

[Federal Register: April 20, 1994]

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DEPARTMENT OF COMMERCE  
50 CFR Parts 672 and 675  
[Docket No. 940102-4106; I.D. 122293D] RIN 0648-AF17

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area

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

ACTION: Final rule.

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SUMMARY: NMFS announces the approval of Amendment 25 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI) and issues final regulations to implement the amendment that eliminates the primary Pacific halibut prohibited species catch (PSC) limit established for BSAI trawl fisheries. NMFS also issues final regulations that prohibit the discard of salmon taken as bycatch in the BSAI groundfish trawl fisheries until the number of salmon has been determined by a NMFS-certified observer, and authorizes the release of vessel-specific observer data on bycatch of prohibited species in the BSAI and Gulf of Alaska (GOA) groundfish fisheries. This action is necessary to manage effectively the halibut PSC limit established for BSAI trawl fisheries and to provide better information on salmon and other prohibited species bycatch. This action is intended to promote management and conservation of groundfish and other fish resources and to further the objectives contained in the FMP for the Groundfish Fishery of the BSAI and the FMP for Groundfish of the GOA.

EFFECTIVE DATE: May 20, 1994.

ADDRESSES: Copies of Amendment 25 and the environmental assessment/ regulatory impact review (EA/RIR) may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: 907-271-2809.

FOR FURTHER INFORMATION CONTACT: Susan J. Salveson, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

Fishing for groundfish by U.S. vessels in the exclusive economic zone of the GOA and the BSAI is managed by the Secretary of Commerce (Secretary) according to the FMP for Groundfish of the GOA and the FMP for the Groundfish Fishery of the BSAI. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) (Magnuson Act), and are implemented by regulations governing the U.S. groundfish fisheries at 50 CFR parts 672 and 675. General regulations that also pertain to U.S. fisheries are codified at 50 CFR part 620. This action implements Amendment 25 to the FMP for the Groundfish Fishery of the BSAI, which eliminates the primary halibut PSC limit established for the BSAI groundfish trawl fisheries. This action also implements regulatory amendments that: (1) Prohibit the discard of salmon taken as bycatch in the BSAI groundfish trawl fisheries until a NMFS-certified observer has determined the number of salmon and completed the collection of any scientific data or biological samples from the salmon; and (2) authorize the release of vessel-specific observer data on bycatch of prohibited species in the BSAI and GOA groundfish fisheries.

A notice of availability of Amendment 25 was published in the Federal Register on December 29, 1993 (58 FR 68848), and invited comment on the amendment through February 22, 1994. No written comments were received. A proposed rule to implement Amendment 25 and the regulatory amendments referenced above was published in the Federal Register January 19, 1994 (59 FR 2817). Comments on the proposed rule were invited through February 28, 1994. Five letters providing 15 comments were received that are summarized in the Response to Comments section, below.

Amendment 25 was approved by the Secretary on March 25, 1994, under section 304(b) of the Magnuson Act. Upon reviewing the amendment, the comments on the proposed rule to implement it and the two proposed regulatory amendments, NMFS has determined that this final rule implementing the following measures is necessary for fishery conservation and management:

1. Elimination of the primary PSC limit established for the BSAI groundfish trawl fisheries that, when reached, required NMFS to close bycatch limitation zones 1 and 2H of the Bering Sea. This action does not affect the overall halibut bycatch mortality limit (3,775 metric tons) established for the BSAI trawl gear fisheries.

2. Prohibit the discard of salmon taken as bycatch in the BSAI groundfish trawl fisheries until a NMFS-certified observer has determined the number of salmon and completed the collection of any scientific data or biological samples from the salmon. 3. Establishment of regulatory authority to release to the public vessel-specific observer data on bycatch of prohibited species in the BSAI and GOA groundfish fisheries. On a weekly basis, the following observer data are authorized for release by NMFS for each vessel participating in a directed fishery for Alaska groundfish:

1. The name and Federal permit number of the vessel;
2. The observed number of chinook salmon and other salmon taken by the vessel;
3. The observed vessel bycatch rates of Pacific halibut, Pacific herring, king crab, and *Chionoecetes bairdi* Tanner crab;
4. The number of observed trawl hauls or fixed gear sets;
5. The number of trawl hauls that were basket sampled; and
6. The total weight of basket samples taken from sampled trawl hauls.

NMFS could also make available to the public the following observer data collected in the Alaska groundfish trawl fisheries other than for rockfish, Greenland turbot, or Atka mackerel. These data would not be identified by vessel and would include the following for each observed haul:

1. Date;
2. Time of day gear is deployed;
3. Latitude and longitude at beginning of haul;
4. Bottom depth;
5. Fishing depth of trawl;
6. Rate chinook salmon (number of chinook salmon/mt groundfish);
7. Rate other salmon (number of other salmon/mt groundfish);
8. Rate Pacific halibut (kg halibut/mt groundfish);
9. Rate Pacific herring (kg herring/mt groundfish);
10. Rate king crab (number of crab/mt groundfish);
11. Rate *C. bairdi* Tanner crab (number of crab/mt groundfish);
12. Sea surface temperature (where available); and
13. Sea temperature at fishing depth of trawl (where available).

