Communications rule applies with CSA exception to the prohibited communications, including with respect to back-up CSAs, if the CSA was entered into and filed with the Commission by the application deadline. If both stations pursuant to the primary CSA have a bidding status of “frozen—provisional winner,” i.e., the auction system determines that the station can never be assigned a feasible channel in its pre-auction band in the current stage, then parties to a back-up CSA may communicate regarding bids and bidding strategy and must cease communication of this type with the party to the original CSA. Prior to that point, the rationale for the CSA exception—that parties to a CSA should be able to “fully engage as various options are presented during the auction process”—is inapplicable with respect to the back-up CSA. Once the relinquishment bid of the prospective host of the CSA is provisionally accepted by the auction system in a given stage of the auction, the CSA exception may be utilized for otherwise prohibited communications involving the parties to the back-up agreement, and can no longer be utilized for parties to the primary agreement in that stage.  

5. The Commission notes that under the reverse auction bidding procedures, the bidding status of a “frozen—provisional winner” may change to “bidding in the current round” if the auction enters a subsequent stage. Accordingly, if the host in the primary CSA, which was no longer in operation because its bidding status became “frozen—provisional winner” in the
previous stage, is designated as “bidding in the current round” in a subsequent stage of the auction, and that CSA expressly provides that it becomes the operative sharing agreement under such circumstances, the host may notify the sharee in the primary CSA of that change in status and the CSA exception will again apply to communications between the parties to the primary agreement rather than with the back-up host.

6. The Commission also finds that the attractiveness of the channel sharing option would be enhanced if sharees were given additional time to plan and execute their transition to the host’s facilities. Currently, the rules require that all winning go-off-air bidders in the reverse auction, including winning channel sharee must terminate operations on their pre-auction channels within three months of when they receive auction proceeds. While three months for termination of operations is sufficient for go-off-air winners who intend to relinquish their licenses and cease broadcasting altogether, the Commission recognizes that winning bidders that plan to share a channel will remain in operation and may therefore need more time to implement the move to the sharer’s facility. For instance, a channel sharee may need time to deal with technical issues associated with transitioning to its shared location. If it is changing its community of license, it may also need to negotiate modifications to carriage agreements or finalize new must-carry arrangements with multichannel video programming distributors.

7. For these reasons, the Commission modifies section 73.3700(b)(4)(iii) of the rules to extend the amount of time a sharee in a pre- or post-auction CSA will have to relinquish its pre-auction channel to six months after receipt of its reverse auction proceeds. As the Commission decided in the Incentive Auction R&O, winning channel sharing bidders may request a waiver of up to an additional three months to cease operations on their pre-auction channel, pursuant to section 1.3 of the rules, and the Commission will view these requests most favorably. Further, winning channel sharing bidders may request an additional three-months, and the Commission will view the additional requests favorably as well so long as it determines that grant of the extension will not delay the post-auction transition. The Commission finds that this extension of the transition period to six months, and the availability of waivers of up to an additional six months, is unlikely to adversely affect the Commission’s post-auction transition timeline.

Initial Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the U.S. Small Business Administration (SBA).

In 2012, Congress mandated that the Commission conduct an incentive auction of broadcast television spectrum as set forth in the Middle Class Tax Relief and Job Creation Act of 2012 (“Spectrum Act”). The incentive auction will have three major pieces: (1) A “reversal auction” in which full power and Class A broadcast television licensees submit bids to voluntarily relinquish certain broadcast rights in exchange for payments; (2) a reorganization or “repackaging” of the broadcast television bands in order to free up a portion of the ultra-high frequency (“UHF”) band for other uses; and (3) a “forward auction” of licenses for flexible use of the newly available spectrum. In the Incentive Auction R&O, the Commission adopted rules to implement the broadband spectrum incentive auction. Among other things, the Commission adopted rules for broadcast stations that choose to channel share. Pursuant to the RFA, a Final Regulatory Flexibility Analysis (“FRFA”) was incorporated into the Incentive Auction R&O.

This Second Order on Reconsideration reflects clarifications and modifications to the Commission’s rules arising in response to comments filed by Fox, ION, Tribune, and Univision (the “Broadcasting Representatives”). The Commission generally responds favorably to the Broadcasting Representatives’ requests, finding that providing these clarifications will increase broadcasters’ flexibility to use the channel sharing bid option and will make the option more attractive. Specifically, this Second Order on Reconsideration clarifies the Commission’s rules to permit broadcasters to enter into back-up channel sharing agreements (“CSAs”) with an additional partner to mitigate the risk that stations that intend to channel share could be left without spectrum after the auction, if both partners receive a status of “frozen-provisionally winning” in the same round of the reverse auction. The Commission also clarified that the CSA exception to the general prohibition on communications regarding bids and bidding strategy will apply to that back-up CSA, so long as the back-up CSA was filed before the application deadline, is the requirement for all CSAs. This Second Order on Reconsideration also permits back-up agreements based on price or other contingencies, but declines to extend the CSA exception to them as introducing unacceptable risk of becoming a vehicle for collusion. Finally, this Second Order on Reconsideration extends the transition period for channel sharing winning bidders from three months to six months, and extends the possibility for additional waivers from three months to six months, barring any delay this would cause other transitioning broadcasters.

