

collected for population inventory. Since little scientific research has been conducted on this species, these and other research efforts could provide critical information regarding cutthroat trout life history and population abundance.

Section 10(a)(1)(B) incidental take permits may be issued to non-Federal entities performing activities that may incidentally take listed species. The types of activities potentially requiring a section 10(a)(1)(B) incidental take permit include the operation and release of artificially propagated fish by state operated and funded hatcheries, state or university research not receiving Federal authorization or funding, and the implementation of state fishing regulations.

NMFS requires several months to review permit applications (including a 30-day public comment period) and assess the issuance of section 10 permits. In the fall of 1996, NMFS will hold a workshop to explain the application process for section 10 permits. Prospective applicants should submit permit applications to NMFS at least 120 days prior to the expected start date of their activities. If there are research activities whose interruption would harm efforts to conserve the species, NMFS will consider issuing a permit under the emergency procedure (50 CFR 222.24(e)). Regulations regarding application, issuance and administration of permits are found at 50 CFR parts 217–222.

It is the policy of NMFS and the USFWS, published in the Federal Register on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the ESA. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range. NMFS believes that, based on the best available information, the following actions will not result in a violation of section 9:

(1) Possession of Umpqua River cutthroat trout acquired lawfully by permit issued by NMFS pursuant to section 10 of the ESA, or by the terms of an incidental take statement pursuant to section 7 of the ESA.

(2) Federally approved projects that involve activities such as silviculture, grazing, mining, road construction, dam construction and operation, discharge of fill material, stream channelization or diversion for which consultation has been completed, and when such activity is conducted in accordance with any terms and conditions given by NMFS in

an incidental take statement accompanied by a biological opinion.

Activities that NMFS believes could potentially harm the Umpqua River cutthroat trout and result in "take", include, but are not limited to:

(1) Unauthorized collecting or handling of the species. Permits to conduct these activities are available for purposes of scientific research or to enhance the propagation or survival of the species.

(2) Unauthorized destruction/alteration of the species' habitat such as removal of large woody debris or riparian shade canopy, dredging, discharge of fill material, draining, ditching, diverting, blocking, or altering stream channels or surface or ground water flow.

(3) Discharges or dumping of toxic chemicals or other pollutants (i.e., sewage, oil and gasoline) into waters or riparian areas supporting the species.

(4) Violation of discharge permits.

(5) Pesticide applications in violation of label restrictions.

(6) Interstate and foreign commerce (commerce across State lines and international boundaries) and import/export without prior obtainment of an endangered species permit.

This list is not exhaustive. It is provided to give the reader some examples of the types of activities that would be considered by the NMFS as constituting a "take" of Umpqua River cutthroat trout under the ESA and regulations. Questions regarding whether specific activities will constitute a violation of section 9, and general inquiries regarding prohibitions and permits, should be directed to NMFS (see ADDRESSES).

Critical Habitat

Section 4(a)(3)(A) of the ESA requires that, to the extent prudent and determinable, critical habitat be designated concurrently with the listing of a species. At the present time, NMFS is placing a higher priority on listings than on critical habitat designations due to staffing and workload constraints resulting from the lifting of the recent listing moratorium. In most cases the substantive protections of critical habitat designations are duplicative of those of listings, however, in cases in which critical habitat designation is deemed essential to the conservation of the species, such a designation could warrant a higher priority. It is NMFS' intention to develop and publish a critical habitat designation for Umpqua River cutthroat trout as time and workload permit.

Classification

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation v. Andrus*, 675 F. 2d 825 (6th Cir., 1981), NMFS has categorically excluded all ESA listing actions from environmental assessment requirements of NEPA (48 FR 4413; February 6, 1984).

As noted in the Conference Report on the 1982 amendments to the ESA, economic considerations have no relevance to determinations regarding the status of the species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process. Similarly, this final rule is exempt from review under E.O. 12866.

References

The complete citations for the references used in this document can be obtained by contacting Garth Griffin, NMFS (see ADDRESSES).

List of Subjects in 50 CFR Part 222

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, Transportation.

Dated: July 29, 1996.

Charles Karnella,
Acting Program Management Officer,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 222 is amended as follows:

PART 222—ENDANGERED FISH OR WILDLIFE

1. The authority citation of part 222 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 et seq.

§ 222.23 [Amended]

2. In § 222.23, paragraph (a), the second sentence is amended by adding the phrase "Umpqua River cutthroat trout (*Oncorhynchus clarki clarki*);" immediately after the phrase "Snake River sockeye salmon (*Oncorhynchus nerka*)."

[FR Doc. 96–20029 Filed 8–8–96; 8:45 am]

BILLING CODE 3510–22–F.

50 CFR Part 679

[Docket No. 960129018-6018-01; I.D. 080596B]

Fisheries of the Exclusive Economic Zone Off Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the deep-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary because the third seasonal bycatch allowance of Pacific halibut apportioned to the deep-water species fishery in the GOA has been caught.

