

United States to Indians because of their status as Indians, and any Alaska Native regional or village corporation established pursuant to the Alaskan Native Claims Settlement Act (43 U.S.C. 1601, *et seq.*). (End of clause)

**552.238-79 Use of Federal Supply Schedule Contracts by Certain Entities—Cooperative Purchasing.**

As prescribed in 538.7004(c), insert the following clause:

Use of Federal Supply Schedule Contracts by Certain Entities—Cooperative Purchasing (Date)

(a) If an entity identified in paragraph (b) of the clause at 552.238-78, Eligible Ordering Activities, elects to place a delivery order under this contract, such order shall be subject to the following conditions:

(1) When the Contractor accepts an order from such an entity, a separate contract is formed which incorporates by reference all the terms and conditions of the Schedule contract except the Disputes clause, the patent indemnity clause, and the portion of the Commercial Item Contract Terms and Conditions that specifies "Compliance with laws unique to Government contracts" (which applies only to contracts with entities of the Executive branch of the U.S. Government). The parties to this new contract which incorporates the terms and conditions of the Schedule contract are the individual ordering activity and the Contractor. The U.S. Government shall not be liable for the performance or nonperformance of the new contract. Disputes which cannot be resolved by the parties to the new contract may be litigated in any State or Federal court with jurisdiction over the parties, using principles of Federal procurement law and the Uniform Commercial Code, as applicable.

(2) Where contract clauses refer to action by a Contracting Officer or a Contracting Officer of GSA that shall mean the individual responsible for placing the order for the ordering activity (e.g. FAR 52.212-4 at paragraph (f) and FSS clause I-FSS-249 B.)

(3) As a condition of using this contract, eligible ordering activities agree to abide by all terms and conditions of the Schedule contract, except for those deleted clauses or portions of clauses mentioned in paragraph (a)(1) of this clause. Ordering activities may not modify, delete or add to the terms and conditions of the Schedule contract. To the extent that orders placed by such ordering activities may include additional terms and conditions not found in the Schedule contract, those terms and conditions are null, void, and of no effect. The ordering activity and the Contractor expressly acknowledge that, in entering into an agreement for the ordering activity to purchase goods or services from the Contractor, neither the ordering activity nor the Contractor will look to, primarily or in any secondary capacity, or file any claim against the United States or any of its agencies with respect to any failure of performance by the other party.

(4) The ordering activity is responsible for all payments due the Contractor under the contract formed by acceptance of the

ordering activity's order, without recourse to the agency of the U.S. Government, which awarded the Schedule contract.

(5) The Contractor is encouraged, but not obligated, to accept orders from such entities. The Contractor may, within 5 days of receipt of the order, decline to accept any order, for any reason. The Contractor shall fulfill orders placed by such entities, which are not declined within the 5-day period.

(6) The supplies or services purchased will be used for governmental purposes only and will not be resold for personal use. Disposal of property acquired will be in accordance with the established procedures of the ordering activity for the disposal of personal property.

(b) If the Schedule Contractor accepts an order from an entity identified in paragraph (b) of the clause at 552.238-78, Eligible Ordering Activities, the Contractor agrees to the following conditions:

(1) The ordering activity is responsible for all payments due the Contractor for the contract formed by acceptance of the order, without recourse to the agency of the U.S. Government which awarded the Schedule contract.

(2) The Contractor is encouraged, but not obligated, to accept orders from such entities. The Contractor may, within 5 days of receipt of the order, decline to accept any order, for any reason. The Contractor shall fulfill orders placed by such entities which are not declined within the 5-day period. (End of clause)

15. Amend section 552.246-73 by revising the date of the clause to read "(Date)"; removing from paragraph (b)(1) "Government" and adding "ordering activity" in its place; and removing from paragraph (b)(3) "The Government" and adding "the ordering activity" in its place.

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 030114012-3012-01; I.D. 121902F]

RIN 0648-AQ46

**Fisheries of the Exclusive Economic Zone Off Alaska; Seasonal Area Closure to Trawl, Pot, and Hook-and-Line Fishing in Waters off Cape Sarichef**

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

**ACTION:** Proposed rule.

**SUMMARY:** NMFS issues a proposed rule to seasonally prohibit directed fishing

for groundfish by vessels using trawl, pot, or hook-and-line gear in waters located near Cape Sarichef in the Bering Sea subarea. This action is necessary to support NMFS research on the effect of fishing on the localized abundance of Pacific cod and to further the goals and objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP).

**DATES:** Comments on the proposed rule must be received on or before February 7, 2003.

**ADDRESSES:** Comments should be sent to Sue Salvesson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Durall, or delivered to room 413-1 in the Federal Building at 709 W 9th St., Juneau, AK. Comments also may be faxed to 907-586-7557, marked Attn: Lori Durall. Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action are available from the same address or by calling the Alaska Region, NMFS, at (907) 586-7228.

