

This same boundary line is used as the offshore boundary of the Ocean Salmon Conservation Zone established by this rule.

#### Regulatory Changes put into Effect Through This Emergency Action

Federal regulations at 50 CFR 660.373(c) establish two closed areas for the Pacific whiting fishery that are intended to constrain the effects of the fishery on Klamath and Columbia River salmon. Additional salmon protection is provided at 50 CFR 660.373(d), which sets whiting trip limits for vessels operating shoreward of the 100-fm (183-m) depth contour in the Eureka management area (from 43°00' to 40°30' N. lat.) This emergency rule temporarily establishes a third salmon conservation zone for all West Coast waters shoreward of a boundary line approximating the 100-fm (183-m) depth contour. The latitude/longitude coordinates defining the boundary line that approximates the 100-fm (183-m) depth contour are provided at § 660.393(a).

#### Classification

This emergency rule establishes a coastwide salmon conservation zone for the Pacific whiting fishery. It is issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act at section 305(c)(1) and is consistent with the regulations implementing the FMP at 50 CFR part 660.

The Assistant Administrator for Fisheries, NOAA (AA) finds good cause to waive the requirement to provide prior notice and comment on this action pursuant to 5 U.S.C. 553(b)(B), because providing prior notice and opportunity for public comment would be impracticable and contrary to the public interest for the following reasons. The information on which this action is based was not available to NMFS until July 2005 and the closed area implemented by this rule needs to be in place as soon as possible in August 2005 in order to provide additional protection for ESA-listed endangered and threatened salmon during the remainder of the 2005 primary whiting season, as well as during the ESA consultation that is currently ongoing for these salmon. If the agency were to conduct a proposed and final rulemaking for this action, the rule would not likely be finalized until after the whiting fisheries had achieved their 2005 whiting quotas. The bycatch of ESA-listed salmon could continue unabated during this time. Providing prior notice and comment would be impracticable because affording prior

notice and opportunity for public comment would impede the agency's mandated duty to manage fisheries to protect endangered and threatened salmon.

For the reasons described above, pursuant to 5 U.S.C. 553(d)(3), the AA also finds good cause to waive the 30-day delay in effectiveness, so that this rule may become effective as soon as possible to provide immediate protection for ESA-listed endangered and threatened salmon.

This emergency rule has been determined to be not significant for purposes of Executive Order 12866.

This action is within the scope of the October 2004 Environmental Impact Statement (EIS) prepared by the Council for the 2005–2006 Pacific Coast groundfish ABCs, OYS, and management measures. Copies of this EIS are available from the Pacific Council (See ADDRESSES.)

This emergency rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior notice and opportunity for public comment.

The proposed and final rules to implement the 2005–2006 groundfish harvest specifications and management measures were developed after meaningful consultation and collaboration with tribal officials from the area covered by the FMP, per Executive Order 13175. Under the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Pacific Council must be a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction. The tribal representative on the Council made a motion to adopt the 2005–2006 tribal management measures, which was passed by the Council. Of the four groundfish treaty tribes, only the Makah Tribe conducts a whiting fishery. NMFS consulted with the Makah Tribe on salmon bycatch in their whiting fishery and on implementing a fishery closure shoreward of a boundary line approximating the 100-fm (183-m) depth contour. The Makah Tribe is implementing tribal fishery regulations to close the tribal whiting fishery shoreward of 100-fm (183-m) and is beginning testing a salmon bycatch excluder device that has been successfully used to exclude salmon bycatch in Alaska pollock fisheries.

#### List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands,

Reporting and recordkeeping requirements.

Dated: August 26, 2005.

**James W. Balsiger,**

*Acting Deputy, Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

■ For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

#### PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

■ 1. The authority citation for part 660 continues to read as follows:

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

■ 2. In § 660.373, paragraph (c)(3) is added to read as follows:

#### § 660.373 Pacific whiting (whiting) fishery management.

\* \* \* \* \*

(c) \* \* \*

(3) *Ocean Salmon Conservation Zone.* All waters shoreward of a boundary line approximating the 100-fm (183-m) depth contour. Latitude and longitude coordinates defining the boundary line approximating the 100-fm (183-m) depth contour are provided at § 660.393(a). This closure supplements the closures provided in this section at paragraphs (c)(1) and (c)(2).

\* \* \* \* \*

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#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 041126332–5039–02; I.D. 082505A]

#### Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pollock in the Bering Sea Subarea

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

**ACTION:** Temporary rule; reallocation.

**SUMMARY:** NMFS is reallocating projected unused amounts of Bering Sea subarea (BS) pollock from the incidental catch allowance to the directed fisheries. This action is necessary to allow the 2005 total allowable catch (TAC) of pollock to be harvested.

**DATES:** Effective August 26, 2005, until 2400 hrs, A.I.t., December 31, 2005.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2005 pollock incidental catch allowance in the BS was established as 44,577 metric tons by the 2005 and 2006 final harvest specifications for groundfish in the BSAI (70 FR 8979, February 24, 2005), in accordance with § 679.20(a)(5)(i)(A)(1) and the American Fisheries Act (AFA) (Public Law 105-277, Division C, Title II).

