

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

[Docket No. 090218204–91211–04]

RIN 0648–AX71

**Fisheries of the United States Exclusive Economic Zone Off Alaska; Fisheries of the Arctic Management Area; Bering Sea Subarea**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule that implements the Fishery Management Plan for Fish Resources of the Arctic Management Area (Arctic FMP) and Amendment 29 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (Crab FMP). The Arctic FMP and Amendment 29 to the Crab FMP establish sustainable management of commercial fishing in the Arctic Management Area and move the northern boundary of the Crab FMP out of the Arctic Management Area south to Bering Strait. This action is necessary to establish a management framework for commercial fishing and to provide consistent management of fish resources in the Arctic Management Area before the potential onset of unregulated commercial fishing in the area. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMPs, and other applicable laws.

**DATES:** Effective December 3, 2009.

**ADDRESSES:** Electronic copies of the Arctic FMP, Amendment 29 to the Crab FMP, maps of the action area and essential fish habitat, and the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) for this action may be obtained from <http://www.regulations.gov> or from the Alaska Region website at <http://www.alaskafisheries.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Melanie Brown, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** The Bering Sea and Aleutian Islands king and Tanner crab fisheries are managed under the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (Crab FMP). The Arctic Management Area fisheries are managed

under the Fishery Management Plan for Fish Resources of the Arctic Management Area (Arctic FMP). The North Pacific Fishery Management Council (Council) prepared the Crab FMP and the Arctic FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations implementing the FMPs appear at 50 CFR parts 679 and 680. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

On May 19, 2009, the Council submitted the Arctic FMP and Amendment 29 to the Crab FMP for review by the Secretary of Commerce (Secretary). A notice of availability (NOA) of the Arctic FMP and Amendment 29 was published in the **Federal Register** on May 26, 2009 (74 FR 24757). The proposed rule for the Arctic FMP and Amendment 29 was published in the **Federal Register** on June 10, 2009 (74 FR 27498). Comments on the Arctic FMP, Amendment 29, and the proposed rule were invited through July 27, 2009. Comments received on the Arctic FMP, Amendment 29, and the proposed rule are summarized and responded to below.

The Arctic FMP and Amendment 29 to the Crab FMP were approved by the Secretary on August 17, 2009.

**Background**

The Arctic FMP and Amendment 29 to the Crab FMP provide for sustainable management of commercial fishing in the Arctic Management Area and eliminate management authority within the Arctic Management Area from the Crab FMP. The Arctic FMP establishes a management framework to sustainably manage future commercial fishing in the Arctic Management Area and initially prohibits commercial fishing until new information regarding Arctic fish resources allows for authorization of a sustainable commercial fishery in the area. Amendment 29 to the Crab FMP ensures consistent management of all crab species in the Arctic Management Area under the Arctic FMP.

In February 2009, the Council recommended the Arctic FMP to implement a management framework to protect the fish resources of the Arctic Management Area against the potential onset of unregulated commercial fishing. The Arctic FMP initially prohibits commercial fishing until sufficient information is available to enable a sustainable commercial fishery to proceed, consistent with the Magnuson-Stevens Act. Global climate change is reducing the extent of sea ice in the Arctic Ocean, providing greater access to Arctic marine resources and

increasing human activity in this sensitive marine environment of the U.S. Exclusive Economic Zone (EEZ). This action prevents potential adverse effects on the Arctic marine environment from unregulated commercial fishing. The Arctic FMP is a precautionary, ecosystem-based approach to fisheries management in the Arctic Management Area.

The Arctic FMP has all required provisions and appropriate discretionary provisions for an FMP contained in sections 303(a), 303(b), and 313 of the Magnuson-Stevens Act. The conservation and management provisions in the Arctic FMP were developed in consideration of the new National Standard 1 guidelines (74 FR 3178, January 16, 2009). The proposed rule (74 FR 27498, June 10, 2009) contains a summary of the contents of the Arctic FMP and Amendment 29 to the Crab FMP, which provide the authority for conservation and management of fish resources and for the provisions in this final rule.

The Arctic FMP and final rule apply to commercial harvests of most fish resources in the waters of the Arctic Management Area (Figure 24 in this final rule). The geographic extent of the Arctic Management Area is all marine waters in the U.S. EEZ of the Chukchi and Beaufort Seas from 3 nautical miles off the coast of Alaska or its baseline to 200 nautical miles offshore, north of Bering Strait (from Cape Prince of Wales to Cape Dezhneva) and westward to the 1990 United States/Russia maritime boundary line and eastward to the United States/Canada maritime boundary as claimed by the United States.

This final rule does not affect non-commercial fishing in the Arctic Management Area or commercial harvest of certain species that are managed pursuant to other legal authorities. It has no effect on the commercial harvest of Pacific salmon and Pacific halibut. The commercial harvest of Pacific salmon in the Arctic Management Area is managed under the FMP for Salmon Fisheries in the EEZ off the Coast of Alaska (Salmon FMP), which prohibits commercial salmon fishing in the Arctic Management Area. Pacific halibut commercial fishing is managed by the International Pacific Halibut Commission (IPHC), which does not allow harvest of Pacific halibut in the Arctic Management Area. This action makes no changes to subsistence harvest of marine resources in the Arctic Management Area.

## Regulatory Amendments

The following describes the regulatory changes and additions to 50 CFR part 679 to implement the Arctic FMP and Amendment 29.

1. Section 679.1 is revised to add the title of the Arctic FMP and to describe the scope of the FMP as governing commercial fishing for Arctic fish in the Arctic Management Area by vessels of the United States. This addition is necessary to expand the scope of the 50 CFR part 679 regulations to include implementation of the Arctic FMP.

2. Section 679.2 is amended to add and revise definitions for the Arctic FMP and for Amendment 29 to the Crab FMP. A definition for "Arctic fish" is added to distinguish in regulations the species under the authority of the Arctic FMP. The Arctic fish definition includes all fish as defined by the Magnuson-Stevens Act, excluding Pacific halibut and Pacific salmon. The Magnuson-Stevens Act defines "fish" as finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals and birds. Commercial fishing for Pacific halibut and Pacific salmon in the EEZ off Alaska is managed by the IPHC and under the Salmon FMP, respectively, and is not managed under the Arctic FMP. Creating this definition allows for the initial prohibition of commercial fishing for Arctic fish, as prescribed by the Arctic FMP.

A definition for the "Arctic Management Area" as described by the Arctic FMP is added. The area is described in regulatory text in § 679.2 and is shown in Figure 24 in part 679. This definition is necessary to define the area within which this rule governs commercial fishing.

The definition for the "Bering Sea and Aleutian Islands Area" for the purposes of king and Tanner crab management is revised. This revision implements Amendment 29 to the Crab FMP by moving the northern boundary of the Crab FMP fishery management area from Point Hope southward to Bering Strait. This revision is necessary to eliminate management authority in the Arctic Management Area from the Crab FMP so that all crab stocks that occur within the Arctic Management Area are managed under the Arctic FMP.

The definition of "commercial fishing" is revised to include the catch of Arctic fish which is or is intended to be sold or bartered, excluding subsistence fishing. This revision is necessary to manage, and initially prohibit, commercial fishing for Arctic fish and to ensure subsistence fishing is

not affected by such management of commercial fishing.

The definition of "management area" is revised to add the Arctic Management Area. This revision is necessary to list the Arctic Management Area with the Bering Sea and Aleutian Islands Management Area and the Gulf of Alaska. This revision allows for fishery management in the Arctic Management Area to be within the scope of the regulations at § 679.1.

The definition of "optimum yield" is revised by adding Arctic fish and referencing § 679.20(a)(1) where the optimum yield for target species identified in the Arctic FMP is specified. This revision is necessary to establish the optimum yield for the target species and to support the prohibition on commercial fishing of target species.

The definition of "subsistence fishing" is added to describe subsistence harvests in the Arctic Management Area of Arctic fish and Pacific salmon. Subsistence in terms of Pacific halibut is defined under regulations at 50 CFR 300.61 and is not changed by this definition. Subsistence fishing in the Arctic is the harvest of Arctic fish and Pacific salmon for non-commercial, long-term, customary and traditional use necessary to maintain the life of the taker or those who depend upon the taker to provide them with such subsistence. Adding this definition to 50 CFR part 679 allows subsistence harvest practices to be differentiated from commercial harvest practices, which are prohibited. This addition is necessary to ensure the continued subsistence harvest of Arctic fish and Pacific salmon in the Arctic Management Area while differentiating such activity from commercial fishing.

3. The introductory paragraph to § 679.6 addressing exempted fishing permits (EFPs) is revised to add Arctic fish. EFPs currently are available for only groundfish exempted fishing. Because the Arctic FMP includes species other than groundfish and the Arctic FMP allows issuance of EFPs for any type of fish resource occurring in the Arctic Management Area, the application of EFPs is revised to include Arctic fish.