The intent of the measures implemented under this action is to eliminate the primary halibut bycatch mortality limit as a halibut bycatch management measure, provide better information to management agencies and the public on salmon and other prohibited species bycatch, and support independent industry initiatives to address the prohibited species bycatch problem. Further explanation of, and reasons for, these measures are contained in the preamble to the proposed rule (59 FR 2817, January 19, 1994).

#### Changes in the Final Rule From the Proposed Rule

This final rule includes the following changes from the proposed rule: These changes are described as follows.

1. Section 672.7(h) and Sec. 675.7(o) are redesignated as Sec. 672.7(o) and Sec. 675.7(p), respectively, to accommodate other recently implemented regulations.

2. Regulatory language at Sec. 675.20(c)(6) has been clarified to set out NMFS's intent to allow observers to use NMFS guidelines for an estimate of the number of retained salmon when time constraints or other duties prevent an observer from counting each fish. Specifically, the phrase ``until all salmon have been counted by a NMFS-certified observer'' has been revised to read

``until the number of salmon has been determined by a NMFS-certified observer''. Accordingly, regulatory text at Sec. 672.7(n) and Sec. 675.7(o) has been changed.

3. In Sec. 675.20, paragraphs (c)(6)(ii) through (iv) are redesignated as paragraphs (c)(6)(i)(A) through (C), respectively, and paragraphs (c)(6)(v) through (vii) are redesignated as paragraphs (c)(6)(ii) through (iv), respectively. Redesignated paragraph (c)(6)(i)(A) is revised to require operators of vessels carrying observers onboard, and whose fishing operations allow for sorting of catch, to retain salmon from different hauls separately and in a manner that identifies the haul from which the salmon were taken. This action is taken in response to public comment that salmon from different hauls should be counted separately to determine possible correlations between haul characteristics and salmon bycatch rates. This revision to regulatory text will provide NMFS with data that could be used to assess observed salmon bycatch rates when other than whole-haul sampling is used by the observer.

4. Regulatory text at Sec. 672.27(g)(1) and Sec. 675.25(g)(1) is revised to include the authority to release to the public observer data on the number of trawl hauls or fixed gear sets observed onboard a vessel during a weekly reporting period, the number of trawl hauls that were basket sampled, and the total weight of basket samples taken from sampled hauls. This action is taken to respond to public comment received on the proposed rule that observed bycatch rates based on small sample sizes often can be misleading. 5. Regulatory text at Sec. 672.27(g)(2) and Sec. 675.27(g)(2) is revised to clarify NMFS intent that the observer data collected for individual hauls and authorized for release to the public will not be identified by vessel name or other information that identifies the vessel from which the data were collected.

#### Response to Comments

Five letters of comments were received within the comment period that ended February 28, 1994. All the letters supported regulations implementing Amendment 25 that eliminate the primary halibut PSC limit for the BSAI trawl gear fisheries. A summary of comments on the regulatory amendments and NMFS's response follows.

Comment 1. Any action is supported that contributes to the reduction of prohibited species bycatch rates and optimal management of prohibited species bycatch in all North Pacific fisheries. One means of achieving this goal is better collection and assessment of data generated by the NMFS Observer Program. Retention is an important first step to accurate assessment of salmon bycatch. In addition, NMFS is encouraged to investigate the accuracy of estimating prohibited species catch in groundfish catches using whole-haul versus basket sampling methods.

Response. NMFS concurs that additional information on salmon bycatch is desirable and necessary to develop future management actions to address the salmon bycatch problem in the Alaska groundfish trawl fisheries. Accordingly, NMFS has approved this final rule to meet this need. NMFS intends to use the additional data on salmon bycatch collected under this final rule to assess the quality of salmon bycatch rate estimates derived from existing observer sampling procedures and to provide additional information with which to assess the magnitude of salmon bycatch in the Alaska trawl fisheries.

Comment 2. Proposed regulations prohibiting the discard of salmon taken in BSAI groundfish trawl fisheries until the number of salmon is determined by a NMFS-certified observer also should apply to GOA trawl fisheries. Salmon bycatch rates in the GOA trawl fisheries often equal or exceed those in the Bering Sea, and vessels in the GOA typically operate with less observer coverage than their BSAI counterparts.

