The preamble to the proposed rule described and presented the reasons for each measure contained in the amendment. The Regional Director, Alaska Region, NMFS (Regional Director) reviewed each measure and the reasons for it. He determined that each measure is consistent with the Magnuson Act and other applicable law. The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), concurred on September 6, 1990.

The following is a summary from the proposed rule of what each measure requires or accomplishes:

Amendment 3 renames the FMP as the "Fishery Management Plan for the Salmon Fisheries in the EEZ off the Coast of Alaska." It reorganizes and shortens the FMP, incorporates recent scientific data on the salmon stocks and statistics on the salmon harvests by the troll fishery in recent years, and corrects existing FMP errors. Amendment 3 provides for the OYs to be set by the Pacific Salmon Commission under procedures established by the Pacific Salmon Treaty. Further, it defers regulation of the salmon fisheries in the EEZ to the State of Alaska to be regulated consistent with the FMP and applicable Federal law, including Federal law implementing applicable treaties. Alaska’s regulations will then apply to all fishing vessels registered under the laws of the State whether they are fishing in State waters or in the EEZ. Amendment 3 discusses fish habitat issues and vessel safety concerns and identifies ongoing and future Council actions to address these matters; it does not contain specific management measures implemented by regulations regarding these concerns. Finally, Amendment 3 provides for extending the jurisdiction of the FMP over salmon in the EEZ west of 175 degrees east longitude should the International Convention be terminated and not be replaced by an equivalent international agreement to which the United States is a party.
salmon fishing in the East Area, and allows sport fishing in both Areas.

Finally, Amendment 3 provides that the Secretary of Commerce may review the applicability of a State statute or regulation to the EEZ. Any member of the public may obtain that review by appealing any State statute or any regulation (i.e., any perennial, annual, or inseason regulation) issued by the State for the salmon fisheries in the EEZ off the Coast of Alaska. Such public appeals of State statutes and perennial or annual regulations would be directed first to the State and, if unsuccessful, then to the Secretary.

Public appeal to the State is not required in advance of an appeal to the Secretary for an inseason rule, but simultaneous pursuit of State and Secretarial review is expressly endorsed by Amendment 3. Secretarial review of all public appeals is limited by Amendment 3 to the issue of whether the challenged State statute or regulation is consistent with the FMP, the Magnuson Act, and other applicable Federal law, including Federal law implementing applicable treaties (the applicable criteria). The Secretary is constrained from responding to public comments that merely object to a State statute or regulation or simply indicate that an alternative State statute or regulation would provide for better management of the salmon fishery. The appellant must tie the objection to the applicable criteria for Secretarial review. This limitation on Secretarial review of State regulations will allow the Secretary to disregard frivolous comments and should encourage persons with serious concerns to participate fully in the State regulatory procedures before seeking Secretarial intervention.

Initial public appeals to the State are to follow procedures of the Alaska Administrative Procedure Act, which are outlined in Amendment 3. These State procedures provide for the Council, National Marine Fisheries Service, and NOAA’s Office of General Counsel to submit comments to the State concerning the extent to which the appealed State regulation falls within the scope of the FMP, the Magnuson Act, and other applicable Federal law.

If, in response to a public appeal or as a result of routine review of the State’s salmon regulations and statutes by NMFS, the Secretary makes a preliminary determination that a State statute or perennial or annual regulation is inconsistent with the applicable criteria, the Secretary will: (1) Publish a proposed rule for salmon fisheries in the EEZ in the Federal Register that is consistent with the applicable criteria, and request comments for 30 days, (2) provide notice of the rule to the Council and the Commissioner of the Alaska Department of Fish and Game, and (3) hold an informal public hearing if requested by the State. After reviewing all public and State comments, the Secretary will decide whether or not the State regulation or statute appealed or found questionable is consistent with the applicable criteria. Depending upon his decision, the Secretary will either publish a notice withdrawing his proposed Federal rule or promulgate a final Federal rule for salmon fisheries in the EEZ superseding the inconsistent State regulation or statute.

If the Secretary receives a public appeal of a State inseason regulation, which is alleged to be inconsistent with the applicable criteria, he will: (1) Immediately provide a copy of the appeal to the Council and the Alaska Department of Fish and Game Commissioner; (2) consider any comments from the Council and Commissioner; and (3) either (A) notify the appellant that he has found the State’s inseason regulation inconsistent with the applicable criteria or (B) if the State regulation is found inconsistent with the applicable criteria, immediately issue a Federal regulation for salmon fisheries in the EEZ superseding the State regulation unless there is sufficient time to follow the procedure for an annual or perennial regulation that has been determined preliminarily to be inconsistent with the applicable criteria.