**FOR FURTHER INFORMATION CONTACT:** Melanie Brown at (907) 586-7228, or [melanie.brown@noaa.gov](mailto:melanie.brown@noaa.gov).

**SUPPLEMENTARY INFORMATION:** NMFS manages the domestic groundfish fisheries in the Bering Sea and Aleutian Islands Management Area (BSAI) under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing the groundfish fisheries of the BSAI appear at 50 CFR parts 600 and 679.

In October 2002, the Council adopted a proposed regulatory amendment to seasonally prohibit directed fishing for groundfish by vessels using trawl, pot, or hook-and-line gear in a portion of the waters off Cape Sarichef in the Bering Sea subarea. The purpose of this action is to support a NMFS research project investigating the effect of commercial fishing on Pacific cod abundance in localized areas. This study is an integral part of a NMFS comprehensive research program designed to evaluate effects of fishing on the foraging behavior of Steller sea lions. The western distinct population segment (DPS) of Steller sea lions is listed as an endangered species under the Endangered Species Act and is likely to be adversely affected by the Atka mackerel, pollock, and Pacific cod fisheries. Steller sea lion protection

measures are currently implemented to ensure the pollock, Atka mackerel, and Pacific cod fisheries are not likely to jeopardize the continued existence of or adversely modify or destroy critical habitat for the western DPS of Steller sea lions (68 FR 204, January 2, 2003).

Currently, the information available to evaluate alternative methods for protecting Steller sea lions and their critical habitat is very limited. Improved information could enhance the effectiveness and efficiency of existing protection measures. NMFS and other management agencies and organizations have undertaken numerous research initiatives to learn more about Steller sea lions and interactions with their environment, including fishery related effects potentially associated with the ongoing decline of the western DPS of Steller sea lions. One such activity is a controlled experiment by NMFS off Cape Sarichef to improve the information that can be used to assess further management actions to protect Steller sea lions and their critical habitat.

The goal of the study is to evaluate the effects of commercial trawl fishing on Pacific cod and to test a localized depletion hypothesis. This hypothesis states that the commercial fisheries may adversely affect the critical habitat of Steller sea lions by localized depletion of Steller sea lion prey. This study is designed as a comparison between sites within the area subject to intensive seasonal trawling and control sites within a nearby zone where trawling is prohibited. A complete description of the study is available in the EA/RIR/IRFA for this action (see **ADDRESSES**).

This proposed rule would impose a seasonal ban on all directed fishing for groundfish by vessels using trawl, pot, or hook-and-line gear in all waters located outside of the existing 10 nm no trawl area around Cape Sarichef and inside the boundary of the following coordinates joined in order by straight lines:

54°30' N lat., 165°14' W long.;  
 54°35' N lat., 165°26' W long.;  
 54°48' N lat., 165°04' W long.;  
 54°44' N lat., 164°56' W long.; and  
 54°30' N lat., 165°14' W long.

Cape Sarichef is located at coordinates 164°56.8' W long. and 54°34.30' N lat. See Figure 21 in the proposed regulatory language below.

This proposed fishing restriction would be in effect annually during the period of March 15 through March 31 in the years 2003 through 2006. The Council would review the experimental results after March 2003 to decide if any changes to the rule are needed in 2004 through 2006.

The trawl, pot, or hook-and-line fishing restriction is necessary to support NMFS research designed to identify and quantify the effects of commercial trawl fishing on the availability of Pacific cod to foraging Steller sea lions within a finite area. This research is intended to assess the effectiveness and efficiency of alternative management methods for ensuring that Pacific cod fisheries off Alaska neither jeopardize the continued existence of the western DPS of endangered Steller sea lions nor adversely modify its critical habitat.

The design of this study requires that experimental pot gear be deployed before and after the period of intense trawl fishing for Pacific cod. NMFS would deploy pot fishing gear in the restriction area during March 15 through March 31, a time period that historically includes the intense trawl fishery for Pacific cod. The trawl closure is necessary to prevent gear conflicts, including the risk of trawl gear disturbing the experimental pot gear. Trawl gear contacting pot gear would result in the displacement or loss of the pots. Pot loss or displacement would lead to economic losses to NMFS and would reduce the quality of the information gathered in the study. The commercial pot and hook-and-line gear closures are necessary to ensure that observed fishing effects are due to trawl fishing and not to additional fishing effort by hook-and-line and pot gear vessels moving into the area due to the trawl closure. A concern also exists that pot and hook-and-line gear vessels would enter areas historically fished by trawl gear. The pot and hook-and-line gear closures will prevent a redistribution of these fisheries and potential future conflicts with trawl gear.

