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Dated: June 12, 2007.

David M. Verhey,Acting 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. 070601115-7115-01]

RIN 0648-AU93

**Fisheries of the Exclusive Economic
Zone Off Alaska; Groundfish, Crab,
Salmon, and Scallop Fisheries of the
Bering Sea and Aleutian Islands
Management Area and Gulf of Alaska,
Essential Fish Habitat Rule Correction****AGENCY:** National Marine Fisheries
Service (NMFS), National Oceanic and
Atmospheric Administration (NOAA),
Commerce.**ACTION:** Proposed rule; request for
comments.**SUMMARY:** NMFS issues this proposed
rule to correct certain provisions of a
June 28, 2006, essential fish habitat
(EFH) rule for Alaska fisheries. This
proposed rule would clarify that
portions of EFH management areas in
the vicinity of the Aleutian Islands are
located in State of Alaska waters. This
proposed action also would apply EFH
vessel monitoring system (VMS) and
closure requirements to federally
permitted vessels operating in State of
Alaska waters adjacent to the Gulf of
Alaska (GOA) and Aleutian Islands
subarea. This action is necessary to
ensure federally permitted vessels
operating in State of Alaska waters
comply with EFH protection measures.**DATES:** Written comments must be
received by July 19, 2007.**ADDRESSES:** Send comments to Sue
Salveson, Assistant Regional
Administrator, Sustainable Fisheries
Division, Alaska Region, NMFS, Attn:
Records Officer. Comments may be
submitted by:

- Mail: P.O. Box 21668, Juneau, AK 99802;
- Hand delivery: 709 West 9th Street, Room 420A, Juneau, AK;
- Fax: 907-586-7557;
- E-mail: VMS-PR-0648-

AU93@noaa.gov. Include in the subject
line the following document identifier:
"VMS PR." E-mail comments, with orwithout attachments, are limited to 5
megabytes; or

- Webform at the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions at that site for submitting comments.

Copies of the maps of EFH and habitat
areas of particular concern (HAPC)
management areas, the Environmental
Impact Statement (EIS) for EFH
Identification and Conservation, the
Environmental Assessment/Regulatory
Impact Review/Initial Regulatory
Flexibility Analysis (EA/RIR/IRFA) for
HAPCs and the RIR/IRFA for this action
may be obtained from the mailing or
street address stated above or from the
Alaska Region NMFS website at <http://www.fakr.noaa.gov>.Written comments regarding the
burden-hour estimates or other aspects
of the collection-of-information
requirements contained in this proposed
rule may be submitted to the NMFS
Alaska Region and by e-mail to
David_Rostker@omb.eop.gov, or fax to
(202) 395-7285.**FOR FURTHER INFORMATION CONTACT:**
Melanie Brown, 907-586-7228 or e-mail
at melanie.brown@noaa.gov.**SUPPLEMENTARY INFORMATION:** The
groundfish, crab, scallop, and salmon
fisheries in the exclusive economic zone
(EEZ) off Alaska are managed under
their respective fishery management
plans (FMPs). The North Pacific Fishery
Management Council (Council)
prepared the FMPs under the authority
of the Magnuson-Stevens Fishery
Conservation and Management Act
(Magnuson-Stevens Act), 16 U.S.C.
1801, *et seq.* Regulations implementing
the FMPs appear at 50 CFR parts 679
and 680. General regulations governing
U.S. fisheries also appear at 50 CFR part
600.**Background**Section 303(a)(7) of the Magnuson-
Stevens Act requires that each FMP
describe and identify EFH, minimize to
the extent practicable the adverse effects
of fishing on EFH, and identify other
measures to promote the conservation
and enhancement of EFH. The Secretary
of Commerce, acting through NMFS,
approved the most recent EFH
amendments to the FMPs on May 3,
2006. These were Amendments 78 and
65 to the FMP for Groundfish of the
Bering Sea and Aleutian Islands
Management Area (BSAI), Amendments
73 and 65 to the FMP for Groundfish of
the Gulf of Alaska (GOA), Amendments
16 and 12 to the FMP for Bering Sea/
Aleutian Islands King and Tanner Crabs,
Amendments 7 and 9 to the FMP for theScallop Fishery off Alaska, and
Amendments 7 and 8 to the FMP for
Salmon Fisheries in the Exclusive
Economic Zone off the Coast of Alaska.
These amendments revised the FMPs by
identifying and describing EFH and
designating HAPC, and included
measures to minimize to the extent
practicable potential adverse effects of
fishing on EFH.On June 28, 2006, NMFS issued a
final rule implementing the EFH
amendments (71 FR 36694). Additional
background information regarding the
EFH FMP and regulatory amendments is
in the March 22, 2006, proposed rule
(71 FR 14470) and in the EIS and EA/
RIR/IRFA for HAPCs (see **ADDRESSES**).**Protection Area Definitions**The June 28, 2006, EFH rule contains
definitions for the Aleutian Islands
Habitat Conservation Area (AIHCA) and
the Aleutian Islands Coral Habitat
Protection Areas (AICHPA) and are
described by coordinates listed in
Tables 23 and 24 to 50 CFR part 679.
Each table includes coordinates for
locations within State of Alaska (State)
waters, as intended by the Council and
described in the EFH FMP amendments.
The current regulatory definitions for
these protection areas conflict with the
FMP amendments and Tables 23 and 24
by describing the protection areas as
part of the Aleutian Islands subarea. The
Aleutian Islands subarea is limited to
waters of the EEZ, which does not
include State waters (§ 679.2).To ensure that the definitions are
consistent with the Council's intent, the
FMP amendments, and Tables 23 and
24, § 679.2 would be revised to define
the protection areas as located in
reporting areas of the Aleutian Islands,
including adjacent State of Alaska
waters. This revision would ensure that
the AIHCA and AICHPA apply to
federally permitted vessels operating in
the EEZ and in State waters.**VMS Requirements**The June 28, 2006, EFH rule requires
all federally permitted fishing vessels to
operate a VMS when operating in the
Aleutian Islands subarea or when
operating in the GOA with mobile
bottom contact gear onboard
(§ 679.28(f)(6)). For the EFH rule, the
Council intended that the VMS
requirements apply to all federally
permitted vessels operating in State or
Federal waters. Specifically, the EFH
rule should have required VMS
operation for all federally permitted
vessels operating in Federal waters of
the Aleutian Islands subarea or adjacent
State waters and operating with mobile
bottom contact gear onboard in the GOA

