

[Federal Register: July 12, 1994]

DEPARTMENT OF COMMERCE 50 CFR Part 675
[Docket No. 940687-4187; I.D. 062194A] RIN 0648-AG72

Groundfish of the Bering Sea and Aleutian Islands Area
AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and
Atmospheric Administration (NOAA), Commerce.
ACTION: Emergency interim rule; request for comments.

SUMMARY: NMFS has determined that an emergency exists in the groundfish fisheries in the Bering Sea and Aleutian Islands management area (BSAI). An unusually large number of salmon other than chinook ("other" salmon) were caught incidentally by trawl catcher vessels operating in the catcher vessel operational area (CVOA) during the 1993 pollock non-roe season. In 1993, the number of "other" salmon caught incidentally in the BSAI groundfish fisheries was 245,000 fish--approximately six times the bycatch level estimated for each of the previous 2 years and triple the previous highest bycatch amount. Approximately 95 percent of this catch is chum salmon. If not controlled, a large number of chum salmon could be incidentally caught again during the 1994 pollock non-roe season, potentially causing serious conservation and management problems. NMFS is implementing by emergency rule, certain management measures necessary to address this problem. These measures are intended to accomplish the goals and objectives of the North Pacific Fishery Management Council (Council) with respect to fisheries management in the BSAI.

DATES: Effective August 15, 1994 through November 12, 1994. Comments must be received by July 27, 1994.

ADDRESSES: Comments should be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802, Attention: Lori Gravel. Copies of the Environmental Assessment (EA) prepared for the emergency rule may be obtained from the same address.

FOR FURTHER INFORMATION CONTACT: Kaja Brix, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

Fishing for groundfish by U.S. vessels in the exclusive economic zone of the BSAI is managed by the Secretary of Commerce (Secretary) according to the Fishery Management Plan (FMP) for the Groundfish Fishery of the BSAI. The FMP was prepared by the Council under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) (Magnuson Act), and is implemented by regulations governing the U.S. groundfish fisheries at 50 CFR part 675. General regulations that also pertain to U.S. fisheries are codified at 50 CFR part 620.

At times, amendments to an FMP or its implementing regulations are necessary to respond to fishery conservation and management problems that cannot be addressed within the time frame of the normal procedures provided for by the Magnuson Act. Section 305(c) of the Magnuson Act authorizes the Secretary to implement emergency regulations necessary to address these situations. These emergency regulations may remain in effect for not more than 90 days after date of publication in the Federal Register, with a possible 90-day extension.

In 1993, the number of "other" salmon caught incidentally in the BSAI groundfish fisheries increased significantly over the 1991 and 1992 amounts of 36,000 and 39,000 fish, respectively. The 1993 total "other" salmon bycatch amount was 245,000 fish--approximately six times the bycatch level estimated for each of the previous 2 years and triple the previous highest bycatch amount of 72,000 "other" salmon estimated in the 1984 foreign trawl fishery. "Other" salmon bycatch was estimated to be below 10,000 fish, both prior to 1983 and between 1987 and 1990. "Other" salmon is defined as salmon other

than chinook salmon. Historical data indicate that approximately 95 percent of the ``other'' salmon bycatch in the Bering Sea is chum salmon. Poor returns of chum salmon to western Alaska river systems during 1993 caused the Alaska Department of Fish and Game (ADF&G) to close commercial, sport, and subsistence fisheries in several western Alaska districts. Projections for 1994 are for below average returns in many districts. The salmon caught as bycatch in the 1993 pollock non-roe season were primarily in the size range of 3-year-old fish, which would have matured in 1994. Little information exists about the potential effect the 1993 chum salmon bycatch will have on the 1994 returns in western Alaska because stock composition of the chum salmon bycatch during the pollock non-roe season is unknown. However, the magnitude of the 1993 chum salmon bycatch in the pollock non-roe season is of concern, regardless of the origin of these fish.

