

such competition, would be to establish time limits within the various viewing circles to avoid the establishment of exclusive viewing areas closest to the whales. However, time limits would be very difficult to implement, monitor, and enforce.

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with that directive, NMFS seeks public comment on any ambiguity or unnecessary complexity arising from the language used in this proposed rule.

#### List of Subjects in 50 CFR Part 224

Endangered and threatened species, Exports, Imports, Transportation.

For the reasons set out in the preamble, 50 CFR part 224 is proposed to be amended as follows:

#### PART 224 ENDANGERED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 224 continues to read as follows:

**Authority:** 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

2. In § 224.103, paragraph (a) is revised to read as follows:

#### § 224.103 Special prohibitions for endangered marine mammals.

(a) *Approaching humpback whales*—(1) *Hawaii*. Except as provided part 222, subpart C of this chapter (General Permit Procedures), it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, or cause to be committed, within 200 nautical miles (370.4 km) of the Islands of Hawaii, any of the following acts with respect to humpback whales (*Megaptera novaeangliae*):

(i) Operate any aircraft within 1,000 feet (304.8 m) of any humpback whale;

(ii) Approach, by any means within 100 yards (91.4 m) of any humpback whale;

(iii) Cause a vessel or other object to approach within 100 yards (91.4 m) of a humpback whale; or

(iv) Disrupt the normal behavior or prior activity of a whale by any other act or omission. A disruption of normal behavior may be manifested by, among other actions on the part of the whale, a rapid change in direction or speed; escape tactics such as prolonged diving, underwater course changes, underwater exhalation, or evasive swimming patterns; interruptions of breeding, nursing, or resting activities; attempts by a whale to shield a calf from a vessel or human observer by tail swishing or by other protective movement; or the abandonment of a previously frequented area.

(2) *Alaska*. Except as provided in part 222, subpart C of this chapter (General Permit Procedures), it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, within 200 nautical miles (370.4 km) of Alaska, any of the acts in paragraphs (a)(2)(i) through (iii) of this section with respect to humpback whales (*Megaptera novaeangliae*):

(i) Approach, by any means, including by interception, within 200 yards (182.8 m) of any humpback whale;

(ii) Cause a vessel or other object to approach within 200 yards (182.8 m) of a humpback whale; or

(iii) Disrupt the normal behavior or prior activity of a whale by any other act or omission, as described in paragraph (a)(1)(iv) of this section.

(iv) These regulations shall not take precedence over any more restrictive conflicting Federal regulation pertaining to humpback whales, including the regulations at 36 CFR 13.65 that pertain specifically to the waters of Glacier Bay National Park and Preserve.

\* \* \* \* \*

Dated: June 19, 2000.

**Penelope D. Dalton,**

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

[FR Doc. 00–16113 Filed 6–23–00; 8:45 am]

**BILLING CODE 3510–22–F**

#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 300 and 679

[Docket No. 000616184–0184–01; I.D. 050500A]

RIN 0648–AK74

#### Fisheries of the Exclusive Economic Zone Off Alaska; Prohibition of Groundfish Fishing and Anchoring in the Sitka Pinnacles Marine Reserve

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

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

**SUMMARY:** NMFS proposes regulations to implement Amendment 59 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP), and to make changes to the regulations governing the halibut fishery. This action would designate a 2.5 square nautical mile (nm) area of Federal ocean

water above and surrounding the Pinnacles off Cape Edgecumbe in the Gulf of Alaska (GOA) as the Sitka Pinnacles Marine Reserve. This area, which is an unusually productive and highly fragile marine habitat, would be closed to fishing for groundfish or anchoring by vessels holding a Federal fisheries permit. The area would also be closed to commercial or sport fishing for Pacific halibut, and to anchoring by sport or commercial halibut vessels. The intent of this action is to protect an area containing important fish habitat from degradation due to fishing and anchoring impacts, and to create a groundfish reserve.

**DATES:** Comments on the proposed rule must be received by August 10, 2000.

**ADDRESSES:** Comments must be sent to Susan Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel. Comments may also be sent via facsimile (fax) to 907–586–7465. Comments will not be accepted if submitted via e-mail or Internet. Courier or hand delivery of comments may be made to NMFS in the Federal Building, Room 453, Juneau, AK. Copies of Amendment 59 and the Environmental Assessment/Regulatory Impact Review/Initial Flexibility Analysis (EA/RIR/IRFA) prepared for the amendment by the North Pacific Fishery Management Council (Council) and NMFS are available from the Council, 605 West 4<sup>th</sup> Avenue, Suite 306, Anchorage, AK 99501–2252; telephone 907–271–2809.