or adjacent State waters. This would ensure activities in or near the EFH protection areas could be easily monitored. As described above, the AIHCA and AICHPA include areas in State waters. The EFH protection areas in the GOA are not located in State waters but some are near State waters. Because preexisting VMS requirements implemented to monitor Steller sea lion protection areas apply to federally permitted vessels in State waters and the Council's intent was to build on existing VMS requirements, the EFH protection measures' VMS requirements also should apply in State waters.

Section 679.28(f)(6)(ii) and (iii) identify the applicable areas for VMS as the Aleutian Islands subarea and the GOA. Under § 679.2, this description does not include State waters. This proposed rule would revise these paragraphs by requiring VMS operation in reporting areas of the Aleutian Islands subarea and the GOA, including adjacent State waters. This correction would ensure VMS operation for federally permitted vessels operating in State or Federal waters of the Aleutian Islands subarea for all gear types and in the GOA or adjacent State waters when mobile bottom contact gear is onboard. This correction would facilitate monitoring of vessel activities near EFH protection areas.

Classification

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMPs, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for the purposes of Executive Order (E. O.) 12866.

This proposed rule contains no federalism implications under E. O. 13132. Even though the requirements of this rule apply to federally permitted vessels in State waters, this rule does not supplant any State regulatory requirements.

NMFS prepared an IRFA for this action, as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the SUMMARY section of the preamble. A summary of the analysis follows. A copy

of this analysis is available from NMFS (see ADDRESSES).

The vessels that are directly regulated by the proposed action are those that are federally permitted and operate in State waters adjacent to the Aleutian Islands subarea or operate with mobile bottom contact fishing gear onboard in State waters adjacent to the GOA. Vessels were considered small, according to the Small Business Administration criteria, if they had estimated 2004 gross revenues less than or equal to \$4 million, and were not known to be affiliated with other firms whose combined receipts exceeded \$4 million.

In the Aleutian Islands reporting areas, an estimated 88 federally permitted vessels are believed to have been operated by small entities during 2004. Forty-three of these appear to have fished within State waters of the Aleutian Islands during at least one month of the year. Thus, an estimated 43 vessels would be directly regulated by this action in the State waters adjacent to the Aleutian Islands subarea. These 43 vessels grossed, on average, about \$964,000 from all fisheries, and an average of about \$114,000 from their fishing within State waters, within the Aleutian Islands reporting areas.

In the GOA, an estimated 60 federally permitted vessels using mobile bottom contact gear appear to have been operated by small entities during 2004. Twenty-seven of these appear to have fished with mobile bottom contact gear within State waters adjacent to the GOA during at least one month of the year. Thus, an estimated 27 mobile bottom contact vessels would be directly regulated by this action. These 27 vessels grossed, on average, about \$660,000 from all fisheries, and an average of about \$36,000 from their fishing with mobile bottom contact gear within State waters adjacent to the GOA.

Based on these cost estimates, the calculated upper bounds for annual transmission and maintenance costs are \$10,617 per year, or \$247 per small entity. Thus, average annual costs would be 0.03 percent of total annual revenues from all sources, and 0.2 percent of revenues from fishing within State waters adjacent to the Aleutian Islands subarea. In addition, an entity may need to acquire a VMS unit to comply with this regulation. The cost of this is estimated to be \$2,174, although a portion of this cost is reimbursable by the Pacific States Marine Fisheries Commission (PSMFC). The analysis estimated that about \$1,600 of the initial purchase price would be reimbursable.

