PRELIMINARY REPORT OF THEFT RATES FOR MODEL YEAR 2007 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2007—Continued

	Manufacturer	Make/model (line)	Thefts 2007	Production (Mfr's) 2007	2007 Theft rate (per 1,000 vehicles produced)
194	FERRARI	612 SCAGLIETTI	0	66	0.0000
195	FERRARI	430	0	1382	0.0000
196	GENERAL MOTORS	CADILLAC LIMOUSINE	0	648	0.0000
197	JAGUAR	XJ8/XJ8L	0	1645	0.0000
198	JAGUAR	XJR	0	221	0.0000
199	LAMBORGHINI	MURCIELAGO	0	164	0.0000
200	LAMBORGHINI	GALLARDO	0	558	0.0000
201	MASERATI	QUATTROPORTE	0	2176	0.0000
202	SAAB	9–5	0	4084	0.0000
203	SPYKER	C8	0	7	0.0000
204	VOLVO	V70	0	3899	0.0000

Issued on: June 4, 2009.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E9–13530 Filed 6–9–09; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 090218204–9956–03]

RIN 0648–AX71

Fisheries of the United States Exclusive Economic Zone Off Alaska; Fisheries of the Arctic Management Area; Bering Sea Subarea

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule that would implement the Fishery Management Plan for Fish Resources of the Arctic Management Area (Arctic FMP) and Amendment 29 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (Crab FMP). The Arctic FMP and Amendment 29 to the Crab FMP, if approved, would establish sustainable management of commercial fishing in the Arctic Management Area and move the northern boundary of the Crab FMP out of the Arctic Management Area south to Bering Strait. This action is necessary to establish a management framework for commercial fishing and to provide consistent management of fish resources in the Arctic Management Area before the potential onset of unregulated commercial fishing in the area. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMPs, and other applicable laws.

DATES: Written comments must be received by July 27, 2009.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified for this action by 0648–AX71 (PR), 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 Arctic FMP, Amendment 29 to the Crab FMP, maps of the action area and essential fish habitat, and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) for this action may be obtained from the Alaska Region at the mailing address above or from the Alaska Region website at *http://www.alaskafisheries.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Bering Sea and Aleutian Islands King and Tanner crab fisheries are managed under the Crab FMP. The Arctic Management Area fisheries would be managed under the Arctic FMP. The North Pacific Fishery Management Council (Council) prepared the Crab FMP and has developed and adopted the proposed Arctic FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations implementing the FMPs appear at 50 CFR parts 679 and 680. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The Council submitted the Arctic FMP and Amendment 29 to the Crab FMP for review by the Secretary of Commerce, and a notice of availability of the Arctic FMP and Amendment 29 was published in the **Federal Register** on Mary 26, 2009 (74 FR 24757), with comments on the Arctic FMP and Amendment 29 invited through July 27, 2009. Comments may address the Arctic FMP, Amendment 29, the proposed rule, or all actions, but must be received by July 27, 2009, to be considered in the approval/disapproval decision on the Arctic FMP and Amendment 29. All comments received by that time, whether specifically directed to the Arctic FMP, to Amendment 29, or to the proposed rule, will be considered in the

approval/disapproval decision on the Arctic FMP and Amendment 29.

Background

If approved by NMFS, the Arctic FMP and Amendment 29 to the Crab FMP would provide for sustainable management of commercial fishing in the Arctic Management Area and eliminate management authority over the Arctic Management Area from the Crab FMP. The Arctic FMP would establish a management framework to sustainably manage future commercial fishing in the Arctic Management Area and would initially prohibit commercial fishing until new information regarding Arctic fish resources allows for authorization of a sustainable commercial fishery in the area. Amendment 29 to the Crab FMP would ensure consistent management of all crab species in the Arctic Management Area under the Arctic FMP.

In February 2009, the Council recommended the adoption of the Arctic FMP to implement a management framework that will protect the fish resources of the Arctic Management Area against the potential onset of unregulated commercial fishing by initially prohibiting commercial fishing until sufficient information is available to enable a sustainable commercial fishery to proceed, consistent with the Magnuson-Stevens Act . Global climate change is reducing the extent of sea ice in the Arctic Ocean, providing greater access to Arctic marine resources and increasing human activity in this sensitive marine environment of the U.S. Exclusive Economic Zone (EEZ). Under the Magnuson-Stevens Act (section 306(a)(3)), the State of Alaska may regulate commercial fishing in the adjacent EEZ waters if no FMP is in place. No FMP is yet in place for the Arctic Management Area, and the State does not allow state licensed vessels to commercially fish in the Arctic Management Area. However, the state authority for management in the EEZ pertains only to vessels registered under the law of the State of Alaska. Thus, absent an FMP, it is possible that unregistered vessels could commercially fish in the Arctic Management Area without any limitation or regulatory oversight. The Council chose to prevent this from occurring in the future; the proposed Arctic FMP would eliminate the potential for unregulated commercial fishing in the Arctic Management Area. This action would prevent potential adverse effects on the Arctic marine environment from unregulated commercial fishing. The Arctic FMP would be a precautionary, ecosystem-based approach to fisheries management in the Arctic Management Area.

