

This rule has been determined to be not significant under E.O. 12866.

#### List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 8, 1998.

**Rolland A. Schmitt**,

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

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

#### PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. Section 648.4 is amended by revising paragraphs (a)(5)(i)(B)(I), (a)(5)(ii)(B)(I), (a)(6)(i)(B)(I), and (a)(7)(i)(B)(I) to read as follows:

#### § 648.4 Vessel and individual commercial permits.

(a) \* \* \*

(5) \* \* \*

(i) \* \* \*

(B) \* \* \*

(I) August 31, 1998; or

\* \* \* \* \*

(ii) \* \* \*

(B) \* \* \*

(I) August 31, 1998; or

\* \* \* \* \*

(6) \* \* \*

(i) \* \* \*

(B) \* \* \*

(I) No one may apply for an initial scup moratorium permit after August 31, 1998.

\* \* \* \* \*

(7) \* \* \*

(i) \* \* \*

(B) \* \* \*

(I) August 31, 1998; or

\* \* \* \* \*

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#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 980212037-8142-02; I.D. 012798A]

RIN 0648-AJ87

#### Fisheries of the Exclusive Economic Zone Off Alaska; Halibut Donation Program

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues regulations to implement Amendment 50 to the Fishery Management Plan for Groundfish of the Gulf of Alaska and Amendment 50 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMPs). This rule authorizes the distribution of Pacific halibut taken as bycatch in the specified groundfish trawl fisheries off Alaska to economically disadvantaged individuals through tax-exempt organizations selected by NMFS to be authorized distributors. This rule is applicable only until December 31, 2000, so that management agencies may assess the program prior to determining whether or not to continue it under a future regulatory amendment. This action is necessary to promote the goals and objectives of the FMPs. The intended effect of this action is to reduce the amount of regulatory discards in the groundfish fisheries by processing dead halibut for human consumption.

**DATES:** Effective July 13, 1998.

**ADDRESSES:** Copies of Amendments 50/50 and the Environmental Assessment/Regulatory Impact Review (EA/RIR) prepared for this action are available from the Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau AK 99802, Attn: Lori J. Gravel, or by calling the Alaska Region, NMFS, at 907-586-7228. Send comments regarding burden estimates or any other aspect of data requirements, including suggestions for reducing burdens to NMFS and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503, Attn: NOAA Desk Officer.

**FOR FURTHER INFORMATION CONTACT:** Alan Kinsolving, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The domestic groundfish fisheries in the exclusive economic zone off Alaska are managed by NMFS under the FMPs. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing the Alaska groundfish fisheries appear at 50 CFR parts 600 and 679. Fishing for Pacific halibut in waters in and off Alaska is governed by the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Convention) and by regulations

adopted by the International Pacific Halibut Commission (IPHC) and approved by the Secretary of State of the United States pursuant to section 4 of the Northern Pacific Halibut Act (16 U.S.C. 773-773k). Regulations of the IPHC are published as annual management measures in the **Federal Register** each year pursuant to regulations at 50 CFR 300.62.

A Notice of Availability of Amendments 50/50 was published in the **Federal Register** on February 4, 1998 (63 FR 5777), with comments invited through April 6, 1998. A proposed rule to implement Amendments 50/50 was published in the **Federal Register** on March 4, 1998 (63 FR 10583), with comments invited through April 20, 1998. Four comments were received, and they are summarized and responded to in the Comments and Responses section. No changes were made from the proposed rule to the final rule.

The regulations implementing Amendments 50/50 expand the existing Salmon Donation Program by creating a Prohibited Species Donation (PSD) program that includes Pacific halibut as well as salmon. The regulations authorize the voluntary distribution of halibut taken as bycatch in the groundfish trawl fishery to needy individuals by tax-exempt organizations through a NMFS-authorized distributor.

The program is limited to dead halibut landed by trawl catcher vessels to shoreside processors. Many of the halibut taken in the groundfish fishery are discarded alive. However, dead halibut are sometimes landed shoreside by trawl catcher vessels because at-sea sorting of catch is not practicable. This action will not have any impact on the halibut resource because the groundfish fisheries operate with a halibut prohibited species catch limit that requires closure of a fishery when that limit has been reached.

The regulations implementing Amendments 50/50 are applicable until December 31, 2000. This sunset provision was advocated by the Council and the IPHC so that management agencies could assess the effectiveness of the halibut donation program, relative to the program's objectives, before the Council took action to extend the program beyond the year 2000 by regulatory amendment.

