

**PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972**

■ 1. The authority citation for part 229 continues to read as follows:

**Authority:** 16 U.S.C. 1361 *et seq.*

■ 2. In § 229.2, the definition for “Insignificance threshold” is added in alphabetical order to read as follows:

**§ 229.2 Definitions.**

\* \* \* \* \*

*Insignificance threshold* means the upper limit of annual incidental mortality and serious injury of marine mammal stocks by commercial fisheries that can be considered insignificant levels approaching a zero mortality and serious injury rate. An insignificance threshold is estimated as 10 percent of the Potential Biological Removal level for a stock of marine mammals. If certain parameters (e.g., maximum net productivity rate or the recovery factor in the calculation of the stock’s potential biological removal level) can be estimated or otherwise modified from default values, the Assistant Administrator may use a modification of the number calculated from the simple formula for the insignificance threshold. The Assistant Administrator may also use a modification of the simple formula when information is insufficient to estimate the level of mortality and serious injury that would have an insignificant effect on the affected population stock and provide a rationale for using the modification.

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 660**

[Docket No. 040429134–4135–01; I.D. 071304A]

**Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Actions #5 - 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:** Modification of fishing season; request for comments.

**SUMMARY:** NMFS announces that the commercial fishery in the area from the U.S.-Canada Border to Cape Falcon, OR was modified to open July 8 and close at midnight on July 12, 2004, then to reopen on July 16 through midnight on July 19, 2004, with the provision that no vessel may possess, land, or deliver more than 100 chinook for each open period. This action was necessary to conform to the 2004 management goals. The intended effect of this action was to allow the fishery to operate within the seasons and quotas specified in the 2004 annual management measures.

**DATES:** Adjustment of the area from the U.S.-Canada Border to Cape Falcon, OR effective 0001 hours local time (l.t.), July 8, 2004, until 2359 hours l.t., July 19, 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 August 4, 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 McInnis, 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

[2004salmonIA5.nwr@noaa.gov](mailto:2004salmonIA5.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 open July 8 and close at midnight on July 12, 2004, then reopen on July 16 through July 19, with the provision that no vessel may possess, land, or deliver more than 100 chinook for each open period. On July 2 the Regional Administrator had determined available catch and effort

data indicated that the effort predicted preseason was low and that restricting the fishery to slow the catch of chinook would allow additional time for fishers to access more of the coho quota. The fishery was scheduled to be reevaluated by an inseason conference call on July 14, and any further adjustments announced.

All other restrictions remain in effect as announced for 2004 ocean salmon fisheries. This action was necessary to conform to the 2004 management goals. Modification of fishing seasons is authorized by regulations at 50 CFR 660.409(b)(1)(i) and (ii).

In the 2004 annual management measures for ocean salmon fisheries (69 FR 25026, May 5, 2004), NMFS announced the commercial fishery for all salmon in the area from the U.S.-Canada Border to Cape Falcon, OR would open July 8 through the earlier of September 15, or a 14,700–chinook preseason guideline, or a 67,500–coho quota. The 67,500–coho quota included a subarea quota of 8,000 coho for the area between the U.S.-Canada border and the Queets River, WA. The fishery was scheduled to be open Thursday through Monday prior to August 11, and Wednesday through Sunday thereafter, with the restriction that no vessel may possess, land, or deliver more than 125 chinook for each 5–day open period.

On July 2, 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 the effort predicted preseason was low and that restricting the fishery to slow the catch of chinook would allow additional time for fishers to access more of the coho quota. As a result, on July 2 the states recommended, and the RA concurred, that the area from the U.S.-Canada Border to Cape Falcon, OR open July 8 and close at midnight l.t. on July 12, 2004 (5 days open), then reopen on July 16 through midnight l.t. on July 19, 2004 (4 days open), with the provision that no vessel may possess, land, or deliver more than 100 chinook for each open period. All other restrictions that apply to this fishery remain 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 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 these Federal actions. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice to fishers of the already described action was given, prior to the time 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 this 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 (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.

This action is 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: July 14, 2004.

**Alan D. Risenhoover,**

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