

A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC, 20554, (202) 863-2893, facsimile (202) 863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

The Audio Division further allots, at the request of Robert Fabian, Channel 297A at Leedey, Oklahoma, as the community's first local aural transmission FM service. See 68 FR 15143, March 28, 2003. Channel 297A can be allotted to Leedey, Oklahoma, in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.4 km (5.8 miles) northwest of Leedey. The coordinates for Channel 297A at Leedey, Oklahoma, are 35-56-36 North Latitude and 99-23-48 West Longitude. A filing window for Channel 297A at Leedey, Oklahoma, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent Order.

The Audio Division further allots, at the request of Maurice Salsa, Channel 283A at Memphis, Texas, as the community's third local aural transmission service. See 68 FR 15143, March 28, 2003. Channel 283A can be allotted to Memphis, Texas, in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.7 km (5.4 miles) north of Memphis. The coordinates for Channel 283A at Memphis, Texas, are 34-41-14 North Latitude and 100-27-03 West Longitude. A filing window for Channel 283A at Memphis, Texas, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent Order.

#### List of Subjects in 47 CFR part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

#### PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

#### § 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Leedey, Channel 297A.

■ 3. Section 73.202(b), the Table of FM Allotments under Texas, is amended by

adding Channel 283A at Memphis, and Silverton, Channel 252A.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 030314059-3326-03; I.D. 062003A]

**RIN 0648-AQ48**

#### Fisheries of the Exclusive Economic Zone (EEZ) Off Alaska; Salmon Fisheries off the Coast of Alaska

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule to correct the definition of the area in which salmon fishing regulations implementing the Fishery Management Plan for the Salmon Fisheries in the EEZ off the Coast of Alaska (Salmon FMP) apply, to remove the words "high seas" wherever they appear in the salmon fishing regulations, and to remove an obsolete reference to the North Pacific Fisheries Act of 1954 from the salmon fishing regulations. This action is necessary to fully implement Amendment 3 to the Salmon FMP. The intended effect of this action is regulatory consistency with the provisions of Amendment 3 to the Salmon FMP and improved conservation and management of the salmon fisheries off the coast of Alaska.

**DATES:** Effective February 6, 2004.

**ADDRESSES:** Copies of the Regulatory Impact Review (RIR) may be obtained from the Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 1668, Attn: Lori Durall, 907-586-7247.

**FOR FURTHER INFORMATION CONTACT:** Patsy A. Bearden, 907-586-7228 or e-mail at [patsy.bearden@noaa.gov](mailto:patsy.bearden@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The salmon fishery in the EEZ off the Coast of Alaska is managed pursuant to the Salmon FMP prepared by the North Pacific Fishery Management Council (Council) under the authority of the

Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* Implementing regulations originally appeared at 50 CFR part 674.

The original Salmon FMP provided for the management of the salmon fisheries throughout the EEZ off the coast of Alaska except for the extreme western part of the EEZ west of 175° E. long., near Attu Island. This extreme western part of the EEZ was excluded because this area was then under the jurisdiction of the International Convention for the High Sea Fisheries of the North Pacific Ocean. The original name of the salmon FMP was the "Fishery Management Plan for the High Seas Salmon Fishery off the Coast of Alaska East of 175 Degrees East Longitude."

Over time, the international regime affecting salmon fisheries changed and the Council revisited its salmon management policies. In 1989, the Council adopted Amendment 3 to the FMP which, among other things, renamed the FMP to "Fishery Management Plan for the Salmon Fisheries in the EEZ off the Coast of Alaska," deferred regulation of the salmon fisheries in the EEZ to the State of Alaska, and extended the geographic jurisdiction of the Salmon FMP over waters of the EEZ west of 175° E. long. The Secretary of Commerce (Secretary) approved Amendment 3 to the FMP in 1990, and published a final rule on November 15, 1990 (55 FR 47773), implementing associated measures and removing all the specific management measures from 50 CFR part 674. The 1990 implementing regulations inaccurately omitted both the new title of the FMP and the extension of the geographic jurisdiction of the FMP. No public comment was received on this or on any of the other changes made by Amendment 3, and the entire amendment was non-controversial.

In compliance with required consolidation of all Federal fishery regulations pursuant to President Clinton's Regulatory Reform Initiative, NMFS combined all existing fisheries regulations for the EEZ off Alaska, including part 674, into a new 50 CFR part 679 (62 FR 19686, April 23, 1997). This final rule recodified the two regulatory provisions that NMFS erroneously failed to revise in its 1990 rulemaking that implemented Amendment 3. Moreover, NMFS erred again in the regulatory consolidation by redefining the "High Seas Salmon Management Area" as "the portion of the EEZ off Alaska east of 175° E. long." This new error reinstated the definition of the Salmon FMP management area

effective prior to approval of Amendment 3 by eliminating waters west of 175 degrees east longitude from the management area. Consequently, the current regulations implementing the Salmon FMP fail to give regulatory effect to the expansion of geographic jurisdiction adopted in Amendment 3.