Response. NMFS acknowledges that the salmon bycatch problem extends to the GOA trawl fisheries. However, the Council did not consider extending salmon retention criteria to the GOA trawl fisheries, and the supporting analyses presented to the Council did not address this alternative. The Council's request to NMFS to prepare rulemaking to implement mandatory retention of salmon until counted by an observer was based on issues associated with

chinook salmon bycatch in the BSAI trawl fisheries and independent industry initiatives to address the chinook salmon bycatch problem in these fisheries. Council support for the BSAI program was reinforced after its consideration of the high bycatch amounts of chum salmon estimated for the BSAI pollock fishery during the 1993 non-pollock roe or ``B'' season.

Relative to the BSAI trawl fleet, the GOA fleet typically comprises smaller vessels with less observer coverage. Therefore, monitoring compliance with mandatory salmon retention requirements would be more difficult. Fewer GOA processors are required to have 100-percent observer coverage relative to BSAI processing operations, because of the smaller volume of groundfish processed on a monthly basis. As a result, GOA processors would tend to incur greater relative costs associated with retaining and freezing salmon until an observer becomes available to count retained fish.

If the BSAI program is determined to be effective in collecting additional information on salmon bycatch, and the Council wishes to expand this program to the GOA trawl fisheries, NMFS could initiate separate rulemaking to extend the salmon retention program to the GOA.

Comment 3. The intent of the proposed regulatory language at Sec. 675.20(c)(6)(vii) is unclear. This language states that all salmon must be returned to Federal waters immediately, with a minimum of injury, following notice by a NMFS-certified observer that salmon have been counted and the collection of any scientific data or biological samples has been completed. Why is the term ``minimum of injury'' used when all retained salmon likely are dead? What is a reasonable definition of the term ``immediately'' for salmon that have been in frozen storage at a shoreside facility awaiting the arrival of an observer? Can a vessel transport another vessel's salmon bycatch back out to Federal waters? After they have been counted by an observer, can salmon be disposed of by sending them to a meal plant?

Response. The FMPs currently state that all prohibited species must be returned to the Sea with a minimum of injury except when their retention is authorized by other applicable law. NMFS recognizes that the rationale for existing standards that require prohibited species be returned to the Sea with a ``minimum of injury'' becomes questionable for those prohibited species that obviously are dead, such as salmon delivered to shoreside processors for counting by a NMFS-certified observer. NMFS believes that this issue is not unique to salmon bycatch, and that other prohibited species often are landed shoreside by those vessel operators whose fishing operations do not allow for effective sorting of catch at Sea. At this time, processors are not allowed to dispose of prohibited species by sending them to meal plants. Meal ultimately is produced for commercial sale, and existing regulations are intended to prevent the commercial sale of prohibited species. Federal regulations could be amended to allow the grinding of prohibited species so they could be more easily disposed of in a manner similar to other fish waste under discharge permits issued to processors under the Clean Water Act. NMFS believes that rulemaking authorizing this manner of disposal of salmon delivered to processors in State waters should be considered for all prohibited species, not just salmon. A comprehensive approach for assessing and revising guidelines for disposal of prohibited species is outside the scope of this regulatory action. Therefore, until rulemaking is initiated to revise disposal guidelines for all prohibited species, NMFS has determined to maintain the proposed regulatory guidelines for disposal of salmon after the number of salmon have been determined by a NMFS-certified observer.

Under this final rule, salmon retained and delivered to a processor by one vessel subsequently can be loaded on to another vessel for discard in Federal waters. For purposes of clarifying Sec. 675.20(c)(iv), the term ``immediately'' has been changed to ``as soon as is practicable'' to better express NMFS's intent for the disposal of retained salmon.

Comment 4. Approved methods of disposing of salmon after the number of salmon have been determined by an observer should include distribution to foodbanks through authorized nonprofit organizations.

Response. The authority to retain salmon taken as bycatch in the Alaska

groundfish trawl fisheries for delivery to an authorized distributor for nonprofit foodbank organizations is beyond the scope of this action. The Council has requested that NMFS prepare an analysis of alternatives for a program that would allow retention of salmon for delivery to nonprofit foodbank organizations. The Council is scheduled to consider this analysis at its April 1994 meeting.

Comment 5. The authority for public release of observer data on vessel name and prohibited species bycatch amounts or rates at Sec. 672.27(g)(1) and Sec. 675.25(g)(1) is supported, but should be expanded to include observer data on the number of tows sampled onboard a vessel during a weekly reporting period, the number of tows that were basket sampled or whole-haul sampled, and the total sample weight of basket samples. This is important, because bycatch rates based on small sample sizes often can be misleading.

Response. NMFS concurs. The requested observer data can be provided inseason and has been added to Sec. 672.27(g)(1) and Sec. 675.25(g)(1) as information that may be released to the public on a weekly basis under vessel name. NMFS has further revised the final rule to clarify that the authority to release these data applies to both trawl and fixed gear fisheries.

Comment 6. The authority for public release of haul-by-haul data authorized at Sec. 672.27(g)(2) and Sec. 675.25(g)(2) should be expanded to include the fixed gear fisheries in the GOA and BSAI.