4. In § 679.7, a prohibition is added to prevent commercial fishing for Arctic fish in the Arctic Management Area. A prohibition on commercial fishing for Arctic fish is necessary to implement the Arctic FMP prohibition on commercial fishing on either target or ecosystem component species.

5. In § 679.20(a), the optimum yield (OY) for commercial fishing for Arctic Management Area target species is

added. The OY for commercial fishing is set at zero metric tons for each of the target species, as provided in the Arctic FMP. This revision is necessary to implement the OYs specified in the Arctic FMP.

6. Figure 24 to part 679 is added to show the Arctic Management Area as established by the Arctic FMP. This addition is necessary to clarify in the regulations the location of the Arctic Management Area and to differentiate the boundary of the Arctic Management Area from the Bering Sea and Aleutian Islands Management Area boundary shown in Figure 1 to part 679. The Chukchi Sea Statistical Area 400 remains with the Bering Sea and Aleutian Islands statistical and reporting areas in Figure 1 to part 679 until the Arctic FMP is amended to authorize a commercial fishery in the Arctic Management Area. The Council recommended not establishing subareas for fisheries management in the Arctic Management Area at this time due to the lack of information to inform the selection of subarea boundaries.

## Comments and Responses

The comment periods for the NOA and the proposed rule for this action ended on July 27, 2009. Comments were received from members of the public, environmental organizations, tribal representatives, and fishing industry representatives, all of which supported the Arctic FMP and Amendment 29 to the Crab FMP. Eight environmental organizations' letters also enclosed form letters or petition signatures representing 35,852 individual commentors. Including each version of the form letters, NMFS received approximately 389 letters containing 48 unique comments. The following summarizes and responds to the 48 unique comments on the NOA for the Arctic FMP and Amendment 29 and on the proposed rule.

*Comment 1:* For Amendment 29 to the Crab FMP, the map needs to be corrected to show the northern boundary of the management area consistent with the text in the FMP amendment.

*Response:* The error in the northern boundary on the map is noted. Two lines appear on the map for the northern boundary. Only the northern most line should be shown. The text in the FMP amendment and the coordinates listed for Figure 1 of 50 CFR part 679 describe only the northernmost line, which is the effective boundary for the Crab FMP, according to the definition of Bering Sea and Aleutian Islands Area in § 679.2. The figure will be corrected with a future amendment to the Crab FMP.

*Comment 2:* In Section 4.2.2 of the Arctic FMP and in Section 8.1.2 of the EA, the oceanographic features of the Arctic Ocean should be corrected to describe upwellings from Barrow Canyon, rather than Beaufort Canyon.

*Response:* The error is noted. The correction was made in the EA and will be made in the Arctic FMP with a future amendment.

*Comment 3:* In the proposed rule, the definition of Arctic fish in conjunction with the definition of commercial fishing and subsistence fishing seems to allow an opportunity to fish commercially for Pacific halibut in Arctic waters. The prohibition under § 679.7(p) prohibits commercial fishing for Arctic fish which excludes Pacific salmon and Pacific halibut. Pacific salmon commercial fishing is prohibited by the Salmon FMP. The text of the prohibition could be changed to prohibit commercial fishing in the Arctic Management Area and in that manner include Pacific halibut.

*Response:* Pacific halibut commercial fishing is managed under regulations of the International Pacific Halibut Commission (IPHC), which do not allow harvest of Pacific halibut in the Arctic Management Area. In light of this existing limitation on commercial harvest of Pacific halibut, the Arctic FMP, developed by the Council, does not include a prohibition on commercial fishing for Pacific Halibut in the Arctic Management Area. NMFS concurs with the Council's conclusion that existing regulatory authority currently provides adequate conservation and management of Pacific halibut in the Arctic Management Area. Additional prohibitions on such fishing are not warranted at this time. Commercial fishing is a very broad term under the Magnuson-Stevens Act which applies to any kind of fish. The term "Arctic fish" is necessary to apply the prohibition on commercial fishing only to those species covered by the Arctic FMP. The prohibition text in the rule remains unchanged.

*Comment 4:* It is important to gather scientific information and data on significant marine habitat and fishery resources. These can be used to identify and protect sensitive Arctic marine habitat and the adjacent Bering Sea, before opening the Arctic Management Area to commercial fishing. Identification and protection of sensitive areas are critical to ensuring the long term sustainability of Alaska's fisheries. Consideration of the errors in gathering and using scientific information and data should be made in fisheries management in the Arctic.

The Arctic FMP should include a plan for regular monitoring with a consistent protocol for surveying in the Chukchi and Beaufort Seas. NMFS and the Council are encouraged to make arctic research a priority because of the changing environment. A suite of research priorities for the Arctic should be developed and forwarded to the North Pacific Research Board for its consideration.

*Response:* NMFS agrees that more information is needed to understand the Arctic marine environment and fishery resources. With global climate change, interest is increasing in the Alaskan Arctic regarding loss of sea ice and ecosystem effects that will alter the fish community. NMFS is participating in the Bering Arctic and Subarctic Integrated Survey and the Loss of Sea Ice Initiative to investigate and gather information to manage marine resources in the Bering Sea and Arctic Ocean and to formulate strategies in anticipation of the impacts of climate change on fisheries and the ecosystem. Additional information on research activities in the Bering Sea and Arctic Ocean is available from <http://www.afsc.noaa.gov>.

NMFS is also a sponsor of the International Arctic Fisheries Symposium scheduled for October 19-21, 2009, in Anchorage, Alaska. Participants will help identify current management regimes in the Arctic region and how relevant scientific and fisheries data can be used to inform future management decisions. NOAA also is working with Russia to observe physical and biological environmental changes in the Northern Bering Sea and Chukchi Sea and with Canada for continental shelf mapping. More information on NOAA Arctic research activities may be found at <http://www.arctic.noaa.gov/aro/>.

NMFS identifies the variability and known errors in data in all research activities, including stock assessments. These are important considerations in setting harvest levels for target species and for developing appropriate management measures. NMFS agrees that consistent surveying protocols, including consistency in methodology and timing, are important to reduce the potential for error and variability in data collection. A survey of the Beaufort Sea shelf fish and invertebrate resources completed by NMFS researchers in August 2008 may serve as a pilot study for future surveys in the area.

NMFS determines its research needs and resources for Alaska fisheries and direct research efforts based on priorities. These priorities are identified by working with the Council and consideration of management of present

and future fisheries. Periodic and regular surveys of Arctic fish resources will be done as priorities and budget allow. NMFS will work with the Council to identify and prioritize research needs for all U.S. EEZ waters off Alaska, including the Arctic. The Council annually reviews its five-year research priorities, which currently include research in the Arctic. These priorities are shared with the North Pacific Research Board for its consideration in research planning. More information on the Council's research priorities may be found at <http://www.alaskafisheries.noaa.gov/npfmc/default.htm>

*Comment 5:* The current biomass estimates in the Arctic FMP cannot be relied on to reflect future baseline biomass. Biomass surveys were conducted in limited areas and limited time periods, and may over or under estimate biomass in the Arctic Management Area. Shifting temperature regimes and altered productivity and food webs may further affect standing stocks and variability.

*Response:* NMFS agrees that the combination of changing conditions and current information on biomass estimates provides limited support for future sustainable management of a commercial fishery in the Arctic. As described in Section 2.2.2 of the FMP, the collection of biomass and life history data sufficient for developing sustainable management measures will be required before any commercial fishery could be authorized.

*Comment 6:* The Department of Commerce should fully engage in international discussions on fishery management in the Arctic. Discussions with Russia and Canada are extremely important for coordination in the Arctic region, ensuring the conservation actions through the Arctic FMP are complemented by management actions taken in Russian or Canadian Arctic waters or by other nations in the international Arctic waters. The 2008 Senate Resolution 17 urges the United States to "initiate discussions and take necessary steps with other Arctic nations to negotiate an agreement or agreements for managing migratory, transboundary, and straddling fish stocks in the Arctic Ocean and establishing a new international fisheries management organization for the region." The Arctic FMP will encourage the international negotiations called for in the resolution and sets the stage for the kind of cooperative efforts to make the prohibition on commercial fishing in U.S. waters truly effective. The Arctic FMP would more fully comport with this resolution if it

included the resolution's requirement to work with other Arctic nations on international fishing issues, including EEZ disputes; highly migratory and transboundary stocks; stock monitoring, assessment, and allocation; international agreements that prohibit fishing; and conservation of protected species. Discussion is required in the FMP on the implication of these issues for present and future EEZ boundary disputes. The Arctic FMP should include a discussion on the United States and Canada boundary disputes of the EEZ in the Beaufort Sea.

