

of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

### V. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comments. This action is necessary because section 823 of the National Defense Authorization Act for Fiscal Year 2010 requires implementation no later than 180 days after October 28, 2009. If this requirement is not implemented in the DFARS, contracting officers may not be aware of the requirement to consider reduction or denial of the award fee paid in a period in which actions of gross negligence or reckless disregard of health or safety by the contractor or its subcontractors caused serious bodily injury or death of Government personnel. However, pursuant to 41 U.S.C. 418b, DoD will consider public comments received in response to this interim rule in the formation of the final rule.

### List of Subjects in 48 CFR Parts 216 and 252

Government procurement.

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Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 216 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 216 and 252 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR chapter 1.

### PART 216—TYPES OF CONTRACTS

■ 2. Sections 216.405–270 and 216.406 are added to subpart 216.4 to read as follows:

#### 216.405–270 Award fee reduction or denial for jeopardizing the health or safety of Government personnel.

(a) *Definitions.*

*Covered incident* and *serious bodily injury*, as used in this section, are defined in the clause at 252.216–7004, Award Fee Reduction or Denial for Jeopardizing the Health or Safety of Government Personnel.

(b) In accordance with section 823 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84), the contracting officer shall include in the evaluation of any award fee plan, a review of contractor actions that jeopardized the health and safety of Government personnel.

(c) If, in performing under a contract, contractor or subcontractor actions cause serious bodily injury or death of civilian or military Government personnel, the contracting officer shall consider reducing or denying the award fee for any of the relevant award fee periods in which the covered incident occurred, including the recovery of all or part of any award fees previously paid for such period.

#### 216.406 Contract clauses.

Use the clause at 252.216.7004, Award Fee Reduction or Denial for Jeopardizing the Health or Safety of Government Personnel, in all solicitations and contracts containing award fee provisions.

### PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Section 252.216–7004 is added as follows:

#### 252.216.7004 Award Fee Reduction or Denial for Jeopardizing the Health or Safety of Government Personnel.

As prescribed in 216.406 use the following clause:

AWARD FEE REDUCTION OR DENIAL FOR JEOPARDIZING THE HEALTH OR SAFETY OF GOVERNMENT PERSONNEL (NOV 2010)

(a) *Definitions.* As used in this clause—  
Covered incident—

(1) Means any incident in which the Contractor, through a criminal, civil, or administrative proceeding that results in a disposition listed in paragraph (2) of this definition—

(i) Has been determined in the performance of this contract to have caused serious bodily injury or death of any civilian or military personnel of the Government through gross negligence or with reckless disregard for the safety of such personnel; or

(ii) Has been determined to be liable for actions of a subcontractor of the Contractor that caused serious bodily injury or death of any civilian or military personnel of the Government through gross negligence or with reckless disregard for the safety of such personnel.

(2) Includes those incidents that have resulted in any of the following dispositions:

(i) In a criminal proceeding, a conviction.

(ii) In a civil proceeding, a finding of fault or liability that results in the payment of a monetary fine, penalty, reimbursement, restitution, or damage of \$5,000 or more.

(iii) In an administrative proceeding, a finding of fault and liability that results in—

(A) The payment of a monetary fine or penalty of \$5,000 or more; or

(B) The payment of a reimbursement, restitution, or damages in excess of \$100,000.

(iv) In a criminal, civil or administrative proceeding, a disposition of the matter by consent or compromise with an acknowledgment of fault by the Contractor if the proceeding could have led to any of the

outcomes specified in paragraphs (2)(i), (2)(ii), or (2)(iii) of this definition.

*Serious bodily injury* means a grievous physical harm that results in a permanent disability.

(b) If, in the performance of this contract, the Contractor's or its subcontractor's actions cause serious bodily injury or death of civilian or military Government personnel, the Government may reduce or deny the award fee for the relevant award fee period in which the covered incident occurred, including the recovery of all or part of any award fees paid for any previous period during which the covered incident occurred.  
(End of clause)

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 0910131363–0087–02]

RIN 0648–XZ88

#### Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Bering Sea Subarea of the Bering Sea and Aleutian Islands Management Area

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

**ACTION:** Temporary rule; apportionment of reserves; request for comments.

**SUMMARY:** NMFS apportions amounts of the non-specified reserve to the initial total allowable catch of Pacific ocean perch in the Bering Sea subarea of the Bering Sea and Aleutian Islands management area. This action is necessary to allow fishing operations to continue. It is intended to promote the goals and objectives of the fishery management plan for the Bering Sea and Aleutian Islands management area.

**DATES:** Effective November 10, 2010 through 2400 hrs, Alaska local time, December 31, 2010. Comments must be received at the following address no later than 4:30 p.m., Alaska local time, November 26, 2010.

**ADDRESSES:** Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by 0648–XZ88 by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the

Federal eRulemaking Portal Web site at <http://www.regulations.gov>.

- *Mail:* P.O. Box 21668, Juneau, AK 99802.

- *Fax:* (907) 586-7557.

- *Hand delivery to the Federal Building:* 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (*e.g.*, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

**FOR FURTHER INFORMATION CONTACT:** Obren Davis, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the Bering Sea and Aleutian Islands (BSAI) exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2010 initial total allowable catch (ITAC) of Pacific ocean perch in the

Bering Sea subarea was established as 3,256 metric tons (mt) by the final 2010 and 2011 harvest specifications for groundfish of the BSAI (75 FR 11778, March 12, 2010). In accordance with § 679.20(a)(3) the Regional Administrator, Alaska Region, NMFS, has reviewed the most current available data and finds that the ITAC for Pacific ocean perch in the Bering Sea subarea needs to be supplemented from the non-specified reserve in order to promote efficiency in the utilization of fishery resources in the BSAI and allow fishing operations to continue.

Therefore, in accordance with § 679.20(b)(3), NMFS apportions from the non-specified reserve of groundfish 300 mt to the Pacific ocean perch ITAC in the Bering Sea subarea. This apportionment is consistent with § 679.20(b)(1)(i) and does not result in overfishing of a target species because the revised ITAC is equal to or less than the specifications of the acceptable biological catch in the final 2010 and 2011 harvest specifications for groundfish in the BSAI (75 FR 11778, March 12, 2010).

The harvest specification for the 2010 Pacific ocean perch ITAC included in the harvest specifications for groundfish in the BSAI is revised as follows: 3,556 mt for Pacific ocean perch in the Bering Sea subarea.

#### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at

5 U.S.C. 553(b)(B) and § 679.20(b)(3)(iii)(A) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the apportionment of the non-specified reserves of groundfish to the Pacific ocean perch fishery in the Bering Sea subarea. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet and processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of November 5, 2010.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Under § 679.20(b)(3)(iii), interested persons are invited to submit written comments on this action (*see ADDRESSES*) until November 26, 2010.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: November 8, 2010.

**Brian Parker,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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