Response. The intent of the regulatory amendment implemented under the referenced regulations is to address the salmon bycatch problem in the Alaska trawl fisheries, although the data authorized for release also will benefit an assessment of the bycatch problem for other prohibited species. The trawl industry petitioned NMFS for the release of these data outside of the Council process, and NMFS agreed to include in the proposed rule the authority to release these data to support independent initiatives by the trawl industry to better define the salmon bycatch problem and to take action to address it.

The release of observer data on haul position and depth posed some concern to members of the trawl industry, because of the potential for competitive harm. Ultimately, representatives of the trawl industry attempted to address this concern by requesting that NMFS not release these data for those fisheries that are geographically specific in nature, involve a small number of participants, and have relatively small quotas.

NMFS has approved the authority to release vessel names, bycatch amounts of salmon, and bycatch rates of other prohibited species on a weekly basis for all observed vessels, including those participating in the fixed gear fisheries. However, representatives for the fixed gear fisheries have not petitioned NMFS for the release of observer data for individual sets. Given the potential for competitive harm that could result from the release of observer data on the position and depth of individual sets in the hook-and-line, pot, or jig gear fisheries, NMFS believes that separate regulatory action to implement the authority to release these data should be developed in consultation with the Council and affected industry members.

Comment 7. The requirement that all salmon taken as bycatch in the BSAI groundfish trawl fisheries be retained until an observer has counted each fish and collected appropriate scientific or biological samples is supported. No data are available to suggest this requirement would increase salmon bycatch mortality, and it is an essential step in developing reliable data concerning the actual number of salmon taken as bycatch in the trawl fisheries and identifying the stocks of origin of salmon taken as incidental catch. The retention procedure should require observed vessels whose operations allow sorting to store salmon in separate bins on a haul-by-haul basis and to identify the haul(s) to which the bin(s) relate. This procedure is necessary to determine possible correlations between haul characteristics and salmon bycatch rates.

Response. NMFS concurs and has revised the final rule to require operators of observed vessels whose operation allows sorting of catch to store salmon from different hauls separately and to identify for the observer those hauls associated with retained salmon. In addition to being necessary for assessing

possible correlations between haul characteristics and salmon bycatch rates, this requirement will provide data that could be used by NMFS to assess observed salmon bycatch rates when other than whole-haul sampling is used by the observer.

Comment 8. Any exemption for processors not carrying observers from the requirement of retaining salmon until the number of salmon is determined by a NMFS-certified observer is opposed. If NMFS concludes that such exemptions may be necessary, they should be made available by the Director, Alaska Region, NMFS (Regional Director), on a case-by-case basis, upon a showing by the processor that the requirement would result in undue expense or difficulty, and that the fisheries served by the processor have a low salmon bycatch rate.

Response. In 1992 and 1993, the pollock fisheries accounted for 91 percent and 97 percent, respectively, of the total salmon bycatch in the BSAI trawl fisheries. Mothership and shoreside processors receiving pollock from vessels participating in this fishery typically are large operations that process a high volume of fish. In 1993, 13 mothership and shoreside processors participated in the pollock fishery during at least 1 week. Twelve of these processors received over 500 mt of groundfish during the months that they participated in the pollock fishery and were required to obtain either 30-percent or 100-percent observer coverage. One processor received less than 500 mt of groundfish during the single month it participated in the pollock fishery and was exempt from observer coverage. This processor accounted for less than .003 percent of the total pollock harvest. Processors that receive less than 500 mt of groundfish during a month may never be required to obtain observer coverage during a year if they maintain monthly groundfish processing at this low level. Given that unobserved processors accounted for less than 1 percent of the 1993 pollock catch and that 97 percent of the 1993 salmon bycatch occurred in the pollock fishery, NMFS maintains that providing authority to the Regional Director to exempt these processors is not necessary because these processors are not now observed. If the Council determines in the future that small mothership and shoreside operations should be subject to observer requirements, then a separate regulatory amendment can be initiated to increase observer coverage requirements for these operations.

Pending approval of the proposed North Pacific Fisheries Research Plan adopted by the Council at its June 1992 meeting, observer coverage requirements will be determined annually under regulations implementing the second year of the Research Plan, currently scheduled for 1996. If necessary, an increase in observer coverage of small processing operations could be considered under this annual process to obtain additional data on salmon bycatch associated with these operations.

Comment 9. No circumstances likely exist under which release of haul-by-haul observer data listed in the proposed rule for the Alaska trawl fisheries other than for rockfish, Greenland turbot, and Atka mackerel could reasonably be expected to cause substantial competitive harm. Fisheries other than those identified generally take place on well-known fishing grounds, and at times of the year when a substantial portion of the trawl fleet is fishing. Because release of information concerning target species catch per unit of effort is not proposed for release, it is highly unlikely that knowledge of individual haul locations or bycatch rates would result in competitive harm to the party providing the information. In the rare circumstance where that may be possible, the proposed petition procedure should provide adequate protection.