**FOR FURTHER INFORMATION CONTACT:** Nina Mollett, 907–586–7462, fax 907–586–7465, e-mail [nina.mollett@noaa.gov](mailto:nina.mollett@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

Regulations governing the domestic groundfish fisheries appear at 50 CFR parts 600 and 679. Regulations governing the domestic halibut fisheries appear at 50 CFR 300.60 to 300.65. These regulations supplement the annual fishery management measures adopted by the International Pacific Halibut Commission (IPHC) under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea.

The Council has submitted Amendment 59 to the Secretary of Commerce (Secretary) for review. NMFS published a notice of availability (NOA) of the FMP amendment on May 12, 2000 (65 FR 30559), with comments on the FMP amendment invited through July 11, 2000. Written comments may address the FMP amendment, the proposed rule, or both, but must be

received by July 11, 2000, to be considered in the approval/disapproval decision on the FMP amendment.

**Management Background and Need for Action**

The Sitka Pinnacles area, in the Southeast Outside District of the GOA near Cape Edgecumbe, provides highly productive habitat for many species at

different stages of their life cycles. Information collected during manned submersible surveys of groundfish habitat by the Alaska Department of Fish & Game (ADF&G) indicates that the diversity and density of fish in that area is much greater than is typical of the eastern continental shelf. The area could easily be overfished because of the concentration of fishes in a relatively

small, compact space. State and Federal biologists have recommended that the Sitka Pinnacles and surrounding waters be given protective status as a marine refuge.

Accomplishing this requires cooperation among NMFS, ADF&G, and the IPHC, because different species are managed under different jurisdictions (see Table 1).

| Species  | Agency               | Law  |
|--|----------------------|--|
| Commercial and recreational fishing for lingcod and black rockfish | ADF&G .....          | These fisheries are closed under 5 AAC 28.150.   |
| Groundfish   | NMFS .....           | Would be accomplished by proposed Amd. 59 and proposed regulatory amendments at 50 CFR 679.2 and 679.22.   |
| Halibut  | NMFS and IPHC .....  | Would be accomplished by proposed regulatory amendments at 50 CFR 300.63 and 679.22.   |
| Scallops   | ADF&G .....          | Under Amd. 3 to the Fishery Management Plan for Scallop Fisheries off Alaska, NMFS delegates responsibility to the State for managing the scallop fishery. Scallop dredging has been closed under 5 AAC 38.120 in the "Central Southeast Outside" area, which includes the proposed reserve, since July, 1994. |
| Commercial and Recreational Salmon                                 | NMFS and ADF&G ..... | The Alaska State Board of Fish considered closure to salmon fishing at its February 2000 meeting and rejected the proposal.  |

The Sitka Pinnacles (also called the Cape Edgecumbe Pinnacles) consist of two large volcanic cones that rise abruptly off the seafloor. The top of one is less than 70 meters below the sea surface, and the other is less than 40 meters below the sea surface. The area from the sea surface to the seafloor provides a variety of rich habitat suitable for different species. Large numbers of juvenile and adult bottom-dwelling rockfish find shelter among the algae, anemones, and other flora and fauna that cover portions of the rock walls. The field of boulders on the bottom provides a spawning bed for lingcod and refuge for large numbers of commercially valuable species like yelloweye and tiger rockfish, along with non-commercial species such as prowlfish.

Juvenile and adult rockfish and huge concentrations of lingcod use the flat, irregular tops of the pinnacles as a feeding platform. Schooling species, such as yellowtail and widow rockfish, feed along the pinnacle walls and in the water column between the top of the pinnacles and the surface. The area has been used for fishing, especially with hook-and-line gear, for decades. In the late 1980s, a directed fishery for lingcod developed on the pinnacles. The high density and aggressive feeding behavior of lingcod made them extremely susceptible to capture; hourly catch rates of lingcod at the site exceeded catch rates in the surrounding area by threefold. In 1991, the State of Alaska began attempting to preserve lingcod

populations in nearby State waters (the Sitka Pinnacles are in Federal waters) through closures during winter when male lingcod are nest guarding, and, in 1994, through spring/summer in-season closures of State-regulated fishing in areas that included the pinnacles. In 1995, ADF&G included the pinnacles area in the winter closure as well. In 1997, ADF&G issued an emergency order closing the area to all State-regulated groundfish fishing for the entire season. However, the sport fishing industry was not affected by any of the State's management actions and continued to take lingcod and Pacific halibut. In May of 1998, the commercial and sportfish divisions of ADF&G submitted joint proposals to the Alaska State Board of Fish and the Council to close the Sitka Pinnacles area. The Board of Fish closed the area to fishing for lingcod and black rockfish, which are species under its jurisdiction. It took up the question of closing the area to commercial and recreational salmon fishing in February 2000, but decided against such a closure.

