Bruce Blanchard, Acting Director, Fish and Wildlife Service.
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DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
50 CFR Parts 672 and 675
[Docket No. 921108-2308]

Groundfish Fishery of the Gulf of Alaska, and Groundfish Fishery of the Bering Sea and Aleutian Islands Area
AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.
ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations that would establish two trawl test areas in the Gulf of Alaska (GOA) and one trawl test area in the Bering Sea and Aleutian Islands (BSAI) area where pelagic and bottom trawl fishermen could test their trawl fishing gear when the GOA or BSAI would otherwise be closed to trawling. Establishment of these test areas would allow vessel operators the opportunity to test their trawl gear before a season opens so that they could begin fishing efficiently at the beginning of a season. This would reduce lost fishing time from gear problems, and would promote the goals and objectives of the North Pacific Fishery Management Council (Council) with respect to groundfish management off Alaska. Authority to establish test areas is contained in Amendment 27 to the Fishery Management Plan (FMP) for Groundfish of the GOA and in Amendment 22 to the FMP for the Groundfish Fishery of the BSAI Area. These amendments were submitted to the Secretary of Commerce (Secretary) by the Council and are pending the Secretary's review and approval.

DATE: Comments are invited until January 8, 1993.

ADDRESS: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802. Individual copies of proposed Amendments 22 and 27 and the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) may be obtained from the Council, P.O. Box 103136, Anchorage, AK 99510. Comments on the environmental assessment are particularly requested.

FOR FURTHER INFORMATION CONTACT:
David C. Ham, Fisheries Management Biologist, NMFS, (907) 586-7229.

SUPPLEMENTARY INFORMATION:
Background
The domestic and foreign groundfish fisheries in the Exclusive Economic Zone of the GOA and BSAI are managed by the Secretary under the FMP for Groundfish of the GOA and the FMP for the Groundfish of the BSAI area. These FMPs were prepared by the Council under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and are implemented by regulations for the foreign fishery at 50 CFR part 611 and for the U.S. fishery at 50 CFR parts 672 and 675, respectively. General regulations that also pertain to the U.S. fishery appear at 50 CFR part 620.

Amendment 27 to the GOA FMP and Amendment 22 to the BSAI FMP were recommended to the Secretary by the Council at its January 13-18, 1992, meeting, and are under Secretarial review. A notice of availability of the amendments was published on September 25, 1992 (57 FR 44355). If approved by the Secretary, these amendments would provide NMFS with the authority to establish trawl test areas. This rule proposes to establish two areas in the GOA and one area in the BSAI area where pelagic and bottom trawl fishermen could test their trawl fishing gear when the GOA or BSAI is otherwise closed to trawling. Establishment of these test areas would allow vessel operators to test their gear before a season opens and begin fishing efficiently at the beginning of a season, reducing lost fishing time from gear problems.

Until recently, the GOA and BSAI have been open to trawling for most of the year, and fishermen were able to test trawl gear in preparation for a season opening. However, in 1992, new regulations (57 FR 382, January 6, 1992) delayed the opening of the trawl season in the GOA and BSAI from January 1 until January 20. A similar delay of the GOA and BSAI trawl fisheries until January 20 is in effect for 1993 and beyond (57 FR 43926, September 23, 1992) to reduce bycatch rates of chinook salmon and Pacific halibut. Therefore, from January 1 until January 20 of each year, trawl gear may not be deployed in the GOA and BSAI, and fishermen will be unable to test their trawl gear before the trawl season opening. Fishing with trawl gear is also prohibited at other times of the year in the GOA. If a quarterly allocation of halibut bycatch for trawl gear is taken, non-pelagic trawling is prohibited for the remainder of that quarter. This would prohibit fishermen from testing their bottom trawl gear before the next bottom trawling season begins.

There are several reasons for fishermen to test trawl gear before season openings. Fisheries are closing earlier because increasingly larger fleets are harvesting the total allowable catch (TAC) more quickly. The establishment of trawl test areas would enable fishermen to test their gear and begin fishing efficiently at the beginning of a season, reducing lost fishing time that might result from gear problems. In a similar trawl test program, the State of Washington allows vessels to use State waters in Puget Sound for trawl gear testing.

