

§ 670.21 Harvest limitations.

No person may fish for or possess a prohibited species in or from the EEZ. The taking of a prohibited species in the EEZ as incidental catch will not be considered unlawful possession of a prohibited species provided it is returned immediately to the sea in the general area of fishing.

§ 670.22 Gear restrictions.

(a) An explosive may not be used to harvest a coral reef resource in the EEZ. Dynamite or a similar explosive substance may not be possessed on board a vessel that possesses a coral reef resource in or from the EEZ.

(b) No person may use a chemical, plant, or plant derived toxin to harvest a coral reef resource in the EEZ.

(c) A coral reef resource in the EEZ may be harvested only with a hand-held dip net or slurp gun, or by hand in a manner that does not injure or destroy a coral reef resource or its habitat. For the purposes of § 670.7(f) and this paragraph (c), a hand-held slurp gun is a device that rapidly draws seawater containing fish into a self-contained chamber.

§ 670.23 Restrictions on sale or purchase.

(a) No person may purchase, barter, trade, or sell, or attempt to purchase, barter, trade, or sell a prohibited species harvested in the EEZ.

(b) A prohibited species that is sold or exchanged, or offered for sale or exchange, in Puerto Rico or the U.S. Virgin Islands will be presumed to have been harvested in the EEZ unless it is accompanied by documentation showing that it was harvested elsewhere. Such documentation must contain:

(1) The information specified in 50 CFR part 246 for marking containers or packages of fish or wildlife that are imported, exported, or transported in interstate commerce;

(2) The name and home port of the vessel, or the name and address of the individual, harvesting the prohibited species;

(3) The port and date of landing the prohibited species; and

(4) A statement signed by the person selling or exchanging, or offering for sale or exchange, the prohibited species attesting that, to the best of his or her knowledge, information, and belief, such prohibited species was harvested other than in the EEZ or the waters of Puerto Rico or the U.S. Virgin Islands.

§ 670.24 Specifically authorized activities.

The Regional Director may authorize the harvest and possession of a prohibited species in or from the EEZ

for a scientific, educational, or restoration purpose and may authorize activities otherwise prohibited by the regulations in this part for the acquisition of information and data.

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50 CFR Part 675

[Docket No. 950830223-5223-01; I.D. 082395C]

RIN 0648-AE97

Groundfish of the Bering Sea and Aleutian Islands Area; Chinook Salmon Savings Areas

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations that would implement Amendment 21b to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). This amendment proposes to prohibit the use of trawl gear in specified areas of the Bering Sea and Aleutian Islands (BSAI) management area through April 15 of each fishing year once a chinook salmon bycatch of 48,000 fish has been reached in the BSAI management area trawl fisheries. This action is necessary to limit chinook salmon bycatch in the BSAI management area and is intended to promote the goals and objectives of the FMP.

DATES: Comments on the FMP amendment must be received by October 20, 1995.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK, 99802, Attention: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of Amendment 21b and the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) prepared for Amendment 21b are available from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: 907-271-2809.

FOR FURTHER INFORMATION CONTACT: Sally Bibb, 907-586-7228.

SUPPLEMENTARY INFORMATION: Fishing for groundfish by U.S. vessels in the exclusive economic zone of the BSAI management area is managed by NMFS according to the FMP. The FMP was

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 is implemented by regulations governing the U.S. groundfish fisheries at 50 CFR parts 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 21b to the FMP. If approved by NMFS, this amendment would prohibit the use of trawl gear in specified areas of the BSAI management area that historically contributed to relatively high chinook salmon bycatch rates during winter months.

Chinook salmon are caught incidentally in trawl fisheries in the BSAI management area. They are a prohibited species in the trawl fisheries and must be discarded after being counted by a NMFS-certified observer.

