

**ACTION:** Notice of closure.

**SUMMARY:** The Director, Alaska Region, NMFS (Regional Director), has determined that the 1991 allocation of prohibited species catch (PSC) of Pacific halibut to domestic annual processing (DAP) vessels using trawl gear in the Gulf of Alaska (GOA) has been reached. Therefore, NMFS is prohibiting directed fishing for (1) pollock by vessels using non-pelagic trawl gear, and (2) groundfish, except for pollock, by DAP vessels using any trawl gear in the GOA. This action is necessary to avoid exceeding the PSC limit of Pacific halibut established for trawl gear. The intent of this action is to ensure optimum use of groundfish while conserving Pacific halibut stocks.

**EFFECTIVE DATE:** 12:00 noon, Alaska local time (A.L.T.), October 14, 1991, until the initiation of the 1992 fishing season.

**FOR FURTHER INFORMATION CONTACT:** Andrew N. Smoker, Resource Management Specialist, Alaska Region, NMFS, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The Fishery Management Plan for Groundfish of the GOA (FMP) governs the groundfish fishery in the Exclusive Economic Zone in the GOA under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council and is implemented by regulations appearing at 50 CFR 611.92 and parts 620 and 672.

Under 50 CFR 672.20(c)(2), 1991 Pacific halibut PSC limits were established and allocated to gear types in the GOA. The notice of final specifications of groundfish total allowable catch and Pacific halibut PSC (56 FR 8723, March 1, 1991) established the 1991 gear allocation of Pacific halibut for trawl gear as 2,000 metric tons (mt).

Under § 672.20(f)(3), the Regional Director has determined that the PSC limit for Pacific halibut for trawl gear in the GOA will soon be reached. Therefore, NMFS is prohibiting directed fishing for: (1) Pollock by DAP vessels using non-pelagic trawl gear, and (2) groundfish, except for pollock, by DAP vessels using any trawl gear in the GOA, from 12:00 noon A.L.T. October 14, 1991, for the remainder of the fishing year.

**Classification**

This action is taken under 50 CFR 672.20, and as in compliance with Executive Order No. 12291.

**List of Subjects in 50 CFR Part 672**

Fisheries, Reporting and recordkeeping requirements.

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

Dated: October 11, 1991.

David S. Crestin,

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

[FR Doc. 91-25100 Filed 10-11-91; 4:35 pm]

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**50 CFR Part 675**

[Docket No. 901199-1021]

**Groundfish of the Bering Sea and Aleutian Islands Area**

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of closure.

**SUMMARY:** The Director, Alaska Region, NMFS (Regional Director), has determined that the secondary allowance of the prohibited species catch (PSC) of Pacific halibut for the domestic annual processing (DAP) flatfish fishery in the Bering Sea and Aleutian Islands management area (BSAI) soon will be caught. Therefore, NMFS is closing the BSAI to directed fishing with trawl gear for yellowfin sole and "other flatfish" in the aggregate. This action is necessary to prevent the secondary allowance of Pacific halibut for the flatfish fishery from being exceeded before the end of the fishing year. The intent of this action is to ensure optimum use of groundfish while conserving Pacific halibut stocks.

**EFFECTIVE DATES:** 12 noon, Alaska local time (A.L.T.), October 15, 1991, through midnight, A.L.T., December 31, 1991.

**FOR FURTHER INFORMATION CONTACT:** Andrew N. Smoker, Resource Management Specialist, NMFS, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands Area (FMP) governs the groundfish fishery in the exclusive economic zone within the BSAI management area under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council and is implemented by regulations appearing at 50 CFR 611.93 and parts 620 and 675.

The final rule for amendment 16 to the FMP (54 FR 2700; January 24, 1991) established PSC limits for Pacific halibut for groundfish fisheries in the BSAI area. Under § 675.21(a)(5), the secondary PSC limit of Pacific halibut caught while conducting any domestic annual harvest trawl fishery for groundfish in the BSAI during any fishing year is 5,333 metric

tons (mt). Section 675.21(b)(1) requires that the PSC limit of Pacific halibut be further apportioned into bycatch allowances, one of which is assigned to the DAP flatfish fishery. The final notice of initial specifications of groundfish in the BSAI for 1991 (56 FR 6290; February 15, 1991) established the secondary Pacific halibut allowance for the DAP flatfish fishery at 800 mt.