If approved, Amendments 27 and 22 would provide the Secretary with the authority to establish gear test areas, with no specific reference to a particular gear type. With this authority, the Secretary could implement any future gear test areas for any gear type by regulatory amendment, without amending the FMP. The amendments also include the following five criteria with which any gear test area must comply.

1. Depth and bottom type must be suitable for testing the particular gear type.
2. The areas must be outside State waters.
3. The areas must be in locations not normally closed to fishing with that gear type.
4. The areas must be in locations that are not usually fished heavily by that gear type.
5. The areas must not be within a designated Steller sea lion protection area at any time of the year.

This proposed rule would establish three trawl test areas (see Figure 1) bounded by straight lines connecting the following coordinates in the order listed:

**GULF OF ALASKA--KODIAK**

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**GULF OF ALASKA--SAND POINT**

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Fishermen would be able to test trawl gear in these areas at times when trawling would otherwise be prohibited in those management areas under the following conditions:

1. The cod end shall be left unzipped so that the trawl gear will not retain fish;
2. Groundfish may not be on board; and
3. The time vessels spend trawl gear testing in these three areas will not contribute towards observer coverage requirements, and the placement of observers on board these vessels will be at the discretion of the Regional Director.

Criteria for Gear Test Areas

The following explains how the three proposed trawl test areas comply with the criteria:

1. Depth and bottom type must be suitable for testing pelagic and bottom trawl nets.

The Kodiak area has depths ranging from approximately 30-80 fathoms, the Sand Point area from 50-65 fathoms, and the Bering Sea area from 70-160 fathoms. These depths are suitable for bottom and pelagic trawling, and the bottom type is suitable for bottom trawling. Therefore, these test areas should be acceptable testing grounds for bottom and pelagic trawl gear. Each of these trawl test areas was chosen with the advice and assistance of trawl industry representatives.

2. The areas must be outside Alaska State waters.

All of the trawl test areas are outside State waters.

3. The areas must be in locations that are not usually heavily fished by trawling.

None of the three test areas is known to be an area of high trawl catch for groundfish.

4. The areas must be in locations not normally closed to trawling.

None of the trawl test areas is in an area that is normally closed to trawling at any time of the year. However, the Bering Sea test area is entirely within the summer Herring Savings Area 2 (HSA 2). Herring Savings Area 2 regulations require that the attainment of a trawl bycatch allowance for herring would close the HSA 2 for the period from July 1 to August 15. NMFS believes that the Bering Sea test area would be required only from January 1 to January 20 before the trawl season opens. Because trawl bycatch amounts of herring are insignificant in the HSA 2 during January, conflicts should not result from having a trawl test area in HSA 2.

5. The trawl test area must not be within a designated Steller sea lion protection area at any time of the year.

None of the three test areas is within a designated Steller sea lion protection area at any time of the year.

At the January 1992 Council meeting, the Council’s Scientific and Statistical Committee (SSC) and Advisory Panel (AP) recommended that several issues of concern be addressed before the proposed FMP amendments and this proposed rule are published in the Federal Register. The following are responses to the SSC’s and AP’s concerns about the implementation of these trawl test areas:

1. Species to be encountered in trawl test areas.

From the GOA and BSAI Stock Assessment and Fishery Evaluation Reports for 1992, the species that are likely to be encountered in these test areas are:

- Kodiak and Sand Point Areas—walleye pollock, Pacific cod, flatfish, sablefish, rockfish, halibut, salmon, crab, and other species.
- Bering Sea Area—walleye pollock, Pacific cod, halibut, greenland turbot, arrowtooth flounder, sablefish, Pacific ocean perch, atka mackerel, and small amounts of rock sole, other flatfish, squid, and other species.

2. Accessibility of these areas to fishermen.

Vessels fishing in the Gulf of Alaska could use the Kodiak and Sand Point test areas. Vessels fishing in the Bering Sea are primarily based in Dutch Harbor and Akutan, making the Bering Sea test area most convenient for testing. These test areas have been positioned to provide the best access to a test area by the majority of trawl vessels, and were chosen with input and consultation with the trawl fishing industry.

3. The trawl test area should not be larger than is necessary to test the gear.

Kodiak Area—The approximate size for this area is 14 nautical miles (nm) by 18 nm, or 252 square nm. This is approximately the minimum size needed for a test area to allow vessels enough straight line distance and room to maneuver. For example, if a vessel is moving through a test area and begins gear testing at a normal trawling speed of 3-4 knots, the vessel could move in the same direction for about 4 hours. This should be enough time to solve most gear problems. Also, making the area nearly square provides room for vessel operators to use the test area without interfering with each other. This is important because vessels working on gear problems are less able to maneuver.

