

12. *Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations*

Because this rule proposes authorization of pre-existing State rules and imposes no additional requirements beyond those imposed by State law and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994).

13. *Congressional Review Act*

EPA will submit a report containing this rule and other information required by the Congressional Review Act (5 U.S.C. 801 *et seq.*) to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 271**

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

**Authority:** This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: October 10, 2007.

**Walter W. Kovalick,**

*Acting Regional Administrator, Region 5.*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 070322067-7501-01; 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:** Final rule.

**SUMMARY:** NMFS amends 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 exempting pollock vessels from Chinook and Chum Salmon Savings Area closures if they participate in an intercooperative agreement (ICA) to reduce salmon bycatch, and exempting vessels participating in non-pollock trawl fisheries from Chum Salmon Savings Area closures because these fisheries intercept minimal amounts of salmon. This action 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:** Effective on November 28, 2007.

**ADDRESSES:** Copies of Amendment 84; the final Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for Amendment 84; and the final Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this action may be obtained from the NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Ellen Sebastian, and on the NMFS Alaska Region website at <http://www.fakr.noaa.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements included in this final rule may be submitted to NMFS at the address above and by e-mail to [David\\_Rostker@omb.eop.gov](mailto: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](mailto: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

fisheries. 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, chum salmon represent 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.

In October 2005, the Council adopted Amendment 84 to the FMP. Amendment 84 establishes the salmon bycatch intercooperative agreement (ICA) which allows vessels participating in the directed fisheries for pollock in the Bering Sea to utilize their internal cooperative structure to reduce salmon bycatch using a method called the "voluntary rolling hotspot system" (VRHS). In recommending Amendment 84, the Council recognized that current regulatory management measures, including a bycatch cap that triggered closure of fixed salmon savings areas, have not been effective at reducing salmon bycatch. Amendment 84 provides an alternative approach to managing salmon bycatch which has the potential to be more effective than current regulations.

The notice of availability for Amendment 84 was published in the **Federal Register** on March 26, 2007 (72 FR 14069), and the public review and comment period closed on May 25, 2007. NMFS approved Amendment 84 on June 22, 2007. This final rule contains regulatory amendments necessary to implement the provisions of Amendment 84.

The proposed rule to implement Amendment 84 was published in the **Federal Register** on April 18, 2007 (72 FR 19454), and the public review and comment period closed on June 4, 2007. The proposed rule contains a description of the management measures adopted by the Council prior to Amendment 84 to limit salmon bycatch, a description of requirements for the salmon bycatch reduction ICA, and a summary of the proposed regulations to implement the Amendment 84. Please refer to the proposed rule for detailed background information as it is not reproduced in this final rule.

The purpose of the salmon bycatch avoidance ICA is to use real-time salmon bycatch information to avoid areas of high chum and Chinook salmon bycatch rates. Parties to the ICA include the American Fisheries Act cooperatives, the six Western Alaska Community Development Quota (CDQ)

groups, at least one third party group representing western Alaskans who depend on salmon and have an interest in salmon bycatch reduction, and at least one private firm retained to facilitate bycatch avoidance behavior and information sharing. The ICA utilizes a system of base bycatch rates, assignment of vessels to tiers based on bycatch rates relative to the base rate, a system of closures for vessels in certain tiers, and monitoring and enforcement through private contractual arrangements. Vessels participating in the salmon bycatch ICA are exempted from closures of the Chinook and Chum Salmon Savings Areas in the Bering Sea. In addition, vessels participating in trawl fisheries for species other than pollock are exempt from Chum Salmon Savings Area closures. More information about the salmon bycatch reduction ICA is included in the Classification section of this rule and in the proposed rule (72 FR 19454; April 18, 2007).

#### Response to Comments

NMFS received two letters of comment on Amendment 84 and one letter of comment on both the proposed rule and the amendment. These letters contained seven separate comments related to both the proposed rule and the amendment. The following summarizes and responds to these comments.

