

## A. Background

The Defense Energy Support Center (DESC), a major contracting activity of DLA, has historically utilized a method of price adjustment in the bulk petroleum area using price indexes for the same or similar end products and using market price assessments for products published in industry trade journals.

None of the three EPA types currently encompassed by the FAR are appropriate for many of the competitive procurements undertaken by DESC and other DLA contracting offices. Currently, FAR 16.203 recognizes EPA references based on established market or catalog prices of the individual contractor only. The new DLAD coverage expands this to include industry-wide and geographically specific market price assessments, and authorizes the development and use of clauses on that basis. FAR 16.203 also recognizes EPA references based only on indexes for labor or material costs or indexes of such costs. The DLAD coverage expands this to include indexes for the same or similar supplies, services, or end items and authorizes the development and uses of clauses on that basis.

The uses of an EPA reference based on an individual contractor's established price or cost of materials is impractical for various competitive procurements. Unique EPA references for each offeror engender relative price variations during the delivery period, making it impossible to determine the most favorable offer at time of award. This creates a significant price risk for the Government in periods where the margins are shrinking and for the contractors in periods where the margins are expanding. Such fluctuations can be significant, for example, in petroleum markets. A reference based on the same or similar products as provided under the contract, results in a common EPA reference for competing offerors and minimizes the price risk for both the Government and the contractor.

A proposed rule with request for comments was published in the **Federal Register**, (60 FR 10826, Feb. 28, 1995.) One respondent submitted comments on the proposed rule. The respondent's comments were considered in the development of the final rule. On October 5, 1995, the Director, Defense Procurement, approved a permanent class deviation for DLA to deviate from the requirements of FAR 16.203-1 and 16.203-4(a) when using fixed price contracts with economic price adjustments. Under this deviation, DLA

was authorized to include conforming language in the DLA supplement.

The final rule is the same as the proposed rule with one exception. The second sentence in Subpart 5416.203-4, "Contract clauses" of the proposed rule, which states that "established prices in such clauses need not be verifiable using the criteria in 48 CFR (FAR) 15.804-3" was removed in the final rule. The criteria referred to were deleted from the Truth in Negotiations Act (TINA) (10 U.S.C. 2306a.) when the statute was recently revised. Accordingly, the revised and renumbered FAR Part 15 no longer contains these criteria. Therefore, the language has been removed from the final rule as it is no longer applicable.

### Regulatory Flexibility Act

The final rule does not have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. An initial regulatory flexibility analysis was not performed. The final rule does not represent a change for small entities doing business with DLA. Comments were requested concerning the effect of the proposed rule on small entities in accordance with section 612 of the Act. No comments were received.

## B. Paperwork Reduction Act

This rule does not impose any new reporting or record keeping requirements that require the approval of OMB under 44 U.S.C. 3501, et seq.

### List of Subjects in 48 CFR Part 5416

Government procurement.

For reasons set forth in the preamble, the Defense Logistics Agency amends 48 CFR Chapter 54, by adding part 5416 to read as follows:

## PART 5416—TYPES OF CONTRACTS

### Subpart 5416.2—Fixed Price Contracts

- 5416.203 Fixed-Price Contracts with Economic Price Adjustment
- 5416.203-1 Description
- 5416.203-3 Limitations
- 5416.203-4 Contract Clauses

**Authority:** Fixed Price Contracts

### 4516.203 Fixed Price Contracts with Economic Price Adjustment

#### 4516.203-1 Description.

(a)(S-90) Adjustments based on established prices. Established prices may reflect industry-wide and/or geographically based market price fluctuations for commodity groups, specific supplies or services, or contract end items.

(c)(S-90) Adjustments based on cost indexes of labor or materials. These price adjustments may also be based on increases or decreases in indexes for commodity groups, specific supplies or services, or contract end items.

#### 4516.203-3 Limitations.

(S-90) A fixed price contract with economic price adjustment may also be used to provide for price adjustments authorized in this section.

#### 4516.203-4 Contract clauses.

(S-90) When the contracting officer determines that an existing EPA clause is not appropriate, the contracting officer may develop and use another EPA clause in accordance with 5416.203-1 (a)(S-90) or (c)(S-90). Established prices and cost indexes need not reflect changes in the costs or established prices of a specific contractor. The established price or cost index may be derived from sales prices in the marketplace, quotes, or assessments as reported or made available in a consistent manner in a publication, electronic database, or other form, by an independent trade association, Governmental body, or other third party independent of the contractor. More than one established price or cost index may be combined in a formula for economic price adjustment purposes in the absence of an appropriate single price or cost index.

Dated: July 23, 1999.