The proposed Arctic FMP contains all required provisions and appropriate discretionary provisions for an FMP contained in sections 303(a), 303(b), and 313 of the Magnuson-Stevens Act. The conservation and management provisions in the Arctic FMP were developed in consideration of the National Standard guidelines. The following provides a summary of the main provisions of the proposed Arctic FMP that provide the authority for conservation and management of fish resources and for the provisions in this proposed rule.

The Arctic FMP would apply to commercial harvests of most fish resources in the waters of the Arctic Management Area (Figure 24 in this proposed rule). The geographic extent of the Arctic Management Area would be all marine waters in the U.S. EEZ of the Chukchi and Beaufort Seas from 3 nautical miles off the coast of Alaska or its baseline to 200 nautical miles offshore, north of Bering Strait (from Cape Prince of Wales to Cape Dezhneva) and westward to the 1990 U.S./Russia maritime boundary line and eastward to the U.S./Canada maritime boundary.

This proposed rule will not affect non-commercial fishing in the Arctic Management Area or commercial harvest of certain species that are managed pursuant to other legal authorities. This action would have no effect on subsistence harvest of marine resources in the Arctic Management Area. It also would have no effect on the commercial harvest of Pacific salmon and Pacific halibut. The commercial harvest of Pacific salmon in the Arctic Management Area is managed under the FMP for Salmon Fisheries in the EEZ off the Coast of Alaska (Salmon FMP), which prohibits commercial salmon fishing in the Arctic Management Area. Pacific halibut commercial fishing is managed by the International Pacific Halibut Commission (IPHC), which does not allow harvest of Pacific halibut in the Arctic Management Area.

The proposed Arctic FMP would establish two categories of species: target species and ecosystem component species. Target species are those that are most likely to be targeted in a foreseeable commercial fishery based on potential markets and available biomass in the Arctic Management Area. Arctic cod (Boreogadus saida), saffron cod (Eleginus gracilis), and snow crab (Chionoecetes opilio) are target species in the proposed Arctic FMP. The remainder of fish occurring in the Arctic Management Area are classified as ecosystem component species. As used in the FMP, fish are defined by section 3 of the Magnuson-Stevens Act as finfish, mollusks, crustaceans, and all other forms of marine plant and animal life other than marine mammals and birds.

The proposed Arctic FMP would provide the maximum sustainable yield (MSY) and optimum yield (OY) for commercial fishing for each target species. MSY is specified for each target species using the MSY control rule described in the proposed Arctic FMP. The OY for each target species is determined by reductions from MSY based on uncertainty, economic considerations, and ecosystem considerations. The MSYs for Arctic cod, saffron cod, and snow crab would be reduced by 100 percent based on economic costs of fishing. Uncertainty would reduce the MSY for each target species by an amount ranging from 36 to 61 percent. MSYs for Arctic cod and saffron cod also would be reduced based on ecosystem considerations. Arctic cod is a keystone species in the Arctic marine environment, with many higher trophic level predators (i.e., certain marine mammals and seabirds) dependent on Arctic cod as a principal prey species. The harvest of saffron cod likely would result in very high levels of Arctic cod bycatch (two tons of Arctic cod for each ton of saffron cod); therefore, the harvest of saffron cod likely would result in impacts on Arctic cod and on those species that depend on Arctic cod as prey. Because of the importance of Arctic cod to the Arctic food web, the lack of knowledge of the Arctic cod biomass needed to support commercial fishing and Arctic predators, and the potential high levels of bycatch of Arctic cod in a saffron cod fishery, the MSYs for Arctic cod and saffron cod would be reduced 100 percent based on ecosystem concerns.

Based on these reductions of the MSYs for the target species, the OY for commercial fishing in the Arctic Management Area for each target species is proposed to be zero. With an OY of zero for each target species, no quantity of target species is available for commercial harvest. The proposed Arctic FMP specifies the OY for each target species as the lowest amount of catch sufficient to allow for bycatch of Arctic cod, saffron cod, and snow crab in subsistence fisheries for other species.

