

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

[Docket No. 990113011-9011-01; I.D. 010699A]

RIN 0648-AM06

**Fisheries of the Exclusive Economic Zone Off Alaska; Observer and Inseason Management Requirements for Pollock Catcher/Processors**

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

**ACTION:** Emergency interim rule; request for comments.

**SUMMARY:** NMFS issues an emergency interim rule to establish additional observer coverage requirements for 20 catcher/processor (C/P) vessels identified in the American Fisheries Act (AFA). NMFS also is establishing inseason authority to manage the non-pollock harvest limitations required under the AFA for these 20 vessels. These actions are necessary to monitor and manage the harvest of the listed C/Ps. Their goal is to comply with the intent of the statutory provisions promulgated under the AFA for these vessels in 1999.

**DATES:** Effective January 20, 1999, through July 19, 1999. Comments must be received by February 8, 1999.

**ADDRESSES:** Comments may be sent to Sue Salvesson, 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. Copies of the Environmental Assessment prepared for this emergency rule may be obtained from the same address.

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

**SUPPLEMENTARY INFORMATION:** MFS manages the U.S. groundfish fisheries of the Bering Sea and Aleutian Islands management area (BSAI) in the Exclusive Economic Zone (EEZ) pursuant to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). The North Pacific Fishery Management Council (Council) prepared the FMP pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801, *et seq.* Regulations implementing

the FMP appear at 50 CFR part 679. General regulations at 50 CFR part 600 also apply.

On October 20, 1998, the President signed the AFA into law. The AFA specifies the manner in which the BSAI pollock fishery must be managed, as well as measures to limit activity of pollock vessels in non-pollock fisheries. Section 208(e)(1) through (20) of the AFA lists C/Ps that are subject to specific harvest limitations for pollock and non-pollock species starting in 1999 (listed C/Ps). These harvest limitations will be established for 1999 as part of the 1999 groundfish specification process authorized under regulations at 50 CFR § 679.20. NMFS must implement additional observer coverage and inseason management authority necessary to monitor and manage these harvest limitations at the start of the 1999 fishing season. By regulation, the fishing season begins on January 20, 1999. At its November 1998 meeting, the Council recommended that these measures be implemented by emergency rule. The justification for, and a description of, these measures are discussed below.

**Observer Coverage for Listed C/Ps**

For the 1999 fishing year, section 211(b)(6) of the AFA requires only those listed C/Ps that are approved to participate in the 1999 multispecies groundfish community develop quota (MSCDQ) program to carry two observers and weigh catch on a scale on board approved by NMFS. For the 2000 fishing year, the AFA statutory provisions state that all 20 listed C/Ps shall (1) have two observers aboard at all times while groundfish are being harvested, processed, or received from another vessel in any fishery under the authority of the Council; and (2) weigh their catch on board on a NMFS-approved scale while harvesting groundfish in fisheries under the Council's authority.

CDQ groups have proposed that twelve of the twenty listed C/Ps participate in the 1999 MSCDQ program. The AFA requires that each of these 12 vessels that is approved to participate in the 1999 MSCDQ program have two observers aboard and weigh its catch on NMFS-approved scales at all times the vessel is used to fish for groundfish in 1999. These additional observer coverage requirements under the AFA for listed C/Ps do not change current observer coverage requirements for these vessels during their participation in the 1999 MSCDQ fisheries.