Neither of these changes adopted in this Second Order on Reconsideration will impose additional costs. The changes provide greater flexibility for both stations that wish to pursue channel sharing agreements pre-auction and those that become channel sharing stations post-auction. Therefore, the Commission certifies that the changes adopted in this Second Order on Reconsideration will not have a significant economic impact on a substantial number of small entities.

The Commission will send a copy of the Second Order on Reconsideration, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act. In addition, the Second Order on Reconsideration and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the Federal Register.

Federal Rules Which Duplicate, Overlap, or Conflict With the Commission’s Proposals

None.

List of Subjects in 47 CFR Part 73

Television and reporting and recordkeeping requirements.
DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
50 CFR Part 679
[Docket No. 140918791–4999–02]
RIN 0648–XE293
Fisheries of the Exclusive Economic Zone Off Alaska; Inseason Adjustment to the 2015 Gulf of Alaska Pollock Seasonal Apportionments

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

ACTION: Temporary rule; inseason adjustment.

SUMMARY: NMFS is adjusting the 2015 seasonal apportionments of the total allowable catch (TAC) for pollock in the Gulf of Alaska (GOA) by re- apportioning unharvested pollock TAC in Statistical Areas 610, 620, and 630 of the GOA. This action is necessary to provide opportunity for harvest of the 2015 pollock TAC, consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), October 28, 2015, until 2400 hours A.l.t., December 31, 2015.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council (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.

The annual pollock TACs in Statistical Areas 610, 620, and 630 of the GOA are apportioned among four seasons, in accordance with § 679.23(d)(2). Regulations at § 679.20(a)(5)(iv)(B) allow the underharvest of a seasonal apportionment to be added to subsequent seasonal apportionments, provided that any revised seasonal apportionment does not exceed 20 percent of the seasonal apportionment for a given statistical area. Therefore, NMFS is increasing the D season apportionment of pollock in Statistical Areas 610, 620, and 630 of the GOA to reflect the underharvest of pollock in those areas during the C season. In addition, any underharvest remaining beyond 20 percent of the originally specified seasonal apportionment in a particular area may be further apportioned to other statistical areas. Therefore, NMFS also is increasing the D season apportionment of pollock to Statistical Areas 610 and 630 based on the underharvest of pollock in Statistical Areas 620 of the GOA. These adjustments are described below.

The D season apportionment of the 2015 pollock TAC in Statistical Area 610 of the GOA is 12,185 metric tons (mt) as established by the final 2015 and 2016 harvest specifications for groundfish of the GOA (80 FR 10250, February 25, 2015). In accordance with § 679.20(a)(5)(iv)(B), the Administrator, Alaska Region, NMFS (Regional Administrator), hereby increases the D season apportionment for Statistical Area 610 by 2,437 mt to account for the underharvest of the TAC in Statistical Areas 610 and 620 in the C season. This increase is in proportion to the estimated pollock biomass and is not greater than 20 percent of the D seasonal apportionment of the TAC in Statistical Area 610. Therefore, the revised D seasonal apportionment of the pollock TAC in Statistical Area 610 is 14,622 mt (12,185 mt plus 2,437 mt).

The D season apportionment of the pollock TAC in Statistical Area 620 of the GOA is 14,628 mt as established by the final 2015 and 2016 harvest specifications for groundfish of the GOA (80 FR 10250, February 25, 2015). In accordance with § 679.20(a)(5)(iv)(B), the Regional Administrator hereby increases the D season apportionment for Statistical Area 620 by 2,926 mt to account for the underharvest of the TAC in Statistical Areas 610 and 620 in the C season. This increase is not greater than 20 percent of the D seasonal apportionment of the TAC in Statistical Area 620. Therefore, the revised D seasonal apportionment of the pollock TAC in Statistical Area 620 is 17,554 mt (14,628 mt plus 2,926 mt).

The D season apportionment of pollock TAC in Statistical Area 630 of the GOA is 18,639 mt as established by the final 2015 and 2016 harvest specifications for groundfish of the GOA (80 FR 10250, February 25, 2015). In accordance with § 679.20(a)(5)(iv)(B), the Regional Administrator hereby increases the D season apportionment for Statistical Area 630 by 3,728 mt to account for the underharvest of the TAC in Statistical Areas 620 and 630 in the C season. This increase is in proportion