

Issued: July 26, 1983.

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 83-20725 Filed 8-1-83; 8:45 am]

BILLING CODE 6718-03-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MM Docket No. 82-825; RM-4226]

#### FM Broadcast Station in Hamlin and Anson Texas; Changes Made in Table of Assignments

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This action assigns Class C FM Channel 279 to Hamlin, Texas, in response to a petition filed by Grande Broadcasting Company. Additionally, Channel 252A is substituted for Channel 276A at Anson, Texas. This action allows Hamlin, Texas to have its first FM assignment.

**EFFECTIVE DATE:** September 19, 1983.

**ADDRESS:** Federal Communications Commission, Washington, D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:** Mark N. Lipp, Mass Media Bureau (202) 634-6530.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

#### Report and Order—Proceeding Terminated

In the matter of amendment of § 73.202(b), table of assignments, FM Broadcast Station (Hamlin and Anson, Texas); MM Docket No. 82-825, RM-4226.

Adopted: June 23, 1983.

Released: July 20, 1983.

By the Chief, Policy and Rules Division.

1. The Commission has under consideration the *Notice of Proposed Rule Making*, 48 FR 842, published January 7, 1983, proposing the assignment of Class C Channel 279 to Hamlin, Texas, as that community's first FM assignment. The *Notice* also proposed the substitution of Channel 252A for unused Channel 276A at Anson, Texas.<sup>1</sup> This substitution is necessary because the assignment of Channel 279 to Hamlin would be short-spaced by approximately 48 miles to Channel 276A in Anson. In addition, a site restriction of 6.8 miles southwest is required in order to avoid short-spacing

<sup>1</sup> An application for Channel 276A was recently filed by Lilly Amador (830314AT). The application can be amended to specify Channel 252A instead.

to Channel 279 at Anadarko, Texas. Petitioner submitted comments in support of the *Notice* and expressed its interest in applying for the channel, if assigned. No opposing comments were received.

2. The Commission has determined that the public interest would be served by assigning Class C Channel 279 to Hamlin, Texas, since it could provide a first FM service to Hamlin, and substituting Channel 252A for unused Channel 276A at Anson, Texas.

3. Accordingly, pursuant to the authority contained in sections 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b), and 0.283 of Commission's Rules, it is ordered, that effective September 19, 1983, the FM Table of Assignments, § 73.202(b) of the Rules, is amended, with respect to the communities listed below.

City	Channel No.
Anson, Texas	252A
Hamlin, Texas	279

4. It is further ordered, that this proceeding is terminated.

5. For further information concerning this proceeding, contact Mark N. Lipp, Mass Media Bureau (202) 634-6530.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 83-20711 Filed 8-1-83; 9:45 am]

BILLING CODE 6712-01-M

### 47 CFR Part 73

[BC Docket No. 82-716; RM-4102; RM-4140]

#### TV Broadcast Services in Anchorage and Seward, Alaska; Changes Made in Table of Assignments

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This action assigns VHF television Channel 5 to Anchorage, Alaska, as its fifth commercial television channel, in response to a request by

Pioneer Broadcasting Company, Inc. The assignment of a noncommercial educational channel as previously requested by the State of Alaska has been dismissed for lack of interest.

**EFFECTIVE DATE:** September 19, 1983.

**ADDRESS:** Federal Communications Commission, Washington, D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:** Philip S. Cross, Mass Media Bureau (202) 632-5414.

#### List of Subjects in 47 CFR Part 73

Television broadcasting.

#### Report and Order (Proceeding Terminated)

In the matter of Amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations (Anchorage and Seward, Alaska); BC Docket No. 82-716, RM-4102, RM-4140.

Adopted: June 29, 1983.

Released: July 21, 1983.

By the Chief, Policy and Rules Division.

1. The Commission has before it the *Notice of Proposed Rule Making* herein published in the *Federal Register* on November 1, 1982 (47 FR 49416). The *Notice* proposed two optional assignment plans. Option I proposed to assign VHF TV Channel 5 for commercial use and VHF TV Channel 9 for noncommercial use at Anchorage, Alaska. Option II proposed to reserve Channel 5 and permit the use of Channel 9 on a commercial basis. The proposal was in response to petitions by the State of Alaska ("State") for the assignment of a noncommercial educational channel in Anchorage and by Pioneer Broadcasting Company, Inc. ("Pioneer")<sup>1</sup> for the assignment of a commercial channel in Anchorage.

