

TABLE 13 TO 50 CFR PART 679 (EFFECTIVE THROUGH JULY 19, 1999)—Continued

[Steller sea lion protection areas<sup>1</sup> in the Gulf of Alaska<sup>2</sup> are identified in the following table. Where two sets of coordinates are given, the base-line extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.]

Management area/island/site	Boundaries to				Directed fishing for pollock prohibited within . . . (nm)		Trawling prohibited within . . . (nm)	
	Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)	Nov. 1 through April 31	May 1 through Oct. 31	Jan. 1 through April 15	Year-round
Latax Rocks .....	58°42.00'	152°28.50'	58°40.50'	152°30.00'	10	10	.....	.....
Ushagat/SW .....	58°55.00'	152°22.00'	.....	.....	.....	10	.....	.....
Ugak .....	57°23.00'	152°15.50'	57°22.00'	152°19.00'	.....	10	.....	.....
Sea Otter Island	58°31.50'	152°13.00'	.....	.....	10	10	.....	.....
Long .....	57°47.00'	152°13.00'	.....	.....	10	.....	.....	.....
Kodiak/Cape Chiniak .....	57°37.50'	152°09.00'	.....	.....	10	10	.....	.....
Sugarloaf .....	58°53.00'	152°02.00'	.....	.....	10	10	.....	10
Sea Lion Rocks (Marmot) .....	58°21.00'	151°48.50'	.....	.....	10	10	.....	.....
Marmot .....	58°14.00'	151°47.50'	58°10.00'	151°51.00'	10	10	.....	10
Perl .....	59°06.00'	151°39.50'	.....	.....	10	10	.....	.....
Outer (Pye) Island .....	59°20.50'	150°23.00'	59°21.00'	150°24.50'	10	10	.....	10
Steep Point .....	59°29.00'	150°15.00'	.....	.....	.....	10	.....	.....
Chiswell Islands	59°36.00'	149°34.00'	.....	.....	10	10	.....	.....
Wooded Island (Fish) .....	59°53.00'	147°20.50'	.....	.....	10	10	.....	.....
Glacier Island .....	60°51.00'	147°09.00'	.....	.....	10	10	.....	.....
Seal Rocks .....	60°10.00'	146°50.00'	.....	.....	10	10	.....	.....
Cape Hinchinbrook ..	60°14.00'	146°38.50'	.....	.....	.....	10	.....	.....
Hook Point .....	60°20.00'	146°15.50'	.....	.....	.....	10	.....	.....
Cape St. Elias ..	59°48.00'	144°36.00'	.....	.....	10	10	.....	.....

<sup>1</sup> Three nm NO TRANSIT ZONES are described at 50 CFR 227.12(a)(2) of this title.

<sup>2</sup> Additional closures along the Aleutian Island chain that extend into statistical area 610 of the Gulf of Alaska are displayed in Table 13 to this part.

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 981021264-9016-02; I.D. 092998A]

RIN 0648-AL29

**Fisheries of the Exclusive Economic Zone Off Alaska; Season and Area Apportionment of Atka Mackerel Total Allowable Catch**

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

**ACTION:** Final rule; 1999 interim Atka mackerel specifications.

**SUMMARY:** NMFS issues regulations that divide the Atka mackerel total allowable catch (TAC) specified for the Aleutian Islands Subarea (AI) into two seasonal allowances; reduce the percentage of Atka mackerel TAC harvested from Steller sea lion critical habitat (CH) over

a 4-year period in the Western and Central Districts of the AI; and extend the seasonal no-trawl zone around Seguum and Agligadak rookeries in the AI Eastern District into a year-round closure. This action is necessary to avoid potential jeopardy to the continued existence of Steller sea lions due to fishery-induced localized depletions of Atka mackerel, a primary prey species for Steller sea lions. This action is intended to foster the recovery of Steller sea lions and to further the conservation goals of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP).

**DATES:** Effective January 19, 1999.

**ADDRESSES:** Copies of the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this action may be obtained from the Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori J. Gravel, or by calling 907-586-7228.

**FOR FURTHER INFORMATION CONTACT:** Jay Ginter, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fisheries in the

Bering Sea and Aleutian Islands Management Area (BSAI) pursuant to the FMP. General regulations governing U.S. fisheries appear at 50 CFR part 600. The FMP is implemented by regulations appearing at 50 CFR part 679 issued under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The North Pacific Fishery Management Council (Council) prepared the FMP under authority of the Magnuson-Stevens Act. Fishing for Atka mackerel (*Pleurogrammus monopterygius*) is governed by the FMP and its implementing regulations.

**Background**

The purpose and need for this action were described in the preamble to the proposed rule published on November 9, 1998 (63 FR 60288). That document and the EA/RIR/FRFA describe the conservation and management events leading to this action. In summary, the number of Steller sea lions (*Eumetopias jubatus*) west of 144°W. long. in the Gulf of Alaska (GOA) and the BSAI has declined severely during the last several decades. In 1997, NMFS recognized these animals as a separate and endangered population. NMFS has

defined CH for this population to generally include marine areas within 20 nautical miles (nm) of major Steller sea lion rookeries and haul outs west of 144°W. long. and principal foraging areas. NMFS is the lead agency responsible for the conservation of this marine mammal species and its recovery.