NOAA could collaborate with the U.S. Department of State's Office of Ocean and Polar Affairs to negotiate with government and tribal representatives to have a moratorium on commercial fisheries and other extractive industries in Arctic areas beyond the U.S. jurisdiction.

*Response:* NMFS is working with other organizations to engage in international discussions on Arctic fisheries management. See response to Comment 4 regarding the International Arctic Fisheries Symposium. The Arctic FMP is focused on the management of fisheries in the Arctic Management Area and is not a descriptive document of international issues regarding the published U.S. EEZ boundaries (60 FR 43825, August 23, 1995). Details of the border disputes and negotiations between the United States and Russia and Canada on Arctic fisheries management are detailed in the EA/RIR/FRFA for this action (see ADDRESSES) and are not repeated in the FMP. The Council may consider adding a discussion of the U.S. Senate resolution on the Arctic to the Arctic FMP by an FMP amendment.

Not enough is known about the target species stock structure at this time to determine whether highly migratory and transboundary stocks occur in the U.S. Arctic EEZ. More research and the sharing of abundance data and stock structure information with other Arctic nations may support international agreements in highly migratory and transboundary stock management. At the time a fishery is authorized, the FMP may be amended to include management measures that address issues of highly migratory and transboundary stocks, monitoring, assessment, allocation, and international agreements for conservation of stocks. The analysis accompanying the consideration of authorizing a commercial fishery would include these types of international considerations.

NMFS through NOAA and the Department of Commerce works closely

with the U.S. Department of State's Office of Ocean and Polar Affairs to address international fishery issues between the United States and other nations. The U.S. Department of State is responsible for the coordination and negotiation with other nations regarding conservation of transboundary resources. The United States initiated discussions on the conservation and management of shared living marine resources separately with Canada and Russia in 2008. These discussions continue in 2009 and included discussions with Norway on Arctic high seas marine conservation policy issues in February 2009.

*Comment 7:* The U.S. Senate should ratify the United Nations Convention on the Law of the Sea. Other Arctic nations are ahead of the United States in ratifying this convention.

*Response:* Comment noted. Those interested in this issue may contact their U.S. Senators at [http://www.senate.gov/general/contact\\_information/senators\\_cfm.cfm](http://www.senate.gov/general/contact_information/senators_cfm.cfm).

*Comment 8:* The U.S. Government should explain to the American people the issues with our fisheries so that Americans will understand the need to close the U.S. Arctic waters to commercial fishing.

*Response:* In addition to the **Federal Register** notice of the proposed rule (74 FR 27496, June 10, 2009) and the analysis to support this action (see ADDRESSES), NMFS Alaska Region's website has a page dedicated to Arctic issues. This information is available to the public at the NMFS Alaska Region website <http://www.alaskafisheries.noaa.gov/sustainablefisheries/arctic/> and at the Council website [http://www.alaskafisheries.noaa.gov/npfmc/current\\_issues/Arctic/arctic.htm](http://www.alaskafisheries.noaa.gov/npfmc/current_issues/Arctic/arctic.htm). These sources provide the public with the background and reasons for the Arctic FMP and its implementing regulations.

*Comment 9:* NOAA is captured by commercial fishing interests and fails to manage fish populations sustainably. The fishing quota allows too much fishing and should be reduced. Oceans are dangerously overfished by industrial fishing, which needs to be stopped. We must end depletion and damage to the ocean's wildlife. Humans need to learn to use less resources and reduce population growth. Industrial fishing damages ocean floor habitat and destroys many fish and wildlife species with indiscriminate use of giant gear and lines. Huge areas of plastic debris, including fishing gear, in the Pacific and other oceans injure and kill marine animals.

*Response:* This action is limited to the implementation of the Arctic FMP in the Arctic Management Area. The Arctic FMP will initially prohibit commercial fishing in the Arctic Management Area until information is available to sustainably manage Arctic fisheries. This action is supported by a wide range of interests, including commercial fishery participants. No Alaska fisheries are currently experiencing overfishing. Commercial fishing in the EEZ off Alaska is managed under regulations at 50 CFR parts 300, 600, 679, and 680, which impose many restrictions on the type of gear, location, vessel types, and timing of fishing activities so that indiscriminate use of fishing gear does not occur. Fishery regulations include provisions to reduce waste by improved retention and improved utilization of certain species under § 679.27 and to manage fishing to control and reduce bycatch of prohibited species under § 679.21. Alaska fisheries regulations include protection measures to mitigate potential adverse effects on other marine species and habitats. Examples of protection measures include areas closed to bottom contact gear to prevent damage to bottom habitat, areas closed to fishing around Steller sea lion rookeries and haulouts, and seabird avoidance gear used by hook-and-line fisheries to reduce the accidental catching of seabirds during fishing activities.

NMFS agrees that plastic debris, including discarded fishing gear, in the marine environment poses a threat to a variety of marine organisms through entanglement and ingestion. The National Ocean Service's Marine Debris Program is undertaking a national and international effort focusing on identifying, reducing, and preventing debris in the marine environment. More information on this issue is at the Marine Debris Program website <http://marinedebris.noaa.gov/>.

*Comment 10:* No commercial fishing should occur in the Arctic Management Area now or in the future because of the fragile nature of the area and the potential for the industry to degrade it.

*Response:* This rule prohibits commercial fishing for Arctic fish in the Arctic Management Area. Arctic fish do not include Pacific salmon or Pacific halibut, because these species are managed under other authorities. Pacific salmon is managed under the Salmon FMP, which prohibits commercial fishing for salmon in the Arctic Management Area. Pacific halibut commercial fishing is not permitted in the Arctic Management Area by authority of the International Pacific Halibut Commission.

Commercial fishing in the Arctic can be authorized only through an FMP amendment and changes in regulations. An extensive process and criteria for authorizing a fishery in the Arctic are detailed in the Arctic FMP and must be followed by the Council before recommending the authorization of a commercial fishery. The potential impacts of an Arctic fishery based on the best available scientific data must be considered in developing the management measures for any future Arctic commercial fishery.

*Comment 11:* The United States should implement regulations that close U.S. Arctic waters to trawlers both near shore and off shore within the EEZ.

*Response:* The Arctic FMP and the final rule prohibit commercial fishing for all fish, except Pacific salmon and Pacific halibut, in waters of the EEZ from 3 nm to 200 nm off Alaska in the Arctic Ocean. This prohibition includes commercial fishing using trawl gear in these waters. Waters from 0 nm to 3nm are under the authority of the State of Alaska (State) which authorizes several small fisheries in State waters as described in detail in Section 5.4 of the Arctic FMP. Trawls are not used in these State waters fisheries.

*Comment 12:* Overfishing is why we are considering the Arctic FMP.

*Response:* Currently, commercial fishing is not occurring and very little subsistence and sport fishing occurs in the Arctic Management Area. Based on information in the EA/RIR/FRFA (see ADDRESSES), overfishing is not occurring. This action is a precautionary approach to fisheries management to prevent the possibility of unregulated fishing that may result in overfishing of fish stocks.

*Comment 13:* Industrial fishing is particularly harsh and hard to manage in the Arctic. Mistakes take decades to remedy and other species pay a heavy toll for overharvest.

*Response:* NMFS agrees that commercial fishing in the Arctic would pose challenges to management that are not experienced in other locations in Alaska waters, due to the extreme remote location and harsh weather and sea ice conditions. Due to the paucity of information on the fish stocks in the Arctic, it is difficult to determine the potential effects of commercial fishing on marine resources or the recovery time. Any Arctic commercial fishing that may be authorized in the future will be based on information that would allow management to be done in a sustainable manner and with consideration of ecosystem effects. Management measures for the fishery

would prevent overfishing, as required by the Magnuson-Stevens Act.

*Comment 14:* The Council system used to make decisions does not work. The members come to the meetings with decisions already made and represent big business. Big business representatives can afford to attend the Council meetings constantly. Remember small businesses are the economic engines.

*Response:* The Council public process for decision making has allowed effective management of Alaska fishery resources. The Council membership includes representatives from industry, state, and federal agencies, with the majority of the seats filled by persons recommended by the State of Alaska Governor and approved by the Secretary. Comments can be made to the Council early in the decision-making process in person and in writing for Council members' consideration.

Thorough analysis of potential actions is reviewed in public by the Council's Scientific and Statistical Committee (SSC) and the Advisory Panel where public testimony is also taken. Written comments also are an effective method for expressing the concerns of persons unable to attend the Council meetings.

The Council recognizes the importance of the small vessel fleet and the communities that depend on them in Alaska fisheries and is required by National Standard 8 of the Magnuson-Stevens Act to take into account the importance of fishery resources to fishing communities. Analysis of fisheries management actions includes the potential effects of the action on small entities, including small businesses. This analysis is used by the Council in making recommendations and by the Secretary in approving or disapproving the recommendation. The EA/RIR/FRFA for this action contains the analysis of potential impacts on small entities (see ADDRESSES).

