Avenue, N.W., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (1995) (ICCTA), abolished the Interstate Commerce Commission (ICC) and transferred responsibility for regulating rail transportation to the Surface Transportation Board (Board). As pertinent here, the ICCTA also reduced regulatory oversight of rail transportation contracts in several significant ways. First, the ICCTA limited such oversight to contracts covering the transportation of agricultural products. Second, even as to contracts for agricultural products, the ICCTA eliminated the requirement that railroads file copies of the contracts with the Board; railroads need only file a summary of each contract. Third, the ICCTA removed various outdated provisions and procedural details, leaving it to the Board to maintain appropriate implementing procedures.

In an advance notice of proposed rulemaking in this proceeding, served March 26, 1996 (61 FR 13147), we invited interested persons to submit suggestions for appropriate regulations to implement 49 U.S.C. 10709, in place of the now-outdated rules at 49 CFR part 1313. In response, we received comments from shipper, carrier and rail employee interests. Shippers contended that the existing information disclosure requirements for agricultural contracts have proven to be adequate, and that all of them should be continued. Rail carriers proposed to reduce the information required to be disclosed.

After considering the comments, we propose to revise our regulations to eliminate provisions for filings that are no longer required, and otherwise to continue many of the existing filing and information disclosure requirements for agricultural contract summaries. Certain other minor revisions, such as changes to the time period within which the Board must take action against new and amended contracts, are proposed to reflect related changes made by the ICCTA. Additionally, we propose to add a new requirement that summaries for agricultural contracts be filed within seven days of the date of a contract or amended contract. In other respects, the proposed regulations do not significantly change the existing rules.

Availability

The full text of the proposed rules is available to all persons for a charge by phoning DC News and Data, Inc., at (202) 289–4357.

Request for Comments

We invite comments on all aspects of the proposed regulations. We encourage any commenter that has the necessary technical wherewithal to submit its comments as computer data on a 3.5-inch floppy diskette formatted for WordPerfect 5.1, or formatted so that it can be readily converted into WordPerfect 5.1. Any such diskette submission (one diskette will be sufficient) should be in addition to the written submission (an original and 10 copies).

Small Entities

The Board preliminarily concludes that these rules, if adopted, would not have a significant economic effect on a substantial number of small entities. One commenter, the Kansas Grain and Feed Association (KGFA), asserts that these regulations will have a significant economic impact on a substantial number of small entities by influencing its members' daily markets for the sale and purchase of agricultural products. KGFA's contention relates to the rail contracting practices permitted by both the former and new statutes, not the impact of these regulations. The proposed regulations merely reflect the modest changes effected by the ICCTA, and largely continue existing contract disclosure requirements for agricultural products.

The Board, nevertheless, seeks comment on whether there would be effects on small entities that should be considered, so that the Board can determine whether to prepare a regulatory flexibility analysis at the final rule stage.

Environment

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1313

Agricultural products, Contract summaries, Rail carriers, Transportation contracts.

Decided: October 4, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–26438 Filed 10–16–96; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 100996A]

RIN 0648–AI63

Fisheries of the Exclusive Economic Zone off Alaska; Definition of Overfishing

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

ACTION: Notice of availability of amendments to fishery management plans; request for comments.

SUMMARY: These amendments would revise definitions of acceptable biological catch (ABC) and overfishing levels (OFLs) for groundfish species or species groups. The North Pacific Fishery Management Council (Council) has submitted Amendment 44 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA) and Amendment 44 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI) (FMPs). This action is necessary to ensure that conservation and management measures continue to be based upon the best scientific information available and is intended to advance the Council's ability to achieve, on a continuing basis, the optimum yield from fisheries under its jurisdiction. NMFS is requesting comments from the public on the proposed amendments, copies of which may be obtained from the Council (see **ADDRESSES**).

DATES: Comments on Amendments 44/44 must be submitted by December 10, 1996.

ADDRESSES: Comments on the FMP amendments should be submitted to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of Amendments 44/44 and the environmental assessment (EA) and related economic analysis prepared for the proposed action are available from the North Pacific Fishery Management Council, 605 W 4th Ave., Suite 306, Anchorage, AK 99501–2252; telephone: 907–271–2809.

FOR FURTHER INFORMATION CONTACT: James Hale, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act) requires that each Regional Fishery Management Council submit any FMP or plan amendment it prepares to NMFS for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that NMFS, after receiving a fishery management plan or amendment, immediately publish a document in the Federal Register that the fishery management plan or amendment is available for public review and comment. This action constitutes such notice for Amendments 44/44 to the FMPs.

Section 301(a) of the Magnuson Act establishes national standards for fishery conservation and management and requires that all fishery management plans create management measures consistent with those standards. National Standard 1 requires that conservation and management measures shall ''prevent overfishing while achieving, on a continuing basis, the optimum yield'' from fisheries in Federal waters. National Standard 2 requires further that conservation and management measures be based on the best scientific information available.

