

*National Environmental Policy Act*

This rule does not require an environmental impact statement because section 702(d) of SMGRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

*Regulatory Flexibility Act*

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether

this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

*Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2) of the Small Business Regulatory Enforcement Fairness Act. This rule: a. Does not have an annual effect on the economy of \$100 million; b. will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and c. does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

*Unfunded Mandates*

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector

of \$100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

**List of Subjects in 30 CFR Part 934**

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 29, 2005.

**Allen D. Klein,**

*Regional Director, Western Regional.*

■ For the reasons set out in the preamble, 30 CFR part 934 is amended as set forth below:

**PART 934—North Dakota**

■ 1. The authority citation for part 934 continues to read as follows:

*Authority:* 30 U.S.C. 1201 *et seq.*

■ 2. Section 934.15 is amended in the table by adding a new entry in chronological order by “Date of Final Publication” to read as follows:

**§ 934.15 Approval of North Dakota regulatory program amendments.**

\* \* \* \* \*

| Original amendment submission date | Date of final publication            | Citation/description                        |
|------------------------------------|--------------------------------------|---|
| * * * * *<br>April 20, 2005 .....  | * * * * *<br>November 28, 2005 ..... | * * * * *<br>NDCC 38–14.1–17.1.a and 2005b. |

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 660**

[Docket No. 050426117–5117–01; I.D. 110905E]

**Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Action #10 - Adjustment of the Recreational Fishery from Leadbetter Point, Washington, to Cape Falcon, Oregon**

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

**ACTION:** Temporary rule; modification of fishing seasons; request for comments.

**SUMMARY:** NMFS announces a regulatory modification in the recreational fishery from Leadbetter Point, WA, to Cape Falcon, OR (Columbia River Subarea). Effective Friday, September 17, 2005, the daily bag limit for the Columbia River Subarea was modified as follows: “All Salmon, two fish per day, all retained coho must have a healed adipose fin clip.” All other restrictions remain in effect as announced for 2005 ocean salmon fisheries, and by previous inseason actions. This action was necessary to conform to the 2005 management goals, and the intended effect is to allow the fishery to operate within the seasons and quotas specified in the 2005 annual management measures.

**DATES:** Modification in the recreational fishery from Leadbetter Point, WA to Cape Falcon, OR is effective 001 hours local time (l.t.) Friday, September 17, 2005, until the next scheduled open period, which will be announced in a

future publication in the **Federal Register**.

Comments will be accepted through December 13, 2005.

**ADDRESSES:** Comments on this action 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 McInnis, 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 [2005salmonIA10.nwr@noaa.gov](mailto:2005salmonIA10.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 [050426117–5117–01 and/or I.D. 110905E] 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 NMFS Regional Administrator (RA) has adjusted the recreational fishery from Leadbetter Point, WA, to Cape Falcon, OR (Columbia River Subarea), with one regulatory modification. On September 13, 2005, the Regional Administrator determined that the Chinook catch rate was slower than anticipated and that there was sufficient Chinook quota remaining to allow relaxation of the daily bag limit. Therefore, effective Friday, September 17, 2005, the daily bag limit for the Columbia River Subarea was modified as follows: "All Salmon, two fish per day, all retained coho must have a healed adipose fin clip."

All other restrictions remain in effect as announced for 2005 ocean salmon fisheries, and by previous inseason actions. This action was necessary to conform to the 2005 management goals, and the intended effect is to allow the fishery to operate within the seasons and quotas specified in the 2005 annual management measures. Modification of the species that may be caught and landed during specific seasons and the establishment or modification of limited retention regulations is authorized by regulations at 50 CFR 660.409(b)(1)(ii). Modification in recreational bag limits and recreational fishing days per calendar week is authorized by regulations at 50 CFR 660.409(b)(1)(iii).