EFFECTIVE DATES: 1200 hrs, Alaska local time (A.l.t.), August 7, 1996, until 2400 hrs, A.l.t., October 1, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The deep-water species fishery was apportioned 400 mt of Pacific halibut prohibited species catch for the third season, the period July 1, 1996, through September 30, 1996 (61 FR 4304, February 5, 1996). (See § 679.21(d).)

The Director, Alaska Region, NMFS, has determined, in accordance with § 679.21(d)(7)(i), that vessels participating in the trawl deep-water species fishery in the GOA have caught the third seasonal bycatch allowance of Pacific halibut apportioned to that fishery. Therefore, NMFS is prohibiting directed fishing for each species and species group that comprise the deep-water species fishery by vessels using trawl gear in the GOA. The species and species groups that comprise the deep-water species fishery are: All rockfish of the genera *Sebastes* and *Sebastolobus*, Greenland turbot, Dover sole, Rex sole, arrowtooth flounder, and sablefish.

Maximum retainable bycatch amounts for applicable gear types may be found at § 679.20(e).

Classification

This action is taken under 50 CFR 679.21 and is exempt from review under E.O. 12866.

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

Dated: August 5, 1996.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 96-20318 Filed 8-6-96; 11:57 am]

BILLING CODE 3510-22-F

50 CFR Part 679

[Docket No. 960401095-6212-02; I.D. 032596A]

RIN 0648-AH61

Fisheries of the Exclusive Economic Zone Off Alaska; Improve Individual Fishing Quota Program

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule amending the regulations implementing the Individual Fishing Quota (IFQ) Program for the Pacific halibut and sablefish fixed gear fisheries in and off of Alaska. This rule also eliminates a prohibition pertaining to IFQ sablefish in the regulations governing the groundfish fisheries in the Gulf of Alaska (GOA). After the first year of the IFQ Program's operation, the North Pacific Fishery Management Council (Council) and NMFS recognize aspects of the Program that need further refinement. This action is necessary to make those refinements and is intended to improve the ability of NMFS to manage the Pacific halibut and sablefish fixed gear fisheries.

EFFECTIVE DATE: September 9, 1996.

ADDRESSES: Copies of the final rule and the Regulatory Impact Review for this action may be obtained from: Fisheries Management Division, Alaska Region, NMFS, Room 453, 709 W. 9th Street, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802, Attention: Lori J. Gravel.

FOR FURTHER INFORMATION CONTACT: James Hale, 907-586-7228.

SUPPLEMENTARY INFORMATION:**Background**

Regulations codified at 50 CFR 679 implement the IFQ Program, a limited access system for management of the Pacific halibut (*Hippoglossus stenolepis*) and sablefish (*Anoplopoma*

fimbria) fixed gear fisheries in and off of Alaska, under the authority of the Northern Pacific Halibut Act with respect to halibut and the Magnuson Fishery Conservation and Management Act (Magnuson Act) with respect to sablefish. Further information on the rationale for and implementation of the IFQ Program is contained in the preamble to the final rule published in the Federal Register on November 9, 1993 (58 FR 59375).

This action amends various portions of the regulations implementing the IFQ Program and eliminates a prohibition in the groundfish regulations that pertains to IFQ sablefish. These changes are intended to improve the ability of fishermen to conduct fishing operations under the IFQ Program, to refine NMFS' ability to administer the program effectively, and to make the Program more responsive to conservation and management goals for Pacific halibut and sablefish fisheries. A proposed rule was published in the Federal Register, which invited comments through May 24, 1996 (61 FR 18116; April 24, 1996). No comments were received. The following list is a brief description of the regulatory provisions added or amended by this rule. Further information on these changes is contained in the preamble to that proposed rule (61 FR 31228; June 19, 1996).

Elimination of the 72-hour "Fair Start" Provision

Section 679.7(b)(2) is removed to eliminate the prohibition against deploying fixed gear during the 72-hour period preceding the opening of fixed gear sablefish fishing seasons. NMFS has determined that this prohibition is no longer necessary. Under the IFQ Program, which lengthened GOA fixed gear sablefish seasons, the problems addressed by the "fair start" provision have been resolved.

Revision of the Owner-Aboard Restriction

Section 679.4(d)(6)(ii) is revised to allow fishermen to leave their vessels during the time between their arrival in port and the beginning of landing operations. IFQ regulations formerly required IFQ holders to be aboard vessels used to harvest IFQ fish during all fishing operations to ensure that the catcher vessel fleet remains primarily an owner-operator fleet. As revised the regulation continues to require that IFQ holders be aboard during harvest and landing of IFQ fish, except as allowed by the emergency waiver provision; however, IFQ fishermen no longer have to remain aboard in the interim between