NMFS scientists have found that Atka mackerel are the most common prey species for Steller sea lions in portions of the AI Central and Western Districts, based on the collection of Steller sea lion scats. Further investigation of Atka mackerel fishery data indicates that the fishery has led to localized depletions of Steller sea lion prey, thereby increasing evidence of competition for Atka mackerel between Steller sea lions and the fishery. The single most important feature of CH for the Steller sea lion is its prey base. Areas designated as CH for this species must include sufficient food to meet the energy demands of a stable and healthy sea lion population.

Although the ultimate cause(s) of the population decline of Steller sea lions west of 144°W. long. remain(s) uncertain, NMFS believes that the lack of available prey is an important

contributing factor. Atka mackerel is an important part of the mix of species preyed on by Steller sea lions. This rule reduces the proportion of the annual Atka mackerel catch taken from within designated CH to prevent potential jeopardy to the continued existence of the endangered Steller sea lion population and adverse modification of its CH.

At its meeting in June 1998, the Council adopted the fishery management alternative described in the proposed rule. This action implements the management elements described in the proposed rule, with no change. Briefly, these elements include (1) dividing the Atka mackerel TACs specified for each subarea and district of the BSAI into two equal seasonal allowances, (2) progressively reducing the catch of Atka mackerel within areas designated as Steller sea lion CH and (3) extending the seasonal 20 nm no-trawl zones around the Seguam and Agligadak rookeries in the Eastern District of the AI into 20 year-round closures.

**Interim Specifications**

Regulations at § 679.20(c)(1) require annual publication of proposed

specifications of catch limits in the BSAI and GOA groundfish fisheries for the next fishing year. NMFS published the 1999 proposed specifications for the BSAI on December 30, 1998 (63 FR 71867). Interim specifications (§ 679.20(c)(2)) provide for groundfish fisheries that start in early January each year and remain in effect until superceded by publication of the final specifications. NMFS published interim specifications for the BSAI groundfish fisheries on January 4, 1999 (64 FR 50). This final rule changes the regulatory procedures for setting interim specifications at § 679.20(c)(2)(ii)(A), and effectively changes the published interim specifications for Atka mackerel to the A season apportionments that appear in Table 3 of the proposed BSAI specifications. The A season apportionments of Atka mackerel, and catch limits inside CH as specified in Table 3, will remain in effect for 1999, until superceded by publication of the final specifications for 1999. The revised interim TACs (in metric tons) for Atka mackerel are as follows:

Subarea & Component	Inside CH	Total
Western AI (543) .....	7,459	11,475
Central AI (542) .....	7,616	9,520
Eastern AI and BS Jig Gear .....	.....	127
Eastern AI and BS Other Gear .....	.....	6,269
<b>Total</b> .....	.....	<b>27,391</b>

**Response to Comments**

NMFS invited public comments on the proposed rule from November 9, 1998, through December 9, 1998 (63 FR 60288, November 9, 1998). NMFS received three letters of substantive comment and one letter stating that no comment would be made. Ten principal comments from the three comment letters are summarized and responded to here.

*Comment 1.* The proposed regulations would lessen the jeopardy to the Steller sea lions posed by the Atka mackerel fishery and should be adopted. Enforcement of the regulations will require detailed knowledge of the location of fishing vessels. NMFS should adopt a vessel monitoring system (VMS) for the Atka mackerel fishery as soon as possible.

*Response.* NMFS notes the support for the regulations. As noted in the preamble to the proposed rule, the Council recommended that NMFS establish a VMS program to monitor the activity of vessels fishing with trawl

gear in CH areas. NMFS intends to implement VMS requirements in 1999 before the start of the second Atka mackerel fishing season on September 1.

*Comment 2.* NMFS should design and implement, in consultation with the fishing industry and other agencies, a program for evaluating the effectiveness of the regulations on the availability of Atka mackerel to Steller sea lions and on Steller sea lion recovery. Such an evaluation program should include efforts to determine whether the catch of 40 percent of the total AI mackerel harvest in the Steller sea lion CH is too high to result in reduced competition between Steller sea lions and the Atka mackerel fishery.

*Response.* NMFS recognizes that research into the relationship between groundfish fisheries and the Steller sea lion is necessary and advisable. Information from well-designed research studies may better enable NMFS and the Council to craft fishery management measures that ensure sufficient prey availability for sea lion

recovery and that minimize, to the extent practicable, burdensome impacts on the fishing industry. NMFS is reviewing a preliminary research plan to investigate the effects of the Atka mackerel fishery on Steller sea lion condition and fitness, and the efficacy of trawl exclusion zones as a sea lion conservation measure. NMFS has initiated planning discussions on how best to undertake the initial steps of this proposal, which include small-scale bottom trawl surveys and tagging of Atka mackerel for movement studies.

