

Other specific requirements of the SIP revision and the rationale for EPA's action to grant conditional approval are explained in the NPR and will not be restated here. No public comments were received on the NPR.

III. Final Action

EPA is granting conditional approval of West Virginia's March 31, 2005 SIP revision consisting of West Virginia emergency rule 45CSR1. For West Virginia's emergency rule 45CSR1 to become fully approvable, the State must, in accordance with its August 15, 2005 commitment, fulfill the following conditions:

(1) Adopt a permanent rule that corresponds to emergency rule 45CSR1, but with an effective date prior to the sunset date of the emergency rule, and

(2) Submit the permanent rule as a SIP revision to EPA by July 1, 2006. Once West Virginia fulfills these conditions, EPA will conduct rulemaking to convert its conditional approval to a full approval. If the conditions are not fulfilled within the specified time frame, any final conditional approval granted by EPA will convert to a disapproval.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal

Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a

"major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 13, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action granting conditional approval of West Virginia's SIP revision to meet Phase II of the NO_x SIP Call may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: December 23, 2005.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart XX—West Virginia

■ 2. Section 52.2522 is amended by adding paragraph (i) to read as follows:

§ 52.2522 Approval status.

* * * * *

(i) EPA is granting conditional approval of West Virginia's March 31, 2005 SIP revision consisting of West Virginia emergency rule 45CSR1. For West Virginia's emergency rule 45CSR1 to become fully approvable, the State must, in accordance with its August 15, 2005 commitment, fulfill the following conditions:

(1) Adopt a permanent rule that corresponds to emergency rule 45CSR1, but with an effective date prior to the sunset date of the emergency rule, and

(2) Submit the permanent rule as a SIP revision to EPA by July 1, 2006.

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DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 051017269-6002-02; I.D. 100705C]

RIN 0648-AT54

Fisheries of the Exclusive Economic Zone Off Alaska; Cape Sarichef Research Restriction Area Opening for the Groundfish Fisheries of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to open the Cape Sarichef Research Restriction Area in the Bering Sea and Aleutian Islands Management Area (BSAI) to directed fishing for groundfish using trawl, pot, and hook-and-line gear from March 15, 2006, through March 31, 2006. Because NMFS' Alaska Fisheries Science Center (AFSC) will not conduct research in this area in 2006, closure of the Cape Sarichef Research Restriction Area is not needed. This action is intended to relieve an unnecessary restriction on groundfish fisheries and allow the optimum utilization of fishery resources, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This final rule also will remove the regulations for the Cape Sarichef Research Restriction Area, and regulations for the Chiniak Gully Research Area because both research projects have ended.

DATES: Effective February 10, 2006.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for the original action closing the area, and dated November 2002, and the Categorical Exclusion and the RIR prepared for this action, are available from: NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Durall; NMFS, Alaska Region, 709 West 9th Street, Room 420A, Juneau, AK; or the NMFS Alaska Region website at www.fakr.noaa.gov.

FOR FURTHER INFORMATION CONTACT: Becky Carls, 907-586-7228 or becky.carls@noaa.gov.

SUPPLEMENTARY INFORMATION: The groundfish fisheries in the exclusive

economic zone of the BSAI and Gulf of Alaska (GOA) are managed by NMFS under the Fishery Management Plans (FMPs) for Groundfish of the BSAI and Groundfish of the GOA. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMPs appear at 50 CFR parts 600 and 679.

Background and Need for Action

The background and need for this action were described in the preamble to the proposed rule published in the **Federal Register** on October 26, 2005 (70 FR 61775). In summary, the final year of a research project in the waters off Cape Sarichef will not be conducted in 2006. Thus, the closure of the study area specified in § 679.22(a)(11) for March 15-31, 2006, will not be needed. Maintaining the closure would unnecessarily restrict the groundfish fisheries because no research will be conducted in this area in 2006. Removing the 2006 trawl, pot, and hook-and-line gear closure will allow vessels participating in groundfish fisheries to harvest their total allowable catch amounts without the operational constraints imposed by the closure.

In addition, this regulatory amendment includes a housekeeping measure that removes regulations for the Chiniak Gully Research Area off Kodiak Island, which were applicable through December 31, 2004.

Regulatory Amendments

In § 679.22, paragraphs (a)(11) and (b)(3) are removed. Also removed is Figure 21 to part 679, which shows the Cape Sarichef Research Restriction Area.

Response to Comments

The proposed rule for this action was published in the **Federal Register** on October 26, 2005 (70 FR 61775). NMFS received two letters of comment that contained four separate comments. The comments are summarized and responded to below.

Comment 1: This research area should not be opened to more overfishing.

Response: This action opens an area to fishing which otherwise would be closed only two weeks in 2006 and does not change the amount of fish authorized to be harvested. Currently, no Alaska groundfish species are considered by NMFS to be overfished, and overfishing is not occurring.

Comment 2: Birds are being killed by hook-and-line fishing.

Response: Hook-and-line fishing would be allowed in this area, but this

action would not change the total amount of fishing activity with hook-and-line gear. Hook-and-line fishing must be done in compliance with seabird avoidance regulations at 50 CFR 679.24(e) to reduce the incidental take of seabirds.

Comment 3: NOAA must stop commercial fish profiteers from overfishing. Overfishing causes the death of all marine life that needs fish to survive, which is an assault on the environment.

Response: This action does not change the amount of fish that may be harvested. None of the Alaska groundfish stocks are overfished or experiencing overfishing. The groundfish fisheries off Alaska are managed using science-based conservation and management practices. NMFS limits the amount of fish that may be harvested in the groundfish fisheries off Alaska by setting annual catch limits based on the best scientific information available about each specific managed stock. In the course of considering catch limits and regulatory changes, NMFS and the Council consider a broad range of alternatives to address biological, environmental, and economic concerns. This process also includes an examination of the potential impacts of alternatives on other marine resources and the environment. This action would result in insignificant impacts on other marine animals as described in the EA/RIR/IRFA prepared for the original action and dated November 2002 (see **ADDRESSES**).

Comment 4: Thank you. With all the other closed areas we have today, it's nice to have some areas back. Every little bit will help with our rising fuel costs.

Response: NMFS notes this support.

Changes From the Proposed Rule

No changes are made in this final rule from the proposed rule.

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 during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: January 6, 2006.

John Oliver,

Deputy Assistant Administrator for Operations, 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 part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1540(f); 1801 *et seq.*; 1851 note; 3631 *et seq.*

§ 679.22 [Amended]

■ 2. In § 679.22, remove and reserve paragraphs (a)(11) and (b)(3).

PART 679—[AMENDED]

■ 3. In part 679, remove and reserve Figure 21 to Part 679—Cape Sarichef Research Restriction Area (Applicable through March 31, 2006).

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