

the GOA (73 FR 10562, February 27, 2008).

NMFS closed the directed fishery for pollock in Statistical Area 610 of the GOA under § 679.20(d)(1)(iii) on January 22, 2008 (73 FR 4493, January 25, 2008). The fishery reopened on March 3, 2008 for 24 hours (73 FR 12031, March 6, 2008).

As of March 4, 2008, NMFS has determined that approximately 3,050 mt of pollock remain in the directed fishing allowance in Statistical Area 610 of the GOA. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C) and (a)(2)(iii)(D), and to fully utilize the A season allowance of the 2008 TAC of pollock in Statistical Area 610, NMFS is terminating the previous closure and is reopening directed fishing for pollock in Statistical Area 610 of the GOA, effective 1200 hrs, A.l.t., March 7, 2008.

#### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) and 50 CFR 679.25(c)(1)(ii) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of pollock in Statistical Area 610 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 4, 2008.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Without this inseason adjustment, NMFS could not allow the fishery for pollock in Statistical Area 610 of the GOA to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until March 21, 2008.

This action is required by § 679.20 and § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: March 6, 2008.

**Emily H. Menashes**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. 08-1001 Filed 3-6-08; 2:55 pm]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 070816465-8008-02]

RIN 0648-AV96

#### Fisheries of the Exclusive Economic Zone Off Alaska; Prohibited Species Bycatch Management

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule to repeal regulations providing for a groundfish vessel incentive program (VIP) that was designed to reduce the rate at which Pacific halibut and red king crab are taken as incidental catch in Alaska groundfish trawl fisheries. The VIP has not performed as intended because of the costs associated with implementation and enforcement, the relatively small number of vessels covered by the regulation, and the implementation of more effective bycatch reduction programs. This action is necessary to reduce a regulatory burden on the industry and to reduce the administrative costs necessary to support a program no longer considered an effective means to reduce bycatch rates.

**DATES:** Effective April 10, 2008.

**ADDRESSES:** Copies of the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this action are available on the Alaska Region Web site at <http://www.fakr.noaa.gov>. Printed copies can be obtained from the Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Ellen Sebastian.

**FOR FURTHER INFORMATION CONTACT:** Ben Muse, 907-586-7228, or [ben.muse@noaa.gov](mailto:ben.muse@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

NMFS manages the U.S. groundfish fisheries of the exclusive economic zone off Alaska under the Fishery

Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). The North Pacific Fishery Management Council (Council) prepared the FMPs pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations implementing the FMPs appear at 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

Fisheries off Alaska targeting groundfish incidentally catch other species. Some of these non-groundfish species are themselves the objects of valuable targeted fisheries and retention of these species is prohibited in the groundfish fishery. These prohibited species include Pacific halibut, Chinook and "other" salmon, several crab species, and herring. Measures to restrict the catch of these species have been incorporated into the FMPs and regulations at 50 CFR part 679. Among these measures are prohibited species catch (PSC) limits that restrict the amount of a prohibited species that may be taken incidentally in a groundfish fishery. Groundfish fisheries are routinely closed in all or part of a management area when a PSC limit is reached. These closures are expensive for industry because they mean that valuable groundfish are left unharvested.

Section 3.6.4 of the Gulf of Alaska (GOA) FMP authorizes regulations to reduce halibut bycatch rates in fisheries subject to halibut PSC limits to increase the opportunity to fish groundfish total allowable catches (TACs) before established PSC limits are reached.

Section 3.6.4 of the Bering Sea and Aleutian Island (BSAI) FMP allows for implementation of regulatory measures to provide incentives to individual vessels to reduce bycatch rates of prohibited species for which PSC limits are established. While the GOA provisions are limited to halibut, the BSAI provisions authorize the creation of incentive programs to reduce the bycatch of red king crab, as well as halibut.

#### Vessel Incentive Program

Regulations at 50 CFR 679.21(f) implement a vessel incentive program (VIP) under the authority of the FMPs. The program creates incentives for individual groundfish trawl operators to reduce their incidental catch rates of halibut and red king crab by imposing penalties on operators whose incidental catch rates exceed specified standards. Under the program, the Alaska Regional

Administrator is required to publish fishery-specific bycatch rate standards for halibut in the GOA and BSAI, and red king crab in the BSAI two times a year. Observer data on the catch composition of harvests in subject fisheries is statistically analyzed. Vessels that exceed the published bycatch rate standards are subject to prosecution. The program became effective in mid-1991.

