

(4) Detonations must be staggered by a minimum of 0.9 seconds for each group of charges.

§ 216.144 Prohibitions.

Notwithstanding takings authorized by § 216.141 or by a Letter of Authorization issued under § 216.106, the following activities are prohibited:

(a) The taking of a marine mammal that is other than unintentional, except that the intentional passive herding of dolphins from the vicinity of the structure may be authorized under section 109(h) of the Act as described in a Letter of Authorization;

(b) The violation of, or failure to comply with, the terms, conditions, and requirements of this part or a Letter of Authorization issued or renewed under § 216.106 or § 216.146;

(c) The incidental taking of any marine mammal of a species either not specified in this subpart or whenever the taking authorization for authorized species has been reached;

(d) The use of single explosive charges having an impulse and pressure greater than that generated by a 50-lb (22.7 kg) explosive charge detonated outside the structure piling; and

(e) The taking of a marine mammal in water depths greater than 656 ft (200 m).

§ 216.145 Requirements for monitoring and reporting.

(a) Observer(s) approved by the National Marine Fisheries Service in advance of the detonation must be used to monitor the area around the site prior to, during, and after detonation of charges.

(b)(1) Both before and after each detonation episode, a 30-minute or more aerial survey by NMFS-approved observers must be conducted within 1 hour of the detonation episode. To ensure that no marine mammals are within the designated 3,000 ft (941 m) safety zone nor are likely to enter the designated safety zone prior to or at the time of detonation, the pre-detonation survey must encompass all waters within one nautical mile of the structure.

(2) A second post-detonation aerial or vessel survey of the detonation site must be conducted no earlier than 48 hours and no later than 1 week after the oil and gas structure is removed, unless a systematic underwater marine mammal survey, either by divers or remotely operated vehicles that are dedicated to marine mammals and sea turtles, of the site has been successfully conducted with 24 hours of the detonation event. The aerial or vessel survey must concentrate down-current from the structure.

(3) The NMFS-approved observer may waive post-detonation monitoring described in paragraph (b)(2) of this section provided no marine mammals were sighted during either the aerial surveys before detonation or during the 48 hour pre-detonation observer monitoring period.

(c) During all diving operations (working dives as required in the course of the removals), divers must be instructed to scan the subsurface areas surrounding the structure (detonation) sites for bottlenose or spotted dolphins and if marine mammals are sighted to inform either the NMFS-approved observer or the agent of the holder of the Letter of Authorization immediately upon surfacing.

(d) In water depths of 150 ft (46 m) or greater, or in cases where divers are not deployed in the course of normal removal operations, a remotely operated vehicle (ROV) must be deployed prior to detonation to scan areas below structures. If marine mammals are sighted, the ROV operator must inform either the NMFS-approved observer or the agent of the holder of the Letter of Authorization immediately.

(e) In water depths of 328 ft (100 m) or greater, passive acoustic detection must be employed prior to detonation. If marine mammals are detected by the acoustic device, the operator must inform either the U.S. government observer or the agent of the holder of the Letter of Authorization immediately.

(f)(1) A report summarizing the results of structure removal activities, mitigation measures, monitoring efforts, and other information as required by a Letter of Authorization, must be submitted to the Regional Administrator, NMFS, Southeast Region, 9721 Executive Center Drive N, St. Petersburg, FL 33702 within 30 calendar days of completion of the removal of the structure.

(2) NMFS will accept the NMFS-approved observer report as the activity report if all requirements for reporting contained in the Letter of Authorization are provided to that observer before the observer's report is complete.

§ 216.146 Letters of Authorization.

(a) To incidentally take bottlenose and spotted dolphins pursuant to this subpart, each company operating or that operated an oil or gas structure in the geographical area described in § 216.141, and that is responsible for abandonment or removal of the structure, must apply for and obtain a Letter of Authorization in accordance with § 216.106.

(b) A copy of the Letter of Authorization must be in the possession

of the persons conducting activities that may involve incidental takings of bottlenose and spotted dolphins.

§ 216.147 Modifications to Letters of Authorization.

(a) In addition to complying with the provisions of § 216.106, except as provided in paragraph (b) of this section, no substantive modification, including withdrawal or suspension, to the Letter of Authorization issued pursuant to § 216.106 and subject to the provisions of this subpart shall be made until after notice and an opportunity for public comment.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.141(b), the Letter of Authorization issued pursuant to § 216.106 may be substantively modified without prior notice and an opportunity for public comment. A notice will be published in the **Federal Register** subsequent to the action.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 020430101-2101-01; I.D. 072402D]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Action 4 - Adjustment of the Commercial Fishery from the U.S.-Canada Border to Cape Falcon, OR

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

ACTION: Adjustment; request for comments.

SUMMARY: NMFS announces that the commercial fishery for all salmon except coho in the area from the U.S.-Canada Border to Cape Falcon, OR, was modified to reopen on July 12 and close at midnight, July 22, 2002, with a vessel limit of 400 chinook salmon for the 11-day open period. The Northwest Regional Administrator, NMFS (Regional Administrator), determined that available catch and effort data indicated that these management measures should

be implemented to allow fishers to fully access the chinook and coho quotas without exceeding the quotas. This action was necessary to conform to the 2002 management goals.

