

length; and 18 inches (45.72 cm) in height for vessels longer than 65 ft (19.81 m) in length. Markings must be legible and of a color that contrasts with the background.

As discussed during the HMS FMP Plan Development phase, the Council's intent in recommending the current requirement, was to address marking for identification purposes on HMS commercial fishing vessels, not recreational charter vessels. Our intent in promulgating the rule was to exempt recreational charter vessels from the marking requirements, similar to exemptions granted under the Council's Groundfish FMP. The current inclusion of HMS recreational charter vessels as part of the vessel identification requirements in the HMS FMP is not consistent with how vessel marking requirements are applied in the Groundfish FMP. The Council recommended to NMFS that meeting this requirement was not necessary as the HMS recreational charter vessels were already adequately marked, under existing state and U.S. Coast Guard regulations, so as to be identified by enforcement assets from both air and sea. In addition to being unnecessary for enforcement purposes, compliance with the current marking requirement would detract from the aesthetics of the charter vessels and degrade the "attraction factor" for future clients.

Classification

NMFS has determined that the proposed rule is consistent with the HMS FMP and preliminarily determined that this proposed rule is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This proposed 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 that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Approximately 327 vessels were permitted under the HMS FMP to operate in the HMS recreational charter fishery off the U.S. West Coast in 2006. This proposed rule would exclude owners of HMS permitted recreational charter vessels from the vessel identification regulations at 50 CFR 660.704. The cost of maintaining/applying the identification numbers is approximately one and one-half hours of labor and the cost of approximately 3 gallons of marine paint, or about \$20. All vessels affected by this rule are

considered small business entities; the rule should not only have no adverse economic impact to them, but should have a direct positive impact to them (i.e., it simply would relieve a burden).

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 13, 2007.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF THE WEST COAST STATES

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

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

2. Section 660.704 is revised to read as follows:

§ 660.704 Vessel identification.

(a) *General.* This section only applies to commercial fishing vessels that fish for HMS off or land HMS in the States of California, Oregon, and Washington. This section does not apply to recreational charter vessels that fish for HMS off or land HMS in the States of California, Oregon, and Washington.

(b) *Official number.* Each fishing vessel subject to this section must display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be visible from enforcement vessels and aircraft.

(c) *Numerals.* The official number must be affixed to each vessel subject to this section in block Arabic numerals at least 10 inches (25.40 cm) in height for vessels more than 25 ft (7.62 m) but equal to or less than 65 ft (19.81 m) in length; and 18 inches (45.72 cm) in height for vessels longer than 65 ft (19.81 m) in length. Markings must be legible and of a color that contrasts with the background.

[FR Doc. E7-7381 Filed 4-17-07; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070322067-7067-01; I.D. 031407A]

RIN 0648-AU03

Fisheries of the Exclusive Economic Zone Off Alaska; Prohibited Species Bycatch Management

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

ACTION: Proposed rule.

SUMMARY: NMFS proposes to amend regulations governing salmon bycatch in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to enhance the effectiveness of salmon bycatch measures by (1) exempting pollock vessels from Chinook and chum salmon savings area closures if they participate in an inter-cooperative agreement (ICA) to reduce salmon bycatch, and (2) exempting vessels participating in non-pollock trawl fisheries from chum salmon savings area closures because these fisheries intercept minimal amounts of salmon. The proposed rule is intended to promote the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP).

DATES: Written comments must be received by June 4, 2007.

ADDRESSES: Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian, Records Officer. Comments may be submitted by any of the following methods:

- E-mail: 0648-au03-BSA84-A-PR@noaa.gov. Include in the subject line the following identifier: BS salmon proposed rule. E-mail comments, with or without attachments, are limited to 5 megabytes;
- Federal e-Rulemaking Portal: <http://www.regulations.gov>;
- Mail to P.O. Box 21668, Juneau, AK 99802;
- Fax: to (907) 586-7557; or
- Hand Delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, AK.

Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action

may be obtained from the same mailing address listed here or from the NMFS Alaska Region Web site at www.fakr.noaa.gov.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS at ADDRESSES above and by e-mail to David_Rostker@omb.eop.gov, or fax to (202) 395-7285.

FOR FURTHER INFORMATION CONTACT: Jason Anderson, 907-586-7228, or jason.anderson@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

NMFS manages the U.S. groundfish fisheries of the BSAI in the Exclusive Economic Zone under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations implementing the FMP appear at 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

Pacific salmon are caught incidentally in the BSAI trawl fisheries, especially in the pollock fishery. Of the five species of Pacific salmon, Chinook salmon (*Oncorhynchus tshawytscha*) and chum salmon (*O. keta*) are most often incidentally caught in the pollock fishery. Pacific salmon are placed into two categories for purposes of salmon bycatch management: Chinook and non-Chinook. The non-Chinook category is comprised of chum, sockeye (*O. nerka*), pink (*O. gorbuscha*), and coho (*O. kisutch*) salmon. However, from 2001 through 2004, chum salmon represented about 98 percent of non-Chinook salmon harvested incidentally in the pollock trawl fisheries. For convenience, all non-Chinook salmon are referred to as chum salmon.

