

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

[Docket No. 0205222128–2267–02; I.D. 050602B]

RIN 0648–AP79

**Fisheries of the Exclusive Economic Zone Off Alaska; Prohibition of Non-pelagic Trawl Gear in Cook Inlet in the Gulf of Alaska**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule to implement Amendment 60 to the Fishery Management Plan for Groundfish of the Gulf of Alaska Area (FMP). This amendment prohibits the use of non-pelagic trawl gear in Cook Inlet. This action is necessary to address bycatch avoidance objectives in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and is intended to further the goals and objectives of the FMP.

**DATES:** Effective December 27, 2002.

**ADDRESSES:** Copies of Amendment 60, the Environmental Assessment, Regulatory Impact Review and Initial Regulatory Flexibility Analysis, and Final Regulatory Flexibility Analysis (FRFA) prepared for this final rule may be obtained from the Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel-Durall.

**FOR FURTHER INFORMATION CONTACT:** Glenn Merrill, (907) 586–7228 or email at [glenn.merrill@noaa.gov](mailto:glenn.merrill@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The domestic groundfish fisheries of the Gulf of Alaska (GOA) are managed by NMFS under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson-Stevens Act. Regulations implementing the FMP and governing the groundfish fisheries of the GOA appear at 50 CFR, parts 600 and 679.

**Background and Need for Action**

This final rule complies with the Magnuson-Stevens Act, which emphasizes the importance of reducing bycatch to maintain sustainable fisheries. National standard 9 of the Magnuson-Stevens Act mandates that conservation and management measures shall minimize bycatch, to the extent

practicable, and shall minimize mortality of bycatch where bycatch cannot be avoided (section 301(a)(9)).

More specific authority for this action is provided by section 303(b)(2) of the Magnuson-Stevens Act. It states: “Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, may...designate zones where, and periods when, fishing...shall be permitted only... with specified types and quantities of fishing gear.”

This final rule implements Amendment 60 to the FMP which prohibits the use of non-pelagic trawl gear in the exclusive economic zone (EEZ) of Cook Inlet in an area north of a line from Cape Douglas (58°51.10' N. lat.) to Point Adam (59°15.27' N. lat.). Amendment 60 was adopted by the Council in September 2000 with the specific goal of reducing potential bycatch of crab in the EEZ of Cook Inlet in the GOA groundfish fishery.

A notice of availability of Amendment 60 was published May 14, 2002 (67 FR 34424), which invited public comment on the amendment until July 15, 2002. No comments were received on this document. NMFS approved Amendment 60 on August 13, 2002. Meanwhile, NMFS published a proposed rule that would implement Amendment 60 if it were approved. The proposed rule was published June 13, 2002 (67 FR 40680), and invited public comments until July 29, 2002. No public comments were received.

A detailed discussion of the status of crab and groundfish resources in Cook Inlet and the effect of this final rule may be found in the preamble to the proposed rule, published June 13, 2002 (67 FR 40680).

*Status of Crab Resources in Cook Inlet*

Historically, Cook Inlet supported significant Tanner crab (*Chionoecetes bairdi*) and red king crab (*Paralithodes camtschaticus*) fisheries. These crab fisheries occurred in State of Alaska (State) and Federal waters, and a number of the most productive fishing grounds were within the Federal waters of Lower Cook Inlet. In 1982, the State closed the red king crab fishery and it has remained closed. The commercial Tanner crab fishery of Lower Cook Inlet peaked in the early 1970s then declined gradually until the fishery closed in 1995. These harvest patterns are similar to other Tanner and red king crab fisheries in the GOA.

In response to concerns by fishermen and Alaska Department of Fish and Game (ADF&G) biologists about the potential impacts of non-pelagic trawl gear on crab bycatch and habitat, the

Alaska Board of Fisheries prohibited the use of non-pelagic trawl gear in State waters encompassing primary crab habitat in 1990, and extended this prohibition to all of the State waters of Cook Inlet in 1996. Recent surveys in Cook Inlet in 1999 and 2001 indicate that Tanner crab stocks may be improving. However, these indications are highly uncertain at this time.

The State manages crab fisheries in the GOA EEZ in the absence of Federal regulations. However, the Secretary retains management authority for groundfish fisheries in this area. In June 1998, the ADF&G submitted a proposal to the Council to prohibit the use of non-pelagic gear in the EEZ of Cook Inlet. The Council adopted this proposal as Amendment 60 to the FMP in September 2000.

**Effects of Non-Pelagic Trawl Gear on Crab Resources**

Non-pelagic trawl gear may catch crab incidental to its target groundfish species. The amount of crab caught and discarded by non-pelagic trawl gear varies depending on the abundance of crab stocks, the type of trawl gear used, the type of substrate on which the gear is fishing, and the target species of the trawl gear. Non-pelagic trawl gear can cause direct mortality of crab through bycatch. Although numerous studies have been conducted on the impact of non-pelagic trawl gear on crab, the level of bycatch mortality varies. NMFS has restricted the use of non-pelagic trawl gear in several areas of the GOA that have historically supported crab fisheries where crab bycatch is relatively high compared to other areas.

