

(iii) For a vessel fishery, vessel name, length, and U.S. Coast Guard documentation number or state vessel registration number, and if applicable, state commercial vessel license number and for a nonvessel fishery, a description of the gear and state commercial license number, if applicable.

(iv) A list of all Category I and II fisheries in which the fisher may engage during next calendar year;

(v) The approximate time, duration, and location of each such fishery operation, and the general type and nature of use of the fishing gear and techniques used; and

(vi) A certification signed and dated by the owner of an authorized representative of the owner as follows: "I hereby certify that I am responsible for the vessel or gear described in this registration, that I have reviewed all information contained in this registration, and that the information is true and complete to the best of my knowledge."

(3) If a notice is published in the Federal Register announcing an integrated Authorization Certificate/fishery management program, the owner of a vessel, or for nonvessel fishery, the owner of the gear may register by following the directions provided in that notice. In some cases, an integrated Authorization Certificate/fishery management program may automatically register participants in a fishery for Authorization Certificates. If a person receives a registration to which he or she is not entitled or if the registration contains incorrect, inaccurate or incomplete information, the person shall notify NMFS within 10 days following receipt. A registration must be signed and dated by the owner or an authorized representative of the owner unless it contains incorrect, inaccurate or incomplete information. If for some reason a person who expects to receive automatic registration does not receive that registration within the time specified in the notice announcing the integrated Authorization Certificate/fishery management program, the person shall notify NMFS as directed in the notice or may apply for registration by submitting the information required under paragraph (b)(1)(i) through (vi).

\* \* \* \* \*

(e) *Issuance.* (1) NMFS will issue an Authorization Certificate and annual decal to an owner or a representative of the owner who submits a completed registration and the required fee, or is registered under an integrated Authorization Certificate/fishery management program and has paid any

required fee, provided that the registrant has complied with the requirements of this section and §§ 229.6 and 229.7.

(2) NMFS will renew an Authorization Certificate and issue a new annual decal to an owner or a representative of the owner who submits updated registration or renewal registration which includes a statement (yes/no) whether any marine mammals were killed or injured during the current or previous calendar year and the required fee, or who is registered under an integrated Authorization Certificate/fishery management program and has paid any required fee, provided that the registrant has complied with the requirements of this section and §§ 229.6 and 229.7.

(3) If a person receives an Authorization Certificate or an annual decal to which he or she is not entitled, the person shall notify NMFS within 10 days following receipt. In order for a Authorization Certificate to be valid, the certification must be signed and dated by the owner or an authorized representative of the owner.

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### 50 CFR Part 679

[Docket No. 960703187-6187-01; I.D. 062096B]

RIN 0648-A196

#### Fisheries of the Exclusive Economic Zone off Alaska; Allow Longline Pot Gear

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS issues a proposed rule to allow the use of longline pot gear in the directed sablefish fishery in the Bering Sea. Sablefish hook-and-line fishermen in the Bering Sea have faced increasing depredation of hooked sablefish by killer whales. The use of longline pot gear would effectively prevent such depredation. This action is necessary to protect Bering Sea sablefish harvests and is intended to resolve a conflict between fishermen and a species protected under the Marine Mammal Protection Act of 1972 (MMPA).

**DATES:** Comments must be received by August 15, 1996.

**ADDRESSES:** Comments must be sent to Ronald J. Berg, Chief, Fisheries

Management Division, Alaska Region, NMFS, Room 453, 709 W. 9th Street, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802, Attention: Lori J. Gravel.

Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) for this action may be obtained from the North Pacific Fishery Management Council, 605 West 4th Ave., Suite 306, Anchorage, AK 99510-2252.

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

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) according to the Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands Area (FMP). The FMP was prepared by the North Pacific Fishery Management Council (Council) and approved by NMFS under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). This FMP, implemented by regulations at 50 CFR parts 600, and 679, provides for changes to gear restrictions by regulatory amendment without amendment to the FMP. The regulations pertaining to this action, at § 679.24, specify gear types that may legally be employed to harvest sablefish in the Bering Sea. Killer whales (*Orcinus orca*) are protected under the MMPA, which prohibits harassment of marine mammals and authorizes the Secretary of Commerce to consult with and assist regional fishery management councils to reduce takings of marine mammals incidental to commercial fishing operations.

