

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Tributary Kiowa .....	At confluence with Lake Kiowa .....	+705	Cooke County (Unincorporated Areas).
	Approximately 2,500 feet upstream from confluence with Lake Kiowa.	+723	
Wolf Creek .....	At the confluence with Lake Ray Roberts .....	+645	Cooke County (Unincorporated Areas).
	Approximately 1,000 feet upstream from FM 295 .....	+746	
Wolf Creek Tributary 1 .....	At the confluence with Wolf Creek .....	+681	Cooke County (Unincorporated Areas).
	Approximately 2,700 feet upstream from confluence with Wolf Creek.	+709	

\* National Geodetic Vertical Datum.

+ North American Vertical Datum.

# Depth in feet above ground.

#### ADDRESSES

##### City of Valley View

Maps are available for inspection at 100 South Dixon, Gainesville, TX 76240.

##### Cooke County (Unincorporated Areas)

Maps are available for inspection at 100 South Dixon, Gainesville, TX 76240.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: June 29, 2009.

**David I. Maurstad,**

*Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.*

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#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

##### 50 CFR Part 660

[Docket No. 071106669-81372-03]

RIN 0648-AU26

##### Fisheries Off West Coast States; Coastal Pelagic Species Fishery; Amendment 12 to the Coastal Pelagic Species Fishery Management Plan

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

**ACTION:** Final rule

**SUMMARY:** NMFS issues this final rule to implement Amendment 12 to the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) which would provide protection for all species of krill off the West Coast (i.e., California,

Oregon and Washington). This rule would prohibit the harvest of all species of krill by any fishing vessel operating in the Exclusive Economic Zone (EEZ) off the West Coast, and would also deny the use of exempted fishing permits to allow krill fishing.

**DATES:** Effective August 12, 2009.

**ADDRESSES:** Copies of Amendment 12, which includes an Environmental Assessment/Initial Regulatory Flexibility Analysis/Regulatory Impact Review, are available from Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802.

##### FOR FURTHER INFORMATION CONTACT:

Joshua B. Lindsay, Sustainable Fisheries Division, NMFS, at 562-980-4034 or Mike Burner, Pacific Fishery Management Council, at 503-820-2280.

**SUPPLEMENTARY INFORMATION:** The CPS fishery in the EEZ off the West Coast is managed under the CPS FMP, which was developed by the Pacific Fishery Management Council (Council) pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The CPS FMP was approved by the Secretary of Commerce on June 10, 1999, and was implemented by a final rule (64 FR 69888, December 15, 1999) that was codified at 50 CFR part 660, subpart I.

Amendment 12, which was approved by the Secretary of Commerce on May 25, 2007, added all species of krill as a

management unit species under the CPS FMP and placed krill under a newly established "prohibited harvest species" category. This new category differs from the existing "prohibited species" definition in the FMP because "prohibited harvest species" may not be taken by any fishery or gear type in the U.S. EEZ. In contrast, "prohibited species" may not be taken and retained incidentally by CPS fishery participants, but are legally harvested under provisions in Federal regulations implementing other Council FMPs.

As the principal food source for many fish and non-fish species, krill are a critical component of the marine ecosystem. Off the West Coast krill are important prey for a variety of fish species, including several overfished groundfish species, salmon and Pacific whiting. Krill are also a principal food source for many species of marine mammals and seabirds, some of which are listed as threatened or endangered under the Endangered Species Act and warrant special efforts for protection and recovery. Although there is no indication that the status of the krill resource has contributed to the overfished, endangered, or threatened status of these species, protecting krill will help to maintain these important ecological relationships and to ensure the long-term health and productivity of the West Coast ecosystem. Amendment 12 incorporates ecosystem conservation principles into fishery management programs by protecting, to the extent

practicable, krill resources, which are an integral part of that ecosystem.

At this time, there are no Federal regulations that limit fishing for krill in the EEZ. While a krill fishery off the U.S. West Coast does not currently exist and there have been only limited expressions of interest in commercial exploitation of krill in the EEZ, NMFS is concerned such a fishery could develop, which could have an adverse impact on other West Coast fish stocks, marine mammals, seabirds and the ecosystem generally.

