

distinct population segment (DPS) of Pacific salmon and steelhead (*Oncorhynchus* spp.) is threatened or endangered species under the ESA. NMFS has determined that DPSs are represented by ESUs of Pacific salmon and steelhead and treats ESUs as a "species" under the ESA (56 FR 58612, November 20, 1991). To date, NMFS has completed comprehensive coastwide status reviews of Pacific salmonids and identified 51 ESUs in California, Oregon, Washington, and Idaho. Five of these ESUs are currently listed under the ESA as endangered, and 21 ESUs are listed as threatened.

#### Petition Received

On March 18, 2002, NMFS received a petition from the California State Grange (Grange petition) to delist coho salmon in Siskiyou County, California. These fish are part of a larger ESU of SONCC coho salmon. The SONCC coho ESU was listed as a threatened species on May 6, 1997 (62 FR 24588). This ESU includes all naturally spawned populations of coho salmon in coastal streams between Cape Blanco, Oregon, and Punta Gorda, California. NMFS has recently committed to update the status of 25 ESUs of Pacific salmon and steelhead, including the SONCC coho ESU (67 FR 6215 February 11, 2002).

The Grange petition is a duplicate of a petition received by NMFS on September 19, 2001, from the Interactive Citizens United (ICU). NMFS rejected the ICU petition in a notice published in the **Federal Register** on February 11, 2002 (67 FR 6215), finding that the petition failed to present substantial scientific or commercial information to suggest that delisting may be warranted.

#### Petition Finding

The Grange petition seeks delisting of a portion of the threatened SONCC coho salmon ESU (i.e., fish in Siskiyou County), an action not enabled by the ESA. NMFS having determined that DPSs are represented by ESUs of Pacific salmon and steelhead, treats ESUs as species under the ESA (56 FR 58612, November 20, 1991). The ESA authorizes the listing, delisting, or reclassification of a species, subspecies, or DPS, as defined under the Act (50 CFR 424.02(k)). However, the ESA does not authorize the delisting of one subset or portion of a listed species/subspecies/DPS (50 CFR 424.11(d)). The petition lacks a coherent narrative detailing the justification for the recommended measure. Additionally, it does not present substantial scientific or commercial information that the SONCC ESU is recovered, extinct, or that the data or the interpretation in the original

listing determination were in error. Furthermore, the Grange petition does not provide status data for the listed ESU over all or a significant portion of its range, hence the data provided are not instructive in the context of the ESU's status as a whole. The data provided in the petition are restricted to the Iron Gate Hatchery population, a population which is not part of the listed ESU (62 FR 24588 May 6, 1997). Therefore, NMFS determines that the petition does not present substantial scientific or commercial information to indicate that the petitioned action may be warranted based on the criteria specified in 424.11(d) and 424.14(b)(2).

#### Re-opening of Comment Period

Several comments and requests have been received to extend the comment period for the February 11, 2002, petition findings (67 FR 6215) and the associated status review updates for 25 Pacific salmon and steelhead ESUs. The comment period closed on April 12, 2002. Accordingly, NMFS is re-opening the comment period for 60 days to allow adequate opportunity for public comment (see **DATES** and **ADDRESSES**). NMFS is seeking information, comments, and/or data concerning the petition findings or the status review updates. The following are the 25 ESUs for which NMFS is conducting status review updates: Ozette lake sockeye (*O. nerka*) ESU; Sacramento River winter-run, Snake River spring/summer, Snake River fall, Puget Sound, Upper Willamette River, Lower Columbia River, Upper Columbia River spring-run, Central Valley spring-run, and California Coastal chinook (*O. tshawytscha*) ESUs; Central California Coast, Southern Oregon/Northern California Coasts, Oregon Coast, and Lower Columbia/Southwest Washington coho ESUs; Hood Canal summer-run, and Columbia River chum (*O. keta*) ESUs; and South-Central California, Central California Coast, Upper Columbia River, Snake River Basin, Lower Columbia River, California Central Valley, Upper Willamette River, Middle Columbia River, and Northern California steelhead (*O. mykiss*) ESUs. NMFS is soliciting such pertinent information on naturally spawned and hatchery populations within these ESUs as data on population abundance, recruitment, productivity, escapement, and reproductive success (e.g. spawner-recruit or spawner-spawner survivorship, smolt production estimates, fecundity, and ocean survival rates); historical and present data on hatchery fish releases, outmigration, survivorship, returns, straying rates, replacement rates, and reproductive

success in the wild; data on age structure and migration patterns of juveniles and adults; meristic, morphometric, and genetic studies; and spatial or temporal trends in the quality and quantity of freshwater, estuarine, and marine habitats. NMFS is particularly interested in such information for the period since the most recent status review for a given ESU (see 67 FR 6215, February 11, 2002, for a summary, by ESU, of the last status review conducted and the most recent data used). Status reviews for the majority of the 25 ESUs to be reviewed were conducted in 1997–2000. However, the status of Sacramento River winter-run chinook, and Central California coast coho were last assessed in 1994 and 1995, respectively. Comments submitted during the initial public comment period need not be re-submitted. NMFS will consider all information, comments, and recommendations received during the extended public comment period.