NMFS published a correction notice in the **Federal Register** on July 1, 2002 (67 FR 44093), to change the name of the Salmon FMP as it appears in 50 CFR 679.1(i) to be consistent with the Salmon FMP as amended and approved by the Secretary.

NMFS published a proposed rule in the **Federal Register** on July 23, 2003 (68 FR 43483), which described the proposed regulatory amendment to correctly describe the geographic jurisdiction of the Salmon FMP, to remove the words "high seas" wherever they appear in the salmon fishing regulations, and to remove an obsolete reference to the North Pacific Fisheries Act of 1954 from the salmon fishing regulations. Comments were invited from the public through August 22, 2003. NMFS received one comment letter on the proposed rule which is summarized below:

*Comment:* NMFS approved the Salmon FMP in 1979 to implement the Federal Government's authority over the salmon troll fishery off the coast of Southeast Alaska. The troll fishery had previously been managed by the State of Alaska, and a significant amount of the effort occurred on the Fairweather Grounds, in what was then called the Fishery Conservation Zone (FCZ), now the EEZ. The primary regulatory provision of the Salmon FMP was establishment of a federal permit system, which is now codified at 50 CFR 679.4(h). When the Salmon FMP was amended in 1990, it expressly stated in Section 2.2.2 that fishing in three "historical" net fisheries managed by the State of Alaska pursuant to the North Pacific Fisheries Act and 50 CFR part 210 was not subject to the prohibition on fishing in the West Area.

Appendix C of the Salmon FMP elaborated this intent and delineated the boundaries of the three fisheries at False Pass (South Peninsula), Cook Inlet, and Copper River. The regulations implementing the amended Salmon FMP captured this intent in a provision now codified at 50 CFR 679.7(h)(1), which provides that it is unlawful to fish for salmon "in violation of the North Pacific Fisheries Act of 1954." The inference is that fishing in compliance with the North Pacific Fisheries Act that is, in the three "historic" net fisheries that technically extend into the EEZ but which are

managed by the State of Alaska is not prohibited by the Federal salmon regulations.

In the proposed rule, NMFS proposed to remove § 679.7(h)(1) and delete the reference to the North Pacific Fisheries Act. This would have the unintended consequence of foreclosing fishing that the Salmon FMP expressly authorizes in the three net fisheries identified in section 2.2.2 and Appendix C. Without the reference to the North Pacific Fisheries Act, NMFS is left with the language of 50 CFR § 679.3(f)(3), which states, in part, "Because no commercial fishing for salmon is allowed in the EEZ west of Cape Suckling, all commercial salmon fishing west of Cape Suckling must take place in Alaska's territorial sea and, consequently, is subject to Alaska's management authority." This sentence in § 679.3(f)(3) is not accurate in view of Section 2.2.2 of the Salmon FMP, but since it is only descriptive and not proscriptive it does not operate to foreclose fishing that currently is allowed under the Salmon FMP and § 679.7(h)(1). The exemption for the three historical net fisheries may be less clear in the absence of § 679.7(h)(1). The commenter makes suggestions for changes to the final rule regulatory text to ensure that fishing for salmon in the three net fishing areas is not prohibited.

NMFS agrees with the commenter that the proposed rule would have resulted in the unintended prohibitions of fishing for salmon in the three historical fisheries. NMFS makes the suggested changes to the final rule implementing the Salmon FMP at § 679.3(f) and § 679.7(h)(2).

#### Classification

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule does not have a significant economic impact on a substantial number of small entities. This final rule extends the jurisdiction of the Salmon FMP to the EEZ waters west of 175° E. long. This final rule will have no effect on any small entities because there has not been any domestic salmon fishing in these waters for 40 years, and NMFS expects no salmon fishing to develop in these waters in the foreseeable future. No comments were received regarding the economic impact of the final rule. As a result, a regulatory flexibility analysis was not prepared.

NMFS is aware of no existing relevant Federal rules which duplicate, overlap, or conflict with this final rule.

This regulation does not impose new recordkeeping or reporting requirements on the regulated small entities.

The legislative authority for this action is the Magnuson-Stevens Fishery Conservation and Management Act, Public Law 94 265, 16 U.S.C. 1801 (Magnuson-Stevens Act).

