Alaska groundfish fisheries are "small entities" for purposes of the Regulatory Flexibility Act.

In the preamble to the proposed rule, NMFS concluded that the six CDQ organizations likely would not be classified as "small entities" under the guidelines outlined above and that they would not comprise a substantial number of entities operating in the fisheries off Alaska. NMFS recognized that the non-CDQ fleet in the BSAI contains a substantial number of small entities that will be affected by implementation of the MS CDQ program. However, NMFS determined that the 7.5 percent reduction in overall quota available to the non-CDQ fleet would not likely result in a direct 7.5 percent reduction in catch by a small individual fishing operation. This conclusion was based in part on the fact that the 7.5 percent CDQ allocation is taken from the amount of TAC set aside as reserve. Prior to the CDQ program, amounts within this reserve could be allocated to the groundfish fisheries during the fishing year; however, there was and continues to be no guarantee that the reserve will be reallocated later in the season. Further, because the reserve is not species-specific, any amount of the reserve may be apportioned to a target species with exceptions for fixed gear sablefish and the "other species" category. For example, if the reserve originally consisted of 100 mt of species A, 100 mt of species B, and 100 mt of species C, the Regional Administrator could allocate up to 300 mt of species A and allocate no additional species B or C provided that such apportionments were consistent with 50 CFR 679.20(a)(3) and do not result in overfishing of a target species or the "other species" category.

In addition to the benefits of separate management measures that mandate retention and utilization of some groundfish species were also considered and estimated to compensate for the 7.5 percent quota reduction. Also, as stated above, CDQ organizations work with harvesting partners and, based on historical performance in the CDQ

fisheries, most, if not all, MS CDQ fisheries would be prosecuted by most of the same vessels currently in the fisheries. While owners and operators of those vessels would be required to pay the CDQ groups a fee for the privilege of harvesting the CDQ fish, the participating vessels will realize some economic benefit from their contractual arrangement with the CDQ organization, lessening any negative economic impact from the reduced overall groundfish quota.

Without more specific references to incorrect information, NMFS concludes that this final rule will not have significant negative economic impacts on those small entities affected by this final rule.

Comment 2: A cap should be placed on the 7.5 percent crab allocation to the CDQ fleet, so that the percentage can never be increased.

Response: The Magnuson-Stevens Act currently limits the amount of crab that can be allocated to the CDQ program at 7.5 percent. The Magnuson-Stevens Act requires that 3.5 percent of the crab available for commercial harvest in the BS/AI be made available to the CDQ program for 1998. For 1999, the percentage will change to 5.0 percent, and, for each year thereafter, the percentage would be 7.5 percent. Unless the Magnuson-Stevens Act is amended, the 7.5 percent cap cannot be increased.

Comment 3: NMFS should adopt regulations that return to the moratorium groundfish fisheries the CDQ reserves that the CDQ fleet will not be able to harvest during the first year of the program.

Response: NMFS concurs and has added regulatory language to authorize the Regional Administrator to reallocate any amount of a CDQ reserve back to the non-CDQ fisheries if the Regional Administrator determines that a certain amount will not be used during the remainder of the 1998 fishing year. NMFS anticipates that CDQ reserves in subsequent years will be fully harvested or that only small amounts will remain unharvested. Therefore, provisions to reallocate CDQ reserves past the 1998 fishing year are unnecessary.

Comment 4: It is unfair for CDQ groups to have an IFQ-type program that will allow for a rational fishery where rents are captured, while the moratorium groundfish fisheries must continue the race for fish with an ever growing fleet and watch as all rents dissipate and safety deteriorates. The moratorium groundfish fisheries should have an IFQ-type system also.

Response: The Council continues to explore management measures to address the over capitalized nature of

the moratorium fisheries. The management experience gained through the MS CDQ fisheries can be used to develop and assess future limited access programs for the moratorium fisheries.

Comment 5: The action to prohibit the use of trawl gear in the Southeast Outside District is an example of the lack of consideration of reasonable alternatives. The analysis did not provide evidence of a problem with using trawl gear in that area. Also, other alternatives, such as prohibiting only bottom trawl gear as opposed to all trawl gear, should have been considered.

