

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

[Docket No. 000905252-0339-02; I.D. 080700D]

RIN 0648-AN98

Fisheries of the Exclusive Economic Zone Off Alaska; Prohibited Species Donation Program

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

ACTION: Final rule, permanent extension of the Pacific halibut donation program.

SUMMARY: NMFS issues a final rule that permanently extends the existing regulations that establish and govern the voluntary Pacific halibut donation program. Under this program, Pacific halibut that is taken incidentally in groundfish trawl fisheries off Alaska may be donated for consumption by economically disadvantaged individuals rather than discarded, as normally required. This action is necessary to promote the goals and objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI) and the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA) (FMPs). The intended effect of this action is to reduce the amount of regulatory discards in the groundfish fisheries.

DATES: Effective January 1, 2001.

ADDRESSES: Copies of the regulatory impact review and environmental assessment prepared for this action may be obtained from NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or by calling the Alaska Region, NMFS, at 907-586-7228. Comments regarding burden estimates for collection-of-information requirements should be sent to NMFS, Alaska Region, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer). Send comments on any

ambiguity or unnecessary complexity arising from the language used in this final rule to Sue Salvesson, Assistant Regional Administrator, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802.

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

SUPPLEMENTARY INFORMATION: The domestic groundfish fisheries in the exclusive economic zone off Alaska are managed by NMFS under the Alaska groundfish FMPs. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing the Alaska groundfish fisheries appear at 50 CFR parts 600 and 679. Fishing for Pacific halibut in waters in and off Alaska is governed by the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea and by regulations adopted by the International Pacific Halibut Commission (IPHC) and approved by the Secretary of State of the United States pursuant to section 4 of the North Pacific Halibut Act (16 U.S.C. 773-773k). Regulations of the IPHC are published as annual management measures in the **Federal Register** each year pursuant to regulations at 50 CFR 300.62.

The Prohibited Species Donation (PSD) program regulations at 50 CFR 679.26 include provisions for the donation of those trawl-caught halibut that are delivered by catcher vessels to shoreside processors. A final rule published in the **Federal Register** (63 FR 32144, June 12, 1998) authorized voluntary distribution of halibut taken as bycatch in the groundfish trawl fishery to needy individuals by tax-exempt organizations through a NMFS-authorized distributor.

The program is limited to dead halibut landed by trawl catcher vessels to shoreside processors. Many of the halibut taken in the groundfish fisheries are discarded alive. However, dead halibut are sometimes landed shoreside by trawl catcher vessels because at-sea sorting of catch is not practicable. This action has no impact on the halibut

resource because the groundfish fisheries are restricted by halibut bycatch mortality limits that require closure of specified fisheries when a limit has been reached. This final rule has no impact on target and non-target species of the groundfish fisheries harvested because it has no effect on harvest amounts or patterns. In 1998 and 1999, 21,196 lb (9,635 kg) and 6,190 lb (2,814 kg) of eviscerated halibut were donated through the PSD program, respectively. NMFS estimates that the halibut donation program provided 65,000 meals to economically disadvantaged individuals in the western Washington Puget Sound area in 1998. No violations of the halibut donation regulations have been reported or observed.

Without this final rule the halibut part of the PSD program would have expired on December 31, 2000. This sunset provision was advocated by the Council and the IPHC so that management agencies could assess the effectiveness of the halibut donation program, relative to the program's objectives, before the Council took action to extend the program beyond the year 2000.

At its June 2000 meeting, the Council requested NMFS to initiate rulemaking to permanently extend the halibut donation program. The Council also endorsed a recommendation by IPHC staff to review the program every 3 years and assess whether regulatory changes should be pursued to respond to any management or enforcement concerns that may arise in the future. With this rulemaking, NMFS permanently extends the existing halibut provisions of the PSD program. This action makes no other changes to the existing PSD program. NMFS, the Council, and the IPHC will conduct a periodic review of the program and the regulations could be revised in the future, if necessary, to respond to new concerns.

A proposed rule to permanently implement the Pacific halibut donation program was published in the **Federal Register** for a 15-day public review and comment period (65 FR 56860, September 20, 2000). No written comments were received during the comment period.

Classification

The Administrator, Alaska Region, NMFS (Regional Administrator), has determined that this final regulatory amendment is consistent with the FMPs, the Magnuson-Stevens Act, and other applicable laws.

