

that seriously and directly affects the fitness of observers.

(iii) *Issuance of initial administrative determination.* Upon determination that suspension or decertification is warranted under paragraph (f)(3)(ii) of this section, the suspension/decertification official will issue a written IAD to the observer via certified mail at the observer's most current address provided to NMFS. The IAD will identify whether a certification is suspended or revoked and will identify the specific reasons for the action taken. If the IAD issues a suspension for an observer certification, the terms of the suspension will be specified. Suspension or decertification is effective immediately as of the date of issuance, unless the suspension/decertification official notes a compelling reason for maintaining certification for a specified period and under specified conditions.

(iv) *Appeals.* A certified observer who receives an IAD that suspends or revokes his or her observer certification may appeal pursuant to paragraph (f)(4) of this section.

(4) *Appeals.* (i) Decisions on appeals of initial administrative decisions denying certification to, or suspending, or decertifying, an observer, will be made by the Regional Administrator (or designated official).

(ii) Appeals decisions shall be in writing and shall state the reasons therefor.

(iii) An appeal must be filed with the Regional Administrator within 30 days of the initial administrative decision denying, suspending, or revoking the observer's certification.

(iv) The appeal must be in writing, and must allege facts or circumstances to show why the certification should be granted, or should not be suspended or revoked, under the criteria in this section.

(v) Absent good cause for further delay, the Regional Administrator (or designated official) will issue a written decision on the appeal within 45 days of receipt of the appeal. The Regional Administrator's decision is the final administrative decision of the Department as of the date of the decision.

(g) \* \* \*

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(iii) *Minimum work space aboard at-sea processing vessels.* The observer must have a working area of 4.5 square meters, including the observer's sampling table, for sampling and storage of fish to be sampled. The observer must be able to stand upright and have a work area at least 0.9 m deep in the area in front of the table and scale.

(iv) *Table aboard at-sea processing vessels.* The observer sampling station must include a table at least 0.6 m deep, 1.2 m wide and 0.9 m high and no more than 1.1 m high. The entire surface area of the table must be available for use by the observer. Any area for the observer sampling scale is in addition to the minimum space requirements for the table. The observer's sampling table must be secured to the floor or wall.

(v) *Diverter board aboard at-sea processing vessels.* The conveyor belt conveying unsorted catch must have a removable board (diverter board) to allow all fish to be diverted from the belt directly into the observer's sampling baskets. The diverter board must be located downstream of the scale used to weigh total catch. At least 1 m of accessible belt space, located downstream of the scale used to weigh total catch, must be available for the observer's use when sampling.

(vi) *Other requirement for at-sea processing vessels.* The sampling station must be in a well-drained area that includes floor grating (or other material that prevents slipping), lighting adequate for day or night sampling, and a hose that supplies fresh or sea water to the observer.

(vii) *Observer sampling scale.* The observer sample station must include a NMFS-approved platform scale (pursuant to requirements at 50 CFR 679.28(d)(5)) with a capacity of at least 50 kg located within 1 m of the observer's sampling table. The scale must be mounted so that the weighing surface is no more than 0.7 m above the floor.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 040429134-4135-01; I.D. 052704B]

#### Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Actions #2 and #3 - Adjustments of the Commercial Fishery from the U.S.-Canada Border to Cape Falcon, Oregon

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

**ACTION:** Rescission of automatic closures; request for comments.

**SUMMARY:** NMFS announces that the commercial fishery in the area from the U.S.-Canada Border to Cape Falcon, OR, which was closed on May 5, was modified to reopen May 15 and close at midnight on May 18, 2004, with the provision that no vessel may possess, land, or deliver more than 125 chinook for the entire 4 day open period (Inseason Action #2); and to reopen May 24 through midnight on May 26, 2004, with the provision that no vessel may possess, land, or deliver more than 70 chinook for the entire 3 day open period (Inseason Action #3). These actions were necessary to conform to the 2004 management goals. The intended effect of these actions was to allow the fishery to operate within the seasons and quotas specified in the 2004 annual management measures.

**DATES:** Inseason Action #2 - Reopening the area from the U.S.-Canada Border to Cape Falcon, OR effective 0001 hours local time (l.t.), May 15, 2004, until 2359 hours l.t., May 18, 2004; and Inseason Action #3 - reopening the area from the U.S.-Canada Border to Cape Falcon, OR effective 0001 hours l.t., May 24, 2004, until 2359 hours l.t., May 26, 2004; after which the fishery will remain closed until opened through an additional inseason action for the west coast salmon fisheries, which will be published in the **Federal Register**, or until the effective date of the next scheduled open period announced in the 2004 annual management measures. Comments will be accepted through June 22, 2004.

