

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****15 CFR Part 902****50 CFR Part 679**

[Docket No. 960503125-6191-02; I.D. 040996A]

RIN 0648-AH03

**Fisheries of the Exclusive Economic Zone off Alaska; Salmon Donation Program**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule to implement Amendment 26 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and Amendment 29 to the Fishery Management Plan for Groundfish of the Gulf of Alaska. This rule authorizes a voluntary Salmon Donation Program (SDP) for distribution of Pacific salmon taken as bycatch in the groundfish trawl fisheries off Alaska to economically disadvantaged individuals by tax-exempt organizations through a NMFS-authorized distributor. This action is necessary to support industry initiatives to reduce waste from discard in the groundfish fisheries by processing salmon bycatch for human consumption. This action is intended to promote the goals and objectives of the FMPs that govern the commercial groundfish fisheries off Alaska.

**EFFECTIVE DATE:** July 19, 1996.

**ADDRESSES:** Copies of Amendments 26 and 29 and the Environmental Assessment/Regulatory Impact Review (EA/RIR) prepared for the amendments may be obtained from the North Pacific Fishery Management Council, Suite 306, 605 West 4th Ave., Anchorage, AK 99510-2252; telephone: 907-271-2809. Send comments regarding burden estimates or any other aspect of the data requirements, including suggestions for reducing the burdens, to Susan J. Salvesson, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802.

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

**SUPPLEMENTARY INFORMATION:** Fishing for groundfish by U.S. vessels in the exclusive economic zone of the Gulf of Alaska (GOA) and Bering Sea and Aleutian Islands management area

(BSAI) is managed by NMFS according to the respective FMPs for the groundfish fisheries of the GOA and BSAI. The FMPs were prepared by the North Pacific Fishery Management 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 part 679.

This action implements regulations authorized under Amendments 26 and 29 to the FMPs. These amendments were approved by NMFS on July 10, 1996, and authorize the distribution of Pacific salmon taken incidentally in the groundfish trawl fisheries off Alaska to economically disadvantaged individuals by tax-exempt organizations through a NMFS-authorized distributor. The SDP's objective is to reduce waste from discards in the groundfish trawl fisheries.

Under this final rule, the Director, Alaska Region, NMFS (Regional Director) will select one or more tax-exempt organizations to be authorized distributors based on the information submitted by applicants under § 679.26. After review of qualified applicants, NMFS will announce the selection of authorized distributor(s) in the Federal Register. NMFS anticipates that the selection process of (an) authorized distributor(s) will be completed prior to the beginning of the 1996 BSAI pollock nonroe season. Any vessel or processor wishing to retain and process salmon bycatch for delivery to an authorized distributor selected by NMFS must be listed by the authorized distributor as a participant. Any costs resulting from the handling, processing, storing, and delivery of donated salmon to an authorized distributor will be borne by participating vessels and processors. Participation in the SDP is voluntary.

A full description of, and background information on, the SDP may be found in the preamble to the proposed rule published in the Federal Register on May 16, 1996 (61 FR 24750) and in the EA/RIR prepared for this action. Public comment on the proposed rule was invited through July 1, 1996. The U.S. Coast Guard commented that no enforcement or safety concerns would result from the proposed SDP. No other written comments were received during the comment period.

No changes to the proposed rule are made in the final rule except to incorporate the regulatory format into the new consolidated regulations governing the fisheries in Federal waters off Alaska (50 CFR part 679).

**Classification**

The Regional Director has determined that Amendments 26 and 29 are necessary for the conservation and management of the groundfish fisheries of the BSAI and the GOA and that they are consistent with the Magnuson Act and other applicable laws.

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

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 reasons were published in the notice of proposed rulemaking. As a result, a regulatory flexibility analysis was not prepared.

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

This rule contains a collection-of-information requirements subject to the PRA. The collection of this information has been approved by the OMB, Control Number 0648-0316. The rule includes an application to participate as an authorized distributor in the SDP, documentation requirements for the authorized distributor(s) and processors participating in the SDP, packaging requirements for vessels and processors, and identification requirements. Public reporting burden for these collections of information are estimated to average 40, 40, 0.1, and 0.25 hours respectively, per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send suggestions regarding burden estimates or any other aspect of the data requirements, including suggestions for reducing the burdens to Susan J. Salvesson (see ADDRESSES) and to the Office of Information and Regulatory Affairs, OMB, Washington, D.C. 20503, Attn: NOAA Desk Officer.