These cost estimates may be upper bounds for several reasons. For

example, some of these vessels may already be subject to VMS regulations because of crab requirements imposed since 2004. Moreover, as noted above, vessels buying VMS to comply with this regulation are eligible for a reimbursement of a portion of the initial purchase price from the PSMFC. Some vessels may choose to avoid the VMS requirement by surrendering their federal permit during periods when they expect to operate only in State waters.

Based on these statistics, estimates of the upper bound annual transmission and maintenance costs are \$3,952 per year, or \$146 per small entity. Thus, average annual costs would be 0.02 percent of total annual gross revenues from all sources, and 0.4 percent of gross revenues from fishing within State waters adjacent to the GOA. In addition, two small entities may be required to acquire VMS units to comply with this regulation. The total cost of this is estimated to be \$4,348, or \$2,174 per vessel, although the current reimbursement program would offset some of this cost. As discussed in the RIR, there are several reasons for believing that these costs are upper bound estimates.

For purposes of the VMS requirement, a federally permitted vessel is one required to carry either a Federal fisheries permit or a Federal crab vessel permit. This action would add new reporting requirements for federally permitted vessels fishing in State waters adjacent to the Aleutian Islands subarea, or for federally permitted vessels with mobile bottom contact gear onboard while operating in State waters adjacent to the GOA. These fishing operations would be required to carry VMS units, and to report their locations every half hour while they were in fisheries subject to the requirement. Moreover, they would be required to notify NOAA Office of Law Enforcement (OLE) that their VMS unit was active before it was used for fishing activity. They would be required to notify NOAA OLE in the event of a breakdown of the unit. Estimated costs are described above.

There are no Federal rules that duplicate, overlap, or conflict with the proposed action.

An IRFA must describe any significant alternatives to the proposed rule that accomplish the stated objectives of the proposed action, consistent with applicable statutes, and that would minimize any significant economic impact of the proposed rule on small entities. This action has only the status quo and the preferred alternative. The status quo does not meet the objectives of the action because the current regulations do not apply

EFH closures and VMS requirements to certain federally permitted vessels operating in state waters. As noted in Section 2.6 of the IRFA for this action, the objectives of this action are to (1) correct erroneous language contained in current regulations to better reflect the original intent of the Council and to ensure consistency with the FMP amendments and Tables 23 and 24 to 50 CFR part 679, and (2) facilitate enforcement of EFH closure areas within State waters through the use of VMS equipment by federally permitted vessels operating in State waters adjacent to the Aleutian Islands subarea, and by federally permitted vessels operating with mobile bottom contact gear onboard in State waters adjacent to the GOA. In this way, the action provides for the protection of EFH areas in State waters adjacent to the Aleutian Islands subarea and GOA, as was the Council's purpose in the original action.

The purpose of this action is to correct or clarify regulations to make them reflect the original "preferred alternative" chosen by the Council and the Secretary of Commerce under the previous EFH action. There are no other identifiable alternatives that would accomplish this objective; and no other alternatives were identified, considered, and rejected.

This proposed rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648-0445. Public reporting burden per response are estimated to average: 6 seconds for each VMS transmission, 12 minutes for VMS check-in form, 6 hours for VMS installation, and 4 hours for VMS annual

maintenance. The response times include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and by e-mail to *David_Rostker@omb.eop.gov*, or fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection-of-information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: June 11, 2007.

Samuel D. Rauch III,
Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

For reasons set out in the preamble, NMFS proposes to amend 50 CFR part 679 as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; and Pub. L. 108 199, 118 Stat. 110.

2. In § 679.2, revise the definitions for "Aleutian Islands Coral Habitat

Protection Areas" and "Aleutian Islands Habitat Conservation Area," to read as follows:

§ 679.2 Definitions.

* * * * *

Aleutian Islands Coral Habitat Protection Areas means management areas established for the protection of certain coral garden areas in reporting areas of the Aleutian Islands subarea and adjacent State waters. See Table 23 to this part.

Aleutian Islands Habitat Conservation Area means a management area established for the protection of fish habitat in reporting areas of the Aleutian Islands subarea and adjacent State waters. See Table 24 to this part.

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3. In § 679.28, paragraphs (f)(6)(ii) and (iii) are revised to read as follows:

§ 679.28 Equipment and operational requirements.

* * * * *

(f) * * *

(6) * * *

(ii) You operate a vessel required to be federally permitted in reporting areas located in the Aleutian Islands subarea or operate a federally permitted vessel in adjacent State waters;

(iii) You operate a vessel required to be federally permitted with mobile bottom contact gear onboard in reporting areas located in the GOA or operate a federally permitted vessel with mobile bottom contact gear onboard in adjacent State waters; or

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