*Comment 15:* There should be no commercial fishing in the northern Bering Sea.

*Response:* The northern portion of the Bering Sea currently is closed to nonpelagic trawling. This closure was established as the Northern Bering Sea Research Area (73 FR 43362, July 25, 2008). Though this area is open to other types of commercial fishing (e.g. hook-and-line, pot, and pelagic trawling) very little fishing occurs in this area due to its distance from major ports and the distribution of fish stocks. Closure of the northern Bering Sea area to all commercial fishing is beyond the scope of this action.

*Comment 16:* It is a waste of taxpayer money to develop the Arctic FMP

including EFPs when collection of the same information under an EFP could be done under the Magnuson-Stevens Act section 402(a).

*Response:* The purpose of the Arctic FMP is to provide a framework for sustainable management of fish resources in the Arctic Management Area. The FMP is needed not only for collection of information but also to authorize regulations to prevent unregulated fishing. The FMP also provides for EFPs as an information collection tool.

Information collection under the Magnuson-Stevens Act section 402(a) is used to determine if fisheries management is necessary or to determine whether changes need to occur in fisheries management for an existing FMP. This rule establishes fisheries management for the Arctic Management Area before commercial fishing occurs, as a precautionary approach to fisheries management in this sensitive marine environment. Allowing EFPs provides a mechanism for industry participation in collecting information important to Arctic fisheries management. Data collected under EFPs would be specific to the study conducted and would be collected in cooperation with the fishing industry. The information collection authority under section 402(a) does not fully meet the Council's and Secretary's objectives for sustainable management of Arctic fish resources. These objectives are met by approval of the Arctic FMP and this rule.

*Comment 17:* The argument that more prolonged ice-free periods is a reason for enacting an FMP ignores the fact that ice-free periods currently exist during fishing seasons and yet no fishing is taking place.

*Response:* The Arctic FMP is a precautionary action to protect Arctic fish resources from the potential adverse effects of unregulated fishing before such fishing occurs. NMFS agrees that commercial fishing is not currently known to occur in the Arctic Management Area, but with ice-free conditions expanding, there is more interest in all kinds of industrial activity in the Arctic Management Area, including commercial fishing. Waiting for commercial fishing to occur before establishing management measures would allow for unregulated fishing for up to two years as the Council and NMFS complete the process for implementing a new FMP. The additional ice-free time periods increase the interest in fishing and, therefore, warrant establishing fisheries management through the Arctic FMP now, before the occurrence of

unregulated fishing and the potential irreversible effects on the Arctic marine environment.

*Comment 18:* It is appropriate to develop an FMP that addresses species that are already known to occur in the Arctic, but a comprehensive FMP that covers species that may range into the Arctic is speculative and not needed. Species ranging out of the Bering Sea into the Arctic should already be covered by an existing FMP.

*Response:* Little is known about species ranging into the Arctic Management Area. Species lists have been developed based on limited survey information. An ecosystem component species group is used in the Arctic FMP to include those nontarget species currently known to occur in the Arctic and those species that may be discovered in the future. By identifying the ecosystem component species group, the FMP provides for management measures to protect these species. This provides the flexibility to protect ecosystem component species without the need to amend the Arctic FMP with specific species listings, which are likely to change as more information is gathered on Arctic fish resources.

Several Arctic marine species are known to occur in the Bering Sea and some of these species are managed under the FMP for Groundfish of the Bering Sea and Aleutian Islands Management Area or under the Crab FMP. The management authority under the Bering Sea and Aleutian Islands groundfish FMP does not extend into the Arctic Management Area. Also, snow crab is managed in the Bering Sea under the Crab FMP. Amendment 29 to the Crab FMP limits the northern boundary of the Crab FMP management area to Bering Strait, which is the southern boundary of the Arctic Management Area. Management measures for snow crab in the Crab FMP are specific to the Bering Sea snow crab fishery located in the Bering Sea, which is a large, historical fishery. Compared to Bering Sea snow crab, snow crab in the Arctic are smaller in size with no historical commercial exploitation and uncertain population dynamics and abundance. Under the Arctic FMP, the management of this species is consistent with the precautionary approach to prohibit commercial fishing on target species until more information is available to allow for sustainable management in the Arctic.

*Comment 19:* We support the Council's action to recommend an FMP for an unfishery area that has the potential for fisheries development because of climate change and the

potential movement of fish species. We commend the Council, NOAA, and NMFS for protecting marine habitat, as well as subsistence users, until a sustainable management plan for commercial fishing in the Arctic Management Area is developed. We need to take responsibility for sustainable management to ensure a healthier environment and ocean diversity. Polar ecosystems take longer to recover, if at all, compared to other ocean ecosystems. Only careful preservation and management of what we have left will preserve the total environment on which all life depends, including humans. The Arctic marine ecosystem is a "final frontier."

We have seen the loss of important fisheries in the U.S. and around the world in our lifetimes, and it is time for a change in fishery management. We have the opportunity to learn from our past overfishing and protect this ocean treasure. Allowing unregulated commercial fishing will result in the decimation of fish stocks as seen everywhere unregulated fishing occurs. The Arctic marine environment needs fish to survive while humans do not need fish from this area. Humans can find other food sources of protein and omega 3 fatty acids without eating fish. Humanity's pattern has been to exploit first and regret later. The Arctic FMP is an opportunity to avoid that pathology. In the past, commercial interests took precedence over rational scientific management of resources and the environment. It is time to change our national misbehavior.

*Response:* Support noted. Humans living in the Arctic region and practicing a subsistence lifestyle are dependent on Arctic marine resources for their nutrition, including fish. This action will ensure Arctic fish resources, including those used for subsistence, are not adversely affected by unregulated commercial fisheries.

*Comment 20:* We urge the Secretary of Commerce to approve the FMP and to implement regulations to close U.S. Arctic waters to commercial fishing. The FMP and regulations would protect the birds and wildlife of the Arctic for future generations. This protection is important because of the fragile and changing nature of the Arctic marine environment.

Global climate change is having profound effects on the Arctic marine environment and on the people who depend on it. Seasonal sea ice cover is diminishing and ocean temperatures are increasing. These rapid changes are causing enormous stress to Arctic ecosystems. Marine mammals such as walrus, ice seals, and polar bears are

struggling to adapt. Climate change is affecting the Arctic Ocean's role in providing breeding, feeding, migrating, and staging areas for millions of shorebirds, seabirds, and waterfowl. Arctic peoples' subsistence way of life is inextricably linked to healthy and productive marine ecosystems, and they are also threatened by these rapid changes. Introduction of commercial fishing into the Arctic environment would place an even greater burden on the fragile Arctic food web and the people and animals that rely on it for their survival.

Given the threats to the Arctic from climate change, ocean acidification, and industrialization from oil development, shipping, and other industries, we need a science-based precautionary approach to address the expansion of industrial activities, including commercial fishing in the Arctic Ocean. The Arctic FMP takes a responsible course that protects the health of the Arctic and its people and sets an important precedent for other nations and other industries to follow.

We support the establishment of the Arctic Management Area, establishment of target and ecosystem component species groups, and prohibition on commercial fishing until stock assessments are completed. By using the Council's public review and decision making process, future management actions in the Arctic will be in accordance with the Magnuson-Stevens Act and other applicable laws. Authorizing a commercial fishery will require amendment to the Arctic FMP, including analysis and public participation in the decision-making process with the Council. The Council should consider a committee process to develop further guidance and criteria for analysis of potential new fisheries, including conditions that would need to be addressed for authorizing a fishery in the Arctic Management Area. This process will ensure issues for fishery management and protection of the marine environment will be addressed. This public process will ensure sustainable fishery management.

*Response:* Support noted. At the time a potential Arctic commercial fishery is identified, the Council may appoint a committee to assist the Council in applying the review process outlined in Section 2.2.2 of the Arctic FMP. This committee could assist the Council to analyze the effects of the potential fishery and to develop recommended management measures. The Council's committees meet in public to assure public participation from the initiation of the potential commercial fishery review process.

*Comment 21:* Over the past 100 years, the Arctic has warmed twice as fast as the rest of the Earth. Since the 1950s, an area of the Arctic sea ice, the size of almost half the continental United States, has melted.

*Response:* NMFS acknowledges that the current and projected rate of sea ice reduction in the Arctic is of concern. The Arctic FMP reflects a precautionary approach to marine resource management that considers the uncertain impacts of climate change on the vulnerability of species to commercial fishing.