**William J. Kenny,**

*Executive Director, Procurement Management.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018-AF70

### Endangered and Threatened Wildlife and Plants; Listing of Nine Evolutionarily Significant Units of Chinook Salmon, Chum Salmon, Sockeye Salmon, and Steelhead

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Fish and Wildlife Service (Service) is adding several Evolutionarily Significant Units (ESUs) of chinook salmon (*Oncorhynchus tshawytscha*), chum salmon (*Oncorhynchus keta*), sockeye salmon (*Oncorhynchus nerka*), and steelhead

(*Oncorhynchus mykiss*) to the List of Endangered and Threatened Wildlife (List) in accordance with the Endangered Species Act of 1973, as amended (Act). The Puget Sound chinook salmon ESU in Washington, the Lower Columbia River chinook salmon ESU in Washington and Oregon, and the Upper Willamette spring-run chinook salmon ESU in Oregon are added as threatened; the Upper Columbia River spring-run chinook salmon ESU in Washington is added as endangered; the Hood Canal summer-run chum salmon ESU in Washington and the Columbia River chum salmon ESU in Washington and Oregon are added as threatened; the Ozette Lake sockeye salmon ESU in Washington is added as threatened; and the Middle Columbia River steelhead ESU in Washington and Oregon and the Upper Willamette River steelhead ESU in Oregon are added as threatened. This amendment is based on determinations by the National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Department of Commerce, which has jurisdiction for these species, published in the **Federal Register** on March 24, 1999 (64 FR 14308), and March 25, 1999 (64 FR 14508, 64 FR 14517, 64 FR 14528).

**DATES:** The effective date for listing of these ESUs is May 24, 1999. The amendments to the list in 50 CFR 17.11(h) are effective August 2, 1999.

**ADDRESSES:** Division of Endangered Species, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Mail Stop 420, Arlington, Virginia 22203.

**FOR FURTHER INFORMATION CONTACT:** Richard E. Hannan, Acting Chief, Division of Endangered Species, at the above address or telephone 703-358-2171.

**SUPPLEMENTARY INFORMATION:**

**Background**

In accordance with the Act and Reorganization Plan No. 4 of 1970,

NMFS has jurisdiction over west coast steelhead. Under section 4(a)(2) of the Act, NMFS must decide whether a species under its jurisdiction should be classified as endangered or threatened. The Service is responsible for the actual amendment of the List in 50 CFR 17.11(h).

On March 24, 1999 (64 FR 14308), NMFS published a final rule listing four chinook salmon ESUs as threatened; the Puget Sound chinook salmon ESU in Washington, the Lower Columbia River chinook salmon ESU in Washington and Oregon, and the Upper Willamette spring-run chinook salmon ESU in Oregon; the Upper Columbia River spring-run chinook salmon ESU in Washington was listed as endangered. On March 25, 1999 (64 FR 14508), NMFS published a final rule listing two chum salmon ESUs as threatened; the Hood Canal summer-run chum salmon ESU in Washington and the Columbia River chum salmon ESU in Washington and Oregon. On March 25, 1999 (64 FR 14528), NMFS published a final rule listing one sockeye salmon ESU in Washington as threatened. On March 25, 1999 (64 FR 14517), NMFS published a final rule listing two steelhead ESUs as threatened; the Middle Columbia River steelhead ESU in Washington and Oregon and the Upper Willamette River steelhead ESU in Oregon. NMFS had previously issued proposed listing rules for the chinook salmon ESUs on March 9, 1998 (63 FR 11482), for the chum salmon ESUs on March 10, 1998 (63 FR 11774), for the sockeye salmon ESU on March 10, 1998 (63 FR 11750), and for the steelhead ESUs on March 10, 1998 (63 FR 11798).

The proposed rules identified above solicited comments from peer reviewers, the public, and all other interested parties. The final rules addressed the comments received in response to the proposed rules. Because NMFS provided public comment periods on

the proposed rules, and because this action of the Service to amend the List in accordance with the determinations by NMFS is administrative and nondiscretionary, the Service has omitted the notice and public comment procedures of 5 U.S.C. 553(b) for this action.

**National Environmental Policy Act**

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. The Service published a notice outlining its reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Regulation Promulgation**

Accordingly, the Service amends part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

**PART 17—[AMENDED]**

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under FISHES, to the List of Endangered and Threatened Wildlife:

**§ 17.11 Endangered and threatened wildlife.**

\* \* \* \* \*  
(h) \* \* \*

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
Fishes							

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Salmon, chinook .....	<i>Oncorhynchus tshawytscha</i> .	North America from Ventura R. in California to Point Hope, Alaska and the Mackenzie R. area in Canada, Northeast Asia from Hokkaido, Japan to the Anadyr R., Russia.	U.S.A. (WA) all naturally spawned populations from rivers and streams flowing into Puget Sound, including the Straits of Juan De Fuca from the Elwha R. eastward, and Hood Canal, South Sound, North Sound and the Strait of Georgia.	T	664	NA	NA
Salmon, chinook .....	<i>Oncorhynchus tshawytscha</i> .	North America from Ventura R. in California to Point Hope, Alaska and the Mackenzie R. area in Canada, Northeast Asia from Hokkaido, Japan to the Anadyr R., Russia.	U.S.A. (OR, WA) all naturally spawned populations from the Columbia R. and its tributaries upstream from its mouth to a point east of the Hood R. and White Salmon R., including the Willamette R. to Willamette Falls in Oregon, excluding the spring run in the Clackamas R.	T	664	NA	NA
Salmon, chinook .....	<i>Oncorhynchus tshawytscha</i> .	North America from Ventura R. in California to Point Hope, Alaska and the Mackenzie R. area in Canada, Northeast Asia from Hokkaido, Japan to the Anadyr R., Russia.	U.S.A. (OR) all naturally spawned populations in the Clackamas R. and the Willamette R. and its tributaries above Willamette Falls.	T	664	NA	NA
Salmon, chinook .....	<i>Oncorhynchus tshawytscha</i> .	North America from Ventura R. in California to Point Hope, Alaska and the Mackenzie R. area in Canada, Northeast Asia from Hokkaido, Japan to the Anadyr R., Russia.	U.S.A. (WA) all naturally spawned populations in the Columbia R. tributaries upstream of Rock Island Dam and downstream of Chief Joseph Dam, excluding the Okanogan R., and the Columbia R. from a line between the west end of Clatsop jetty, OR, and the west end of Peacock jetty, WA, upstream to Chief Joseph Dam, including spring-run hatchery stocks (and their progeny) in Chiwawa R., Methow R., Twisp R., Chewuch R., White R., and Nason Creek.	E	664	NA	N

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Salmon, chum .....	<i>Oncorhynchus keta</i> ..	North Pacific Rim from Korea and the Japanese Island of Honshu east to Monterey Bay, California, Arctic Ocean from the Laptev Sea in Russia to Mackenzie R. in Canada.	U.S.A. (WA) all naturally spawned summer-run populations in Hood Canal and its tributaries and Olympic Peninsula rivers between Hood Canal and Dungeness Bay.	T	664	NA	NA
Salmon, chum .....	<i>Oncorhynchus keta</i> ..	North Pacific Rim from Korea and the Japanese Island of Honshu east to Monterey Bay, California; Arctic Ocean from the Laptev Sea in Russia to Mackenzie R. in Canada.	U.S.A. (OR, WA) all naturally spawned populations in the Columbia R. and its tributaries.	T	664	NA	NA
* Salmon, sockeye .....	* <i>Oncorhynchus nerka</i>	* North Pacific Basin from U.S.A. (CA) to Russia.	* U.S.A. (WA) all naturally spawned populations in Ozette Lake and its tributary streams.	* T	* 664	NA	* NA
* Steelhead .....	* <i>Oncorhynchus mykiss</i> .	* North Pacific Ocean from the Kamchatka Peninsula in Asia to the northern Baja Peninsula.	* U.S.A. (OR) all naturally spawned winter-run populations in the Willamette R. and its tributaries from Willamette Falls to the Calapooia R., inclusive.	* T	* 664	NA	* NA
Steelhead .....	<i>Oncorhynchus mykiss</i> .	North Pacific Ocean from the Kamchatka Peninsula in Asia to the northern Baja Peninsula.	U.S.A. (OR, WA) All naturally spawned populations in streams above and excluding the Wind R. in Washington, and the Hood R. in Oregon, upstream to, and including, the Yakima R. Excluded are steelhead from the Snake R. Basin.	T	664	NA	NA
* .....	* .....	* .....	* .....	* .....	* .....	.....	* .....

Dated: July 12, 1999.

**Marshall P. Jones,**

*Acting Director, Fish and Wildlife Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 990304063-9063-01; I.D. 072799D]

#### Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Central Aleutian District of the Bering Sea and Aleutian Islands

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

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific ocean perch in the Central Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 1999 total allowable catch (TAC) of Pacific ocean perch in this area.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), July 28, 1999, through 2400 hrs, A.l.t., December 31, 1999.

**FOR FURTHER INFORMATION CONTACT:** Mary Furuness, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

Table 2 of the Final 1999 Harvest Specifications of Groundfish for the BSAI (64 FR 12103, March 11, 1999) established the 1999 Initial TAC of Pacific ocean perch for the Central Aleutian District as 3,561 metric tons (mt). See § 679.20(c)(3)(iii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 1999 TAC for Pacific ocean perch in the Central Aleutian District will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 3,261 mt, and is setting

aside the remaining 300 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Central Aleutian District of the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

#### Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 1999 TAC of Pacific ocean perch for the Central Aleutian District of the BSAI. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

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

Dated: July 28, 1999.

**Bruce C. Morehead,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 990304063-9063-01; I.D. 072799E]

#### Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Western Aleutian District of the Bering Sea and Aleutian Islands

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

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 1999 total

allowable catch (TAC) of Pacific ocean perch in this area.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), July 28, 1999, through 2400 hrs, A.l.t., December 31, 1999.

**FOR FURTHER INFORMATION CONTACT:** Mary Furuness, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

Table 2 of the Final 1999 Harvest Specifications of Groundfish for the BSAI (64 FR 12103, March 11, 1999) established the 1999 Initial TAC of Pacific ocean perch for the Western Aleutian District as 5,753 metric tons (mt). See § 679.20(c)(3)(iii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 1999 TAC for Pacific ocean perch in the Western Aleutian District will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 5,453 mt, and is setting aside the remaining 300 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Aleutian District of the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

#### Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 1999 TAC of Pacific ocean perch for the Western Aleutian District of the BSAI. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.