During the foreign fisheries, the estimated chinook salmon bycatch reached a high of 115,000 salmon in 1980. As a result, the foreign fleet was put on a bycatch reduction schedule starting at 65,000 chinook salmon and decreasing to 16,500 chinook by 1986. According to reported bycatch, the foreign fleet did not exceed the reduction schedule bycatch level in any year.

The domestic groundfish trawl fleet has caught the majority of the chinook salmon bycatch since 1987. Chinook salmon bycatch exceeded 20,000 fish in 1987, 1988, and 1989 and exceeded 40,000 fish in 1991, 1992, 1993, and 1994. Estimated chinook salmon bycatch in the domestic trawl fisheries from 1990 to the present is summarized below:

Year	No. of Chinook
1990	13,990
1991	48,821
1992	41,903
1993	45,964
1994	44,437
¹ 1995	17,701

¹ Preliminary through 7/29/95.

Observer data from the foreign, joint-venture, and domestic trawl fisheries for pollock and Pacific cod were examined for seasonal and spacial patterns in chinook salmon bycatch and groundfish catch. The pollock and Pacific cod fisheries were selected because nearly all chinook salmon bycatch occurs in these fisheries (92 percent in 1994). These data showed that chinook salmon bycatch was largely associated with groundfish catches along the 200-m contour (continental shelf break), in the

“horseshoe” area of the contour, and north of Unimak Island. Chinook salmon bycatch did not extend, for the most part, far from the contour, from the horseshoe, or from north of Unimak Island. In addition, analysis of haul-by-haul observer data showed that chinook salmon bycatch rates were higher in the winter months—from September or October through April.

Analysis of scale patterns, tagging study results, and parasite information indicates that from about 50 percent to over 90 percent of the chinook salmon encountered in the Bering Sea are of Western Alaskan origin. Therefore, chinook salmon bycatch likely reduces the number of chinook salmon available for escapement and subsistence, commercial, and recreational fisheries in Western Alaska and elsewhere.

Salmon fishery managers have been concerned about the health of chinook salmon stocks on the Yukon River, Kuskokwim River, and portions of Bristol Bay, where minimum escapement goals in several systems were not met in the mid- and late-1980's. Although escapement has improved in recent years, these goals are only being met through careful management of directed fisheries by time and area and through gear restrictions.

Chinook salmon is one of the major food items of the Yup'ik Eskimo and Athabaskan Indians of Western and Interior Alaska and plays an important role in supporting the indigenous cultures and mixed, subsistence-cash socioeconomic systems of these peoples. In addition, commercial and recreational fishing provides an important source of income in Western Alaska communities. Further description of the biological, economic, and cultural importance of chinook salmon in Western Alaska is contained in the EA/RIR/IRFA (see ADDRESSES).

The Council began developing alternatives for chinook salmon bycatch management in the domestic groundfish trawl fisheries in 1992 under Amendment 21 to the FMP. A draft analysis was released for public review in January 1993. However, in April 1993, the Council decided to separate the chinook salmon bycatch management alternatives; identify them as Amendment 21b; and postpone action to allow public review of a Vessel Incentive Program and industry development of the Salmon Research Foundation. During its June 1993 meeting, the Council voted to endorse the Salmon Research Foundation (SRF), a non-profit corporation that uses income generated from a \$20 per chinook salmon assessment to develop

a salmon bycatch avoidance program and to fund research on the origin of salmon caught in the trawl fisheries. In 1994, the SRF developed a program to disseminate inseason observer data and other information about individual vessel chinook salmon bycatch to the trawl fleet. The intent of this program was to provide vessel operators timely information to help reduce salmon bycatch rates. The long-term effectiveness of the SRF in reducing chinook salmon bycatch is difficult to evaluate, given the short time it has been in operation.

In June 1993, the Council voted to recommend the issuance of regulations to: (1) Prohibit the discard of salmon until the number of salmon are determined by a NMFS-certified observer, (2) implement data gathering and analysis of bycatch patterns, and (3) require posting on the NMFS bulletin board of salmon bycatch numbers for each vessel. These regulations became effective May 20, 1994 (59 FR 18575, April 20, 1994).