*Comment 22:* Several environmental organizations provided additional information and references to support the approval of the Arctic FMP and implementing regulations. The analysis and information in the EA/RIR/IRFA for this action sufficiently justifies implementation of the Arctic FMP and Amendment 29 to the Crab FMP. The additional information augments the administrative record for the decision. Additional information included further discussions on the unique communities and ecosystem of the Arctic and its role in regulating the Earth's climate, climate related changes and loss of sea ice, ocean acidification in the Arctic region, and the potential additional effects on the marine environment of increased industrial activity in the Arctic region.

*Response:* NMFS appreciates the additional information. It is included in the administrative record for future reference.

*Comment 23:* The Arctic FMP and Amendment 29 to the Crab FMP set the stage for thoughtful and science-driven deliberations for future fishery development in the Arctic. These deliberations should include active engagement with Arctic coast residents. Closing the Beaufort and Chukchi Seas to commercial fishing now will allow time for community input and consideration of local and traditional knowledge before commercial fishing is authorized. Because a mistake in the management of fisheries could have cascading effects that may harm subsistence and cultural traditions, a cautious approach to fisheries in the Arctic is warranted. Local communities should benefit from ecologically sustainable development off their coasts. The Council has made exceptional efforts to engage residents, communities, and organizations representing the people of the Arctic regarding the Arctic FMP. The Council has a strong outreach program and new committee to more fully engage Alaska's subsistence communities in fishery management.

*Response:* NMFS agrees that the Council has a strong outreach program and effectively engaged Arctic communities during the development of the Arctic FMP. Consideration of any new Arctic commercial fishery will include analysis of subsistence resources, harvest activities, and customary and traditional subsistence use patterns and how these may be affected by a new commercial fishery. In Section 3.20.1 of the Arctic FMP, periodic reviews of the FMP will be conducted by the Council, including public hearings and outreach to Natives and communities at appropriate times and in appropriate locations regarding ecological relationships and potential commercial fishery development and management. Information on the Council's Rural Community Outreach Committee is on the Council's website at [http://www.alaskafisheries.noaa.gov/npfmc/current\\_issues/RuralOutreach/RCOCreport81209.pdf](http://www.alaskafisheries.noaa.gov/npfmc/current_issues/RuralOutreach/RCOCreport81209.pdf).

*Comment 24:* We do not understand the impact a commercial fishery may have on the Arctic region or on subsistence lifestyles in the Arctic. The Council has done a poor job of fairly allocating fish to commercial fishermen rather than to sport or subsistence users, sacrificing the benefits to many for the profits of a few.

*Response:* NMFS agrees that not enough information currently is available to understand the effects of a commercial fishery on the Arctic marine environment and on subsistence resources. Sport and subsistence fisheries in the Arctic occur primarily in State waters, where they are managed by the Alaska Department of Fish and Game. As done with Pacific halibut, the Council may review fisheries management of a stock, including the types of participants in the fishery, and may recommend commercial, sport, and subsistence allocations to ensure sustainable management of the fishery.

*Comment 25:* NMFS should engage in robust consultation with the Alaska Native tribes and their representatives with respect to the definition for subsistence fishing. The definition for subsistence fishing appears to meet the requirements for ensuring access to subsistence resources, but must be thoroughly vetted with the appropriate affected Alaska Native tribes to ensure that the definition is sensitive to Alaska Natives' needs.

*Response:* The definition for subsistence fishing in the rule is intended to maintain the current subsistence practices. On June 12, 2009, NMFS sent to each affected tribe a notice of the proposed rule, a copy of the proposed rule, and an offer for tribal

consultation on the Arctic FMP and the proposed rule. None of these tribes responded requesting a consultation for this action. The section of the proposed rule describing the subsistence fishing definition specifically asked the public for suggestions on a better way to define subsistence fishing, and no suggestions were received during the comment period. NMFS will continue to work with Alaska Natives to keep them informed and involved in federal fisheries management actions.

*Comment 26:* The Arctic FMP should contain a process for scoping and resolving conflicts between indigenous and commercial use of fishery resources. The Arctic FMP lacks a discussion of potential conflicts between commercial and subsistence use and does not describe a process to identify and resolve such conflicts should a commercial fishery develop.

*Response:* The Council has appointed the Rural Community Outreach Committee to (1) advise the Council on how to provide opportunities for better understanding and participation from Alaska Native and rural communities; (2) to provide feedback on community impacts sections of specific analyses; and (3) to identify proposed Council actions that need a specific outreach plan and prioritize multiple actions. This committee will provide guidance to the Council on effective methods of scoping and resolving conflict between indigenous and subsistence uses and commercial uses of fishery resources in the Arctic and in other Alaska locations.

*Comment 27:* The Arctic FMP should specify subsistence fisheries bycatch caps for target species based on the best available science. Subsistence fisheries may increase with expanding access to the Arctic and changes in species distribution and bycatch hotspots. Increases in subsistence fisheries may result in increases in bycatch of target species, which the FMP currently does not address.

*Response:* NMFS currently does not have enough information to determine the species for which to set bycatch caps in the subsistence fisheries nor the appropriate level of such caps. If information becomes available that indicates a need to regulate harvest in subsistence fisheries, an FMP amendment would be required to change the FMP to govern non-commercial fisheries. Also see response to Comment 24.

*Comment 28:* The Arctic FMP should include a commitment to characterize sensitive habitats and to protect such habitats by establishing habitat areas of particular concern (HAPCs) and marine protected areas (MPAs). MPAs could

provide important baseline information for fisheries management. Opening any new fishery should include establishing a network of MPAs to ensure a large portion of the Arctic marine biodiversity is protected. Areas should only be opened to fishing if habitats and fish stocks are sustainable and the effects on the associated ecosystem are acceptable. Shallow and deep water areas should be characterized. Marine reserves have proven effective elsewhere.

The Arctic should be designated as an international sanctuary, protected for all of the world's benefit.

*Response:* Marine reserves and MPAs are important tools in marine resource management and are used effectively in other locations of the United States and the world. This action closes the Arctic Management Area to commercial fishing until more information on the marine resources can be determined. Current information does not support the need for a marine reserve or MPA, and effective conservation of marine resources can be accomplished at this time through the commercial fishery closure. If future information indicates that more effective management of all or part of the Arctic Management Area could be achieved through marine reserves or MPAs, the Council could recommend such action. Any consideration of MPAs and HAPCs is likely to include information on a variety of habitats that may be affected by fishing, including shallow and deep waters. Section 4.1.3.3 of the Arctic FMP includes the Council's process and criteria for considering potential HAPC sites in the Arctic Management Area.

The request to establish an international sanctuary throughout the Arctic Ocean is beyond the scope of this action.

*Comment 29:* Recently, massive oil and gas leasing, exploration, and development has occurred in the Beaufort and Chukchi Seas. This activity has occurred despite very little being known about the marine ecosystem of the Arctic Ocean and the inability to predict potential consequences of such activities on the environment. Despite the biological baseline knowledge and regardless of concerns of the NMFS, U.S. Fish and Wildlife Service, and the U.S. Environmental Protection Agency, the Minerals Management Service has moved forward with oil and gas leasing, exploration, and development.

*Response:* Management of oil and gas resources is outside the scope of this action. NMFS will continue to work with the Minerals Management Service to identify potential effects and mitigation measures for Arctic oil and

gas leasing, exploration, and development, consistent with NMFS responsibilities under the Endangered Species Act (ESA), Marine Mammal Protection Act, National Environmental Policy Act (NEPA), and the Magnuson-Stevens Act with respect to essential fish habitat (EFH).

*Comment 30:* NOAA should actively engage in discussions on drilling or mining industries on the Arctic seafloor and advocate a moratorium on such activity.

*Response:* Arctic drilling and mining is outside the scope of this action. See response to Comment 29.

*Comment 31:* The Arctic FMP's conservation and management measures are in full compliance with the Magnuson-Stevens Act and consistent with the conservation and management mandate of the Magnuson-Stevens Act. The FMP prioritizes long-term viability of fish populations by preventing unregulated fishing and by accounting for scientific uncertainty. Amendment 29 to the Crab FMP allows for consistent application of conservation and management measures in the Arctic Management Area. The Magnuson-Stevens Act allows for conservation and management measures that prohibit fishing. Because of the lack of baseline information on the Arctic marine environment, scientific uncertainty, and the pace and scale of changes in the Arctic, the Magnuson-Stevens Act authorizes a precautionary ban on commercial fisheries to achieve conservation and management policies. The Arctic FMP provides environmental and cultural protection while allowing for a respectable amount of economic yield.

*Response:* Support noted.

*Comment 32:* The conservation and management measures in the FMP are based on the best scientific information available and are consistent with the National Standards of the Magnuson-Stevens Act. The Council is using an ecosystem approach to management by identifying target and ecosystem component species in the FMP. National Standard 1 provides for the use of ecosystem component species in the FMP, which are not required to have status determination criteria and reference points for fisheries management. The FMP sets status determination criteria and reference points for the target species, as required by National Standard 1 guidelines (74 FR 3178, January 16, 2009). The lack of information and uncertainty is addressed in the setting of OY, as required by National Standard 1 guidelines. Control rules for future fisheries planning are part of the FMP.