Response. Consistent with procedures set out at 15 CFR 4.7(h) for the disclosure of commercial or financial information, NMFS has approved regulations for the release to the public of observer data collected onboard trawl vessels participating in a directed fishery for groundfish other than Greenland turbot, rockfish, or Atka mackerel. In taking this action, NMFS has acknowledged that the disclosure of observer data on prohibited species bycatch and associated haul location and depth information could possibly be expected to divulge information on specific fishing operations in a manner that would result in substantial competitive harm.

Comment 10. The authority for public release of haul-by-haul observer data listed at Sec. 672.27(g)(2) and Sec. 675.25(g)(2) of the proposed rule should be expanded to include the Greenland turbot trawl fishery, given the serious problem with halibut bycatch experienced in this fishery. The proposed regulation does not require the release of data from all fisheries to which it applies. If there is no consensus that data from a particular fishery should be released, the Regional Director can weigh objections and act accordingly. It is thus appropriate to structure the authority rather broadly at this time to avoid having to initiate new rulemaking on a fishery-by-fishery basis.

Response. NMFS has acknowledged that the release of observer data on a haul-by-haul basis could divulge information on specific fishing operations in a manner that would result in substantial competitive harm. Except as provided by pre-notification procedures set out at 15 CFR 4.7(h), commercial or financial information cannot be released under the Freedom of Information Act (5 U.S.C. 552(b)(4)). The regulations at Sec. 672.27(g)(2) and Sec. 675.25(g)(2) satisfy this pre-notification procedure, except for the Greenland turbot, Atka mackerel and rockfish fisheries. At the request of representatives for the Alaska groundfish trawl industry, these exceptions were included in the proposed rule because of the greater potential for substantial competitive harm that would result from the release of observer data on haul locations, given that these fisheries are conducted by a relatively small number of vessels, involve relatively small amounts of quota, and are geographically specific in nature. NMFS has determined to continue to exempt these fisheries from release of haul-by-haul observer data under this final rule, given general concerns about the release of these data and continued industry support for the release of haul-by-haul observer data collected for all other trawl fisheries, particularly those that experience the highest salmon bycatch rates. Observer data collected on board vessels participating in the Greenland turbot fishery still could be released under the Freedom of Information Act, provided that NMFS provides written notice to each vessel operator and owner of a request for disclosure and describes the nature of the information requested for public release.

Comment 11. The preamble to the proposed rule implies that NMFS may limit the release of haul-by-haul data to those collected from 1992 onward. This restriction is inappropriate. Data collected prior to 1992 may be a valuable source of bycatch pattern information and should be released.

Response. NMFS intent for the release of specified observer data on a haul-by-haul basis is to facilitate research by industry on salmon and other prohibited species bycatch that would lead to more informed decisions by vessel operators on alternative fishing practices to minimize bycatch rates of these species. Pending the availability of staff resources, NMFS concurs in the release of observer data specified in regulations at Sec. 672.27(g)(2) and Sec. 675.25(g)(2) for all prior years where available. NMFS has taken this position after considering (1) assertions by members of the industry that historic data are necessary to better support independent industry initiatives, to identify bycatch patterns, and to better address the bycatch problem in the groundfish trawl fisheries, and (2) the potential competitive harm resulting from the release of observer data becomes increasingly diminished relative to historic data.

Comment 12. Regulations at Sec. 672.27(g)(2) and Sec. 675.25(g)(2) should be revised to clarify that the specified observer data are not released to the public under vessel name.

Response. NMFS has revised the final rule to clarify the intent of NMFS that haul-by-haul observer data will not identify the vessel from which the data were collected.

Comment 13. The intent of proposed regulatory language at Sec. 672.7(n) is unclear.

Response. Section 672.7(n) prohibits vessel operators who deliver BSAI groundfish catch to GOA processors from discarding salmon until the salmon are counted by a NMFS-certified observer. Similarly, GOA processors are prohibited from discarding salmon taken as bycatch in a BSAI trawl fishery until an

observer has counted each fish, unless the processor is exempt from observer coverage. The intent of this regulation is to ensure that salmon incidentally taken in the BSAI trawl fisheries are counted by a NMFS-certified observer if the associated groundfish catch is delivered to a GOA processor and to discourage vessel operators who harvest BSAI groundfish from delivering to GOA processors for the sole purpose of avoiding costs associated with retaining salmon under regulations at Sec. 675.20(c) (3) and (6).