2. Comments were filed by State; Alaska Public Broadcasting Commission ("APBC"); the City of Seward ("Seward"); Alaska Public Television ("APT"); Alaska 13 Corporation ("KIMO")<sup>2</sup>; Channel 2 Broadcasting Company ("KTUU-TV")<sup>3</sup>; and Pioneer. Further comments or reply comments were filed by State; APBC; APT; Northern Television, Inc. ("KTVA")<sup>4</sup>; KIMO; KTUU-TV; and Pioneer.

<sup>1</sup> Licensee of Station KFQD (AM) and permittee of Station KWHI (FM) in Anchorage.

<sup>2</sup> Licensee of Station KIMO (TV) in Anchorage.

<sup>3</sup> Licensee of Station KTUU-TV in Anchorage.

<sup>4</sup> Licensee of Stations KTVA (TV), KBYR (AM) and KNIK-FM, Anchorage, KCBF (AM) Fairbanks, and permittee of a new AM station in Valdez, Alaska.



3. All parties which had previously expressed an interest in a noncommercial educational assignment in Anchorage, i.e. State, APBC and APT, have withdrawn that interest. Accordingly, further consideration is given only to the use of Channel 5 or Channel 9 on a commercial basis in Anchorage. Anchorage (population 173,017)<sup>5</sup>, located in south central Alaska, is currently served by five VHF television stations, as follows: KTTU-TV, (Channel 2); KTTY (CP issued), (Channel 4); KAKM (Channel 7); KTVA, (Channel 11); and KIMO (Channel 13). Anchorage is described as the center of commerce for an area extending approximately 800 miles to the west. It is reported to prosper as a retail sales market, increasing in excess of 20% per year between 1978 and 1980, to over one billion dollars.

#### Waiver Matter

4. The assignment of Channel 5 is supported by Pioneer and KTVA and opposed by KIMO and KTUU-TV. KIMO contends that Pioneer, as the licensee of an AM Station (KFDQ) and permittee of a new FM station in Anchorage, is not eligible to apply for an additional broadcast station in Anchorage, absent a waiver of § 73.636(a)(1) of our "one-to-a-market" rule barring a grant of a television license to any party owning an AM or an FM station in the same community. KIMO asserts that the proponent of a channel allocation in the amendment of the Television Table of Assignments, § 73.606(b), must be willing and ready to apply for authorization to operate on the channel<sup>6</sup> which Pioneer is not.

5. KTUU-TV also notes that Pioneer's operation of a television station in Anchorage would be in violation of § 73.636(a)(1) of our Rules; and that, since Pioneer looks toward filing for a waiver of the "one-to-a-market" rule, KTUU-TV sets out why it believes Pioneer is not eligible for the waiver. The reasons include the precedent that would be established in derogation of the Commission's ownership policy without an offsetting benefit to the public; and that no showing is made of a need to reach a previously unserved area. Citing *Commercial Radio Institute, Inc.* 47 R.R. 2d 1307 (Rev. Bd. 1980); *Central Broadcasting Corporation*

(Defiance Communication, Inc.), FCC 82-505, November 13, 1982. KTUU-TV states that favorable action on Pioneer's request for assignment of an additional channel to Anchorage would be a tacit recognition of Pioneer's qualifying as an applicant for the channel. KTUU-TV adds that such recognition would in turn acknowledge that any other Anchorage station owner—AM, FM or TV station owner—would be eligible to obtain a similar waiver of the multiple ownership rules.

6. KTVA states that it supports Pioneer's efforts to obtain a waiver of the "one-to-a-market" rule and believes that the assignment of VHF Channel 5 to Anchorage is in the public interest. KTVA, as licensee of Stations KTVA-TV, KBYR-AM and KNIK-FM, Anchorage, and KTVF-TV and KCBF-AM, Fairbanks, and permittee of a new AM station in Valdez, Alaska, advocates a marketplace regulatory framework founded on the concept of open-entry and free enterprise. KTVA submits that, as a general matter, the one-to-a-market restriction, based on the need for diversity, is outmoded in today's telecommunications environment with its proliferation of video services. KTVA asserts that the Commission has a long-standing recognition of the uniqueness of Alaskan broadcasting and has undertaken efforts to fashion rules and to authorize waivers to meet Alaska's special needs. KTVA states that specific precedent for waiver of the one-to-a-market rule in Alaska exists citing *KINY Associates*, 50 R.R. 2d 981 (1981).

7. Pioneer states that it has not applied for a waiver of the one-to-a-market rule because to do so at this time and in the context of this rule making proceeding would be premature and inappropriate. Pioneer states further that it has indicated its intention to apply for authorization to operate on Channel 5 if it is assigned to Anchorage and to seek a waiver of § 73.636(a)(1) at the time. Pioneer adds that the Commission has in the past recognized the special nature of Alaska broadcasting and granted waivers of the one-to-a-market rule in at least two cases in Alaska. See *KINY Associates, supra.* and *Evangelistic Missionary Fellowship*, 75 F.C.C. 2d 724 (1980) (North Pole, Fairbanks, Alaska).