Sand Point Area—This area is approximately 15 nm by 15 nm, or 225 square nm, about the same size as the Kodiak Area.

Bering Sea Area—This area is approximately 20 nm by 30 nm, or 600 square nm. This area is larger than the other two areas, because vessels that operate in the BSAI are larger. These larger vessels tow larger nets and are less capable of maneuvering because of their size. These factors contribute to the need for a larger area in the BSAI.

4. Enforcement requirements for trawl test areas.

Check in/check out or notification of trawl test area use may be required in the future to aid enforcement.

5. Trawl testing and crab opening conflicts.

Crab fishing with pot gear and halibut fishing with hook and line gear are classified as stationary gear. Sometimes, movable gear such as trawl gear can conflict with stationary gear if both gear types are used on the same fishing grounds. If pot or hook and line gear is especially abundant, for example on a season opening for these gear types, it may be difficult for trawlers to avoid the stationary gear in the trawl test areas, resulting in conflict between stationary and movable gear types. In 1991, the King crab openings in the two GOA test areas were on September 25. Conflicts could have resulted in the GOA test areas if heavy use of the test areas occurred at the end of the third quarter due to a prohibition on trawling from exhausting the third quarter halibut PSC bycatch allocation. NMFS does not believe that trawl testing during these times of potential conflict will create a burden for the king crab fisheries; however, NMFS may implement time/area closures for trawl testing if public comments show that significant gear conflicts would occur.

For 1991, the Tanner crab opening for all three areas occurred on January 15. Trawl testing would be required from January 1 to January 20 when trawling is prohibited in the GOA and BSAI. Therefore, heavy use of the trawl test areas could potentially conflict with the Tanner crab opening on January 15. Conflicts are not expected to occur to a great extent in the Bering Sea or the Sand Point test areas because few crab resources exist there. Crab resources in the Kodiak area are abundant, and the potential exists for conflict. NMFS does not believe that trawl testing during
these times of potential conflict will create a burden for the Tanner crab fisheries; however, NMFS may implement time/area closures for trawl testing if public comments show that significant gear conflicts would occur.

(6) Trawl testing and halibut opening conflicts.

The Bering Sea test area falls within the International Pacific Halibut Commission (IPHC) fishing area 4A. For 1992, area 4A halibut fishing periods are from June 8 to June 9, from August 6 to announced closure, and from September 22 to announced closure. Trawl testing should not conflict with the halibut opening in the Bering Sea area, because the time of year that the Bering Sea trawl test area would normally be used would be from January 1 to January 20, when fishing with trawl gear in the BSAI is prohibited.

The Sand Point test area is in IPHC area 3B, where the 1992 halibut fishing periods will be from June 8 to June 9, from September 7 to September 8, and from October 5 to announced closure. The Gulf of Alaska is closed to trawling from January 1 to January 20, and possibly near the end of each quarter if the quarterly allocation of halibut bycatch is exhausted. Halibut openings from June 8 to June 9 and September 7 to September 8 are near the end of the second and third quarters, respectively, so it is possible that the halibut bycatch for the trawl fleet would be taken and trawling would be prohibited resulting in use of the trawl test areas, thereby conflicting with the area 3B halibut opening. NMFS does not believe that trawl testing during these times of potential conflict will create a burden for the Pacific halibut fisheries; however, NMFS may implement time/area closures for trawl testing if public comments show that significant gear conflicts would occur.

The Kodiak test area is in the same situation with regard to conflicts with halibut openings as the Sand Point area in the above paragraph. NMFS does not believe that trawl testing during these times of potential conflict will create a burden for the Pacific halibut fisheries; however, NMFS may implement time/area closures for trawl testing if public comments show that significant gear conflicts would occur.

Classification

The Council prepared an environmental assessment (EA) for the FMP amendments and this proposed rule that discusses the impact on the environment as a result of this rule. A copy of the EA may be requested from the Council (see ADDRESSES) and comments on it are requested.

