

relevant information required. The proposal may be submitted on a form supplied by the Program Office. However, the proposal should be submitted in at least two sections:

(a) Investigation and Technical Plan; and

(b) Management and Cost Plan as described in 1872.705-2.

1872.705 [Amended]

13. Amend Part VI of section 1872.705 by removing "Appendix C" in paragraph (b)(5) and adding "Appendix B" in its place and removing "General Instructions and Provisions" in paragraphs (d) and (e) and adding "Guidelines for Proposal Preparation" in its place.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 001213348-0366-02; I.D. 121100A]

RIN 0648-AO44

Fisheries of the Exclusive Economic Zone Off Alaska; Removal of Groundfish Closure

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

ACTION: Final rule.

SUMMARY: NMFS revises an existing closure to commercial fishing for Pacific cod within critical habitat designated for Steller sea lions in the exclusive economic zone (EEZ) off Alaska west of 144° W. long. through December 31, 2000. The revision of the existing closure is necessary to permit relatively small-scale, fixed-gear fisheries for Pacific cod to continue for a limited period of time. The revised closure is intended to ensure that Steller sea lions are adequately protected based on conclusions in a biological opinion issued November 30, 2000, while mitigating short-term social and economic effects on fixed-gear fisheries for Pacific cod.

DATES: Effective December 22, 2000 through December 31, 2000.

ADDRESSES: Copies of the Endangered Species Act, Section 7 Consultation Biological Opinion and Incidental Take Statement on Authorization of the

Bering Sea and Aleutian Islands groundfish fisheries based on the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Authorization of the Gulf of Alaska groundfish fisheries, based on the Fishery Management Plan for Groundfish of the Gulf of Alaska, including the reasonable and prudent alternative (BiOp), may be obtained by contacting the Alaska Region, NMFS, P.O. Box 21668, Juneau, AK, 99802, or Room 401 of the Federal Building, 709 West 9th Street, Juneau, AK. The 2000 BiOp is also available on the Alaska Region home page at <http://www.fakr.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Jay Ginter, 907-586-7228 or jay.ginter@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the U.S. groundfish fisheries in the EEZ of the Bering Sea and Aleutian Islands Management Area (BSAI) and Gulf of Alaska (GOA) under the fishery management plans (FMPs) for groundfish in the respective areas. The North Pacific Fishery Management Council (Council) prepared, and NMFS approved, the FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations implementing the FMPs appear at 50 CFR part 679. General regulations governing U.S. fisheries appear at 50 CFR part 600.

NMFS also has statutory authority to promulgate regulations governing the groundfish fisheries under the Endangered Species Act (ESA), 16 U.S.C. 1531 *et seq.* The ESA requires that each Federal agency ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered or threatened species or to result in the destruction or adverse modification of critical habitat of such species.

On August 7, 2000, the United States District Court for the Western District of Washington issued an order that granted a motion for a partial injunction on the North Pacific groundfish fisheries. *Greenpeace v. NMFS*, No. C98-4922 (W.D. Wash.). This motion requested injunctive relief until NMFS issues a legally adequate BiOp addressing the combined, overall effects of the North Pacific groundfish fisheries on Steller sea lions and their critical habitat pursuant to the ESA. The population of Steller sea lions west of 144° W. long. (hereafter western population) is listed under the ESA as endangered, while the

population of Steller sea lions east of 144° W. long. is listed as threatened.

To comply with the Court's August 7, 2000, Order, NMFS, pursuant to the ESA, issued an interim rule prohibiting fishing for groundfish with trawl gear in Steller sea lion critical habitat (65 FR 49766, August 15, 2000). The critical habitat areas closed by the interim rule were defined in regulations codified at 50 CFR 226.202, and in Tables 1 and 2 to 50 CFR part 226.

On November 30, 2000, NMFS issued a BiOp, which is comprehensive in scope and considers the fisheries and the overall management framework established by the BSAI and GOA FMPs. After analyzing the cumulative, direct and indirect effects of the groundfish fisheries authorized by the BSAI and GOA FMPs on listed species, NMFS concluded in the BiOp that the fisheries for pollock, Pacific cod, and Atka mackerel, as currently prosecuted, jeopardize the continued existence of the western population of Steller sea lions and adversely modify their critical habitat. NMFS reached this conclusion based on information that the pollock, Pacific cod, and Atka mackerel fisheries and the Steller sea lions compete for the same species, that this competition causes reduced availability of prey for the Steller sea lions, that reduced availability of prey leads to nutritional stress, and that nutritional stress, especially of juveniles and to a lesser extent adult females, is the leading hypothesis to explain the continued decline of the western population of Steller sea lions.