Comment 14. In the proposed rule at Sec. 675.20(c) (6) (i), the phrase ``until all salmon have been counted by a NMFS-certified observer'' should be revised to read ``until the number of salmon has been determined by a NMFS-certified observer''. This revision would allow the NMFS Observer Program to develop guidelines for observers that provide alternative methods for estimating the number of salmon that have been retained for enumeration. These guidelines would be especially important if the number of salmon retained by a vessel or processor is large and salmon cannot be individually counted without jeopardizing other observer duties.

Response. NMFS is preparing written instructions to observers for purposes of complying to the extent practicable with this final rule. These instructions will include guidelines for observers for obtaining an estimate of the number of retained salmon when time constraints or other observer duties prevent an observer from counting each fish. NMFS agrees that the suggested revision to regulatory text clarifies NMFS intent and the final rule has been changed accordingly.

Comment 15. Based on information presented in the EA/RIR, the proposed rule requiring mandatory retention of salmon until counted by a NMFS-certified observer is unnecessary for proper scientific management of salmon stocks, but instead is intended to meet a political demand that activity of the groundfish fleet be curtailed. If NMFS is adequately accounting for the take of salmon bycatch in the North Pacific fisheries, it is unwise to burden observers with additional duties for political reasons when observers could spend that time ensuring the accuracy of their samples for all species for which they are charged with gathering data.

Response. No information exists to indicate that the current level of salmon bycatch in the Alaska trawl fisheries presents critical conservation issues; however, low salmon returns for Western Alaska stocks indicate that the potential exists for conservation concerns.

NMFS estimates salmon bycatch numbers in the Alaska groundfish fisheries using observed bycatch rates, although NMFS has expressed the opinion that observed bycatch rates could be improved if larger sample sizes were possible. The final rule would provide data to compare observed salmon bycatch rates with those derived through the mandatory salmon retention requirements for purposes of improving the overall estimate of salmon bycatch in the Alaska trawl fisheries.

NMFS shares the concern about observers being burdened with additional obligations, especially if new obligations jeopardize the collection-of-data on which the management of fishery resources is based. Nonetheless, NMFS has approved regulations requiring mandatory retention of salmon until a NMFS-certified observer has determined the number of salmon retained and completed the collection of any scientific data or biological samples from the retained fish. This action is necessary to provide additional information to management agencies and the industry on which to base the development of practical management measures to address the salmon bycatch problem. NMFS has determined that this information is sufficiently important to include its collection among the duties of NMFS-certified observers to the extent possible. NMFS is preparing written guidelines for observers to facilitate the collection of salmon data without serious jeopardy to other observer duties.

#### Classification

NMFS prepared an RIR that concludes that this rule will not have a significant economic impact on a substantial number of small entities. A copy of this analysis is available from the Council (see ADDRESSES).

This final rule has been determined to be not significant under E.O.



12866.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

Dated: April 14, 1994. Nancy Foster, Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service. For the reasons set out in the preamble, 50 CFR parts 672 and 675 are amended as follows:

PART 672--GROUND FISH OF THE GULF OF ALASKA

1. The authority citation for part 672 continues to read as follows:

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

2. In Sec. 672.7, paragraph (o) is added to read as follows:

Sec. 672.7 Prohibitions.

\* \* \* \* \*

(o) Discard any salmon taken incidental to a directed fishery for Bering Sea and Aleutian Islands management area groundfish by vessels using trawl gear until notified by a NMFS-certified observer that the number of salmon has been determined and the collection of any scientific data or biological samples has been completed as provided at 50 CFR 675.20(c)(6).

3. In Sec. 672.27, paragraph (g) is added to read as follows:

Sec. 672.27 Observers.

\* \* \* \* \*

(g) Release of observer data to the public.

(1) The following information collected by observers for each catcher processor and catcher vessel during any weekly reporting period may be made available to the public:

(i) Vessel name and Federal permit number;

(ii) Number of chinook salmon and "other salmon" observed;

(iii) The ratio of total round weight of halibut or Pacific herring to the total round weight of groundfish in sampled catch;

(iv) The ratio of number of king crab or *C. bairdi* Tanner crab to the total round weight of groundfish in sampled hauls;

(v) The number of observed trawl hauls or fixed gear sets;

(vi) The number of trawl hauls that were basket sampled; and

(vii) The total weight of basket samples taken from sampled trawl hauls.

(2)

(i) The information listed in paragraphs (g)(2)(i)(A) through (M) of this section and collected by observers from observed hauls onboard vessels using trawl gear to participate in a directed fishery for groundfish other than for rockfish, Greenland turbot, or Atka mackerel may be made available to the public:

(A) Date;

(B) Time of day gear is deployed;

(C) Latitude and longitude at beginning of haul;

(D) Bottom depth;

(E) Fishing depth of trawl;

(F) The ratio of the number of chinook salmon to the total round weight of groundfish;

(G) The ratio of the number of other salmon to the total round weight of groundfish;

(H) The ratio of total round weight of halibut to the total round weight of groundfish;

(I) The ratio of total round weight of herring to the total round weight of groundfish;

(J) The ratio of the number of king crab to the total round weight of groundfish;

(K) The ratio of the number of *C. bairdi* Tanner crab to the total round weight of groundfish;

(L) Sea surface temperature (where available); and

(M) Sea temperature at fishing depth of trawl (where available).