8. We reject the argument that absent a waiver of § 73.636(a)(1) Pioneer is an unqualified proponent for assignment of Channel 5 to Anchorage. A petitioner for an amendment of the TV Table of

Assignments, § 73.606(b), is required to "restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly." (Par. 2, APPENDIX, *Notice of Proposed Rule Making* herein). Pioneer has so stated. We consider the stated intention as no different from the language of "willing and ready to apply for the authorization" cited by KIMO in *Montgomery, Selma, and Tuscaloosa, Alabama, and Columbus, Georgia*, 51 R.R. 2d 57, 62. We have no reason to question or reject Pioneer's stated intention. Accordingly, we have no reason to hold that Pioneer is an unqualified proponent of the Channel 5 assignment. Our finding that a petitioner has met the requirement of intention to apply for and build a station on a channel is not to be construed as a determination that an application which a petitioner later submits is to be granted. Such an application and any request for waiver must be considered on the merits in the application processing stage. They are outside the scope of a rule making proceeding. Thus, the matter of a waiver which Pioneer will seek is not germane to this proceeding. We give no consideration here to the merits of whether or not a future waiver request by Pioneer should be granted. Thus, Pioneer's need for a waiver is not a fatal defect to disqualify it from proposing the channel assignment.

#### Economic Injury

9. KIMO and KTUU-TV also urge that Channel 5 should not be assigned to Anchorage because the market is already well-served. They point out that Anchorage has three commercial television stations, a permittee for a fourth, and one public television station. They add that Anchorage also has a cable television system and an MDS station (Multipoint Distribution Service). KIMO states that the increased competition could be devastating. KTUU-TV asserts that the market is diverse and competitive and does not require the addition of a channel which would be potentially anticompetitive.

10. Pioneer responds that the claims of economic injury are unfounded. Pioneer states that pursuant to *Carroll Broadcasting Company v. FCC*, 258 F. 2d 440 (D.C. Cir. 1958), the burden of proof on the existing licensee alleging harm from new competition is a heavy one, which KIMO and KTUU-TV have not met. Pioneer asserts that, moreover, the

<sup>5</sup> Population figures are derived from the preliminary 1980 U.S. Census Reports.

<sup>6</sup> See *Montgomery, Alabama, et al.* 51 R.R. 2d 57, 62 (1982).



Commission has uniformly held that a *Carroll* issue is inappropriate in a rule making proceeding to amend the table of assignments. *Glendive, Montana*, 16 F.C.C. 2d 733, 739 (1967); *Colby, Kansas*, 8 R.R. 2d 1715, 1716 (1967). We agree.

11. Economic impact is an issue to which consideration is given not at the rule making stage but at the application stage. In addition to the cases cited by Pioneer, see *Sanger, Clovis, Visalia and Fresno, California*, 49 R.R. 2d 579 (1981); *Beaverton, Michigan*, 44 R.R. 2d 55 (1978); *Hay Springs, Nebraska*, 42 R.R. 2d 1673 (1978); and *Grand Junction, Colorado*, 26 R.R. 2d 513 (1973). The decision in *Grand Junction* held that any economic impact on the public interest can be better evaluated in passing upon an applicant's proposed use of the new assignment.

#### Cross Subsidization

12. KTUU-TV asserts that Pioneer would be in a position to cross-subsidize operation of the proposed television station through its AM and FM stations; and that the long-standing policy of the Commission has been to discourage such a potentiality. *Brown Broadcasting Co., Inc.*, 8 R.R. 2d 55 (Rev. Bd. 1966). KTUU-TV also states that multiple ownership situations enabling joint economies of operation have been permitted where broadcast service was threatened by a depressed economy, but that this reasoning is not applicable to Pioneer's situation in the Anchorage market. *Central Broadcasting Co., Inc.*, 21 R.R. 2d 482 (1971). We point out that both cases involved determinations at the application stage, not in a rule making proceeding. The cross-subsidization question raised here by KTUU-TV is inappropriate in a rule making proceeding and would be more properly raised at the application stage in connection with the matter of economic injury. See par. 11, *supra*.

#### Preclusion

13. KIMO and KTUU-TV contend that the assignment of Channel 5 to Anchorage may prevent other communities within the 190 mile radius of Anchorage from having their own VHF broadcast service; and that the Commission should resist assigning an additional channel to Anchorage until it can be determined whether another location will require the channel. Pioneer asserts that no data whatsoever are offered to show that the assignment of Channel 5 to Anchorage would preclude any other community in Alaska from having numerous local television outlets. We agree and conclude that their contention is too speculative for any probative value.

