

Peer Review

The Office of Management and Budget issued its Final Information Quality Bulletin for Peer Review on December 16, 2004. The Bulletin went into effect June 16, 2005, and generally requires that all “influential scientific information” and “highly influential scientific information” disseminated on or after that date be peer reviewed. Because the information used to evaluate this petition may be considered “influential scientific information,” we solicit the names of recognized experts in the field that could serve as peer reviewers of such information we may disseminate as we evaluate this petition. Independent peer reviewers will be selected from the academic and scientific community, applicable tribal and other Native American groups, Federal and state agencies, the private sector, and public interest groups.

References Cited

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- Baker, J.D., C.L. Littman, and D.W. Johnston. 2006. Potential Effects of Sea Level Rise on the Terrestrial Habitats of Endangered and Endemic Megafauna in the Northwestern Hawaiian Islands. *Endangered Species Research* 2:21–30.
- Baker, J.D., J.J. Polovina, and E.A. Howell. 2007. Effect of Variable Oceanic Productivity on the Survival of an Upper Trophic Predator, the Hawaiian Monk Seal *Monachus schauinslandi*. *Marine Ecology Progress Series* 346: 277–283.
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- National Marine Fisheries Service (“NMFS”). 2007. Recovery Plan for the Hawaiian Monk Seal (*Monachus schauinslandi*). Second Revision. National Marine Fisheries Service, Silver Spring, MD. 165 pp.
- Parrish, F.A. and C.L. Littman. 2007. Changing Perspectives in Hawaiian Monk Seal Research Using Animal-Borne Imaging. *Marine Technology Society Journal* 41:30–34.

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

Dated: September 29, 2008.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 080721859–81206–01]

RIN 0648–AX01

Fisheries of the Exclusive Economic Zone Off Alaska, Groundfish of 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 a regulatory amendment to exempt fishermen using dinglebar fishing gear in federal waters of the Gulf of Alaska from the requirement to carry a vessel monitoring system (VMS). This action is necessary because the risk of damage posed to protected corals in the Gulf of Alaska by the dinglebar gear fishery is minor and insufficient to justify the costs of VMS. This action is intended to promote the goals and objectives of the Magnuson–Stevens Fishery Conservation and Management Act, the Fishery Management Plan for Groundfish of the Gulf of Alaska, and other applicable law.

DATES: Comments must be received no later than November 3, 2008.

ADDRESSES: Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by RIN 0648–AX01, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal website at <http://www.regulations.gov>.
- Mail: P.O. Box 21668, Juneau, AK 99802.
- Fax: 907–586–7557.
- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record and will generally be

posted to <http://www.regulations.gov> without change. All personal identifying information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action may be obtained from the NMFS Alaska Region at the address above or from the Alaska Region website at <http://alaskafisheries.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Julie Scheurer, 907–586–7356.

SUPPLEMENTARY INFORMATION:

Groundfish fisheries in the Gulf of Alaska (GOA) are managed under the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson–Stevens Fishery Conservation and Management Act (Magnuson–Stevens Act). Regulations implementing the FMP appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The FMP designates essential fish habitat and habitat areas of particular concern (HAPCs) in the Gulf of Alaska. HAPCs are areas within essential fish habitat that are of particular ecological importance to the long-term sustainability of managed species, are of a rare type, or are especially susceptible to degradation or development. The Council may designate specific sites as HAPCs and may develop management measures to protect habitat features within them. In order to protect HAPCs, certain habitat protection areas and habitat conservation zones have been designated. A habitat protection area is an area of special, rare habitat features where fishing activities that may adversely affect the habitat are restricted.

Two HAPCs are designated in the Fairweather Grounds and one HAPC is designated near Cape Ommaney in the Gulf of Alaska. Within these HAPCs, five Coral Habitat Protection Areas were identified where high concentrations of sensitive corals occur. Fishing is restricted only in the Coral Habitat

Protection Areas, not the entire HAPC. The Coral Habitat Protection Areas cover a total area of 13.5 square nautical miles and were established to protect sensitive and slow-growing corals (*Primnoa* species) that provide a rare and important habitat type for rockfish and other species.