Current regulations at 50 CFR § 679.50 require the remaining eight listed C/Ps

to have only one observer aboard at all times the vessel is used to fish in 1999. NMFS does not believe that one observer can adequately monitor the catch and associated harvest limitations specified for the listed C/Ps. Furthermore, a contract implementing a fishery cooperative under section 210 of the AFA among listed C/Ps and catcher vessels eligible to deliver pollock to listed C/Ps was filed with the Council and the Secretary of Commerce on December 20, 1998. NMFS believes that the reliance on observer data for compliance monitoring and on management of pollock catch amounts taken by listed C/Ps in the directed fishery for pollock or as incidental catch in non-pollock fisheries becomes increasingly important under such a fishery cooperative. Under a fishery cooperative, contract agreements would be established that essentially allocate specific amounts of pollock to individual vessels for purposes of directed fishing. Amounts of the non-pollock groundfish harvest limitations specified for the listed C/Ps also would be allocated under the fishery cooperative among individual vessels. Although NMFS does not intend to actively manage individual vessel groundfish harvests under the cooperative, it is challenged to ensure that overall groundfish or prohibited species catch harvest limitations are not exceeded and that the incidental catch of pollock taken in non-pollock groundfish fisheries is not credited against the pollock directed fishing allowance established under section 206(b) of the AFA for vessels harvesting pollock for processing by the listed C/Ps. To meet these management challenges, more than one observer must be aboard to sample and provide information on an increased number of hauls. NMFS, therefore, is implementing by this emergency interim rule a requirement that two NMFS-certified observers be aboard each of the 20 listed C/Ps at all times the vessel is used to fish for groundfish in the EEZ off Alaska.

In addition to the requirement that each listed C/P carry two NMFS-certified observers, NMFS requires that at least one of the observers aboard each listed C/P have successfully completed the additional training necessary to be certified to observe in the MSCDQ fisheries. This requirement for at least one MSCDQ-certified observer is necessary to ensure that the compliance monitoring role of the observers aboard the listed C/Ps can be successfully accomplished. The AFA (section 211(b)) requires that the C/Ps abide by harvest

limitations that apply only to the C/Ps. In order to monitor and enforce these newly imposed limitations, observers with more experience and training must be aboard C/Ps. NMFS-certified MSCDQ observers have that experience and training. MSCDQ observers receive special training in sampling for species composition in situations where bycatch may be limiting, in working with vessel personnel to resolve access to catch and other sampling problems, and in using flow scales for catch weight measurements. Monitoring by MSCDQ-certified observers is essential for accurate catch accounting, given the fact that a fishery cooperative has been established and that the potential exists for fishing to be curtailed when either groundfish or prohibited species harvest limitations specified for listed C/Ps have been reached.

Under this emergency interim rule, only one of the two observers is required to be MSCDQ certified so that the supply of these observers to the MSCDQ program is not jeopardized in 1999. NMFS notes that subsequent rulemaking establishing observer coverage requirements for listed C/Ps after 1999 could require both observers to be MSCDQ certified. Also, the MSCDQ-certified observer required by this emergency rule is not required to be trained as a "lead CDQ observer" as described at 50 CFR § 679.50(h)(1)(i)(E). A detailed discussion on the justification for additional observer training and certification criteria for individual vessel monitoring programs was provided both in the preamble to the proposed rule (62 FR 43866, August 15, 1997) and in the preamble to the final rule (63 FR 30381, June 4, 1998) implementing the MSCDQ program.

#### **Inseason Authority to Manage Listed C/P Harvest Limits**

Congress was concerned that, given the ability to form fishery cooperatives in 1999, listed C/Ps may utilize the benefits realized from fishery cooperatives and enter into or increase fishing effort in fisheries other than the pollock fishery. Section 211(b) of the AFA seeks to protect non-pollock fisheries from major and non-traditional redistributed fishing effort by listed C/Ps. To accomplish this, provisions under section 211(b)(2) establish harvest limitations for non-pollock groundfish and prohibited species that apply to listed C/Ps and that are based on historical catch amounts. These harvest limitations will be specified in the 1999 proposed, interim, and final BSAI groundfish specifications under 50 CFR § 679.20. Many of these harvest limitations are small amounts of fish

that will not support a directed fishery for those species or species groups.

Current regulations do not clarify the inseason action NMFS will implement to maintain the harvest of non-pollock by listed C/Ps within specified harvest limitations mandated by the AFA under section 211(b). With clarification under this emergency rule, NMFS announces its intent to set a directed fishing allowance and close a groundfish species to directed fishing by the listed C/Ps when a harvest limitation specified for that species has been or will be reached. Additionally, NMFS lacks the regulatory authority to apply a directed fishing closure only to the 20 listed C/Ps when one or more of these non-pollock species may be available to directed fishing by other vessels. Furthermore, NMFS lacks regulatory authority under § 679.21(e)(7) to close directed fishing for all non-pollock groundfish by the listed C/Ps if NMFS determines that these vessels have reached a prohibited species harvest limitation.