*Comment 1:* While we support the ideas and intent of salmon bycatch management through the Voluntary Rolling Hot Spot (VRHS) system adopted by Amendment 84, in the absence of an associated limit on salmon bycatch, we have great concerns that this system will not effectively reduce salmon bycatch in compliance with National Standard 9 of the Magnuson-Stevens Act and the Yukon River Salmon Agreement. In fact, the experiences of the first two seasons of operation of the VRHS under an Experimental Fishing Permit have seen some of the highest bycatch numbers on record.

*Response:* From 1990 through 2001, BSAI Chinook salmon bycatch averaged around 37,819 individual fish annually, and chum salmon bycatch averaged 69,332. Recently, however, salmon bycatch numbers have increased significantly. In 2003, 54,911 Chinook salmon and 197,091 chum salmon were caught incidentally in the trawl fisheries. In 2004, salmon bycatch increased to 62,493 Chinook and 465,650 chum salmon. Bycatch amounts remained high in 2005 and totaled 74,975 Chinook and 711,939 chum

salmon. In 2006, 87,786 Chinook and 326,279 chum salmon were taken.

NMFS authorized exempted fishing permits (EFPs) for the 2006 "B" and 2007 "A" and "B" seasons to allow the pollock fisheries in the Bering Sea to operate under the salmon bycatch ICA that will be implemented by Amendment 84. The EFPs exempted the pollock fleet from salmon savings area closures and allowed them to explore the feasibility of operating under a dynamic salmon bycatch reduction mechanism. One of the objectives of these EFPs was to reduce salmon bycatch, however, as noted by the commenter, salmon bycatch amounts remain high even under the EFPs.

Analyses of data collected under the EFPs suggest that salmon bycatch rates and amounts would have been higher without the salmon savings area exemptions that are provided under Amendment 84. A report prepared by representatives of the ICA for the Council concluded that the reduced salmon bycatch rates under the 2006 EFP resulted in estimated savings of salmon from what would otherwise have occurred (18 percent reduction for Chinook and 65 percent reduction for chum). They also reported that the 2007 EFP resulted in an estimated savings of 39,000 Chinook salmon during the "A" season.

The primary objective of Amendment 84 is to reduce salmon bycatch. Information in the EA/RIR/FRFA that compares historical bycatch rates inside and outside the existing salmon savings closure areas and the EFP reports indicate that bycatch rates under the EFP have been reduced relative to what they would have been under the existing regulatory structure.

Amendment 84 provides participants in the pollock fisheries the flexibility to conduct pollock fishing in areas of relatively lower salmon bycatch rates and to be responsive to current bycatch rates rather than relying on static closure areas that were established based on historical high bycatch rates. The EA/RIR/FRFA shows that the existing regulations caused vessels to fish in areas of higher bycatch rates when the Chinook and Chum Salmon Savings Areas closed. For these reasons, we believe that Amendment 84 is consistent with National Standard 9 because it increases the ability of ICA participants to minimize salmon bycatch to the extent practicable. In addition, we believe that Amendment 84 also is consistent with the Yukon River Salmon Agreement because it is an element of the Council's efforts to reduce bycatch of western Alaska salmon in the BSAI groundfish fisheries.

Additionally, the Council continues to work on ways to further reduce salmon bycatch and will evaluate the effectiveness of Amendment 84 in the next few years as it analyzes additional alternatives to reduce salmon bycatch.

*Comment 2:* The commenter is concerned with a statement in the EA/RIR/IRFA that there are recent indications of increasing returns to chum and Chinook salmon stocks in Western Alaska. Specifically, the commenter notes that salmon bycatch in the pollock fishery has increased while Chinook salmon runs in the Yukon River and Norton Sound remain at average or below average returns.

*Response:* While the EA/RIR/FRFA does contain the general statement quoted in the comment about increasing returns to chum and Chinook stocks in Western Alaska, it also acknowledges, in section 3.4 (Western Alaska Chinook Salmon Stock Status), that there are concerns with the Yukon River and Norton Sound Chinook salmon returns.