This action would complement State regulations by designating a 2.5 square nm area of Federal waters above and surrounding the Sitka Pinnacles as the Sitka Pinnacles Marine Reserve. The area would be closed to fishing or anchoring by vessels required to have a Federal fisheries permit under § 679.4(b). The area would also be closed to fishing for halibut or anchoring by vessels required to have on board an individual fishing quota

(IFQ) halibut permit under § 679.4(d). In addition, the area would be closed to sport fishing for halibut as defined at § 300.61, or anchoring by vessels having halibut on board. The IPHC manages Pacific halibut under the Northern Pacific Halibut Act. The Act states that the Regional Fishery Management Council may develop regulations governing U.S. waters "which are in addition to, and not in conflict with, regulations adopted by the Commission" (16 U.S.C. 773c(c)).

The combined effect of State and Federal regulations would be to allow the Sitka Pinnacles ecosystem to maintain its natural levels of production by eliminating the harvest or bycatch of fish during critical portions of their life cycle. The prohibition on anchoring would eliminate a source of potential degradation of the area's fragile habitat.

**Classification**

At this time, NMFS has not determined that the amendment this proposed rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable law. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

Nothing in this proposed action would result in any changes in reporting or recordkeeping requirements. The analysis for this proposed action did not reveal any existing Federal rules that duplicate, overlap, or conflict with the actions proposed in the alternatives.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS has prepared an IRFA that describes the impact this proposed rule, if adopted, may have on small entities. NMFS estimates the total number of entities to which this rule would apply to be 2,618, which includes 1,048 fixed gear groundfish vessels and 1,570 halibut vessels, based on 1998 data for vessels that fished in the GOA. This figure does not include trawl vessels, which are already prohibited from fishing in this area under Amendment 41 (63 FR 8356, February 19, 1998). Of the non-trawl vessels, the great majority (90 percent) are catcher vessels under 60 feet in length overall. Although this rule would apply to all vessels that can fish in the GOA, only a portion of these vessels have fished in the statistical area (S.A.) the rule would affect. Therefore, NMFS estimates that it is likely that, at most, only 688 entities could be affected. This number represents 224 commercial groundfish vessels, 67 halibut IFQ vessels, and 397 charter companies that fished in the area in 1998. NMFS lacks the necessary data on ownership, affiliation, contractual relationships, etc., to determine which of these operations are "small entities" for Regulatory Flexibility Act purposes, and some of these 2,618 vessels might not qualify under Small Business Administration criteria. However, for the purposes of the IRFA analysis, NMFS assumes all of these groundfish and commercial halibut vessels to be small entities, given the nature of the fisheries they participate in and the unlikelyhood that many of them would reach annual gross revenues in excess of \$3 million.

The actual number of vessels affected by this proposed rule would likely be even smaller. Few commercial fishing vessels currently use the area. Most, if not all, groundfish longliners, and halibut fishermen as well, have voluntarily avoided the pinnacles area for the past 2 years, since ADF&G regulations prohibiting the take of groundfish species under its jurisdiction took effect.

Even if a few vessels were still fishing in the proposed reserve, it is unlikely that any of them would be adversely affected by the closure to any significant extent, as the area constitutes less than 1 percent of the grounds in S.A. 355631, and less than a thousandth of 1 percent of the total available fishing grounds in the GOA (about 340,000 square nm). To the extent that any halibut IFQ vessels may be displaced, similar opportunities to fish for halibut exist throughout the area. It is unlikely that any lost fishing

opportunity or increase in fuel costs would be incurred. For groundfish vessels, however, there are no comparable fishing grounds that offer the density of groundfish that occur on the pinnacles. To the extent that there are any groundfish vessels targeting rockfish other than those prohibited by the State, this rule could result in an unquantifiable loss of fishing opportunity.