To respond to this concern, NMFS, in consultation with the Council, implements the following three measures under emergency rulemaking, to address the chum salmon bycatch problem in the 1994 BSAI pollock non-roe season:

1. Establishment of a 42,000 ``other'' salmon bycatch limit in the CVOA which, when reached, closes a portion of the CVOA to vessels using trawl gear;
2. Requirement for two observers on mothership processor vessels that receive groundfish caught in the CVOA during the 1994 pollock non-roe season; and
3. Requirement for electronic communication capabilities for each mothership processor vessel required to carry two observers under this emergency rule and for each shoreside facility that receives pollock harvested from the CVOA during the 1994 pollock non-roe season that is required to have 100 percent observer coverage under 50 CFR 672.27 or 675.25.

These measures are described in detail and justified below.

Salmon Savings Area

At its April 1994 meeting, the Council requested that NMFS prepare emergency rulemaking that would provide the authority to close an area within the CVOA to all vessels using trawl gear if the ``other'' salmon bycatch in the CVOA during 1994 reaches 42,000 fish. This measure is intended to prevent 1994 chum salmon bycatch numbers from approaching the level experienced in the 1993 fishery. Establishing the bycatch limit at 42,000 ``other'' salmon accommodates pre-1993 levels while preventing excessive bycatch.

This closure area (the salmon savings area) is defined by straight lines connecting the following coordinates in the order listed: 56 deg.00' N., 167 deg.00' W.; 56 deg.00' N., 165 deg.00' W.; 55 deg.30' N., 165 deg.00' W.; 55 deg.30' N., 164 deg.00' W.; 55 deg.00' N., 164 deg.00' W.; 55 deg.00' N., 167 deg.00' W.; 56 deg.00' N., 167 deg.00' W.

If the ``other'' salmon bycatch limit established for the CVOA is taken, NMFS will close the salmon savings area to all vessels using trawl gear through November 12, 1994--the expiration date of this emergency rule. The salmon savings area historically has accounted for a large proportion of ``other'' salmon bycatch and a relatively small proportion of groundfish harvest. The recommended 42,000 ``other'' salmon bycatch limit represents 50 percent of the 1991, 1992, and 1993 average of ``other'' salmon bycatch in the CVOA. The 42,000 ``other'' salmon limit approximates the 1991 and 1992 bycatch, while providing some buffer to accommodate slight increases in bycatch.

This action is intended to prevent a recurrence of the high 1993 chum salmon bycatch experienced during the BSAI pollock non-roe season. The bycatch of ``other'' salmon appears to be a function of the time of year, distribution of fishing effort, and spatial distribution of salmon. Historical data indicate that ``other'' salmon bycatch is reduced generally during the winter months and elevated during the months of July through October. Approximately 67 percent of all ``other'' salmon bycatch in observed hauls during 1991 was taken during August, and 40 percent and 62 percent of the 1992 and 1993 ``other'' salmon bycatch, respectively, was taken during the month of September. Starting in 1993, the opening of the pollock non-roe season was delayed from June 1 until August 15 (58 FR 30997, May 28, 1993). This delay

was implemented to achieve increased revenues from the harvest of BSAI pollock during the non-roe season and to provide participants in the pollock non-roe fishery increased opportunities to fish in other groundfish fisheries. Although the delay of the pollock non-roe season until August 15 was expected to increase chum salmon bycatch, the magnitude of the 1993 bycatch amount was not anticipated. Spatially, the number of ``other'' salmon appears to be highest south of 57 deg. N. lat. and east of 168 deg. W. long. Consistent with historical data, about 80 percent of the 1993 BSAI ``other'' salmon bycatch was taken in the CVOA.

Analysis of historical observer data relative to the 1993 pollock non-roe season chum salmon bycatch was not available prior to the Council's April 1994 meeting. Therefore, the recently discovered circumstances surrounding the 1993 chum salmon bycatch problem provided little opportunity for the Council to respond through normal rulemaking before the opening of the 1994 pollock non-roe season on August 15.