*Response:* Support noted.

*Comment 33:* Taking a proactive approach to fishery management in the Arctic will likely avoid conflict with industry and other management entities. Providing the management measures before authorizing commercial fishing will allow for effective management when commercial fishing commences.

*Response:* NMFS agrees that working with industry in the development of a commercial fishery is likely to result in effective management measures that the industry will be prepared to meet once commercial fishing is authorized.

*Comment 34:* The proposed rule raises concerns about the ability to effectively detect incursion into the closed Arctic fishery management area, and then to be able to take effective enforcement action. The Arctic is a large area from a closed area enforcement perspective. This area is well beyond the areas routinely patrolled by the U.S. Coast Guard (USCG). The USCG has relatively few vessels with the ability to operate in the Arctic, and these are based far from the region resulting in a significant response time. Lack of infrastructure in the region makes it difficult to resupply vessels and limits the ability of many vessels to remain in the region. Without electronic monitoring of vessels operating in the close vicinity of the Arctic Management Area, it may be impractical to expect consistent enforcement of this vast closed area with presently available resources. Additionally, it is a concern that using a vessel monitoring system (VMS) is not specifically mentioned as a vessel requirement once fishing is authorized.

*Response:* NMFS acknowledges the challenges of enforcing fishery regulations under the difficult operating conditions in this remote region with its limited infrastructure. VMS is an efficient and effective tool for monitoring fishing vessel activities with respect to closure areas. Significant portions of the U.S. commercial fishing fleet are already subject to VMS requirements in the southern part of the Arctic Management Area. Sections 679.7(a)(18) and 679.28(f)(6)(i) require vessels endorsed for Atka mackerel, Pacific cod, or pollock fisheries to operate a VMS unit when they are operating in any federal reporting area and the vessel's authorized species and gear type is open to directed fishing. Important fisheries for pollock and Pacific cod are open much of the summer and early fall, when significant commercial fishing north of Bering Strait is most likely. Section 680.23(d) requires vessels with a federal crab vessel permit in a crab fishing year to



operate a transmitting VMS when they are operating with crab pots, crab hauling equipment, or a crab pot launcher on board in any reporting area off Alaska.

In Figure 1(b) to 50 CFR part 679, the southern Chukchi Sea is designated Statistical Reporting Area 400. Statistical Area 400 is defined as the area north of a diagonal line between 66° 00' N, 169°42.5' W (Cape Dezhneva, Russia) and 65°37.5' N, 168°7.5' W (Cape Prince of Wales, Alaska) and to the limits of the U.S. EEZ as described in the current edition of NOAA chart INT 814 Bering Sea (Northern Part). The northern edge of this chart lies at 68°00' N. This chart covers the southern Chukchi Sea, including federal waters within Kotzebue Sound. Thus, VMS requirements extend into part of the Arctic Management Area.

The FMP recognizes that monitoring and enforcement measures necessary and appropriate to ensure sustainable management and conservation of Arctic fish stocks may be required and that these may include the use of observers, electronic logbooks, VMS, or other measures that will be specified in regulations. The Council could recommend a VMS requirement for any fishing vessels operating in or near the Arctic Management Area prior to or with the authorization of a commercial fishery.

*Comment 35:* The Arctic FMP process for authorizing a new fishery should also consider available USCG search and rescue capacity and vessel safety. Current search and rescue capacity is low and may present a significant danger for vessels operating in the Arctic Management Area.

*Response:* NMFS agrees that search and rescue capacity and vessel safety are important considerations in fishery management. This type of information was summarized in the Regulatory Impact Review prepared for the Arctic FMP (see *ADDRESSES*) and will be updated to support any future amendment to the FMP that authorizes commercial fishing.

*Comment 36:* NMFS and the Council should develop criteria for potential new fisheries in the Arctic.

*Response:* Section 2.2.2 of the Arctic FMP contains the process and criteria for authorizing a commercial fishery. This section describes the review process to be used by the Council and the criteria to be analyzed for considering the authorization of a fishery in the Arctic Management Area. Any additional criteria for a potential new fishery would be developed at the time of consideration, based on the best available scientific information

regarding the fishery, the Arctic marine environment, and fisheries management.

*Comment 37:* The process of identifying new stocks in the Arctic FMP may be inadequate. Listing a target species does not trigger the collection of fishery and survey data sufficient for tier 3 assessment in a defined time period. These species may be vulnerable to exploitation because the opening of a fishery only requires a change in the OY and does not trigger a formal process based on new data.

*Response:* The process of identifying new target species stocks under Section 3.4 of the Arctic FMP is a separate process from the consideration of authorizing a commercial fishery under Section 2.2.2. It is not necessary to gather tier 3 level information on a target stock if no commercial fishery is authorized for that stock. Authorizing a commercial fishery would require not only a change in the OY, but also completion of the review and implementation process listed under Section 2.2.2, including FMP amendment and promulgation of regulations to implement necessary management measures. The change in OY would require a greater certainty in the information used to determine OY. This process ensures that a commercial fishery would not be authorized unless sustainable management is implemented based on the best available science.

*Comment 38:* The final rule and Arctic FMP should include tables of in-depth descriptions of the tier system used for allowable harvest and status determination for finfish, as is done for crab species.

*Response:* Although not identified as a table per se, Section 3.8.1 of the Arctic FMP includes a detailed description of the finfish tier system that specifies each of the control rules, along with accompanying text that describes the parameters and terms utilized in the finfish tier system. Additional descriptions of terms, such as FOFL and B, are provided in Section 3.6.1 of the Arctic FMP and under the "Acronyms and Abbreviations Used in the FMP." NMFS agrees that presenting this information in tabular form along with a tabular guide in the FMP could facilitate understanding of the tier method for finfish fisheries management. Prior to making an amendment that would authorize a commercial fishery, the Council could consider amending the Arctic FMP specifically to add finfish tier tables similar to the crab tier tables.

As described in the response to Comment 39, the finfish tier system will

not be implemented unless and until the Council amends the FMP to authorize commercial fishing for finfish. The tier method is the policy that may be used for stock assessments and the setting of harvest levels and status determination criteria in the management of the fisheries that may be authorized in the future. Regulations primarily contain the requirements currently applicable to fishery participants rather than management policy, which is described in the FMPs. The regulations do not contain tables describing the tier systems for fisheries management, and no changes are made to the regulations to add this information.

*Comment 39:* We support a precautionary approach to setting acceptable biological catch (ABC) and annual catch targets (ACT) based on consideration of science and management uncertainty. The policy in the FMP would require lower catch limits based on uncertainty, providing an incentive to collect information that could lead to less need for precautionary ABC and ACT amounts. This would allow the tiers used for setting harvest amounts to better conform to the Magnuson-Stevens Act National Standard 1 and provide information towards achieving at least tier 3 in a defined period of time for a new fishery. The Arctic FMP lacks policies to provide priorities and incentives for research to address uncertainties and to tie harvest control rules explicitly to uncertainty. ABCs and ABC control rules should be adjusted from overfishing levels (OFLs) based on scientific uncertainty and ACLs and ACTs should be adjusted based on management uncertainty. The tiers should be adapted to include adequately precautionary buffers tied to uncertainty for all tiers.

*Response:* The Arctic FMP does not call for OFLs, ABCs, or total allowable catch levels (TACs) to be established for any species of Arctic fish at this time. TACs are equivalent to ACTs described in the National Standard 1 Guidelines (74 FR 3178, January 16, 2009). It would be highly speculative, if not impossible, to determine, in the abstract, whether the buffers between OFL, ABC, and TAC that may be established for a hypothetical future fishery would adequately account for scientific and management uncertainty.

Currently, the Arctic FMP and this rule adequately account for uncertainty and provide ample incentives for research to reduce uncertainty. The Arctic FMP initially prohibits commercial fishing for all species of Arctic fish, and this rule implements that prohibition. One of the principal

justifications for this broad prohibition is that the impacts of such fishing would be too uncertain to ensure that the fishery is managed sustainably, based on information currently available. Section 3.21 of the Arctic FMP describes the Council's process for developing the 5-year research plan for the Arctic, including improving the scientific understanding of fish stocks. Improving scientific understanding likely will reduce the scientific uncertainty that is applied to the setting of future ABCs. As described in Section 3.10, the FMP contains accountability measures and mechanisms that are specific to the prohibition of commercial fishing in the Arctic Management Area. As described in Section 3.8, harvest control rules beyond the prohibition of commercial fishing are not needed at this time as no harvest is authorized. The Arctic FMP and this rule establish an optimum yield (OY) of zero for commercial fishing for Arctic fish, based in part on uncertainty. It would not be possible to further limit the commercial harvest of Arctic fish to account for additional uncertainty at this time.

