the rulemaking record. We will honor the request to the extent allowable by law.

There may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

List of Subjects in 48 CFR Part 1437

Forests and forest products, Government procurement.

Dated: August 17, 2004.

P. Lynn Scarlett,

Assistant Secretary—Policy, Management and Budget.

■ For the reasons set forth in the preamble, the Department of the Interior adds a new part 1437 to 48 CFR chapter 14, subchapter F, reading as follows:

PART 1437—UTILIZATION OF WOODY BIOMASS

Sec.
1437.100 General.
1437.101 When can woody biomass be removed?
1437.102 When is the biomass clause required?
1437.103 Format of woody biomass utilization clause.
1437.104 Definitions.

Authority: 30 U.S.C. 601–604, 611, as amended; 16 U.S.C. 668dd; 16 U.S.C. 1; 25 U.S.C. 3101 *et seq.*; 43 U.S.C. 1701 *et seq.*

1437.100 General.

This part establishes consistent and efficient procedures to allow contractors the option to remove woody biomass by-products from Department of the Interior land management activities where ecologically appropriate. If the woody biomass has fair market value and payment is required, or as required by regulation, Bureau policy or the Mineral Materials Disposal Act of 1947 (30 U.S.C. 601 *et. seq*), a separate timber/vegetative sales contract must be executed.

1437.101 When can woody biomass be removed?

(a) The Department of the Interior allows and encourages contractors to remove and use woody biomass from project areas when:

(1) The biomass is generated during land management service contract activity; and

(2) Removal is ecologically appropriate.

(b) A contractor removing biomass under this part shall:

(1) Do so only within legal limits applicable to the contractor, including National Environmental Policy Act (NEPA) compliance; and

(2) If required, comply with the terms, conditions and special provisions of the applicable timber/vegetative sales notice.

1437.102 When is the biomass utilization clause required?

This section applies to any solicitation or contract that is expected to generate woody biomass that meets the requirements of § 1437.101 unless biomass removal is already required in the service contract. The agency contracting officer will:

(a) Insert in the solicitation or contract the clause in § 1437.103;

(b) Specify any limitations on types of woody biomass that may not be removed; and

(c) Specify any areas from which woody biomass must not be removed.

1437.103 Format of woody biomass utilization clause.

The contracting officer must insert a clause reading substantially as follows in each solicitation and contract that meets the criteria in § 1437.101(a):

Utilization of Woody Biomass

1. The contractor may remove and utilize woody biomass, if:

(a) Project work is progressing as scheduled; and

(b) Removal is completed before contract expiration.

2. To execute this option, the contractor must submit a written request to the Government.

3. Following receipt of the written request, and if appropriate, the Government and the contractor will negotiate and execute a separate timber/vegetative sales contract. Payment under this sales contract must be at a price equal to or greater than the appraised value before the removal of any woody biomass. The contractor must make any appropriate payment specified in this timber/vegetative sales contract.

4. If required by law, regulation or Bureau policy, the Government will prepare a timber/vegetative sales notice and/or prospectus, including volume estimates, appraised value and any appropriate special provisions.

5. The contractor must treat any woody biomass not removed in accordance with the specifications in the service contract.

6. The sales contract and service contract are severable; default or termination under either contract does not remove the contractor from payment or performance obligations under the other contract.

1437.104 Definitions.

Ecologically appropriate means those situations where the Deciding Officer and/or Contracting Officer determine it is not necessary to retain specific woody material and/or reserve specific areas from woody biomass removal to meet ecological objectives. For example, it may be necessary to retain snags or small woody debris to meet wildlife habitat objectives, or to create specific prescribed burning conditions to stimulate native plant development; therefore it would not be appropriate to allow removal of the specified woody biomass.

Timber/vegetative sales contract and/or notice means the agency-specific authorized contract instrument for the sale, barter, exchange, billing or other compensation for the payment, removal, and/or transportation of woody biomass material.

Woody biomass means the trees and woody plants, including limbs, tops, needles, leaves, and other woody parts, grown in a forest, woodland, or rangeland environment, that are the by-products of management, restoration and/or hazardous fuel reduction treatment.

Woody biomass utilization or use means the harvest, sale, offer, trade, and/or utilization of woody biomass to produce the full range of wood products, including timber, engineered lumber, paper and pulp, furniture and value-added commodities, and bio-energy and/or bio-based products such as plastics, ethanol and diesel.

[FR Doc. 04–19592 Filed 8–26–04; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 040427134–4230–02; 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: Final rule.

SUMMARY: NMFS issues a final rule 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: Effective on September 27, 2004.

ADDRESSES: Copies of the Categorical Exclusion and Regulatory Impact Review (RIR) prepared for this action, and the Environmental Assessments prepared for Amendments 26/29 and Amendments 50/50 to the Alaska groundfish fishery management plans, may be obtained from NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Durall.