*Comment 3.* Reducing the likely adverse impacts of high-volume, concentrated trawl fishery removals of key prey species from sea lion CH should be the highest priority for sea lion conservation. The proposed regulations fall short in this respect. Additional measures for sea lion conservation should include (1) no trawling for Atka mackerel in all Steller sea lion CH and foraging habitat in the AI, (2) spreading the catch more evenly in time with quarterly allocations, (3)

spreading the catch more evenly in space with smaller spatial allocations, and (4) reducing the overall TAC in response to sharp declines in the estimates of stock biomass.

*Response.* NMFS believes that the measures contained in this action will reduce the likelihood of fishery-induced localized depletions of Steller sea lion prey within CH. However, if continuing research indicates that this is not the case, NMFS will change the regulations, in consultation with the Council, to reflect the newly acquired understanding of sea lion prey requirements and fishery effects on local prey availability. Although the Atka mackerel biomass decreased from a peak in 1990 and 1991, the TAC-setting process incorporates risk-averse methods that ensure conservative catch levels.

*Comment 4.* The proposed regulations are inadequate because they do not insure that adverse modification will not occur in sea lion CH, especially in the Eastern District of the AI. No analysis exists to show that a 50-percent reduction in total fishery removals from CH in Districts 542 and 543 is adequate to avoid localized depletions or other adverse modifications of CH. The problem of fleet concentration and locally intense pulse fishing is not addressed by broad spatial allocations because the fishery is likely to remain spatially concentrated in discrete locations under the proposed regulations. Two equal seasonal allowances of Atka mackerel TACs are not sufficient to prevent locally high extraction rates. The proposed measures do not adequately address the need to reduce fishing in the fall and winter months when sea lion prey is believed to be more scarce. Finally, allocating substantial portions of the Atka mackerel TAC outside of the CH, without reductions in TAC levels, will likely result in transferring the problems to these other areas.

*Response.* See response to Comment 3. A 50-percent reduction in total fishery removals from CH is a reasonable first step that substantially diminishes competition for Atka mackerel between Steller sea lions and the Atka mackerel fishery. For example, based on catch history and the Atka mackerel TAC of 22,400 metric tons (mt) for the Central AI District (542) in 1998, up to 98 percent or 21,952 mt could have been caught by the fishery inside CH. Under the conservation program implemented by this final rule, and assuming the same TAC, the catch of Atka mackerel inside CH would be reduced to 17,920 mt in the first year and to 8,960 mt by the fourth year of the

program. Further in this example, the catches made inside CH without the conservation measures normally would be taken at one time of the year, in winter. This action will divide the catch inside CH between winter and summer/fall seasons. Instead of removing 21,952 mt from CH during one winter season (in this example) the fishery would ultimately be allowed to remove only 4,480 mt during a winter season. Hence, disbursement of the fleet by area and season will significantly reduce fishery-induced localized depletions of Atka mackerel inside CH. If new information in the future indicates otherwise, NMFS will re-examine these measures in that light. To this end, the phased-in approach to reducing catch levels inside CH is designed, in part, to avoid transferring the conservation problem to other areas outside CH by allowing time to identify and respond to unanticipated effects of this action.

*Comment 5.* The Atka mackerel TAC reapportionment plan should be approved for the Eastern and Western AI Districts and modified for the Central AI District where only the temporal reapportionment of Atka mackerel fishing should be implemented. The proposed CH area restrictions for the Central AI District could negatively affect the Atka mackerel stock and, thereby, adversely impact foraging opportunities for sea lions as a greater proportion of fishing is mandated outside of current fishing areas. The Council's Scientific and Statistical Committee (SSC) advised the Council to move forward with seasonal modifications, but not spatial modifications, to the Atka mackerel fishery. The SSC was concerned that disproportionate harvest rates of Atka mackerel in marginal areas for the stock (outside CH) could hurt the mackerel population and possibly impact sea lions. In the Eastern and Western Districts, a reasonable fishery can be conducted under the proposed modifications.

*Response.* For 1999, the apportionment of Atka mackerel TAC between areas inside and outside Steller sea lion CH in the AI Central District will be 80 percent inside and 20 percent outside. This represents the first year of a four-year phased-in reduction in the proportion caught in CH (to 40 percent inside CH in 2002), but only a 15 percent reduction from the recent 3-year average of 95 percent caught within CH in the Central District. While NMFS recognizes that mandated movements of the fishery may have unforeseen consequences to the fishery, the Atka mackerel stock, and the habitats of other species, NMFS believes that decreased

use of CH areas by the fishery will promote the recovery of Steller sea lions. Furthermore, the phased-in reduction of the use of CH areas will enable NMFS and the Council to revisit these actions before 2002. If research, groundfish surveys (to be conducted in both 2000 and 2002), or other information sources indicate that redistribution of the fishery to areas outside CH is having detrimental effects on the Atka mackerel stock or the habitats of other species, NMFS may consider different measures to promote the recovery of the Steller sea lion population and protect the habitats of marine species.

