

Comments and Responses

Comment 1: Two commenters offered strong support for the interim action.

Response: Comment noted.

Comment 2: One commenter noted that NMFS “should have seen the [ETAA] issue coming.”

Response: Framework 18 included a mechanism to adjust the ETAA trips. The Council and NMFS included the provision to adjust ETAA measures in the event that the biomass estimates were overestimated in Framework 18 initially. The Framework 18 mechanism was determined to be not as effective as the interim action in addressing the uncertainty in the projections, but the issue was anticipated.

Classification

Because this interim rule merely extends the interim action already in place, for which public comment was accepted and considered, NMFS finds it is impracticable and contrary to the public interest to provide any additional notice and opportunity for public comment under 5 U.S.C. 553(b)(B) prior to publishing the interim rule. Waiving prior notice and comment allows the ETAA interim measures to remain in place, thereby reducing the potential for overfishing the scallop resource and preventing excessive scallop mortality. For these reasons, the need to extend these measures to assure that overfishing does not occur also constitutes good cause under authority contained in 5 U.S.C. 553(d)(3), to waive the 30-day delayed effective date, and extend the interim action upon publication. This interim rule has been determined to be not significant for purposes of Executive Order 12866. This interim rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior notice and opportunity for public comment.

Dated: May 23, 2007.

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 660

[Docket No. 061127309-7100-02; I.D. 110706D]

RIN 0648-AU72

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Reporting Requirements and Conservation Measures

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

ACTION: Final rule.

SUMMARY: This action implements new reporting and conservation measures under the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). The purpose of this action is to prevent interactions between CPS fisherman and southern sea otters, as well as establish methods for fishermen to report these occurrences when they occur. These reporting requirements and conservation measures require CPS fishermen/vessel operators to employ avoidance measures when southern sea otters are present in the area they are fishing and to report any interactions that may occur between their vessel and/or fishing gear and sea otters.

DATES: Effective June 29, 2007, except for § 660.520 which contains information collection requirements that have not been approved by OMB. NOAA will publish a document in the **Federal Register** announcing the effective date.

ADDRESSES: Copies of Amendment 11 and its Environmental Assessment/Regulatory Impact Review may be obtained from the Southwest Regional Office by contacting Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this action may be submitted to the Southwest Regional Office and by e-mail to David_Rostker@omb.eop.gov or fax to (202) 395-7285

FOR FURTHER INFORMATION CONTACT: Joshua B. Lindsay, Southwest Region, NMFS, (562) 980-4034.

SUPPLEMENTARY INFORMATION: The CPS FMP, which was implemented by publication of the final rule in the

Federal Register on December 15, 1999 (64 FR 69888), regulates commercial fishing for CPS in the Exclusive Economic Zone (EEZ) off the West Coast; 3-200 nautical miles off the coastlines of Washington, Oregon, and California. This action implements new reporting requirements and conservation measures under the CPS FMP. Southern sea otters are listed as threatened under the Endangered Species Act (ESA) and depleted under the Marine Mammal Protection Act (MMPA), providing them strict protection under these laws. Known interactions between CPS fishing operations and southern sea otters are extremely rare. Data gathered from this action will prove valuable in determining whether such interactions are as rare as believed or whether stronger measures are necessary to ensure protection of this species. This action stems from a biological opinion (BO) issued by the U.S. Fish and Wildlife Service (USFWS) regarding the implementation of Amendment 11 to the CPS FMP.

Background

In accordance with the regulations implementing the ESA, NMFS initiated an ESA section 7 consultation with the USFWS regarding the possible effects of implementing Amendment 11 (71 FR 36999) to the CPS FMP. USFWS determined that formal consultation was necessary on the possible effects to the threatened southern sea otter. USFWS completed a biological opinion (BO) for this action and concluded that it was not likely to jeopardize the continued existence of the southern sea otter. The requirements and conservation measures put forth in this action stem from this BO and are an attempt to provide further conservation efforts for southern sea otters. These reporting requirements and conservation measures require all CPS fishermen and vessel operators to employ avoidance measures when sea otters are present in the fishing area and to report any interactions that may occur between their vessel and/or fishing gear and otters.

