

b. Redesignating paragraphs (b), (c), and (d) as paragraphs (b) (1), (b)(2), and (c) and adding a heading to new paragraph (b);

c. Adding a new heading to new paragraph (c); and

d. Adding a new paragraph (d), to read as set forth below.

#### § 21.12 General exceptions to permit requirements.

The following persons or entities under the following conditions are exempt from the permit requirements:

(a) *Employees of the Department of the Interior (DOI)*: DOI employees authorized to enforce the provisions of the Migratory Bird Treaty Act of July 3, 1918, as amended (40 Stat. 755; 16 U.S.C. 703–711), may, without a permit, take or otherwise acquire, hold in custody, transport, and dispose of migratory birds or their parts, nests, or eggs as necessary in performing their official duties.

(b) *Employees of certain public and private institutions*:

(1) \* \* \*

(2) \* \* \*

(c) *Licensed veterinarians*:

\* \* \* \* \*

(d) *General public*: Any person may remove a migratory bird from the interior of a building or structure under the following conditions. If you need advice on dealing with a trapped bird, you should contact your closest Fish and Wildlife Service office or your State wildlife agency.

(1) You may humanely remove a trapped migratory bird from the interior of a residence or a commercial or government building without a Federal permit if the migratory bird:

(i) Poses a health threat (for example, through damage to foodstuffs);

(ii) Is attacking humans, or poses a threat to human safety because of its activities (such as opening and closing automatic doors);

(iii) Poses a threat to commercial interests, such as through damage to products for sale; or

(iv) May injure itself because it is trapped.

(2) You must use a humane method to capture the bird or birds. You may not use adhesive traps to which birds may adhere (such as glue traps) or any other method of capture likely to harm the bird.

(3) After capture, you must promptly release the bird or birds to the wild in habitat suitable for the species.

(4) If a bird is injured or orphaned during the removal, the property owner is responsible for promptly transferring it to a federally permitted migratory bird rehabilitator.

(5) You may not lethally take a migratory bird for these purposes. If your actions to remove the trapped migratory bird are likely to result in its lethal take, you must possess a Federal Migratory Bird Permit. However, if a bird you are trying to remove dies, you must dispose of the carcass unless you have reason to believe that a museum or scientific institution might be able to use it. In that case, you should contact your nearest Fish and Wildlife Service office or your State wildlife agency about donating the carcass.

(6) For birds of species on the Federal List of Threatened or Endangered Wildlife, provided at 50 CFR 17.11(h), you may need a Federal threatened or endangered species permit before removing the birds (*see* 50 CFR 17.21 and 50 CFR 17.31).

(7) You will need a permit from your regional migratory bird permits office to remove a bald eagle or a golden eagle from a building (*see* 50 CFR Part 22).

(8) Your action must comply with State and local regulations and ordinances. You may need a State, tribal, or territorial permit before you can legally remove the bird or birds.

(9) If a nest, eggs, or nestlings are present, you must seek the assistance of a federally-permitted migratory bird rehabilitator in removing them. The rehabilitator is then responsible for handling them properly.

Dated: March 2, 2007.

**David M. Verhey,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[I.D. 031407A]

RIN 0648–AU03

#### Fisheries of the Exclusive Economic Zone Off Alaska; Salmon Bycatch

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

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The North Pacific Fishery Management Council (Council) has submitted Amendment 84 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands

Management Area (FMP). If approved, Amendment 84 would exempt vessels participating in an inter-cooperative agreement (ICA) to reduce salmon bycatch from Chinook and chum salmon savings area closures, and exempt vessels participating in non-pollock trawl fisheries from the chum salmon savings area. This action is intended to promote the goals and objectives of the FMP and Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This action is necessary to reduce salmon bycatch in the Bering Sea and Aleutian Islands management area (BSAI).

**DATES:** Comments on Amendment 84 must be received on or before May 25, 2007.

**ADDRESSES:** Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian, Records Officer.

Comments may be submitted by:

- Mail to P.O. Box 21668, Juneau, AK 99802;

- Hand delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, AK;

- FAX to 907–586–7557;

- E-mail to [BSA84-A-NOA@noaa.gov](mailto:BSA84-A-NOA@noaa.gov) and include in the subject line of the E-mail comment the document identifier: Amendment 84. E-mail comments, with or without attachments, are limited to 5 megabytes; or

- Webform at the Federal eRulemaking Portal:

[www.regulations.gov](http://www.regulations.gov). Follow the instructions at that site for submitting comments.