*Comment 3:* It is unclear on what basis the EA can conclude that "the incidental catch of Chinook salmon by the BSAI trawl fisheries is not thought to be extremely detrimental to the health and viability of those stocks." Although the EA does recognize there is some uncertainty in that analysis, the conclusion reached is that Amendment 84 will have limited impacts on the salmon stocks.

*Response:* The EA/RIR/FRFA provides an overview of the information known about the origin of salmon bycatch in the BSAI groundfish fisheries and the status of western Alaska salmon stocks. Admittedly, NMFS has limited information on salmon biomass and genetic river of origin for salmon bycatch species. Research is underway to address these information deficiencies. However, without this information, NMFS is unable to determine if high bycatch amounts in the pollock fishery are due to high salmon abundance in the Bering Sea, or how these high bycatch amounts affect western Alaska salmon runs. Throughout the EA/RIR/IRFA and discussion of the issue, the Council recognized that salmon bycatch is an important issue and that salmon of western Alaska origin that are caught in the groundfish fisheries are not available for escapement, subsistence fisheries, and commercial fisheries. Amendment 84 provides more flexible regulations that can better respond to changes in salmon bycatch rates, and the Council believes that it is an improvement to the existing regulatory structure. In addition, the Council is continuing to work to identify

additional measures that could be implemented to reduce salmon bycatch amounts.

*Comment 4:* Two elements of the VRHS system of closures limit the system's ability to reduce bycatch. First, the method of setting the base rate for Chinook salmon in the "A" season at the last "A" season's average and then adjusting the rate three weeks into the season can result in initially setting the base rate high when salmon bycatch was high in the previous year. This occurred in the 2007 A season. The effect of this method is that most coops move to Tier 1, where closures do not apply. While in reality boats responded to the advisory closures throughout the remainder of the A season as if they were in Tier 3, this action was not required under the VRHS system. Second, limitations on closure areas to 1,000 square miles represent an enormous reduction from the amount of area closed under the regulatory Salmon Savings Areas and it is not clear in the analysis why such a limit is necessary or how a VRHS system with such a limit will achieve salmon bycatch reductions.

*Response:* The specific components of the ICA were proposed to the Council as a package by the members of the ICA and analyzed as Alternative 3 in the EA/RIR/IRFA. The Secretary concurs with the Council's selection of this alternative as its preferred alternative because it allows the parties to the ICA to develop a more flexible system for responding to salmon bycatch than the existing regulations. Calculation of the base rates and the minimum size of the closure areas are two of many elements of the ICA developed by the parties. The Chinook salmon initial base rate is based on the average bycatch rate in the previous A season, as noted by the commenter. However, the regulations also place an upper limit of 0.06 Chinook per metric ton of pollock as a maximum initial base rate for the A season. Therefore, the initial base rate is not necessarily always as high as the previous year's average bycatch rate. The proposed regulations specify that the maximum ICA Chinook savings area closures during the A season must be at least 1000 square miles. However, the parties to the ICA could specify larger closure areas if they determined that this was necessary to accomplish the goals of reducing salmon bycatch.

In general, the objective of Amendment 84 and its implementing regulations is to allow the parties to the ICA to develop a system of managing salmon bycatch that includes identifying the elements of the ICA that the parties believe will best accomplish the goals of reducing salmon bycatch. At

the time the Council took final action on Amendment 84, it also expressed its intent to review salmon bycatch performance under the ICA and to make adjustments in the future, if necessary. Specific elements of the ICA such as the base rate calculations and the size of the closure areas may be reviewed in the future as performance under the ICA is evaluated by the Council.

*Comment 5:* We strongly support the voluntary rolling hotspot approach to managing Bering Sea salmon bycatch. As noted in the EA/RIR/FRFA, Amendment 84 has the potential to reduce Bering Sea salmon bycatch more than the status quo. If that potential is realized, Amendment 84 would reduce the foregone value of salmon bycatch and increase the overall benefits of bycatch reduction.

