

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 660**

[Docket No. 071106669-7824-02]

RIN 0648-AU26

Fisheries Off West Coast States; Coastal Pelagic Species Fishery; Amendment 12 to the Coastal Pelagic Species Fishery Management Plan

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement Amendment 12 to the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) which would provide protection for all species of krill off the West Coast (i.e., California, Oregon and Washington). This rule would prohibit the harvest of all species of krill by any fishing vessel operating in the Exclusive Economic Zone (EEZ) off the West Coast, and would also deny the use of exempted fishing permits to allow krill fishing.

DATES: Comments must be received by June 19, 2008.

ADDRESSES: You may submit comments to this proposed rule identified by "I.D. 012607A-PR" by any of the following methods:

- Federal e-Rulemaking portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail: 0648-AU26.SWR@noaa.gov. Include the I.D. number in the subject line of the message.
- Mail: Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802.
- Fax: (562)980-4047

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of Amendment 12, which includes an Environmental Assessment/

Initial Regulatory Flexibility Analysis/Regulatory Impact Review, are available from Donald O. McIssac, Executive Director, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220-1384.

FOR FURTHER INFORMATION CONTACT:

Joshua B. Lindsay, Sustainable Fisheries Division, NMFS, at 562-980-4034 or Mike Burner, Pacific Fishery Management Council, at 503-820-2280.

SUPPLEMENTARY INFORMATION: The CPS fishery in the EEZ off the West Coast is managed under the CPS FMP, which was developed by the Council pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The CPS FMP was approved by the Secretary of Commerce and was implemented by regulations that can be found at 50 CFR part 660, subpart I.

Amendment 12 would add all species of krill as a management unit species under the CPS FMP and would place krill under a newly established "prohibited harvest species" category. This new category would differ from the existing "prohibited species" definition in the FMP because "prohibited harvest species" may not be taken by any fishery or gear type in the U.S. EEZ. In contrast, "prohibited species" may not be taken and retained incidentally by CPS fishery participants, but are legally harvested under provisions in Federal regulations implementing other Pacific Fishery Management Council (Council) FMPs.

As the principal food source for many fish and non-fish species, krill are a critical component of the marine ecosystem. Off the West Coast krill are important prey for a variety of fish species, including many Council managed stocks. Krill are also a principal food source for many species of marine mammals and seabirds; some of which are listed as threatened or endangered and warrant special efforts for protection and recovery. Protecting krill will likely minimize adverse impacts on these fish stocks and living marine resources and in turn, help to maintain ecological relationships and ensure the long-term health and productivity of the West Coast ecosystem. Amendment 12 is an attempt to incorporate ecosystem conservation principles into fishery management programs by protecting, to the extent practicable, krill resources, which are an integral part of that ecosystem.

At this time, there are no Federal regulations that limit fishing for krill in the EEZ. While a krill fishery off the U.S. West Coast does not currently exist, NMFS is concerned such a fishery could

develop and have an adverse impact on other West Coast fish stocks, marine mammals, and the ecosystem generally.

The states of Washington, Oregon, and California prohibit their vessels from fishing for krill and prohibit landings of krill into their respective ports. However, these prohibitions would not prevent a fishery from developing in the West Coast EEZ by vessels from outside of the region, as long as landings were not made into a West Coast port. A market for krill currently exists in Washington and Oregon, where salmon farms use krill products as a supplemental feed. Federal (EEZ) waters which lie outside of the state prohibitions on krill harvest, may in the future be used for fish farming. These operations will likely demand krill as feed stock, and a fishery could develop around the needs of these aquaculture facilities. Local krill would be an obvious food source, which may significantly increase the likelihood of a krill fishery developing within West Coast EEZ waters.

NMFS is concerned about the impacts of a krill fishery based in part on information regarding large-scale krill fishing methods and the impacts of existing krill fisheries in other areas. Krill concentrations attract marine mammal, bird, and fish predators, and due to the trawl-type gear used to catch krill, bycatch and/or disturbance of these predators could occur. In the Antarctic krill fishery, there is known bycatch of fur seals as well as various sea birds. In British Columbia a krill fishery began in 1970 and in 1976 quotas were established due to concerns for harvesting a forage species upon which salmon and other commercially important finfish depend. An annual catch was set at 500 tons with an open season from November to March to minimize the incidental catch of larval and juvenile fish.

In the Antarctic, although krill catches are currently well below catch limits, some have questioned whether there is a risk that localized, excessive fishing effort might have an impact on land-based predators that depend on krill for food. This could be of particular concern during the breeding season considering the considerable overlap between the krill fishery and breeding areas for penguins and seals in the South Atlantic Ocean. Some believe that demand for krill has begun to exceed supply in areas of the southwest Atlantic and as a result penguins and

albatrosses might be having difficulties in rearing offspring successfully on South Georgia due to this competition for resources.

NMFS' examination of this action began in September 2004, when managers of the Cordell Bank, Monterey Bay, and Gulf of the Farallones National Marine Sanctuaries (Sanctuaries) requested that the Council consider prohibiting krill fishing in the federal waters portion of the three sanctuaries. The Council moved forward with the request recognizing the need for a more substantive analysis of the krill resource - including an analysis of possible controls that would meet the objectives of the requested action. The analysis also considered the total distribution and importance of krill throughout waters off the West Coast EEZ, not just in sanctuary waters.