Because the OYs for commercial fisheries for each target species are zero and because of the lack of information to manage sustainable fisheries for ecosystem component species, the Arctic FMP would prohibit commercial fishing on target and ecosystem

component species, except Pacific salmon and Pacific halibut for which other authorities prohibit commercial fishing, as explained above. Prohibiting commercial harvest of ecosystem component species would prevent adverse effects on the Arctic marine ecosystem, including the target species, that may result from unregulated commercial fishing on any ecosystem component species. This prohibition is a precautionary approach to fisheries management because little information is available to NMFS to determine either the ability of these species to support commercial fishing or the potential impacts from such fishing on the Arctic marine environment, including the target species.

Consistent with the Council's stated management policy and objectives, the proposed Arctic FMP includes non-target species in the ecosystem component category to ensure that the Arctic marine ecosystem is adequately protected and out of concern that unregulated commercial fishing for these species could detrimentally affect the target fishery. The inclusion of all non-target species in the Arctic Management Area in the ecosystem component category is consistent with the Magnuson-Stevens Act which: recognizes the increased importance of habitat conservation; calls for development of conservation and management measures to avoid irreversible or long-term adverse effects to the marine environment and to minimize bycatch to the extent practicable; permits inclusion in an FMP of management measures to conserve non-target species and habitats, considering the variety of ecological factors affecting fishery populations; and requires consideration of ecological factors and protection of the marine ecosystem in setting OY for stocks in the fishery. The National Standard 1 guidelines (50 CFR 600.310(d)(5)(i)) further encourage an ecosystem-based approach to management of fisheries, providing the Council and NMFS with broad discretion to determine whether stocks should be classified and included in an FMP as ecosystem component species for a series of reasons, including specifying OY and developing conservation and management measures for the associated fishery to address other ecosystem issues and to protect their associated role in the ecosystem with which the fishery interacts. Due to the lack of commercial fishing in the Arctic, these species are non-target species and are not generally retained for sale or for personal use. Moreover, these species are not likely to be overfished or be subject to overfishing in the absence of commercial fishing or conservation and management measures.

The Council's decision to create an ecosystem component category that includes all fish species in the Arctic Management Area, except the potential target species, and to prohibit commercial fishing for such species other than Pacific salmon and Pacific halibut, is based on ecosystem considerations and is intended to conserve target and non-target species and their habitats. The stated management objectives of the Arctic FMP provide a benchmark for NMFS' evaluation of the Council's proposed management measures. These objectives include a ''Biological Conservation Objective'' that seeks to ensure the long-term viability of fish populations by, among other things, preventing unregulated fishing and ''incorporating ecosystem-based considerations into fishery management decisions, as appropriate . . . .'' The prohibition on commercial fishing for ecosystem component species reflects such appropriate ecosystem-based considerations and does not constitute required conservation and management for purposes of including such species in the fishery.

The OY for each of the three potential target fisheries is de minimis and sufficient only to support subsistence fishing. NMFS shares the Council's concern that if the target species are caught as bycatch during unregulated commercial fishing for other species, removal of those target species could surpass OY. Similarly, NMFS shares the Council's concern that unregulated commercial fishing for ecosystem component species may affect the Arctic marine ecosystem in ways that are detrimental to the potential target fishery as well as non-target species and their habitats. For example, large-scale removal of biomass of important prey species for one or more target species, or removal of species that are otherwise ecologically connected to one or more target species, could adversely affect the target fishery populations. At present, the scientific understanding of the interdependence and trophic relationships between particular species in the Arctic marine ecosystem is rudimentary, relative to other marine ecosystems, as is the knowledge of particular habitats in the region that may be important to the continued health of the ecosystem and its various species. In particular, NMFS is concerned about the potential adverse effects of unregulated commercial fishing for non-target species on Arctic cod, which is found throughout the Arctic Management Area and is a keystone species that provides a crucial trophic link between the sea ice food web and marine mammals and birds.

These limitations on NMFS' understanding of ecological processes in the Arctic are compounded by the ongoing climatic changes in the region and physical changes in the marine environment. Global climate change is anticipated to continue altering the Arctic environment in fundamental ways, and before long may lead to a seasonally ice-free Arctic Ocean. As a result, there is great uncertainty regarding the ways in which current ecological relationships may change, irrespective of fishing pressure. Consistent with the Council's ecosystem-based management policy, NMFS believes it is appropriate to adopt management measures that will maximize the resilience of the target species and afford the greatest protection to the integrity of the Arctic ecosystem in the face of a changing climate. The prohibition on commercial fishing for ecosystem component species represents such a management measure.