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 would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

The Assistant Administrator for Fisheries, NOAA (AA), finds for good cause under 5 U.S.C. 553(d)(3) that delaying the effectiveness of this final rule for 30 days would be contrary to the public interest. Such a delay would cause the Pacific halibut donation program to expire. The intent of this action is to have that program continue without interruption so that its benefits to economically disadvantaged individuals can continue. Further, the program is voluntary and no individual has to take any action because the program remains in effect. Accordingly, the AA is making the extension effective January 1, 2001.

This final rule has been determined to be not significant for purposes of E.O. 12866.

The Regional Administrator determined that activities conducted pursuant to this rule will not affect endangered and threatened species or critical habitat under the Endangered Species Act (ESA).

Pursuant to section 7 of the ESA, NMFS has completed a consultation on the effects of the groundfish fishery on listed species. Reasonable and prudent alternatives have been implemented to mitigate the adverse impacts of the pollock fisheries on the western

population of Steller sea lion and its critical habitat (65 FR 3892, January 25, 2000, and extended at 65 FR 36795, June 12, 2000). NMFS also completed consultations on the effects of the 2000 BSAI groundfish fisheries on listed species and on critical habitat. These consultations were completed December 23, 1999, and concluded that the proposed fisheries were not likely to cause jeopardy or adverse modification to designated critical habitat. However, in an order dated January 25, 2000, the District Court for the Western District of Washington (Court) concluded that NMFS must consult pursuant to section 7 of the ESA on the fishery management plans for the groundfish fisheries of the BSAI and GOA. *Greenpeace v. NMFS*, Civ. No. 98-49ZZ (W.D. Wash.). On August 7, 2000, the Court issued an injunction, effective August 8, 2000, prohibiting fishing for groundfish with trawl gear in the exclusive economic zone within Steller sea lion critical habitat west of 144° W. long. until NMFS issues a comprehensive biological opinion adequately analyzing the full scope of the FMPs. (*Greenpeace v. NMFS*, 106 F. Supp. 2d 1066 (W.D. Wash. 2000)). The critical habitat areas closed by the Court's injunction are defined in regulations codified at 50 CFR 226.202, and in Tables 1 and 2 to 50 CFR part 226. Pursuant to the ESA, NMFS published an interim final rule prohibiting fishing for groundfish with trawl gear in Steller sea lion critical habitat specified in the Court's injunction (65 FR 49766, August 15, 2000). This interim final rule was effective August 9, 2000, and will remain in effect until the Court orders otherwise. NMFS has developed a comprehensive biological opinion that evaluates the effects of the FMPs on endangered and threatened species and their critical habitat as required by the Court.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

This rule contains collection-of-information requirements subject to the PRA. These collections of this information have been approved under OMB control number 0648-0316. Public reporting burden (per individual) for these collections of information, including both salmon and halibut donations, is estimated to average as follows: 40 hours every 3 years per application and 40 hours per year for completing a list of vessels and processors for a NMFS authorized distributor; 9 hours per year (0.1 hrs for 90 processing days) for vessel and processor labeling and product tracking documentation; and 15 minutes per year for vessels/processor documentation. The estimated response times listed include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information.

Send comments regarding this burden estimate, or any other aspect of these data collections, including suggestions for reducing the burden, to NMFS and OMB (see ADDRESSES).

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this final rule. Such comments should be sent to NMFS, Alaska Region (see ADDRESSES).

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: December 8, 2000.

William T. Hogarth,

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

For the reasons set forth 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.*; Title II of Division C, Pub. L. 105-277; Sec. 3027, Pub. L. 106-31, 113 Stat. 57; 16 U. S. C. 1540(f).

2. In § 679.26, paragraphs (a)(2) and (b)(3)(iv) are revised to read as follows:

§ 679.26 Prohibited Species Donation Program (PSD).

(a) * * *

(2) Halibut delivered by catcher vessels using trawl gear to shoreside processors.

(b) * * *

(3) * * *

(iv) *Effective period.* A PSD permit issued for salmon or halibut remains in effect for a 3-year period after the

selection notice is published in the **Federal Register** unless suspended or revoked. A PSD permit issued to an authorized distributor may be renewed following the application procedures in this section.

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[FR Doc. 00-31917 Filed 12-13-00; 8:45 am]

BILLING CODE: 3510-22-S