In addition to the commercial fishing vessels, 588 charter vessels, owned by 397 businesses, fished for halibut in 1998 in IPHC Area 2C, in which the Sitka Pinnacles are located. Of the charter vessels, 364 were homeported in Sitka, and 191 of the Sitka vessels targeted bottomfish, including Pacific halibut. Although the opportunity of charter boat operators, as well as individual anglers, to fish for Pacific halibut could be affected by this proposed action, few, if any, of these charter boats have been fishing on the pinnacles since the State closed the area to lingcod and to State-managed rockfish species in the summer of 1998. The aggregations of lingcod present on the pinnacles were an incentive to travel to this site. Although halibut do occur on the pinnacles, they do not aggregate there in any greater numbers than elsewhere in S.A. 355631. Thus, as is the case for halibut IFQ vessels, these vessels are not expected to experience negative economic impacts as a result of displacement from the pinnacles.

In summary, the cost to small entities of the proposed closure and prohibition on anchoring is expected to be quite low, as the area being proposed for closure constitutes an extremely small percentage of available fishing grounds. Few, if any, vessels have been fishing in the area since ADF&G promulgated regulations prohibiting fishing for groundfish species under its jurisdiction in 1998. Lingcod was the primary incentive for charter vessels to fish in this area, which congregated on the pinnacles and created an easy target. For species that may be found in the area but not in special concentrations, such as halibut and some groundfish species, little if any cost would be incurred to those vessels targeting these species to avoid this area. There are ample fishing grounds nearby that require no additional fuel or other costs.

The prohibition on anchoring would protect from damage the fragile structures growing on the pinnacles.

NMFS considered one alternative that could have had less economic impact on small entities—maintaining the status quo. Maintaining the status quo could minimize economic impacts on small entities. This alternative would not

affect small entities except that some fishermen who have been avoiding the area because of local support for the marine reserve might resume fishing on the pinnacles. Some small economic advantage might be gained by small entities, on the theory that increasing the options for business entities always increases the potential for making profit-maximizing decisions. As previously stated, the proposed reserve is small and other productive fishing grounds are available and equally accessible.

#### List of Subjects

##### 50 CFR Part 300

Administrative practice and procedure, Exports, Fish, Fisheries, marine resources.

##### 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: June 20, 2000.

**Penelope D. Dalton,**

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

For the reasons discussed in the preamble, 50 CFR parts 300 and 679 are proposed to be amended as follows:

#### **PART 300—INTERNATIONAL FISHERIES REGULATIONS**

1. The authority citation for part 300, subpart E, continues to read as follows:

**Authority:** 16 U.S.C. 773–773k.

2. In subpart E, Pacific Halibut Fisheries, § 300.63, is amended by adding paragraph (e) to read as follows:

##### **§ 300.63 Catch sharing plans, local area management plans, and domestic management measures.**

\* \* \* \* \*

(e) *Prohibition on halibut fishing and anchoring in the Sitka Pinnacles Marine Reserve.* (1) For purposes of § 300.63(e), the Sitka Pinnacles Marine Reserve means an area totaling 2.5 square nm off Cape Edgecumbe, defined by straight lines connecting the following points in a counterclockwise manner:

56°55.5'N lat., 135°54.0'W long;

56°57.0'N lat., 135°54.0'W long;

56°57.0'N lat., 135°57.0'W long;

56°55.5'N lat., 135°57.0'W long.

(2) No person shall engage in sport fishing, as defined in § 300.61, for halibut within the Sitka Pinnacles Marine Reserve.

(3) No person shall anchor a vessel having halibut on board in the Sitka Pinnacles Marine Reserve.

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

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

**Authority:** 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

4. In § 679.2, a new definition for the “Sitka Pinnacles Marine Reserve” is added in alphabetical order, to read as follows:

**§ 679.2 Definitions.**

\* \* \* \* \*

*Sitka Pinnacles Marine Reserve* means an area totaling 2.5 square nm in the GOA, off Cape Edgecumbe, in Statistical Area 650. See Figure 18 to this part.

\* \* \* \* \*

5. In § 679.22, paragraph (b)(5) is added to read as follows:

**§ 679.22 Closures.**

\* \* \* \* \*

(b) \* \* \*  
(5) *Sitka Pinnacles Marine Reserve.* (i) No vessel required to have a Federal

fisheries permit under § 679.4(b) may fish for groundfish or anchor in the Sitka Pinnacles Marine Reserve, as described in Figure 18 to this part.

(ii) No vessel required to have on board an IFQ halibut permit under § 679.4(d) may fish for halibut or anchor in the Sitka Pinnacles Marine Reserve, as described in Figure 18 to this part.