*Response:* NMFS agrees.

*Comment 6:* The analysis prepared for this action indicates that very little chum bycatch occurs in the non-pollock fisheries. Additionally, virtually no non-Chinook salmon are caught in the flatfish, rockfish, or Atka mackerel fisheries within the Catcher Vessel Operational Area. Therefore, we recommend approval of the component of Amendment 84 that applies closures of the Chum Salmon Savings Area only to vessels conducting directed fishing for pollock. In addition, if there are additional delays in implementing Amendment 84, we recommend implementation of this exemption while other issues of concern are addressed.

*Response:* Amendment 84 was approved on June 22, 2007, and this final rule revises regulations at 50 CFR part 679 to apply closures of the Chum Salmon Savings Area only to vessels conducting directed fishing for pollock that are not participating in an approved salmon bycatch ICA.

*Comment 7:* We suggest two changes from the proposed rule. First, several paragraphs of the proposed rule reference Tier assignments at § 679.21(g)(6)(iii)(C). We believe these references should be § 679.21(g)(5)(iii)(C). Second, regulations at § 679.21(g)(5)(vii) require that if a cooperative Board of Directors fails to assess a minimum uniform assessment within 60 days of receiving a notice of an apparent violation, the information used to determine if an apparent violation was committed must be disseminated to all parties to the ICA. The Intercooperative recently addressed several apparent violations of ICA savings area closures. In the process of doing so, it became apparent that 60 days is not sufficient for a vessel captain to gather evidence necessary to defend the violation, the captain to submit this

information to the Board of Directors, and the Board of Directors to issue a reasoned decision concerning whether a violation was committed. Therefore, we recommend revising the final rule so that regulations at § 679.21(g)(5)(vii) reflect a 180 day time limit.

*Response:* NMFS agrees. The reference correction noted in the comment is correct and is made in the final rule. In addition, an increase in the time period for ICA members to respond to a notice of apparent violation is reasonable and will improve the administrative process under the ICA. Therefore, this revision also will be made in the final rule.

#### Changes From the Proposed Rule

Regulations at § 679.21(g)(5)(iii)(A)(1) describe the initial base rate calculation for Chinook salmon. In the first sentence, the final rule adds the words "in the" between the words "season" and "prior" to clarify that sentence.

Regulations at § 679.21(g)(5)(iii)(B)(5) and § 679.21(g)(5)(iii)(A)(4) describe fishing restrictions for vessels assigned to Tiers. In the first sentence of both paragraphs, the final rule removes the words "for seven days" from the end of the sentence, and adds them between the word "pollock" and the comma in the same sentence. This clarifies that the ICA must require chum savings area closures announced on Thursdays must remain in place for seven days for vessels assigned to Tier 3.

Regulations at § 679.21(g)(5)(iii)(C) describe the salmon bycatch reduction ICA requirements for cooperative Tier assignments. However, proposed regulations erroneously referred to this paragraph as § 679.21(g)(6)(iii)(C). These references are corrected in the final rule regulatory text.

Regulations at § 679.21(g)(5)(vii) require that if a cooperative Board of Directors fails to assess a minimum uniform assessment within 60 days of receiving a notice of an apparent violation, the information used to determine if an apparent violation was committed must be disseminated to all parties to the ICA. As noted by public comment above, the 60 day time limit may be constraining, and is not consistent with its intent to provide ample opportunity for internal ICA penalty processes to occur. Therefore, § 679.21(g)(5)(vii) is revised to a 180-day time limit.

Regulations at § 679.61(f)(2)(vii) describe annual reporting requirements for AFA fishery cooperatives. The final rule adds an apostrophe to the word "vessels" to indicate its possessive form.

## Classification

The Administrator, Alaska Region, NMFS determined that Amendment 84 is necessary for the conservation and management of the groundfish fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

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

NMFS prepared a Final Regulatory Flexibility Analysis. The FRFA incorporates the IRFA, a summary of the significant issues raised by public comments in response to the IRFA, NMFS responses to those comments, and a summary of the analyses completed to support the action. A copy of this analysis is available from NMFS (see **ADDRESSES**). The following summarizes the FRFA.

