

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State AMLR plans and revisions thereof since each such plan is drafted and promulgated by a specific State, not by OSM. Decisions on proposed State AMLR plans and revisions thereof submitted by a State are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and the applicable Federal regulations at 30 CFR Parts 884 and 888.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State AMLR plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements established by SMCRA or previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the

data and assumptions in the analyses for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 11, 1995.

Richard J. Seibel,

Regional Director, Western Regional Coordinating Center.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 950206040-5040-01; I.D. 081595B]

Groundfish Fishery of the Bering Sea and Aleutian Islands Area; Change in Assumed Pacific Halibut Discard Mortality Rate

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

ACTION: Proposed change in assumed Pacific halibut discard mortality rate; request for comments.

SUMMARY: NMFS proposes to reduce the Pacific halibut discard mortality rate assumed for the 1995 hook-and-line Pacific cod fishery in the Bering Sea and Aleutian Islands management area (BSAI) from 12.5 percent to 11.5 percent. This action is necessary to implement the intent of the North Pacific Fishery Management Council (Council) to assess discard mortality rates observed in this fishery during the first half of 1995 and, if warranted, adjust the 12.5 assumed rate specified for this fishery to reflect more closely the 1995 observed rate.

DATES: Comments must be received by September 5, 1995.

ADDRESSES: Comments must be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Gravel. The final Environmental Assessment prepared for the 1995 BSAI groundfish total allowable catch specifications or the report prepared by the International Pacific Halibut Commission titled "Halibut Discard Mortality Rates in the 1995 BSAI Pacific Cod Hook-and-Line Fishery: Results From Inseason Data Analysis" may be obtained from the same address, or by calling 907-586-

7228. The final Stock Assessment and Fishery Evaluation (SAFE) report, dated November 1994, may be requested from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510 (907-271-2809).

FOR FURTHER INFORMATION CONTACT: Susan Salvesson, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

Groundfish fisheries in the BSAI are governed by Federal regulations at 50 CFR part 675 that implement the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Island area (FMP). The FMP was prepared by the Council and approved by NMFS under the Magnuson Fishery Conservation and Management Act (Magnuson Act).

NMFS, in consultation with the Council, annually establishes Pacific halibut bycatch allowances for specified BSAI groundfish fisheries. The Director, NMFS, Alaska Region (Regional Director), monitors each fishery's halibut bycatch allowance using assumed discard mortality rates that are based on the best information available. NMFS published the 1995 halibut bycatch mortality allowances and assumed discard mortality rates in the **Federal Register** on February 14, 1995 (60 FR 8479) as part of the final 1995 specifications of groundfish and associated management measures. NMFS noted in this publication that the 12.5 percent discard mortality rate specified for the BSAI Pacific cod hook-and-line gear fishery would be subject to change pending the results of a mid-year analysis of halibut discard mortality rate data collected by NMFS-certified observers during the first half of 1995. The reasons and justification for this mid-year assessment are discussed in the February 14, 1995, final 1995 groundfish specifications.

Staff of the International Pacific Halibut Commission (IPHC) conducted an analysis of 1995 halibut viability data collected by NMFS-certified observers during the period January 1 to May 6. The results of this analysis are presented in a report titled "Halibut Discard Mortality Rates in the 1996 (BSAI) Pacific Cod Hook-and-Line Fishery: Results From Inseason Data Analysis" (see **ADDRESSES**). Results of this analysis indicate that a halibut discard mortality rate of 11.5 percent is more appropriate in estimating halibut bycatch mortality in the 1995 BSAI hook-and-line fishery for Pacific cod than the 12.5 percent rate established in the final 1995 groundfish specifications (February 14, 1995, 60 FR 8479). These

results were based on data collected by 32 observers from 26 different vessels, which represented 60 percent of the groundfish catch in the BSAI Pacific cod hook-and-line gear fishery through early May. The 11.5 percent discard mortality rate is a reduction from the 18 percent discard mortality rate previously estimated for this fishery based on observer data collected during 1992 and 1993. An estimate of the 1994 discard mortality rate has not been completed, because final 1994 observer data are not yet available. The IPHC believes that the apparent reduction in halibut discard mortality rates is a result of several factors. First, the hook-and-line gear fleet has gained a greater awareness of careful release procedures that increase survival rates of discarded halibut. In 1993, regulations at § 675.7(m) were implemented to require vessels to follow careful release procedures (58 FR 28799, May 17, 1993) and the hook-and-line industry has made an effort to inform vessel operators and crew of these mandatory requirements.