As of August 22, 2005, the Administrator, Alaska Region, NMFS, has determined that approximately 11,525 metric tons (mt) of pollock remain in the incidental catch allowance. Based on projected harvest rates of other groundfish species and the expected incidental catch of pollock in those fisheries, the Regional Administrator has determined that 7,000 mt of pollock specified in the incidental catch allowance will not be necessary as incidental catch. Therefore, NMFS is apportioning the projected unused amount, 7,000 mt, of pollock from the incidental catch allowance to the directed fishing allowances established pursuant to § 679.20(a)(5)(i)(A). Pursuant to the pollock allocation requirements set forth in § 679.20(a)(5)(i), this transfer will increase the allocation to catcher vessels harvesting pollock for processing by the inshore component by 3,500 mt, to catcher/processors and catcher vessels

harvesting pollock for processing by catcher/processors in the offshore component by 2,800 mt and to catcher vessels harvesting pollock for processing by motherships in the offshore component by 700 mt. Pursuant to § 679.20(a)(5)(i)(A)(4), no less than 8.5 percent of the 2,800 mt allocated to catcher/processors in the offshore component, 238 mt, will be available for harvest only by eligible catcher vessels delivering to listed catcher/processors. Pursuant to § 679.20(a)(5)(i)(A)(4)(iii), an additional 14 mt or 0.5 percent of the catcher/processor sector allocation of pollock will be available to unlisted AFA catcher/processors.

Pursuant to § 679.20(a)(5)(I) (A), Tables 3 and 10 are revised for the 2005 B season consistent with this reallocation. Footnote 1 continues to state the allocations under regulations at § 679.20(a)(5).

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TABLE 3—2005 AND 2006 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA)<sup>1</sup>  
 [Amounts are in metric tons]

Area and sector	2005 Allocations	2005 A season <sup>1</sup>		2005 B season <sup>1</sup>	2006 Allocations	2006 A season <sup>1</sup>		2006 B season <sup>1</sup>
		A season DFA	SCA harvest limit <sup>2</sup>	B season DFA		A season DFA	SCA harvest limit <sup>2</sup>	B season DFA
Bering Sea subarea	1,494,900	.....	.....	.....	1,487,756	.....	.....	.....
CDQ DFA	149,750	59,140	41,398	90,610	148,776	59,510	41,657	89,265
ICA <sup>1</sup>	37,577	.....	.....	.....	44,856	.....	.....	.....
AFA Inshore	653,787	257,215	180,050	396,572	647,062	258,825	181,177	388,237
AFA Catcher/Processors <sup>3</sup>	523,029	205,772	144,040	317,258	517,650	207,060	144,942	310,590
Catch by C/Ps	478,572	188,281	.....	290,291	473,650	189,460	.....	284,190
Catch by CVs <sup>3</sup>	44,457	17,491	.....	26,967	44,000	17,600	.....	26,400
Unlisted C/P Limit <sup>4</sup>	2,615	1,029	.....	1,586	2,588	1,035	.....	1,553
AFA Motherships	130,757	51,443	36,010	79,314	129,412	51,765	36,235	77,647
Excessive Harvesting Limit <sup>5</sup>	228,825	.....	.....	.....	226,472	.....	.....	.....
Excessive Processing Limit <sup>6</sup>	392,272	.....	.....	.....	388,237	.....	.....	.....
Total Bering Sea DFA	1,457,323	573,570	401,498	883,754	1,442,900	577,160	404,012	865,740
Aleutian Islands subarea <sup>1</sup>	2,600	.....	.....	.....	19,000	.....	.....	.....
CDQ DFA	.....	.....	.....	.....	1,900	760	.....	1,140
ICA	1,400	740	.....	660	2,000	1,200	.....	800
Aleut Corporation	1,200	200	.....	1,000	15,100	9,800	.....	5,300
Bogoslof District ICA <sup>7</sup>	10	.....	.....	.....	10	.....	.....	.....

<sup>1</sup> Under § 679.20(a)(5)(i)(A), the Bering Sea subarea pollock after subtraction for the CDQ DFA - 10 percent and the ICA - 3.35 percent, the pollock TAC is allocated as a DFA as follows: inshore component - 50 percent, catcher/processor component - 40 percent, and mothership component - 10 percent. In the Bering Sea subarea, the A season, January 20 - June 10, is allocated 40 percent of the DFA and the B season, June 10 - November 1 is allocated 60 percent of the DFA. The Aleutian Islands (AI) directed pollock fishery allocation to the Aleut Corporation remains after first subtracting for the CDQ DFA - 10 percent and second the ICA - 2,000 mt. The Aleut Corporation directed pollock fishery is closed to directed fishing until the management provisions for the AI directed pollock fishery become effective under Amendment 82. In the AI subarea, the A season is allocated 40 percent of the ABC and the B season is allocated the remainder of the directed pollock fishery.

<sup>2</sup> In the Bering Sea subarea, no more than 28 percent of each sector's annual DFA may be taken from the SCA before April 1. The remaining 12 percent of the annual DFA allocated to the A season may be taken outside of SCA before April 1 or inside the SCA after April 1. If 28 percent of the annual DFA is not taken inside the SCA before April 1, the remainder is available to be taken inside the SCA after April 1.