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), initially determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the RIR prepared for this proposed rule. This proposed rule, if adopted, is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Council prepared an initial regulatory flexibility analysis as part of the regulatory impact review which concludes that this proposed rule, if adopted, would have significant effects on small entities. More than 2,000 vessels may fish for groundfish off Alaska in 1992 and future years. This proposed rule is expected to have positive economic effects by allowing vessel operators to test their gear and have it in operating condition for the beginning of the trawl season. This opportunity is expected to improve fishing efficiency and reduce costs resulting from lost time due to inoperative fishing gear during the season. A copy of this analysis is available from the Council (see ADDRESSES).

NMFS has determined that none of the management measures proposed under this rule would adversely affect endangered or threatened species. Therefore, formal consultation pursuant to section 7 of the Endangered Species Act is not required for the adoption of these FMP amendments or their implementing rules.

This proposed rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

The Council determined that this rule, if adopted, will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of the State of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Fishing vessels.


Samuel W. McKeen,
Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

BILLING CODE 3510-22-M
Note Fig. 1 will not appear in the Code of Federal Regulations

FIG 1 - LOCATION OF PROPOSED TRAWL TEST AREAS IN THE GULF OF ALASKA AND BERING SEA
For the reasons set out in the preamble, 50 CFR parts 672 and 675 are proposed to be amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for part 672 continues to read as follows:

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

2. In §672.24, paragraph (f) is added to read as follows:

§ 672.24 Gear limitations.

* * * * *

(f) Trawl Gear Test Areas. (1) General. For purposes of allowing pelagic and bottom trawl fishermen to test trawl fishing gear, NMFS may establish, after consulting with the Council, locations for the testing of trawl fishing gear in areas that would otherwise be closed to trawling.

(2) For the purposes of this section, “trawl gear testing” means deploying trawl gear in areas designated in this paragraph under the following conditions:

(i) The cod end shall be unzipped while trawl gear testing;

(ii) Groundfish shall not be possessed on board when trawl gear testing; and

(iii) Observers on board vessels during the time spent trawl gear testing shall not fulfill observer requirements at §672.27.

(3) The establishment of test areas must comply with the following five criteria:

(i) Depth and bottom type must be suitable for testing the particular gear type.

(ii) The areas must be outside State waters.

(iii) The areas must be in locations not normally closed to fishing with that gear type.

(iv) The areas must be in locations that are not usually fished heavily by that gear type.

(v) The areas must not be within a designated Steller sea lion protection area at any time of the year.

(4) Kodiak Test Area. Trawl gear testing is allowed in an area bounded by straight lines connecting the following coordinates in the order listed at times when fishing with trawl gear is prohibited in statistical area 63 as defined in §672.2:

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(5) Sand Point Test Area. Trawl gear testing is allowed in an area bounded by straight lines connecting the following coordinates in the order listed at times when fishing with trawl gear is prohibited in statistical area 61 as defined in §672.2:

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PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

3. The authority citation for part 675 continues to read as follows:

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

4. In §675.24, paragraph (g) is added to read as follows:

§ 675.24 Gear limitations.

* * * * *

(g) Trawl Gear Test Areas. (1) General. For purposes of allowing pelagic and bottom trawl fishermen to test trawl fishing gear, NMFS may establish, after consulting with the Council, locations for the testing of trawl fishing gear in areas that would otherwise be closed to trawling.

(2) For the purposes of this section, “trawl gear testing” means deploying trawl gear in areas designated in this paragraph under the following conditions:

(i) The cod end shall be unzipped while trawl gear testing;

(ii) Groundfish shall not be possessed on board when trawl gear testing; and

(iii) Observers on board vessels during the time spent trawl gear testing shall not fulfill observer requirements at §672.27 of this part.

(3) The establishment of test areas must comply with the following five criteria:

(i) Depth and bottom type must be suitable for testing the particular gear type.

(ii) The areas must be outside State waters.

(iii) The areas must be in locations not normally closed to fishing with that gear type.

(iv) The areas must be in locations that are not usually fished heavily by that gear type.

(v) The areas must not be within a designated Steller sea lion protection area at any time of the year.

(4) Bering Sea Test Area. Trawl gear testing is allowed in an area bounded by straight lines connecting the following coordinates in the order listed at times when fishing with trawl gear is prohibited in the Bering Sea and Aleutian Islands Management Area as defined in §675.2:

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