Additionally, non-pelagic trawl gear may alter the benthic substrate so that it is less favorable to crab survival. Generally, studies on the potential impact of trawl gear on benthic habitats indicate that non-pelagic trawl gear can damage sedentary megafauna (e.g., sponges, corals), reduce the overall diversity of sedentary organisms, smooth the surface of the ocean floor, and resuspend sediment near the ocean floor. No study has specifically assessed the impacts of non-pelagic trawl gear on crab habitat and crab populations in Alaska. The potential impact of mortality due to gear interactions or habitat modification on Tanner and red king crab populations in Cook Inlet is unknown. Amendment 60 will eliminate the potential adverse effects of non-pelagic trawl gear on the benthic habitat of Cook Inlet.

*Groundfish Fisheries in Cook Inlet*

Historically, non-pelagic trawl gear has been little used in Cook Inlet.

According to ADF&G data, from 1987–2000, only two vessels have used non-pelagic trawl gear in Cook Inlet—one vessel in 1990, and another vessel in 1995. Both of these vessels harvested a small amount of groundfish. No non-pelagic trawling has occurred in Cook Inlet since 1995.

#### Effect of This Action

This final rule prevents potential adverse effects of non-pelagic trawl crab bycatch on the population of Tanner and red king crab stocks in Cook Inlet. Although no crab fisheries currently exist in Cook Inlet and no recent non-pelagic trawling has occurred, this action will prevent the development of a non-pelagic trawl fishery in an area that historically has supported a productive crab fishery.

Although non-pelagic trawling may have an adverse effect on some sedentary megafauna and certain types of substrate, the potential impacts of non-pelagic trawl gear on crab habitat and populations in Alaska are unknown.

This action is a proactive measure to limit potential crab bycatch from non-pelagic fisheries that may develop in the future. This final rule reduces the potential bycatch of crab resources, which currently are at relatively low abundance, mirrors existing regulations in State waters of Cook Inlet, and minimizes potential adverse effects of non-pelagic trawl gear on the benthic habitat for crab and other groundfish stocks. This final rule implements these benefits without adversely affecting any existing non-pelagic trawl fisheries.

#### Changes from the Proposed Rule

This final rule makes no changes from the proposed rule. NMFS invited public comment on the proposed rule implementing Amendment 60 from June

13, 2002, through July 29, 2002 (67 FR 40680). No public comments were received.

#### Classification

The Administrator, Alaska Region, NMFS, determined that the FMP amendment that this rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws.

NMFS prepared an FRFA that describes the impact that this final rule would have on small entities. The overall impact of this amendment on small entities is minimal. Based on historic trends in participation, few if any small entities, would be adversely affected by this action. One vessel used non-pelagic trawl gear in the EEZ of Cook Inlet in 1990, and another vessel in 1995, both of which presumably qualify as small entities. This action would not have any adverse impact on existing fishing vessels, given the negligible use of non-pelagic gear in Cook Inlet currently, the availability of other more productive non-pelagic trawl fisheries in other areas of the GOA, pot and jig gear fisheries for Pacific cod in the State waters of Cook Inlet, and a pot and longline gear fishery for Pacific cod in the EEZ of Cook Inlet. Numerous fishing opportunities exist for vessels using other legal types of fishing gear within Cook Inlet, or outside of Cook Inlet if non-pelagic trawl gear is used. Nearby fishery dependent communities and recreational fishermen would not be affected by this non-pelagic trawl ban.

Likewise, this action is not expected to have any economic benefit for small entities. This action may improve the prospects for rebuilding crab stocks. However, no Tanner or red king crab fishery exists currently in Cook Inlet. Therefore, potential economic benefits

of this possibility are not now foreseeable.

At present NMFS does not have the full data necessary to determine the extent to which this action may impact small entities.

No new reporting or recordkeeping requirements are imposed by this final rule. This final rule has been determined to be not significant for the purposes of Executive Order 12866.

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

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: November 21, 2002.

#### John Oliver,

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

For the reasons discussed 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., 3631 et seq., Title II of Division C, Pub. L. 105–277; Sec. 3027, Pub. L. 106–31, 113 Stat. 57; 16 U.S.C. 1540(f).

2. In § 679.22, paragraph (b)(7) is added to read as follows:

#### § 679.22 Closures.

(b) \* \* \*

(7) *Cook Inlet.* No person may use a non-pelagic trawl in waters of the EEZ of Cook Inlet north of a line from Cape Douglas (58°51.10' N. lat.) to Point Adam (59°15.27' N. lat.).

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