#### Reservation

14. Although withdrawing from the proceeding, APT suggests that Channel 9 be assigned to Anchorage and reserved for future noncommercial educational use. APT states that it may some day be in a position to apply for and operate a station on the channel. Our long-standing policy is to base channel assignments upon a present demand for use of the channel. We believe that assignment of a reserved channel in Anchorage should be considered in light of the situation which obtains at the time a demand is shown for such use.

15. Accordingly, in view of the above, it is ordered, that effective September 19, 1983, § 73.606(b) of the Commission's Rules, the TV Table of Assignments, is amended with regard to the following community:

City	Channel No.
Anchorage, Alaska	2, 4, 5, 7-11, 13-

16. Authority for the adoption of the amendment herein is contained in Sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules.

17. It is further ordered, That this proceeding is terminated.

18. For further information concerning the above, contact Philip S. Cross, Mass Media Bureau, (202) 632-5414.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 83-20712 Filed 8-1-83; 8:45 am]

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#### 47 CFR Part 83

##### Oversight of the Maritime Service Rules

##### CFR Correction

In the October 1, 1982 revision of Title 47 (Part 80-end) of the Code of Federal Regulations, certain entries in the table to § 83.359(a) were incorrect.

The table in paragraph (a) is corrected by revising the ship frequency of channel designator 63, under "port operations", and by revising the ship and the coast frequency of channel 67, under "navigation", as shown below.

§ 83.359 Frequencies in the band 156-162 MHz available for assignment.

(a) \* \* \*

#### PORT OPERATIONS

63	156.175	156.175	Do.
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#### NAVIGATIONAL

67	156.375	156.375	Do.
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#### 47 CFR Part 90

##### Private Land Mobile Radio Services; Amendment to the Commission's Rules Pursuant to Its Unregulatory Program; Correction

##### Correction

In FR Doc. 83-19532 beginning on page 33000 in the issue of Wednesday, July 20, 1983, make the following correction:

1. On page 33000, third column, § 90.73(c), the frequency table, under megahertz, "72.76" should have read "72-76".

2. On page 33001, first column, § 90.75(b), the frequency table, the limitations for 465.975 and 466.000 megahertz should have both read "1, 2, 28, 39".

BILLING CODE 1505-01-M

#### DEPARTMENT OF THE INTERIOR

##### Fish and Wildlife Service

#### 50 CFR Part 17

##### Republication of the Lists of Endangered and Threatened Species

##### Correction

In FR Doc. 83-17213 beginning on page 34182 in the issue of Wednesday, July 27, 1983, make the following corrections:

1. On page 34184, the entry for "Deer, Bawean", under the column designated "Scientific name", the word "*Cervus*" should read "*Cervus*".

2. On page 34191, the entry for "Turtle, three-keeled Asian", under the column designated "Scientific name", "*Geoemyda-Nicoria*" should read "*Geoemyda, Nicoria*".

3. On page 34195, under the column designated "Common name", the twenty-second entry should read "Ewa Plains' akoko".

BILLING CODE 1505-01-M



## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 611

[Docket No. 30711-133]

## Foreign Fishing, Groundfish of the Bering Sea and Aleutian Islands Area

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NOAA issues a final rule to implement Amendment 7 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. The amendment: (1) Alleviates some of the restrictive measures placed on foreign longline fleets in order to provide them with ample opportunity to harvest their groundfish allocations, and (2) provides an incentive to foreign longline vessels to minimize their incidental take of Pacific halibut, a prohibited species in the foreign groundfish fisheries.

**EFFECTIVE DATE:** August 31, 1983.

**ADDRESS:** Copies of the amendment and the environmental assessment may be obtained by contacting the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, Alaska 99510, 907-274-4563.

**FOR FURTHER INFORMATION CONTACT:** Susan J. Salvesson, 907-586-7230.

**SUPPLEMENTARY INFORMATION:**

## Background

The Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) was implemented on January 1, 1982 (46 FR 63295, December 31, 1981), by the NOAA Assistant Administrator for Fisheries (Assistant Administrator) under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Eight amendments to the FMP have been adopted by the North Pacific Fishery Management Council (Council). Four of those amendments have been implemented: Amendments 1a and 2 (47 FR 1295), Amendment 4 (48 FR 21336), and Amendment 3 (48 FR 24719).