Although there is uncertainty as to whether commercial fishing for ecosystem component species would diminish target fishery populations to an unacceptable degree, either due to bycatch of target species or impacts on the ecosystem, NMFS has determined that the Council appropriately adopted a precautionary approach that proposes prohibiting commercial fishing for any species of Arctic fish in the Arctic Management Area. Given the limited knowledge of ecological relationships and considerable uncertainty regarding the future, this will ensure that fishing does not interfere with important ecological relationships in the Arctic marine environment and thereby avoids the risk of harm to the potential target species, the broader ecosystem, and the habitat of fish species that may otherwise result from unregulated commercial fishing for ecosystem component species. NMFS will periodically review the status of ecosystem component species based on the best available scientific information to determine whether or not such species should be classified for active conservation and management as species or stocks in the fishery.

The proposed Arctic FMP prescribes the process the Council will follow and the criteria it will evaluate before authorizing a future commercial fishery. Consideration of a future commercial fishery would include the Council's

review of an analysis of the biological information on the potential target species and potential impacts from commercial fishing on the Arctic marine environment and on communities. An Arctic FMP amendment would be required to authorize a commercial fishery in the Arctic Management Area and to implement the specific conservation and management measures for the fishery.

If a commercial fishery is authorized in the Arctic Management Area, the proposed Arctic FMP would provide the general conservation and management measures to ensure sustainable fishing and to prevent overfishing of any target species. Determination criteria for overfishing levels (OFL) and acceptable biological catch levels (ABC) would be based on the type and quantity of information available.

The OFLs and ABCs would guide the Council and NMFS in setting harvest specifications for fishery management in the Arctic Management Area. The process for specifying OFLs, ABCs, and total allowable catch amounts (TACs) would include the development of a Stock Assessment and Fishery Evaluation report for the Council's consideration in recommending OFLs, ABCs, and TACs to the Secretary. At the time a commercial fishery is authorized by the amended Arctic FMP, the harvest specification regulations under § 679.20 would be revised to include the Arctic Management Area. This would ensure the latest method of determining harvest specifications would be used at the time the Arctic Management Area commercial fishery is authorized.

The National Standard 1 guidelines (74 FR 3178, January 16, 2009) require accountability measures and mechanisms to prevent overfishing. Because the proposed Arctic FMP initially prohibits commercial fishing in the Arctic Management Area, the prohibition on commercial fishing that would be implemented by this proposed rule would satisfy this requirement. If a commercial fishery is authorized in the future, the FMP would be amended to include specific accountability measures and mechanisms to prevent overfishing.

The process and criteria for issuing exempted fishing permits (EFPs) that would be implemented by this proposed rule will be found at 50 CFR part 679. EFPs provide exemptions to fishing regulations to allow commercial fishing in a manner not otherwise authorized. EFPs are granted for the purpose of allowing studies that provide information useful to the management of fisheries and are effective for a limited time. More information regarding EFPs is available from the NMFS Alaska Region website at *http://www.alaskafisheries.noaa.gov/ram/efp.htm*.

Essential fish habitat (EFH) is described for each target species in the proposed Arctic FMP. Once EFH is established, NMFS must be consulted on any federal action that may adversely impact EFH (Magnuson-Stevens Act section 305(b)(2)). The proposed EFH description for Arctic cod includes waters of the entire Arctic Management Area. Proposed EFH locations for snow crab and saffron cod are primarily in the Chukchi Sea. A description of non-fishing impacts on EFH is appended to the proposed Arctic FMP. This appendix describes potential adverse impacts of a variety of human activities that may occur in the Arctic Management Area and identifies possible mitigation measures to reduce such impacts.

To assist in the ecosystem approach to fisheries management, the proposed Arctic FMP includes habitat descriptions for several ecosystem component species. The species selected for habitat descriptions represent forage species and potential future target species based on Bering Sea commercial fishing.

The proposed Arctic FMP includes the latest information on the Arctic ecosystem and Chukchi and Beaufort Seas survey data. This information provides the basis for the MSY and OY specifications and informed the Council's decision to recommend adoption of the Arctic FMP.

Amendment 29 to the Crab FMP would move the northern boundary of the Crab FMP management area to Bering Strait. The Crab FMP northern boundary is currently located at Point Hope, north of Bering Strait and within the Arctic Management Area (Figure 24 in this proposed rule). This change in the Crab FMP northern boundary would allow the management of all crab species in the Arctic Management Area to be under the Arctic FMP. This change in the geographic scope of management authority under the Crab FMP would ensure consistent management authority and application of the conservation and management measures in the Arctic FMP to crab throughout the Arctic Management Area. The Crab FMP defers crab management to the State of Alaska with federal oversight. The management of crab stocks in the Bering Sea is based on survey and catch information, which is not available in the Arctic Management Area. The Arctic FMP's conservation and management measures were designed to address the unique Arctic marine environment and the paucity of information available for sustainable crab fisheries management.

