

CompTel's recommendation that we require waiver of termination penalties in contracts for entrance facilities because we conclude that such a waiver would deny the LECs recovery of capital expenditures made specifically for a particular IXC. We also decline to adopt AT&T's proposal to require LECs to waive NRCs for all IXC consolidations because it is moot and beyond the scope of this proceeding. Moreover, we decline to restrict the NRC waiver to once per trunk, as USTA suggests, because, in light of the limited time period for which the waiver was available, we have no reason to believe that the significant churn envisioned by USTA occurred.

22. Finally, we conclude that, in their mid-course adjustment of the interconnection charge, the LECs are entitled, upon a proper showing, to take into account NRCs waived pursuant to the Commission's requirement. Therefore, if a LEC can demonstrate that, as a result of the Commission-mandated waiver of NRCs, the transport restructure yielded revenues significantly less than the amount it realized previously, in part, because the number of NRCs charged during the year fell short of the demand level used in calculating the initial interconnection charge, the LEC may seek a mid-course adjustment on this basis. We conclude that the Commission has statutory authority to allow this type of recovery through the interconnection charge because it is necessary to maintain revenue neutrality and because carrying out such an adjustment does not constitute retroactive ratemaking.

#### E. Miscellaneous

##### 1. Pricing Flexibility

23. We reaffirm that the LECs may offer term and volume discounts for switched transport services and may implement density zone pricing of switched transport, as set forth in the Switched Transport Expanded Interconnection Order (Expanded Interconnection with Local Telephone Company Facilities, Second Report and Order and Third Notice of Proposed Rulemaking, 58 FR 48756 (September 17, 1993)), and as reaffirmed and slightly modified by the Expanded Interconnection Remand Order, (Expanded Interconnection with Local Telephone Company Facilities, Memorandum Opinion and Order, 59 FR 38922 (August 1, 1994)). We decided these issues in the expanded interconnection proceeding, based on a separate and complete record. The present record, however, does not refute the need for this additional pricing

flexibility in an increasingly competitive access market.

24. With respect to volume and term discounts, we clarify that the rules we adopted in the expanded interconnection proceeding regarding discounted transport offerings (47 U.S.C. 69.110(f)-(h), 69.111(i)-(k), and 69.112(f)-(h)) contemplate only volume discounts (reduced per-unit prices for a particular number of units of service) and term discounts (reduced per-unit prices for a specified service for a particular period of time). These rules do not provide for percentage or growth discounts—reduced per-unit prices for customers that commit to purchase a certain percentage of their past usage from a LEC, or reduced prices based on growth in traffic placed over a LEC's network. With respect to density zone pricing, we reaffirm our requirement that the price subindexes (i.e., the upper and lower pricing bands—not the rate levels) be the same in each zone when a LEC introduces density zone pricing in a study area.

##### 2. Intermediate Hubbing and Tandem-Switched Transport

25. We decline to adopt Sprint's proposal to modify the definition of "tandem-switched transport" to include service between any customer-designated telephone company office and an end office, thus permitting IXCs to purchase (1) dedicated facilities to an intermediate hub that is not collocated at the serving wire center or at the tandem office; and (2) tandem-switched transport from that intermediate hub to an end office, rated based on the distance between the hub and the end offices without regard for the actual location of the intervening tandem office. We have already adopted rules that enable tandem-switched transport users to obtain efficiencies through intermediate hubbing. Sprint's proposal would substantially change the transport rate structure, and would lead to the pricing of more services in a manner that does not reflect the way facilities are deployed. Given our doubts about the efficiency benefits of Sprint's request and the fact that the existing rules already provide reasonable opportunities for tandem-switched transport users to compete with direct-trunked transport users, we decline to amend our prior decisions.

##### 3. Meet Point Billing

26. We conclude that specific methods for assessing, and avoiding double billing for, the tandem charge and the interconnection charge under meet point billing arrangements are better left to the individual parties

involved, given the wide variety and diversity of such arrangements. If such issues cannot be settled among the parties, we can address them in the future in the tariff process or pursuant to specific complaints filed with the Commission.

##### 4. Prohibition on Ratcheting

27. We continue to believe that ratcheting by interconnectors benefits access customers and competition, and therefore, decline to modify our rules with respect to ratcheting.