*Comment 6.* Although industry presented several options to the Council for addressing the potential impact of the Atka mackerel fishery on Steller sea lions, NMFS informed the industry and Council that the only acceptable options were those based on inside-outside CH apportionments of TAC. NMFS stated other options that failed to limit harvest within CH could result in a finding that the fishery jeopardized the recovery of sea lions (under the Endangered Species Act) and could result in fishery closures in 1999. NMFS was acting as both judge and jury, stifling the Council process and affecting the content of options eventually adopted by the Council. The result was approval of measures based on the split of the TAC between inside and outside CH despite the Council's reservations regarding the merits of such an approach.

*Response.* During the process of developing conservation measures to address the potentially adverse impact of the Atka mackerel fishery on the recovery of the endangered Steller sea lion, NMFS hosted several industry workshops and considered comments by the Council's SSC and Advisory Panel, as well as public testimony, provided at the April and June 1998 Council meetings. The alternative management measures presented to the Council included options such as the step-wise implementation of CH harvest limitations that were suggested by industry and ultimately adopted by the Council. Although both industry and conservation groups presented other options, NMFS did not pursue these options as reasonable alternatives in light of the standards provided by the ESA and other applicable law and due to the limited knowledge on fishery interactions with Steller sea lions. NMFS balanced these concerns with precautionary principles that require immediate and significant action be taken to mitigate activities that pose jeopardy to the recovery of Steller sea lions or adversely impact their CH.

NMFS acknowledges the Council's reservations in adopting the proposed measures given the scarcity of existing information. However, such action is commended, prudent, and subject to change in the future as new information becomes available.

*Comment 7.* NMFS should not implement the third and fourth year Atka mackerel catch reductions in the CH of the Central AI District if data from the first and second year's fisheries indicate that this district cannot support a fishery for 60 percent of the TAC outside CH. NMFS should reconsider its entire area apportionment plan if research in the next few years concludes that fishing does not affect the density of Atka mackerel in areas inhabited by sea lions. The Council should be required to conduct an annual review of the phased-in modifications to the Atka mackerel fishery. NMFS made several important commitments to research the effect of the fishery on the density of Atka mackerel in areas inhabited by sea lions. NMFS also agreed that a better assessment of the spatial distribution of Atka mackerel was necessary. NMFS should follow through on its commitment so that an adequate review of the action can be conducted.

*Response.* See responses to Comments 2 and 5. NMFS intends to support research on the effects of fishing on Steller sea lion prey to the extent funding permits. NMFS also supports periodic review of the phased-in catch restrictions inside CH.

*Comment 8.* NMFS' expressed intent to manage catch limitations inside CH areas by counting all catch from the beginning of a season against the catch limits inside CH, regardless of where the fish were actually caught, will create a "race-for-fish" inside CH contrary to the stated objective of the plan. NMFS should delay implementing CH restrictions until a VMS program is implemented so that the location of catch can be correctly counted against the area in which it is taken. The fishing industry is willing to work with NMFS to establish a reasonable monitoring system.

*Response.* As noted in the response to Comment 1, NMFS intends to implement VMS requirements by September 1, 1999. The primary purpose of these requirements will be to enforce area closures; not for catch accounting purposes. The resolution of catch location data, even with the use of a VMS, is not sufficient to determine whether any particular catch of fish was taken from inside or outside of the CH area. This is because a VMS does not necessarily match a catch of fish to a particular area. NMFS' presumption that

initial catches of Atka mackerel come from within CH is historically based in that significant amounts of the Atka mackerel TAC have been harvested within Steller sea lion CH. As discussed in the EA/RIR/FRFA, only 5 to 15 percent of the Atka mackerel harvest currently occurs outside of CH. Because of this current harvesting practice, NMFS' approach should not stimulate any more of a "race-for-fish" than currently exists without vessel-specific catch quotas. To not follow this approach would undermine the conservation measures implemented by this action to protect Steller sea lions. NMFS may alter this approach as data develops concerning increased harvests of Atka mackerel outside of CH.

*Comment 9.* NMFS has made no explicit allowances for TAC not taken in the A season to be incorporated into the B season. NMFS should commit to rolling over unharvested A season quota into the B season. Otherwise, fishermen will have an incentive to fish in hazardous weather conditions which creates a safety issue.

*Response.* The proposed rule, at § 679.20(a)(8)(ii)(B), specifically provided for the addition of unharvested amounts of the A season allowance to the B season allowance. This provision is unchanged in the final rule. NMFS will exercise this reapportionment authority such that the percentage of an Atka mackerel TAC that may be harvested from inside CH during the B season under § 679.22(a)(8)(iii)(B) of the final rule is not exceeded. That is, unharvested amounts of the TAC apportionment specified for the A season would be reapportioned to the B season for harvest outside CH. An overage of the A season TAC apportionment would be deducted from the B season TAC apportionment proportionately between inside and outside CH areas.