### *Objectives and Need for this Action*

This action exempts 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 rates in the BSAI AFA and CDQ pollock fisheries. Additionally, this action exempts all non-pollock trawl vessels from the Chum Salmon Savings Area closure.

### *Number of Small Entities Affected by the Rule*

In 2005 about 116 trawl catcher vessels operated in the BSAI with gross revenues less than \$4.0 million. NMFS records indicate that 111 BSAI catcher vessels were members of AFA cooperatives. Because of Small Business Administration affiliation guidelines, all AFA vessels are considered large entities. Therefore, five BSAI trawl catcher vessels appear to qualify as small entities. Additionally, NMFS' 2005 data indicate that three non-AFA catcher processor trawl vessels had gross revenues less than \$4.0 million.

### *Significant Alternatives Considered and Steps Taken to Minimize the Significant Economic Impacts to Small Entities*

Salmon bycatch in the Bering Sea pollock trawl fishery has increased in recent years under Alternative 1, the status quo. 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 salmon. 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 result 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 currently 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 associated 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 fishery. Alternative 3 is the preferred alternative. It exempts vessels participating in a salmon bycatch reduction ICA from the BSAI salmon savings area closures. It is expected to reduce salmon bycatch rates 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 will be subject to a dynamic system of rolling "hot spot" closures dictated by the ICA and designed to reduce salmon bycatch. This alternative likely will 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 will 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 through private contractual arrangements.

Alternative 3 will 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.

Alternative 3, through the suboption to option 2, exempts directly regulated small entities participating in the BSAI Pacific cod and/or flatfish trawl fisheries from all salmon bycatch caps, closures, voluntary salmon bycatch management measures, etc. Pacific cod and/or flatfish trawl fisheries in the BSAI account for a negligible share of the total salmon bycatch attributable to trawl fisheries. At the same time, many of the vessels that prosecute these fisheries are assumed to be "small" (as defined by the Regulatory Flexibility Act). Therefore, adoption of the suboption to option 2 that exempts BSAI Pacific cod and/or flatfish trawl fisheries from the regulatory provisions of the salmon bycatch reduction program removes all adverse economic burdens from this action on all small entities operating in these BSAI groundfish trawl fisheries.

### *Issues Raised by Public Comments on the IRFA*

No comments were received on the IRFA.

### *Recordkeeping, Reporting, and other Compliance Requirements*

Depending on the alternative chosen, the subsequent proposed regulation may impose new recordkeeping or reporting requirements on directly regulated small entities. This would be accurate for Alternative 3, which eliminates existing salmon bycatch prevention measures, and replaces them with an industry funded and operated salmon bycatch reduction program. Under this program, the ICA will require vessels to report bycatch and position data to an industry hired contractor. These activities could conceivably increase recordkeeping and reporting requirements for regulated small entities. However, under the suboption to option 2, virtually all the small entities directly regulated under this action would be exempted from the program's provisions.

### *Small Entity Compliance Guide*

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is

required to take to comply with a rule or group of rules.

The preamble to this rule serves as the small entity compliance guide. It applies to trawl catcher vessels and catcher/processors operating in the BSAI. Affected entities are well informed of compliance measures for regulations implementing Amendment 84, due to their involvement in the Council process leading to its adoption of Amendment 84, and industry development of the VRHS system of closures. These entities have assessed their ability to comply with Amendment 84 regulations and provided comments to NMFS on the proposed rule. NMFS has incorporated some of these comments in the final rule. Implementing regulations at §§ 679.2, 679.7, 679.21, 679.22 and 679.61 detail all revisions and additions to definitions, prohibitions, prohibited species management, area closures, and recordkeeping and reporting requirements. This action does not require additional compliance from small entities that is not described in this final rule. Copies of the final rule are available from NMFS (see ADDRESSES) and at the following website: <http://www.fakr.noaa.gov>.