Unless and until the FMP is amended to authorize a commercial fishery based on new information, the ABC control rules and the process for setting ABCs and TACs set forth in the FMP will not be implemented. Any such amendment would be accompanied by an analysis of the impacts of the commercial fishing to be authorized thereby, which would include an assessment of whether the applicable control rule adequately accounts for uncertainty in establishing the buffers between OFL, ABC, and TAC given the particular information available for the fishery that is being authorized, or is otherwise adequate to prevent overfishing. Moreover, additional harvest control rules may be added to the FMP at that time and development of such rules would include the consideration of uncertainty using the best available scientific information.

Currently, the Arctic FMP includes scientific and management uncertainty in its framework for setting future ABCs and TACs, respectively, as described in Sections 3.2, 3.8, and 3.9.1. The tier process for setting ABCs includes scientific uncertainty by assigning tiers based on the information available for determining ABC. The type of information available influences the amount of ABC available with less certain information resulting in more conservative ABC amounts. For each of the tiers, the control rules in the Arctic FMP include a buffer between ABC and OFL, which accounts for some

uncertainty. In most instances, the control rules afford the Council flexibility to further reduce ABC relative to OFL to account for any additional uncertainty. NMFS has determined that the catch limits implemented under the Arctic FMP at this time will prevent overfishing and that the tier system described in the Arctic FMP may be applied consistent with the National Standard 1 Guidelines, including accounting for scientific and management uncertainty in the setting of ABCs and TACs. At the time a commercial fishery is considered for the Arctic Management Area, the tier system will be reviewed to ensure the best management practices are applied to the fishery, including addressing uncertainty in management decisions.

*Comment 40:* The Arctic FMP should include a management framework that accounts for all types of fish catch (commercial, subsistence, and recreational) and provides for the needs of managed species such as marine mammals and seabirds.

*Response:* Section 3.9.2 of the Arctic FMP lists the information required in the Stock Assessment and Fishery Evaluation report. Estimates of fishery mortality include commercial, recreational, and subsistence catches. NMFS is working with the State of Alaska to gather information on recreational and subsistence catch, which mostly occurs in State waters. At the time an authorized commercial fishery is considered, the needs of subsistence and recreational fisheries, and marine mammals and seabirds and the potential impacts on these species will be considered in the development of management measures. The development of these management measures will need to be specific to the commercial fishery authorized to ensure efficient and effective measures are used.

*Comment 41:* If commercial fishing is opened in the Arctic Management Area, the Council and NMFS should consider catch share management to prevent stock collapse and improve stewardship of the fishery resources at the outset of commercial fishing. If Alaska Native communities choose to participate in Arctic water fisheries, they should have priority for allocation of harvest amounts.

*Response:* Catch share programs have been effectively used in the sustainable management of a number of fisheries of the United States. The use of a catch share program in the Arctic that includes Alaska Native community participation and priority could be considered by the Council during development of a commercial fishery.

Section 3.16 of the Arctic FMP states that once a commercial fishery is authorized, the Arctic FMP could be amended to include a share-based program.

*Comment 42:* Section 679.6 should include language that prohibits the use of fishing history under an EFP for purposes of determining future allocations of harvest amounts. Allowing history through EFP fishing would create an unfair advantage in securing limited future fisheries allocations in the Arctic.

*Response:* The Council would determine what catch history can and cannot be used as a basis for eligibility in potential future catch share programs. Any future fisheries allocations would have to comply with National Standard Four, which requires an allocation of fishing privileges to be fair and equitable.

*Comment 43:* NMFS must be careful in its decisions to authorize EFPs in the Arctic Management Area. An EFP applicant must demonstrate a valid experimental design based on science. NMFS must evaluate the potential impacts of the EFP activity and ensure it is consistent with the precautionary approach and ecosystem principles for the Arctic Management Area, as recommended by the Council.

*Response:* NMFS follows the procedures in § 679.6 and § 600.745 for the review and issuance of EFPs (74 FR 42786, August 25, 2009). This process includes the review of the project by the Alaska Fisheries Science Center and consultation with the Council, including review by their SSC and the public. NMFS is careful to ensure the work under the EFP is designed to provide information useful to fisheries management and that the goal of the project is consistent with the management principles under the FMP. Any potential effects from the proposed study are analyzed in the appropriate National Environmental Policy Act (NEPA) and ESA documents, which are available for Council and public consideration before issuance of an EFP.

*Comment 44:* The Arctic FMP EFH description should include a discussion on changing oceanographic conditions that may affect EFH. Known and potential sensitive habitats and the potential for HAPC designation, and information needs for EFH and HAPC characterizations should be thoroughly explored.

*Response:* The description of EFH in the Arctic FMP is based on the best available scientific information. EFH designations are based on data from the 1980s regarding species distribution. More recent information is not yet

available to support a robust discussion on the effects of current or future oceanographic conditions on EFH. A more detailed discussion of EFH and unique Arctic habitats is in the EA/RIR/FRFA for this action (see **ADDRESSES**). As more information becomes available, this kind of analysis can be included in the NEPA analyses to support fishery management actions in the Arctic Management Area and can be considered in the Council's review of potential HAPC sites, as described in Section 4.1.3.3 of the Arctic FMP.

*Comment 45:* The non-fishing impacts discussion for EFH does not include the potential impacts of energy development. The section on oil and gas development in Appendix C should mention that fish attracted to habitat provided by oil and gas underwater structures may be vulnerable to fishing due to concentration of the fish at these sites. The increase in search and rescue activities in the Arctic Management Area may lead to port expansion and should be discussed under Vessel Operations and Marine Transportation.

*Response:* The first topic in Appendix C of the Arctic FMP covers the potential impacts of energy development. This section describes the potential impacts of oil and gas exploration, development, and production on EFH and includes a discussion of the attraction of fish and invertebrates to oil and gas underwater platforms and how the removal of these platforms may impact these species. The vulnerability of fish stocks to fishing near oil and gas facilities would depend on the vessel restrictions surrounding these structures and the dependence of the fish stock on the habitat provided by the structure. It is unknown whether increases in search and rescue operations would occur or lead to port expansion in the Arctic, and therefore these speculative impacts are not discussed in the FMP. As more information on non-fishing activities becomes available, the associated impacts on EFH could be described in subsequent amendments to the Arctic FMP.

*Comment 46:* Low cost loans or subsidies for fish farms in every state should be made available.

*Response:* Fish farming is not within the scope of this action.

*Comment 47:* Limited fishing should occur in the Arctic.

*Response:* Based on the limited information available on targeted species, the Secretary determined that no commercial fishing should occur in the Arctic Management Area until information is available to sustainably manage the stocks. Because subsistence fishing may occur in the Arctic and

State waters fisheries and is not affected by this action, limited fishing may continue in the Arctic Management Area, as historically practiced.

*Comment 48:* The over 10-mile-long algal biomass that occurred in the Arctic in Summer 2009 has never been seen before in these waters and should serve as a warning to us to think before we fish in such a fragile environment.

*Response:* NMFS agrees that much remains to be learned about the Arctic marine environment, its responses to the changing climate and human impacts, and the potential recovery from any adverse effects. These issues need to be considered in the development of any commercial fishing regulations so the potential impacts of such activity can be determined and understood before fishing commences.

#### Classification

Pursuant to sections 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the NMFS Acting Assistant Administrator has determined that this final rule is consistent with and necessary to implement the Arctic FMP and Amendment 29 to the Crab FMP, and is in accordance with other provisions of the Magnuson-Stevens Act, and other applicable law.

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

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA describes the economic impact of this action on small entities. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA and NMFS responses to those comments, and a summary of the analyses completed to support the action. Descriptions of the action, the reasons it is under consideration, and its objectives and legal basis are included earlier in the preamble and in the **SUMMARY** section of the preamble. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

A summary of the IRFA was provided in the classification section to the proposed rule (74 FR 27498, June 10, 2009), and the public was notified of how to obtain a copy of the IRFA. The public comment period ended on July 27, 2009. No comments were received on the IRFA or on the economic impacts of the rule.

This action regulates commercial fishing for fish resources and does not regulate subsistence, recreational, or personal use fishing in the action area. Currently, only one unverified, small,

and poorly documented commercial fishery for red king crab potentially exists in a portion of the Arctic Management Area in Kotzebue Sound.