#### Classification

NMFS has determined that the seasonal adjustments of fishery closures this proposed rule would implement are consistent with the national standards of the Magnuson-Stevens Act and other applicable laws.

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

This proposed action does not result in any changes in reporting or recordkeeping requirements.

Species listed under the Endangered Species Act (ESA) are present in the action area. According to an informal consultation completed on November 25, 2002, no listed species are likely to be adversely affected by this proposed action.

The analysis for this proposed action did not reveal any existing Federal rules that duplicate, overlap, or conflict with this action.

An IRFA to examine impacts of the preferred alternative on regulated small entities was conducted for this action in accordance with 5 U.S.C. 603(b). The proposed closure area is a small portion of Alaska State statistical reporting area 655430 and very small portions of areas 655410 and 645434. Observer data indicated that insignificant amounts of groundfish fishing occurs in areas 655410 and 645434, compared to 655430 and, therefore, catch data from these areas are not included in the analysis for this action. The entities regulated by this proposed action would be the catcher vessels and catcher-processors that have fished in the closure area in the second half of March, but that would not be able to do so during that period from 2003 through 2006. The estimated number of small entities that have fished in this area at that time ranges from 21 to 56 per year from 1998 through 2001. Statistical area 655430 includes waters other than those in the closure area; therefore, these estimates of entity numbers likely are high based on the data available for analysis.

The estimated annual average gross revenues for these small operations (from all their Alaskan fisheries) range between approximately \$1.02 million and \$1.63 million from 1998 through 2001. The estimated average gross revenues for these small entities in statistical area 655430 during the last 2 weeks in March, were about \$10,000 in 1998, \$18,000 in 1999, \$19,000 in 2000, and \$17,000 in 2001. As noted earlier, statistical area 655430 includes waters outside of the closure area; therefore, these estimates of average revenue probably exceed average revenues earned in the closure area.

The preferred alternative would prevent trawling, hook-and-line, and pot gear fishing in the closure area from March 15 to March 31 in the years 2003 through 2006. Fishing vessels that would otherwise have fished in the closure area during that period, would likely alter their fishing patterns so as to fish elsewhere. Many vessels may fish in waters to the north or northeast of the closure area. These alternative waters are further from the delivery ports and support services available at Akutan, Unalaska, and King Cove. These operational changes may impose somewhat higher costs on the vessels, and may lead to some loss of revenues. Moreover, the shift in fishing area may increase the bycatch rate on non-targeted species.

The impacts of the proposed action on these operations will be minor. The average gross revenues from statistical area 655430 are minor compared to overall small entity average gross revenues over the course of the year. They are also relatively minor compared to their total revenues from fishing activity in the last 2 weeks of March. These vessels likely would be able to alter their operations to continue their fishing activity elsewhere in the second half of March and, therefore, actual revenue loss should be much less than the average revenue from the closure area. Thus, the average gross revenues overstate the total adverse impact of the proposed rule on small entities.

An IRFA should include a description of any significant alternatives to the proposed rule that accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes and that would minimize any significant economic impact of the proposed rule on small entities. Two alternatives that would have had less adverse impacts on small entities were considered. Alternative 1, the status quo alternative, would not have imposed restrictions on groundfish fishing in this area. This alternative was rejected because it created an unacceptably high risk of loss of experimental pot gear and consequent reduction in the statistical power of the experiment. This could have reduced the value of the experimental results for management purposes. Alternative 2 would have only restricted trawling in the closure

area. This alternative was rejected because of concerns that, with no trawling in the closure area, hook-and-line and pot gear fishermen would enter in increasing numbers with consequent increased removals of Pacific cod that might be interpreted by the experiment as a trawl effect. Moreover, this alternative could have led to increased risk of gear conflicts between trawl and hook-and-line and pot gear following the end of the closure, as pot and hook-and-line gear vessels moved into the area closed to trawling but historically fished with trawl gear. Finally, the closure area under this alternative differed in its dimensions from the closure area in this proposed rule; these differences were introduced to reduce the adverse impact on small trawl entities under the proposed rule.

#### List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: January 16, 2003.

#### Rebecca Lent,

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

For the reasons discussed in the preamble, 50 CFR part 679 is proposed to be 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 § 679.22, paragraph (a)(11) is revised to read as follows:

#### § 679.22 Closures.

\* \* \* \* \*

(a) \* \* \*

(11) *Cape Sarichef Research Restriction Area (effective through March 31, 2006)*—(i) *Description of Cape Sarichef Research Restriction Area.* The Cape Sarichef Research Restriction Area is all waters located outside of the 10 nm no trawl area around Cape Sarichef, as described in Tables 4 and 5 to this part, and inside the boundary of the following coordinates joined in order by straight lines (Figure 21 to part 679):

54°30' N lat., 165°14' W long.;

54°35' N lat., 165°26' W long.;

54°48' N lat., 165°04' W long.;

54°44' N lat., 164°56' W long.; and,

54°30' N lat., 165°14' W long.