#### References

The complete citations for the references used in this document can be obtained by contacting NMFS or via the Internet (see **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**).

**Authority:** 16 U.S.C. 1531 *et seq.*

Dated: June 7, 2002.

**William T. Hogarth,**

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

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#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

##### 50 CFR Part 679

[Docket No. 020522128–2128–01; I.D. 050602B]

**RIN 0648–AP79**

##### Fisheries of the Exclusive Economic Zone Off Alaska; Prohibition of Non-pelagic Trawl Gear in Cook Inlet in the Gulf of Alaska

**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 60 to the Fishery Management Plan for Groundfish of the Gulf of Alaska Area

(FMP). This action would prohibit the use of non-pelagic trawl gear in Cook Inlet. This action is necessary to address bycatch avoidance objectives in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), to mirror existing regulations in State waters of Cook Inlet, and is intended to further the goals and objectives of the FMP.

**DATES:** Comments on the proposed rule must be received by July 29, 2002.

**ADDRESSES:** Comments may be mailed to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Gravel-Durall. Hand delivery or courier delivery of comments may be sent to the Federal Building, 709 West 9th St., Room 453, Juneau, AK 99801. Comments also may be sent via facsimile (fax) to (907) 586-7465. Comments will not be accepted if submitted via e-mail or internet. Copies of Amendment 60 to the FMP and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action are available from NMFS at the above address, or by calling the Alaska Region, NMFS, at (907) 586-7228.

**FOR FURTHER INFORMATION CONTACT:** Glenn Merrill, (907) 586-7228.

**SUPPLEMENTARY INFORMATION:** The domestic groundfish fisheries of the Gulf of Alaska (GOA) are managed by NMFS under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Act. Regulations governing the groundfish fisheries of the GOA appear at 50 CFR, parts 600 and 679.

### Background and Need for Action

This action is designed to comply with the Magnuson-Stevens Act, which emphasizes the importance of reducing bycatch to maintain sustainable fisheries. National Standard 9 of the Magnuson-Stevens Act mandates that conservation and management measures shall minimize bycatch, to the extent practicable, and shall minimize mortality of bycatch where bycatch cannot be avoided.

More specific authority for the proposed rule is provided by section 303(b)(2) of the Magnuson-Stevens Act. It states: "Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, may...designate zones where, and periods when, fishing...shall be permitted only ...with specified types and quantities of fishing gear."

The objective of Amendment 60, as adopted by the Council in September 2000, is to reduce bycatch of crab in the exclusive economic zone (EEZ) of Cook Inlet in the GOA groundfish fishery. The proposed action would prohibit the use of non-pelagic trawl gear in the EEZ of Cook Inlet in an area north of a line from Cape Douglas (58°51.10' N. lat.) to Point Adam (59°15.27' N. lat.).

### Status of Crab Resources in Cook Inlet

Historically, Cook Inlet supported significant Tanner crab (*Chionoecetes bairdi*) and red king crab (*Paralithodes camtschaticus*) fisheries. These crab fisheries occurred in State of Alaska (State) and Federal waters, and a number of the most productive fishing grounds were within the Federal waters of Lower Cook Inlet. The earliest recorded red king crab fishery in Cook Inlet occurred in 1937. The proximity to ports encouraged the development of this fishery and by the mid-1950s annual harvests increased. The peak harvest of over 8 million lb (3,629 mt) of red king crab occurred during the 1962-1963 season. The fishery remained productive through the mid-1970s then productivity declined. In 1982, the fishery was closed and has remained closed.

The commercial Tanner crab fishery in Cook Inlet began in the mid-1960s as a fishery incidental to the more lucrative red king crab fishery. Harvests in the Tanner crab fishery of Lower Cook Inlet peaked in the early 1970s at over 4 million lb (1,814 mt) then declined gradually until the fishery closed in 1995. The fishery has remained closed. These harvest patterns are similar to other Tanner and red king crab fisheries in the Gulf of Alaska.