Under § 675.21(c)(1)(iv), the Regional Director has determined that U.S. fishing vessels using trawl gear while participating in the DAP flatfish fishery will catch the secondary PSC allowance of Pacific halibut in the BSAI area by October 15, 1991. Therefore, NMFS is closing the BSAI area to U.S. fishing vessels with trawl gear and engaged in the directed fishery for yellowfin sole and "other flatfish" in the aggregate from 12 noon, A.L.T., October 15, 1991, through midnight, A.L.T., December 31, 1991.

In accordance with § 675.20(h)(8) and § 675.21(b)(4)(iv), vessels fishing with trawl gear in the Bering Sea and Aleutian Islands area cannot retain at any particular time during a trip amounts of yellowfin sole and "other flatfish" in the aggregate that are equal to or greater than 20 percent of the amount of all other fish species retained at the same time during the same trip as calculated in round weight equivalents.

**Classification**

This action is taken under §§ 675.20 and 675.21 and complies with Executive Order 12291.

**List of Subjects in 50 CFR 675**

Fish, Fisheries, Reporting and recordkeeping requirements.

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

Dated: October 15, 1991.

Richard H. Schaefer,

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

[FR Doc. 91-25173 Filed 10-15-91; 3:44 pm]

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**50 CFR Part 685**

[Docket No. 910489-1241]

RIN 0648-AD98

**Pelagic Fisheries of the Western Pacific Region**

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule to implement Amendment 3 to the Fishery

Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP). This rule prohibits longline fishing within 50 nautical miles (nm) of certain Northwestern Hawaiian Islands (NWHI) as well as within corridors between those islands. The intent of this action is to provide a protected species zone around the centers of activity of the endangered Hawaiian monk seal (*Monachus schauinslandi*), thereby eliminating the incidental take of monk seals in fishing operations. The final rule also establishes a process for adjusting the size of the protected species zone and/or changing the conservation and management measures to conserve Hawaiian monk seals and other protected species in the area.

**EFFECTIVE DATE:** This action is effective at 0000 hours local time October 14, 1991.

**ADDRESSES:** Copies of Amendment 3 and the environmental assessment are available from Kitty B. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1405, Honolulu, HI 96813 (808-523-1368), or E.C. Fullerton, Regional Director, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, CA 90731.

Send comments on the collection of information to the Director, Southwest Region, NMFS (see above), and to the Office of Information and Regulatory Affairs, Office of Management and Budget, ATTN: Paperwork Reduction Project 0648-0214, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Svein Fougner, Fisheries Management Division, Southwest Region, Terminal Island, California, (213) 514-6660, or Alvin Katekaru, Pacific Area Office, Southwest Region, NMFS, Honolulu, Hawaii, (808) 955-8831.

**SUPPLEMENTARY INFORMATION:** An interagency task force consisting of NMFS, the U.S. Fish and Wildlife Service, the Hawaii Department of Land and Natural Resources, the U.S. Coast Guard, and the Western Pacific Fishery Management Council (Council) recommended closing to longline fishing the area where monk seals are active. At a public hearing in Honolulu, Hawaii, on February 28, 1991, representatives of several environmental groups stated that they favored closures of 50 nm or more to guarantee that there would be no taking of monk seals by longline gear, and proposed mandatory observer coverage in a buffer zone around the NWHI. Several representatives of the fishing industry indicated that they believed interactions were rare and would be limited to waters much closer

to the islands. They felt that a closure of 20-30 nm would be sufficient with observer coverage out to 50 nm.

The Council subsequently met in an open session in Honolulu on February 27 through March 1, 1991, and concluded that prohibiting longline fishing in waters within 50 nm of the NWHI, including corridors connecting islands more than 100 nm apart, would be appropriate. In the Council's view, there was no evidence to suggest that there would be interactions beyond these boundaries. Because evidence of continuing interactions of the fishery with the seals warranted establishing a closed area, this was done by emergency rule (56 FR 15842) on April 18, 1991, as modified at 56 FR 33211, July 19, 1991. The details for these actions can be found in the cited publications and will not be restated here.

A proposed rule to establish permanently this action was published in the Federal Register on August 2, 1991 (56 FR 37070). At that time, a summary of the rapid growth of the longline fishery and the actions taken to prevent interaction of fishing vessels with monk seals was presented.