DATES: Adjustment in the area from the U.S.-Canada Border to Cape Falcon, OR, effective 0001 hours local time (l.t.), July 12, 2002, through 2359 hours l.t. July 22, 2002, after which the fishery will remain closed until opened through an additional inseason action, which will be published in the **Federal Register** for the west coast salmon fisheries, or until the effective date of the year 2003 management measures. Comments will be accepted through August 16, 2002.

ADDRESSES: Comments on these actions must be mailed to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115-0070; or faxed to 206-526-6376; or Rod McInnis, Acting Regional Administrator, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802-4132; or faxed to 562-980-4018. Comments will not be accepted if submitted via e-mail or the Internet. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: Christopher Wright, 206-526-6140.

SUPPLEMENTARY INFORMATION: The Regional Administrator modified the season for the commercial fishery in the area from the U.S.-Canada Border to Cape Falcon, OR, to reopen on July 12 and close at midnight, July 22, 2002, with a vessel limit of 400 chinook salmon for the 11-day open period. Information provided on July 11 regarding the available catch and effort data indicated that these management measures should be implemented to allow fishers to fully access the chinook and coho quotas. Modification of fishing seasons are authorized by regulations at 50 CFR 660.409(b)(1)(i).

In the 2002 annual management measures for ocean salmon fisheries (67 FR 30616, May 7, 2002), NMFS announced that the commercial fishery for all salmon except coho in the area from the U.S.-Canada Border to Cape Falcon, OR would open July 1 and run through the earlier of September 8 or a 32,500-chinook quota, except for a selective fishery for marked coho scheduled at the end of the season with a 5000-marked coho quota.

The fishery in the area from the U.S.-Canada Border to Cape Falcon, OR was modified by an inseason action to close at midnight, July 8, 2002, with the provision that no vessel may possess, land, or deliver more than 250 chinook for the entire 8-day open period (67 FR 47334, July 18, 2002). The modification to the fishing season was adopted to avoid closing the fishery early due to reaching the chinook quota, thus precluding the opportunity to catch available marked hatchery coho salmon later in the season.

On July 11, 2002, the Regional Administrator consulted with representatives of the Pacific Fishery Management Council, Washington Department of Fish and Wildlife, and Oregon Department of Fish and Wildlife (ODFW) by conference call. Information related to catch to date, the chinook catch rate, and effort data indicated that it was likely that the chinook quota would be reached prematurely unless adequately controlled, potentially foreclosing opportunity of fishers to conduct the selective fishery for marked coho later in the season. As a result, the states of Washington and Oregon recommended, and the Regional Administrator concurred, that the commercial fishery in the area from the U.S.-Canada Border to Cape Falcon, OR, would reopen on July 12 and close at midnight, July 22, 2002, with the provision that no vessel may possess, land, or deliver more than 400 chinook for the entire 11-day open period. All other restrictions that apply to this fishery remain in effect as announced in the 2002 annual management measures. The State of Oregon added a landing restriction for this fishery in their regulations requiring that fishers fishing north of Cape Falcon, and intending to land salmon south of Cape Falcon, notify the ODFW before they leave the area at the following phone number (541) 867-0300, Ext. 252. In addition, the parties agreed to reevaluate the fishery on July 25, and assess the possibility of further openings for the rest of 2002.

The Regional Administrator determined that the best available information indicated that the catch and effort data, and projections, supported the above inseason action recommended by the states. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone in accordance with this Federal action. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice to fishers of the above described action was given prior to the

effective date by telephone hotline number 206-526-6667 and 800-662-9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz.

This action does not apply to other fisheries that may be operating in other areas.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B), or delaying the effectiveness of this rule for 30 days under 5 U.S.C. 553(d)(3), because such notification and delay would be impracticable and contrary to the public interest. As previously noted, actual notice of this action was provided to fishers through telephone hotline and radio notification. This action complies with the requirements of the annual management measures for ocean salmon fisheries (67 FR 30616, May 7, 2002) and the West Coast Salmon Plan. Prior notice and opportunity for public comment was impracticable because NMFS and the state agencies have insufficient time to provide for prior notice and the opportunity for public comment between the time the fishery catch and effort data are collected to determine the extent of the fisheries and the time the limits to which the fishery must be adjusted to reduce the tempo of the fishery must be in place. Moreover, such prior notice and the opportunity for public comment is contrary to the public interest because it does not allow commercial fishermen appropriately controlled access to the available fish at the time they are available.

Moreover, the AA finds good cause to waive the 30-day delay in effectiveness required under 5 U.S.C. 553(d)(3). A delay in effectiveness of this action would not allow commercial fishermen appropriately controlled access to the available fish at the time they are available.

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under Executive Order 12866.

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

Dated: July 26, 2002.

Valerie L. Chambers,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
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