Proposed Regulatory Amendments

The Council recommended, and the Secretary proposes, the following regulatory changes and additions to 50 CFR part 679 to implement the Arctic FMP.

1. Section 679.1 would be revised to add the title of the Arctic FMP and to describe the scope of the FMP as governing commercial fishing for Arctic fish in the Arctic Management Area by vessels of the United States. This addition would be necessary to expand the scope of the 50 CFR part 679 regulations to include implementation of the Arctic FMP.

2. Section 679.2 would be amended to add and revise definitions for the Arctic FMP and for Amendment 29 to the Crab FMP. A definition for ''Arctic fish'' would be added to distinguish in regulations the species under the authority of the Arctic FMP. The Arctic fish definition would include all fish as defined by the Magnuson-Stevens Act, excluding Pacific halibut and Pacific salmon. The Magnuson-Stevens Act defines ''fish'' as finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals and birds. Commercial fishing for Pacific halibut and Pacific salmon in the EEZ off Alaska is authorized by the IPHC and under the Salmon FMP, respectively, and would not be managed under the Arctic FMP. Creating this definition would allow for the initial prohibition of commercial fishing for Arctic fish, as would be prescribed by the Arctic FMP.

A definition for the ''Arctic Management Area'' as described by the Arctic FMP would be added. The area would be described by text and would refer to Figure 24 in part 679. This definition is necessary to define the area within which the proposed Arctic FMP will manage commercial fishing.

The definition for the ''Bering Sea and Aleutian Islands Area'' for the purposes of king and Tanner crab management would be revised. This revision would implement Amendment 29 to the Crab FMP by moving the northern boundary of the Crab FMP fishery management area from Point Hope southward to Bering Strait. This revision is necessary to eliminate management authority in the Arctic Management Area from the Crab FMP so that all crab that occur within the Arctic Management Area would be managed under the Arctic FMP.

The definition of ''commercial fishing'' would be revised to include the catch of Arctic fish which is or is

intended to be sold or bartered, excluding subsistence fishing. This revision is necessary to manage, and initially prohibit, commercial fishing for Arctic fish and to ensure subsistence fishing is not affected by such management of commercial fishing.

The definition of ''management area'' would be revised to add the Arctic Management Area. This revision is necessary to list the Arctic Management Area with the Bering Sea and Aleutian Islands Management Area and the Gulf of Alaska. This revision would allow for fishery management within the scope of the regulations at § 679.1.

The definition of ''optimum yield'' would be revised by adding Arctic fish and referencing § 679.20(a)(1) where the optimum yield for target species identified in the Arctic FMP would be specified. This revision is necessary to establish the optimum yield for the target species and to support the prohibition on commercial fishing of target species.

The definition of ''subsistence fishing'' would be added to describe subsistence harvests in the Arctic Management Area of Arctic fish and Pacific salmon. Subsistence in terms of Pacific halibut is defined under regulations at 50 CFR 300.61 and would not be changed by this proposed definition. Subsistence fishing in the Arctic would be the harvest of Arctic fish and Pacific salmon for non-commercial, long-term, customary and traditional use necessary to maintain the life of the taker or those who depend upon the taker to provide them with such subsistence. This definition is consistent with the definition of subsistence in the Marine Mammal Protection Act. Adding this definition to 50 CFR part 679 would allow the subsistence harvest practices to be differentiated from commercial harvest practices, which would be prohibited. This addition is necessary to ensure the continued subsistence harvest of Arctic fish and Pacific salmon in the Arctic Management Area while differentiating such activity from commercial fishing. NMFS is requesting comments specific to this definition and any suggestions on how subsistence fishing may be better defined.

3. The introductory paragraph to § 679.6 addressing EFPs would be revised to add Arctic fish. EFPs currently are available for only groundfish exempted fishing. Because the Arctic FMP includes species other than groundfish and the Council intended that EFPs may be available for any type of fish resource occurring in the Arctic Management Area, the application of EFPs would be revised to include Arctic fish.

4. In § 679.7, a prohibition would be added to prevent commercial fishing for Arctic fish in the Arctic Management Area. A prohibition on commercial fishing for Arctic fish would be necessary to implement the Arctic FMP prohibition on commercial fishing on either target or ecosystem component species. NMFS currently works with the U.S. Coast Guard in surveillance of vessel activities in the Arctic Management Area. U.S. fishing vessels transiting Canadian waters are required to stow gear in a manner that makes the gear not readily available for fishing and easily visible during surveillance flights. NMFS may, in the future, consider this or other procedures that could facilitate enforcement of the commercial fishing prohibition in the Arctic Management Area and is interested in any public comment on possible future enforcement procedures.