(ii) *Closure.* The Cape Sarichef Research Restriction Area is closed from March 15 through March 31 to directed fishing for groundfish by vessels named on a Federal Fisheries Permit issued under § 679.4(b) and using trawl, pot, or hook-and-line gear.

\* \* \* \* \*

3. Figure 21 to part 679 is added to read as follows:

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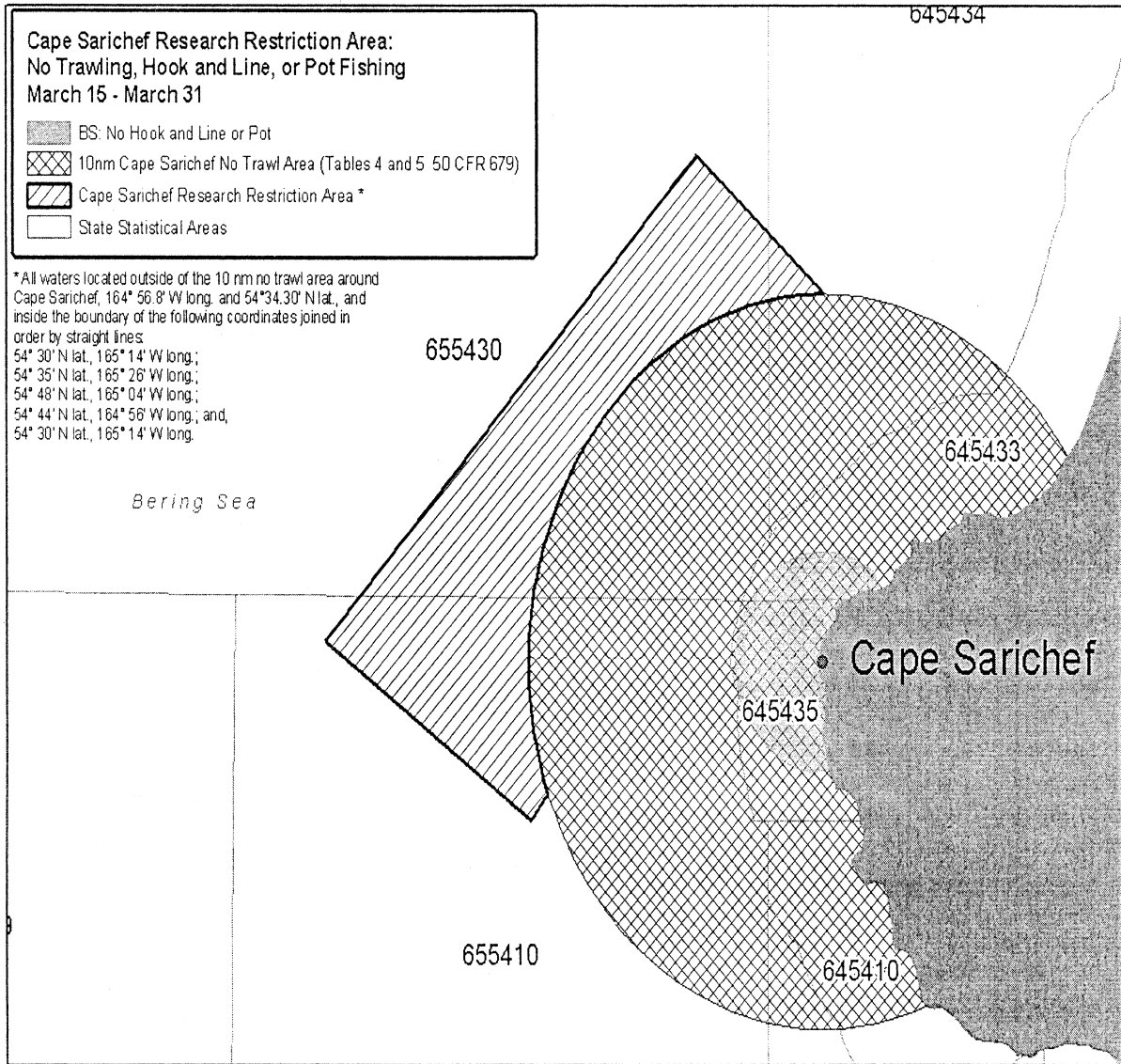


Figure 21 Cape Sarichef Research Restriction Area (Effective through March 31, 2006)