Response: The analysis for the LLP did address the use of non-trawl gear only in the Southeast Outside District, although the use of non-trawl gear only in the Southeast Outside District was characterized primarily as an allocation issue. However, in 1992, another analysis was performed on the biological and socio-economic impacts of prohibiting trawl gear in the Southeast Outside District. This analysis addressed such issues as gear conflicts, bycatch problems, localized depletion of non-migratory species and issues of habitat concerns, including trawl gear impacts on deep water corals and benthic habitat. Although the Council chose not to implement a trawl ban in 1992, that decision did not preclude the Council from deciding to implement a trawl ban at this time.

The 1992 analysis contained several alternatives, including an alternative banning only bottom trawl gear. The 1992 analysis was cited in the License Limitation analysis, and the Council was cognizant of these alternatives when it decided to authorize only non-trawl gear in the Southeast Outside District.

The record in support of License Limitation indicated that preemption problems were caused by conflicts between trawl and fixed gear. These conflicts are ameliorated by the trawl ban in the Southeast Outside District (see discussion in this preamble).

Comment 6: The prohibition of trawling in the Southeast Outside District provides the Southeast Alaska fishing industry and coastal communities with stability and is consistent with the provisions in the Magnuson-Stevens Act concerning essential fish habitat, fishery dependent communities, and bycatch reduction.

Response: NMFS concurs. As stated in the preamble, NMFS is aware that small vessel fishermen from communities in Southeast Alaska depend on rockfish species to supplement their incomes. Without this supplemental income, many of these

small vessel fishermen would experience economic hardship. National standard 8 requires that management measures take into account the importance of fishery resources to fishing communities by providing for the sustained participation of fishing communities and, to the extent practicable, by minimizing adverse economic impacts on fishing communities. NMFS also realizes that, under some circumstances, trawl gear can produce a larger volume of bycatch than fixed gear. National standard 9 requires that management measures, to the extent practicable, minimize bycatch. Finally, NMFS is aware that certain trawl gear can be detrimental to deep water corals and benthic habitats. Section 303(a)(7) of the Magnuson-Stevens Act requires that management measures minimize to the extent practicable adverse effects on fish habitat caused by fishing. National standard 8, national standard 9, and section 303(a)(7) were carefully considered by NMFS when the trawl ban in the Southeast Outside District was approved.

Classification

The Administrator, Alaska region, NMFS, determined that Amendment 39 to the BSAI FMP, Amendment 41 to the GOA FMP, and Amendment 5 to the FMP for the Commercial King and Tanner Crab Fisheries of the BS/AI are necessary for the conservation and management of these fisheries and that they are consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for the purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the measures this rule would implement would not have a significant economic impact on a substantial number of small entities. NMFS received one comment stating that the analysis made incorrect statements and drew incorrect conclusions about the impacts of the MS CDQ program on small entities. For the reasons stated in the response to comment 1 above, this comment did not cause the Assistant General Counsel for Legislation and Regulation to change his determination regarding the certification. As a result, a regulatory flexibility analysis was not prepared.

The Administrator, Alaska Region, finds, under 5 U.S.C. 553(d)(3), that good cause exists not to delay for 30 days the effective date of the provisions of this final rule that establish and

apportion CDQ and PSQ reserves. These provisions will not require affected fishermen to change any of their current fishing practices. Accordingly, it is unnecessary to delay the effective date of these provisions. Therefore, the provisions of this rule that establish and apportion the CDQ and PSQ reserves are effective February 13, 1998.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: February 12, 1998.

Rolland A. Schmitt, Jr.

Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.2, the definition of "Prohibited Species Quota" is added to read as follows:

§ 679.2 Definitions.

* * * * *

Prohibited species quota (PSQ) means the amount of a prohibited species catch limit established under § 679.21(e)(1) and (2) that is allocated to the groundfish CDQ program under § 679.21(e)(3).

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3. In § 679.7, paragraph (b) is added to read as follows:

§ 679.7 Prohibitions.