*Comment 10.* In the analysis presented to the Council, NMFS incorrectly determined that there were no small entities (pursuant to the Regulatory Flexibility Act (RFA)) affected by the management measures being developed. In the proposed rule, NMFS attempted to remedy this error by admitting that some impacted entities could be "small entities," as defined by the RFA. NMFS should have made this determination during development of the measures as it may have changed the outcome of the Council decision. Despite a current finding of significant impact on small entities, the analyses of impacts should have been prepared in conjunction with the development of proposed measures instead of in hindsight. NMFS continues to miss the

point on impacts on communities in the AI that are by definition "small entities" by maintaining that the issue is impact on Community Development Quota (CDQ) communities. Dutch Harbor and Adak are not CDQ communities but are clearly small entities which depend heavily on income from services provided to vessels participating in the Atka mackerel fishery. Further discrepancy exists between the meaning of "small entity" as used in the analysis of impacts of the pollock inshore-offshore allocations developed at the same time as the analysis of Atka mackerel management measures.

*Response.* During the development of alternatives, NMFS prepared an analysis of the potential economic impacts of various Steller sea lion conservation measures. This initial analysis indicated that this measure would not result in significant economic impacts on a substantial number of small entities because most of the entities that would be directly affected by the measures were not considered "small entities" under the RFA. For fishing firms, a "small entity" would have receipts of less than \$3 million dollars annually. The initial analysis indicated that catcher/processor vessels dominate the Atka mackerel fishery and these vessels did not appear to meet this "small entity" criterion. NMFS presented this analysis to the Council and public. Public testimony presented to the Council included comments on the impacts on small entities and challenged the tentative view that the conservation measures would not have a significant economic impact under the RFA. NMFS later determined that a definite certification of no significant impact on a substantial number of small entities could not be made due to a lack of empirical information. Therefore, NMFS prepared an initial regulatory flexibility analysis (IRFA) that was available for public review and comment at the time the proposed rule was published for public review. A final regulatory flexibility analysis (FRFA) was prepared for the final rule.

The Council process for recommending conservation and management measures is public and iterative, and designed to incorporate new information as it emerges through this process. Compliance with the RFA is primarily an agency responsibility. NMFS is satisfied that the public was adequately notified of the potential small entity impacts, and that the final agency decision to implement this rule has taken these potential impacts into consideration. For example, exemption of small entity jig gear vessels from the rule and the phased-in approach to

reducing Atka mackerel catches within CH serve to mitigate economic impacts of the rule on all directly affected entities.

For purposes of the RFA, NMFS must identify small entities that are expected to comply with the rule, i.e. those that would be directly or indirectly regulated by the rule. For this rule, those small entities include those small businesses, small organizations, and small governmental jurisdictions as described in the FRFA (section 5.2). Although the fishing ports of Alaska are small entities, they are not regulated by this action. CDQ groups, on the other hand, are small entities that are directly regulated by this action. Most of the vessels that have participated in the Atka mackerel fishery recently have had total annual receipts in excess of \$3 million, and few are small entities. Similarly, few of the factory trawlers in the BSAI pollock fishery should have been identified as small entities for the purposes of the IRFA for the inshore-offshore allocation (Amendment 51 to the FMP). For this action, a summary of the analysis of entities affected indirectly is presented in the preamble to the proposed rule. Due to public comment indicating that the rule could have adverse economic impacts on small entities, including governmental jurisdictions, and without empirical information to demonstrate conclusively that significant impacts on a substantial number of small entities would not occur, NMFS prepared an IRFA and FRFA for this action.

#### Small Entity Compliance Guide

The following information satisfies the Small Business Regulatory Enforcement Fairness Act of 1996, which requires a plain language guide to assist small entities in complying with this rule. This rule's primary management measures are time and area closures to directed fishing for Atka mackerel. These closures affect only fishermen who use trawl gear.

*What areas does this rule close?* This rule prohibits trawling within 10 nm and within 20 nm of the Steller sea lion rookeries identified in this final rule at § 679.22(a)(7) and (8). Most of these areas were already closed to trawling before this final rule. This action makes permanent closures that were seasonal around the two Steller sea lion rookeries shown in Table 5b of this rule. In addition, this rule prohibits trawling for Atka mackerel within areas designated as Steller sea lion CH in the Western and Central Districts of the AI when NMFS announces this area closure in the **Federal Register**. The Alaska Region, NMFS will announce these CH

closures in an information bulletin. Contact the Alaska Region, Sustainable Fisheries Division (see **ADDRESSES**) for further information on obtaining closure announcements. Tables 1 and 2, and Figure 4 of rules at 50 CFR part 226 identify the CH area in the Western and Central Districts of the AI. The only exception to the CH closure to trawl gear is for harvesting groundfish CDQ. However, a CDQ group must cease fishing with trawl gear inside CH areas in the Western and Central Districts of the AI, when it has taken its specified allocation of Atka mackerel for the fishing year.

*When is fishing for Atka mackerel with trawl gear allowed?* This final rule authorizes directed fishing for Atka mackerel with trawl gear in the AI Subarea only during two seasons specified in this rule at § 679.23(e)(3). Directed fishing for Atka mackerel during each season will end on the last day of the season or when the Alaska Region Administrator determines that the seasonal allowance for either season has been harvested. NMFS will announce seasonal closures of directed fishing for Atka mackerel in the **Federal Register** and in information bulletins released by the Alaska Region. Affected fishermen should keep themselves informed of such closure notices.