To address Chinook salmon bycatch concerns, the Council adopted several management measures designed to reduce overall Chinook salmon bycatch in the BSAI trawl fisheries. In 1995, the Council adopted, and NMFS approved, Amendment 21b to the FMP. Based on historic information on salmon bycatch, Amendment 21b established a Chinook salmon savings area (60 FR 31215, November 29, 1995). Under Amendment 21b, the Chinook salmon savings area closed when the incidental catch of Chinook salmon in BSAI trawl fisheries reached 48,000 fish. Amendment 58 to the FMP revised the Chinook salmon savings area measures (65 FR 60587, October 12, 2000). Amendment 58

reduced the Chinook salmon bycatch limit from 48,000 fish to 29,000 fish, mandated year-round accounting of Chinook bycatch in the directed pollock fishery, revised the boundaries of the Chinook salmon savings area closure, and implemented new closure dates. The timing of the closure depends on when the limit is reached. If the limit is reached:

- Before April 15, the area closes immediately through April 15. After April 15, the area re-opens, but closes again from September 1 through December 31.
- Between April 15 and September 1, the area would close from September 1 through the end of the year.
- After September 1, the area closes immediately through the end of the year.

The Chinook salmon savings area was further modified by Amendment 82 to the FMP (70 FR 9856, March 1, 2005). Amendment 82 established a separate Aleutian Islands subarea bycatch limit that, when reached, closes the existing Chinook salmon savings area located in the Aleutian Islands subarea (Area 1). The Chinook salmon savings area located in the Bering Sea subarea remained unchanged, but was designated as Area 2.

The Council also adopted a time-area closure designed to reduce overall chum salmon bycatch in the BSAI trawl fisheries. In 1995, Amendment 35 to the FMP established the chum salmon savings area (60 FR 34904, July 5, 1995). This area is closed to all trawling from August 1 through August 31 of each year. Additionally, if 42,000 chum salmon are caught in the Catcher Vessel Operational Area (CVOA) during the period August 15 through October 14, the area remains closed for the remainder of the calendar year.

Community development quota (CDQ) groups receive, along with allocations of groundfish CDQ, individual allocations of Chinook and non-Chinook annual bycatch amounts. Vessels groundfish CDQ fishing are not subject to the chum and Chinook salmon savings area closures that apply to the non-CDQ pollock fisheries. Rather, the Chinook salmon savings area closes to vessels directed fishing for pollock for a CDQ group once that CDQ group has reached its Chinook salmon bycatch limit. The chum salmon savings area closes to vessels using trawl gear to fish for groundfish CDQ once that CDQ group has reached its non-Chinook salmon bycatch limit. Thus, individual CDQ groups are subject to salmon savings area closures based on their respective catch of chum or Chinook salmon while groundfish CDQ fishing.

The Chinook and chum salmon savings areas were adopted based on historic observed salmon bycatch rates and were designed to avoid high spatial and temporal levels of salmon bycatch. From 1990 through 2001, the BSAI salmon bycatch average was 37,819 Chinook and 69,332 chum annually. Recently, however, salmon bycatch numbers have increased substantially. In 2003, 54,911 Chinook salmon and 197,091 chum salmon were taken incidentally in the trawl fisheries. In 2004, salmon bycatch increased substantially to 62,493 Chinook and 465,650 chum salmon. Bycatch amounts remained high in 2005 and totaled 67,541 Chinook and 116,999 chum salmon.

Since its establishment in 1995, the Chinook salmon savings area closure only has been triggered since 2003. The Chinook salmon bycatch limit was not reached prior to 2003. In 2003, the Chinook salmon savings area closed to directed trawl fishing for non-CDQ pollock on September 1, with the closure remaining in effect until the end of the calendar year. In 2004, the Chinook salmon savings area closed to directed trawl fishing for non-CDQ pollock on September 5 through the end of the year. In 2005, the Chinook salmon savings area in the Bering Sea subarea was closed to directed trawl fishing for non-CDQ pollock on September 1 through the end of the year.

Since establishment of the chum salmon savings area in 1995, the bycatch of non-Chinook salmon triggered closures in 2002, 2003, 2004, and 2005. In these years, the chum salmon savings area closed to non-CDQ trawl fisheries in September and October.