In addition, in order to prevent persons from circumventing the closure by claiming to be transiting the protected species zone, NMFS has supplemented the regulations submitted with Amendment 3 by the Council, to include a requirement that fishing vessel operators notify the NMFS Southwest Enforcement Office immediately upon entering and exiting the zone. Notification shall include the name of the vessel, name of the operator, date and time of the entry or exit, and location of the vessel by latitude and longitude to the nearest minute.

#### Comments Received and Responses

Comments were received from the Pacific Seabird Group and the Marine Mammal Commission (Commission). Although the Pacific Seabird Group favors an observer program to ensure compliance, it supports the closure. A discussion of the major comments of the Marine Mammal Commission follows:

**Comment:** The Commission recommended that the amendment be returned to the Council with a request that it be modified to designate a protected species zone extending to 100 nm from the islands (including waters between the islands), and to require that operators of vessels intending to fish in the waters 50-100 nm from the NWHI notify NMFS before fishing so that an observer could be assigned on a representative sample of vessels. The observers would determine whether any interactions with monk seals occur in

those waters. The protected species zone could be reduced in size if observations demonstrate that interactions do not occur in this broader zone. The Commission indicated that monk seals have been sighted more than 50 nm from shore and that there is no information to support a conclusion that monk seals do not regularly use waters 50 nm or more offshore. The Commission indicated there was insufficient justification for the argument that closing a zone larger than 50 nm would be burdensome to the fleet.

**Response:** Though individual animals have been assigned beyond 50 nm, available data indicate that the monk seal range consists of the islands and banks of the NWHI and the corridors within that area. The 50-nm protected species zone includes all known areas of monk seal habitation, including most of the offshore banks. Close to 100 percent of the monk seal population can be expected to be found within this extensive area, and it is assumed that any monk seals hooked or snagged came in contact with longline gear deployed within this area. Keeping fishermen beyond 50 nm is expected to prevent longline vessels from interacting with monk seals, although it does not eliminate all possibility of interaction. The conclusion that interaction beyond 50 nm is unlikely is logical even though individual animals may be found far from shore on occasion. There have been no reports of interactions or sightings of hooked or injured seals since the closure went into effect.

Because interaction outside the area is unlikely, placing observers on vessels fishing beyond the protected species zone is not expected to yield results that would justify the expense; however, this rule does not prevent imposition of an observer requirement. The rulemaking procedure contained in the final rule permits the Regional Director to initiate rulemaking to allow placement of observers aboard vessels if necessary. The rule alerts fishermen to this possibility. Observers also may be placed on a vessel volunteering to take observers if the opportunity occurs.

Regarding the impact of different area closures on the longline fishery, longline vessels fish a large area, from near shore to beyond 200 nm. The area covered is determined by the extensive migratory habits of the resources sought, which include blue marlin, swordfish, mahi mahi, and various tunas. Logbooks are available for the first 6 months of 1991. The data show that 163,444 fish were caught off the Main Hawaiian Islands, the NWHI, and outside the U.S. exclusive economic zone (EEZ). The

catch was distributed as follows: (1) Main Hawaiian Islands, 72,680 (44 percent), (2) outside the EEZ, 66,325 (41 percent), and (3) NWHI, 24,439 (15 percent). Much of the NWHI harvest was caught in the 50-nm protected species zone. Although this catch might be recovered from outside the zone, the risk of producing a significant economic loss by forcing vessels farther offshore increases as the size of the closed zone increases. The catch per unit of effort of broadbill swordfish, the major target species of the longline fleet, was 2.89 fish per thousand hooks off the Main Hawaiian Islands, 10.7 off the NWHI, and 12.97 outside the EEZ. The figures on catch in the various areas may not be indicative of normal conditions as they cover only the first 6 months of 1991. The movement of the various species may fluctuate widely depending on environmental conditions, and the fleet must adjust to those changes.

The modified emergency rule published on July 19, 1991, contained a new definition of longline gear, which encompasses all longline gear regardless of length. That definition is included in this final rule to ensure the full protection of monk seals as intended by the closure.

Finally, rejection of the amendment would mean that fishing could resume in the closed area when the emergency closure ends on October 13, 1991. Under the Magnuson Act, emergency rules can be in place for 90 days, with a possible extension for a second 90-day period. The current emergency closure cannot be extended any longer under the Magnuson Act.

*Comment:* The proposed process for adopting new measures that may be needed to conserve protected species is unclear and seems unnecessary when emergency procedures exist.