#### Classification

This action has been determined to be not significant under E.O. 12866.

Pursuant to the RFA, NMFS has prepared a Final Regulatory Flexibility Analysis (FRFA), which is supplemented by the preamble to this final rule. A summary of significant issues raised in public comments in response to the IRFA and the NMFS response to those comments are provided in Comment 10. No new reporting, recordkeeping or other compliance requirements are imposed by this rule. The FRFA concludes the following regarding the small entities to which this rule applies and measures to mitigate significant economic impacts on small entities.

*Business entities affected directly.* The actions being considered for the BSAI Atka mackerel fishery would have direct effects on fewer than 15 fishing vessels all of which are expected to be factory trawlers. In 1997, 12 factory trawlers participated in the BSAI Atka mackerel fishery and eight of these vessels accounted for 81 percent of the retained catch in that fishery. All of the factory trawlers in the Atka mackerel fishery are owned by seafood companies with annual receipts that exceed the \$3 million small entity threshold by the Small Business Administration for fish

harvesting businesses. In 1998, 1 percent of the Atka mackerel TAC in Area 541 (127 mt) was allocated to vessels using jig gear. However, for all of 1998, NMFS did not receive any Atka mackerel catch reports by vessels using jig gear in Area 541 and the entire 127 mt TAC allocation was unharvested. Up to 10 vessels using jig gear had expressed interest in fishing for Atka mackerel in Area 541 and all of these vessels are small entities. However, the final rule would exempt vessels using jig gear from the A-B season split, critical habitat restrictions, and VMS requirements. Therefore, all small entities using jig gear to fish for Atka mackerel would be unaffected by this action.

*Small communities and groups affected directly.* Because, very little BSAI Atka mackerel is delivered to on-shore processors and because the principal participants in this fishery are not residents of Alaska fishing communities, with the exception of the CDQ communities, few small communities would be affected directly. With the expansion of the CDQ program to include all BSAI groundfish and crab, the 50 plus CDQ communities would be affected by actions that affect the Atka mackerel CDQ. However, the effects on these communities are not expected to be significant because Atka mackerel is expected to account for less than 5% of the value of the CDQs to these communities, none of the actions would eliminate all of the value of the Atka mackerel CDQs, and the CDQs are but one source of income for these communities. To further reduce the potential impacts of this action on CDQ groups, the Council's preferred alternative would exempt CDQ groups from the A-B season split so that CDQ groups are not forced to fish small amounts of Atka mackerel CDQ during two separate time periods.

*Business entities affected indirectly.* A much larger number of entities would be affected indirectly if the final rules result in the factory trawlers, that have dominated the Atka mackerel fishery, switching effort from the Atka mackerel fishery to other groundfish fisheries. If the fishing capacity of the eight factory trawlers that were the core of the Atka mackerel fleet in 1997 were diverted to other fisheries, these vessels could take substantially larger shares of the catch in the BSAI rock sole, Pacific cod, flathead sole, or other flatfish fishery or the GOA flatfish fisheries. Much of any such increase in catch by the core Atka mackerel fleet would be at the expense of other factory trawlers in the BSAI and both catcher vessels and other factory trawlers in the GOA. In 1996, 67 factory

trawlers participated in BSAI and GOA Pacific cod fisheries and 42 factory trawlers participated in the various BSAI and GOA flatfish fisheries. In 1996, 180 trawl catcher vessels participated in the Pacific cod fisheries of the BSAI and GOA and 62 trawl catcher vessels participated in the various flatfish fisheries of the BSAI and GOA. Due to inshore/offshore TAC allocations for Pacific cod in the GOA and TAC splits between catcher vessels and catcher processors in the BSAI, catcher vessels participating in the Pacific cod fishery will be unaffected if Atka mackerel factory trawlers shift into the Pacific cod fishery. However, catcher vessels fishing for flatfish in the BSAI and GOA could face impacts if effort shifts away from Atka mackerel as a result of this action. The extent to which these shifts may occur is impossible to quantify or predict.

Most of the factory trawlers operating in the BSAI and GOA Pacific cod and flatfish fisheries are owned by or affiliated with "large" entities. In addition, up to half of the catcher vessels fishing in the BSAI are believed to be owned by or affiliated with large entities. However, in a written comment to the Council submitted for this action, an industry representative for flatfish and Pacific cod factory trawlers indicated that more than 30 percent of the factory trawlers in the BSAI flatfish and Pacific cod fisheries expected 1998 annual gross revenues to be less than \$3 million. NMFS does not have information to confirm or refute this figure. Furthermore, the ownership characteristics of these vessels has not been analyzed to determine if they are independently owned and operated or affiliated with a larger parent company. Because NMFS cannot quantify the number of small entities that may be indirectly affected by this action, or quantify the magnitude of those effects, NMFS concludes that it is possible that this action could have a significant economic impact on a substantial number of small entities.