In the 2005 annual management measures for ocean salmon fisheries (70 FR 23054, May 4, 2005), NMFS announced the recreational fisheries: the area from the U.S.-Canada Border to Cape Alava, WA (Neah Bay Subarea) opened July 1 through the earlier of September 18 or a 12,667 marked coho subarea quota with a subarea guideline of 4,300 Chinook; the area from Cape Alava to Queets River, WA (La Push Subarea) opened July 1 through the earlier of September 18 or a 3,067 marked coho subarea quota with a subarea guideline of 1,900 Chinook; the area from Queets River to Leadbetter Point, WA (Westport Subarea) opened June 26 through the earlier of September 18 or a 45,066 marked coho subarea quota with a subarea guideline of 28,750 Chinook; the area from Leadbetter Point, WA to Cape Falcon, OR (Columbia River Subarea) opened July 3 through the earlier of September 30 or a 60,900-marked coho subarea quota with a subarea guideline of 8,200 Chinook. The Neah Bay and La Push Subareas were opened Tuesday through Saturday, and

the Westport and Columbia River Subareas were opened Sunday through Thursday. All subareas had a provision specifying that there may be a conference call no later than July 27 to consider opening seven days per week. All subareas were restricted to a Chinook minimum size limit of 24 inches (61.0 cm) total length. In addition, all of the subarea bag limits were for all salmon, two fish per day, no more than one of which may be a Chinook, with all retained coho required to have a healed adipose fin clip.

The recreational fisheries in the area from Cape Alava, WA, to Cape Falcon, OR (La Push, Westport, and Columbia River Subareas), were modified by Inseason Action t5 (70 FR 47727, August 15, 2005), effective Friday, July 29, 2005, to be open seven days per week, with a modified daily bag limit as follows: "All salmon, two fish per day, and all retained coho must have a healed adipose fin clip." All other restrictions remained in effect as announced for 2005 Ocean Salmon Fisheries.

The recreational fishery from the U.S.-Canada Border to Cape Alava, WA (Neah Bay Subarea), was modified by Inseason Action #6 (70 FR 52035, September 1, 2005), effective Tuesday, August 16, 2005, to have a daily bag limit as follows: "All salmon, two fish per day, and all retained coho must have a healed adipose fin clip." All other restrictions remained in effect as announced for 2005 Ocean Salmon Fisheries.

The recreational fishery from the U.S.-Canada Border to Cape Alava, WA (Neah Bay Subarea), was modified by Inseason Action #8 (70 FR 55303, September 21, 2005), effective Tuesday, August 30, 2005, to be open seven days per week. All other restrictions remained in effect as announced for 2005 ocean salmon fisheries, and by previous inseason actions.

The Recreational Fishery from Leadbetter Point, WA to Cape Falcon, OR (Columbia River Subarea), was modified by Inseason Action #9 (70 FR , 69916, November 18, 2005), effective Friday, September 9, 2005, to have a daily bag limit as follows: "All salmon, except no Chinook retention, two fish per day, all retained coho must have a healed adipose fin clip." All other restrictions remained in effect as announced for 2005 ocean salmon fisheries, and by previous inseason actions.

On September 13, 2005, 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 and coho catch rates, and effort data indicated that the Chinook catch rate was slower than anticipated and that there was sufficient Chinook quota remaining to relax the daily bag limit. As a result, on September 13, 2005, the states recommended, and the RA concurred, that effective Friday, September 17, 2005, the Columbia River Subarea would be modified to have a daily bag limit as follows: "All Salmon, two fish per day, all retained coho must have a healed adipose fin clip." All other restrictions remain in effect as announced for 2005 ocean salmon fisheries, and by previous inseason actions.

The RA determined that the best available information indicated that the catch and effort data, and projections, supported the above inseason action 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 this Federal action. As provided by the inseason action procedures of 50 CFR 660.411, actual notice to fishers of the already described regulatory action was given, prior to the date the 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.

This action does 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 the regulatory action was provided to fishers through telephone hotline and radio notification. This action complies with the requirements of the annual management measures for ocean salmon fisheries (70 FR 23054, May 4, 2005), 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 this action would unnecessarily limit fishers appropriately controlled access

to available fish during the scheduled fishing season by unnecessarily maintaining a restriction. The action allowed fishers to land up to two of any species of salmon, previously Chinook salmon could not be retained.

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under Executive Order 12866.

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

Dated: November 18, 2005.

**Alan D. Risenhoover,**

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

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