Changes to the Regulations Implementing the FMP

Because Amendment 3 defers regulation of the sport and commercial salmon fisheries in the EEZ off the coast of Alaska to the State of Alaska, this final rule implementing Amendment 3 removes all the specific management measures presently contained in 50 CFR 674, subpart B (Management Measures—fishing times and areas, harvest limits, gear restrictions, and inseason adjustment procedures).

Subpart B of 50 CFR 674 will now simply refer to relevant State of Alaska salmon fishing regulations. Subpart A of 50 CFR 674 is amended to eliminate references to specific management measures no longer contained in subpart B.

Classification

The Regional Director determined that Amendment 3 is necessary for the conservation and management of the Alaskan salmon fisheries and that it is consistent with the Magnuson Act and other applicable law.

The Council prepared an Environmental Assessment (EA) for Amendment 3. The Assistant Administrator found, based on the EA, that there will be no significant impacts on the quality of the human environment as a result of this rule. A copy of the EA may be obtained from the Regional Director at the above address.

The Assistant Administrator has determined that this final rule is not a “major rule” requiring a regulatory impact analysis under Executive Order 12291. This determination was based on a review of the Regulatory Impact Review (RIR) prepared by the Council which concluded that Amendment 3 does not change the FMP in a manner affecting the actual functioning of the fishery. A summary of the RIR was published with the proposed rule at 55 FR 28661.

This rule does not contain a collection of information requirement subject to the Paperwork Reduction Act.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of Alaska. This determination was submitted for review by the responsible State agency under section 307 of the Coastal Zone Management Act. The responsible State agency did not comment within the statutory time period.

The Federalism Official for the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on small entities. As a result, a regulatory flexibility analysis was not prepared. A summary of the reasons for this certification was published with the proposed rule at 55 FR 28661.

This rule does not contain a collection of information requirement subject to the Paperwork Reduction Act.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of Alaska. This determination was submitted for review by the responsible State agency under section 307 of the Coastal Zone Management Act. The responsible State agency did not comment within the statutory time period.

The Federalism Official for the Department of Commerce determined that Amendment 3 and the proposed rule had sufficient federalism implications to warrant preparation of a Federalism Assessment (FA) under Executive Order 12612 (E.O. 12612). An FA was prepared and is available, upon request, at the above address. The FA contains the Federalism Official’s certification that the provisions and policies of Amendment 3 and the implementing rule are consistent with the federalism principles, criteria, and requirements set forth in sections 2 through 5 of E.O. 12861. Amendment 3 and the final rule do not appear to affect Alaska’s ability to discharge traditional State governmental functions, or other aspects of State sovereignty; additional costs or burdens to the State are not expected.
List of Subjects in 50 CFR Part 674

Fisheries, Fishing, International organizations, Reporting and Recordkeeping requirements.

Dated: November 8, 1990.

William W. Fox, Jr.,
Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 674 is amended as follows:

PART 674—HIGH SEAS SALMON FISHERY OFF ALASKA (AMENDED)

1. The authority citation for part 674 continues to read as follows:


2. Section 674.2 is amended by revising the definition of "West Area" under "management area" to read as follows:

§ 674.2 Definitions.

Management area

(a) West Area means the waters of the EEZ seaward of Alaska which are west of 143°53'36" W. longitude (Cape Suckling).

3. Section 674.7 is revised to read as follows:

§ 674.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Fish for, take, or retain any salmon in violation of the Act or this part.

(b) Engage in fishing for salmon in the management area except to the extent authorized by § 674.4(a) of this part.

4. Subpart B is revised to reads as follows:

Subpart B—Management Measures

§ 674.20 General.

The management measures specified in this subpart shall apply to all fishing for salmon in the management area by vessels registered under laws of the State of Alaska.

§ 674.21 Commercial fishing.

(a) For State of Alaska statutes and regulations governing commercial fishing, see Alaska Statutes, title 16—Fish and Game; title 5 of the Alaska Administrative Code, chapters 1-39.

(b) For State of Alaska Regulations specifically governing the salmon troll fishery, see 5 Alaska Administrative Code 30 (Yakutat Area), and 5 Alaska Administrative Code 33 (Southeastern Alaska Area).

§ 674.22 Personal use fishing.

(a) For State of Alaska statutes and regulations governing sport and personal use salmon fishing other than subsistence fishing, see Alaska Statutes, title 16—Fish and Game; 5 Alaska Administrative Codes 42.010 through 75.995.

(b) For State of Alaska statutes and regulations governing subsistence fishing, see Alaska Statutes, title 16—Fish and Game; 5 Alaska Administrative Codes 01, 02, 39, and 99.010.