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By E-Mail: Comments in ASCII format only may be mailed directly to SUPERFUND.DOCKET@EPAMAIL.EPA.GOV. E-mailed comments must be followed up by an original and three copies sent by mail or Federal Express.

FOR FURTHER INFORMATION CONTACT:
Terry Keidan, State and Site Identification Center, Office of Emergency and Remedial Response (Mail Code 5204G), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460; telephone (703) 603-8852.

Dated: February 24, 1998.

Larry G. Reed,
Acting Director, Office of Emergency and Remedial Response.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 980212037-8037-01; I.D. 012798A]

RIN 0648-AJ87

Fisheries of the Exclusive Economic Zone Off Alaska; Halibut Donation Program

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 50 to the Fishery Management Plan for Groundfish of the Gulf of Alaska and Amendment 50 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMPs) that have been submitted by the North Pacific Fishery Management Council (Council) for Secretarial review. This rule would authorize the limited retention of Pacific halibut taken as bycatch in the groundfish trawl fisheries off Alaska for distribution to economically disadvantaged individuals by tax-exempt organizations through a NMFS-authorized distributor. This action would support industry initiatives to reduce regulatory discards in the groundfish fisheries by processing halibut bycatch for human

consumption. This action is necessary to promote the goals and objectives of the FMPs that govern the commercial groundfish fisheries off Alaska.

DATES: Comments on the proposed rule must be received by April 20, 1998.

ADDRESSES: Comments should be submitted to the Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK, Attn: Lori Gravel. Copies of the proposed Amendments to the FMP and the Environmental Assessment/Regulatory Impact Review (EA/RIR) and related economic analysis prepared for the proposed action are available from NMFS at the above address or by calling the Alaska Region, NMFS, at 907-586-7228. Send comments regarding burden estimates or any other aspect of the data requirements, including suggestions for reducing burdens to NMFS and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503, Attn: NOAA Desk Officer.

FOR FURTHER INFORMATION CONTACT:
Alan Kinsolving, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Management Background and Need for Action

The domestic groundfish fisheries in the exclusive economic zone of the Gulf of Alaska and the Bering Sea and Aleutian Islands management area are managed by NMFS under the FMPs. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing the Alaska groundfish fisheries appear at 50 CFR parts 600 and 679.

The Council has submitted Amendments 50/50 to the FMPs for Secretarial review and a Notice of Availability of the FMP amendments was published on February 4, 1998 (63 FR 5777) with comments on the FMP amendments invited through April 6, 1998. All written comments received by April 6, 1998, whether specifically directed to the FMP amendments, the proposed rule, or both, will be considered in the approval/disapproval decision on the FMP amendments.

Pacific halibut are taken incidentally to the Alaska groundfish fisheries. Vessels participating in these fisheries typically use trawl, hook-and-line, or pot gear. Trawl gear accounts for most of the groundfish catch, and for about 84 percent of the halibut bycatch mortality.

A portion of this bycatch is landed dead at shoreside processing facilities because sorting of catch at sea is not always feasible. Such bycatch must then be returned to Federal waters for disposal as a prohibited species. Total halibut bycatch mortality in the Alaska groundfish fisheries was estimated to be 6,757 metric tons during 1996.

In general, no information exists to indicate that the current level of halibut bycatch landed at shoreside processing sites in the Alaska trawl fisheries presents critical conservation issues. The International Pacific Halibut Commission (IPHC) has recommended enhanced data collection at shoreside processing plants to assess the levels of shoreside landings of trawl halibut bycatch.

At its January 1996 Annual Meeting, the IPHC endorsed a pilot program allowing limited retention of halibut bycatch for donation to the needy through food bank organizations. The pilot program was intended to explore ways to reduce discard of dead halibut and to improve bycatch records. However, NMFS was not able to identify an acceptable administrative procedure for transferring halibut bycatch from shoreside processing plants to the government for distribution to foodbank organizations. At its 1997 Annual Meeting, the IPHC requested that its staff work with NMFS to develop an acceptable administrative procedure for limited retention of halibut bycatch landed at shoreside processing plants. NMFS recommended that amendments to the FMPs be prepared to allow a NMFS authorized distributor(s) to receive and distribute halibut bycatch. The program would be similar to the current salmon donation program authorized at 50 CFR 679.26. The IPHC staff further recommended that regulations implementing the FMP amendments be effective only for a 3-year period so that management agencies may assess the halibut donation program prior to determining whether to continue it under a future regulatory amendment.