The Council considered seven different alternatives for time/area closures to limit chum salmon bycatch during the 1994 pollock non-roe season. The recommended area was chosen as a minimum closure area that would provide the most consistent protection to ``other'' salmon during the pollock non-roe season, but would still allow access to productive pollock fishing grounds. During the period July through October, the recommended salmon savings area accounted for 1.0, 0.8, and 7.0 percent of the total annual observed groundfish catch in the BSAI pollock and Pacific cod trawl fisheries during 1991, 1992, and 1993, respectively. During the period July through October of 1991, 1992, and 1993, this area accounted for 38, 40, and 54 percent, respectively, of the total annual ``other'' salmon bycatch. During the period July through October 1993, the salmon savings area had the highest ``other'' salmon bycatch rate of the areas analyzed--approximately 1.2 ``other'' salmon per metric ton of groundfish.

Increased Observer Coverage and Electronic Transmission of Observer Data

NMFS must rely on data collected by NMFS-certified observers to manage the 1994 ``other'' salmon bycatch limit of 42,000 fish. Currently, one observer is required on each mothership processor vessel participating in either the inshore or offshore component of the pollock fishery. Under a regulatory amendment effective May 20, 1994 (59 FR 18757, April 20, 1994), all salmon taken in BSAI trawl operations must be retained until the number of salmon is determined by a NMFS-certified observer. NMFS intends to use these observed counts to monitor the ``other'' salmon bycatch limit, unless other information indicates that these numbers do not provide the best information available on salmon bycatch. To monitor the chum salmon bycatch limit effectively and to prevent the 42,000 fish bycatch limit from being exceeded, NMFS must receive daily reports of salmon bycatch numbers. NMFS typically receives weekly reports on groundfish catch and on prohibited species bycatch to monitor the fisheries. The time required to process these reports results in a delay between the receipt of reports and determination of overall catch statistics that provide the basis for determining whether a closure is required. If the ``other'' salmon bycatch in 1994 were to proceed at the 1993 rate (i.e., approximately 39,000 fish in week 1; 26,000 fish in week 2; and 47,000 fish in week 3), weekly reporting would not be sufficient to prevent the 42,000 ``other'' salmon limit from being exceeded.

Effective monitoring of the bycatch limit requires a second observer on each mothership processor vessel that receives fish from catcher boats fishing in the CVOA during the pollock non-roe season. This is necessary to ensure accurate and timely counts of salmon bycatch, without compromising the other groundfish sampling duties of the observer. Observers onboard mothership processor vessels currently sample approximately two out of every ten hauls. The time required to count salmon bycatch under the May 20, 1994, regulatory amendment, and to transmit these data on a daily basis, places an extra burden on observers stationed on mothership processor vessels. According to 1993 records, the salmon bycatch rate was greater for mothership processor vessels (0.813 ``other'' salmon/mt groundfish) than for shoreside plants (0.343

``other'' salmon/mt groundfish). NMFS will require the additional observers to remain onboard the mothership processor vessels until either (1) the salmon savings area is closed, or (2) the salmon bycatch rates are sufficiently low such that daily observer reports are no longer needed to monitor the ``other'' salmon bycatch limit established for the CVOA.

The observer requirements and the requirements for electronic communication capabilities are necessary for NMFS to monitor the ``other'' salmon bycatch limit effectively. The affected mothership processing vessels and processors must obtain for observers' use the data entry software program provided by the Regional Director. To enable the observers to report haul-by-haul statistics and salmon bycatch numbers on a daily basis, the operator of each mothership processor vessel that receives fish harvested in the CVOA must provide INMARSAT Standard A satellite communication capabilities and associated software (cc:Mail remote and a data entry program provided by the Regional Director) for observers' use. Each mothership processor vessel must also have the following equipment or equipment compatible therewith and having the ability to operate the NMFS-supplied data entry software program: a personal computer (PC) with a 386 or better processing chip, a DOS version 3.0 operating system, and 5 megabytes of free hard disk storage available for the observers' use. Each shoreside facility that receives pollock harvested in the CVOA during the 1994 pollock non-roe season and that is required to have 100-percent observer coverage under 50 CFR 672.27 and 675.25, must have the capability to transmit data over telephone lines using a computer modem. These processors will make available to observers the following equipment or equipment compatible therewith: a PC with a 386 or better processing chip, with at least a 9600 baud modem, and a phone line. The PC must be equipped with a mouse, Windows version 3.1 or a program having the ability to operate the NMFS-supplied data entry software program, and have at least 5 megabytes of free hard disk storage.