Under the original FMP, foreign longline vessels were prohibited from fishing landward of the 500 meter depth contour in the Winter Halibut Savings Area (WHS) from December 1 through May 31. This provision was intended to protect juvenile Pacific halibut when they concentrate in the WHS during winter months. Amendment 7 alleviates

this restriction on the foreign longline fishery until the total incidental catch of Pacific halibut by foreign longline vessels in the Bering Sea and Aleutian Islands area reaches 105 metric tons (mt) during the 12-month period of June 1 through May 31. At that time or on December 1, whichever comes later, the 500 meter depth restriction on foreign longline vessels in the WHS will be reimposed. Thus, if the incidental catch of Pacific halibut by foreign longline vessels in the Bering Sea and Aleutian Islands area reaches 105 mt between June 1 and November 30, the WHS will be closed to foreign longline fishing landward of the 500 meter depth contour for the 6-month period December 1 through May 31. If the incidental catch limit of 105 mt is reached between December 1 and May 31, the restriction will be reimposed for whatever remains of that 6-month period.

This action is being taken in view of the relatively small absolute catch of Pacific halibut by foreign longline vessels and the low mortality of those halibut that are caught. The 500 meter depth restriction was maintained by the Council because the incidence of Pacific halibut per metric ton of groundfish is much higher in waters shallower than 500 meters. The 105 mt catch limit is 75 percent of the average 1978-81 take of Pacific halibut by foreign longline vessels in the Bering Sea and Aleutian Islands area. The 25 percent reduction in halibut by-catch was chosen by the Council as a compromise between the Council's objective of limiting the catch of Pacific halibut in foreign groundfish operations and a target level of halibut by-catch that representatives for the Japanese longline industry felt was attainable and would not put undue constraint on foreign longline operations.

In order to avoid grounds preemption problems and gear conflicts, foreign longline fleets have historically fished in the WHS during winter months when foreign trawl operations are prohibited in this area. The 12-month limit, June 1 through May 31, on Pacific halibut interceptions in foreign longline operations implemented by this amendment (105 mt) should provide an incentive to foreign longline vessels to keep their Pacific halibut catch below the 105 mt level so that they may continue their longline operations in the WHS throughout their traditional winter fishery, December 1 through May 31. Representatives for the Japanese longline industry have indicated that the 105 mt Pacific halibut catch limit should not be so burdensome as to prevent foreign longline fleets from catching their groundfish allocations.

The preamble to the proposed rule (48 FR 21978; May 16, 1983) further discussed the need and justification for Amendment 7. The preamble also solicited public comment on the lack of a procedure for the apportionment of the 105 mt Pacific halibut limit among foreign longline nations and whether or not holding foreign longline nations accountable for their Pacific halibut catch in the entire management area as of June 1, 1983, would create hardship given the August 31, 1983, effective date of the amendment. Public comments were invited until June 24, 1983. Public comments received have been considered and are responded to below. After considering the comments, the Director of the National Marine Fisheries Service, Alaska region (Regional Director), has decided to give final approval to Amendment 7 and to implement it by final rule.

The final rule incorporates the following two changes to paragraph (c)(3)(ii) of the proposed regulations. First, language is added to clarify that the closure under Amendment 7 is triggered only after December 1, regardless of when the 105 mt Pacific halibut limit is reached. Second, closure notification procedures are added as a cross reference to § 611.15(c).

## Public Comments

1. *Comment:* The Japanese North Pacific Longline-Gillnet Association (NPL) does not perceive any significant difficulties arising from the fact that Amendment 7 does not apportion the 105 mt halibut by-catch quota among the various countries operating longline fleets in the Bering Sea. At the present time, only Japan and Korea conduct longline operations in this area and representatives for those nations have successfully coordinated the fishing effort of their respective fleets in the past and no significant problems are contemplated in coordinating those efforts in the future insofar as the 105 mt halibut by-quota is concerned. If such efforts prove unsuccessful, or if the number of foreign longline vessels operating in the Bering Sea increases substantially, then it may be necessary to devise some sort of formal allocation procedure. At the present time, however, such a procedure would not seem to be necessary and no significant problems are anticipated.

*Response:* Comment noted.

2. *Comment:* The NPL has no objection to being held accountable for all Pacific halibut caught since June 1, 1983, even though Amendment 7 will not be implemented until late summer 1983. Such an approach avoids the difficulties



which might otherwise be encountered in trying to allocate a certain portion of the 105 mt limit of Pacific halibut for the months remaining in the fishing year after the amendment is implemented. Under the circumstances, beginning the count on June 1 would appear to be the simplest, most straightforward approach, and one which is consistent with the purpose and intent of the amendment.