FOR FURTHER INFORMATION CONTACT: Jason Anderson, 907–586–7228, or *jason.anderson@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the Exclusive Economic Zone of the Bering Sea and Aleutian Islands management area (BSAI) and the Gulf of Alaska (GOA) under the Fishery Management Plan for Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for the Groundfish of the Gulf of Alaska (FMPs). The North Pacific Fishery Management Council (Council) prepared, and NMFS approved, the FMPs under the authority of the Magnuson–Stevens Act (16 U.S.C. 1801 *et seq.*). Regulations implementing the 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 50 CFR 679.2 to include all species of Pacific salmon, steelhead trout, Pacific 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 50 CFR 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 found at 50 CFR 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 and persons conducting activities supervised by authorized distributers from consuming or retaining prohibited species for personal use. They may not sell, trade or barter any prohibited species that are 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 (e.g., heads, guts, bones, skin) that are not distributed under the PSD program. Processors found it impractical to separate this offal from the leftover parts of commercial groundfish, which they render into meal and oil, products that may be 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 action amends the PSD program regulations at 50 CFR 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. This action was described in the proposed rule published May 5, 2004 (69 FR 25056). Comments on the proposed rule were invited through June 4, 2004, and are summarized and responded to below. The final rule remains unchanged from the proposed rule.

Comments and Responses

Three letters of comment were received on the proposed rule that contained eight unique comments. Comments are summarized and responded to here.

Comment 1: The proposed rule states that the Chief Counsel for Regulation, Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. This certification is based on large processors and fails to address the broader issue of the effects of fish meal production to small, wild salmon fishermen displaced by the fish meal being shipped to Chile as food for farmed salmon. These farmed fish are marketed in direct competition with wild salmon harvested in Alaska.

Response: The Regulatory Flexibility Act requires NMFS to address the effects of a Federal action only on directly regulated small entities. None of the directly regulated entities in this action meet the SBA's criteria for a small entity. Therefore, the certification provided to the Chief Counsel for Advocacy of the SBA is appropriate.

Comment 2: Salmon from the PSD program has not been received by or benefitted the hunger and humanitarian organizations located in the area where these intercepted salmon were destined. What assurances are provided to ensure that all the PSD program fish will not be diverted into the production of animal feed instead of direct human consumption, as intended?

Response: Regulations at 50 CFR 679.26 govern the PSD program. Under these regulations, all processing, handling, and distribution of salmon and halibut must be carried out under the direction of an authorized distributor. An authorized distributor must submit an application which describes its plan for distributing fish to specifically named food bank networks and hunger relief agencies. This plan must be reviewed and approved by the Regional Administrator. NMFS only authorizes distributors who meet the minimum requirements listed under § 679.26(b). With the exception of offal used for fish meal as authorized under this action, halibut or salmon that are not processed under the direction of an authorized distributor or are sold for purposes other than human consumption is a violation of PSD program regulations and subject to enforcement action. Seashare, formerly

Northwest Food Strategies, is a non–profit organization that has participated as an authorized distributor since the PSD program's inception and is currently the only authorized distributor permitted to participate.

Comment 3: Currently, fisheries managers do not have sufficient data on the distribution of salmon from western Alaska in the BSAI and GOA due to financial constraints. If overfishing of certain western Alaska populations of chum and chinook salmon occurs, conservation measures will impact all users of fisheries resources in Alaska, including the general public. To prevent overfishing of these salmon stocks, initiatives to collect genetic information to determine the origin of salmon incidentally harvested in the Alaska groundfish fisheries should be accelerated.

Response: This action is intended to promote the objectives of the PSD program and does not regulate scientific information collection. This comment is outside the scope of this final rule; however, the following response provides general information on this topic.

Currently, research is being conducted by several countries, including the United States, under the Bering–Aleutian International Salmon Survey (BASIS). One research component of the BASIS program is to conduct biological and stock identification analyses designed to determine growth and life history characteristics of regional salmon stocks. Although results of this research initiative are not yet available, the stock identification analysis will be based on genetic, parasite, scale, otolith, and tag data collected over 5 years of international cooperative research cruises. Extensive information on the BASIS program can be found a *www.afsc.noaa.gov/abl/occ/basis.htm*. Genetic information collected under the BASIS program is part of an effort that includes NMFS and the State of Alaska to establish new baseline standards using DNA markers.

NMFS will continue to work internally to obtain necessary data through data collection programs to meet the needs of scientists. Any new or accelerated data collections, including those required for genetic analyses, would need to be prioritized and balanced with available funding and many existing and ongoing management and stock assessment data collections.

Comment 4: While it may be impractical to separate offal from salmon and halibut intended for the PSD program, allowing processors to profit from the sale of fish meal, fish oil, and bone meal made from these species is not the intent of the PSD program. Allowing the sale of products made from prohibited species does not deter the processor from trying to prevent the incidental catch of salmon. Salmon should continue to be donated under the PSD program. However, a certain percentage of the profits made from any byproduct of salmon or halibut should also be donated to meet the original intent of the PSD program.