##### Ordering Clauses

28. Accordingly, it is ordered, pursuant to Sections 1, 4(i) and (j), 201-205, 218, 220, 403, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), 201-205, 218, 220, 403, and 405, that the petitions for reconsideration and clarification concerning the rate structure and pricing of local transport are denied, except to the extent indicated herein.

29. It is further ordered that the decisions and policies adopted herein shall be effective thirty days after the date of publication in the **Federal Register**.

30. It is further ordered that WilTel's Motion for Acceptance of Late-Filed Opposition to Petition for Reconsideration is granted.

31. It is further ordered that authority is delegated to the Chief, Common Carrier Bureau, as set forth herein.

##### List of Subjects in 47 CFR Part 61 and 69

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

**William F. Caton,**  
*Acting Secretary.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 675

[Docket No. 950104001-5001-01; I.D. 092694A]

RIN 0648-AF02

#### Groundfish of the Bering Sea and Aleutian Island Area; Amendment 21a

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule to implement Amendment 21a to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI), which prohibits the use of trawl gear in specified areas surrounding the Pribilof Islands. This action is necessary to protect areas that are biologically important to certain crab stocks and to reduce potential interference with seabird and marine mammal populations. This action is intended to promote the goals and objectives of the FMP.

**EFFECTIVE DATE:** January 20, 1995.

**ADDRESSES:** Copies of Amendment 21a and the Environmental Assessment/Regulatory Impact Review (EA/RIR) are available from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510.

**FOR FURTHER INFORMATION CONTACT:** Ellen R. Varosi, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The domestic groundfish fisheries in the exclusive economic zone of the BSAI are managed by NMFS in accordance with the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act). Regulations authorized under the FMP that pertain to the U.S. groundfish fisheries appear at 50 CFR parts 620, 675, and 676.

This action implements Amendment 21a to the FMP. It establishes a trawl closure around the Pribilof Islands to protect sensitive habitat areas for crab, seabird, and marine mammal populations.

A notice of availability of Amendment 21a was published on October 6, 1994 (59 FR 50893), and invited comment on the amendment through November 29, 1994. A proposed rule was published in the **Federal Register** on October 17, 1994 (59 FR 52277); a correction to the proposed rule was published in the **Federal Register** on November 3, 1994 (59 FR 55076). Comments on the proposed rule were invited through November 28, 1994. Written comments are summarized in the "Response to Comments" section, below.

After reviewing the reasons for Amendment 21a and the comments on the proposed rule to implement it, NMFS approved Amendment 21a on December 30, 1994, under section 304(b) of the Magnuson Act. Amendment 21a, and this final rule implementing it, prohibits fishing with trawl gear in the area bounded by a

straight line connecting the following pairs of coordinates in the following order:

Latitude	Longitude
57°57.0' N.	168°30.0' W.
56°55.2' N.	168°30.0' W.
56°48.0' N.	169°2.4' W.
56°34.2' N.	169°2.4' W.
56°30.0' N.	169°25.2' W.
56°30.0' N.	169°44.1' W.
56°55.8' N.	170°21.6' W.
57°13.8' N.	171°0.0' W.
57°57.0' N.	171°0.0' W.
57°57.0' N.	168°30.0' W.

The reasons for this action are explained further in the preamble to the proposed rule.

**Changes From the Proposed Rule**

The proposed rule would have amended § 675.22 by adding the proposed trawl closure as paragraph (i). The final rule amends § 675.24 by adding paragraph (h) to include the trawl closure as the Pribilof Island Area Habitat Conservation Zone.

**Response to Comments**

Seven letters of comment were received within the comment period. Of these, one letter was submitted by another government agency that acknowledged the action but provided no comment, three letters supported the action, and three letters of comment opposed the action. A summary of comments and NMFS' response follows:

*Comment 1:* The proposed closure in the specified area around the Pribilof Islands should be disapproved because it includes all trawling, as opposed to bottom trawling, which will cause unnecessary impacts to the midwater pollock fishery. Also, the rock sole and flatfish fisheries will be seriously affected as a result of this closure. Finally, the rationale of protecting seabirds and marine mammals has not been analyzed thoroughly and fails to provide adequate justification for flatfish fisheries.