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(b) *Prohibitions specific to GOA.* Use any gear other than non-trawl gear in the GOA east of 140° W. long. (Southeast Outside District).

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4. In § 679.20, paragraphs (b)(1)(iii) and (b)(1)(iv) are redesignated as paragraphs (b)(1)(iv) and (b)(1)(v), new paragraph (b)(1)(iii) is added, and paragraphs (c)(1)(iii), (c)(2)(ii), (c)(3)(iii) and (f)(2) are revised to read as follows:

§ 679.20 General limitations.

* * * * *

(b) * * *

(1) * * *

(iii) *CDQ reserve*—(A) *Groundfish CDQ reserve.* Except as limited by § 679.31(a) of this part, one half of the nonspecified reserve established by paragraph (b)(1)(i) of this section is

apportioned to the groundfish CDQ reserve.

(B) *Fixed gear sablefish CDQ reserves.* Twenty percent of the fixed gear allocation of sablefish established by paragraph (a)(4)(iii) of this section for each subarea or district of the BSAI is apportioned to a CDQ reserve for each subarea or district.

(C) *Apportionment of groundfish CDQ reserve by TAC category.* (1) Except for the fixed gear sablefish CDQ reserves, the groundfish CDQ reserve is apportioned among TAC categories in amounts equal to 7.5 percent of each TAC category for which a reserve is established.

(2) If the final harvest specifications required by paragraph (c) of this section change the groundfish species comprising a species category or change a TAC by combining management areas or splitting a TAC into two or more TACs by management area, then any CDQ allocations based on those TACs change proportionally.

* * * * *

(c) * * *

(1) * * *

(iii) *BSAI.* The BSAI proposed specifications will specify the annual TAC and initial TAC amounts for each target species and the "other species" category and apportionments thereof established by paragraph (a)(2) of this section, PSQ reserves and prohibited species catch allowances established by § 679.21, seasonal allowances of pollock TAC (including pollock CDQ), and CDQ reserve amounts established by paragraph (b)(1)(iii) of this section.

(2) * * *

(ii) *BSAI.* Except for pollock and the hook and line and pot gear allocation of sablefish, one quarter of each proposed initial TAC and apportionment thereof, one quarter of each CDQ reserve established by paragraph (b)(1)(iii) of this section, and one quarter of the proposed PSQ reserve and prohibited species catch allowances established by § 679.21.

(A) The interim specifications for pollock will be equal to the first seasonal allowance under paragraph (a)(5)(i)(A) of this section that is published in the proposed specifications under paragraph (c)(1) of this section.

(B) The interim specifications for CDQ pollock will be equal to the first seasonal allowance that is published in the proposed specifications under paragraph (c)(1) of this section.

(3) * * *

(iii) *BSAI.* The final specifications will specify the annual TAC for each target species and the "other species"

category and apportionments thereof, PSQ reserves and prohibited species catch allowances, seasonal allowances of the pollock TAC (including pollock CDQ), and CDQ reserve amounts.

* * * * *

(f) * * *

(2) *Retainable amounts.* Except as provided in Table 10 to this part, arrowtooth flounder, retained CDQ species, or any groundfish species for which directed fishing is closed may not be used to calculate retainable amounts of other groundfish species.

* * * * *

5. In § 679.21, paragraphs (e)(3) through (e)(8) are redesignated as paragraphs (e)(4) through (e)(9), respectively, a new paragraph (e)(3) is added and newly designated paragraph (e)(7)(i) is revised to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(e) * * *

(3) *PSC apportionment to PSQ.* 7.5 percent of each PSC limit established by paragraphs (e)(1) and (e)(2) of this section is allocated to the groundfish CDQ program as PSQ reserve.

* * * * *

(7) * * *

(i) *General.* NMFS will publish annually in the **Federal Register** the annual red king crab PSC limit, and, if applicable, the amount of this PSC limit specified for the RKCSS, the annual *C. bairdi* PSC limit, the annual *C. opilio* PSC limit, the proposed and final PSQ reserve amounts, the proposed and final bycatch allowances, the seasonal apportionments thereof and the manner in which seasonal apportionments of non-trawl fishery bycatch allowances will be managed as required by paragraph (e) of this section.