NMFS has determined that this final rule should be effective immediately to provide adequate time for tax-exempt organizations to apply to NMFS to become authorized distributors and for NMFS to review applications, to issue

SDP permits to authorized distributors, and to notify the public in the Federal Register of authorized distributors prior to the beginning of the 1996 BSAI pollock nonroe season, currently scheduled for August 15. An infrastructure has been developed over the past 2 years to provide for the distribution of donated salmon taken incidentally in the BSAI pollock fishery to needy individuals under authority of three successive experimental fishing permits (EFPs). The last EFP expired at the end of the 1996 pollock roe season. The infrastructure for the distribution of donated salmon could be jeopardized if a hiatus occurs in the authority to retain and donate salmon during the upcoming pollock nonroe season. Therefore, the need to implement the final rule in a timely manner to provide adequate time to select authorized distributors prior to the 1996 pollock nonroe season and avoid a hiatus and the fact that participation in the SDP is voluntary constitute good cause under authority contained in 5 U.S.C. 553(d)(3) to make this rule effective immediately.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 679

Fisheries, Reporting and recordkeeping requirements.

Dated: July 18, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR chapter IX and 50 CFR chapter VI are amended as follows:

15 CFR Chapter IX

**PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS**

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, paragraph (b), the table is amended by adding, in numerical order, the following entry to read as follows:

**§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.**

\* \* \* \* \*

(b) \* \* \*

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648-)
* * * *	*
<b>50 CFR</b>	
* * * *	*
679.26 .....	0316
* * * *	*

**50 CFR Chapter VI**

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

3. The authority citation for part 679 continues to read as follows:

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

4. In § 679.2, the definitions of "Authorized distributor", "Food bank distributor", "Food bank network", "Hunger relief agency", "SDP", "SDP permit", and "Tax-exempt Organization" are added, in alphabetical order, to read as follows:

**§ 679.2 Definitions.**

\* \* \* \* \*

*Authorized distributor* means a tax-exempt organization authorized by NMFS to coordinate the processing, storage, transportation, and distribution of salmon taken as bycatch in the groundfish trawl fisheries to tax-exempt hunger relief agencies, food bank networks, and food bank distributors.

\* \* \* \* \*

*Food bank distributor* means a tax-exempt organization with the primary purpose of distributing food resources to hunger relief agencies.

*Food bank network* means a tax-exempt organization with the primary purpose of coordinating receipt and delivery of food resources to its member food bank distributors or hunger relief agencies.

\* \* \* \* \*

*Hunger relief agency* means a tax-exempt organization with the primary purpose of feeding economically disadvantaged individuals free of charge.

\* \* \* \* \*

*SDP* means the Salmon Donation Program established under this section.

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

\* \* \* \* \*

*Tax-exempt organization* means an organization that received a

determination letter from the Internal Revenue Service recognizing tax exemption under 26 CFR part 1 (§§ 1.501 to 1.640).

\* \* \* \* \*

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

**§ 679.7 Prohibitions.**

\* \* \* \* \*

(a) \* \* \*

(12) *Salmon donation program.* Retain or possess salmon, except as permitted to do so under the Salmon Donation Program as provided by § 679.26, or as authorized by other applicable law.

\* \* \* \* \*

6. In § 679.21, paragraphs (b)(2)(ii) and (c)(1) are revised to read as follows:

**§ 679.21 Prohibited species bycatch management.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(ii) Sort its catch as soon as possible after retrieval of the gear and, except as provided under paragraph (c) of this section or § 679.26, 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 aboard.

\* \* \* \* \*

(c) \* \* \* (1) *Salmon discard.* Except as provided in paragraph (c)(3) of this section, the operator of a vessel and the manager of a shoreside processor must not discard any salmon or transfer or process any salmon under the SDP at § 679.26, if the salmon were taken incidentally to a directed fishery for BSAI 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.

\* \* \* \* \*

7. Section 679.26 is added to Subpart B to read as follows:

**§ 679.26 Salmon Donation Program.**

(a) *Authorized distributors—(1) Application.* An applicant seeking to become an authorized distributor must provide the Regional Director with the following information:

(i) Proof of the applicant's tax-exempt status.

(ii) A description of the arrangements for processing, shipping, storing, and transporting donated salmon and an estimate of the associated costs.

(iii) A statement describing the applicant's expertise in providing for the distribution of food product from remote Alaskan locations to hunger

relief agencies, food bank networks, or food bank distributors, including arrangements for transportation, distribution costs, and product quality control.