*Response:* The inclusion of all trawl gear types provides additional protection for seabirds and marine mammals because all trawl gear is retrieved at the surface. Trawl gear interaction with these species at or near the ocean surface would be eliminated because the incidental takings of these species primarily occur near the surface. In addition, the inclusion of all trawl gear promotes enforcement and, by prohibiting the directed fishing for rock sole and flatfish with trawl gear, eliminates the source of the highest bycatch rates of crab and prohibited species categories. The amount of groundfish caught inside the habitat

conservation area is minimal compared to the groundfish caught in the remaining Bering Sea areas. The EA/RIR provides a detailed analysis, which concludes that additional conservation benefits would be achieved with the prohibition of all trawl gear types from the habitat conservation area, which will have minimal adverse impact on the trawl fisheries.

*Comment 2:* Combined effects of the proposed closure and other closures under consideration by the Council, which directly affect the rock sole fishery, were not adequately considered. An adequate analysis should be developed to determine: (1) The increased bycatch rate of prohibited species catch (halibut and Tanner crab) and other groundfish species due to the necessity for vessels participating in the rock sole fishery to change traditional fishing grounds; (2) the increased probability of a closure of the rock sole fishery before available TAC is harvested due to the attainment of *C. bairdi* Tanner crab or halibut bycatch allowances; (3) the combined effect of other trawl closures, which have made the rock sole fishery dependent on the Pribilof Islands area for higher catch rates, such that a redistribution of fishing effort from this area will result in lower catch rates and poorer utilization of groundfish stocks; and (4) whether a plausible link exists between the flatfish fisheries and seabirds or marine mammals.

*Response:* The problem statement for this action addressed the habitat concerns for crabs, marine mammals, and seabirds in the ecosystem around the Pribilof Islands. Groundfish fisheries have bycatch, which were predominately blue king crab, in the Pribilof Islands area. Blue king crab exist as isolated populations off the Pribilof Islands, St. Matthew Island, and St. Lawrence Island.

In addition, the northern fur seal population in the Pribilof Islands area comprises nearly two-thirds of the world population; although the population is currently stable, it is listed as depleted under the Marine Mammal Protection Act. Other seabirds and marine mammals that forage and breed in the area off the Pribilof Islands are Steller sea lions, Pacific harbor seals, and red-faced cormorants, murre species, auklets, and horned puffins. Therefore, the area surrounding the Pribilof Islands provides the potential for a marine sanctuary, if all trawling were prohibited. Any fishing with trawl gear, including flatfish, would increase the potential for interaction between the species needing protection and trawl gear, which has the potential to affect

marine mammals and seabirds adversely.

A bycatch simulation model was used initially to examine the potential impact of alternative trawl closure areas around the Pribilof Islands. Results of this analysis suggested that minimal impacts in halibut or Tanner crab bycatch amounts would occur. The EA/RIR prepared for this action states that these results could be due to the relatively small spatial scale of the proposed alternatives that the model could not approximate, or reflect a fairly accurate minimal impact, both economically and in terms of bycatch of prohibited species.

Analysis of the preferred alternative did not make use of the bycatch simulation model, in part because an updated version of the model was not available. Instead, analysts examined historical distribution and observed bycatch rates of prohibited species and the potential displacement of fishing effort from the proposed closed area to other fishing grounds. Based on this information and the previous bycatch simulation model runs, NMFS believes the best available information was used to examine the potential impact of the alternative trawl closures and that the proposed trawl closure would not be anticipated to result in an increase in prohibited species bycatch amounts.

The EA/RIR included adequate analysis of the economic impacts relative to the groundfish fisheries in this area. Amendment 21a will have a larger impact on the flatfish fisheries than on other groundfish fisheries because the highest blue king crab bycatch rate in the groundfish fisheries has occurred in the closed area. Furthermore, the rock sole fishery experiences the highest bycatch rate of blue king crab, which is the species in need of protection.

*Comment 3:* The proposed Pribilof Island area closure should be approved, because it will protect most of the king crab stocks, and enhance the rebuilding of depressed blue king crab stocks without causing foregone harvest of groundfish.

*Response:* NMFS concurs with this comment.

*Comment 4:* Amendment 21a is a conservation measure of significant proportion that is greatly needed and supported by the residents of the Pribilof Islands. Adequate support to minimize the impacts of the trawl fisheries was provided.

*Response:* NMFS concurs with this comment.