Anecdotal information from participants in the BSAI trawl fisheries indicated that salmon bycatch rates may be higher outside the Chinook and chum salmon savings area. In February 2005, the Council initiated an EA/RIR/IRFA to explore alternatives to the current salmon bycatch measures. Spatial and temporal comparisons of non-CDQ vessels fishing outside of the salmon savings areas with CDQ vessels fishing inside of the salmon savings areas indicated that bycatch rates were much higher outside of the savings areas.

In October 2005, the Council adopted Amendment 84 to the FMP. Amendment 84 would exempt non-CDQ and CDQ pollock vessels participating in a salmon bycatch reduction ICA from closures of the Chinook and chum salmon savings areas in the Bering Sea. Additionally, vessels participating in trawl fisheries for species other than

pollock would be exempt from chum salmon savings area closures. The Council and NMFS intend to use NMFS salmon bycatch information to assess the effectiveness of regulations implementing Amendment 84 at reducing salmon bycatch in the directed pollock fisheries. The Council also asked for participants in the salmon bycatch reduction ICA to report annually on how effective the ICA appears to be at reducing salmon bycatch. The Council also will gather additional information to assess the effectiveness of the ICA in coordinating voluntary salmon bycatch reduction efforts by participants in the Bering Sea pollock fisheries. Additionally, this information could be used to further assess whether participants fishing in the current salmon savings areas continue to encounter lower salmon bycatch rates than participants fishing outside of salmon savings areas.

The Council is also developing a separate FMP amendment that could result in additional management measures to reduce salmon bycatch. These measures could include altering the geographic coordinates of the Chinook and chum salmon savings areas based on recent bycatch rates, and implementing an individual salmon bycatch accountability program. However, the Council determined that consideration of these management measures would require additional time and chose to expedite Amendment 84 while the Council develops the second amendment.

Salmon Bycatch Reduction ICA

Amendment 84 proposes a management program intended to enable the pollock fleet to utilize its internal cooperative structure to reduce salmon bycatch. If Amendment 84 is approved and implemented, salmon savings area closures would not apply to vessels that operate under a salmon bycatch reduction ICA. Rather, the agency intends that salmon bycatch would be reduced as ICA parties comply with the provisions of the ICA. The ICA, including its enforcement mechanism, is discussed further below.

The salmon bycatch reduction ICA is intended to reduce salmon bycatch in the BSAI non-CDQ and CDQ pollock fisheries. American Fisheries Act (AFA) pollock fishery participants would incorporate the ICA into existing cooperative agreements.

CDQ groups, western Alaska community organizations, and AFA cooperatives would be eligible to become parties to the ICA. Parties to the ICA could include the following AFA cooperatives: Pollock Conservation

Cooperative, the High Seas Catchers Cooperative, the Mothership Fleet Cooperative, the Inshore Cooperatives (Akutan Catcher Vessel Association, Arctic Enterprise Association, Northern Victor Fleet Cooperative, Peter Pan Fleet Cooperative, Unalaska Fleet Cooperative, Unisea Fleet Cooperative and Westward Fleet Cooperative) and all six CDQ groups. Additionally, western Alaskan groups who have an interest in the sustainability of salmon resources could be parties in the ICA. The ICA must identify at least one third party group representing western Alaskans who depend on salmon and have an interest in salmon bycatch reduction.

The purpose of the ICA would be to use real-time salmon bycatch information to avoid high incidental catch rates of chum and Chinook salmon. The ICA would be a contractual agreement among the parties. All parties to the ICA would agree to comply with ICA provisions, including requirements to retain the services of a private contractor to collect and analyze bycatch data and report salmon bycatch information to the ICA parties.

The ICA would require that the third party hired to facilitate salmon bycatch avoidance compare the bycatch rate of a participating cooperative to a pre-determined bycatch rate (base rate). All ICA provisions for fleet bycatch avoidance behavior, closures, and enforcement would be based on the ratio of the cooperative's rate to the base rate.

The third party entity hired to facilitate salmon bycatch avoidance would assign an ICA cooperative to one of three tiers based on its bycatch rate relative to the base rate. Higher tiers correspond to higher bycatch rates. Tier assignments determine access privileges to specific fishing areas. The ICA would prohibit a participant assigned to a high tier from fishing in a relatively larger geographic area to avoid high bycatch areas. Conversely, the ICA would grant access to a wider range of fishing areas to a participant assigned to a low tier based on fishing behavior that results in relatively low bycatch. The contractor would track bycatch rates for each participant. The ICA would specify a participant's tier assignment each week based on that participant's bycatch rate for the previous week. Thus, participants would have incentives to avoid fishing behavior that results in high bycatch rates.

Monitoring and enforcement would be facilitated through the ICA. Any of the parties to the ICA may bring civil suit or initiate a binding arbitration action against another party for violating

the ICA. For example, a participant that fishes for pollock in a prohibited area based on its tier assignment would be subject to a monetary penalty. The ICA would include a penalty schedule for violating these tier closures.