This action is necessary to provide NMFS with the inseason management tools necessary to ensure that the management of specified harvest limitations will minimize the potential of a limit being exceeded while optimizing the opportunity to harvest the pollock directed fishing allowance allocated to vessels under section 206(b)(2) of the AFA for processing by the listed C/Ps.

Under this emergency rule, NMFS will establish directed fishing allowances for the non-pollock groundfish harvest limitations when it appears that one or more of these amounts have been or will be reached. The attainment of a non-pollock groundfish or prohibited species harvest limitation established under section 211(b)(2) of the AFA will not prohibit the listed C/Ps from participating in the directed fishery for pollock with pelagic trawl gear. However, the attainment of a non-pollock groundfish species harvest limitation established under section 211(b)(2) of the AFA will prohibit the listed C/Ps from participating in the directed fishery for that species. Also, the attainment of a prohibited species harvest limitation while fishing for non-pollock groundfish species will result in the closure of the applicable area to directed fishing for all non-pollock groundfish species. Bycatch or bycatch mortality of prohibited species taken by the listed C/Ps while participating in the pollock fishery will be credited against the respective prohibited species bycatch allowances specified for the pollock fishery. Consistent with existing

regulations, attainment of a bycatch allowance specified for the pollock fishery will result in closure of a specified area to directed fishing for pollock with non-pelagic trawl gear.

NMFS anticipates that this emergency rule will limit the listed C/Ps' opportunity to participate in non-pollock groundfish fisheries. For example, in order for the listed C/Ps to participate in a directed fishery for a non-pollock groundfish species, the specified harvest limit for this species must be sufficiently large to support a directed fishery by the listed C/Ps. If NMFS determines that the amount is not sufficiently large to support a directed fishery by the listed C/Ps, directed fishing for the non-pollock groundfish species will be closed. When directed fishing for a non-pollock groundfish species is closed, the listed C/Ps may continue to retain amounts of that species up to the maximum retainable bycatch amounts established in regulations at § 679.20(e) and (f).

#### **Classification**

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary to respond to an emergency situation and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

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

NMFS finds that there is good cause to waive the requirement to provide prior notice and an opportunity for public comment pursuant to authority set forth at 5 U.S.C. 553(b)(B). This action is necessary to implement the requirements of the AFA as they relate to the pollock fishery. Delaying the start of the pollock fishery beyond its scheduled regulatory start date of January 20, 1999, would conflict with investment-backed expectations of the regulated community and could disrupt supply of seafood products to U.S. markets and consequently would be contrary to the public interest. Likewise, the need to avoid delaying the start of the pollock season constitutes good cause to waive, pursuant to authority set forth at 5 U.S.C. 553(d)(3) the thirty-day delay in effective date otherwise required by 5 U.S.C. 553(d). In addition, the regulated industry has been aware that these new requirements would be necessary since the October 1998 Council meeting and have had ample

time to prepare for coming into compliance making a thirty-day delay in effective date unnecessary.

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with that directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this emergency interim rule.

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

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: January 15, 1999.

**Andrew A. Rosenberg,**

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

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

**50 CFR CHAPTER VI**

**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.*, and 3631 *et seq.*

2. In § 679.2, a definition of “American Fisheries Act” is added in alphabetical order to read as follows:

**§ 679.2 Definitions.**

\* \* \* \* \*

*American Fisheries Act (AFA) (applicable through July 19, 1999)* means Title II—Fisheries, Subtitles I and II, as cited within the Omnibus Appropriations Bill FY99 (Pub. L. 105–277).