The VIP imposes potential costs on fishermen with high observed prohibited species bycatch rates. This has created an incentive for fishermen to reduce these observed rates. They can do this by changing the patterns of their fishing behavior. They can also do this by manipulating the observer reported rates. Anecdotal evidence from knowledgeable persons in the Observer Program and NOAA Enforcement suggests that the incidence of these activities may be high. Pre-sorting may affect the accuracy of observer reports of halibut and red king crab bycatch.

Effective enforcement of the VIP imposes significant costs on the Observer Program and NMFS. Resources for the management of the program and enforcement of the rule have to be taken from other high priority management and enforcement responsibilities. It also is not clear from experience with the program that it has had, or will have, a significant deterrent effect or has led to the harvest of significant additional amounts of target groundfish.

Furthermore, the establishment of fishery cooperatives and the stringent catch monitoring provisions implemented by NMFS to monitor cooperative-specific allocations of groundfish and prohibited species, including halibut and red king crab, are additional means to reduce bycatch. Cooperative members receive a joint allocation of PSC, and this creates incentives and capabilities for cooperatives to control individual operation PSC bycatch rates to maximize the value of the cooperative's PSC allocation.

In June 2003 the Council initiated an amendment to repeal the VIP given concerns about its effectiveness, its potential to absorb resources that could be utilized by other, important management and enforcement functions, and the incentive created to pre-sort bycatch, as well as developments in other bycatch reduction programs that have occurred since 1991. In October 2003, the Council reviewed a NMFS discussion paper and made a preliminary identification of alternatives for analysis. In December 2003 the Council reiterated its approval of the alternatives it had adopted in

October and scheduled initial review of the draft for its April 2004 meeting.

In October 2006 the Council initially reviewed the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) and (a) identified repeal of the VIP regulations, without modification of authorizing language in the FMPs, as its preferred alternative; (b) approved release of the EA/RIR/IRFA for public review; and (c) scheduled final action for its December 2006 meeting in Anchorage, Alaska. In December 2006 the Council took final action, adopting the preferred alternative it had identified in October 2006.

The proposed rule for the repeal of the VIP regulations was published in the **Federal Register** on November 30, 2007 (72 FR 67692). The public comment period ended on December 31, 2007. No comments were received.

#### Final Regulatory Changes

This action repeals 50 CFR 679.21(f), which imposes the requirement for compliance with the VIP and describes procedures for assignment of vessels to fisheries, notification of bycatch rate standards, analysis of the factors on which bycatch rate standards are to be based, public comment, publication of notification in the **Federal Register**, use of observer data to calculate rates, calculation of individual vessel rates, and determining whether a vessel is in compliance with bycatch rate standards.

This action also would repeal 50 CFR 679.7(a)(5) which specifically prohibits vessels from exceeding a bycatch rate standard specified under 50 CFR 679.21(f).

This action does not modify the BSAI and GOA FMPs, which contain language authorizing the Council to develop a new VIP if it chooses.

Regulations at 50 CFR 679.50(k) authorize NMFS Alaska Region to publish individual vessel bycatch rates for specified prohibited species. Nothing in this final rule would affect this authority, and the Alaska Region will continue to publish these bycatch rates on its Web site.

#### Changes from Proposed Rule

This rule does not change the authority citation for 50 CFR part 679. The proposed rule inadvertently said that the authority citation was revised, although it did not identify any revisions. In the final rule, the phrase "is revised" has been replaced with the words "continues to read."

#### Classification

The Administrator, Alaska Region, NMFS, determined that this final rule is necessary for the conservation and management of the groundfish fisheries, and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared a FRFA as required by section 604 of the Regulatory Flexibility Act. The FRFA describes the economic impact this final rule, if adopted, would have on small entities. A copy of the FRFA is available from NMFS (see **ADDRESSES**). A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of the preamble and in the **SUMMARY** section of the preamble. A summary of the remainder of the analysis follows.

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) to accompany the proposed rule. The proposed rule described the IRFA and explained to the public how to obtain a copy. No comments were received on the IRFA or the economic effects of the proposed rule.