As described above, two western Alaska salmon user groups could be parties to the ICA. These groups do not participate in commercial groundfish fisheries off Alaska. However, they represent subsistence salmon users, and are concerned about the amount of salmon bycatch taken in the groundfish fisheries. Because their members are partially dependent on healthy salmon returns, the western Alaska user groups have incentives to reduce salmon bycatch in the groundfish fisheries and monitor performance of the ICA's bycatch reduction measures. The Council's intent is that their participation in the ICA may improve monitoring and compliance among the parties. If either of these western Alaska user groups determines that fishing is not in compliance with the ICA, the user group could bring civil suit against the offending parties.

Chum Salmon Savings Area Exemption

Vessels participating in non-pollock trawl fisheries currently are subject to the chum salmon savings area closure. However, the best available information summarized in the EA/RIR/IRFA prepared for this action indicates that 97 percent of the 2002 and 2003 chum salmon bycatch occurred in the pollock fisheries. Because the non-pollock trawl sector accounts for such a small portion of the chum bycatch, the Council recommended exempting all non-pollock trawl vessels from the chum salmon savings area closure. While this proposed rule would exempt non-pollock trawl vessels from this closure, any chum salmon bycatch by these vessels would continue to contribute towards triggering closures.

Proposed Changes to Regulations

The salmon bycatch reduction ICA would be defined at § 679.2 as a voluntary civil agreement among pollock cooperatives, CDQ groups, and western Alaska subsistence salmon user groups that is intended to coordinate the pollock fishery in a manner that reduces incidental catch rates of salmon.

Prohibitions at § 679.7 would be revised to incorporate the primary elements of this proposed action into two existing prohibitions specific to CDQ fisheries. Section 679.7(d)(9) and (10) would be revised to extend the exemptions from salmon savings area closures to vessels participating in the pollock CDQ fishery under a salmon

bycatch reduction ICA. Additionally, §§ 679.7(d)(10), 679.21(e)(7)(vii), and 679.22(a)(10) would be revised to exempt trawl vessels directed fishing for groundfish other than pollock from the chum salmon savings area closure.

Regulations at §§ 679.21(e)(7)(ix) would be revised to exempt pollock trawl vessels participating in a salmon bycatch reduction ICA from closures in Area 2 of the Chinook salmon savings area. Vessels that are not participating in the salmon bycatch reduction ICA would remain subject to Chinook and chum salmon savings area closures.

As noted above, NMFS would not enforce provisions of the salmon bycatch reduction ICA. However, these proposed regulations would require the ICA to include basic provisions necessary to reduce salmon bycatch in the pollock fisheries. Additionally, NMFS would review the ICA for compliance with regulations. An ICA that includes these basic provisions would be approved by NMFS. If NMFS does not approve an ICA, participants would be able to appeal that determination, subject to current regulations at § 679.43. The process for submitting and obtaining NMFS approval of an ICA would be described at § 679.21(g). Additionally, § 679.21(g)(4) would establish an initial deadline of December 1, 2007, for the 2008 fishing year, and the ICA would remain in effect until it expires or is amended. An amendment of the ICA would require submission of an amended ICA signed by all parties and approval by final agency action of the amended ICA by NMFS.

Minimum requirements for an ICA would be described at § 679.21(g)(6). The proposed rule would require the salmon bycatch reduction ICA to list the parties to the agreement, describe how participants would avoid salmon bycatch in directed pollock fisheries, and describe internal monitoring and enforcement mechanisms for the ICA. It would require the ICA to identify at least one private firm retained to facilitate bycatch avoidance behavior and information sharing. It would require the ICA to dictate salmon bycatch avoidance behaviors for vessel operators subject to the ICA. In addition, it would require the ICA to specify a salmon bycatch base rate, a method for assigning a cooperative or CDQ group to one of three tiers based on its salmon bycatch rate relative to the salmon bycatch base rate and provisions for governing access to fishing areas by cooperatives or CDQ groups assigned to each tier. Finally, it would require the ICA to require all parties to comply with the provisions of the ICA.

The proposed rule also would require the ICA to include the names, Federal fisheries permit numbers, and United States Coast Guard (USCG) vessel identification numbers of vessels subject to the salmon bycatch reduction ICA. Finally, the proposed rule would require the ICA to list the name, business address, and phone number of the person who will annually file the ICA with NMFS.

The proposed rule also would require participants to procure an external compliance audit. If the compliance audit reveals a previously unidentified violation of the terms of the ICA, the information used to determine that this violation occurred would be required to be disseminated to all participants. Furthermore, if a violation of the ICA is identified at any time, but a penalty is not assessed, the information used to identify that violation would be required to be disseminated to all participants. These provisions are intended to increase transparency for the participants, and allow each participant to monitor compliance with the terms of the ICA.