*Measures taken to reduce impacts on small entities.* The Council considered and adopted a series of exemptions to reduce the impacts of this action on small entities. The final rule contains the following elements to reduce impacts on small entities: (1) Vessels using jig gear would be exempted from all aspects of the proposed action, (2) CDQ groups would be exempted from the A-B season split to prevent having to fish for small Atka mackerel CDQ amounts during two times of the year, and (3) vessels using hook-and-line gear would be exempt from the closure to fishing inside critical habitat. The

critical habitat closures would affect vessels using trawl gear only, (4) both jig and hook and line vessels would be exempted from future VMS requirements for the Atka mackerel fishery.

As stated in the preceding paragraph and in the section entitled, "Business entities affected directly," all small entities in the Atka mackerel fishery (jig boats) are exempt from all aspects of this final rule. NMFS is not aware of additional alternatives that could further mitigate this action's economic impact on small entities.

Pursuant to section 7 of the ESA, NMFS initiated consultation on the effects of fishing under this action on listed species, including the Steller sea lion, and designated CH. The biological opinion prepared for this consultation, dated December 3, 1998, as revised December 16, 1998, concludes that the Atka mackerel fishery in the AI, without this action, would appreciably reduce the likelihood of the survival and recovery of Steller sea lions and adversely modify their designated CH. With the conservation measures in this final rule fully implemented by 2002, the biological opinion further concluded that fishing for Atka mackerel under these measures should not appreciably reduce the likelihood of both the survival and recovery of Steller sea lions. This rule implements the identified conservation measures.

This final rule contains no new collection-of-information requirements subject to the Paperwork Reduction Act.

The Assistant Administrator for Fisheries, NOAA, finds there is good cause under the authority contained in 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness because the immediate effectiveness of this rule is required to prevent the Atka mackerel fishery from exceeding the A season apportionment of the Atka mackerel TAC inside CH when directed fishing for this species opens in January 1999.

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

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: January 15, 1999.

**Andrew A. Rosenberg,**  
Deputy Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is amended 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.*, and 3631 *et seq.*

2. In § 679.20, paragraphs (a)(8) and (c)(2)(ii)(A) are revised to read as follows:

#### § 679.20 General limitations.

\* \* \* \* \*

(a) \* \* \*

(8) *BSAI Atka mackerel*—(i) *Jig gear.* Vessels using jig gear will be allocated up to 2 percent of the TAC of Atka mackerel specified for the Eastern Aleutian Islands District and Bering Sea subarea, after subtraction of reserves, based on the following criteria:

(A) The amount of Atka mackerel harvested by vessels using jig gear during recent fishing years;

(B) The anticipated harvest of Atka mackerel by vessels using jig gear during the upcoming fishing year; and

(C) The extent to which the jig-gear allocation will support the development of a jig-gear fishery for Atka mackerel while minimizing the amount of Atka mackerel TAC annually allocated to vessels using jig gear that remains unharvested at the end of the fishing year.

(ii) *Other gears.* The remainder of the Atka mackerel TAC, after subtraction of the jig gear allocation and reserves, will be allocated to vessels using other authorized gear types.

(A) *Seasonal allowances.* The Atka mackerel TAC specified for each subarea or district of the BSAI will be divided equally, after subtraction of the jig gear allocation and reserves, into two seasonal allowances corresponding to the A and B seasons defined at § 679.23(e)(3).

(B) *Overages and underages.* Within any fishing year, unharvested amounts of the A season allowance will be added to the B season allowance and harvests in excess of the A season allowance will be deducted from the B season allowance.

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(ii) \* \* \*

(A) The interim specifications for pollock and Atka mackerel will be equal to the first seasonal allowance for pollock and Atka mackerel that is published in the proposed specifications under paragraph (c)(1) of this section.

\* \* \* \* \*

3. In § 679.22, paragraphs (a)(7) and (a)(8) are revised to read as follows.

#### § 679.22 Closures.

(a) \* \* \*

(7) *Steller sea lion protection areas, Bering Sea Subarea and Bogoslof*

*District*—(i) *Year-round closures.* Trawling is prohibited within 10 nm of each of the eight Steller sea lion rookeries shown in Table 4a of this part.

(ii) *Seasonal closures.* During January 1 through April 15, or a date earlier than April 15, if adjusted under § 679.20, trawling is prohibited within 20 nm of each of the six Steller sea lion rookeries shown in Table 4b of this part.

(8) *Steller sea lion protection areas, Aleutian Islands Subarea*—(i) *10-nm closures.* Trawling is prohibited within 10 nm of each of the 17 Steller sea lion rookeries shown in Table 5a of this part.

(ii) *20-nm closures.* Trawling is prohibited within 20 nm of each of the two Steller sea lion rookeries shown in Table 5b of this part.

(iii) *Western and Central Aleutian Islands critical habitat closures*—(A) *General.* Trawling is prohibited within areas designated as Steller sea lion critical habitat in the Western or Central Districts of the AI (see Table 1, Table 2, and Figure 4 to part 226 of this title) when the Regional Administrator announces by notification in the **Federal Register** that the criteria for a trawl closure in a district set out in

paragraph (a)(8)(iii)(B) of this section have been met.