\* \* \* \* \*

3. In § 679.20, paragraph (d)(1)(iv) is added to read as follows:

**§ 679.20 General limitations.**

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(iv) *American Fisheries Act harvest limitations (applicable through July 19, 1999).* (A) If the Regional Administrator determines that any harvest limitation of groundfish other than pollock, established under section 211(b)(2) (A) or (C) of the American Fisheries Act for catcher/processers identified in section 208(e)(1) through (20) of that Act, has been or will be reached, the Regional Administrator may establish a directed fishing allowance for the species or species group applicable only to those identified catcher/processers.

(B) In establishing a directed fishing allowance under paragraph (d)(1)(iv)(A) of this section, the Regional

Administrator shall consider the amount of the harvest limitation established under section 211(b)(2) (A) or (C) of the American Fisheries Act that will be taken as incidental catch by those catcher/processers identified in section 208(e) (1) through (20) of that Act in directed fishing for other species.

4. In § 679.21, paragraphs (e)(3)(v) and (e)(7)(ix) are added to read as follows:

**§ 679.21 Prohibited species bycatch management.**

\* \* \* \* \*

(e) \* \* \*

(3) \* \* \*

(v) *American Fisheries Act prohibited species catch limitations (applicable through July 19, 1999).* The aggregate amounts of any crab, halibut or herring trawl PSC limit caught by the catcher/processers identified under section 208(e)(1) through (20) of the American Fisheries Act and counted against the bycatch allowances specified for the fishery categories defined under paragraphs (e)(3)(iv)(B) through (E) of this section shall be limited to the amounts established under section 211(b)(2)(B) of that Act and published in the **Federal Register** under paragraph (e)(6) of this section.

\* \* \* \* \*

(7) \* \* \*

(ix) *Closures under the American Fisheries Act prohibited species catch limitations (applicable through July 19, 1999).* When the Regional Administrator determines that the catcher/processers identified under section 208(e)(1) through (20) of the American Fisheries Act have caught the amount of any crab, halibut, or herring prohibited species catch limitation specified under paragraph (e)(3)(v) of this section, directed fishing for groundfish by those vessels will be prohibited in the applicable area defined under this paragraph (e)(7), except for pollock with pelagic trawl gear.

\* \* \* \* \*

5. In § 679.50, paragraph (c)(5) is added to read as follows:

**§ 679.50 Groundfish Observer Program applicable through December 21, 2000.**

\* \* \* \* \*

(c) \* \* \*

(5) *Observer coverage under the American Fisheries Act (applicable through July 19, 1999).* Any catcher/processor listed under section 208(e)(1) through (20) of the American Fisheries Act is required to have two observers aboard the vessel any day it harvests, receives, or processes groundfish. One of the two observers must meet the

qualifications described at paragraph (h)(1)(i)(D) of this section.

\* \* \* \* \*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 990115017–9017–01; I.D. 011199A]

RIN 0648–AM08

**Fisheries of the Exclusive Economic Zone Off Alaska; Steller Sea Lion Protection Measures for the Pollock Fisheries Off Alaska**

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

**ACTION:** Emergency interim rule; revision to 1999 interim harvest specifications; technical amendment to Steller sea lion no-trawl zones; request for comments.

**SUMMARY:** NMFS issues an emergency interim rule implementing reasonable and prudent alternatives to avoid the likelihood that the pollock fisheries off Alaska will jeopardize the continued existence of the western population of Steller sea lions or adversely modify their critical habitat. This emergency rule would implement three types of management measures for the pollock fisheries of the Bering Sea and Aleutian Islands Management Area (BSAI) and Gulf of Alaska (GOA): Measures to temporally disperse fishing effort, measures to spatially disperse fishing effort, and pollock trawl exclusion zones around important Steller sea lion rookeries and haulouts. These emergency measures are necessary and must be effective before the start of the BSAI and GOA pollock fisheries on January 20, 1999, or NMFS will be obligated under the Endangered Species Act to close all fishing for pollock until such measures are in place.

**DATES:** Effective January 20, 1999, through July 19, 1999. Comments must be received by February 22, 1999.

**ADDRESSES:** Comments may be sent to Sue Salvesson, 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. Copies of the Biological Opinion