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

Alaska, Fisheries, International organizations, Recordkeeping and reporting.

Dated: December 31, 2003.

#### Rebecca Lent,

*Deputy Assistant Administrator for Regulatory Programs, 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 50 CFR part 679 continues to read as follows:

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

■ 2. In § 679.1, paragraph (i) is revised to read as follows:

#### § 679.1 Purpose and scope.

\* \* \* \* \*

(i) *Fishery Management Plan for the Salmon Fisheries in the EEZ off the Coast of Alaska (Salmon FMP).* (1) Regulations in this part govern fishing for salmon by fishing vessels of the United States in the Salmon Management Area.

(2) State of Alaska laws and regulations that are consistent with the Salmon FMP and with the regulations in this part apply to vessels of the United States that are fishing for salmon in the Salmon Management Area.

\* \* \* \* \*

■ 3. In § 679.2, the definition for "High Seas Salmon Management Area" is removed; the definitions for "Commercial fishing," paragraph (1); "Optimum yield" paragraph (1); and "Personal use fishing," are revised and the definition for "Salmon Management Area" is added, alphabetically to read as follows:

#### § 679.2 Definitions.

\* \* \* \* \*

*Commercial fishing* means:

(1) For purposes of the salmon fishery, fishing for salmon for sale or barter.

\* \* \* \* \*

*Optimum yield* means:

(1) With respect to the salmon fishery, that amount of any species of salmon

that will provide the greatest overall benefit to the Nation, with particular reference to food production and recreational opportunities, as specified in the Salmon FMP.

\* \* \* \* \*

*Personal use fishing* means, for purposes of the salmon fishery, fishing other than commercial fishing.

\* \* \* \* \*

*Salmon Management Area* means the waters of the EEZ off the coast of Alaska (see Figure 23 to part 679), including parts of the North Pacific Ocean, Bering Sea, Chukchi Sea, and Beaufort Sea. The Salmon Management Area is divided into a West Area and an East Area with the border between the two at the longitude of Cape Suckling (143°53'36" W):

(1) The West Area is the area of the EEZ off the coast of Alaska west of the longitude of Cape Suckling (143°53'36" W). It includes the EEZ in the Bering Sea, Chukchi Sea, and Beaufort Sea, as well as the EEZ in the North Pacific Ocean west of Cape Suckling.

(2) The East Area is the area of the EEZ off the coast of Alaska east of the longitude of Cape Suckling (143°53'36" W).

\* \* \* \* \*

■ 4. In § 679.3, paragraph (f)(5) is removed; paragraph (f)(4) is redesignated as (f)(5); paragraph (f)(3) is revised; and

new paragraph (f)(4) is added to read as follows:

**§ 679.3 Relation to other laws.**

\* \* \* \* \*

(f) *Domestic fishing for salmon.*

\* \* \* \* \*

(3) The Salmon Fishery east of Cape Suckling is administered in close coordination with ADF&G's administration of the State of Alaska's regulations governing the salmon troll fishery off Southeast Alaska. For State of Alaska regulations specifically governing the salmon troll fishery, see 5 Alaska Administrative Code 30 (Yakutat Area), and 5 Alaska Administrative Code 33 (Southeastern Alaska Area).

(4) Commercial fishing for salmon in the EEZ west of Cape Suckling is not allowed except in three net fisheries managed by the State of Alaska as described in Section 2.2.2 and Appendix C of the Salmon FMP. For State of Alaska regulations governing these fisheries, see 5 Alaska Administrative Code 09 (Alaska Peninsula), 5 Alaska Administrative Code 21 (Cook Inlet), and 5 Alaska Administrative Code 24 (Prince William Sound).

\* \* \* \* \*

■ 5. In § 679.7, paragraph (h) is revised to read as follows:

**§ 679.7 Prohibitions.**

\* \* \* \* \*

(h) *Salmon fisheries.* (1) Fish for, take, or retain any salmon in violation of this part.

(2) Engage in fishing for salmon in the Salmon Management Area defined at § 679.2 and Figure 23 to this part, except to the extent authorized by § 679.4(h) or applicable State of Alaska regulations.

