

local exchange carriers (LECs) to offer video programming services. As of June 2007, BSPs served approximately 1.4 million subscribers, representing 1.46 percent of all MVPD households. Among BSPs, however, those operating under the OVS framework are in the minority, with approximately eight percent operating with an OVS certification. BSPs include companies such as RCN, Champion Broadband, Knology, and SureWest Communications. RCN received approval to operate OVS systems in New York City, Boston, Washington, DC and other areas. The Commission does not have employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. We thus believe that at least some of the OVS operators may qualify as small entities.

23. *Cable and Other Subscription Programming.* The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. \* \* \* These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers." The SBA has developed a small business size standard for firms within this category, which is: firms with \$13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were 270 firms in this category that operated for the entire year. Of this total, 217 firms had annual receipts of under \$10 million and 13 firms had annual receipts of \$10 million to \$24,999,999. Thus, under this category and associated small business size standard, the majority of firms can be considered small.

24. A "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope.

#### *D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

25. Depending on the rules adopted as a result of this *FNPRM*, the *Report and Order* ultimately adopted in this

proceeding may contain new or modified information collections. We anticipate that none of the changes would result in an increase to the reporting and recordkeeping requirements of broadcast stations, newspapers, or applicants for licenses. As noted above, we invite small business entities to comment in response to this *FNPRM*.

#### *E. Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered*

26. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

27. We are directed under law to describe any alternatives we consider, including alternatives not explicitly listed above. The *FNPRM* seeks comment on whether or not it should retain the single majority shareholder exemption, and whether eliminating the exemption would negatively impact capital investment, particularly in small businesses. Additionally, it seeks comment on whether or not to bar a limited partner from selling video programming to the general partner cable entity in order to maintain insulated limited partner status for purposes of the attribution rules. It also seeks comment on whether to conform various aspects of the ED cable attribution rule to the amended EDP broadcast attribution rule upon which the cable rule was based. Finally, it seeks comment on how it should craft a rule to limit the number of cable channels that can be occupied by affiliated video programming services. Cable ownership limits are intended to prevent large cable entities from unfairly impeding the flow of video programming to consumers through their horizontal reach or their level of vertical integration. We anticipate that any channel occupancy limits adopted by the Commission will have little adverse impact on small cable entities because small entities as a general matter do not approach the channel occupancy limits and are not the focus of the rule. We also expect that,

whichever alternatives are chosen with respect to revising the cable attribution rules, the Commission will seek to minimize any adverse effects on small businesses.

#### *F. Federal Rules That May Duplicate, Overlap, or Conflict with the Proposed Rules*

28. None.

#### **Ex Parte Restrictions**

29. This is a permit-but-disclose notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206(a).

#### **Ordering Clauses**

30. *It is ordered* that pursuant to Sections 1, 4(i) and (j), 301, 302, 303, 307, 308, 309, 319, and 324 of the Communications Act of 1934, 47 U.S.C. 151, 154(i) and (j), 301, 302, 303, 307, 308, 309, 319, and 324 that *notice is hereby given* of the proposals and tentative conclusions described in this Notice of Proposed Rule Making.

31. *It is further ordered* that the Reference Information Center, Consumer Information Bureau, shall send a copy of this Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E8-3701 Filed 2-26-08; 8:45 am]

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## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 679**

**RIN 0648-AW06**

#### **Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish Fisheries of the Bering Sea and Aleutian Islands Management Area**

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

**ACTION:** Availability of an amendment to a fishery management plan; request for comments.

**SUMMARY:** The North Pacific Fishery Management Council has submitted

Amendment 89 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) to establish Bering Sea habitat conservation measures. This amendment, if approved, would prohibit nonpelagic trawling in certain waters of the Bering Sea subarea to protect bottom habitat from the potential adverse effects of nonpelagic trawling. This amendment also would establish the Northern Bering Sea Research Area for studying the impacts of nonpelagic trawling on bottom habitat. This action is necessary to protect portions of the Bering Sea subarea bottom habitat from the potential adverse effects of nonpelagic trawling. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable laws. Comments from the public are welcome.

**DATES:** Written comments on the amendment must be received by 1700 hours, A.L.T. on April 28, 2008.

**ADDRESSES:** Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by 0648-AW06, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.

- Mail: P.O. Box 21668, Juneau, AK 99802.
- Hand delivery: 709 West 9th Street, Room 420A, Juneau, AK.
- Fax: 907-586-7557.

All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

Copies of the FMP amendment, maps of the Bering Sea subarea nonpelagic trawl closure areas and Northern Bering Sea Research Area, and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) for this action may be obtained from the Alaska Region NMFS address above or

from the Alaska Region NMFS website at <http://www.fakr.noaa.gov>.

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

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that the North Pacific Fishery Management Council (Council) submit any FMP amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP amendment, immediately publish a notice in the **Federal Register** that the amendment is available for public review and comment.