The Magnuson Act includes a general definition of overfishing, but does not establish specific measures for determining where overfishing may occur. Pursuant to § 301(b) of the Magnuson Act, the Secretary of Commerce issued advisory guidelines (codified at 50 CFR part 600, subpart D) that provide comprehensive guidance for the development of fishery management plans and amendments. An amendment to the advisory guidelines (54 FR 30826, July 24, 1989) requires that fishery management plans specify an objective and measurable definition of overfishing for each managed stock or stock complex and provide for an analysis of how the definition was determined and how it relates to biological potential. The guidelines require that an overfishing definition will: (1) Have sufficient scientific merit, (2) be likely to protect the stock from closely approaching or reaching an overfished status, (3) provide a basis for objective measurement of the status of the stock against the definition, and (4) be operationally feasible. See 50 CFR § 600.310(c)(5).

In response to the national standards and advisory guidelines, the Council developed an objective and measurable definition of overfishing and, in 1991, implemented that definition under Amendments 16 and 21 to the FMPs (56 FR 2700, January 24, 1991). In the years since implementation of that definition, fishery scientists have had the opportunity to evaluate the efficacy of current definitions of ABC and OFL. In light of that experience and with increased understanding of the reference fishing mortality rates used to define ABCs and OFLs, fishery scientists have raised several concerns about the present definitions and the extent to which they reflect and account for levels of uncertainty about fish stock populations. Consequently, NMFS' Overfishing Definitions Review Panel (ODRP) and the Council's Scientific and Statistical Committee (SSC) recommended redefining ABC and overfishing to facilitate more conservative, risk-averse management measures when stock size and mortality rates are not fully known.

The ODRP and SSC recommended that a new definition of overfishing should: (1) Compensate for uncertainty in estimating fishing morality rates at a level of maximum sustainable yield (MSY) by establishing fishing mortality rates more conservatively as biological parameters become more imprecise; (2) relate fishing mortality rates directly to biomass for stocks below target abundance levels, so that fishing mortality rates fall to zero should a stock become critically depleted; and (3) maintain a buffer between ABC and the OFL. Accordingly, stock assessment scientists at the NMFS Alaska Fisheries Science Center have developed new proposed definitions consistent with these recommendations.

Revised Definitions of ABC and Overfishing

The proposed definitions involve sophisticated statistical analyses of fish population dynamics. The analyses develop a series of six levels or tiers of reliable information available to fishery scientists. OFLs would be determined according to the tier that best characterizes the available information.

The first tier, operating on the best available information, requires estimates of biomass and biomass at the level of MSY and a reliable description of the uncertainty (or probabilities) attending the variables involved in calculating fishing mortality at the level of MSY. Uncertainty is described by the distribution density of probable values: the more widely distributed the probable values, the more uncertainty exists in estimating which value most closely approximates the true value. Conversely, when probable values are clustered in a relatively small range, greater certainty exists that any one of these values represents a close approximation of the true value.

In tier (1), ABC and OFLs are set by deriving two different statistical means or averages from the probable values for fishing mortality at MSY. The OFL is set at the arithmetic mean (the same as a common ''average''), and the ABC is set at the harmonic mean, which results typically in a lower value than the common average. The harmonic mean grows increasingly lower in relation to the average as the probable values become more widely distributed. For example, the average for the series of values 3, 4, 5, 6, and 7 is 5; the harmonic mean for the same series of values is 4.57. The series of values 1, 2, 5, 8, and 9, for which the average is also 5, produces in contrast a harmonic mean of 2.58.

When applied to the range of probable values for fishing mortality at MSY, the harmonic mean would produce a value for ABC that becomes increasingly lower in relation to the OFL as the uncertainty in approximating the true value for fishing mortality increases. This process creates a buffer between ABC and OFL to protect the stock against uncertainty in management parameters and against overly aggressive harvest. Conversely, when the probable values for fishing mortality are clustered within a relatively small range, greater probability (i.e., less uncertainty) exists that the true value for fishing mortality will be approximated. In that case, the buffer between ABC and overfishing would decrease appropriately.

If the probabilities (i.e., the amount of uncertainty) cannot be reliably assessed for variables associated with fishing mortality at MSY, the remaining tiers provide, in descending order, for determination of ABC and OFLs with increasingly limited information. For tiers (1) and (2), the target abundance level is the size of the biomass necessary to produce MSY. Tier (3) provides for stocks for which reliable estimates of biomass at MSY are not available by setting the target abundance level at an estimate of the long-term average biomass that would be expected under average recruitment and a fishing mortality rate that would reduce the lifetime spawning stock to 40% of what it would be in the absence of fishing. Tiers (4) - (6) provide for stocks where target abundance levels cannot be known.

In tiers (2) - (5), ABC and OFL would be determined by reliable information on point estimates of biological factors: biomass (tiers (2) - (5)); fishing mortality rates at MSY (tier (2)); long-term average biomass under average recruitment (tier (3)); percentages of the level of spawning per recruit necessary to maintain the biomass in the absence of

any fishing (tiers (2) - (4)), or natural mortality (tier (5)). In each of tiers (2) - (5), ABC is set substantially lower than the OFL, in the case of moderately depleted stocks, by being correlated to biomass size. In the case of severely depleted stocks, tiers (1) - (4) set ABC and OFL at zero. When biological information is extremely limited, tier (5) establishes an ABC level at 25 percent below the natural mortality rate.