At its April 1997 meeting, the Council adopted Amendments 50/50 and recommended that they be implemented on a temporary basis, to assess the feasibility of a donation program for halibut bycatch landed dead at shoreside processors. The Council's recommendation endorses the policy of reducing unnecessary discard of dead, but wholesome, fish, thereby benefitting the public by allowing fish that would otherwise be discarded to be retained for processing and delivery to food bank organizations. The Council's intent in making its recommendation was to

reduce regulatory discard and protein waste in the groundfish trawl fisheries and provide additional opportunity to collect biological samples and scientific data. Any costs associated with this recommended action would be borne by voluntarily participating shoreside processors and the NMFS authorized distributors.

Amendments 50/50 would expand the existing Salmon Donation Program (SDP) to create a Prohibited Species Donation (PSD) program that includes Pacific halibut as well as salmon. These amendments and this proposed rule to implement them would authorize the distribution of halibut taken as bycatch in the groundfish trawl fishery to economically disadvantaged individuals by tax-exempt organizations through a NMFS authorized distributor. These amendments and this proposed rule would support industry initiatives to reduce regulatory discards and help improve the diets of people who often have access only to meager and inadequate food.

The Council further adopted the IPHC's recommendation to limit the effective period of the regulations implementing Amendments 50/50. This would allow the Council, in consultation with the IPHC and NMFS, to assess the effectiveness of the halibut donation program relative to the program's objectives before the Council took an action to extend the program by regulatory amendment. Accordingly, the rule would expire December 31, 2000.

Selection Process for Authorized Distributors

The Administrator, Alaska Region, NMFS, (Regional Administrator) would select an authorized distributor(s) from qualified applicants, announce the NMFS-authorized distributor(s) in the **Federal Register**, and issue a PSD permit to each selected applicant. A PSD permit would be effective until December 31, 2000.

Factors that would be considered by the Regional Administrator when selecting an authorized distributor are listed at proposed § 679.26(b)(1). The number of authorized distributors selected by the Regional Administrator would be based on the criteria listed at proposed § 679.26(b)(2).

Responsibilities of an Authorized Distributor

An authorized distributor would be responsible for monitoring the retention and processing of halibut donated by shoreside processors. An authorized distributor also would coordinate the processing, storage, transportation, and distribution of halibut to hunger relief

agencies, food bank networks, and food bank distributors.

Prior to retaining any halibut under the PSD program, the authorized distributor would provide the Regional Administrator with a list of all participants in the halibut PSD program, including a list of all shoreside processors and a list of hunger relief agencies, food bank networks, and food distributors participating in the PSD program. The list of processors would include the following information: (1) A Federal processor permit number, (2) the name of the owner or responsible manager, and (3) a telephone number or fax number. If an authorized distributor modifies the list of participants in the PSD program or changes delivery locations, the authorized distributor would be required to submit a revised list of participants to the Regional Administrator before halibut bycatch could be retained by any new participant.

Reporting Requirements—Documentation and Labeling

Participants in the halibut PSD program would have to comply with new documentation and labeling requirements. All packages would be required to be labeled with the date of processing, the name of the processing facility, the contents, and the weight of the halibut contained in the package, and the words, "NMFS PROHIBITED SPECIES DONATION PROGRAM - NOT FOR SALE - PERISHABLE PRODUCT - KEEP FROZEN".

A processor or authorized distributor retaining or receiving halibut under the PSD program would keep on file and make available for inspection by an authorized officer all documentation including receipt and cargo manifests setting forth the origin, weight, and destination of all halibut. Such documentation would be retained until 1 year after the effective period of the PSD permit (December 31, 2001).