(iv) Documentation of support from cold storage and transportation facilities.

(v) A proposed operating budget that is adequate to ensure that salmon donated under this program will be distributed to hunger relief agencies, food bank networks, or food bank distributors and that the salmon will be maintained in a manner fit for human consumption.

(vi) Proof of the applicant's ability to obtain and maintain adequate funding for the distribution of salmon under the SDP.

(vii) A copy of the applicant's articles of incorporation and bylaws showing that the purpose of the applicant includes providing food resources to hunger relief agencies, food bank networks, or food bank distributors.

(viii) Proof of the applicant's ability to take full responsibility for the documentation and disposition of salmon received under the SDP, including sufficient liability insurance to cover public interests relating to the quality of salmon distributed for human consumption.

(ix) Quality control criteria to be followed by vessels, processors, hunger relief agencies, food bank networks, and food bank distributors.

(x) The number of vessels and processors that the applicant is capable of administering effectively.

(xi) A list of all vessels and processors, food bank networks and food bank distributors participating in the SDP. The list of vessels and processors must include:

(A) The vessel's or processor's Federal fisheries permit number or Federal processor permit number.

(B) The name of the vessel owner or responsible operator or the name of the owner or plant manager of the processor.

(C) The vessel's or processor's telephone number and fax number.

(D) The signature of the vessel owner or responsible operator or the owner or plant manager of the processor.

(xii) A signed statement from the applicant and all persons listed under paragraph (a)(1)(xi) of this section who would conduct activities pursuant to the SDP 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 SDP.

(xiii) A list of locations where salmon must be delivered by participating vessels and processors.

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

(i) The number and qualifications of applicants for SDP permits.

(ii) The number of harvesters and the quantity of salmon that applicants can effectively administer.

(iii) The anticipated level of salmon bycatch based on the salmon bycatch from previous years.

(iv) The potential number of vessels and processors participating in the groundfish trawl fisheries.

(3) *SDP Permit.* (i) After review of qualified applicants, the Regional Director will announce the selection of authorized distributor(s) in the Federal Register and will issue SDP permit(s).

(ii) The Regional Director may impose additional terms and conditions on an SDP permit consistent with the objectives of the SDP.

(iii) An SDP permit may be suspended, modified, or revoked under 15 CFR part 904 for noncompliance with terms and conditions specified in the permit or for a violation of this section or other regulations in this part.

(iv) An SDP permit remains in effect for a 3-year period after the selection notice is published in the Federal Register unless suspended or revoked. An SDP permit may not be transferred. An SDP permit issued to an authorized distributor may be renewed following the application procedures in this section.

(v) If the authorized distributor modifies any information on the SDP permit application submitted under paragraph (a)(1)(xi) or (a)(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 Director.

(b) *Reporting and Recordkeeping Requirements.* (1) A vessel or processor retaining salmon under the SDP must comply with all applicable recordkeeping and reporting requirements. A vessel or processor participating in the SDP must comply with applicable regulations at §§ 679.7(c)(2), and 679.21(c) that allow for the collection of data and biological sampling by an NMFS-certified observer prior to processing any salmon under the SDP.

(2) Salmon retained under the SDP 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 salmon contained in the package and the words, "NMFS SALMON DONATION PROGRAM—NOT FOR SALE—PERISHABLE PRODUCT—KEEP FROZEN".

(3) A processor retaining or receiving salmon under the SDP 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 salmon. Such documentation must be retained until 1 year after the effective period of the SDP permit.

(c) *Processing, handling, and distribution.* (1) Processing and reprocessing of all salmon retained under the SDP must be carried out under the direction of the authorized distributor. A processor retaining or receiving salmon under the SDP, at a minimum, must head, gut, and freeze the salmon in a manner that makes it fit for human consumption.

(2) Salmon that are determined to be unfit for human consumption prior to delivery to an authorized distributor must be discarded under § 679.21(b). Salmon that are determined to be unfit for human consumption after delivery to the authorized distributor must be destroyed in accordance with applicable sanitation laws and regulations.

(3) Authorized distributors and persons conducting activities supervised by authorized distributors may retain salmon only for the purpose of processing and delivering the salmon to hunger relief agencies, food networks or food distributors as provided by this section. Such persons may not consume or retain salmon for personal use and may not sell, trade or barter, or attempt to sell, trade or barter any salmon that is retained under the SDP.

(4) No salmon bycatch 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 Director under paragraph (a)(1)(xi), (a)(1)(xiii), or (a)(3)(v) of this section.

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