Additional information on this action is contained in the preamble to the proposed rule and in the EA/RIR (see **ADDRESSES**). Upon reviewing Amendments 50/50, the Administrator, Alaska Region, NMFS has determined that Amendments 50/50 are necessary for the conservation and management of

the groundfish fisheries off Alaska and are consistent with the Magnuson-Stevens Act and with other applicable laws.

### Comments and Responses

*Comment 1:* The concept of a PSD program is a good one, but the plan amendments should be structured to allow the donation of any prohibited species and not just halibut.

*Response:* The Council has recommended that the PSD program be limited to the existing salmon donation program and to the new halibut donation program implemented by this action. If the PSD program is successful, the Council may consider its expansion at a future date. At this time, the only authorized distributor has not expressed interest in receiving donations of other species.

*Comment 2:* The Council and NMFS have been moving in the direction of increasing the utilization of harvested fish. While expanding the salmon donation program is worthwhile, the Secretary of Commerce should encourage the Council to rethink its management of prohibited species. Many of the regulatory discard rules may no longer be necessary in the light of increased retention/increased utilization policies that have been recently implemented.

*Response:* Comment noted. NMFS will continue to examine viable alternatives to the existing programs for managing bycatch and reducing the need for regulatory discard. NMFS believes that this action is a positive step in this direction.

*Comment 3:* The preamble to the proposed rule asserts that the retention of halibut for donation will provide additional opportunity to collect biological samples and scientific data. NMFS should consider the possibility that prohibited species catch data, which may be collected as a result of the program, could be misleading. This should be addressed when considering the approval of these amendments.

*Response:* The primary goals of Amendments 50/50 is to reduce regulatory discards and to provide a mechanism for the donation of dead halibut to economically disadvantaged individuals. While this action provides an opportunity for increased collection of data, NMFS does not currently have plans to collect new data through this program. If such plans develop in the future, we will keep this comment in mind.

*Comment 4:* The EA prepared for this action erroneously states that trawl gear accounts for 84 percent of the halibut bycatch in the FMP managed groundfish

fisheries. The correct statement would be that trawl gear accounts for 84 percent of the halibut bycatch mortality.

*Response:* The executive summary of the final EA has been revised to indicate that trawl gear is estimated to account for 84 percent of the halibut bycatch mortality.

### Classification

At the proposed rules stage, the Assistant General Counsel for Legislation and Regulation 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. The rationale for this determination appeared in the proposed rule. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

This final rule has been determined to be not significant for the purposes of E.O. 12866.

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The collection of this information has been approved by OMB under OMB control number 0648-0316.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to penalty for failure to comply with a collection of information, subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

Public reporting burdens for these collections of information are estimated to average: 40 hours per response for a distributor to complete an application; 40 hours per year per response per distributor to comply with the documentation requirements; 0.1 hours per response for processors to properly label processed halibut; and 0.25 hours per response for the vessels/processors to list vessels/processors. The estimated response times shown include the time to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information.

Send comments on these or any other aspects of the collection of information, including suggestions for reducing burdens, to NMFS and to OMB (see ADDRESSES).

### List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: June 5, 1998.

**Rolland A. Schmittin,**

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

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

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

1. The authority citation for 50 CFR part 679 continues to read as follows:

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

2. In § 679.2, the definitions of “SDP” and “SDP permit” are removed, the definitions of “PSD program” and “PSD permit” are added, and paragraph (1) of the definition of “Catcher vessel” is revised, in alphabetical order as follows:

#### § 679.2 Definitions.

\* \* \* \* \*

*Catcher vessel* means:

(1) With respect to groundfish recordkeeping and reporting, the PSD program and subpart E of this part, a vessel that is used for catching fish and that does not process fish on board.

\* \* \* \* \*

*PSD Permit* means a permit issued by NMFS to an applicant who qualifies as an authorized distributor for purposes of the PSD.

*PSD Program* means the Prohibited Species Donation Program established under § 679.26.

\* \* \* \* \*

3. In § 679.7, paragraph (a)(12) is revised to read as follows:

#### § 679.7 Prohibitions.

\* \* \* \* \*

(a) \* \* \*

(12) *Prohibited species donation program.* Retain or possess prohibited species, defined at § 679.21(b)(1), except as permitted to do so under the PSD program as provided by § 679.26 of this part, or as authorized by other applicable law.

\* \* \* \* \*

#### § 679.21 [Amended]

In § 679.21 paragraph (c)(1) is amended by changing the word “SDP” to the phrase “PSD program”.