Management measures restrict fishing activity within the five GOA Coral Habitat Protection Areas. Anchoring and the use of bottom contact gear by any federally permitted fishing vessel in these five areas are prohibited. Anchoring and fishing with bottom contact gear adversely affect coral habitat by breaking and injuring the coral and disturbing the substrates to which corals attach. Colonies of *Primnoa* species are easily damaged or dislodged from the seafloor if contacted by fishing gear and recovery after disturbance is likely to take decades. NOAA Fisheries Office for Law Enforcement uses vessel monitoring systems (VMS) to enforce the anchoring and fishing with bottom contact gear prohibitions in the Coral Habitat Protection Areas.

Bottom contact fishing gear includes nonpelagic trawl, dredge, dinglebar, pot, and hook-and-line gear. Nonpelagic trawl, dredge, and dinglebar gear are considered mobile bottom contact fishing gear. Dinglebar gear is similar to salmon troll gear with the addition of a heavy metal bar that keeps the hooks close to the seafloor. Of the types of mobile bottom contact fishing gear, only dinglebar gear is used off the coast of Southeast Alaska in the State of Alaska-managed fishery for lingcod.

Although lingcod is not managed under the FMP, if a vessel catches and retains any groundfish managed under the FMP in the exclusive economic zone off Alaska (EEZ), it also is considered to be fishing for groundfish, and therefore must carry a Federal Fishing Permit. Certain species of rockfish are required to be retained (demersal shelf rockfish and dark rockfish) under the FMP. Rockfish are common bycatch in the state-managed dinglebar fishery for lingcod, and therefore these vessels are subject to the requirements of the FMP and must carry a Federal Fishing Permit. All federally permitted vessels with mobile bottom contact gear onboard are subject to VMS requirements (50 CFR 679.7(a)(22)). Consequently, vessels fishing for lingcod with dinglebar gear also must carry a transmitting VMS onboard.

Vessel monitoring systems allow NMFS to enforce regulations over a large area. VMS requirements went into effect June 28, 2006 (71 FR 36694), for all vessels fishing in the GOA and using

mobile bottom contact fishing gear. Vessels participating in the dinglebar fishery for lingcod in federal waters of Southeast Alaska first used VMS units in 2007.

Information about the GOA dinglebar fishery for lingcod is available from two sources: VMS data from 2007, and logbook data submitted to the Alaska Department of Fish and Game (ADFG). Logbook data are self-reported by fishermen and estimate the area, average depth, and other characteristics of the fishing operation. These reports are subjective and are not routinely cross-checked with VMS or other data.

Logbook data indicate that fishing depths may have limited overlap with the depths where sensitive corals occur. In general, *Primnoa* species in the HAPCs are found deeper than 70 fathoms. Most of the area within the Coral Habitat Protection Areas is deeper than 80 fathoms (86.1 to 100 percent across the five areas). Ninety-six percent of the logbook reports from 1998–2002 indicate fishing at average depths of less than 80 fathoms, and 80 percent at depths less than 50 fathoms, whereas only four percent reported fishing at an average depth deeper than 80 fathoms. Between 2003 and 2007, all fishing was reported at depths averaging less than 80 fathoms, and only two percent of the observations fished between 70 and 80 fathoms. During this same period, 93 percent of the logbook reports indicated fishing at depths shallower than 50 fathoms. These data suggest that fishing in recent years has occurred at shallower depths. On the assumption that the reported depths are averages, some fishing took place at depths greater than these reported values. Precise fishing depth data are unavailable.

VMS units were required for the first time in this fishery in 2007. Landings records and VMS data indicate that only eight vessels participated in the dinglebar fishery for lingcod in federal waters off Southeast Alaska in 2007 and participation in the fishery has been declining over the past 10 years. All these vessels carried VMS units as a requirement for participation in the fishery. The VMS data show that in 2007 fishery participants did not fish in the GOA Coral Habitat Protection Areas and very little fishing activity occurred at all in the Cape Ommaney area. The VMS requirement was likely a deterrent to fishing in protected areas.

NMFS also correlated VMS data with information about bottom substrates in the HAPCs. This analysis revealed that the dinglebar fishery for lingcod targets a different substrate type (folded sandstone) than the substrates that

typically support *Primnoa* species corals (bedrock and boulders). Small pinnacles in the areas of high coral concentrations are also a likely deterrent to fishing in those areas with dinglebar gear.

In June 2008, the Council adopted its preferred alternative to exempt fishermen using dinglebar gear from the VMS requirement. After reviewing the analysis, the Council concluded that any risk of illegal fishing and damage to corals in the restricted areas of the Cape Ommaney and Fairweather Grounds HAPCs were insufficient to justify monitoring by VMS, given the cost imposed on lingcod fishermen, the small scale of the fishery (in terms of number of participants, duration, size of vessels, and revenues generated), and the limited spatial overlap of the fishery with restricted areas of the HAPCs.