Second, a greater number of vessels is using swivels where the gangion ties into the groundline or the gangion connects to the hook. The swivels help prevent halibut from twisting and winding the gangion around the groundline, thus providing greater movement of the halibut and enhancing a fish's ability to avoid sand flea predation. Observer data from 1995, as well as previous years, suggest that sand flea predation is a significant contributor to the overall mortality of halibut taken as bycatch in the hook-and-line gear fisheries.

Third, the 1995 BSAI hook-and-line fleet participated in a voluntary program to monitor halibut discard mortality rates inseason on a vessel-by-vessel basis. This action provided feedback to the individual vessels when observer data suggested that bycatch halibut was improperly handled.

At its June 1995 meeting, the Council reviewed the IPHC's analysis of 1995 observer data and recommended that NMFS reduce the discard mortality rate for the BSAI Pacific cod hook-and-line gear fishery from 12.5 percent to 11.5 percent. NMFS concurs with the analytical results of the IPHC's assessment, as well as the Council's recommendation. Accordingly, NMFS proposes to revise Table 9 of the final 1995 groundfish specifications published February 14, 1995 (60 FR 8479), as follows:

TABLE 9.—ASSUMED PACIFIC HALIBUT MORTALITY RATES FOR THE BSAI FISHERIES DURING 1995

Hook-and-line gear fisheries	Assumed mortality (percent)
Rockfish	24.0
Pacific cod	11.5
Greenland turbot	19.0
Sablefish	17.0
Trawl Gear Fisheries:	
Midwater pollock	89.0
Non-pelagic pollock	77.0
Yellowfin sole	76.0
Rock sole, flathead sole, other flatfish	75.0
Rockfish	69.0
Pacific cod	65.0
Atka mackerel	59.0
Arrowtooth	49.0
Greenland Turbot	48.0
Pot Gear Fisheries:	
Pacific cod	8.0

NMFS proposes to recalculate the 1995 halibut bycatch mortality for the BSAI Pacific cod hook-and-line gear fishery using the 11.5 percent assumed discard mortality rate. Based on catch and observer data through mid-July 1995, the BSAI Pacific cod hook-and-line fleet has taken 3,613 metric tons (mt) of halibut bycatch. This equates to 452 mt bycatch mortality using the 12.5 percent mortality rate assumption and 415 mt bycatch mortality using the 11.5

mortality rate assumption. Using this latter assumption, 310 mt of halibut mortality remains of the 725 mt halibut bycatch mortality allowance specified for this fishery in 1995.

NMFS estimates that less than 2,200 mt of halibut bycatch will be taken by the Pacific cod hook-and-line gear fleet during the remainder of 1995 based on the assumption that 21,000 mt of groundfish may be harvested by this fleet during the remainder of 1995 at a halibut bycatch rate of 103.26 kg per mt of groundfish, as experienced in the 1994 fall fishery. Given the projection for another 2,200 mt of halibut bycatch during the remainder of 1995, NMFS anticipates that an additional 253 mt of halibut bycatch mortality would result using the 11.5 percent discard mortality rate, compared to 275 mt of halibut mortality, if a 12.5 percent discard mortality rate were used. Neither assumption for discard mortality rate would result in the attainment of the 725 mt halibut bycatch allowance before the amount of Pacific cod allocated to vessels using hook-and-line or pot gear is reached.

Classification

This action is authorized under 50 CFR part 675.20 and is exempt from review under E.O. 12866.

NMFS prepared an environmental assessment (EA) on the 1995 groundfish specifications. The Assistant Administrator for Fisheries, NOAA, concluded that no significant impact on the environment will result from their implementation. A copy of the EA is available (see ADDRESSES).

Authority: 16 U.S.C. 1801 et seq.
Dated: August 16, 1995.

Richard W. Surdi,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

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