Fishery surveys conducted by the Alaska Department of Fish and Game (ADF&G) in Cook Inlet throughout the early and mid-1990s indicated that both Tanner and red king crab stocks remained at historically low levels of abundance. In response to concerns by fishermen and ADF&G biologists about the potential impacts of non-pelagic trawl gear on crab bycatch and habitat, the Alaska Board of Fisheries (Board) prohibited the use of non-pelagic trawl gear in State waters encompassing primary crab habitat in 1990. In 1996, the Board extended that prohibition to all of the State waters of Cook Inlet and in many other areas of the Gulf of Alaska. In 1999, based on continuing concerns about the impacts of trawl gear on crab bycatch and habitat, the Board further extended State water closures to non-pelagic trawl gear in additional areas of the GOA, particularly in State waters in the Kodiak region.

Recent surveys in Cook Inlet in 1999 and 2001 indicate that Tanner crab stocks may be improving. These indications are highly uncertain at this point. Surveys conducted in other regions of the GOA indicate that some Tanner crab stocks may be improving. ADF&G opened limited Tanner crab fisheries in nearby Kodiak in 2001 and 2002, and the South Alaska Peninsula in 2001.

Although the State of Alaska manages crab fisheries in the GOA EEZ in the absence of Federal regulations, the Secretary retains management authority for groundfish fisheries in the GOA EEZ. The Board does not have authority to manage groundfish fisheries in the EEZ that may affect crab stocks. In June 1998, ADF&G submitted a proposal to the Council to prohibit the use of non-pelagic trawl gear in the EEZ of Cook Inlet. ADF&G submitted this proposal to effectively extend the existing State water prohibition on non-pelagic trawling to protect crab stocks that may occur in the EEZ of Cook Inlet. The Council adopted this proposal as Amendment 60 to the GOA FMP in September 2000.

### Effects of Non-Pelagic Trawl Gear on Crab Resources

Non-pelagic trawl gear may catch crab incidental to its target species. The amount of crab incidental catch or bycatch by non-pelagic trawl gear varies depending on the abundance of crab stocks, the type of trawl gear used, the type of substrate on which the gear is fishing, and the target species of the trawl gear. Non-pelagic trawl gear can impact crab populations in several ways. Non-pelagic trawl gear can cause direct mortality of crab through bycatch. Although numerous studies have been conducted on the impact of non-pelagic trawl gear on crab, the level of bycatch mortality varies. NMFS has restricted the use of non-pelagic trawl gear in several areas of the GOA that have historically supported crab fisheries where crab bycatch is relatively high compared to other areas (e.g., Amendment 26 to the GOA FMP, (58 FR 503, January 6, 1993)). NMFS has implemented similar measures in the Bering Sea and Aleutian Islands management area (BSAI) groundfish fisheries in regions that support crab fisheries with high incidence of crab bycatch (e.g., Amendment 37 to the BSAI FMP, (61 FR 65985, December 12, 1996)).

Non-pelagic trawl gear also may cause indirect mortality of crab. As non-pelagic trawl gear passes over the ocean floor, it may kill or damage crab that come into contact with the gear. Few

studies exist on the potential impacts of this indirect mortality on crab resources, but recent research described in the EA (see **ADDRESSES**) indicates that this indirect bycatch mortality may be less than 10 percent of the crabs that encounter the gear.

Finally, non-pelagic trawl gear may alter the benthic substrate so that it is less favorable to crab survival. Numerous studies exist on the potential impact of trawl gear on benthic habitats. Generally, these studies indicate that non-pelagic gear can damage sedentary megafauna (e.g., sponges, corals), reduce the overall diversity of sedentary organisms, smooth the surface of the ocean floor, and resuspend sediment near the ocean floor. Research outside of Alaska cited in the EA indicates that crab populations have a mixed response to this disturbance and some crab populations may benefit whereas others may not. No study has directly assessed the impacts of non-pelagic trawl gear on crab habitat and crab populations in Alaska. The potential impact of indirect mortality due to gear interactions or habitat modification on Tanner and red king crab populations in Cook Inlet is unknown.

#### Groundfish Fisheries in Cook Inlet

Groundfish fisheries in Cook Inlet have expanded in the past 10 years. Historically, non-pelagic trawl gear has been little used in Cook Inlet. According to ADF&G data, from 1987-2000, only two vessels have used non-pelagic trawl gear in Cook Inlet—one vessel in 1990, and another vessel in 1995. Both of these vessels harvested a small amount of groundfish. No non-pelagic trawling has occurred in Cook Inlet since 1995.