The total cost for acquisition and installation of a VMS unit is estimated at \$2,068 per vessel. The Pacific States Marine Fish Commission reimburses a portion of the initial cost to the vessel owner, but this still represents a cost to society. Annual maintenance and operation costs are estimated at \$630. A full discussion of the costs of VMS is provided in the RIR for this proposed action (see **ADDRESSES**). The Council reiterated its previous decision that the need for VMS monitoring should be evaluated on a case-by-case basis for individual fisheries. Consequently, the VMS exemption proposed in this action applies specifically to dinglebar gear with respect to the five Coral Habitat Protection Areas currently identified in the GOA. Should the Council identify new GOA HAPCs in the future, the need for VMS monitoring for all gear types will be examined with respect to those areas. This proposed action would not exempt vessels using dinglebar gear for other fisheries from VMS requirements. Likewise, the proposed action would not exempt vessels fishing for lingcod with other gear types from the VMS requirement.

This action proposes to exempt vessels that use dinglebar gear from the VMS requirements at §§ 679.7(a)(22) and 679.28(f)(6)(iii) by revising the text in these paragraphs to specify that the VMS requirement only applies to two types of mobile bottom contact gear, non-pelagic trawl gear and dredge gear, not dinglebar gear. This change would not remove dinglebar gear from the definition of mobile bottom contact gear.

Classification

Pursuant to section 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has

determined that this proposed rule is consistent with the FMP, other provisions of the Magnuson–Stevens Act, and other applicable law, subject to further consideration after public comment.

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

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of this analysis is available from NMFS (see **ADDRESSES**). A summary of the analysis follows.

The objective of this proposed action is to prevent damage to corals from the use of dinglebar gear while ensuring that regulations are applied without imposing undue costs on the fishermen using dinglebar gear. Evidence suggests that the dinglebar fishery for lingcod does not overlap with areas where sensitive coral species occur, so the VMS requirements are an unnecessary burden to a small fleet. This action would directly regulate all vessels with Federal Fishing Permits carrying dinglebar gear in the EEZ. All such vessels are considered “small entities” for purposes of the RFA. NMFS has identified eight to twelve small entities that would be affected by this proposed rule. All of the directly regulated individuals would be expected to benefit from this action relative to the status quo alternative because they would not be required to purchase and

maintain VMS units in order to participate in the lingcod fishery.

NMFS has not identified a significant alternative to the proposed action that would meet the objectives of the action and would have a smaller adverse impact on directly regulated small entities. The objectives of the action were to avoid damage to protected habitat without imposing undue burdens on fishermen using dinglebar gear. The proposed rule completely relieves the financial burden of the VMS. No other significant alternative would have a smaller impact on directly regulated small entities. The Council considered an alternative that would have had the effect of lifting the restriction on fishing by dinglebar vessels within the protected habitat as well as the VMS requirement. However, the Council rejected this alternative without further analysis because its intent was not to lift restrictions on fishing by a specific gear type that might impact bottom habitat, but to lift an enforcement measure if that measure imposed costs disproportionate to its efficacy.

There are no new reporting, recordkeeping, or other compliance requirements associated with this proposed rule. No federal rules that duplicate, overlap, or conflict with the proposed action were identified in the analysis.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries.

Dated: September 29, 2008.

Samuel D. Rauch III

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 679 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.*; Pub. L. 108–447.

2. In § 679.7, paragraph (a)(22) is revised to read as follows:

§ 679.7 Prohibitions.

* * * * *

(a) * * *

(22) *VMS for non-pelagic trawl and dredge gear vessels in the GOA.* Operate a federally permitted vessel in the GOA with non-pelagic trawl or dredge gear onboard without an operable VMS and without complying with the requirements at § 679.28.

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3. In § 679.28, paragraph (f)(6)(iii) is revised to read as follows:

§ 679.28 Equipment and operational requirements.

* * * * *

(f) * * *

(6) * * *

(iii) You operate a vessel required to be federally permitted with non-pelagic trawl or dredge gear onboard in reporting areas located in the GOA or operate a federally permitted vessel with non-pelagic trawl or dredge gear onboard in adjacent State waters; or

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