

accessible to users of NII/SUPERNet devices.

5. The *NPRM* proposes a basic "listen-before-talk" interim etiquette similar to that established for unlicensed Data-PCS devices in order to expedite the development and introduction of NII/SUPERNet devices. However, the Commission encourages industry to develop any additional etiquette protocols that would increase spectrum efficiency and facilitate equal access to the spectrum by a variety of devices. Specifically, the proposed interim etiquette would require unlicensed devices: to monitor the frequencies they will occupy to determine if the frequencies are unused and available; to limit the maximum time unlicensed devices may transmit to 10 milliseconds; and to require unlicensed devices to wait after ceasing transmission 50 microseconds before beginning to monitor again. Comment is sought on whether these interim standards would be appropriate, and interested parties are invited to submit alternatives.

6. The *NPRM* also proposes to establish sharing criteria between unlicensed NII/SUPERNet devices and incumbent and proposed licensed operations in the 5 GHz range. Specifically, the *NPRM* proposes that NII/SUPERNet devices not be deemed to cause interference to licensed services, provided that they operate in accordance with the Commission's technical rules and they are located indoors or employ an outdoor antenna that is mounted 15 meters or less above the ground. NII/SUPERNet devices with outdoor antennas higher than 15 meters would be required to cease operation or make some accommodation, such as limiting power, to eliminate any harmful interference caused to a licensed operation. Finally, consistent with unlicensed part 15 operation, NII/SUPERNet devices must accept any interference caused by licensed services.

Initial Regulatory Flexibility Analysis

1. *Reason For Action:* The Commission finds that there is a need for additional unlicensed spectrum for intentional radiators. This rule making proceeding is initiated to obtain comment regarding proposals to make spectrum in the 5 GHz band available for such purposes and to amend the part 15 rules to add the technical requirements necessary to permit sharing between the proposed new unlicensed devices and incumbent operations.

2. *Objective:* The objective of this proposal is to provide adequate unlicensed spectrum for wideband

applications, and to provide for the technical rules necessary for spectrum sharing and efficiency.

3. *Legal Basis:* The proposed action is authorized by sections 4(i), 303(c), 303(f), 303(g) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 303(c), 303(f), 303(g) and 303(r). These provisions authorize the Commission to make such rules and regulations as may be necessary to encourage more effective use of radio as is in the public interest.

4. *Description, Potential Impact, and Number of Small Entities Affected:* This proposal may provide new opportunities for radio manufacturers and suppliers of radio equipment, some of which may be small businesses, to develop and sell new equipment. The Commission is unable to quantify other potential effects on small entities. The *NPRM* invites specific comments on this point by interested parties.

5. *Reporting, Record Keeping, and Other Compliance Requirements:* None.

6. *Federal Rules That Overlap, Duplicate, or Conflict With This Rule:* None.

7. *Significant Alternatives:* If promulgated, this proposal will provide additional unlicensed spectrum. The Commission is unaware of other alternatives which could provide sufficient spectrum in the immediate future. The *NPRM* solicits comment on this point.

List of Subjects in 47 CFR Part 15

Radio,
Federal Communications Commission.
William F. Caton,
Acting Secretary.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 960503125-6125-01; I.D. 040996A]

RIN 0648-AH03

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands; Salmon Donation Program

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement Amendment 26 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and Amendment 29 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). This rule would authorize a voluntary Salmon Donation Program (SDP) for distribution of Pacific salmon taken as bycatch in the groundfish trawl fisheries off Alaska to economically disadvantaged individuals by tax-exempt organizations through a NMFS-authorized distributor. This action would support industry initiatives to reduce waste from discard in the groundfish fisheries by processing salmon bycatch for human consumption. This action is intended to promote the goals and objectives of the FMPs that govern the commercial groundfish fisheries off Alaska.

DATES: Comments must be received by July 1, 1996.

ADDRESSES: Comments should be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of Amendments 26 and 29 and the Environmental Assessment/Regulatory Impact Review (EA/RIR) prepared for the amendments may be obtained from the North Pacific Fishery Management Council, 605 West 4th Ave., Suite 306, Anchorage AK 99510-2252; telephone: 907-271-2809. Send comments regarding burden estimates or any other aspect of the data requirements, including suggestions for reducing the burdens, to NMFS and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503, Attn: NOAA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Susan J. Salveson, 907-586-7228.