**Response:** Comment noted.

**3. Comment:** To whatever extent Pacific halibut abundance in the Bering Sea increases, there will be a corresponding and largely unavoidable increase in the by-catch of this species. Thus, although the 105 mt limit is adequate to accommodate longline by-catch requirements at current abundance levels, continued increases in the halibut stocks may require the Council to reassess the 105 mt by-catch limit at some point in the future. At the present time, however, the 105 mt longline by-catch limit appears to be adequate and should not prevent foreign longline fleets from harvesting their groundfish allocations.

**Response:** Comment noted. The Council will reassess the impact of the 105 mt halibut by-catch limit on foreign longline fleets if the abundance of Pacific halibut changes significantly from the present and longline fleets are no longer able to operate under the by-catch limit implemented under Amendment 7.

#### Classification

The Regional Director has determined that Amendment 7 is necessary for the conservation and management of the Bering Sea and Aleutian Islands area groundfish fishery and that it is consistent with the Magnuson Act and other applicable law.

The Council prepared an environmental assessment for this amendment and concluded that there will be no significant impact on the human environment as a result of this rule. You may obtain a copy of the environmental assessment from the Council at the address listed above.

The NOAA Administrator has determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The General Counsel of the Department of Commerce has also certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities and will not necessitate the preparation of a regulatory flexibility analysis. Both of these actions were based on the analysis presented in the environmental assessment on the

impacts of the final rule on the socioeconomic environment. This analysis was summarized in the preamble to the proposed rule at 48 FR 21978. You may obtain a copy of the environmental assessment from the Council at the address listed above.

This rule does not contain a collection of information requirement for purposes of 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 the State of Alaska. The State Division of Policy Development and Planning has concurred in this determination.

#### List of Subjects in 50 CFR Part 611

Fish, Fisheries, Foreign relations, Reporting and recordkeeping requirements.

Dated: July 28, 1983.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR Part 611 is amended as follows:

#### PART 611—FOREIGN FISHING

1. The authority citation for Part 611 reads as follows:

Authority: 16 U.S.C. 1801 *et seq.*, unless otherwise noted.

2. Section 611.93 is amended by revising paragraph (c)(3)(ii) to read as follows:

#### § 611.93 Bering Sea and Aleutian Islands groundfish fishery.

(c) \* \* \*

(3) \* \* \*

(ii) When U.S. observer information or other reliable reported statistics indicate that foreign longline vessels have intercepted 105 mt of Pacific halibut in the entire management area during the 12-month period June 1 through May 31, the Regional Director shall prohibit further longlining by foreign vessels from that day forward or from December 1, whichever comes later, through May 31, in waters less than 500 meters deep in the area designed under paragraph (c)(2)(ii)(C) of this section. Notice of this prohibition will be given according to procedures specified in § 611.15(c).

[FR Doc. 83-20919 Filed 8-1-83; 8:45 am]

BILLING CODE 3510-22-M

#### 50 CFR Part 662

[Docket No. 30712-130]

#### Northern Anchovy Fishery

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NOAA issues notice that Amendment 4 to the Northern Anchovy Fishery Management Plan (FMP), is approved and issues this final rule to implement the amendment. These regulations (1) eliminate the minimum size limit for anchovies, (2) institute a minimum mesh size for the reduction fishery to be effective April 1, 1986, and (3) prescribe a reserve of the reduction harvest quota that would be withheld if scientific evidence demonstrates that the original biomass estimate was too high. The respective reasons for these measures follow: (1) Alleviate the economic hardship imposed on the reduction fishery during times when mature anchovies are predominantly less than five inches in total length; (2) prevent the fishery from adopting smaller mesh sizes than are not commonly used, while providing the few non-conforming operating in the fishery conservation zone off California and to compensate for current uncertainties in biomass estimates.

**EFFECTIVE DATE:** August 15, 1983.

**FOR FURTHER INFORMATION CONTACT:** Mr. Rodney McInnis (Acting Chief, Fisheries Management Division), 213-548-2518.

**SUPPLEMENTARY INFORMATION:** An initial notice of approval and availability of Amendment 4 to the FMP and proposed rules to implement the amendment were published in the *Federal Register* on April 25, 1983 (48 FR 17627). Comments on the proposed rule were invited until June 9, 1983. The rationale for approving Amendment 4 was given in the preamble to the proposed rules. During the comment period two provisions of the proposed amendment—the elimination of the size limit and the inclusion of reserve quota procedures—were implemented by emergency action in order to avoid economic hardship in the reduction fishery during its spring season. The emergency rule was published May 18, 1983, and is effective until August 15, 1983 (48 FR 22301).