(ii) The identity of the vessels from which the data in paragraph (g) (2) (i) of this section are collected will not be released.

(3) In exceptional circumstances, the owners and operators of vessels may provide to the Regional Director written justification at the time observer data are submitted or within a reasonable time thereafter, that disclosure of the information listed in paragraph (g) (1) or (g) (2) of this section could reasonably be expected to cause substantial competitive harm. The determination whether to disclose the information will be made pursuant to 15 CFR 4.7.

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

4. The authority citation for part 675 continues to read as follows:  
Authority: 16 U.S.C. 1801 et seq. Sec. 675.2 [Amended]

5. In Sec. 675.2, the definition of ``Bycatch Limitation Zone 2H'' is removed.

6. In Sec. 675.7, paragraph (p) is added to read as follows:  
Sec. 675.7 Prohibitions.

\* \* \* \* \*

(p) Discard any salmon taken incidental to a directed fishery for groundfish by vessels using trawl gear until notified by a NMFS- certified observer that the number of salmon has been determined and the collection of any scientific data or biological samples has been completed as provided at Sec. 675.20 (c) (6).

7. In Sec. 675.20, paragraphs (c) (3) and (4) are revised and paragraph (c) (6) is added to read as follows:

Sec. 675.20

General limitations.

\* \* \* \* \*

(c) \* \* \*

(3) The operator of each vessel regulated under this part must sort its catch as soon as possible after retrieval of the gear and, except as provided under paragraph (c) (6) of this section, must return all prohibited species or parts thereof to the sea immediately, with a minimum of injury, regardless of its condition, after allowing for sampling by an observer if an observer is onboard.

(4) Except as provided under paragraph (c) (6) of this section, it will be a rebuttable presumption that any prohibited species retained onboard a fishing vessel regulated under this part was caught and retained in violation of this section.

\* \* \* \* \*

(6) Retention of salmon.

(i) Except as provided in paragraph (c) (6) (ii) of this section, the operator of a vessel and the manager of a shoreside processing operation must not discard any salmon taken incidental to a directed fishery for groundfish by vessels using trawl gear until the number of salmon has been determined by a NMFS-certified observer and the collection of any scientific data or biological samples from the salmon has been completed.

(A) Operators of vessels carrying observers onboard and whose fishing operations allow for sorting of groundfish catch for salmon must retain all salmon bycatch from each haul in a separate bin or other location that allows an observer free and unobstructed physical access to the salmon to count each fish and collect any scientific data or biological samples. Salmon from different hauls must be retained separately in a manner that identifies the haul from which the salmon were taken.

(B) Operators of vessels not carrying observers onboard or whose fishing operations do not allow for sorting of groundfish catch for salmon must ice,

freeze, or store in a refrigerated saltwater tank all salmon taken as bycatch in trawl operations for delivery to the processor receiving the vessel's groundfish catch.

(C) Processors receiving groundfish harvested in a directed fishery for groundfish using trawl gear must retain all salmon delivered by each trawl vessel during a weekly reporting period in separate bins marked with the vessel's name and ADF&G fish ticket number(s) for each delivery until a NMFS-certified observer has counted each salmon and collected any scientific data or biological samples from the salmon delivered to the processor by that vessel. Processors without an observer present must store whole salmon in an iced or frozen state until an observer is available to count each fish. Salmon must be stored at a location that allows an observer free and unobstructed physical access to each salmon.

(ii) Mothership processor vessels and shoreside processing facilities that are exempt from obtaining observer coverage during a month under Sec. 675.25 or Sec. 672.27 of this chapter are exempt from mandatory retention of salmon under this paragraph (c) (6).

(iii) Operators of vessels and managers of shoreside processing operations that are required to retain salmon under paragraph (c) (6) (i) of this section must designate and identify to the NMFS-certified observer onboard the vessel or at the shoreside operation a crew person or employee to be responsible for sorting, retention, and storage of salmon consistent with this paragraph (c) (6). Upon the request of the NMFS-certified observer, the designated crew person or employee also is responsible for counting salmon and taking biological samples from retained salmon under the direction of the observer.

(iv) Salmon must be returned to Federal waters as soon as is practicable, with a minimum of injury, regardless of condition, following notice by a NMFS-certified observer that the number of salmon has been determined and the collection of any scientific data or biological samples has been completed.