(B) *Criteria for closure.* The trawl closures identified in paragraph (a)(8)(iii)(A) of this section will take effect when the Regional Administrator determines that the harvest of a seasonal allowance of Atka mackerel specified under § 679.20(a)(8)(ii)(A) reaches the following percentage identified for each year and district:

Year	Western (543) (percent)	Central (542) (percent)
1999 .....	65	80
2000 .....	57	67
2001 .....	48	46
2002 and after .....	40	40

(C) *Duration of closure.* A Steller sea lion critical habitat area trawl closure within a district will remain in effect until NMFS closes Atka mackerel to directed fishing within the same district.

(D) *CDQ fishing.* Harvesting groundfish CDQ with trawl gear is prohibited within areas designated as Steller sea lion critical habitat in the Western and/or Central Districts of the AI (see Table 1, Table 2, and Figure 4

to part 226 of this title) for an eligible vessel listed on an approved CDP after the CDQ group has harvested the percent of the annual Atka mackerel CDQ specified for the year and district at paragraph (a)(8)(iii)(B) of this section.

\* \* \* \* \*

4. In § 679.23, paragraph (e)(3) is redesignated as paragraph (e)(4) and a new paragraph (e)(3) is added to read as follows:

**§ 679.23 Seasons.**  
\* \* \* \* \*  
(e) \* \* \*

(3) *Directed fishing for Atka mackerel with trawl gear.* Subject to other provisions of this part, directed fishing for Atka mackerel with trawl gear in the Aleutian Islands Subarea is authorized only during the following two seasons:

(i) *A season.* From 0001 hours, A.l.t., January 1, through 1200 hours, A.l.t., April 15;

(ii) *B season.* From 1200 hours, A.l.t., September 1, through 1200 hours, A.l.t., November 1.

\* \* \* \* \*

5. In part 679, Table 5 is revised to read as follows:

TABLE 5.—ALEUTIAN ISLANDS SUBAREA STELLER SEA LION PROTECTION AREAS

Name of island	From		To	
	Latitude	Longitude	Latitude	Longitude
3-nm NO TRANSIT ZONES described at 227.12(a)(2) of this title.				
a. Trawling Prohibited Year-Round Within 10 nm:				
Yunaska Island .....	52° 42.0' N	170° 38.5' W	52° 41.0' N	170° 34.5' W
Kasatochi Island .....	52° 10.0' N	175° 31.0' W	52° 10.5' N	175° 29.0' W
Adak Island .....	51° 36.5' N	176° 59.0' W	51° 38.0' N	176° 59.5' W
Gramp Rock .....	51° 29.0' N	178° 20.5' W		
Tag Island .....	51° 33.5' N	178° 34.5' W		
Ulak Island .....	51° 20.0' N	178° 57.0' W	51° 18.5' N	178° 59.5' W
Semisopochnoi .....	51° 58.5' N	179° 45.5' E	51° 57.0' N	179° 46.0' E
Semisopochnoi .....	52° 01.5' N	179° 37.5' E	52° 01.5' N	179° 39.0' E
Amchitka Island .....	51° 22.5' N	179° 28.0' E	51° 21.5' N	179° 25.0' E
Amchitka Is/Column Rocks .....	51° 32.5' N	178° 49.5' E		
Ayugadak Point .....	51° 45.5' N	178° 24.5' E		
Kiska Island .....	51° 57.5' N	177° 21.0' E	51° 56.5' N	177° 20.0' E
Kiska Island .....	51° 52.5' N	177° 13.0' E	51° 53.5' N	177° 12.0' E
Buldir Island .....	52° 20.5' N	175° 57.0' E	52° 23.5' N	175° 51.0' E
Agattu Is./Gillion Pt .....	52° 24.0' N	173° 21.5' E		
Agattu Island .....	52° 23.5' N	173° 43.5' E	52° 22.0' N	173° 41.0' E
Attu Island .....	52° 54.5' N	172° 28.5' E	52° 57.5' N	172° 31.5' E
b. Trawling Prohibited Year-Round Within 20 nm:				
Seguam Island .....	52° 21.0' N	172° 35.0' W	52° 21.0' N	172° 33.0' W
Agligadak Island .....	52° 06.5' N	172° 54.0' W		

**Note:** Each rookery extends in a clockwise direction from the first set of geographic coordinates, along the shoreline at mean lower low water, to the second set of coordinates; if only one set of geographic coordinates is listed, the rookery extends around the entire shoreline of the island at mean lower low water.

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

**Fisheries of the Exclusive Economic Zone Off Alaska**

*CFR Correction*

In Title 50 of the Code of Federal Regulations, parts 600 to End, revised as

of Oct. 1, 1998, on page 440, first column, § 679.2 is corrected by adding paragraph (2) to the definition of *Catcher vessel* to read as follows:

**§ 679.2 Definitions.**

\* \* \* \* \*

*Catcher vessel* means:

(1) \* \* \*

(2) (Applicable through December 31, 1998). With respect to moratorium groundfish, as defined in paragraph (1) of this definition; with respect to moratorium crab species, a vessel that is used to catch, take, or harvest moratorium crab species that are retained on board as fresh fish product at any time.

\* \* \*

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