Responsibilities of Participating Shoreside Processors

All donated halibut would be required to be processed so that it is fit for human consumption. Participation in the PSD program would not relieve any processor from any existing reporting requirements.

Classification

At this time, NMFS has not determined that Amendments 50/50 are consistent with the national standards, other provisions of the Magnuson-Stevens Act, and other applicable laws. NMFS, in making that determination, will take into account the data, views,

and comments received during the comment period.

NMFS prepared a regulatory impact review (RIR) that describes the impact this proposed rule, if adopted, would have on small entities. The RIR examined the economic effects of the proposed rule and concluded that it would not have a significant impact on a substantial number of small entities.

The Small Business Administration has defined all fish-harvesting or hatchery businesses that are independently owned and operated, not dominant in their field of operation, with annual receipts not in excess of \$3,000,000 as small businesses. In addition, seafood processors with 500 employees or fewer, wholesale industry members with 100 employees or fewer, not-for-profit-enterprises, and government jurisdictions with a population of 50,000 or less are considered small entities. NMFS has determined that a "substantial number" of small entities would generally be 20 percent of the total universe of small entities affected by the regulation. A regulation would have a "significant economic impact" on these small entities if it reduced annual gross revenues by more than 5 percent, increased total costs of production by more than 5 percent, resulted in compliance costs for small entities by at least 10 percent compared with compliance costs as a percent of sales for large entities, or resulted in 2 percent or more of the affected small entities being forced to cease operations.

The Assistant General Council for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities as follows.

There are 56 shoreside processors in the State of Alaska, most have fewer than 500 employees and would be considered small entities. NMFS anticipates that 5 of these processors, or 6 percent, will choose to participate in the program. NMFS does not anticipate that any processor that qualifies as a small entity would elect to participate in the voluntary program if the cost of doing so would reduce gross annual receipts by 5 percent or more, would result in compliance costs at least 10 percent higher than such costs as a percent of sales for large entities, or would cause the entity to go out of business. Thus, this rule is not expected to have a significant economic impact on a substantial number of small entities.

As a result, a regulatory flexibility analysis was not prepared.

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

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act. OMB approval for the collection-of-information requirement under the salmon donation program was obtained under OMB control number 0648-0316. The collection of information requirements contained in the proposed rule would revise OMB number 0648-0316 to include information submitted on an application to participate as an authorized distributor in the halibut donation program, documentation requirements for the authorized distributor(s) and processors participating in the PSD program, and packaging requirements for processors. Public reporting burden for these collections of information are estimated to average: 40 hours per response for a distributor to complete an application; 40 hours per year per distributor to comply with documentation requirements; 0.1 hours per response for processors to properly label processed halibut; and 0.25 hours per response for the vessels/processors to list vessels/processors.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of NMFS, including whether the information shall have practical utility; (b) the accuracy of the estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS and to OMB (see ADDRESSES).

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

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: February 20, 1998.

David L. Evans,

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

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.2, the definitions of “*SDP*” and “*SDP permit*” are removed, the definitions of “*PSD program*” and “*PSD permit*” are added, and paragraph (1) of the definition of *Catcher vessel* is revised, in alphabetical order as follows:

§ 679.2 Definitions.

* * * * *

Catcher vessel means:

(1) With respect to groundfish recordkeeping and reporting, the PSD program and subpart E of this part, a vessel that is used for catching fish and that does not process fish on board.

* * * * *

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

PSD Program means the Prohibited Species Donation Program established under § 679.26.

* * * * *

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

§ 679.7 Prohibitions.

* * * * *

(a) * * *

(12) *Prohibited species donation program.* Retain or possess prohibited species, defined at § 679.21(b)(1), except as permitted to do so under the PSD program as provided by § 679.26 of this part, or as authorized by other applicable law.