8. In Sec. 675.21, paragraphs (a) (4) and (c) (1) (iii) are removed; paragraphs (a) (5) through (a) (7) are redesignated as paragraphs (a) (4) through (a) (6), respectively; paragraph (c) (1) (iv) is redesignated as paragraph (c) (1) (iii); and paragraphs (b) (1) introductory text, (b) (2) (i) and newly redesignated paragraphs (a) (4) and (c) (1) (iii) are revised to read as follows:

#### Sec. 675.21

Prohibited species catch (PSC) limitations.

(a) \* \* \*

(4) The PSC limit of Pacific halibut caught while conducting any trawl fishery for groundfish in the Bering Sea and Aleutian Islands Management Area during any fishing year is an amount of Pacific halibut equivalent to 3,775 mt of halibut mortality.

\* \* \* \* \*

(b) \* \* \*

(1) Apportionment to trawl fishery categories. NMFS, after consultation with the Council, will apportion each PSC limit set forth in paragraphs (a) (1) through (5) of this section into bycatch allowances for fishery categories specified in paragraph (b) (1) (iii) of this section, based on each category's proportional share of the anticipated incidental catch during a fishing year of prohibited species for which a PSC limit is specified and the need to optimize the amount of total groundfish harvested under established PSC limits. The sum of all bycatch allowances of any prohibited species will equal its PSC limit.

\* \* \* \* \*

(2) \* \* \*

(i) NMFS, after consultation with the Council, may apportion the halibut PSC limit for non-trawl gear set forth in paragraph (a) (6) of this section into bycatch allowances for fishery categories specified in paragraph

(b) (2) (ii) of this section, based on each category's proportional share of the anticipated bycatch mortality of halibut during a fishing year and the need to optimize the amount of total groundfish harvested under the non-trawl halibut PSC limit. The sum of all halibut bycatch allowances will equal the halibut PSC limit specified in paragraph (a) (6) of this section.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(iii) Halibut bycatch allowance. If, during the fishing year, the Regional Director determines that U.S. fishing vessels participating in any of the trawl fishery categories listed in paragraphs (b) (1) (iii) (B) through (F) of this section in the Bering Sea and Aleutian Islands Management Area will catch the halibut bycatch allowance, or seasonal apportionment thereof, specified for that fishery category under paragraph (b) of this section, NMFS will publish in the Federal Register the closure of the entire Bering Sea and Aleutian Islands management area to directed fishing for the species and/or species group that comprises that fishery category (which together constitute a species or species group for purposes of the directed fishing standards) for the remainder of the year or for the remainder of the season, except that when a bycatch allowance, or seasonal apportionment thereof, specified for the pollock/Atka mackerel/`other species' fishery category is reached, only directed fishing for pollock is closed to trawl vessels using non-pelagic trawl gear.

\* \* \* \* \*

9. In Sec. 675.25, paragraph (g) is added to read as follows:

Sec. 675.25

Observers.

\* \* \* \* \*

(g) Release of observer data to the public.

(1) The following information collected by observers for each catcher processor and catcher vessel during any weekly reporting period may be made available to the public:

(i) Vessel name and Federal permit number;

(ii) Number of chinook salmon and `other salmon' observed;

(iii) The ratio of total round weight of halibut or Pacific herring to the total round weight of groundfish in sampled catch;

(iv) The ratio of number of king crab or C. bairdi Tanner crab to the total round weight of groundfish in sampled hauls; (v) The number of observed trawl hauls or fixed gear sets;

(vi) The number of trawl hauls that were basket sampled; and

(vii) The total weight of basket samples taken from sampled trawl hauls.

(2) (i) The information listed in paragraphs (g) (2) (i) (A) through (M) of this section and collected by observers from observed hauls onboard vessels using trawl gear to participate in a directed fishery for groundfish other than for rockfish, Greenland turbot, or Atka mackerel may be made available to the public:

(A) Date;

(B) Time of day gear is deployed;

(C) Latitude and longitude at beginning of haul;

(D) Bottom depth;

(E) Fishing depth of trawl;

(F) The ratio of the number of chinook salmon to the total round weight of groundfish;

(G) The ratio of the number of other salmon to the total round weight of groundfish;

(H) The ratio of total round weight of halibut to the total round weight of groundfish;

(I) The ratio of total round weight of herring to the total round weight of groundfish;

(J) The ratio of the number of king crab to the total round weight of groundfish;

(K) The ratio of the number of C. bairdi Tanner crab to the total round

weight of groundfish;

(L) Sea surface temperature (where available); and

(M) Sea temperature at fishing depth of trawl (where available).

(ii) The identity of the vessels from which the data in paragraph (g) (2) (i) of this section are collected will not be released.

(3) In exceptional circumstances, the owners and operators of vessels may provide to the Regional Director written justification at the time observer data are submitted or within a reasonable time thereafter, that disclosure of the information listed in paragraph (g) (1) or (g) (2) of this section could reasonably be expected to cause substantial competitive harm. The determination whether to disclose the information will be made pursuant to 15 CFR 4.7.

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