If the Council determined that the salmon bycatch reduction ICA did not effectively reduce salmon bycatch, it could initiate a separate action to accomplish salmon bycatch reduction goals. Additionally, NMFS is concerned about the effective execution of the terms and conditions of the ICA. To address these concerns, regulations at § 679.61(f)(2)(vi) would require AFA annual reports to include the number of violations of the ICA, the nature of those violations, and the penalty imposed, if any, against the violating party.

Public comments are being solicited on the FMP amendment through the end of the comment period stated in the NOA. Public comments on the proposed rule must be received by the end of the comment period on the amendment, as published in the NOA, to be considered in the approval/disapproval decision on the amendment. All comments received by the end of the comment period on the amendment, whether specifically directed to the amendment, or the proposed rule, will be considered in the approval/disapproval decision. Comments received after that date will not be considered in the approval/disapproval decision on the amendment. To be considered, comments must be received by close of business on the last day of the comment period; that does not mean postmarked or otherwise transmitted by that date.

Classification

At this time, NMFS has not determined that the FMP/amendment

that this rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an initial regulatory flexibility analysis (IRFA) as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of the preamble and in the **SUMMARY** section of the preamble. A copy of the IRFA is available from NMFS (see **ADDRESSES**). A summary of the analysis follows.

This action proposes to exempt vessels participating in directed pollock fishing from Chinook and chum salmon savings area closures if they participate in a salmon bycatch reduction ICA. The ICA is intended to reduce salmon bycatch in the BSAI AFA and CDQ pollock fisheries. Additionally, this proposed rule would exempt all non-pollock trawl vessels from the chum salmon savings area closure.

In 2003, about 116 trawl catcher vessels operated in the BSAI with gross revenues less than \$3.5 million. NMFS records indicate that 112 BSAI catcher vessels were members of AFA cooperatives. Because of Small Business Administration affiliation guidelines, all AFA vessels are considered large entities. Therefore, four BSAI trawl catcher vessels appear to qualify as small entities. Additionally, NMFS' 2003 data indicates that three non-AFA catcher processor trawl vessels had gross revenues less than \$3.5 million.

Alternative 1, the status quo, has resulted in increases in salmon bycatch in the Bering Sea pollock trawl fishery in recent years. This translates into foregone salmon value, assuming full terminal harvest of salmon bycatch, of nearly \$1 million for Chinook and more than \$250 thousand for chum in 2003. These values very likely overstate the actual harvest that might have occurred if salmon bycatch had not been taken in the Bering Sea pollock trawl fishery. Unfortunately, it is not possible to estimate actual harvest value more accurately at this time. However, the increases in salmon bycatch under the status quo likely results in increases in foregone value and decreased benefits of bycatch reduction. The status quo could also lead to future restrictions on the

Bering Sea pollock trawl fleet to reduce the incidental take of Chinook salmon listed under the Endangered Species Act.

Alternative 2 would eliminate the salmon savings closure areas altogether. The result would likely be reduced operational costs, improved vessel safety, improved product quality, and reduced management and enforcement costs. However, in the absence of any bycatch reduction measures this alternative may result in further increase in salmon bycatch in the Bering Sea pollock trawl fishery. Were that to occur, the foregone value of such bycatch would increase and the associate benefits of bycatch reduction would decrease, possibly dramatically. This could also result in the increased take of listed Chinook salmon in the Bering Sea pollock trawl fisheries.

Alternative 3 would be implemented by this proposed rule. It would exempt vessels participating in a salmon bycatch reduction ICA from the BSAI salmon savings area closures. It is expected to reduce salmon bycatch in the BSAI pollock fisheries by penalizing participants that exhibit high salmon bycatch rates and rewarding participants that exhibit low salmon bycatch rates. Vessels participating in a salmon bycatch reduction ICA would be subject to a dynamic system of rolling "hot spot" closures dictated by the ICA and designed to reduce salmon bycatch. This alternative would likely reduce operational costs, improve vessel safety, and improve product quality. Alternative 3 also has the potential to reduce salmon bycatch more than the status quo management measures. If that potential is realized, Alternative 3 would reduce foregone value of salmon bycatch and increase the overall benefits of bycatch reduction. Alternative 3 also provides some mitigation possibilities for western Alaska subsistence salmon user groups by including them as parties to the ICA and enabling them to enforce compliance with the ICA's salmon bycatch reduction measures in Bering Sea pollock fisheries.

Alternative 3 would reduce management and enforcement costs for government agencies by transferring much of that cost to the fishing industry. The industry has volunteered to bear this cost in hopes of reducing operational costs associated with the status quo while at the same time attempting to reduce salmon bycatch. If bycatch is not reduced under Alternative 3, additional restrictions on the fleet could result.