Specifically, these new measures and regulations are:

1. CPS fishing boat operators and crew are prohibited from deploying their nets if a southern sea otter is observed within the area that would be encircled by the purse seine.

2. If a southern sea otter is entangled in a net, regardless of whether the animal is injured or killed, such an occurrence must be reported within 24 hours to the Regional Administrator, NMFS Southwest Region.

3. While fishing for CPS, vessel operators must record all observations of otter interactions (defined as otters within encircled nets or coming into contact with nets or vessels, including but not limited to entanglement) with their purse seine net(s) or vessel(s). With the exception of an entanglement, which will be initially reported as described in #2 above, all other observations must be reported within 20 days to the Regional Administrator.

When contacting NMFS after an interaction, fishermen are required to provide information regarding the location, specifically latitude and longitude, of the interaction and a description of the interaction itself. If available, location information should also include: Water depth; distance from shore; and, relation to port or other landmarks. Descriptive information of the interaction should include: whether or not the otters were seen inside or outside the net; if inside the net, had the net been completely encircled; did contact occur with net or vessel; the number of otters present; duration of interaction; otter's behavior during interaction; and, measures taken to avoid interaction.

For further background information on this action please refer to the preamble of the proposed rule (71 FR 70941).

Comments and Responses

NMFS received two public comments on the proposed rule. These comments are addressed here:

Comment 1: One comment stated that due to the strict protections provided to southern sea otters by the MMPA, incidental take of southern sea otters could not be authorized under the ESA and that it was necessary for NMFS to amend the proposed rule to reflect this. The comment also stated that self-reporting has not always proved effective with regard to marine mammal interactions with fisheries and that this rule should include a mandatory neutral observer program. However, to the extent that self-reporting would be required, that it be made as easy as possible for the fishermen.

Response: This final rule does not authorize the take of southern sea otters within CPS fisheries. The purpose of this final rule is to further protect this threatened species. Sea otters have not been documented to have been injured or killed in CPS fisheries and due to the very small overlap of CPS fisheries in the EEZ off the West Coast and the distribution of southern sea otters, the likelihood that such an event will occur is low. However, the BO prepared by USFWS determined that the possibility

of interactions between sea otters and the fishery does exist. Therefore, NMFS decided that the requirements recommended by USFWS to reduce possible interactions with, and provide protection for, southern sea otters, would be a prudent conservation measure. NMFS currently places observers on CPS vessels operating in the Monterey Bay region and will continue to do so.

Comment 2: The commenter stated that after an interaction it would be unnecessary for the fisherman to provide location information other than latitude and longitude. The commenter also suggests that the requirement to report non-entanglement interactions is unclear and unnecessary.

Response: Under § 660.520(a)(3), fishermen will only be required to provide the latitude and longitude of where the interaction took place. NMFS asks that other location information that is readily available be provided as well, but it is not required. With regards to the reporting of non-entanglement interactions, it is not the intent of this final rule to require fishermen to report casual observations of sea otters. This action only requires fishermen to report when sea otters occur within encircled nets or come into contact with fishing gear or the vessel. This information could prove valuable to both fishermen and/or the conservation of sea otters as it will establish a record of the presence or absence of sea otter interactions. If interactions are occurring, location information will be important in determining areas where further conservation efforts may be needed.

No changes were made to the regulatory text from the proposed rule.

Classification

The Administrator, Southwest Region, NMFS, determined that this action is necessary for the conservation and management of the CPS fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This final rule contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. Public reporting burden for this otter interaction requirement is estimated to average 10 minutes per individual per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to David_Rostker@omb.eop.gov or fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

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 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: May 23, 2007.

Samuel D. Rauch III

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

■ For the reasons set out in the preamble, NMFS amends 50 CFR part 660 as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 660.505, paragraph (n) is added to read as follows:

§ 660.505 Prohibitions.

* * * * *

(n) When fishing for CPS, deploy a net if a southern sea otter is observed within the area that would be encircled by the purse seine net.