\* \* \* \* \*

6. In part 679, Figure 18 is added to read as follows:

**BILLING CODE 3510-22-F**

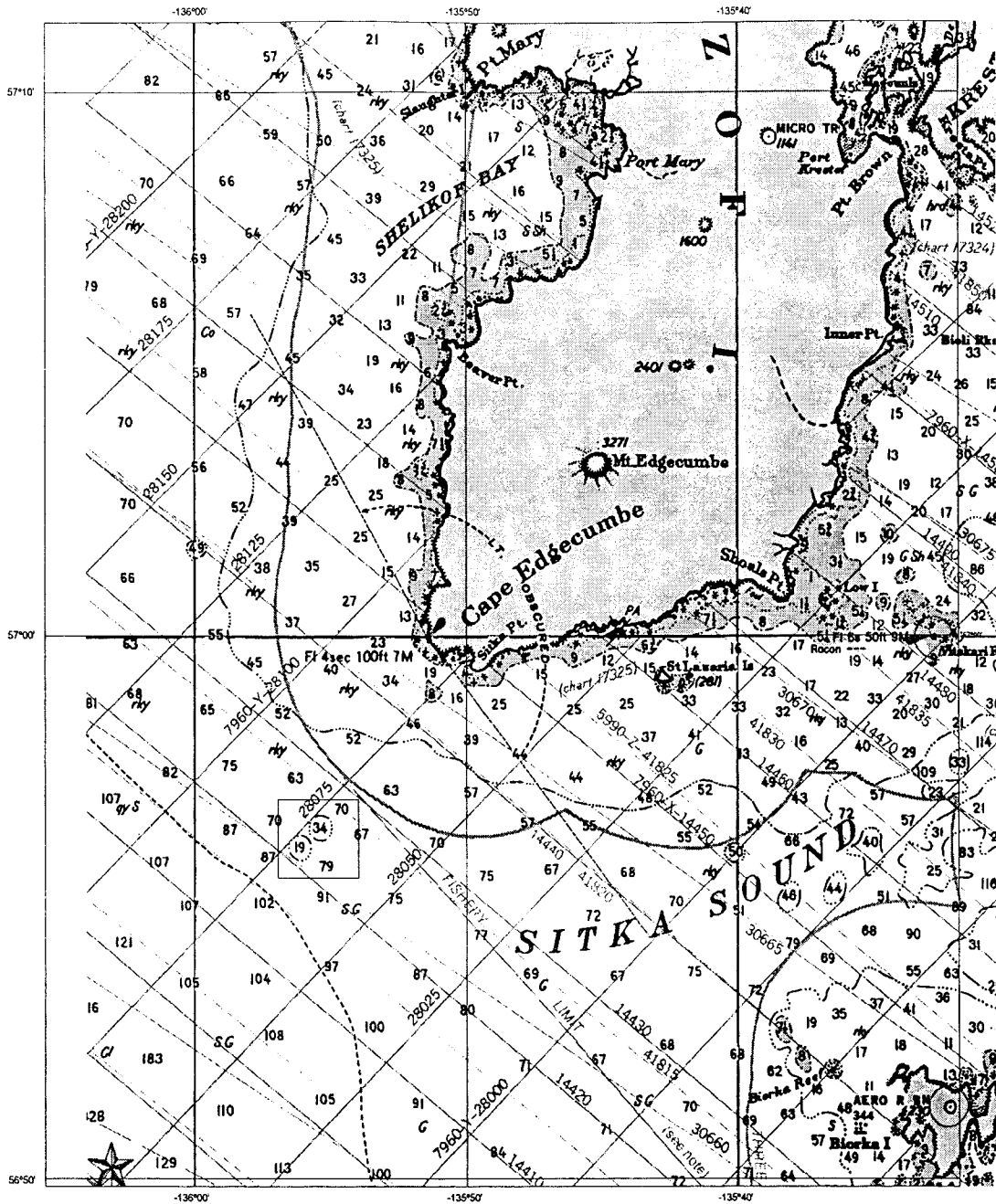


Figure 18 to Part 679. Sitka Pinnacles Marine Reserve (area enclosed within rectangle).

a. Map

b. Coordinates

An area totaling 2.5 square nm off Cape Edgecumbe, defined by straight

lines connecting the following points in a counterclockwise manner:

56°55.5'N lat., 135°54.0'W long;

56°57.0'N lat., 135°54.0'W long;

56°57.0'N lat., 135°57.0'W long;

56°55.5'N lat., 135°57.0'W long.

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