Response: This action will generate relatively insignificant revenue for processors. Fish meal from whitefish sells for $0.24 – $0.30 per pound. Generally fish meal from salmon and halibut is mixed in with the whitefish meal from groundfish species. The revenue from fish meal derived from the PSD program would be very small compared with total fish meal produced by the participating processors. The RIR prepared for this action (see **ADDRESSES**) describes the costs fishermen must bear, including using scarce space on vessels to store PSD program fish and maintaining fish in a condition fit for human consumption. Processors also incur costs for accepting delivery, handling the appropriate paperwork and processing and storing the fish. The RIR estimates approximately $1,500 in revenue from salmon meal processed from PSD program fish for one processor of BSAI pollock. This amount is 0.025 percent of its nearly $6 million in revenue from pollock fish meal, and likely less than the cost incurred by the processor to participate in the PSD program. Therefore, the handling of salmon and halibut under the PSD program probably results in a net cost to processors and fishermen and could contribute toward incentives to avoid incidental catches of salmon and halibut to the extent possible.

Comment 5: At least 70 percent of fish caught die when returned to the sea. All catch of fish should be avoided. Catching fish and throwing them back to die is ridiculous.

Response: In order to eliminate any incentive for the groundfish fleet to target commercially exploited species that already support their own commercial fishery off Alaska, the BSAI and GOA FMPs prohibit the groundfish fisheries from retaining certain non–groundfish species. These prohibited species include all species of salmon, king and Tanner crabs, Pacific halibut, and Pacific herring. Annual prohibited species catch (PSC) limits are established that, when reached, result in specified fishery closures. Any incidentally caught prohibited species must be returned to the sea as soon as possible, with minimal injury. The exception to this discard rule is the PSD program which, as described above, was adopted by the Council to reduce the amount of edible protein discarded by some groundfish vessels without creating an incentive to target these species.

Incidental catch of non target groundfish also occurs and often is unavoidable. In recognition of this, NMFS and the Council have adopted management measures designed to create incentives to avoid bycatch when possible and to decrease regulatory and economic discards when it is not.

Comment 6: Processors should not find it impractical to separate halibut and salmon offal from parts of leftover groundfish. The proposed action only benefits processors, and is contrary to the intent of Congress and the public. The agency should require processors to separate offal from other groundfish parts.

Response: Under the current PSD program, processors may choose to process salmon for distribution through a NMFS–authorized distributer. However, processors found it impractical to separate PSD program halibut and salmon offal from the offal of other groundfish. Consequently, these processors chose not to participate in the PSD program and incidentally caught halibut and salmon were discarded at sea. This defeats the intent of the Council and the PSD program's purpose of donating fish for hunger relief that otherwise would be discarded. Participation in the PSD program is voluntary. Requiring processors to separate the offal of PSD program halibut and salmon from the offal of other groundfish species likely lead to processors choosing not to participate in the PSD program. This action allows processors to process salmon and halibut waste parts into fish meal along with offal from other species. NMFS believes this allowance will improve efficiency of the groundfish trawl fisheries without increasing incidental catch of salmon and halibut and is consistent with the Magnuson–Stevens Act.

Comment 7: I disagree with NMFS' determination that retention of halibut and salmon for meal does not constitute sufficient potential for revenue.

Response: Please see the response to Comment 4.

Comment 8: Historically, the fishing industry has a tendency to overfish resources if allowed to do so. This rule encourages overfishing and is not within the intent of the public and the Magnuson–Stevens Act.

Response: The handling of salmon and halibut under the PSD program

likely results in a net cost to processors and fishermen, and does not create incentives to increase incidental catch of prohibited species. Processors who participate in the PSD program do so on a voluntary basis at a net cost because the salmon and halibut are donated. While an unregulated fishery does tend to overfish its resource, the salmon, halibut and groundfish resources involved are closely monitored and regulated to prevent overfishing. When PSC or groundfish limits are reached, management measures are imposed which may include closing the fishery. After nearly 30 years of management under the Magnuson–Stevens Act, none of these resources are showing signs of being overfished. Therefore, NMFS does not expect overfishing to occur from this action, and it is consistent with the intent of the Magnuson–Stevens Act.

Classification

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. NMFS received one comment, addressed above, regarding this certification. This comment did not cause NMFS to change its determination regarding the certification.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: August 23, 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 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.*; 16 U.S.C. 1540(f); Pub. L. 105–277, Title II of Division C; Pub. L. 106–31, Sec. 3027; and Pub L. 106–554, Sec. 209.

■ 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.

* * * * *

[FR Doc. 04–19622 Filed 8–26–04; 8:45 am]

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