A survey of the Alaska Department of Fish and Game fish ticket database back to 1985 identified a single fish ticket for this fishery. The ticket was for a very small amount of red king crab delivered in the summer of 2005. However, to the extent that fishing has occurred, landings in this fishery may not always have been reported on official state landings records (i.e., not legally recorded). The waters in which this fishery may have occurred were set apart from other waters for reporting purposes in 2005. From 2005 to 2007, three or four persons acquired the State of Alaska K09X permits that are required to fish commercially in this area. With the exception of the single anomalous fish ticket cited above, no commercial fish landings have been reported from the action area during 2005 through 2007. Thus, the number of permit holders, rather than the number of operations with fish tickets, is assumed to best represent the potential number of entities directly regulated by this action. All of these operations are believed to be small entities with annual gross revenues under \$4 million.

The Council considered four alternatives and three options for this action. The options have no effect on directly regulated small entities as the options are limited to different scientific and administrative processes for developing management measures for fisheries. Each option resulted in the same effect on directly regulated small entities, because each would implement a management framework that initially prohibits commercial fishing in the Arctic Management Area.

Alternative 1 is the status quo which would have allowed for the potential for unregulated commercial fishing to occur in the Arctic Management Area. Alternative 1 was not chosen as it did not meet the objectives of the action to sustainably manage commercial fisheries in the Arctic Management Area.

Alternatives 3 and 4 would have provided different mechanisms to provide for sustainable management of fish resources in the Arctic Management Area, but each alternative excluded the small red king crab fishery in Kotzebue Sound from Arctic FMP management. Alternative 3 would have exempted the red king crab fishery from the Arctic FMP and from the Crab FMP while Alternative 4 would have provided for the continued management of the small red king crab fishery under the Crab FMP. Neither Alternative 3 nor

Alternative 4 were chosen based on the lack of evidence of a currently existing small red king crab fishery in the Kotzebue Sound area and on the lack of information to ensure sustainable management of the potential red king crab stock in the Kotzebue Sound while not affecting subsistence use of the resource. Alternatives 1, 3, and 4 had no known impacts on directly regulated small entities.

Alternative 2 was chosen as the preferred alternative as it fully meets the objective to provide sustainable management for all fish resources of the Arctic Management Area. Alternative 2, which implements a management framework that initially prohibits all commercial fishing in the Arctic Management Area, initially prohibits future crab fishing that may otherwise take place in the small and poorly documented fishery in Kotzebue Sound, until stocks have been assessed and harvest specifications are established. At that time, an amendment to the Arctic FMP could be proposed to authorize commercial fishing. Based on permit issuance, it is possible that two to four small entities may annually fish in the small red king crab fishery in Kotzebue Sound. Permit issuance does not necessarily indicate fishing activity, and only one fish ticket exists from this fishery since 1985. Income from this fishery is likely to be small.

This regulation does not impose new recordkeeping and reporting requirements on the regulated small entities.

The FRFA did not reveal any federal rules that duplicate, overlap, or conflict with the action.

#### Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, NMFS Alaska Region has developed a website that provides easy access to details of this final rule, including links to the Arctic FMP, Amendment 29, the final rule, and maps of Arctic Management Area and essential fish habitat. The relevant information available on the website is the Small Entity Compliance Guide. The website address is <http://alaskafisheries.noaa.gov/>

*sustainablefisheries/arctic*. Electronic copies of this final rule also are available upon request from the NMFS, Alaska Regional Office (see **ADDRESSES**).

Executive Order (E.O.) 13175 of November 6, 2000 (25 U.S.C. 450 note), the Executive Memorandum of April 29, 1994 (25 U.S.C. 450 note), and the American Indian and Alaska Native Policy of the U.S. Department of Commerce (March 30, 1995) outline the responsibilities of NMFS in matters affecting tribal interests. Section 161 of Public Law (P.L.) 108–199 (188 Stat. 452), as amended by section 518 of P.L. 109–447 (118 Stat. 3267), extends the consultation requirements of E.O. 13175 to Alaska Native corporations. NMFS contacted tribal governments and Alaska Native corporations which may be affected by this action, provided a copy of the proposed rule, and offered them an opportunity to consult. No requests for consultation were received.

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

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: October 28, 2009

**Samuel D. Rauch III,**

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

■ For reasons set out in the preamble, NMFS amends 50 CFR part 679 as follows:

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

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

**Authority:** 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108 447.

■ 2. In § 679.1, add paragraph (l) to read as follows:

##### § 679.1 Purpose and scope.

(l) *Fishery Management Plan for Fish Resources of the Arctic Management Area*. Regulations in this part govern commercial fishing for Arctic fish in the Arctic Management Area by vessels of the United States (see this subpart and subpart B of this part).

■ 3. In § 679.2, add in alphabetical order definitions for "Arctic fish", "Arctic Management Area", "Commercial fishing, paragraph (3)", and "Subsistence fishing" and revise the definitions for the "Bering Sea and Aleutian Islands Area", "Management area", and "Optimum yield, paragraph (2)" to read as follows:

##### § 679.2 Definitions.

\* \* \* \* \*

*Arctic fish* means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals, birds, Pacific salmon, and Pacific halibut.

*Arctic Management Area*, for purposes of regulations governing the Arctic Management Area fisheries, means all marine waters in the U.S. EEZ of the Chukchi and Beaufort Seas from 3 nautical miles off the coast of Alaska or its baseline to 200 nautical miles offshore, north of Bering Strait (from Cape Prince of Wales to Cape Dezhneva) and westward to the 1990 U.S./Russia maritime boundary line and eastward to the U.S./Canada maritime boundary (see Figure 24 to this part).

\* \* \* \* \*

*Bering Sea and Aleutian Islands Area*, for purposes of regulations governing the commercial king and Tanner crab fisheries in part 680 of this Chapter, means those waters of the EEZ off the west coast of Alaska lying south of the Chukchi Sea statistical area as described in the coordinates listed for Figure 1 to this part, and extending south of the Aleutian Islands for 200 nm west of Scotch Cap Light (164° 44'36" W. long).

\* \* \* \* \*

*Commercial fishing* means:

\* \* \* \* \*

(3) For purposes of Arctic fish, the resulting catch of fish in the Arctic Management Area which either is, or is intended to be, sold or bartered but does not include subsistence fishing for Arctic fish, as defined in this subsection.

\* \* \* \* \*

*Management area* means any district, regulatory area, subpart, part, or the entire GOA, BSAI, or Arctic Management Area.

\* \* \* \* \*

*Optimum yield* means:

\* \* \* \* \*

(2) *With respect to the groundfish and Arctic fisheries*, see § 679.20(a)(1).

\* \* \* \* \*

*Subsistence fishing* for purposes of fishing in the Arctic Management Area means the harvest of Arctic fish and Pacific salmon for non-commercial, long-term, customary and traditional use necessary to maintain the life of the taker or those who depend upon the taker to provide them with such subsistence.

\* \* \* \* \*

■ 4. In § 679.6, revise paragraph (a) to read as follows:

##### § 679.6 Exempted fisheries.

(a) *General*. For limited experimental purposes, the Regional Administrator

may authorize, after consulting with the Council, fishing for groundfish or fishing for Arctic fish in the Arctic Management Area in a manner that would otherwise be prohibited. No exempted fishing may be conducted unless authorized by an exempted fishing permit issued by the Regional Administrator to the participating vessel owner in accordance with the criteria and procedures specified in this section. Exempted fishing permits will be issued without charge and will expire at the end of a calendar year unless otherwise provided for under paragraph (e) of this section.

\* \* \* \* \*

■ 5. In § 679.7, add paragraph (p) to read as follows:

§ 679.7 Prohibitions.

\* \* \* \* \*

(p) *Arctic Management Area.* Conduct commercial fishing for any Arctic fish in the Arctic Management Area.

■ 6. In § 679.20, revise the introductory paragraph and paragraph (a)(1) to read as follows:

§ 679.20 General limitations.

This section applies to vessels engaged in directed fishing for groundfish in the GOA and/or the BSAI and to vessels engaged in commercial fishing for Arctic fish in the Arctic Management Area.

(a) \* \* \*

(1) *OY (i) BSAI and GOA.* The OY for BSAI and GOA target species and the “otherspecies” category is a range or specific amount that can be harvested consistently with this part, plus the amounts of “nonspecified species” taken incidentally to the harvest of

target species and the “other species” category. The species categories are defined in Table 1 of the specifications as provided in paragraph (c) of this section.

(A) The OY for groundfish in the BSAI regulated by this section and by part 600 of this chapter is 1.4 million to 2.0 million mt.

(B) The OY for groundfish in the GOA regulated by this section and by part 600 of this chapter is 116,000 to 800,000 mt.

(ii) *Arctic Management Area.* The OY for each target fish species identified in the Fishery Management Plan for Fish Resources of the Arctic Management Area regulated by this section and by part 600 of this chapter is 0 mt.

\* \* \* \* \*

7. Figure 24 is added to part 679 to read as follows:

Figure 24 to Part 679– Arctic Management Area