Economic Considerations

Pollock harvests during the non-roe season are apportioned between the ``inshore'' and the ``offshore'' components. During the 1993 non-roe season, the inshore component was comprised of seven shoreside processing plants, one mothership processor vessel, and five trawl catcher/processors. These processors processed approximately 235,000 mt of pollock. The offshore component was comprised of three mothership processors and 52 trawl catcher/processors. Sixteen of these trawl catcher/processors also received pollock deliveries from catcher vessels. The offshore component harvested about 414,000 mt of pollock during the directed non-roe season fishery.

Sixty-five trawl catcher vessels delivered pollock to shoreside processing plants and 25 trawl catcher vessels delivered pollock to mothership processors. These 90 catcher vessels delivered about 233,000 mt of pollock to shoreside processing plants and 121,000 mt to mothership processor vessels, for a total of about 354,000 mt of pollock. Therefore, trawl catcher vessels harvested about 55 percent of the pollock during the 1993 non-roe season and trawl catcher/processors harvested about 45 percent.

The salmon savings area is completely within the CVOA. closure of this area would affect only the pollock harvest areas available to trawl catcher vessels delivering to shoreside processing plants and mothership processor vessels. Most of the harvest by these catcher vessels during the 1993 non-roe season occurred within the CVOA. Preliminary examination of 1993 ADF&G fish tickets indicates that at least five out of seven shoreside processing plants received some pollock harvested within the salmon savings area during the 1993 pollock non-roe season. Harvests within the salmon savings area represented about 10 percent of the total 1993 non-roe season pollock harvests by trawl catcher vessels delivering to shoreside processing plants.

closure of the salmon savings area would only occur if the salmon bycatch limit was reached and would not affect significantly the opportunity available to catcher vessels to harvest available pollock TAC. Most of the area within the CVOA that is currently available to the catcher vessels would remain open to pollock fishing. Based on 1993 non-roe season fishing patterns, closure of

the salmon savings area would have resulted in relocation of catcher vessels within the Bering Sea for less than 10 percent of their pollock harvests.

The observer and equipment requirements of this action apply only to mothership processing vessels or shoreside processing plants receiving fish caught by catcher vessels from the CVOA. Direct costs are limited to those participants, estimated to be four mothership processing vessels and seven shoreside processing plants.

Direct costs for observer coverage are estimated to be about \$200 per day per observer. The cost of a second observer on the four mothership processor vessels would depend on the number of days the additional observer was required. The number of observer days for each mothership processor vessel during the 1993 non-roe season ranged from 39 to 58 days. Based on the observer coverage requirements for 1993, a second observer during the 1994 non-roe season could cost from \$7,800 (39 days x \$200/day) to \$11,600 (58 days x \$200/day) per mothership processor vessel. Based on the actual number of fishing days, the total cost for all four mothership processor vessels would be \$37,400 (187 days x \$200/day), if the second observer were required for the same amount of observer coverage days as during the 1993 non-roe season. If the second observer is required for only a portion of the 1994 non-roe season, additional observer costs would be \$200 per day per mothership processor.

Costs could also be incurred for the acquisition of electronic mail software and a personal computer that satisfies the hardware requirements detailed above. The cost for these items could range from \$200-1200. Mothership processing vessels have the INMARSAT A satellite communication capabilities and necessary computer hardware, and most shoreside facilities have the necessary computer hardware for electronic transmission of data. NMFS will supply the necessary data entry software and will provide installation free of charge.

closure of the salmon savings area to vessels using trawl gear will also affect any trawl vessels that may have otherwise fished in this area in non-pollock target fisheries. However, examination of 1993 catch information indicates that no significant amounts of other groundfish or pollock Community Development Quota fishing occurred in the salmon savings area subsequent to closure of the directed inshore and offshore component pollock fisheries.