In 2005 a total of 78 catcher vessels and 3 catcher/processor vessels reported gross annual receipts of \$4.0 million or less from fishing groundfish and other species using trawl gear in the GOA, and can therefore be characterized as small entities under the Small Business Administration (SBA) size standards. Between 2002 and 2005, the total number of trawl vessels generating \$4.0 million or less in revenue has ranged from a low of 81 in 2004 and 2005, to a high of 112 in 2002. Average gross revenue (from all fishing sources in Alaska) generated by these vessels was approximately \$840,000 in 2005, which was an increase from \$730,000 in 2004 and \$590,000 in 2002. Thus, the final alternatives may directly regulate between 81 and 112 small entities in the GOA. There has been a general decline in the number of vessels that qualify as small entities in the GOA, so the most recent (2005) estimate of 81 vessels was used for the analysis. This estimate is likely an overestimate of the number of small entities actually directly regulated by this action since it does not account for affiliations among entities. Data necessary to fully assess such linkages are not currently available.

The BSAI has a larger number of trawl vessels that are considered small entities than the GOA. In 2005, 99 catcher vessels and 2 catcher/processor vessels reported gross annual receipts of

\$4.0 million or less, from all their fishery production off Alaska. Between 2002 and 2005, the total number of vessels categorized as small entities in these BSAI fisheries has ranged from a low of 101 in 2005 to a high of 123 in 2002. Between 2002 and 2003, the average gross revenue (from all Alaskan fishing sources) generated by these vessels has ranged from a low of \$1.20 million in 2003 to a high of \$1.60 million in 2005. Thus, the final alternatives may directly regulate, on average, 113 trawl vessels that are considered small entities. This estimate is likely an overestimate of the number of small entities actually directly regulated by this action, since it does not account for affiliations among entities. As is the case for the GOA, data necessary to fully assess such linkages are not currently available.

Two alternatives to the preferred one were examined. Alternative 1 was the "No Action" alternative. Under this alternative the VIP would have remained in place. This alternative would have involved a renewed commitment to investigating violations, and prosecuting violators. As noted earlier, the Council and NMFS have had concerns about the effectiveness of this program and its potential to mislead estimates of PSC incidental catches. Moreover, cooperatives offer new methods to control PSC bycatch rates. Alternative 2 would retain the program, but would reduce the frequency with which PSC rates are published. The analysis of Alternatives 1 and 2 is the same, except that Alternative 2 has somewhat lower administrative costs because PSC rates are not published as often. Alternative 3, which would repeal the VIP provisions of regulation, was

chosen as the final alternative because it was the only alternative that meets the objectives of this action.

Alternatives 1 and 2 would renew the VIP. If the VIP were effective, it could lead to reduced bycatch rates and the harvest of larger proportions of TACs in certain trawl fisheries. However, as noted, there are important concerns about the program's potential for successful reduction in bycatch rates. As a practical matter, 100 percent observer coverage is required to make a case against a trawl operator for exceeding the PSC rate. This level of observer coverage is available only on trawl vessels greater than or equal to 125 feet LOA. Enforcement efforts would be principally directed against this class of vessels. Small entities, as defined by the Small Business Administration (SBA), could exist among both vessels greater than or equal to 125 feet length overall (LOA), and less than or equal to 125 feet LOA. Alternative 3 would best meet the objective of this action and avoid the potential costs that might be imposed on directly regulated small entities by enforcement activities.

This regulation would not impose new recordkeeping and reporting requirements on the regulated small entities.

#### Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity

compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules.

The preamble to this final rule serves as the small entity compliance guide. This action does not require any additional compliance from small entities that is not described in the preamble. Copies of this final rule are available from NMFS (see **ADDRESSES**) and at the following Web site: <http://www.fakr.noaa.gov>.

#### List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: March 6, 2008.

#### John Oliver,

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

■ For the reasons set out in the preamble, NMFS amends 50 CFR part 679 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.*; 3631 *et seq.*; Pub. L. 108–447.

#### **§ 679.7 [Amended]**

■ 2. In § 679.7, remove and reserve paragraph (a)(5).

#### **§ 679.21 [Amended]**

■ 3. In § 679.21, remove and reserve paragraph (f).

[FR Doc. E8–4810 Filed 3–10–08; 8:45 am]

**BILLING CODE 3510–22–S**