On December 5, 2000, the United States District Court for the Western District of Washington issued an order dissolving the injunction issued on August 7, 2000. Based on that Order, NMFS issued a final rule on December 14, 2000 (65 FR 79784, December 20, 2000) revoking the closure of all groundfish trawl fishing in designated critical habitat that was published on August 15, 2000 (65 FR 49766). However, because the BiOp concluded that the fisheries for Pacific cod, along with pollock and Atka mackerel, as currently prosecuted, jeopardize the continued existence of the western population of Steller sea lions and adversely modify their critical habitat, and because only Pacific cod was still available for harvest in certain fisheries, the December 20, 2000, final rule prohibited commercial fishing for Pacific cod in designated critical habitat through December 31, 2000. Commercial fisheries for pollock and Atka mackerel were not included in the final rule because fisheries for those species already were prohibited through

December 31, 2000, pursuant to other regulatory requirements.

This final rule revises the December 14, 2000, final rule by permitting directed fishing for Pacific cod by vessels using non-trawl gear and continuing the prohibition on directed fishing for Pacific cod by vessels using trawl gear in designated critical habitat. This action is being taken to allow three previously authorized fisheries for Pacific cod with non-trawl gear to continue through the end of the fishing year (i.e., December 31, 2000) or until otherwise closed sooner due to attainment of catch or bycatch limits. The three previously authorized Pacific cod fisheries include: (1) fishing in the BSAI under the Community Development Quota (CDQ) Program, (2) fishing in the BSAI by vessels less than 60 ft (18.3 m) length overall (LOA), and (3) fishing in the GOA by vessels using pot gear for processing by the offshore component.

The number of vessels that were participating in these three fisheries and the remaining catch quota of Pacific cod to be harvested is small relative to the BSAI and GOA groundfish fisheries generally. Based on current participation and harvest information, the CDQ fishery could have about 10 vessels using hook-and-line gear to harvest a remaining quota of 1,800 mt of Pacific cod in critical habitat in the BSAI. The under 60 ft (18.3 m) LOA fishery could have about 4 vessels using non-trawl gear to harvest a remaining quota of 1,200 mt of Pacific cod in critical habitat in the BSAI. Through December 15, 2000, this fishery harvested only 62 mt of this quota and, based on previous harvest rates, NMFS anticipates that another 33 mt will be harvested before January 1, 2001. No vessels were operating in the GOA

“offshore” fishery for Pacific cod as of December 15, 2000. Only vessels using pot gear can operate in this fishery because restrictions on Pacific halibut bycatch prevent vessels using hook-and-line gear from participating in the GOA “offshore” fishery for Pacific cod through December 31, 2000. Hence, these are relatively small-scale fisheries and NMFS has determined that allowing them to continue within designated critical habitat would not contravene the Reasonable and Prudent Alternative described in Section 9 of the BiOp. In addition, this action expires on December 31, 2000, thereby severely limiting the potential effect of this action on Steller sea lions.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this final rule is consistent with the Court’s Order and is authorized by the ESA.

Because prior notice and opportunity for public comment are not required for this final 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.*, do not apply to this action.

This final rule has been determined to be not significant under section 3(f)(1) of E.O. 12866.

The AA, under 5 U.S.C. 553(b)(B), finds there is good cause to waive providing prior notice and an opportunity for public comment for the partial removal of the existing closure. This removal stems from a United States District Court Order dissolving, as of December 5, 2000, the injunction requiring the closure. Delaying this action to provide prior notice and opportunity for comment would cause unnecessary economic harm to the affected fishermen and thus would be

contrary to the public interest. Because this action relieves a restriction, under 5 U.S.C. 553(d)(1) it is not subject to a 30-day delay in the effective date.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: December 22, 2000.

Penelope D. Dalton

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set forth 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 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; Title II of Division C, Pub. L. 105-277; Sec. 3027, Pub. L. 106-31, 113 Stat. 57; 16 U.S.C. 1540(f).

2. In § 679.22, paragraph (k) is removed and reserved and paragraph (l) is added, effective through December 31, 2000, to read as follows:

§ 679.22 Closures.

* * * * *

(k) *Closure of critical habitat.* (Applicable through December 31, 2000.) Vessels using trawl gear within Steller sea lion critical habitat within the EEZ and west of 144° W. long., as such critical habitat is defined by regulations codified at 50 CFR 226.202 and Tables 1 and 2 to 50 CFR part 226, must not retain at any time amounts of Pacific cod that exceed the maximum retainable bycatch amounts at § 679.20(e) and (f).

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