SUPPLEMENTARY INFORMATION: Fishing for groundfish by U.S. vessels in the exclusive economic zone of the Gulf of Alaska (GOA) and Bering Sea and Aleutian Islands management area (BSAI) is managed by NMFS according to the respective FMPs for the groundfish fisheries of the GOA and BSAI. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801, *et seq.*) (Magnuson Act) and are implemented by regulations governing the U.S. groundfish fisheries at 50 CFR parts 672, 675, and 676. General regulations that also pertain to U.S. fisheries are codified at 50 CFR part 620.

This action proposes regulations to implement Amendment 26 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and Amendment 29 to the Fishery Management Plan for Groundfish of the Gulf of Alaska. If approved by NMFS, these amendments would authorize the distribution of Pacific salmon taken as bycatch in the groundfish trawl fisheries off Alaska to economically disadvantaged individuals by tax-exempt organizations through a NMFS authorized distributor. A description of, and reasons for, the proposed measure are presented below.

Background

The Alaska groundfish trawl fisheries result in incidental fishing mortality of non-groundfish species. Often these species could be fully utilized in other fisheries but must be discarded in the groundfish fisheries. Of particular concern is the incidental fishing mortality of Pacific salmon. During 1993, 1994, and 1995 respectively, 289,284, 141,037, and 45,934 Pacific salmon were estimated to have been caught in the BSAI groundfish fishery; 105,348, 54,613, and 79,617 salmon were estimated to have been caught in the GOA groundfish fishery. Actions have been taken to address various aspects of the salmon bycatch problem. NMFS implemented regulations to require the discard of salmon taken in the BSAI groundfish fisheries to be counted by a NMFS-certified observer (59 FR 18757, April 20, 1994). The intent of this requirement is to collect more data on salmon bycatch. In addition, NMFS issued three experimental fishing permits (EFPs) under regulations at § 675.6 to test the feasibility of distributing salmon bycatch as food to economically disadvantaged individuals for purposes of reducing both salmon bycatch and protein discard in the groundfish trawl fisheries.

The first EFP was issued on August 12, 1993 (58 FR 42947), and was designed to test the feasibility of mandatory retention of all salmon caught incidentally by permitted vessels in three specified trawl fisheries. The objective of this EFP was to reduce both the bycatch and discard of salmon in the groundfish trawl fisheries by requiring participants to incur the costs of processing salmon for distribution to economically disadvantaged individuals by tax-exempt organizations.

The second EFP issued by NMFS authorized voluntary retention and processing of salmon bycatch for donation to charitable organizations (59

FR 39326, August 2, 1994). The purpose of the second EFP was to develop standards and criteria for the voluntary retention of salmon under an SDP that was being considered by the Council. The first voluntary retention EFP expired at the end of the 1995 pollock roe season and the 1995 directed trawl fishery for Pacific cod. The third EFP issued by NMFS (60 FR 43587, August 22, 1995) extended the second EFP for an additional year. The second voluntary retention EFP expires after the closure of the 1996 pollock roe season and the 1996 directed trawl fishery for Pacific cod.

An Interim and a Final Report from the first EFP concluded that a mandatory salmon retention requirement and associated SDP could be effective at reducing salmon bycatch and discards. Results presented in the Final Report from the second EFP indicated that a voluntary retention and processing system and associated SDP would be equally successful at reducing salmon discard amounts but that incentives to reduce salmon bycatch would be negated when the permit was approved on a voluntary basis. A summary of these reports can be found in the EA/RIR (see **ADDRESSES**). Results from the third EFP are due in May 1996.

At its September 1994 meeting, the Council approved Amendments 26 and 29 that would authorize the implementation of an SDP, pending the availability of data from the voluntary EFP that would be used to develop regulatory standards and criteria for the SDP. The success of these EFPs prompted the Council and NMFS to propose regulations to authorize an SDP to reduce salmon discard in the groundfish fisheries off Alaska.

Description of the Salmon Donation Program

The SDP's objective is to distribute salmon taken as bycatch in the groundfish trawl fisheries off Alaska to economically disadvantaged individuals by tax-exempt organizations, thereby reducing waste from discards in the groundfish trawl fisheries. Participants in the SDP would retain and process salmon bycatch for delivery to an authorized distributor selected by NMFS. Participation in the SDP would be voluntary. Vessels and processors would incur the costs of handling, processing, storing, and delivering donated salmon to tax-exempt organizations.

Selection Process for Authorized Distributors

The Director, Alaska Region, NMFS, (Regional Director) would select an

authorized distributor(s) from qualified applicants, announce the NMFS-authorized distributor(s) in the Federal Register, and issue an SDP permit to each selected applicant. An SDP permit would be effective for a period of 3 years after announcement of the authorized distributor(s) in the Federal Register.