* * * * *

4. Section 679.21 paragraph (c)(1) is amended by changing the word “*SDP*” to the phrase “*PSD program*”.

5. In § 679.26, the section heading is revised, paragraphs (a) through (c) are redesignated as paragraphs (b) through (d), redesignated paragraphs (b)(1)(xii), (b)(2) introductory text, (b)(2)(iii), (b)(3)(ii), (b)(3)(iv), (b)(3)(v), (c)(1), (c)(2), (c)(3) and (d)(4) are revised, and new paragraphs (a) and (b)(1)(xiv) are added to read as follows:

§ 679.26 Prohibited Species Donation Program.

(a) *Authorized species.* The PSD program applies only to the following species:

(1) Salmon.

(2) Halibut delivered by catcher vessels using trawl gear to shoreside processors (Applicable through December 31, 2000).

(b) * * *

(1) * * *

(xii) A signed statement from the applicant and all persons listed under paragraph (b)(1)(xi) of this section who would conduct activities pursuant to the PSD permit waiving any and all claims against the United States and its agents and employees for any liability for personal injury, death, sickness, damage to property directly or indirectly due to activities conducted under the PSD program.

* * * * *

(xiv) A separate application must be submitted for each species listed under paragraph (a) of this section that the applicant seeks to distribute.

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

* * * * *

(iii) The anticipated level of bycatch of prohibited species listed under paragraph (a) of this section.

* * * * *

(3) *PSD Permit.*

* * * * *

(ii) The Regional Administrator may impose additional terms and conditions on a PSD permit consistent with the objectives of the PSD program.

* * * * *

(iv) *Effective period.* (1) Salmon. A PSD permit for salmon remains in effect for a 3-year period after the selection is published in the **Federal Register** unless suspended or revoked. A PSD permit issued to an authorized distributor may be renewed following the application procedures in this section.

(2) A PSD permit issued for halibut will expire December 31, 2000.

(v) If the authorized distributor modifies any information on the PSD permit application submitted under (b)(1)(xi) or (b)(1)(xiii) of this section, the authorized distributor must submit a modified list of participants or a modified list of delivery locations to the Regional Administrator.

(c) * * *

(1) A vessel or processor retaining fish under the PSD program must comply with all applicable recordkeeping and reporting requirements. A vessel or processor participating in the PSD program must comply with applicable regulations at § 679.7(c)(1), and § 679.21(c) that allow for the collection of data and biological sampling by a NMFS-certified observer prior to processing any salmon under the PSD program.

(2) Prohibited species retained under the PSD program must be packaged, and all packages must be labeled with the date of processing, the name of the processing facility, the contents and the weight of the fish contained in the package and the words, "NMFS PROHIBITED SPECIES DONATION PROGRAM-NOT FOR SALE-PERISHABLE PRODUCT-KEEP FROZEN".

(3) A processor retaining or receiving fish under the PSD program and an authorized distributor must keep on file and make available for inspection by an authorized officer all documentation including receipt and cargo manifests setting forth the origin, weight, and destination of all prohibited species bycatch. Such documentation must be retained until 1 year after the effective period of the PSD permit.

* * * * *

(d) * * *

(4) No prohibited species that has been sorted from a vessel's catch or landing may be retained by a vessel or processor, or delivered to a delivery location under this section, unless the vessel or processor and delivery location is included on the list provided to the Regional Administrator under paragraphs (b)(1)(xi), (b)(1)(xiii) or (b)(3)(v) of this section.

* * * * *

§ 679.26 [Amended]

In addition to the amendments set forth, § 679.26 is amended by making the following nomenclature changes:

a. In paragraphs (b)(1)(vi), (b)(1)(viii), (b)(1)(xi), (d)(1) and (d)(3), the word "SDP" is removed and the phrase "PSD program" is added in its place.

b. In paragraphs (b)(2)(i), (b)(3)(i) and (b)(3)(iii) the word "SDP" is removed and the word "PSD" is added in its place.

c. In paragraphs (b)(1)(ii), (b)(1)(v), (b)(1)(vi), (b)(1)(viii), (b)(1)(xiii), (b)(2)(ii), (c)(1), (d)(1) and (d)(2) the word "salmon" is removed and the word "fish" is added in its place.

d. In paragraph (d)(3) the word "salmon" is removed and the phrase "prohibited species" is added in its place.

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