If approved by NMFS, this amendment would revise the FMP by establishing areas closed to nonpelagic trawling in the Bering Sea subarea. In June 2007, the Council recommended certain portions of the Bering Sea subarea be closed to nonpelagic trawling to prevent the potential adverse effects of nonpelagic trawling on portions of bottom habitat of the Bering Sea subarea. These closed areas would include locations that have not been previously fished with nonpelagic trawl gear, nearshore bottom habitat areas that may support subsistence marine resources, and a research area that could be used for studying the potential impacts of nonpelagic trawling on bottom habitat. Maps of the four areas that would be closed to nonpelagic trawling and the research area are available from the Alaska Region NMFS website at <http://www.fakr.noaa.gov/habitat/efh.htm>. Each proposed closed area and the research area are described below.

#### **Bering Sea Habitat Conservation Area**

The Council recommended preventing expansion of the nonpelagic trawl fisheries into portions of the Bering Sea subarea not previously fished with nonpelagic trawl gear by limiting nonpelagic trawling to locations historically fished with nonpelagic trawl gear. Areas not historically fished with nonpelagic trawl gear include portions of the Bering Sea subarea located in the deep water basin southwest of the continental slope and in the northern portion of the subarea. The portion of the Bering Sea subarea historically fished with nonpelagic trawl gear is on the continental slope northeast of the deep water basin, not including existing trawl closures (such as the Pribilof Island Area Habitat Conservation Zone and the

Chum and Chinook Salmon Savings Areas) and south of Nunivak and St. Matthew Islands. Several closures that cover the entire northern portion of the Bering Sea subarea also were recommended by the Council for this proposed amendment and are further explained below.

The Bering Sea Habitat Conservation Area (BSHCA) is designed to prevent expansion of the nonpelagic trawl fishery. The BSHCA would be located primarily in the deep waters of the Bering Sea subarea including statistical area 530 and portions of areas 518, 523, 533, and 531. The BSHCA would cover 46,776 square nautical miles (nm<sup>2</sup>).

#### **Nunivak Island, Etolin Strait, and Kuskokwim Bay Habitat Conservation Area**

The Council consulted with a working group of nonpelagic trawl fishing industry members and subsistence resources users to identify bottom habitat in the Bering Sea subarea that may support subsistence marine resources and to identify potential nonpelagic trawl fishery management measures. This group identified potential important bottom habitat in the Bering Sea subarea that may support subsistence marine resources and recommended locations to be closed to nonpelagic trawling. Based on this workgroup's recommendation, the Council recommended closing waters surrounding Nunivak Island, and within Etolin Strait and Kuskokwim Bay, to nonpelagic trawling. Amendment 89 would establish this area as the Nunivak Island, Etolin Strait, and Kuskokwim Bay Habitat Conservation Area. This habitat conservation area would cover 9,777 nm<sup>2</sup>.

#### **St. Lawrence Island Habitat Conservation Area and St. Matthew Islands Habitat Conservation Area**

The Council recommended closing waters near St. Matthew and St. Lawrence Islands to nonpelagic trawling for the protection of blue king crab habitat and to protect bottom habitat areas near St. Lawrence Island that may support subsistence marine resources. Amendment 89 would establish these areas as the St. Matthew Island Habitat Conservation Area and the St. Lawrence Island Habitat Conservation Area. These habitat conservation areas would cover 11,065 nm<sup>2</sup>.

#### **Northern Bering Sea Research Area**

The Council also recommended establishing the Northern Bering Sea Research Area (NBSRA) to provide an opportunity to further understand the potential effects of nonpelagic trawling

on Bering Sea subarea bottom habitat. This area would contain waters with little or no nonpelagic trawling in the northern portion of the Bering Sea subarea, including portions of statistical areas 514 and 524, exclusive of the closure around St. Lawrence Island. This area would cover 65,859 nm<sup>2</sup>.

The NBSRA would be closed to nonpelagic trawling to provide a control area to study the potential effects of nonpelagic trawling on bottom habitat. Nonpelagic trawling within the NBSRA would be allowed only within the scope of a nonpelagic trawling effects research plan. A research plan would be developed, in cooperation with the Alaska Fisheries Science Center, to address potential protection measures for species that may depend on bottom habitat, including king and snow crabs, marine mammals, and Endangered Species Act-listed species, and to

address nearshore subsistence resources for Western Alaska communities. This research plan would be reviewed by the Council within 24 months after the publication of the final rule implementing Amendment 89. Nonpelagic trawling in the NBSRA would be limited to fishing under an exempted fishing permit that would be consistent with the nonpelagic trawling research plan approved by the Council.

NMFS is soliciting public comments on the proposed amendment through April 28, 2008. A proposed rule that would implement the amendment will be published in the **Federal Register** for public comment at a later date, following NMFS' evaluation under the Magnuson-Stevens Act procedures. Public comments on the proposed rule must be received by the end of the comment period on the amendment in order to be considered in the approval/

disapproval decision on the amendment. All comments received on the amendment by the end of the comment period, whether specifically directed to the amendment or to the proposed rule, will be considered in the approval/disapproval decision. Comments received after that date will not be considered in the approval/disapproval decision on the amendment. To be considered, comments must be received—not just postmarked or otherwise transmitted—by 1700 hours, A.l.t. on the last day of the comment period.

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

Dated: February 20, 2008.

**Emily H. Menashes**

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

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