* * * * *

6. Section 679.31 is revised to read as follows:

§ 679.31 CDQ and PSQ reserves.

Portions of the CDQ and PSQ reserves for each subarea or district may be allocated for the exclusive use of CDQ applicants in accordance with CDPs

approved by the Governor in consultation with the Council and approved by NMFS. NMFS will allocate no more than 33 percent of the total CDQ for all subareas and districts combined to any one applicant with an approved CDP application.

(a) *Pollock CDQ reserve (applicable through December 31, 1998).* In the proposed and final harvest specifications required by § 679.20(c), one-half of the pollock TAC placed in the reserve for each subarea or district of the BSAI will be apportioned to a CDQ reserve for each subarea or district.

(b) *Halibut CDQ reserve.* (1) NMFS will annually withhold from IFQ allocation the proportions of the halibut catch limit that are specified in paragraph (b) of this section for use as a CDQ reserve.

(2) Portions of the CDQ for each specified IPHC regulatory area may be allocated for the exclusive use of an eligible Western Alaska community or group of communities in accordance with a CDP approved by the Governor in consultation with the Council and approved by NMFS.

(3) The proportions of the halibut catch limit annually withheld for the halibut CDQ program, exclusive of issued QS, and the eligible communities for which they shall be made available are as follows for each IPHC regulatory area:

(i) *Area 4B.* In IPHC regulatory area 4B, 20 percent of the annual halibut quota shall be made available to eligible communities physically located in, or proximate to, this regulatory area.

(ii) *Area 4C.* In IPHC regulatory area 4C, 50 percent of the halibut quota shall be made available to eligible communities physically located in IPHC regulatory area 4C.

(iii) *Area 4D.* In IPHC regulatory area 4D, 30 percent of the annual halibut quota shall be made available to eligible communities located in, or proximate to, IPHC regulatory areas 4D and 4E.

(iv) *Area 4E.* In IPHC regulatory area 4E, 100 percent of the halibut quota shall be made available to eligible communities located in, or proximate to, IPHC regulatory area 4E. A fishing

trip limit of 6,000 lb (2.7 mt) applies to halibut CDQ harvesting in IPHC regulatory area 4E.

(4) For the purposes of this section, "proximate to" an IPHC regulatory area means within 10 nm from the point where the boundary of the IPHC regulatory area intersects land.

(c) *Groundfish CDQ reserves.* (See § 679.20(b)(1)(iii))

(d) *Crab CDQ reserves.* King and Tanner crab species in the Bering Sea and Aleutian Islands Area that have a guideline harvest level specified by the State of Alaska that is available for commercial harvest are apportioned to a crab CDQ reserve as follows:

(1) For calendar year 2000, and thereafter, 7.5 percent;

(2) For calendar year 1999 (applicable through December 31, 1999), 5 percent; and

(3) For calendar year 1998 (applicable through December 31, 1998), 3.5 percent.

(e) *PSQ reserve.* (See § 679.21(e)(3)).

(f) *Reallocation of CDQ or PSQ reserves* (Applicable through December 31, 1998). If the Regional Administrator determines that any amount of a CDQ or PSQ reserve will not be used during the remainder of the 1998 fishing year, the Regional Administrator may reallocate any unused amount of the CDQ reserve back to the non-specified reserve established by § 679.20(b)(1)(ii) and may reallocate any unused amount of a PSQ reserve back to non-CDQ fisheries in proportion to those fisheries' 1998 apportionment of PSC limits established by § 679.21.

Technical Correction--Appendix A to Part 679 [Corrected]

7. In FR Doc. 98-2244 published on February 4, 1998 (63 FR 5836), make the following correction. On page 5845, in the second column, seventh line, correct the first line of the Appendix heading now reading, "Appendix A to Subpart F of Part 679" to read "Appendix A to Part 679".

[FR Doc. 98-4092 Filed 2-13-98; 9:05 am]
BILLING CODE 3510-22-F