Factors that would be considered by the Regional Director when selecting an authorized distributor are listed in this proposed rule at § 672.28(b)(2). The number of authorized distributors selected by the Regional Director would be based on the criteria listed in this proposed rule at § 672.28(b)(2).

Responsibilities of an Authorized Distributor

An authorized distributor would be responsible for monitoring the retention and processing of salmon donated by vessels and processors. An authorized distributor also would coordinate the processing, storage, transportation, and distribution of salmon to hunger relief agencies, food bank networks, and food bank distributors.

Prior to retaining any salmon under the SDP, the authorized distributor would provide the Regional Director with a list of all participants in the SDP, including a list of all vessels and processors, a list of hunger relief agencies, food bank networks, and food distributors participating in the SDP, and a list of locations where salmon must be delivered by the vessels and processors. The list of vessels and processors provided by the authorized distributor would include the following information: (1) A Federal fisheries permit number or Federal processor permit number, (2) the name of the owner or responsible operator, and (3) a telephone number fax number. If an authorized distributor modifies the list of vessels or processors participating in the SDP or changes delivery locations, the authorized distributor would be required to submit a revised list of vessels and processors or delivery locations to the Regional Director before salmon bycatch could be retained by any additional vessel or processor or delivered to any new delivery location.

Reporting Requirements—Documentation and Labeling

Participants in the SDP would have to comply with new documentation and labeling requirements. All packages would be required to be labeled with the date of processing, the name of the processing facility, the contents and the weight of the salmon contained in the package, and the words, "NMFS SALMON DONATION PROGRAM—NOT

FOR SALE—PERISHABLE PRODUCT—KEEP FROZEN”.

A processor retaining or receiving salmon under the SDP and an authorized distributor would keep on file and make available for inspection by an authorized officer all documentation including receipt and cargo manifests setting forth the origin, weight, and destination of all salmon. Such documentation would be retained until 1 year after the effective period of the SDP permit.

Responsibilities of Participating Vessels and Processors

All donated salmon would be required to be processed so that it is fit for human consumption. All BSAI participants would be required to comply with regulations at §§ 675.7(p) and 675.20(c) that would provide for the collection of biological samples and scientific data by an NMFS-certified observer prior to processing salmon under the SDP. Participation in the SDP would not relieve any vessel or processor from existing reporting requirements.

Delegation of Authority

Under NOAA Administrative Order 205-11, 7.01, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated, to the Assistant Administrator for Fisheries, NOAA, the authority to sign material for publication in the Federal Register.

Classification

Section 304(a)(1)(D) of the Magnuson Act requires NMFS to publish regulations proposed by a Council within 15 days of receipt of an FMP amendment and regulations. At this time, NMFS has not determined that the FMP amendments these rules would implement are consistent with the national standards, other provisions of the Magnuson Act, and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Any vessel or processor may participate in a voluntary salmon donation program if an NMFS distributor is selected by the Regional Director, and the authorized distributor includes the vessel or processor on the list of participants under the SDP that is submitted to the

Regional Director. NMFS does not anticipate that any vessel or processor that qualifies as a small entity would elect to participate in the voluntary program if the cost of doing so reduces gross annual receipts by 5 percent or more. As a result, a regulatory flexibility analysis was not prepared.

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

This proposed rule contains a new collection-of-information requirement subject to the Paperwork Reduction Act. This collection-of-information requirement has been submitted to the Office of Management and Budget (OMB) for approval. The new information requirements include an application to participate as an authorized distributor in the SDP, documentation requirements for the authorized distributor(s) and processors participating in the SDP, and packaging requirements for vessels and processors. Public reporting burden for these collections of information are estimated to average 40 and 0.1 hours respectively for the permit and packaging requirements, and 40 and 0.25 hours per year for the documentation requirements and identification information. Send comments regarding burden estimates or any other aspect of the data requirements, including suggestions for reducing the burdens, to NMFS and OMB (see **ADDRESSES**).

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.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

Dated: May 7, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are proposed to be amended as follows:

PART 672—GROUND FISH OF THE GULF OF ALASKA

1. The authority citation for part 672 continues to read as follows:

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

2. In § 672.7, paragraph (r) is added to read as follows:

§ 672.7 Prohibitions.

* * * * *

(r) Retain or possess salmon, except as permitted under the Salmon Donation Program as provided by § 672.28 of this part, or as authorized by other applicable law.