This proposed rule contains collection-of-information requirements subject to review and approval by OMB

under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval under OMB control number 0648-0401. Public reporting burden is estimated per response to average: 40 hours for salmon bycatch reduction inter-cooperative agreement (ICA); 15 minutes for renewal of ICA; 28 hours for preliminary annual report; 12 hours for final annual report; 4 hours for ICA appeal.

Reporting burden includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS (see **ADDRESSES**) and 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.

The analysis did not reveal any Federal rules that duplicate, overlap, or conflict with the proposed action.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: April 11, 2007.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be 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.*

2. In § 679.2, the definition of "Salmon bycatch reduction inter-cooperative agreement" is added in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

Salmon bycatch reduction inter-cooperative agreement (ICA) is a voluntary chum and Chinook salmon catch avoidance agreement, as described at § 679.21(g) and approved by NMFS, for directed pollock fisheries in the Bering Sea subarea.

* * * * *

3. In § 679.7, paragraphs (d)(9) and (d)(10) are proposed to be revised to read as follows:

§ 679.7 Prohibitions.

* * * * *

(d) * * *

(9) For the operator of an eligible vessel, use trawl gear to harvest pollock CDQ in the Chinook Salmon Savings Area between January 1 and April 15, and between September 1 and December 31, after the CDQ group's Chinook salmon PSQ is attained, unless the vessel is participating in a salmon bycatch reduction ICA under § 679.21(e)(7)(ix).

(10) For the operator of an eligible vessel, use trawl gear to harvest pollock CDQ in the Chum Salmon Savings Area between September 1 and October 14 after the CDQ group's non-Chinook salmon PSQ is attained, unless the vessel is participating in a salmon bycatch reduction ICA under § 679.21(e)(7)(ix).

* * * * *

4. In § 679.21, paragraph (e)(7)(vii) is revised and paragraphs (e)(7)(ix) and (g) are added to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(e) * * *

(7) * * *

(vii) *Chum salmon*. If the Regional Administrator determines that 42,000 non-Chinook salmon have been caught by vessels using trawl gear during August 15 through October 14 in the CVOA, defined under § 679.22(a)(5) and in Figure 2 to this part, NMFS will prohibit directed fishing for pollock for the remainder of the period September 1 through October 14 in the Chum Salmon Savings Area as defined in Figure 9 to this part.

* * * * *

(ix) *Exemptions.*

(A) Trawl vessels participating in directed fishing for pollock and operating under a salmon bycatch reduction ICA approved by NMFS are

exempt from closures in the Chum Salmon Savings Area described at § 679.21(e)(7)(vii). See also § 679.22(a)(10).

(B) Trawl vessels participating in directed fishing for pollock and operating under a salmon bycatch reduction ICA approved by NMFS are exempt from closures in area 2 of the Chinook Salmon Savings Area described at § 679.21(e)(7)(viii).

* * * * *

(g) *Requirements for vessels participating in a salmon bycatch reduction ICA.*

(1) *Who must file the salmon bycatch reduction ICA?* The representative for the salmon bycatch reduction ICA identified at (5)(v) of this paragraph must file a copy of the initial ICA and any amended salmon bycatch reduction ICA with NMFS.

(2) *With whom must the initial salmon bycatch reduction ICA and an amended salmon bycatch reduction ICA be filed?* The ICA representative must send a signed copy of the initial salmon bycatch reduction ICA and any amended salmon bycatch reduction ICA to the NMFS Alaska Region. The mailing address for the Regional Administrator, NMFS Alaska Region is P.O. Box 21668, Juneau, AK 99802. The street address for courier delivery is 709 West 9th St., Suite 401, Juneau, AK 99801.

(3) *What is the deadline for filing?* In order for any ICA participant to be exempt from salmon savings area closures as described at § 679.21(e)(7)(ix)(A), § 679.21(e)(7)(ix)(B) and § 679.22(a)(10), the salmon bycatch reduction ICA must be filed in compliance with the requirements of this section, and approved by NMFS. The initial salmon bycatch reduction ICA must be received by NMFS by December 1, 2007, for the 2008 fishing year. Exemptions from salmon savings area closures will expire upon termination of the initial ICA, expiration of the initial ICA, or if superseded by a NMFS-approved amended salmon bycatch reduction ICA.

(4) *How is the initial and an amended salmon bycatch reduction ICA approved by NMFS?* NMFS will approve the initial or an amended salmon bycatch reduction ICA if it meets all the requirements specified in paragraph (g)(5) of this section. If NMFS disapproves a salmon bycatch reduction ICA, the representative identified at (5)(v) of this section may resubmit a revised salmon bycatch reduction ICA or file an administrative appeal as set forth under the administrative appeals procedures described at § 679.43.