The sixth and final tier applies to stocks for which the only reliable information available is catch history. In such cases, the OFL would be set as the average catch from 1978 through 1995, unless an alternative value is established by the SSC on the basis of the best available scientific information, and ABC would be set lower than or equal to 75 percent of that OFL.

Under the current definitions, the OFL is set equal to the average catch between 1977 and the current year in the absence of reliable biological information. As long as catch never exceeds that OFL, this forces the OFL to decrease over time. The SSC expressed concern that OFL should instead remain constant over time when catch history is the only information available. By setting terminal years at 1978 and 1995, the proposed definition would create a constant OFL for applicable fisheries.

Catch history bears no relationship to biomass levels. However, in the absence of reliable biological information that would provide indicators about stock levels, catch history offers the only alternative, quantifiable information by which to manage a fishery. Tier (6) specifically provides for management of a fishery for which scientists have no other reliable and quantifiable information to indicate stock levels. In developing this final tier, the Council wanted to allow for the possibility that other information may become available that, while insufficient to establish OFL by a higher tier, would provide a more accurate assessment of stock levels. In this event, tier (6) allows for such information to supersede catch history in determining ABC and OFLs.

Under the proposed revision, the SSC has responsibility for determining the reliability of information by using either objective or subjective criteria. The formal review process for a proposed definition of overfishing requires, prior to NMFS approval, certification by the Director, Alaska Fisheries Science Center, NMFS (Science Director), that the proposed definition complies with guidelines provided at 50 CFR 600.310(c)(5). These guidelines provide that an overfishing definition must: (1) Have sufficient scientific merit, (2) is likely to protect the stock from closely approaching or reaching an overfished status, (3) provides a basis for objective measurement of the status of the stock against the definition, and (4) is operationally feasible. The Science Director has certified that this proposed definition of overfishing complies with each factor of the guidelines, based on the following rationale.

Scientific Merit

The scientific merit of Amendments 44/44 can be established on the basis of both internal and external evidence. Internally, evidence is provided by the extremely thorough scientific analysis of the new definition contained in the EA and the economic analysis, both in the main text and in the appendices. In addition, these documents cite examples from the scientific literature which support the new definition. External evidence comes in the form of peer review from the scientific community. Because the existing definitions of ABC and the OFL have been in place for several years, there has been ample opportunity for scientific review thereof. For example, the existing definitions have been reviewed by the Council's BSAI and GOA Plan Teams, the Council's SSC, and NMFS' ODRP. Each of these bodies consists at least in part of scientific experts in the field of marine fish stock assessment. The ODRP in particular was constituted explicitly for the purpose of providing expert scientific review of overfishing definitions developed pursuant to the guidelines contained in 50 CFR § 600.305. The definitional changes contained in Amendment 44/44 are in direct response to requests made by the SSC and ODRP. These changes have been reviewed and are supported by the BSAI and GOA Plan Teams and the SSC. In addition, the material presented in Appendix B of the EA and related economic analysis has been presented in three different international scientific symposia, in the context of which it has been subject to the review of a large number of the world's foremost scientific authorities in this area of research.

Effective Action

One of the important innovations of the new definition is that it institutes a mandatory buffer between ABC and OFL in all cases (under the existing definition, ABC and OFL can be the same, meaning that there is nothing to prevent the stock from being fished right up to the OFL). The new definition follows the ODRP's suggestion that management targets (ABC in this case) be distinguished clearly from management thresholds (OFL). Even if catches caused ABC to be exceeded by a small amount, overfishing would not likely result.

Objective Measurement

The new definition is integrated into the management system in an explicit, objective, and measurable way. Each year, stock assessments are conducted on every species or assemblage managed under the BSAI and GOA groundfish FMPs. Each of these assessments produces quantitative values for the catches corresponding to ABC and OFL. Following review and possible modification by the Plan Teams and SSC, these are approved by the Council, which then adjusts ABC (downward) as appropriate in order to arrive at the total allowable catch. Rigorous in-season monitoring of the fishery produces a real-time estimate of the commercial catch, which is continually compared against the harvest specifications to determine whether the fishery can remain open. Because the harvest specifications and the commercial catch are measured in the same units, the objective basis for comparison of the two is clear.

Operational Feasibility

As noted above, the new definition is tightly integrated into the existing management system, as is the existing definition. Insofar as the existing definition is operationally feasible, having successfully prevented overfishing of the groundfish resources since its implementation in 1990, and given that the new definition only improves on the existing one (e.g., through imposition of a buffer between ABC and OFL to reduce the level of danger implied by a harvest overrun), it is straightforward to predict that the new definition will be operationally feasible as well.

NMFS will consider the public comments received during the comment period in determining whether to approve the proposed amendments. No regulatory changes are necessary to implement these FMP amendments.

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

Dated: October 11, 1996.

Gary Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 96–26633 Filed 10–11–96; 3:07 pm]

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