*Response:* The anticipatory rulemaking procedure in Amendment 3 permits the Regional Director to amend the regulations without the Council submitting an amendment to the FMP. This would include publication of a proposed rule with a period for public review and comment. This is a faster way to respond to a problem that needs to be resolved but which is not an emergency, and it does not require a Council FMP amendment document. If an emergency does arise with regard to vessels interacting with monk seals, the Secretary still has emergency powers available. Therefore, Amendment 3 introduces a third way to amend the regulations, which, unlike an emergency action, is permanent until rescinded or modified.

No event has been identified that could trigger initiation of this

rulemaking process by the Regional Director. This approach has been taken, and is often taken, when future problems that might occur are unknown. The anticipatory rulemaking procedure will permit the Regional Director to take a wide range of actions, depending on the circumstances that exist at the time. His action does not hinge on a single criterion. Also, a rulemaking procedure includes an opportunity for public review and comment. All comments on a proposed action would be taken into consideration before any new management measures are implemented.

*Comment:* Section 685.11(c) of the proposed rule states that the initial size of the protected species zone would be 50 nm from the geographic centers of the various NWHI. This wording does not mention the corridors between the islands.

*Response:* The definition of the protected species zone was contained in the final rule implementing Amendment 2 to the FMP (56 FR 24731, May 31, 1991). The definition was corrected to include the corridors by a notice in the Federal Register on August 2, 1991, (56 FR 37023). References to the protected species zone mean the zone as modified by the August 2, 1991, notice.

*Comment:* There are areas in Amendment 3 where a more complete discussion could have been provided, such as a reference to the new definition of longline gear for the NWHI, a discussion of the monk seal sightings far from shore, a discussion of the recent declines in beach counts, a recognition that no one knows where the interactions have occurred, and a discussion of the suggestion by the Commission on taking observers in a 50-nm area outside the protected species zone.

*Response:* All the above subjects have been taken into consideration in determining to issue this final rule, and the Council has a copy of the Commission's letter. These comments will also be considered in future amendments.

#### Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that Amendment 3 and its implementing rule are necessary for the conservation and management of the pelagic fishery resources of the western Pacific region and are consistent with the Magnuson Act and other applicable law.

The Southwest Region, NMFS, in cooperation with the Council, prepared an environmental assessment (EA) for the amendment. The Assistant Administrator has determined that there

will not be a significant impact on the environment. A copy of the EA is available from the Regional Director of the Council (see ADDRESSES).

The Assistant Administrator has determined that this is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. This final rule will not have a cumulative effect on the economy of \$100 million or more, nor will it result in a major increase in costs to consumers, industries, government agencies, or geographical regions. No significant adverse effects are anticipated on competition, employment, investment, productivity, innovation, or competitiveness of U.S.-based enterprises.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this rule will not have a significant economic effect on a substantial number of small entities. This determination is based on the regulatory impact review (RIR), which is incorporated into the amendment. The displacement of a portion of the longline effort outside the protected species zone, as currently defined, is not expected to have a significant economic effect, because the number of boats involved is small and the harvest can be anticipated to be recovered outside the area.

This rule contains a collection of information as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This information collection has been approved by the Office of Management and Budget (OMB), OMB Control Number 0648-0214. Operators of longline fishing vessels are required to notify the NMFS Southwest Enforcement Office immediately upon entering and departing the protected species zone. The public reporting burden for this collection of information is estimated to be 10 minutes, 5 minutes for the pre-transit notification and 5 minutes for the post-transit notification. Send comments on reducing the burden estimate or any other aspect of this collection of information, including suggestions on how to reduce the burden, to the Regional Director, Southwest Region, NMFS, and to the Office of Information and Regulatory Affairs (see ADDRESSES).

The Council has determined that the proposed action is consistent with the maximum extent practicable with the approved coastal zone management program of the State of Hawaii. A letter requesting concurrence with this determination was forwarded to the appropriate state agency, and the State of Hawaii has concurred.