No comments were received on the proposed rule. However, two technical changes are being made in the final rules to clarify the intent of the amendment. The first change adds the



date April 1, 1986, to the minimum mesh-size restrictions in § 662.5(c) and to general restrictions in § 662.8. Although the effective date for authorized fishing gear did not appear in the proposed regulations, the intent to delay the mesh-size requirement was stated in the amendment and the preamble to the proposed regulations. The delayed effectiveness of the minimum mesh-size requirement will allow fishermen ample proposed regulations, the intent to delay the mesh size requirement was stated in the amendment and the preamble to the proposed regulations. The delayed effectiveness of the minimum mesh-size requirement will allow fishermen ample time to replace any nets that may not comply at present. The second change deletes the size limit specified for non-reduction purposes other than bait in § 662.6(b). No exceptions to the elimination of the size limit were intended. The proposed regulations did not specifically delete the size limit for the non-bait, non-reduction fishery even though they did remove the prohibition on landing undersized anchovies from the general restrictions [§ 662.8(b)].

#### Classification

The NOAA Assistant Administrator for Fisheries has determined that this amendment to the FMP and the proposed implementing regulations comply with the national standards, other provisions of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), and other applicable laws.

Concurrence with the Agency's determination of consistency with the California Coastal Zone Management plan was requested on December 29, 1982, from the California Coastal Commission. No objection was received.

An Environmental Assessment (EA) was filed with the Environmental Protection Agency on February 25, 1983. The EA concludes that implementation of this amendment would not have a significant effect on the environment. The optimum yield specified in the FMP remains unchanged. The environmental impacts are positive because the amendment is designed to reduce waste of undersized anchovy, increase efficiency of the reduction fishery, and permit in-year decrease of the reduction harvest quota in light of a revised biomass estimate.

Based on a regulatory impact review, the Administrator of NOAA has determined that the regulations implementing this amendment are not major under Executive Order 12291 and do not require a regulatory impact analysis. These regulations are designed to provide conservation safeguards and

increase the efficiency of the anchovy reduction fishery in achieving optimum yield without significant adverse impact. Those few fishermen not now in compliance will have ample opportunity (three years) to comply with the mesh size requirements. In addition, fishermen will not have to dump catches of anchovy that do not meet the current size limit, and government agencies will realize reduced enforcement costs.

The General Counsel of Commerce certified that the regulations implementing this amendment will not have a significant economic impact on a substantial number of small entities; therefore, no regulatory flexibility analysis is required under provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The regulations do not require any new "collection of information" as defined in the Paperwork Reduction Act (44 U.S.C. 4501 *et seq.*); therefore, requirements of the Paperwork Reduction Act do not apply to this action.

If these regulations are not effective on August 15, 1983, there will be a lapse in the current regulations and fishermen fishing in subarea A (where the season opens on August 1) would be unnecessarily burdened and confused and their fishing disrupted by a temporary reversion to regulations already changed by the emergency rulemaking. To avoid such a lapse the Assistant Administrator finds for good cause that it would be contrary to the public interest to delay the effective date of these regulations for the full 30-day comment period otherwise required under section 553(d) of the Administrative Procedure Act. Consequently, these regulations are effective August 15, 1983.

#### List of Subjects in 50 CFR Part 662

Fish, fisheries, fishing.

Dated: July 28, 1983.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

#### PART 662—NORTHERN ANCHOVY FISHERY

For the reasons stated in the preamble, 50 CFR Part 662 is amended as follows:

1. The authority citation for 50 CFR Part 662 reads as follows:

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

2. In § 662.3, paragraph (f) is added to read as follows:

#### § 662.3 Quota.

(f) Reduction harvest quotas derived according to the procedure in paragraphs (a) through (d) of this section will be allocated in two halves. The first half will be released at the beginning of the open season. When 25 percent of the total reduction harvest quota has been landed, but not later than February 1, the Regional Director will issue a public notice of the intent to release the second half and will provide the opportunity for the submission of evidence that the second half should not be released. The Regional Director will consult with the California Department of Fish and Game (CDF&G) and the Pacific Fishery Management Council (Council). He will not release the second half of the reduction quota if documented indices of anchovy abundance indicate that the anchovy spawning biomass would fall below one million short tons (expressed in terms of a larva census or equivalent) if continued harvest in U.S. waters were allowed. The second half of the reduction harvest quota will be released no later than April 1 if no evidence is submitted or if the Regional Director, in consultation with the CDF&G and the Council, determines that the evidence is insufficient to warrant withholding the second half of the reduction harvest quota.

3. In § 662.5, paragraph (c) is revised to read as follows:

#### § 662.5 Reduction fishery.

(c) *Minimum mesh size.* Beginning on April 1, 1986, authorized fishing gear for the reduction fishery means round haul nets, including purse seines and lampara nets, which have a minimum wet mesh size of 1 1/2 inches of an inch, except that the bag portion of a purse seine when wet must have a minimum mesh size of 1 1/2 inches of an inch. The bag portion of a purse seine must be constructed as a single unit and must not exceed 12.5 percent of the total area of the net. Minimum mesh-size requirements are met if a stainless steel wedge can be passed with thumb pressure only through 16 of 20 sets of two meshes each of wet mesh.

