

habitat designation as provided by section 4 of the Endangered Species Act;

(4) Additional information concerning the range, distribution, and size of this DPS; and

(5) Current or planned activities in the subject area and their possible impacts on this DPS.

### Background

On February 11, 2004, we published in the **Federal Register** (69 FR 6600) a proposed rule to list the southwest Alaska DPS of the northern sea otter as threatened under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*). The comment period for the proposed listing closes on June 10, 2004. We are announcing a public hearing to allow all interested parties to submit oral comments on the proposed rule. We are seeking comments or suggestions from the public, other concerned agencies, the scientific community, industry, or any other interested parties concerning the proposed rule. Comments already submitted on the proposed rule need not be resubmitted as they will be fully considered in our final determination.

Section 4(b)(5)(E) of the Act requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule. In response to a request from the Alaska Sea Otter and Steller Sea Lion Commission, we are holding a public hearing on the date and at the address described in the **DATES** and **ADDRESSES** section.

Anyone wishing to make an oral statement for the record is encouraged to provide a written copy of the statement and present it to us at the hearing. In the event there is a large attendance, the time allotted for oral statements may be limited. Oral and written statements receive equal consideration. There are no limits to the length of written comments presented at the hearing or mailed to us.

Persons needing reasonable accommodations in order to attend and participate in the public hearing should contact M. Ellen Baier at 907/786-3800, as soon as possible. In order to allow sufficient time to process requests, please call no later than one week before the hearing date. Information regarding our proposal is available in alternative formats upon request.

### Author

The primary author of this notice is Susan Detwiler, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503 (telephone 907/786-3868; facsimile 907/786-3350).

**Authority:** The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: April 29, 2004.

**Craig Manson,**

*Assistant Secretary for Fish and Wildlife and Parks.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 040427134-4134-01; I.D. 042004D]

RIN 0648-AR64

#### Fisheries of the Exclusive Economic Zone Off Alaska; Fish Meal

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes to allow processors to use the offal from Pacific salmon (salmon) and Pacific halibut (halibut) intended for the Prohibited Species Donation (PSD) program for commercial products including fish meal, fish oil, and bone meal. This action is necessary to change current regulations which prohibit the sale of any parts of salmon or halibut that are processed under the PSD program. This action is intended to promote the objectives of the PSD program and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** Comments on the proposed rule must be received on or before June 4, 2004.

**ADDRESSES:** Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, Attn: Lori Durall. Comments may be submitted by:

- Mail to NMFS, P.O. Box 21668, Juneau, AK 99802-1668;
- Hand delivery to the Federal Building, Room 420A, 709 West 9th Street, Juneau, Alaska;
- FAX to 907-586-7557;
- E-mail to [PSCW-0648-AR64@noaa.gov](mailto:PSCW-0648-AR64@noaa.gov) and include in the subject line of the e-mail comment the document identifier: 0648-AR64; or

• Website to the Federal eRulemaking Portal at <http://www.regulations.gov> and following the instructions at that site for submitting comments.

Copies of the Categorical Exclusion and Regulatory Impact Review prepared for this action, and the Environmental Assessment prepared for Amendments 26/29 and Amendments 50/50, may be obtained from the same address.

**FOR FURTHER INFORMATION CONTACT:** Jay Ginter, 907-586-7228, or [jay.ginter@noaa.gov](mailto:jay.ginter@noaa.gov).

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the exclusive economic zone of the Bering Sea and Aleutian Islands Management Area (BSAI) under the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI FMP). NMFS manages the groundfish fishery in the exclusive economic zone of the Gulf of Alaska (GOA) under the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP). The North Pacific Fishery Management Council (Council) prepared, and NMFS approved, the BSAI and GOA FMPs under the authority of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*). Regulations implementing the BSAI and GOA FMPs appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

### Background

Prohibited species are defined at § 679.2 to include all species of salmon, steelhead trout, halibut, Pacific herring, king crab and Tanner crab caught by a vessel regulated under part 679 while fishing for groundfish in the BSAI or GOA.

All prohibited species catch (PSC) is to be avoided, but if caught while fishing for groundfish, prohibited species must be returned to the sea with a minimum of injury, under regulations at § 679.21.