Management measures responding to the information recently presented to the Council are necessary to mitigate potentially adverse impacts of chum salmon bycatch on western Alaska salmon resources and to reduce chum salmon bycatch in 1994. NMFS is implementing this emergency action for the 1994 pollock non-roe season because the high chum salmon bycatch occurred primarily in the pollock non-roe season in 1993 and a large proportion of this bycatch occurred in the salmon savings area.

NMFS concurs that the above regulatory measures must be implemented by emergency rulemaking to prevent high bycatch of chum salmon by catcher vessels fishing for groundfish in the CVOA during the 1994 pollock non-roe season.

Classification

This rule is exempt from the requirements of the Regulatory Flexibility Act to prepare a regulatory flexibility analysis, because it is issued without opportunity for prior public comment, and none has been prepared. This rule has been determined to be not significant for purposes of E.O. 12866.

NMFS finds that the immediate need to protect and conserve the "other" salmon population in the CVOA, as explained in the preamble to this rule, constitutes good cause to waive the requirement to provide prior notice and an opportunity for public comment, pursuant to authority set forth at 5 U.S.C. Sec. 553(b)(B), as such procedures would be contrary to the public interest.

List of Subjects in 50 CFR Part 675

Fisheries, Recordkeeping and reporting requirements.

Dated: July 5, 1994. Charles Karnella, Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 675 is amended effective August 15, 1994 through November 12, 1994, 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. In section 675.22, paragraph (h) is added to read as follows:
Sec. 675.22 Time and area closures.

* * * * *

(h) Salmon savings area. When the Regional Director determines that 42,000 non-chinook salmon have been caught by vessels using trawl gear during 1994 in the catcher vessel operational area, defined in paragraph (g) of this section, NMFS will prohibit fishing with trawl gear, through November 12, 1994, in the area defined by straight lines connecting the following coordinates in the order listed: 56 deg.00' N., 167 deg.00' W.; 56 deg.00' N., 165 deg.00' W.; 55 deg.30' N., 165 deg.00' W.; 55 deg.30' N., 164 deg.00' W.; 55 deg.00' N., 164 deg.00' W.; 55 deg.00' N., 167 deg.00' W.; 56 deg.00' N., 167 deg.00' W.

3. In Sec. 675.25, the existing text is suspended and new paragraphs (a) through (d) are added to read as follows: Sec. 675.25 Observers.

(a) Observer requirements authorized under the observer plan are set out at Sec. 672.27 of this chapter and paragraphs (b) through (d) of this section.

(b) Each mothership processor vessel that receives groundfish harvested by catcher vessels in the catcher vessel operational area, defined at Sec. 675.22(g), during the 1994 second pollock season that starts on August 15 under Sec. 675.23(e), is required to have a second NMFS-certified observer onboard, in addition to the observer required under Sec. 672.27(c)(1)(iii) (A) and (B) of this chapter. Two observers must be onboard for each day of the 1994 second pollock season until either the salmon savings area is closed under Sec. 675.22(h) or the Regional Director determines that the bycatch rates of non-chinook salmon are sufficiently low such that daily observer reports are no longer needed to monitor the 1994 non-chinook salmon bycatch amounts.

(c) Each mothership processor vessel must be equipped with INMARSAT Standard A satellite communication capabilities, cc:Mail remote, and the data entry software provided by the Regional Director, for use by the observers. The operator of each mothership processing vessel shall also make available for the observers' use the following equipment or equipment compatible therewith and having the ability to operate the NMFS-supplied data entry software program: a personal computer with a 386 or better processing chip, a DOS 3.0 operating system, and 5 megabytes of free hard disk storage.

(d) Each shoreside processing facility that is required to have 100 percent observer coverage under Sec. 672.27(c)(2) of this chapter and that receives groundfish harvested in the catcher vessel operational area, defined at Sec. 675.22(g), during the second pollock season that starts on August 15, under Sec. 675.23(e), must make available to the observer the following equipment or equipment compatible therewith: a personal computer with a minimum of a 386 processing chip with at least a 9600-baud modem and a telephone line. The personal computer must be equipped with a mouse, Windows version 3.1 or a program having the ability to operate the NMFS-supplied data entry software program, 5 megabytes of free hard disk storage, and the data entry software provided by the Regional Director for use by the observers.