Collection-of-Information

This final rule includes collection-of-information requirements subject to the Paperwork Reduction Act (PRA) which have been approved by the Office of Management and Budget under Control Number 0648-0401. Public reporting burden per response is estimated to average 40 hr for salmon bycatch reduction intercooperative agreements; 15 min for renewal of an ICA; 28 hr for a preliminary annual report; 12 hr for a final annual report; and 4 hr 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. 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](mailto: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, and no person shall 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 Office of Management and Budget Control Number.

This final rule was developed after meaningful consultation with tribal

representatives and Alaska Native corporations.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: October 23, 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 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.; 1801 et seq.; 3631 et seq.; and Pub. L. 108 199, 118 Stat. 110.

2. In § 679.2, the definition of “Salmon bycatch reduction intercooperative agreement (ICA)” is added in alphabetical order to read as follows:

§ 679.2 Definitions.

\* \* \* \* \*

Salmon bycatch reduction intercooperative 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 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 paragraph (e)(7)(vii) of this section. 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 paragraph (e)(7)(viii) of this section.

\* \* \* \* \*

(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 paragraph (g)(5)(v) of this section 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 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 paragraphs (e)(7)(ix)(A) and (B) of this section and at § 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 (g)(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 in the 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 0.04 Chinook per metric ton of pollock, the initial base rate shall be 0.04 Chinook per metric ton, and if the initial base rate for any given year is equal to or greater than 0.06 Chinook per metric ton of pollock, the initial base rate shall be 0.06 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 entity retained to facilitate vessel bycatch avoidance behavior and information sharing identified in paragraph (g)(5)(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 p.m. Alaska local time the following Friday through 6 p.m. Alaska local time the following Tuesday. The Monday notice must be effective from 6 p.m. Alaska local time the following Tuesday through 6 p.m. Alaska local time the following Friday. For any ICA salmon savings area notice, the maximum total area closed must be at least 1,000 square miles.

(4) *Fishing restrictions for vessels assigned to Tiers as described at paragraph (g)(5)(iii)(C) of this section.* ICA Chinook savings area closures announced on Thursdays must be closed to directed fishing for pollock for seven days, including pollock CDQ, by vessels assigned to Tier 3. ICA Chinook savings area closures announced on Thursdays must be closed to vessels assigned to Tier 2 through 6 p.m. 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 0.05 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 entity retained to facilitate vessel bycatch avoidance behavior and information sharing identified in paragraph (g)(5)(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 p.m. Alaska local time the following Friday through 6 p.m. Alaska local time the following Tuesday. The Monday notice must be effective from 6 p.m. Alaska local time the following Tuesday through 6 p.m. Alaska local time the following Friday. For any ICA salmon savings area notice, the maximum total area closed must be at least 3,000 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)(5)(iii)(C) of this section.* ICA chum savings area closures announced on Thursdays must be closed to directed fishing for pollock for seven days, including pollock CDQ, by vessels assigned to Tier 3. ICA chum savings area closures announced on Thursdays must be closed to vessels assigned to Tier 2 through 6 p.m. 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)(5)(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. Cooperatives with salmon bycatch rates of less than 75 percent of the base rate shall be assigned to Tier 1. Cooperatives with salmon bycatch rates of equal to or greater than 75 percent, but less than or equal to 125 percent of the base rate shall be assigned to Tier 2. Cooperatives 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 the 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 and information sharing identified at paragraph (g)(5)(i) of this section 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 180 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.

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

**§ 679.22 Closures.**

(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).

\* \* \* \* \*

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

**§ 679.61 Formation and operation of fishery cooperatives.**

\* \* \* \* \*

(f) \* \* \*

(2) \* \* \*

(vi) The annual report must indicate the number of salmon taken by species and season, estimate the 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 each vessel's number of appearances on the weekly dirty 20 lists for both salmon species.

\* \* \* \* \*