5. In § 679.20(a), the OY for commercial fishing for Arctic Management Area target species would be added. The OY for commercial fishing would be set at zero mt for each of the target species, as provided in the Arctic FMP. This revision is necessary to implement the OYs specified in the Arctic FMP.

6. Figure 24 to part 679 would be added to show the Arctic Management Area as established by the Arctic FMP. This addition is necessary to clarify in the regulations the location of the Arctic Management Area and to differentiate the boundary of the Arctic Management Area from the Bering Sea and Aleutian Islands Management Area boundary shown in Figure 1 to part 679. The Chukchi Sea statistical area 400 would remain with the Bering Sea and Aleutian Islands statistical and reporting areas in Figure 1 to part 679 until the Arctic FMP is amended to authorize a commercial fishery in the Arctic Management Area. The Council recommended not establishing subareas for fisheries management in the Arctic Management Area at this time due to the lack of information to inform the boundaries of such subareas.

Classification

Pursuant to sections 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the NMFS Acting Assistant Administrator has determined that this proposed rule is consistent with and necessary to implement the Arctic FMP, and Amendment 29 to the Crab FMP, and in accordance with 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 the purposes of Executive Order 12866.

NMFS prepared an initial regulatory flexibility analysis (IRFA), 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. Descriptions of the action, the reasons it is under consideration, and its objectives and legal basis, are contained at the beginning of this section in the preamble and in the SUMMARY section of the preamble. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

This action would regulate commercial fishing for fish resources and not regulate subsistence, recreational, or personal use fishing in the action area. There is only one unverified, small, and poorly documented commercial fishery for red king crab in a portion of the Arctic Management Area in Kotzebue Sound.

A survey of the Alaska Department of Fish and Game fish ticket database back to 1985 identified a single fish ticket for this fishery. The ticket was for a very small amount of red king crab delivered in the summer of 2005. However, to the extent that fishing has occurred, landings in this fishery may not always have been reported on official state landings records (i.e., not legally recorded). The waters in which this fishery may have occurred were set apart from other waters for reporting purposes in 2005. From 2005 to 2007, three or four persons acquired the State of Alaska K09X permits that are required to fish commercially in this area. With the exception of the single anomalous fish ticket cited above, there have been no commercial fish tickets from the action area during 2005 through 2007. Thus, the number of permit holders, rather than the number of operations with fish tickets, is assumed to best represent the potential number of entities directly regulated by this action. All of these operations are believed to be small entities with annual gross revenues under $4 million.

The Council considered four alternatives and three options for this proposed action. The options have no effect on directly regulated small entities as the options are limited to different scientific and administrative processes for developing management measures for fisheries. Each option resulted in the same effect, because each would implement a management framework that initially prohibits

commercial fishing in the Arctic Management Area.

Alternative 1 is the status quo which would allow for the potential for unregulated commercial fishing to occur in the Arctic Management Area. Alternative 1 does not meet the objectives of the action to sustainably manage commercial fisheries in the Arctic Management Area.

Alternatives 3 and 4 would provide different mechanisms to provide for sustainable management of fish resources in the Arctic Management Area, but each alternative would exclude the small red king crab fishery in Kotzebue Sound from Arctic FMP management. Alternative 3 would have exempted the red king crab fishery from the Arctic FMP and from the Crab FMP while Alternative 4 would have provided for the continued management of the small red king crab fishery under the Crab FMP. Neither Alternative 3 nor Alternative 4 were chosen based on the lack of evidence of a currently existing small red king crab fishery in the Kotzebue Sound area and on the lack of information to ensure sustainable management of the potential red king crab stock in the Kotzebue Sound while not affecting subsistence use of the resource. Alternatives 1, 3, and 4 have no known impacts on directly regulated small entities.

Alternative 2 was chosen as the preferred alternative as it fully meets the objective to provide sustainable management for all fish resources of the Arctic Management Area. Alternative 2, which implements a management framework that initially prohibits all commercial fishing in the Arctic Management Area, initially would prohibit future crab fishing that may otherwise take place in the small and poorly documented fishery in Kotzebue Sound, until stocks have been assessed and harvest specifications (e.g., OFL, ABC, TAC) are established. At that time, an amendment to the Arctic FMP could be proposed to authorize commercial fishing. Based on permit issuance, it is possible that two to four small entities may fish in the small red king crab fishery in Kotzebue Sound in a year. Permit issuance does not necessarily indicate fishing activity, and only one fish ticket exists from this fishery since 1985. Income from this fishery is likely to be small.