At the November 2004 Council meeting, NMFS presented the Council with advice on alternative approaches by which krill fishery controls could be implemented. NMFS subsequently prepared an Alternatives Analysis that presented information on the various species of krill that occur off the West Coast, their productivity (as well as the uncertainty of the information available), and the relationship between krill and other fish and non-fish species. The analysis also provided information on potential mechanisms for achieving control over krill fishing in the EEZ as well as evaluated different conservation and management measures that could be applied if krill fishing were to be permitted.

The Council discussed the content of the Alternatives Analysis at its October 31, 2005, meeting and after receiving recommendations from its advisory groups and the public, directed that a draft CPS FMP amendment be prepared presenting a preliminary preferred alternative for public review and comment. Once completed, the document was circulated for public review and comment. Following public testimony at its March 2006 meeting the Council adopted Amendment 12 to the CPS FMP.

The three alternatives that were analyzed for this amendment are as follows:

Alternative 1: No Action

Every assessment of potential management strategies by the Council for consideration of implementation by Federal regulation includes a "no action" alternative, as required by National Environmental Policy Act (NEPA) implementing regulations and against which other alternatives are compared. Under this alternative, NMFS

would not take action at this time. This would mean that the states' prohibitions on landing krill by their vessels would remain in place (see section 3.5 of Environmental Assessment (EA)), but that a fishery by vessels from outside of the region could develop in the EEZ if landings were not made into a West Coast port. If a krill fishery developed, the Council would have an opportunity to develop conservation and management measures in the future.

Alternative 2: Manage Krill Fishing Through Amendment of the CPS FMP (Proposed Action)

Under this alternative, krill (all species) would be added to the management unit species of the CPS FMP. Further, a new category of management unit species - "prohibited harvest" - would be established under the FMP. Krill would be placed in that category. This means that optimum yield (OY) for krill would be zero, and the target, harvest and transshipment of krill would be prohibited. Also, exempted fishing permits (EFPs) would not be issued under the EFP procedures of the CPS FMP to allow individuals to harvest krill as an exception to the prohibition of harvest. These actions would fully achieve the objectives of the amendment to the extent practicable, but would not account for environmental conditions and the responses of krill and other resources to changes in environmental conditions. NMFS recognizes that *de minimis* or trace amounts of krill may be retained by fishermen while targeting other species; such inadvertent action is not intended to be the subject of this prohibition.

Alternative 3: Prohibit Krill Fishing but Establish a Process for Allowing Future Fishing

This alternative would add krill to the management unit species group contained within the CPS FMP as well as initially prohibit fishing for krill in the West Coast EEZ (i.e., OY would have been zero), but a procedure would be established by which krill fishing in the future could be permitted (subject to conditions). That procedure would involve such steps as completing the modeling described in section 3.1.3.5 of the EA, establishing a firm Maximum Sustainable Yield estimate(s), prohibiting the direct harvest of krill but possibly setting an initial low harvest allowance for EFPs with a complete monitoring and evaluation program.

NMFS has considered the potential for development of a krill fishery and the potentially drastic effects a fishery could have on krill resources and on the

fish and other species, such as birds and mammals, that are dependent on, or that are sensitive to, the abundance and availability of krill. NMFS believes it is critical to take preventive action at this time to ensure that a krill fishery will not develop that could potentially harm krill stocks, and in turn harm other fish and non-fish stocks. Therefore, NMFS proposes to Alternative 2 prohibit krill fishing in the EEZ off the West Coast.

Classification

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Act, I have determined that this proposed rule is consistent with the CPS FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

The Council and NMFS has prepared an EA for this amendment that discusses the impact on the environment as a result of this rule. A copy of the EA is available from the Council or NMFS (see **ADDRESSES**).

This proposed rule has been determined to be significant for the purposes of Executive Order 12866.

There are no reporting, recordkeeping, or other compliance requirements of the proposed rule.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

A fishing vessel is considered a "small" business by the U.S. Small Business Administration (SBA) if its annual receipts are not in excess of \$4.0 million. Since all of the vessels fishing for CPS have annual receipts below \$4.0 million they would all be considered small businesses under the SBA standards. Therefore this rule will not create disproportionate costs between small and large vessels/businesses.

No small entities would be directly affected if this action were taken. There are currently no entities engaged in fishing for krill off the West Coast. It is possible that, in the absence of this action, a krill fishery could develop, but it is not possible to estimate the number of entities (large or small) that might engage in such fishing in the future. No criteria for such an evaluation were used as no entities (large or small) will be directly affected by the proposed action. No entities now fish for krill so no entities would be disproportionately affected or suffer reductions in profits. No entities now fish for krill so a "substantial number" of small entities would not be affected.

NMFS has determined that there will not be a significant economic impact to a substantial number of small entities.

As a result, a regulatory flexibility analysis is not required.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

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

Dated: May 14, 2008.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 660 as follows:

PART 660—FISHERIES OFF WEST COAST STATES

1. The authority citation for part 660 continues to read as follows:

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

2. In § 660.502 the definitions of “Krill” and “Prohibited harvest species” are added in alphabetical order to read as follows:

§ 660.502 Definitions.

* * * * *

Krill means all species of euphausiids that occur in the EEZ off the West Coast.

* * * * *

Prohibited harvest species means all krill species in the EEZ off the West Coast.

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3. In § 660.505, add paragraph (o) as follows:

§ 660.505 Prohibitions.

* * * * *

(o) Fish for, target, harvest or land a prohibited harvest species in any fishery within the EEZ off the West Coast.

[FR Doc. E8-11253 Filed 5-19-08; 8:45 am]

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