Copies of Amendment 84 and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action may be obtained from the NMFS Alaska Region at the address above, from the Alaska Region website at <http://www.fakr.noaa.gov> or by calling the Sustainable Fisheries Division, Alaska Region, NMFS, at (907) 586–7228.

**FOR FURTHER INFORMATION CONTACT:** Jason Anderson, 907–586–7228, or [jason.anderson@noaa.gov](mailto:jason.anderson@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Act requires that each regional fishery management council submit any FMP or FMP amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP amendment, immediately publish a notice in the **Federal Register** that the FMP or amendment is available for public

review and comment. This requirement is satisfied by this notice of availability for Amendment 84.

Pacific salmon are caught incidentally in the BSAI trawl fisheries, especially in the pollock fishery. Of the five species of Pacific salmon, Chinook salmon (*Onchorynchus tshawytscha*) and chum salmon (*O. keta*) are most often incidentally caught in the pollock fishery. Pacific salmon are placed into two categories for purposes of salmon bycatch management: Chinook and non-Chinook. The non-Chinook category is comprised of chum, sockeye (*O. nerka*), pink (*O. gorbuscha*), and coho (*O. kisutch*) salmon. However, from 2001 through 2004, chum salmon represented about 98 percent of non-Chinook salmon harvested incidentally in the pollock trawl fisheries. For convenience, all non-Chinook salmon are referred to as chum salmon.

To address Chinook salmon bycatch concerns, the Council adopted several management measures designed to reduce overall Chinook salmon bycatch in the BSAI trawl fisheries. In 1995, the Council adopted, and NMFS approved, Amendment 21b to the FMP. Based on historic information on salmon bycatch, Amendment 21b established a Chinook salmon savings area (60 FR 31215, November 29, 1995). Under Amendment 21b, the Chinook salmon savings area closed when the incidental catch of Chinook salmon in BSAI trawl fisheries reached 48,000 fish. Amendment 58 to the FMP revised the Chinook salmon savings area measures (65 FR 60587, October 12, 2000). Amendment 58 reduced the Chinook salmon bycatch limit from 48,000 fish to 29,000 fish, mandated year-round accounting of Chinook bycatch in the directed pollock fishery, revised the boundaries of the Chinook salmon savings area closure, and implemented new closure dates. The timing of the closure depends on when the limit is reached. If the limit is reached:

- Before April 15, the area closes immediately through April 15. After April 15, the area re-opens, but closes again from September 1 through December 31.
- Between April 15 and September 1, the area would close from September 1 through the end of the year.
- After September 1, the area closes immediately through the end of the year.

The Chinook salmon savings area was further modified by Amendment 82 to the FMP (70 FR 9856, March 1, 2005). Amendment 82 established a separate Aleutian Islands subarea bycatch limit that, when reached, closes the existing Chinook salmon savings area located in

the Aleutian Islands subarea (Area 1). The Chinook salmon savings area located in the Bering Sea subarea remained unchanged, but was designated as Area 2.

The Council also adopted a time-area closure designed to reduce overall chum salmon bycatch in the BSAI trawl fisheries. In 1995, Amendment 35 to the FMP established the chum salmon savings area (60 FR 34904, July 5, 1995). This area is closed to all trawling from August 1 through August 31 of each year. Additionally, if 42,000 chum salmon are caught in the Catcher Vessel Operational Area (CVOA) during the period August 15 through October 14, the area remains closed for the remainder of the calendar year.

Community development quota (CDQ) groups receive, along with allocations of groundfish CDQ, individual allocations of Chinook and non-Chinook annual bycatch amounts. Vessels groundfish CDQ fishing are not subject to the chum and Chinook salmon savings area closures that apply to the non-CDQ pollock fisheries. Rather, the Chinook salmon savings area closes to vessels directed fishing for pollock for a CDQ group once that CDQ group has reached its Chinook salmon bycatch limit. The chum salmon savings area closes to vessels using trawl gear to fish for groundfish CDQ once that CDQ group has reached its non-Chinook salmon bycatch limit. Thus, individual CDQ groups are subject to salmon savings area closures based on their respective catch of chum or Chinook salmon while groundfish CDQ fishing.