In the meantime, the Council continued to consider additional chinook salmon bycatch management alternatives, including a chinook salmon prohibited species catch (PSC) limit and closures in times or areas of historic high salmon bycatch. PSC limits ranging from 8,000 to 48,000 chinook salmon were analyzed. The lower bound of this range was determined by applying the lowest average annual chinook salmon bycatch rate since 1980 (0.004 salmon per metric ton of groundfish in 1986) to current BSAI management area groundfish harvests. Additional PSC limits analyzed included annual bycatch rates of 0.008 (16,000 salmon), 0.012 (24,000 salmon), and 0.024 (48,000 salmon).

The Council considered nine alternatives or options for area closures once a PSC limit was reached, including the entire BSAI management area, specific Federal statistical areas, a 30 mile-wide (48,280 m) buffer strip along the 200-m contour, and specific $\frac{1}{2}^\circ$ lat. by 1° long. blocks. In addition, alternatives or options to close these areas during specific seasons, for specific directed fisheries, or in the absence of a PSC limit also were considered. Chinook Salmon Savings Areas.

At its April 1995 meeting, the Council voted to recommend an FMP amendment that would close three non-contiguous areas of the BSAI management area comprised of nine $\frac{1}{2}^\circ$ lat. by 1° long. blocks to all trawling through April 15, once an annual PSC limit of 48,000 chinook salmon was reached. The areas would reopen April

15 for the remainder of the year, regardless of the amount of chinook salmon bycatch. Accounting of chinook salmon towards the bycatch limit would start at the beginning of each fishing year (January 1).

The Chinook Salmon Savings Areas (CHSSA) are:

(1) The area defined by straight lines connecting the following coordinates in the order listed:

56° 30' N., 171° 00' W.;
56° 30' N., 169° 00' W.;
56° 00' N., 169° 00' W.;
56° 00' N., 171° 00' W.; and
56° 30' N., 171° 00' W.

(2) The area defined by straight lines connecting the following coordinates in the order listed:

54° 00' N., 171° 00' W.;
54° 00' N., 170° 00' W.;
53° 00' N., 170° 00' W.;
53° 00' N., 171° 00' W.; and
54° 00' N., 171° 00' W.

(3) The area defined by straight lines connecting the following coordinates in the order listed:

56° 00' N., 165° 00' W.;
56° 00' N., 164° 00' W.;
5° 00' N., 164° 00' W.;
55° 00' N., 165° 00' W.;
54° 30' N., 165° 00' W.;
54° 30' N., 167° 00' W.;
55° 00' N., 167° 00' W.;
55° 00' N., 166° 00' W.;
55° 30' N., 166° 00' W.;
55° 30' N., 165° 00' W.; and
56° 00' N., 165° 00' W.

Data from observed trawl vessels participating in the pollock and Pacific cod fisheries from 1990 through 1993 were used to compare catch and bycatch in the CHSSA and other areas of the BSAI management area. During the high bycatch months of January through April and September through December, the CHSSA represented 52, 66, 64, and 60 percent of the chinook bycatch, and 20, 36, 38, and 49 percent of the total groundfish catch in observed hauls between 1990 and 1993. In other words, the CHSSA represented a larger share of chinook salmon bycatch relative to total groundfish catch. The importance of these areas, in terms of both groundfish catch and chinook salmon bycatch, increased between 1990 and 1993. However, the increase in groundfish catch in the areas was greater than the increase in chinook salmon bycatch over the 4-year period.

Although high chinook salmon bycatch was identified in two seasons (January through April and September through December), through analysis of observer data aggregated by month, the Council recommended a closure only

from January 1 through April 15, because the majority of the chinook salmon bycatch in recent years has been caught between January and April. For example, in 1993, approximately 71 percent of the chinook salmon bycatch by observed trawl vessels in the pollock and Pacific cod fisheries in the CHSSA occurred between January and April.