The states of Washington, Oregon, and California prohibit their vessels from fishing for krill and prohibit landings of krill into their respective ports. However, these prohibitions would not prevent a fishery from developing in the West Coast EEZ by vessels from outside of the region, as long as landings were not made into a West Coast port. A market for krill currently exists in Washington and Oregon, where salmon farms use krill products as a supplemental feed. Federal (EEZ) waters that lie outside of the state prohibitions on krill harvest may in the future be used for fish farming. Such future operations could use krill as feed stock, and a fishery could develop around the needs of these aquaculture facilities. Local krill would likely be a potential food source, which may significantly increase the likelihood of a krill fishery developing within West Coast EEZ waters.

NMFS is concerned about the potential impacts of a krill fishery based in part on information regarding large-scale krill fishing methods and the impacts of existing krill fisheries in other areas of the world. Krill concentrations attract aggregations of marine mammals, seabirds, and fish predators, and bycatch and/or disturbance of these organisms is likely to occur due to the trawl-type gear used to catch krill. In the Antarctic krill fishery, there is known bycatch of fur seals as well as various sea birds. In British Columbia, a krill fishery began in 1970, and quotas were established in 1976 due to concerns for harvesting a forage species upon which salmon and other commercially important finfish depend. An annual catch was set at 500 tons with an open season from November to March to minimize the incidental catch of larval and juvenile fish.

NMFS has considered the potential for development of a krill fishery and the potential impacts a fishery could have on krill resources and on the fish

and other species, such as birds and mammals, that are dependent on, or that are sensitive to, the abundance and availability of krill. NMFS believes it is critical to take preventive action at this time to ensure that a krill fishery will not develop that could potentially harm krill stocks, and in turn harm other fish and non-fish stocks. In an environmental assessment prepared for this action, NMFS analyzed the option of allowing a small harvest of krill, but ultimately decided to approve the Council's recommendation to impose a simple prohibition, which is consistent with State law and easier to enforce and administer than a program allowing for low harvest levels.

Under Amendment 12, krill (all species) would be added to the management unit species of the CPS FMP. Further, a new category of management unit species – “prohibited harvest” – would be established under the FMP. Krill would be placed in that category. This means that optimum yield (OY) for krill would be zero, and the target, harvest and transshipment of krill would be prohibited. Also, exempted fishing permits (EFPs) would not be issued under the EFP procedures of the CPS FMP to allow individuals to harvest krill as an exception to the prohibition of harvest. These actions would fully achieve the objectives of the amendment to the extent practicable, but would not account for environmental conditions and the responses of krill and other resources to changes in environmental conditions. NMFS recognizes that *de minimis* or trace amounts of krill may be retained by fishermen while targeting other species; such inadvertent action is not intended to be the subject of this prohibition.

Four alternatives were analyzed for this action. For further background information on these alternatives and this action please refer to the Amendment 12 document entitled *Management of Krill as an Essential Component of the California Current Ecosystem*.

NMFS received thirteen comments regarding the proposed regulations to implement Amendment 12. All comments were supportive of the action.

#### Classification

The Administrator, Southwest Region, NMFS, determined that Amendment 12 to the CPS FMP is necessary for the conservation and management of krill and that it is consistent with the

Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This final rule has been determined to be significant for the 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 or the economic impact of the proposed rule. As a result, a regulatory flexibility analysis was not required and none was prepared.

#### List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 7, 2009.

**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

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

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

2. In § 660.502 the definitions of “Krill” and “Prohibited harvest species” are added in alphabetical order to read as follows:

#### § 660.502 Definitions.

\* \* \* \* \*

*Krill* means all species of euphausiids that occur in the EEZ off the West Coast.

\* \* \* \* \*

*Prohibited harvest species* means all krill species in the EEZ off the West Coast.

\* \* \* \* \*

■ 3. In § 660.505, add paragraph (o) as follows:

#### § 660.505 Prohibitions.

\* \* \* \* \*

(o) Fish for, target, harvest or land a prohibited harvest species in any fishery within the EEZ off the West Coast.

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