4. In § 679.26, the section heading is revised; paragraphs (a) through (c) are redesignated as paragraphs (b) through (d); redesignated paragraphs (b)(1)(xii), (b)(2) introductory text, (b)(2)(iii), (b)(3)(ii), (b)(3)(iv), (b)(3)(v), (c)(1), (c)(2), (c)(3) and (d)(4) are revised; and new paragraphs (a) and (b)(1)(xiv) are added to read as follows:

§ 679.26 Prohibited Species Donation Program.

(a) Authorized species. The PSD program applies only to the following species:

- (1) Salmon.
- (2) (Applicable through December 31, 2000) Halibut delivered by catcher vessels using trawl gear to shoreside processors.

(b) \* \* \*

(1) \* \* \*

(xii) A signed statement from the applicant and from all persons who are listed under paragraph (b)(1)(xi) of this section and who would conduct activities pursuant to the PSD permit waiving any and all claims against the United States and its agents and employees for any liability for personal injury, death, sickness, damage to property directly or indirectly due to activities conducted under the PSD program.

\* \* \* \* \*

(xiv) A separate application must be submitted for each species listed under paragraph (a) of this section that the applicant seeks to distribute.

(2) Selection. The Regional Administrator may select one or more tax-exempt organizations to be authorized distributors under the PSD program based on the information submitted by applicants under paragraph (b)(1) of this section. The number of authorized distributors selected by the Regional Administrator will be based on the following criteria:

\* \* \* \* \*

(iii) The anticipated level of bycatch of prohibited species listed under paragraph (a) of this section.

\* \* \* \* \*

(3) \* \* \*

(ii) The Regional Administrator may impose additional terms and conditions

on a PSD permit consistent with the objectives of the PSD program.

\* \* \* \* \*

(iv) Effective period—(A) Salmon. A PSD permit for salmon remains in effect for a 3-year period after the selection notice is published in the Federal Register unless suspended or revoked. A PSD permit issued to an authorized distributor may be renewed following the application procedures in this section.

(B) A PSD permit issued for halibut will expire December 31, 2000.

(v) If the authorized distributor modifies any information on the PSD permit application submitted under paragraph (b)(1)(xi) or (b)(1)(xiii) of this section, the authorized distributor must submit a modified list of participants or a modified list of delivery locations to the Regional Administrator.

(c) \* \* \*

(1) A vessel or processor retaining prohibited species under the PSD program must comply with all applicable recordkeeping and reporting requirements. A vessel or processor participating in the PSD program must comply with applicable regulations at §§ 679.7(c)(1) and 679.21(c) that allow for the collection of data and biological sampling by a NMFS-certified observer prior to processing any salmon under the PSD program.

(2) Prohibited species retained under the PSD program must be packaged, and all packages must be labeled with the date of processing, the name of the processing facility, the contents and the weight of the fish contained in the package, and the words, "NMFS PROHIBITED SPECIES DONATION PROGRAM - NOT FOR SALE - PERISHABLE PRODUCT - KEEP FROZEN".

(3) A processor retaining or receiving fish under the PSD program and an

authorized distributor must keep on file and make available for inspection by an authorized officer all documentation, including receipt and cargo manifests setting forth the origin, weight, and destination of all prohibited species bycatch. Such documentation must be retained until 1 year after the effective period of the PSD permit.

(d) \* \* \*

(4) No prohibited species that has been sorted from a vessel's catch or landing may be retained by a vessel or processor, or delivered to a delivery location under this section, unless the vessel or processor and delivery location is included on the list provided to the Regional Administrator under paragraph (b)(1)(xi), (b)(1)(xiii) or (b)(3)(v) of this section.

§ 679.26 [Amended]

5. In addition to the amendments set forth above, § 679.26 is amended by making the following nomenclature changes:

a. In paragraphs (b)(1)(vi), (b)(1)(viii), (b)(1)(xi), (d)(1), and (d)(3), the word "SDP" is removed wherever it appears and the phrase "PSD program" is added in its place.

b. In paragraphs (b)(2)(i), (b)(3)(i), and (b)(3)(iii) the word "SDP" is removed wherever it appears and the word "PSD" is added in its place.

c. In paragraphs (b)(1)(ii), (b)(1)(v), (b)(1)(viii), (b)(1)(xiii), (b)(2)(ii), (c)(1), (d)(1) and (d)(2) the word "salmon" is removed wherever it appears and the word "fish" is added in its place.

d. In paragraph (d)(3), the word "salmon" is removed wherever it appears and the phrase "prohibited species" is added in its place.

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