3. In § 672.20, paragraph (e)(2) is revised to read as follows:

§ 672.20 General limitations.

* * * * *

(e) * * *

(2) A vessel must sort its catch as soon as possible after retrieval of the catch and except to allow for sampling by an observer (if any) and except as permitted to do so under the Salmon Donation Program as provided by § 672.28, and must return any catch of prohibited species, or parts thereof, to the sea immediately after sorting regardless of its condition. A vessel must handle prohibited species to be discarded in a manner that minimizes additional injury.

* * * * *

4. Section § 672.28 is added to read as follows:

§ 672.28 Salmon Donation Program.

(a) *Definitions.* For purposes of this section:

Authorized distributor means a tax-exempt organization authorized by NMFS to coordinate the processing, storage, transportation, and distribution of salmon taken as bycatch in the groundfish trawl fisheries to tax-exempt hunger relief agencies, food bank networks, and food bank distributors.

Food bank distributor means a tax-exempt organization with the primary purpose of distributing food resources to hunger relief agencies.

Food bank network means a tax-exempt organization with the primary purpose of coordinating receipt and delivery of food resources to its member food bank distributors or hunger relief agencies.

Hunger relief agency means a tax-exempt organization with the primary purpose of feeding economically disadvantaged individuals free of charge.

SDP means the Salmon Donation Program established under this section.

SDP permit means a permit issued by NMFS to an applicant who qualifies as an authorized distributor for purposes of the SDP.

Tax-exempt Organization means an organization that received a determination letter from the Internal Revenue Service recognizing tax exemption under 26 CFR part 1 (§§ 1.501 to 1.640).

(b) *Authorized distributors—(1) Application.* An applicant seeking to become an authorized distributor must

provide the Regional Director with following information:

(i) Proof of the applicant's tax-exempt status.

(ii) A description of the arrangements for processing, shipping, storing, and transporting donated salmon and an estimate of the associated costs.

(iii) A statement describing the applicant's expertise in providing for the distribution of food product from remote Alaskan locations to hunger relief agencies, food bank networks, or food bank distributors, including arrangements for transportation, distribution costs, and product quality control.

(iv) Documentation of support from cold storage and transportation facilities.

(v) A proposed operating budget that is adequate to ensure that salmon donated under this program will be distributed to hunger relief agencies, food bank networks, or food bank distributors and that the salmon will be maintained in a manner fit for human consumption.

(vi) Proof of the applicant's ability to obtain and maintain adequate funding for the distribution of salmon under the SDP.

(vii) A copy of the applicant's articles of incorporation and bylaws showing that the purpose of the applicant includes providing food resources to hunger relief agencies, food bank networks, or food bank distributors.

(viii) Proof of the applicant's ability to take full responsibility for the documentation and disposition of salmon received under the SDP, including sufficient liability insurance to cover public interests relating to the quality of salmon distributed for human consumption.

(ix) Quality control criteria to be followed by vessels, processors, hunger relief agencies, food bank networks, and food bank distributors.

(x) The number of vessels and processors that the applicant is capable of administering effectively.

(xi) A list of all vessels and processors, food bank networks and food bank distributors participating in the SDP. The list of vessels and processors must include:

(A) The vessel's or processor's Federal fisheries permit number or Federal processor permit number.

(B) the name of the vessel owner or responsible operator or the name of the owner or plant manager of the processor.

(C) the vessel's or processor's telephone number and fax number.

(D) the signature of the vessel owner or responsible operator or the owner or plant manager of the processor.

(xii) A signed statement from the applicant and all persons listed under paragraph (b)(1)(xi) of this section who would conduct activities pursuant to the SDP permit waiving any and all claims against the United States and its agents and employees for any liability for personal injury, death, sickness, damage to property directly or indirectly due to activities conducted under the SDP.

(xiii) A list of locations where salmon must be delivered by participating vessels and processors.

(2) *Selection.* The Regional Director may select one or more authorized distributors under the SDP based on the information submitted by applicants under paragraph (b)(1) of this section. The number of authorized distributors selected by the Regional Director will be based on the following criteria:

(i) The number and qualifications of applicants for SDP permits.

(ii) The number of harvesters and the quantity of salmon that applicants can effectively administer.

(iii) The anticipated level of salmon bycatch based on the salmon bycatch from previous years.

(iv) The potential number of vessels and processors participating in the groundfish trawl fisheries.

(3) *SDP Permit.* (i) After review of qualified applicants, the Regional Director will announce the selection of authorized distributor(s) in the Federal Register and will issue SDP permit(s).