*Comment 5:* The effects of this closure to protect crab, seabirds, and marine mammals will significantly affect 14

vessels that fish in the Pribilof Islands area for rock sole and flatfish. To the extent that most of the groundfish catch for these fisheries and vessels takes place in the Pribilof Islands area, the displacement of these trawl vessels to other open areas will result in significant adverse economic effects. According to a Report to Industry on Blue and Red King Crab populations in the Pribilof District, the abundance of blue king crab has increased by 425 percent. The EA/RIR included the following points: (1) The abundance of red king crab in the area surrounding the Pribilof Islands has increased despite continued trawl activity, (2) no assessment of past trawl closures for crab has been conducted, (3) justification is lacking for the alleged destructive impact of bottom trawling on blue king crab's habitat and (4) different models were used to analyze different alternatives for the closed area.

*Response:* The rock sole fishery will be able to continue in areas adjacent to the closed area. The movement of the rock sole fleet to other areas would allow the rock sole fishery to continue without affecting blue king crab stocks, marine mammals, and seabird populations that are dependent on the Pribilof Islands area. Although the NMFS crab survey indicated the abundance of red king crab has increased in the Pribilof Islands area in recent years, the habitat of red king crab covers an extensive portion of the Bering Sea. Blue king crab are present in isolated populations in localized areas near the Pribilof Islands, St. Matthew Island, and St. Lawrence Island. Blue king crab distribution does not extend uniformly across the Bering Sea.

While a 425 percent increase in blue king crab abundance occurred from 1985 to 1993, 1985 marks the lowest annual abundance of blue king crab populations, and when compared to the 1980 abundance, the 1985 abundance is 8,800 percent lower.

The Council developed two sets of alternatives for the trawl closure based on either: (a) Geographic coordinates of existing management areas; or (b) the habitat of blue king crab, seabirds and marine mammals as determined through NMFS trawl survey data. The first set of alternatives was analyzed using a bycatch simulation model. This approach was not used for the second set of alternatives because an updated version of the model was not available. Instead, these alternatives were examined using new technology developed for the global positioning of observer and fishery data.

## Classification

The Director, Alaska Region, NMFS, has determined that FMP Amendment 21a is necessary for the conservation and management of the BSAI groundfish fishery and is consistent with the Magnuson Act and other applicable laws.

The Assistant General Counsel of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities.

NMFS has approved an emergency interim rule prohibiting directed fishing for groundfish by vessels using trawl gear in part of the Bering Sea Subarea to protect red king crab. The emergency rule closure will result in a redistribution of trawl effort for roe-bearing rock sole from historically productive fishing grounds in the Bristol Bay Subarea to other areas of the Bering Sea. The final rule implementing Amendment 21a must become effective concurrent with the emergency rule to prevent an unprecedented increase in trawl effort around the Pribilof Islands that could result from the redistribution of the rock sole fishery under the emergency rule. An increase in trawl effort around the Pribilof Islands would jeopardize the intent of Amendment 21a to protect the important crab, marine mammal, and seabird habitat located in this area. The need to implement Amendment 21a in a timely manner constitutes good cause under authority contained in 5 U.S.C. 553(d)(3), to waive the 30-day delay in effective date and make the rule effective on January 20, 1995.

This action has been determined to be not significant for purposes of E.O. 12866.

## List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Dated: January 13, 1994.

**Charles Karnella,**

*Acting Program Management Officer,  
National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 675 is amended as follows:

## PART 675—GROUND FISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

1. The authority citation for part 675 continues to read as follows:

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

2. Section 675.24, paragraph (h) is added as follows:

**§ 675.24 Gear limitations.**

\* \* \* \* \*

(h) *Pribilof Island Area Habitat Conservation Zone*: Trawling is prohibited at all times in the area bounded by a straight line connecting

the following pairs of coordinates in the following order:

<i>Latitude</i>	<i>Longitude</i>
57°57.0' N.	168°30.0' W.
56°55.2' N.	168°30.0' W.
56°48.0' N.	169°2.4' W.
56°34.2' N.	169°2.4' W.

56°30.0' N.	169°25.2' W.
56°30.0' N.	169°44.1' W.
56°55.8' N.	170°21.6' W.
57°13.8' N.	171°0.0' W.
57°57.0' N.	171°0.0' W.
57°57.0' N.	168°30.0' W.

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