Although a Pacific cod fishery developed in the EEZ of Cook Inlet, and has expanded since 1995, most of the harvest from this fishery comes from pot and longline gear. Despite sporadic interest by some fishermen to use non-pelagic trawl gear in the Cook Inlet EEZ, no one has recently used this gear type. The State has managed a Pacific cod fishery for pot and jig gears in the State waters of Cook Inlet since 1997. Harvests in the State water Pacific cod fishery are well below the guideline harvest level allocated to the fishery in each of the past five years.

#### Effect of this Action

The proposed measure would prevent potential adverse effects of non-pelagic trawl crab bycatch on low populations of Tanner and red king crab stocks in Cook Inlet. Although no crab fisheries currently exist in Cook Inlet and no recent non-pelagic trawling has occurred, this proposed action would

prevent the development of a non-pelagic trawl gear fishery in an area that has supported a productive crab fishery. This proposed action would have no negative effect on existing levels of crab bycatch or non-pelagic trawling given the recent, though uncertain, indications that Cook Inlet crab stocks may be improving and the negligible use of non-pelagic trawl gear in this area.

Although non-pelagic trawling may have an adverse effect on some sedentary megafauna and certain types of substrate, the potential impacts of non-pelagic trawl gear on crab populations are unknown. Given the negligible use of non-pelagic trawl gear in Cook Inlet, this proposed action would not be expected to have any impacts on crab habitat or benthic habitat in general. This action is a proactive measure to limit potential crab bycatch from non-pelagic fisheries that may develop in the future. Some vessel owners have indicated an interest in maintaining these areas open for non-pelagic trawling, although no effort has occurred recently. The proposed measure would reduce potential bycatch on crab resources currently at relatively low abundance, mirror existing regulations in State waters of Cook Inlet, and minimize potential adverse effects of non-pelagic trawl gear on the benthic habitat for crab and other groundfish stocks. This proposed rule would implement these benefits without adversely affecting any existing non-pelagic trawl gear fisheries.

#### Classification

At this time, NMFS has not determined that the amendment this proposed rule would implement is consistent with the national standards 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.

A notice of availability (NOA) of the FMP amendment was published on May 14, 2002 (67 FR 34424), with comments on the FMP amendment invited through July 15, 2002. Written comments may address the FMP amendment, the proposed rule, or both, but must be received by July 15, 2002, to be considered in the decision to approve or disapprove the FMP amendment.

The Council and NMFS prepared an IRFA that describes the impact this proposed rule, if adopted, would have on small entities. Analysis of catch data from 1987-2000 indicates that few, if any, vessels would be adversely affected by the Council's preferred alternative. One vessel used non-pelagic trawl gear in the EEZ of Cook Inlet in 1990 and

another vessel in 1995. The specific amounts of harvest from these two vessels cannot be released due to State confidentiality requirements. However, the ex-vessel value of Pacific cod from both of these vessels was less than \$10,000. This proposed action would not have any adverse impact on existing fishing vessels, given the negligible use of non-pelagic trawl gear in Cook Inlet, the availability of other more productive non-pelagic trawl fisheries in other areas of the GOA, pot and jig gear fisheries for Pacific cod in the State waters of Cook Inlet, and a pot and longline gear fishery for Pacific cod in the EEZ of Cook Inlet. Numerous fishing opportunities exist for vessels within Cook Inlet, or outside of Cook Inlet if non-pelagic trawl gear is used. Nearby fishery-dependent communities and recreational fishermen would not be affected by the non-pelagic trawl gear ban.

Likewise, this action is not expected to have any economic benefit for small entities, because no Tanner or red king crab fishery currently exists in Cook Inlet. This action may improve the prospects for rebuilding crab stocks. However, the potential economic benefits of this possibility are not now foreseeable. Although NMFS does not anticipate that this proposed rule would have a significant impact on a substantial number of small entities, it is unable to state this with certainty and, therefore, prepared an IRFA (see **ADDRESSES**).

No new reporting or recordkeeping requirements are imposed by this proposed rule.

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

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

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: June 7, 2002.

**William T. Hogarth,**  
Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

For the reasons discussed 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.*, 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 (b)(7) is added to read as follows:

**§ 679.22 Closures.**

(b) \* \* \*

(7) Cook Inlet. No person may use a non-pelagic trawl in waters of the EEZ of Cook Inlet north of a line from Cape

Douglas (58°51.10' N lat.) to Point Adam (59°15.27' N. lat.).

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