<sup>3</sup> Under § 679.20(a)(5)(i)(A)(4), not less than 8.5 percent of the DFA allocated to listed catcher/processors shall be available for harvest only by eligible catcher vessels delivering to listed catcher/processors.

<sup>4</sup> Under § 679.20(a)(5)(i)(A)(4)(iii), the AFA unlisted catcher/processors are limited to harvesting not more than 0.5 percent of the catcher/processors sector's allocation of pollock.

<sup>5</sup> Under § 679.20(a)(5)(i)(A)(6) NMFS establishes an excessive harvesting share limit equal to 17.5 percent of the sum of the pollock DFAs.

<sup>6</sup> Under § 679.20(a)(5)(i)(A)(7) NMFS establishes an excessive processing share limit equal to 30.0 percent of the sum of the pollock DFAs.

<sup>7</sup> The Bogoslof District is closed by the final harvest specifications to directed fishing for pollock. The amounts specified are for ICA only, and are not apportioned by season or sector.

TABLE 10– 2005 AND 2006 BERING SEA SUBAREA INSHORE COOPERATIVE ALLOCATIONS

[Amounts are in metric tons]

Cooperative name and member vessels	Sum of member vessel's official catch histories <sup>1</sup>	Percentage of inshore sector allocation	2005 Annual cooperative allocation	2006 Annual cooperative allocation
<u>Akutan Catcher Vessel Association</u> ALDEBARAN, ARCTIC EXPLORER, ARCTURUS, BLUE FOX, CAPE KIWANDA, COLUMBIA, DOMINATOR, EXODUS, FLYING CLOUD, GOLDEN DAWN, GOLDEN PISCES, HAZEL LORRAINE, INTREPID EXPLORER, LESLIE LEE, LISA MELINDA, MARK I, MAJESTY, MARCY J, MARGARET LYN, NORDIC EXPLORER, NORTHERN PATRIOT, NORTHWEST EXPLORER, PACIFIC RAM, PACIFIC VIKING, PEGASUS, PEGGY JO, PERSEVERANCE, PREDATOR, RAVEN, ROYAL AMERICAN, SEEKER, SOVEREIGNTY, TRAVELER, VIKING EXPLORER	245,922	28.130%	183,910	182,018
<u>Arctic Enterprise Association</u> BRISTOL EXPLORER, OCEAN EXPLORER, PACIFIC EXPLORER	36,807	4.210%	27,525	27,242
<u>Northern Victor Fleet Cooperative</u> ANITA J, COLLIER BROTHERS, COMMODORE, EXCALIBUR II, GOLDRUSH, HALF MOON BAY, MISS BERDIE, NORDIC FURY, PACIFIC FURY, POSEIDON, ROYAL ATLANTIC, SUNSET BAY, STORM PETREL	73,656	8.425%	55,083	54,516
<u>Peter Pan Fleet Cooperative</u> AJ, AMBER DAWN, AMERICAN BEAUTY, ELIZABETH F, MORNING STAR, OCEAN LEADER, OCEANIC, PACIFIC CHALLENGER, PROVIDIAN, TOPAZ, WALTER N	23,850	2.728%	17,836	17,652

<u>Unalaska Cooperative</u> ALASKA ROSE, BERING ROSE, DESTINATION, GREAT PACIFIC, MESSIAH, MORNING STAR, MS AMY, PROGRESS, SEA WOLF, VANGUARD, WESTERN DAWN	106,737	12.209%	79,822	79,001
<u>UniSea Fleet Cooperative</u> ALSEA, AMERICAN EAGLE, ARGOSY, AURIGA, AURORA, DEFENDER, GUN-MAR, MAR-GUN, NORDIC STAR, PACIFIC MONARCH, SEADAWN, STARFISH, STARLITE, STARWARD	213,521	24.424%	159,679	158,037
<u>Westward Fleet Cooperative</u> ALASKAN COMMAND, ALYESKA, ARCTIC WIND, CAITLIN ANN, CHELSEA K, DONA MARTITA, FIERCE ALLEGIANCE, HICKORY WIND, OCEAN HOPE 3, PACIFIC KNIGHT, PACIFIC PRINCE, VIKING, WESTWARD I	173,744	19.874%	129,932	128,595
Open access AFA vessels	0	0.00%	0	0
Total inshore allocation	874,238	100%	653,787	647,062

<sup>1</sup>According to regulations at § 679.62(e)(1), the individual catch history for each vessel is equal to the vessel's best 2 of 3 years inshore pollock landings from 1995 through 1997 and includes landings to catcher/processors for vessels that made 500 or more mt of landings to catcher/processors from 1995 through 1997.

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**Classification**

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) and 679.20(b)(3)(iii)(A) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and

contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of projected unused amounts of BS pollock from the incidental catch allowance to the directed fisheries. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 22, 2005.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C.

553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is taken under 50 CFR 679.20, and is exempt from review under Executive Order 12866.

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

Dated: August 26, 2005.

**Alan D. Risenhoover,**

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

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