The biological opinion issued for Amendment 2, which defined the protected species zone and required reporting from fishermen active within the zone, states that closing the area to longline fishing is a reasonable and prudent alternative, under which the fishery would not jeopardize the continued existence of the Hawaiian monk seal. This amendment implements that alternative.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

In order to afford maximum opportunity for public comment and participation, the Administrative Procedure Act (5 U.S.C. 553) requires that, generally, final rules be published not less than 30 days before they become effective. This 30-day period may be shortened or waived if the rulemaking agency publishes with the rule an explanation of what good cause justifies an earlier date. This rule, implementing Amendment 3 to the FMP, makes permanent with few changes certain management measures that were promulgated, with a request for comments, by emergency rule on April 18, 1991 (as modified on July 19, 1991). The public has had opportunities to comment on that emergency rule as well as to participate in the development of Amendment 3. The emergency rule is effective until October 13, 1991. To prevent a lapse in the management regime, which includes urgent measures necessary to protect monk seals and assess conditions in and impacts of the fishery, this rule should be effective when the emergency rule expires. However, the public comment period on the proposed rule ended on September 16, 1991, and although this final rule has been published as expeditiously as possible, it is not possible to provide a full 30 days before the emergency rule will expire. Accordingly, good cause is found for making this rule effective on 0000 hours local time, October 14, 1991.

#### List of Subjects in 50 CFR Part 685

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 11, 1991.

William W. Fox, Jr.,

Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 685 is amended as follows:

### PART 685—PELAGIC FISHERIES OF THE WESTERN PACIFIC REGION

1. The authority citation for part 685 continues to read as follows:

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

2. In § 685.2, the definition for "Longline gear" is revised and a new definition for "Northwestern Hawaiian Islands" is added, in alphabetical order, to read as follows:

#### § 685.2 Definitions.

**Longline gear** means a type of fishing gear consisting of a main line that exceeds one (1) nautical mile in length, is suspended horizontally in the water column either anchored, floating, or attached to a vessel, and from which branch or dropper lines with hooks are attached; except that, within the protected species zone, longline gear means a type of fishing gear consisting of a main line of any length that is suspended horizontally in the water column either anchored, floating, or attached to a vessel, and from which branch or dropper lines with hooks are attached.

**Northwestern Hawaiian Islands** means the EEZ of the Hawaiian Islands Archipelago lying to the west of 161° W. longitude.

3. In § 685.5 new paragraphs (r) and (s) are added, in alphabetical order, to read as follows:

#### § 685.5 Prohibitions.

(r) Fish for management unit species with longline gear within the protected species zone in the Northwestern Hawaiian Islands.

(s) Fail to notify the NMFS Southwest Enforcement Office of intent to enter or depart the protected species zone as required under § 685.14.

4. In § 685.11, the section heading is revised and paragraphs (a) through (c) are revised, to read as follows:

#### § 685.11 Protected species conservation.

(a) If the Regional Director determines that additional measures are needed in a particular area to prevent adverse effects of longline fishing on protected species, the Regional Director will, with the Council's concurrence, initiate rulemaking, which could include:

(1) Requiring additional reporting from vessels fishing;

(2) Enlarging the protected species zone;

(3) Restricting the type of gear used;

(4) Requiring observers to be taken on fishing trips; or

(5) Adopting any other management measures necessary to protect endangered or threatened species.

(b) If an observer requirement is established under paragraph (a)(4) of this section, the operator of a fishing vessel subject to the permit requirements of § 685.9 of this part shall inform the Pacific Area Office at least 72 hours (not including weekends and holidays) before leaving port of the operator's intent to fish within an area in which observers are required. The operator shall provide this notice by contacting the Pacific Area Office, telephone (808) 955-8831. The notice must include the name of the vessel, the name of the operator, the intended departure date and location, and a telephone number at which the operator or his agent may be contacted during the business day (8 a.m. to 5 p.m. local time) to indicate whether an observer will be required on the fishing trip.

(c) The initial size of the protected species zone is 50 nm from the center geographical positions of Nihoa Island, Necker Island, French Frigate Shoals, Gardner Pinnacles, Maro Reef, Laysan Island, Lisianski Island, Pearl and Hermes Reef, Midway Islands, and Kure Island, as defined in § 685.2.

5. A new § 685.14 is added, to read as follows:

#### § 685.14 Transit notification.

The operator of a longline fishing vessel subject to this part transiting the protected species zone shall notify the NMFS Southwest Enforcement Office at (808) 541-2727 immediately upon entering and immediately upon departing the protected species zone. The notification must include the name of the vessel, name of the operator, date and time (GMT) of entry or exit from the protected species zone, and location by latitude and longitude to the nearest minute.

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