■ 3. Section 660.520 is added to read as follows:

§ 660.520 Reporting requirements.

(a) *Otter interaction.* (1) If a southern sea otter is entangled in a net, regardless of whether the animal is injured or killed, the vessel operator must report this interaction within 24 hours to the Regional Administrator.

(2) While fishing for CPS, vessel operators must record all observations of otter interactions (defined as otters within encircled nets or coming into contact with nets or vessels, including but not limited to entanglement) with their purse seine net(s) or vessel(s). With the exception of an entanglement, which must be initially reported as described in paragraph (a)(1) of this section, all other observations must be reported within 20 days to the Regional Administrator.

(3) When contacting NMFS after an interaction, vessel operators must provide the location (latitude and longitude) of the interaction and a description of the interaction itself. If available, location information should also include water depth, distance from shore, and relation to port or other landmarks. Descriptive information of the interaction should include: whether or not the otters were seen inside or outside the net; if inside the net, had the net been completely encircled; whether any otters came in contact with either the net or the vessel; the number of otters present; duration of interaction; the otter's behavior during interaction; measures taken to avoid interaction.

(b) [Reserved]

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

[Docket No. 070213033-7033-01]

RIN 0648-XA45

Fisheries of the Economic Exclusive Zone Off Alaska; Pacific Cod in the Bering Sea and Aleutian Islands

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

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific cod by catcher vessels less than 60 feet (18.3 meters (m)) length overall (LOA) using pot or hook-and-line gear in the Bering Sea and Aleutian

Islands management area (BSAI). This action is necessary to fully use the 2007 total allowable catch (TAC) of Pacific cod specified for catcher vessels less than 60 feet (18.3 m) LOA using pot or hook-and-line gear in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), May 27, 2007, through 2400 hrs, A.l.t., December 31, 2007. Comments must be received at the following address no later than 4:30 p.m., A.l.t., June 8, 2007.

ADDRESSES: Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. Comments may be submitted by:

- Mail to: P.O. Box 21668, Juneau, AK 99802;

- Hand delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, Alaska;

- FAX to 907-586-7557;

- E-mail inseason-akr@noaa.gov and include in the subject line and body of the e-mail the document identifier: bspclt60re2 (E-mail comments, with or without attachments, are limited to 5 megabytes); or

- Webform at the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions at that site for submitting comments.

FOR FURTHER INFORMATION CONTACT:

Jennifer Hogan, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS closed directed fishing for Pacific cod by catcher vessels less than 60 feet (18.3 m) LOA using pot or hook-and-line gear in the BSAI under § 679.20(d)(1)(iii) on March 30, 2007 (72 FR 15848, April 3, 2007). The fishery was reopened on April 30, 2007 (72 FR 18920, April 16, 2007) and was closed again on May 15, 2007 (72 FR 27980, May 18, 2007).

NMFS has determined that as of May 22, 2007, approximately 30 metric tons of Pacific cod remain in the 2007 Pacific cod TAC allocated to catcher vessels less than 60 feet (18.3 m) LOA using pot or hook-and-line gear in the BSAI. Therefore, in accordance with § 679.25(a)(2)(i)(C) and (a)(2)(iii)(D), and

to fully use the 2007 TAC of Pacific cod specified for catcher vessels less than 60 feet (18.3 m) LOA using pot or hook-and-line gear in the BSAI, NMFS is terminating the previous closure and is opening directed fishing for Pacific cod by catcher vessels less than 60 feet (18.3 m) LOA using pot or hook-and-line gear in the BSAI. The opening is effective 1200 hrs, A.l.t., May 27, 2007, through 2400 hrs, A.l.t., December 31, 2007.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of the Pacific cod fishery by catcher vessels less than 60 feet (18.3 m) LOA using pot or hook-and-line gear in the BSAI. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet and processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of May 22, 2007.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Without this inseason adjustment, NMFS could not allow the fishery for Pacific cod by catcher vessels less than 60 feet (18.3 m) LOA using pot or hook-and-line gear in the BSAI to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until June 8, 2007.

This action is required by § 679.25 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*