In September 1995, commercial fishing industry representatives reported to the Council that the annual Bering Sea sablefish quota had been underharvested due in part to interactions with killer whales. While fishermen retrieve their hook-and-line gear when fishing for sablefish, killer whales frequently pick sablefish off the hooks. Sablefish consumed by killer whales in this manner represent undocumented fishing mortality. Even though the sablefish quota may be underharvested by fishermen, overall fishing mortality could actually be higher than the specified quota, resulting in overharvests. Although NMFS is not able to quantify the amount of killer whale-caused fishing mortality, such mortality is a conservation concern to the extent that the amount of overharvests introduces

uncertainty in management of the fishery.

Attempts to deter the whales by various non-lethal means have proven unsuccessful. Research referenced in the EA/RIR/IRFA for this action concluded that the only viable method for reducing killer whale interactions with this fishery is to harvest with longline pot gear instead of hook-and-line gear, and thus deny killer whales the opportunity to take fish being hauled to the surface.

Currently, regulations at § 679.24(b)(1)(iii) prohibit longline pot gear in the Bering Sea to prevent the pre-emption of fishing grounds by one gear-type. Gear conflicts and the pre-emption of fishing grounds by a single gear-type arise from the use of diverse gear in the same area over the same period of time. The nature of longline pot gear and strategies used in fishing longline pots deter fishermen from deploying hook-and-line and trawl gear on fishing grounds where longline pot gear is set. This effectively pre-empts common fishing grounds. For this reason, the Council chose in 1991 to prohibit the use of longline pot gear in the Bering Sea groundfish fisheries. Regulations prohibiting longline pot gear were promulgated on August 21, 1992 (57 FR 37906).

In 1995, the Individual Fishing Quota (IFQ) Program for fixed gear Pacific halibut and sablefish fisheries extended sablefish seasons in Federal waters off Alaska to a period of 8 months. By allowing the fleet to spread its operations over time, the IFQ Program greatly reduced the possibility of congestion and pre-emption of common fishing grounds. The reintroduction of longline pot gear into the Bering Sea fisheries would pose less of a grounds pre-emption threat now compared to 1992 when longline pots were prohibited. Authorizing the use of longline pot gear, with limitations, in the Bering Sea directed sablefish fishery would allow fishermen to use this gear and reduce interactions with killer whales.

In recommending this action, the Council expressed concern that, despite the decreased likelihood of grounds pre-emption, fishermen using traditional hook-and-line gear in relatively small boats may be pre-empted from grounds by fishermen in larger boats using longline pot gear. Therefore, this action would establish a Bering Sea closure to longline pot gear from June 1 through June 30. Lifting the prohibition on longline pot gear for sablefish fisheries would reduce interactions with killer whales, while the month-long closure would continue to provide a period for conducting other fisheries without the potential for gear conflicts with longline pot gear.

#### Classification

This proposed rule has been determined to be not significant for 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 this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The rule would reduce a restriction by allowing fishermen to use longline pot gear to harvest sablefish. At the present time, fishermen may use only hook-and-line gear, a gear subject to depredation of harvests by killer whales. While a gear switch would have direct costs, a switch would be voluntary and presumably would only be made if the fisherman judge that the costs associated with changing gear would be offset by the greater landed weight of sablefish possible in the absence of killer whale depredation.

The Director, Alaska Region, NMFS, has determined that fishing activities conducted under this rule would have no adverse impacts on marine mammals. The express purpose of this rule is to reduce the interactions with commercial fisheries in the Bering Sea and resident killer whale populations.

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

Fisheries, Reporting and recordkeeping requirements

Dated: July 9, 1996.

Nancy Foster, Ph.D.,

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

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

#### **PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA**

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

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

2. In § 679.24, paragraphs (b)(1)(iii) and (c)(4) are revised to read as follows:

#### **§ 679.24 Gear limitations.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(iii) *Longline pot gear.* Any person using longline pot gear must treat any catch of groundfish as a prohibited species, except:

(A) In the Aleutian Islands subarea.

(B) While directed fishing for sablefish in the Bering Sea, except as provided in paragraph (c)(4)(ii) of this section.

\* \* \* \* \*

(c) \* \* \*

(4) *BSAI.* (i) Operators of vessels using gear types other than hook-and-line, pot, or trawl gear in the BSAI must treat sablefish as a prohibited species as provided by § 679.21(b).

(ii) Longline pot gear is prohibited in directed fishing for sablefish from 0001 hrs, A.l.t., on June 1 until 1200 hrs, A.l.t., on June 30.

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