(ii) The Regional Director may impose additional terms and conditions on an SDP permit consistent with the objectives of the SDP.

(iii) An SDP permit may be suspended, modified, or revoked for noncompliance with terms and conditions specified in the permit or for a violation of this section or other regulations in this part or part 675.

(iv) An SDP permit remains in effect for a 3-year period after the selection notice is published in the Federal Register unless suspended or revoked. An SDP permit may not be transferred. An SDP permit issued to an authorized distributor may be renewed following the application procedures in this section.

(v) If the authorized distributor modifies any information on the SDP permit application submitted under (b)(1)(x) or (b)(1)(xii) of this section, the authorized distributor must submit a modified list of participants or a modified list of delivery locations to the Regional Director.

(c) *Reporting and Recordkeeping Requirements.* (1) A vessel or processor

retaining salmon under the SDP must comply with all applicable recordkeeping and reporting requirements. A vessel or processor participating in the SDP must comply with applicable regulations at §§ 672.7(o), 675.7(p), and 675.20(c) that allow for the collection of data and biological sampling by an NMFS-certified observer prior to processing any salmon under the SDP.

(2) Salmon retained under the SDP must be packaged, and all packages must be labeled with the date of processing, the name of the processing facility, the contents and the weight of the salmon contained in the package and the words, "NMFS SALMON DONATION PROGRAM—NOT FOR SALE—PERISHABLE PRODUCT—KEEP FROZEN".

(3) A processor retaining or receiving salmon under the SDP and an authorized distributor must keep on file and make available for inspection by an authorized officer all documentation including receipt and cargo manifests setting forth the origin, weight, and destination of all salmon. Such documentation must be retained until 1 year after the effective period of the SDP permit.

(d) *Processing, handling, and distribution.* (1) Processing and reprocessing of all salmon retained under the SDP must be carried out under the direction of the authorized distributor. A processor retaining or receiving salmon under the SDP, at a minimum, must head, gut and freeze the salmon in a manner that makes it fit for human consumption.

(2) Salmon that are determined to be unfit for human consumption prior to delivery to an authorized distributor must be discarded under § 672.20(e) or § 675.20(c). Salmon that are determined to be unfit for human consumption after delivery to the authorized distributor must be destroyed in accordance with applicable sanitation laws and regulations.

(3) Authorized distributors and persons conducting activities supervised by authorized distributors may retain salmon only for the purpose of processing and delivering the salmon to hunger relief agencies, food networks or food distributors as provided by this section. Such persons may not consume or retain salmon for personal use and may not sell, trade or barter, or attempt to sell, trade or barter any salmon that is retained under the SDP.

(4) No salmon bycatch may be retained by a vessel or processor, or delivered to a delivery location under this section, unless the vessel or processor and delivery location is

included on the list provided to the Regional Director under paragraphs (b)(1)(x), (b)(1)(xii), or (b)(3)(v) of this section.

PART 675—GROUND FISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

5. The authority citation for part 675 continues to read as follows:

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

6. In § 675.7, paragraph (p) is revised and paragraph (s) is added to read as follows:

§ 675.7 Prohibitions.

* * * * *

(p) Discard any salmon taken incidental to a directed fishery for groundfish by vessels using trawl gear until notified by an NMFS-certified observer that the number of salmon

taken has been determined and the collection of any scientific data or biological samples has been completed as provided at § 675.20(c)(6) or retain salmon except as permitted to do so under the Salmon Donation Program as provided by § 672.28 of this chapter.

* * * * *

(s) Retain or possess salmon, except as permitted to do so under the Salmon Donation Program as provided by § 672.28 of this chapter, or as authorized by other applicable law.

7. In § 675.20, paragraph (c)(6)(i) introductory text is revised to read as follows:

§ 675.20 General limitations.

* * * * *

(c) * * *

(6) * * * (i) Except as provided in paragraph (c)(6)(ii) of this section, the operator of a vessel and the manager of

a shoreside processing operation may not discard any salmon or transfer or process any salmon under the Salmon Donation Program at § 672.28 of this chapter if the salmon were taken incidentally to a directed fishery for groundfish by vessels using trawl gear until the number of salmon taken has been determined by an NMFS-certified observer and the collection of any scientific data or biological samples from the salmon has been completed.

* * * * *

8. Section 675.28 is added to read as follows:

§ 675.28 Salmon Donation Program.

The Salmon Donation Program is governed by provisions set forth in § 672.28 of this chapter.

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