Since 1990, chinook salmon bycatch between January 1 and April 15 was estimated to be:

Year	No. of Chinook by April 15
1990	11,626
1991	44,234
1992	30,703
1993	23,129
1994	37,967
¹ 1995	17,064

¹ Preliminary through 7/29/95.

Based on historical bycatch estimates, reaching the 48,000 PSC limit or closing the CHSSA in future years is not likely. In selecting this preferred alternative, the Council expressed the view that current levels of chinook salmon bycatch probably did not represent biological harm to Western Alaska chinook salmon stocks. Furthermore, existing groundfish fisheries should not be constrained in order to reduce the current level of chinook salmon bycatch. However, future increases in bycatch in the BSAI management area trawl fisheries need to be limited to prevent detrimental impact on Western Alaska chinook salmon stocks and fisheries.

If bycatch amounts before April 15 of future years exceed amounts caught in recent years, closure of the CHSSA would prevent trawlers from fishing in areas that historically represented from 20 percent to 49 percent of annual groundfish catch. Although other areas of the BSAI management area would continue to be open to trawling, vessels displaced from the CHSSA would likely incur increased operating costs and lower catch per unit effort.

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 the FMP amendment and regulations. At this time, NMFS has not determined that the FMP amendment these rules would implement is 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 Council prepared an IRFA as part of the RIR, which describes the impact this proposed rule would have on small entities, if adopted. Approximately 107 trawl catcher vessels participate in the BSAI management area groundfish fisheries. Most of these vessels are considered small entities. Closure of the CHSSA is unlikely because the PSC limit is higher than any bycatch estimate for the domestic fisheries. However, the CHSSA represent a large proportion of groundfish catch and many of these catcher vessels are likely to fish in these areas. Therefore, closure of the CHSSA could result in a significant impact on a substantial number of small entities in years of high chinook salmon bycatch. On the other hand, the absence of a mechanism to limit chinook salmon bycatch may adversely impact other small entities that rely on chinook salmon returns to Western Alaska and other areas. A copy of this analysis is available from the Council (see ADDRESSES).

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

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Dated: September 1, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 675 is proposed to be amended as follows:

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

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

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

2. In § 675.22, paragraph (i) is added to read as follows:

§ 675.22 Time and area closures.

* * * * *

(i) *Chinook Salmon Savings Areas.* When the Regional Director determines that 48,000 chinook salmon (*Oncorhynchus tshawytscha*) have been caught by vessels using trawl gear during the time period of January 1 through April 15 in the Bering Sea and Aleutian Islands management area, NMFS will prohibit fishing with trawl gear for the remainder of the period January 1 through April 15 within the following three areas:

(1) The area defined by straight lines connecting the following coordinates in the order listed:

- 56° 30' N., 171° 00' W.;
- 56° 30' N., 169° 00' W.;
- 56° 00' N., 169° 00' W.;
- 56° 00' N., 171° 00' W.; and
- 56° 30' N., 171° 00' W.

(2) The area defined by straight lines connecting the following coordinates in the order listed:

- 54° 00' N., 171° 00' W.;
- 54° 00' N., 170° 00' W.;
- 53° 00' N., 170° 00' W.;
- 53° 00' N., 171° 00' W.; and
- 54° 00' N., 171° 00' W.

(3) The area defined by straight lines connecting the following coordinates in the order listed:

- 56° 00' N., 165° 00' W.;
- 56° 00' N., 164° 00' W.;
- 55° 00' N., 164° 00' W.;
- 55° 00' N., 165° 00' W.;
- 54° 30' N., 165° 00' W.;
- 54° 30' N., 167° 00' W.;
- 55° 00' N., 167° 00' W.;
- 55° 00' N., 166° 00' W.;
- 55° 30' N., 166° 00' W.;
- 55° 30' N., 165° 00' W.; and
- 56° 00' N., 165° 00' W.

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