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

The IRFA did not reveal any federal rules that duplicate, overlap, or conflict with the proposed action.

Executive Order (E.O.) 13175 of November 6, 2000 (25 U.S.C. 450 note), the Executive Memorandum of April 29, 1994 (25 U.S.C. 450 note), and the American Indian and Alaska Native Policy of the U.S. Department of Commerce (March 30, 1995) outline the responsibilities of NMFS in matters affecting tribal interests. Section 161 of Public Law (P.L.) 108–199 (188 Stat. 452), as amended by section 518 of P.L. 109–447 (118 Stat. 3267), extends the consultation requirements of E.O. 13175 to Alaska Native corporations. NMFS will contact tribal governments and Alaska Native corporations which may be affected by the proposed action, provide them with a copy of this proposed rule, and offer them an opportunity to consult.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: June 5, 2009.

Samuel D. Rauch III,

Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

For 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.*; 3631 *et seq.*; Pub. L. 108 447.

2. In § 679.1, add paragraph (l) to read as follows:

§ 679.1 Purpose and scope.

* * * * *

(l) *Fishery Management Plan for Fish Resources of the Arctic Management Area.* Regulations in this part govern commercial fishing for Arctic fish in the Arctic Management Area by vessels of the United States (see this subpart and subpart B of this part).

3. In § 679.2, add in alphabetical order definitions for ≥Arctic fish'', ''Arctic Management Area'', and ''Subsistence fishing'' and revise the definitions for the ''Bering Sea and Aleutian Islands Area'', ''Management area'', and paragraph (2) of the definition of ''Optimum yield'' and paragraph (3) to the definition of ''Commercial fishing'' to read as follows:

§ 679.2 Definitions.

* * * * *

Arctic fish means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals, birds, Pacific salmon, and Pacific halibut.

Arctic Management Area, for purposes of regulations governing the Arctic Management Area fisheries, means all marine waters in the U.S. EEZ of the Chukchi and Beaufort Seas from 3 nautical miles off the coast of Alaska or its baseline to 200 nautical miles offshore, north of Bering Strait (from Cape Prince of Wales to Cape Dezhneva) and westward to the 1990 U.S./Russia maritime boundary line and eastward to the U.S./Canada maritime boundary (see Figure 24 to this part).

* * * * *

Bering Sea and Aleutian Islands Area, for purposes of regulations governing the commercial king and Tanner crab fisheries in part 680 of this Chapter, means those waters of the EEZ off the west coast of Alaska lying south of the Chukchi Sea statistical area as described in the coordinates listed for Figure 1 to this part, and extending south of the Aleutian Islands for 200 nm west of Scotch Cap Light (164° 44′36″ W. long).

* * * * *

Commercial fishing means:

* * * * *

(3) For purposes of Arctic fish, the resulting catch of fish in the Arctic Management Area which either is, or is intended to be, sold or bartered but does not include subsistence fishing for Arctic fish, as defined in this subsection.

* * * * *

Management area means any district, regulatory area, subpart, part, or the entire GOA, BSAI, or Arctic Management Area.

* * * * *

Optimum yield means:

* * * * *

(2) *With respect to the groundfish and Arctic fisheries*, see § 679.20(a)(1).

* * * * *

Subsistence fishing for purposes of fishing in the Arctic Management Area means the harvest of Arctic fish and Pacific salmon for non-commercial, long-term, customary and traditional use necessary to maintain the life of the taker or those who depend upon the taker to provide them with such subsistence.

* * * * *

4. In § 679.6, revise paragraph (a) to read as follows:

§ 679.6 Exempted fisheries.

(a) *General.* For limited experimental purposes, the Regional Administrator may authorize, after consulting with the Council, fishing for groundfish or fishing for Arctic fish in the Arctic

Management Area in a manner that would otherwise be prohibited. No exempted fishing may be conducted unless authorized by an exempted fishing permit issued by the Regional Administrator to the participating vessel owner in accordance with the criteria and procedures specified in this section. Exempted fishing permits will be issued without charge and will expire at the end of a calendar year unless otherwise provided for under paragraph (e) of this section.

* * * * *

5. In § 679.7, add paragraph (p) to read as follows:

§ 679.7 Prohibitions.

* * * * *

(p) *Arctic Management Area.* Conduct commercial fishing for any Arctic fish in the Arctic Management Area.

6. In § 679.20, revise the introductory paragraph and paragraph (a)(1) to read as follows:

§ 679.20 General limitations.

This section applies to vessels engaged in directed fishing for groundfish in the GOA and/or the BSAI and to vessels engaged in commercial fishing for Arctic fish in the Arctic Management Area.