(5) *What are the minimum information requirements for the salmon bycatch reduction ICA?* The salmon bycatch ICA must include the following provisions:

(i) The names of the AFA cooperatives, CDQ groups, and third party groups that are parties to the ICA. The ICA must identify at least one third party group. Third party groups include any organizations representing western Alaskans who depend on Chinook and chum salmon and have an interest in salmon bycatch reduction but do not directly fish in a groundfish fishery. The ICA must identify one entity retained to facilitate vessel bycatch avoidance behavior and information sharing. Collectively, these groups are known as parties to the ICA. Parties to the ICA must agree to comply with all provisions of the ICA;

(ii) The names, Federal fisheries permit numbers, and USCG vessel identification numbers of vessels subject to the salmon bycatch reduction ICA;

(iii) Provisions that dictate salmon bycatch avoidance behaviors for vessel operators subject to the ICA, including:

(A) "A" season salmon bycatch management.

(1) Initial base rate calculation for Chinook salmon. The initial "A" season Chinook base rate shall be calculated by dividing the total number of Chinook taken incidentally in the "A" season prior year by the total number of metric tons of "A" season pollock catch during the prior year, except that if the initial "A" season Chinook base rate for any given year is less than or equal to .04 Chinook per metric ton of pollock, the initial base rate shall be .04 Chinook per metric ton, and if the initial base rate for any given year is equal to or greater than .06 Chinook per metric ton of pollock, the initial base rate shall be .06 Chinook per metric ton. Base rate calculations shall include Chinook salmon and pollock caught in both the CDQ and non-CDQ pollock directed fisheries.

(2) Inseason adjustments to the Chinook salmon base rate calculation. On February 14 of each year, the "A" season Chinook base rate shall be recalculated. The recalculated base rate shall be the Chinook bycatch rate for the current year, calculated by dividing the total number of Chinook salmon taken incidentally in the current "A" season by the total number of metric tons of "A" season pollock catch during the current season. The recalculated base rate shall be used to determine bycatch avoidance areas.

(3) ICA salmon savings area notices. On January 30 of each year and each Thursday and Monday thereafter for the duration of the pollock "A" season, the

non-party entity retained to facilitate vessel bycatch avoidance behavior and information sharing identified in paragraph (g)(6)(i) of this section must provide notice to the parties to the salmon bycatch reduction ICA and NMFS identifying one or more areas designated as "ICA Chinook Savings Areas" by a series of latitude and longitude coordinates. The Thursday notice of ICA Chinook savings area designations must be effective from 6 pm Alaska local time the following Friday through 6 pm Alaska local time the following Tuesday. The Monday notice must be effective from 6 pm Alaska local time the following Tuesday through 6 pm Alaska local time the following Friday. For any ICA salmon savings area notice, the maximum total area closed must be at least 1000 square miles.

(4) Fishing restrictions for vessels assigned to Tiers as described at paragraph (g)(6)(iii)(C) of this section. ICA Chinook savings area closures announced on Thursdays must be closed to directed fishing for pollock, including pollock CDQ, by vessels assigned to Tier 3 for seven days. ICA Chinook savings area closures announced on Thursdays must be closed to vessels assigned to Tier 2 through 6 pm Alaska local time on the following Tuesday. Vessels assigned to Tier 1 may operate in any area designated as an ICA Chinook savings area.

(B) "B" season salmon bycatch management.

(1) "B" season Chinook salmon. For the "B" season of the 2008 fishing year, the Chinook salmon base rate shall be .05 Chinook salmon per metric ton of pollock. For the "B" season of the 2009 fishing year and each "B" season thereafter, the base rate shall be based on the Chinook salmon bycatch during a representative period of the prior year's "B" season. The recalculated base rate shall be used to determine bycatch avoidance areas. Base rate calculations shall include Chinook salmon and pollock caught in both the CDQ and non-CDQ pollock directed fisheries.

(2) Non-Chinook salmon. The initial "B" season non-Chinook salmon base rate shall be 0.19 non-Chinook salmon per metric ton of pollock.

(3) Inseason adjustments to the non-Chinook base rate calculation. Beginning July 1 of each fishing year, and on each Thursday during "B" season, the "B" season non-Chinook base rate shall be recalculated. The recalculated non-Chinook base rate shall be the three week rolling average of the "B" season non-Chinook bycatch rate for the current year. The recalculated

base rate shall be used to determine bycatch avoidance areas.