\* \* \* \* \*

**§§ 679.3 and 679.4 [Amended]**

■ 6. In addition to the amendment set out above, in 50 CFR part 679, remove the words "high seas salmon" and add in their place the word "salmon" in the following places:

a. In § 679.3:

Paragraph (f)(1).

b. In § 679.4:

Paragraph (a)(1)(v), paragraphs (h) heading and introductory text, (h)(1), (h)(1)(iii), (h)(3), (h)(4), (h)(5)(i), (h)(5)(i)(A), (h)(5)(i)(B), (h)(5)(i)(C), (h)(5)(ii), (h)(6) introductory text, (h)(6)(iv), (h)(7)(i), (h)(8), (h)(10), (h)(13) heading introductory text, (h)(13)(i), (h)(13)(ii)(A), (h)(13)(ii)(E), (h)(14)(i), (h)(15)(i), (h)(15)(iii), (h)(15)(vii), and (h)(16)(i).

■ 7. In part 679, Figure 23 is added to read as follows:

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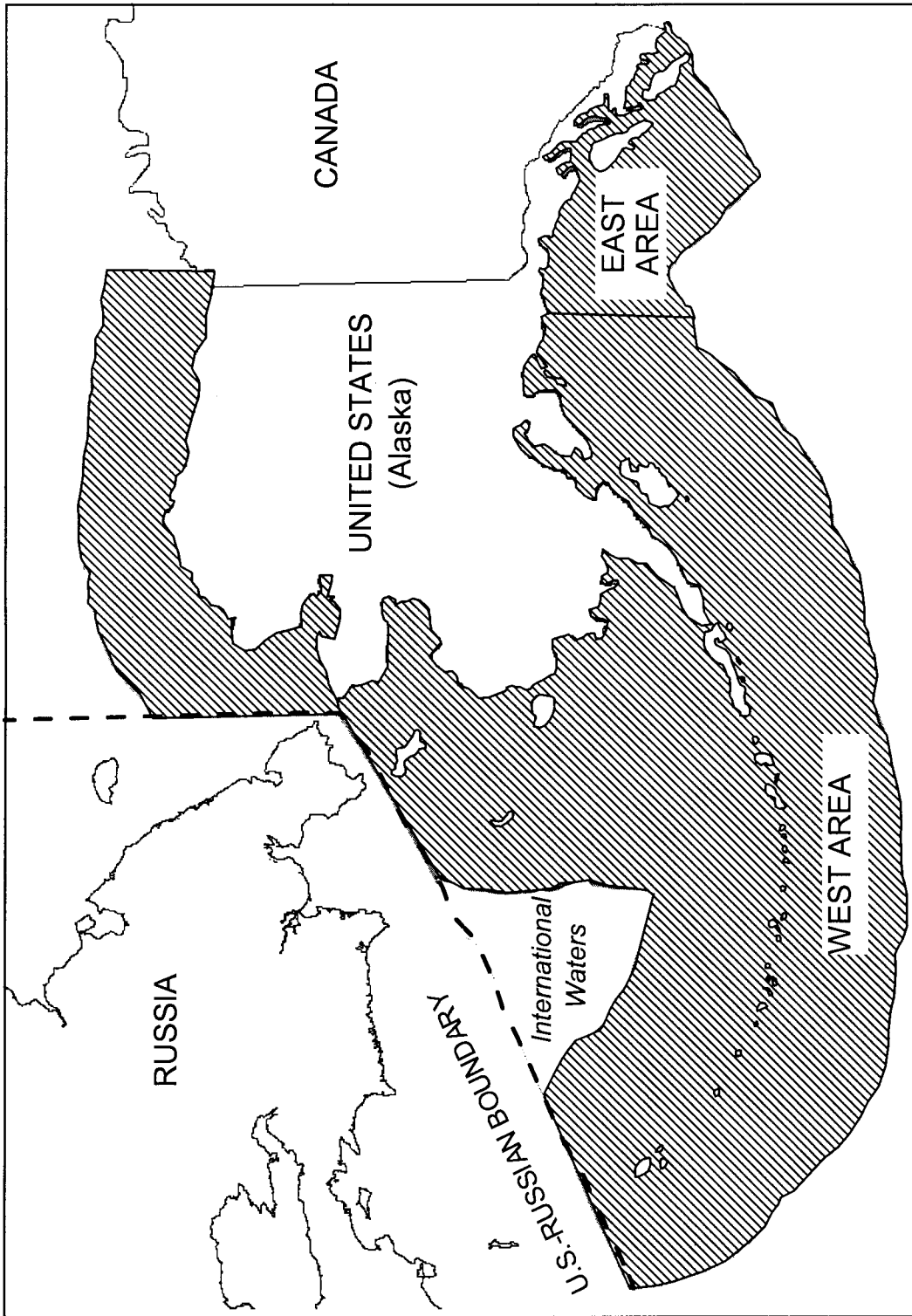


Figure 23 to Part 679 -- Salmon Management Area  
(see § 679.2)