(a) * * *

(1) *OY* (i) *BSAI and GOA.* The OY for BSAI and GOA target species and the ''other species'' category is a range or specific amount that can be harvested consistently with this part, plus the amounts of ''nonspecified species'' taken incidentally to the harvest of target species and the ''other species'' category. The species categories are defined in Table 1 of the specifications as provided in paragraph (c) of this section.

(A) The OY for groundfish in the BSAI regulated by this section and by part 600 of this chapter is 1.4 million to 2.0 million mt.

(B) The OY for groundfish in the GOA regulated by this section and by part 600 of this chapter is 116,000 to 800,000 mt.

(ii) *Arctic Management Area.* The OY for each target fish species identified in the Fishery Management Plan for Fish Resources of the Arctic Management Area regulated by this section and by part 600 of this chapter is 0 mt.

* * * * *

7. Figure 24 is added to part 679 to read as follows:

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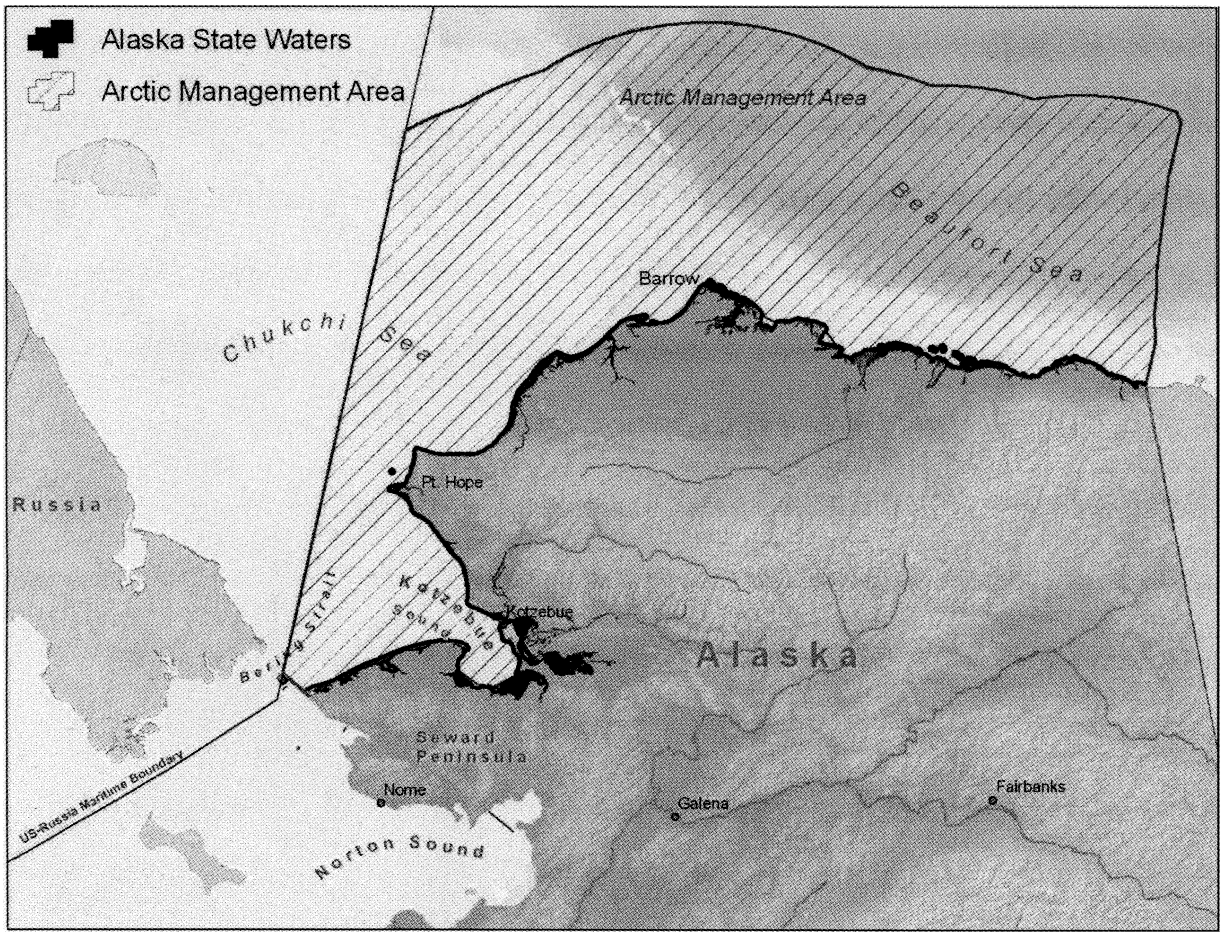
Figure 24 to Part 679– Arctic Management Area



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