The Chinook and chum salmon savings areas were adopted based on historic observed salmon bycatch rates and were designed to avoid high spatial and temporal levels of salmon bycatch. From 1990 through 2001, the BSAI salmon bycatch average was 37,819 Chinook and 69,332 chum annually. Recently, however, salmon bycatch numbers have increased substantially. In 2003, 54,911 Chinook salmon and 197,091 chum salmon were taken incidentally in the trawl fisheries. In 2004, salmon bycatch increased substantially to 62,493 Chinook and 465,650 chum salmon. Bycatch amounts remained high in 2005 and totaled 67,541 Chinook and 116,999 chum salmon.

Since its establishment in 1995, the Chinook salmon savings area closure only has been triggered since 2003. The Chinook salmon bycatch limit was not reached prior to 2003. In 2003, the Chinook salmon savings area closed to directed trawl fishing for non-CDQ pollock on September 1, with the closure remaining in effect until the end

of the calendar year. In 2004, the Chinook salmon savings area closed to directed trawl fishing for non-CDQ pollock on September 5 through the end of the year. In 2005, the Chinook salmon savings area in the Bering Sea subarea was closed to directed trawl fishing for non-CDQ pollock on September 1 through the end of the year.

Since establishment of the chum salmon savings area in 1995, the bycatch of non-Chinook salmon triggered closures in 2002, 2003, 2004, and 2005. In these years, the chum salmon savings area closed to non-CDQ trawl fisheries in September and October.

Anecdotal information from participants in the BSAI trawl fisheries indicated that salmon bycatch rates may be higher outside the Chinook and chum salmon savings area. In February 2005, the Council initiated an EA/RIR/IRFA to explore alternatives to the current salmon bycatch measures. Spatial and temporal comparisons of non-CDQ vessels fishing outside of the salmon savings areas with CDQ vessels fishing inside of the salmon savings areas indicated that bycatch rates were much higher outside of the savings areas.

In October 2005, the Council adopted Amendment 84 to the FMP. Amendment 84 would exempt non-CDQ and CDQ pollock vessels participating in a salmon bycatch reduction ICA from closures of the Chinook and chum salmon savings areas in the Bering Sea. Additionally, vessels participating in trawl fisheries for species other than pollock would be exempt from chum salmon savings area closures. The Council intends to use NMFS salmon bycatch information to assess the effectiveness of regulations implementing Amendment 84 at reducing salmon bycatch in the directed pollock fisheries. The Council also asked for participants in the salmon bycatch reduction ICA to report annually on how effective the ICA appears to be at reducing salmon bycatch. The Council also will gather additional information to assess the effectiveness of the ICA in coordinating voluntary salmon bycatch reduction efforts by participants in the Bering Sea pollock fisheries. Additionally, this information could be used to further assess whether participants fishing in the current salmon savings areas continue to encounter lower salmon bycatch rates than participants fishing outside of salmon savings areas.

The Council is also developing a separate FMP amendment that could result in additional management measures to reduce salmon bycatch.

These measures could include altering the geographic coordinates of the Chinook and chum salmon savings areas based on recent bycatch rates, and implementing an individual salmon bycatch accountability program. However, the Council determined that consideration of these management measures would require additional time and chose to expedite Amendment 84 while the Council develops the second amendment.

Public comments are being solicited on proposed Amendment 84 through the end of the comment period stated

(see **DATES**). A proposed rule that would implement Amendment 84 may be published in the **Federal Register** for public comment, following NMFS' evaluation under the Magnuson-Stevens Act procedures. Public comments on the proposed rule must be received by the end of the comment period on Amendment 84 to be considered in the approval/disapproval decision of the amendment. All comments received by the end of the comment period on the amendment, whether specifically directed to the FMP amendment or the proposed rule, will be considered in the

approval/disapproval decision. Comments received after that date will not be considered in that decision. To be considered, written comments must be received, not just postmarked or otherwise transmitted, by the close of business on the last day of the comment period.

Dated: March 20, 2007.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries,  
National Marine Fisheries Service.*

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