**ADDRESSES:** Comments on these actions must be mailed to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115-0070; or faxed to 206-526-6376; or Rod McLinnis, Acting Regional Administrator, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802-4132; or faxed to 562-980-4018. Comments can also be submitted via e-mail at the 2004oceansalmonIA#2-#3.nwr@noaa.gov address, or through the internet at the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments, and include [docket number and/or RIN number] in the subject line of the message. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

**FOR FURTHER INFORMATION CONTACT:** Christopher Wright, 206-526-6140.

**SUPPLEMENTARY INFORMATION:** The Regional Administrator (RA) modified the season for the commercial fishery in the area from the U.S.-Canada Border to Cape Falcon, OR to reopen May 15 and close at midnight l.t. on May 18, 2004, with the restriction that no vessel may possess, land, or deliver more than 125 chinook for the entire 4 day open period. On May 14 the Regional Administrator had determined that the available catch and effort data indicated that there was enough of the chinook quota to allow four additional days of fishing. The fishery was scheduled to be reevaluated on May 21 to consider whether additional openings would be appropriate.

On May 21, 2004, the RA again modified the season for the commercial fishery in the area from the U.S.-Canada Border to Cape Falcon, OR, this time to reopen May 24 and close at midnight on May 26, 2004, with the restriction that no vessel may possess, land, or deliver more than 70 chinook for the entire 3 day open period. The RA determined that the available catch and effort data indicated that there was enough of the chinook quota to allow three additional days of fishing.

For both inseason actions, all other restrictions remained in effect as announced for 2004 ocean salmon fisheries. These actions were necessary to conform to the 2004 management goals. Recision of automatic season closures are authorized by regulations at 50 CFR 660.409(a)(2). Modification of fishing seasons are authorized by regulations at 50 CFR 660.409(b)(1)(i).

In the 2004 annual management measures for ocean salmon fisheries (69 FR 25026, May 5, 2004), NMFS announced the commercial fishery for all salmon except coho in the area from the U.S.-Canada Border to Cape Falcon, OR would open May 1 through the earlier of June 30 or a 29,800 chinook quota. The fishery would be managed to provide a remaining quota of 500 chinook for a June 26 through 30 open period with a 50-fish, per vessel,

landing limit for the 5-day open period. The resulting quota for the first part of the May-June fishery is therefore 29,300 chinook.

The fishery in the area from the U.S.-Canada Border to Cape Falcon, OR was modified by an inseason action to close effective at midnight l.t. on Wednesday, May 5, 2004 (69 FR 29464, May 24, 2004). The fishing season was closed to avoid exceeding the chinook quota.

On May 14 and 21, 2004, the RA consulted with representatives of the Pacific Fishery Management Council, Washington Department of Fish and Wildlife, and Oregon Department of Fish and Wildlife by conference call. Information related to catch to date, the chinook catch rate, and effort data indicated that there was enough of the chinook quota to allow two additional open periods of fishing. As a result, on May 14, the states recommended, and the RA concurred, that the area from the U.S.-Canada Border to Cape Falcon, OR, reopen May 15 and close at midnight l.t. on May 18, 2004, with the provision that no vessel may possess, land, or deliver more than 125 chinook for the entire 4 day open period. On May 21, the states recommended, and the RA concurred, that the area reopen on May 24 through midnight l.t. on May 26, 2004, with the restriction that no vessel may possess, land, or deliver more than 70 chinook for the entire three day open period. All other restrictions that apply to this fishery remained in effect as announced in the 2004 annual management measures.

The RA determined that the best available information indicated that the catch and effort data, and projections, supported the above inseason actions recommended by the states. The states manage the fisheries in state waters adjacent to the areas of the U.S.

exclusive economic zone in accordance with these Federal actions. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice to fishers of the above described actions was given, prior to the time each action was effective, by telephone hotline number 206-526-6667 and 800-662-9825, and by U.S. Coast Guard Notice to Mariners

broadcasts on Channel 16 VHF-FM and 2182 kHz.

These actions do not apply to other fisheries that may be operating in other areas.

#### Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B) because such notification would be impracticable. As previously noted, actual notice of these actions were provided to fishers through telephone hotline and radio notification. These actions comply with the requirements of the annual management measures for ocean salmon fisheries (69 FR 25026, May 5, 2004), the West Coast Salmon Plan, and regulations implementing the West Coast Salmon Plan 50 CFR 660.409 and 660.411. Prior notice and opportunity for public comment was impracticable because NMFS and the state agencies had insufficient time to provide for prior notice and the opportunity for public comment between the time the fishery catch and effort data were collected to determine the extent of the fisheries, and the time the fishery modifications had to be implemented in order to allow fishers access to the available fish at the time the fish were available. The AA also finds good cause to waive the 30-day delay in effectiveness required under U.S.C. 553(d)(3), as a delay in effectiveness of these actions would unnecessarily limit fishers appropriately controlled access to available fish during the scheduled fishing season.

These actions are authorized by 50 CFR 660.409 and 660.411 and are exempt from review under Executive Order 12866.

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

Dated: June 1, 2004.

**Alan D. Risenhoover,**

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

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