(4) ICA salmon savings area notices. On each Thursday and Monday after June 10 of each year for the duration of the pollock "B" season, the non-party entity retained to facilitate vessel bycatch avoidance behavior and information sharing identified in paragraph (g)(6)(i) of this section must provide notice to the parties to the salmon bycatch reduction ICA and NMFS identifying one or more areas designated as "ICA Chinook Savings Areas" and/or "ICA Chum Savings Areas" by a series of latitude and longitude coordinates. The Thursday notice of ICA Chinook savings area designations must be effective from 6 pm Alaska local time the following Friday through 6 pm Alaska local time the following Tuesday. The Monday notice must be effective from 6 pm Alaska local time the following Tuesday through 6 pm Alaska local time the following Friday. For any ICA salmon savings area notice, the maximum total area closed must be at least 3000 square miles for ICA chum savings area closures, and 500 square miles for ICA Chinook savings area closures.

(5) Fishing restrictions for vessels assigned to Tiers as described at paragraph (g)(6)(iii)(C) of this section. ICA chum savings area closures announced on Thursdays must be closed to directed fishing for pollock, including pollock CDQ, by vessels assigned to Tier 3 for seven days. ICA chum savings area closures announced on Thursdays must be closed to vessels assigned to Tier 2 through 6 pm Alaska local time on the following Tuesday. Vessels assigned to Tier 1 may operate in any area designated as an ICA chum savings area. ICA Chinook savings areas must be closed to fishing by all vessels identified at paragraph (g)(6)(iii)(C) of this section.

(C) *Cooperative tier assignments.* Initial and subsequent base rate calculations must be based on each cooperative's pollock catch for the prior two weeks and the associated bycatch of Chinook or non-Chinook salmon taken by its members. Base rate calculations shall include salmon bycatch and pollock caught in both the CDQ and

non-CDQ pollock directed fisheries. Coops with salmon bycatch rates of less than 75 percent of the base rate shall be assigned to Tier 1. Coops with salmon bycatch rates of equal to or greater than 75 percent but equal to or less than 125 percent of the base rate shall be assigned to Tier 2. Coops with salmon bycatch rates of greater than 125 percent of the base rate shall be assigned to Tier 3. Bycatch rates for Chinook salmon must be calculated separately from non-Chinook salmon, and cooperatives must be assigned to tiers separately for Chinook and non-Chinook salmon bycatch.

(iv) Internal monitoring and enforcement provisions to ensure compliance of fishing activities with the provisions of the ICA. The ICA must include provisions allowing any party of the ICA to bring civil suit or initiate a binding arbitration action against another for breach of the ICA. The ICA must include minimum annual uniform assessments for any violation of savings area closures of \$10,000 for the first offense, \$15,000 for the second offense, and \$20,000 for each offense thereafter;

(v) The name, phone number, and business address of the person who will annually file ICA with NMFS;

(vi) Provisions requiring the parties to conduct an annual compliance audit, and to cooperate fully in such audit, including providing information required by the auditor. The compliance audit must be conducted by a non-party entity, and each party must have an opportunity to participate in selecting the non-party entity. If the non-party entity hired to conduct a compliance audit discovers a previously undiscovered failure to comply with the terms of the ICA, the non-party entity must notify all parties to the ICA of the failure to comply and must simultaneously distribute to all parties of the ICA information used to determine the failure to comply occurred and must include such notice(s) in the compliance report described in § 679.61(f)(2)(vii).

(vii) Provisions requiring data dissemination in certain circumstances. If the entity retained to facilitate vessel bycatch avoidance behavior described at § 679.61(g)(6)(i) determines that an

apparent violation of an ICA savings area closure has occurred, that entity must promptly notify the Board of Directors of the cooperative to which the vessel involved belongs. If this Board of Directors fails to assess a minimum uniform assessment within 60 days of receiving the notice, the information used by the entity retained to facilitate vessel bycatch avoidance behavior to determine if an apparent violation was committed must be disseminated to all parties to the ICA.

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5. In § 679.22, paragraph (a)(10) is revised to read as follows:

§ 679.22 Closures.

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(a) * * *

(10) *Chum Salmon Savings Area.* Directed fishing for pollock by vessels using trawl gear is prohibited from August 1 through August 31 in the Chum Salmon Savings Area defined at Figure 9 to this part (see also § 679.21(e)(7)(vii)). Vessels using trawl gear participating in directed fishing for pollock, including pollock CDQ, and operating under a salmon bycatch reduction ICA are exempt from closures in the Chum Salmon Savings Area. See also § 679.21(e)(7)(vii).

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6. In § 679.61, paragraph (f)(2)(vii) is added to read as follows:

§ 679.61 Formation and operation of fishery cooperatives.

* * * * *

(f) * * *

(2) * * *

(vii) The annual report must indicate the number of salmon taken by species and season, estimate number of salmon avoided as demonstrated by the movement of fishing effort away from salmon savings areas, include the results of the compliance audit described at § 679.21(g)(6)(vi), and list of each vessels number of appearances on the weekly dirty 20 lists for both salmon species.

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