#### § 662.6 [Amended]

4. In § 662.6, paragraph (b) is removed and paragraphs (c) and (d) are redesignated as paragraphs (b) and (c), respectively.

5. In § 662.8, paragraph (b) is revised to read as follows:

#### § 662.8 General restrictions.



(b) Beginning on April 1, 1986, no person shall take, retain, or land anchovies for reduction purposes unless they are taken with fishing gear authorized in § 662.5(c).

[FR Doc. 83-20620 Filed 8-1-83; 8:45 am]

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## 50 CFR Part 647

(Docket No. 30718-131)

### High Seas Salmon Fishery off Alaska

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NOAA issues a final rule to rescind the present prohibition against the use of treble hooks by commercial salmon trollers fishing in the fishery conservation zone off Alaska. The rule is necessary to bring Federal and State regulations into conformity and make Federal regulations more easily enforceable. This action will provide for an orderly fishery and remove an unnecessary regulatory burden from salmon trollers in Alaska.

**EFFECTIVE DATE:** This rule is effective July 28, 1983.

**FOR FURTHER INFORMATION CONTACT:** William L. Robinson (Regional Plan Coordinator, NMFS), 907-586-7229.

**SUPPLEMENTARY INFORMATION:** The Fishery Management Plan (FMP) for the High Seas Salmon Fishery off the Coast of Alaska East of 175° East Longitude governs salmon fishing in the fishery conservation zone (FCZ) off Alaska. Regulations implementing Amendment 2 to the FMP, which were published in 1981, prohibited the use of treble hooks for commercial salmon fishing in the FCZ (50 CFR 674.24).

Treble hooks were prohibited for two reasons. First, there was concern that fishermen using arguably more efficient treble hooks might catch and release a greater number of sublegal chinook

salmon than those using single hooks, thus increasing the incidence of hook-and-release mortalities. Second, the prohibition was imposed to avoid conflicting regulations in Federal and State waters and the resulting enforcement difficulties in both areas. The State of Alaska also prohibited the use of treble hooks in State waters in 1981.

The North Pacific Fishery Management Council (Council) and Alaska State Board of Fishery (Board) reviewed the treble hook prohibition in January 1983. Since the use of treble hooks had been prohibited, no scientific data had been developed demonstrating that prohibiting their use resulted in any measurable biological benefits. The majority of public testimony emphasized that the ban lacked scientific justification and that it imposed an unjustified regulatory burden on those fishermen who traditionally used treble hooks. Consequently, the Board removed the ban in State waters. Due to the lack of conclusive scientific evidence supporting retention of the ban and the desire for conformity between State and Federal regulations, the Council also recommended rescinding the treble hook ban in the FCZ.

#### Response to Comments

No comments were received on the proposed rule (48 FR 24751; June 2, 1983) during the comment period that ended July 5, 1983.

#### Classification

The Assistant Administrator of Fisheries, NOAA (Assistant Administrator), has determined that this final rule is consistent with the FMP, the national standards and other provisions of the Magnuson Fishery Conservation and Management Act, and other applicable law.

An environmental assessment and negative determination of significant environmental impact was prepared on the proposed rule and was filed with the Environmental Protection Agency on April 12, 1983.

The proposed rule was published with a determination that the action was not

major with respect to Executive Order 12291.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. A summary was published at 48 FR 24752. As a result, a regulatory flexibility analysis was not prepared.

The Assistant Administrator has determined that this proposed rule is consistent to the maximum extent practicable with the Alaska Coastal Management Program as required by section 307(c)(1) of the Coastal Zone Management Act of 1982 and its implementing regulations at 15 CFR Part 930, Subpart C.

This final rule does not contain a collection of information requirement within the meaning of the Paperwork Reduction Act of 1980.

This rule relieves a restriction and therefore is made effective immediately, under the exception provided by section 553(d)(1) of the Administrative Procedure Act.

#### List of Subjects in 50 CFR Part 674

Administrative practice and procedure, Fish, Fishing, Reporting and recordkeeping requirements.

Dated: July 28, 1983.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

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

#### PART 674—HIGH SEAS SALMON FISHERY OFF ALASKA

1. The authority citation for Part 674 reads as follows:

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

#### § 674.24 [Amended]

2. Section 674.24 is amended by removing paragraph (a)(4).

[FR Doc. 83-20640 Filed 7-28-83; 2:08 pm]

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