Some groundfish fishing vessels are incapable of sorting their catch at sea, and deliver their entire catch to an onshore processor or a processor vessel. Sorting and discarding of prohibited species occurs at delivery. To reduce the amount of edible protein discarded in that process, the Council initially recommended the PSD program for salmon, which was implemented by NMFS in 1996. The program was expanded to include halibut in 1997. Regulations implementing the PSD program are codified at § 679.26.

The PSD program allows PSC salmon and halibut to be processed and distributed through tax-exempt hunger relief organizations. The implementing regulations prohibit authorized

distributors from consuming or retaining prohibited species for personal use. They may not sell, trade or barter any prohibited species that is retained under the PSD program.

In 2001, processors stopped retaining salmon under the PSD program because current regulations prohibit them from processing and selling the waste parts of salmon (eg. heads, guts, bones, skin) that are not distributed under the PSD program. Processors found it impractical to separate this offal from the offal of commercial groundfish that are rendered into meal and oil products that may be subsequently marketed.

To stop the processing of PSC salmon and halibut for this reason, however, would defeat the PSD program's purpose of donating fish for hunger relief that otherwise would be discarded. Therefore, NMFS Enforcement issued an advisory bulletin on April 4, 2002 (Information Bulletin 02-30), stating that NMFS would not enforce regulations that prohibit converting halibut or salmon offal into meal under the PSD program. According to the bulletin, "NMFS does not believe that retention of Pacific halibut or salmon heads and guts for meal constitutes sufficient potential for revenue to undermine the intent of the PSD program. Rather, concern continues to be focused on prohibiting the sale, trade or barter of edible flesh. Therefore, NMFS intends to propose regulations that would clarify the conditions under which parts of prohibited species may be retained by a processor in a manner that would not undermine the intent of the PSD program."

This proposed rule would amend the PSD program regulations at § 679.26 (d) to allow processors to convert offal from salmon or halibut that has been prepared for the PSD program into fish meal, fish oil, or bone meal, and retain the proceeds from the sale of these products. No other regulatory changes are proposed.

#### Classification

NMFS has determined that the proposed rule is consistent with the BSAI and GOA FMPs and initially determined that the rule is consistent with the Magnuson-Stevens Act and other applicable laws.

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

NMFS has determined that this action is categorically excluded from the requirement to prepare an environmental assessment, in accordance with NAO 216-6. The rule falls within the scope of alternatives and impacts addressed in the Environmental Assessments prepared for the BSAI and GOA FMPs Amendments 26/29 and Amendments 50/50 (see ADDRESSES) and implements only minor changes that do not have the potential to pose significant impacts on the quality of the human environment.

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. Certification of this action is appropriate for the following reasons:

1. The proposed rule does not impose any additional requirements on entities. Participation in the PSD program is voluntary, so an entity that found the program requirements onerous could stop participating without financial cost to itself. Moreover, the action relieves a restriction on entities that choose to participate in the PSD program. By explicitly allowing participating processors to sell the offal of PSC species, this action would allow participating processors to convert offal into commercial products. Finally, for practical purposes, the proposed rule would bring regulations into conformity with established enforcement policy, thereby maintaining current fishing and processing practices. For these reasons, this action does not have a significant economic impact on any regulated entities, large or small.

2. This action does not have an impact on any small entities. Three seafood processing firms in Dutch Harbor have participated in the PSD program. None of these firms are small entities within the meaning of the Regulatory Flexibility Act. Under criteria established by the Small Business Administration, a seafood processor is a small business if it is independently owned and operated, not

dominant in its field of operation, and employs 500 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. None of the three participating firms meet this standard.

#### List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: April 29, 2004.

#### Rebecca Lent

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

For the reasons set forth 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 50 CFR part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; Title II of Division C, Pub. L. 105-277; Sec. 3027, Pub. L. 106-31, 113 Stat. 57.

2. In § 679.26, paragraph (d)(3) is revised to read as follows:

#### § 679.26 Prohibited Species Donation Program.

\* \* \* \* \*

(d) \*\*\*

(3) Authorized distributors and persons conducting activities supervised by authorized distributors may retain prohibited species only for the purpose of processing and delivering the prohibited species to hunger relief agencies, food networks or food distributors as provided by this section. Such persons may not consume or retain prohibited species for personal use and may not sell, trade or barter, or attempt to sell, trade or barter any prohibited species that is retained under the PSD program, except that processors may convert offal from salmon or halibut that has been retained pursuant to the PSD program into fish meal, fish oil, or bone meal, and sell or trade these products.

\* \* \* \* \*

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