

because *C. bairdi* Tanner crab bycatch allowances were reached.

During 1997 through October, the total bycatch of red king crab by vessels participating in the yellowfin sole and "other trawl" fisheries is estimated at 48,000 crab, considerably less than the 100,000 red king crab bycatch limit established for the trawl fisheries in Zone 1. NMFS anticipates that the 1998 red king crab bycatch rates in Zone 1 will be similar to those experienced in 1997 and that the red king crab bycatch limit will remain unchanged.

In spite of anticipated 1998 red king crab bycatch rates being significantly lower than 2.5 red king crab/mt of groundfish, the Council recommended the red king crab bycatch rate standards be maintained at this level to avoid unusually high crab bycatch rates while providing some leniency to those vessel operators who choose to use large mesh trawl gear as a means to reduce groundfish discard amounts.

The Regional Administrator has determined that Council recommendations for bycatch rate standards are appropriately based on the information and considerations necessary for such determinations under § 679.21(f). Therefore, the Regional Administrator concurs in the Council's determinations and recommendations for halibut and red king crab bycatch rate standards for the first half of 1998 as set forth in Table 1. These bycatch rate standards may be revised and published in the **Federal Register** when deemed appropriate by the Regional Administrator pending his consideration of the information set forth at § 679.21(f)(4).

As required in § 679.2 and § 679.21(f)(5), the 1998 fishing months are specified as the following periods for purposes of calculating vessel bycatch rates under the incentive program:

Month 1: January 1 through January 31;
Month 2: February 1 through February 28;
Month 3: March 1 through March 28;
Month 4: March 29 through May 2;
Month 5: May 3 through May 30;
Month 6: May 31 through June 27;
Month 7: June 28 through August 1;
Month 8: August 2 through August 29;
Month 9: August 30 through October 3;
Month 10: October 4 through October 31;
Month 11: November 1 through November 28; and
Month 12: November 29 through December 31.

Classification

This action is taken under 50 CFR 679.21(f) and is exempt from OMB review under E.O. 12866.

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.* and 3631 *et seq.*

Dated: November 26, 1997.

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. 970611133-7263-02; I.D. 052997B]

RIN 0648-AJ36

Fisheries of the Exclusive Economic Zone Off Alaska; Improved Retention/Improved Utilization

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to implement Amendment 49 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). This final rule requires all vessels fishing for groundfish in the Bering Sea and Aleutian Islands Management Area (BSAI) to retain all pollock and Pacific cod beginning January 3, 1998, and all rock sole and yellowfin sole beginning January 1, 2003. This final rule also establishes a 15-percent minimum utilization standard for all at-sea processors beginning January 3, 1998, for pollock and Pacific cod and, beginning January 1, 2003, for rock sole and yellowfin sole. This action is necessary to respond to the fishing industry's socioeconomic needs that have been identified by the North Pacific Fishery Management Council (Council) and is intended to further the goals and objectives of the FMP.

DATES: Effective January 3, 1998.

ADDRESSES: Copies of Amendment 49 and the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this action may be obtained from NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori J. Gravel. Send comments regarding burden estimates or any other aspect of the data requirements, including suggestions for reducing the burdens, to NMFS and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503, Attn: NOAA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907-586-7228.

SUPPLEMENTARY INFORMATION: The domestic groundfish fisheries in the exclusive economic zone of the BSAI are managed by NMFS under the FMP. The FMP was prepared by the Council under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing the groundfish fisheries of the BSAI appear at 50 CFR parts 600 and 679.

At its September 1996 meeting, the Council adopted Amendment 49 to the FMP and recommended that NMFS prepare a rulemaking to implement the amendment. A notice of availability of Amendment 49 was published in the **Federal Register** on June 5, 1997 (62 FR 30835), and invited comment on the amendment through August 4, 1997. A proposed rule to implement Amendment 49 was published in the **Federal Register** on June 26, 1997 (62 FR 34429). Comments on the proposed rule were invited through August 11, 1997. A total of twelve letters of comment on the amendment and/or the proposed rule were received. Nine letters of comment were received by the end of the comment period on Amendment 49. Of these nine, two comments opposed Amendment 49, and seven comments supported approval but recommended changes to the proposed rule. Of the three letters of comment received after the end of the comment period on the amendment but before the end of the comment period on the proposed rule, two opposed Amendment 49 and implementation of the proposed rule. One supported approval of Amendment 49 but recommended changes to the proposed rule. Comments on both the amendment and the proposed rule are summarized and responded to in the Response to Comments section below.

Upon reviewing the reasons for Amendment 49 to the FMP and the comments on the proposed rule to implement it, NMFS determined that this action is necessary for the conservation and management of the groundfish fishery of the BSAI. NMFS approved Amendment 49 on September 3, 1997, under section 304(a) of the Magnuson-Stevens Act. Additional information on this action may be found in the preamble to the proposed rule and in the EA/RIR/FRFA.

The Council also adopted a parallel Amendment 49 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA) in June 1997 and recommended that NMFS prepare a rulemaking to extend the Improved

Retention/Improved Utilization (IR/IU) program to the GOA. A proposed rule to implement Amendment 49 in the GOA was published in the **Federal Register** on August 18, 1997 (62 FR 43977) with comments invited through October 2, 1997.

Response to Comments

Comment 1: The IR/IU program will severely disadvantage small entities to the benefit of large at-sea and shoreside processors. These impacts will be highly allocative and are an inappropriate result of an FMP amendment that has no conservation purpose but is intended solely to respond to the socioeconomic needs of the fishing industry.

Response: The purpose of this amendment is to reduce discards. The EA/RIR/FRFA prepared for Amendment 49 concluded that the action could impose significant economic impacts on a substantial number of small entities. The extent of the impact for a particular operation will be directly proportional to the level of discards of the four IR/IU species. Vessels or fisheries that currently discard IR/IU species at high rates will face a substantially greater burden than vessels or fisheries with lower discard rates of IR/IU species. The impact on a particular operation also is expected to vary inversely with the size and configuration of the operation, with larger processors more likely to have the space and infrastructure necessary to retain and process IR/IU species. Catcher/processors face greater space constraints than onshore processors, and are limited in their ability to expand due to vessel moratorium, license limitation, and U.S. Coast Guard load line requirements. As a result, the impacts of the IR/IU program are expected to fall most heavily on catcher/processors, especially smaller factory trawlers that lack the capacity to produce fishmeal.

During development of Amendment 49, the Council considered and rejected alternatives that might have mitigated impacts on smaller factory trawlers. Alternatives that would have established exemptions or phase-in periods based on vessel size were rejected because they would have diluted expected reductions in bycatch and discards and because they were thought to favor sectors of the industry with high discard rates. The Council believed that an inevitable and appropriate consequence of any discard reduction program is that the compliance burden would be proportionate to the current bycatch and discard rate of a particular operation.

NMFS currently is assisting with industry efforts to develop more

selective fishing gear and fishing techniques to reduce the adverse economic impacts of Amendment 49. NMFS approved a large-scale fishing experiment in the BSAI during August 1997 to test experimental trawl gear designed to reduce pollock bycatch in flatfish trawl fisheries. Initial results from the experiment have been promising and will be made available to the public in late 1997. These and other efforts may assist the industry in significantly reducing the effects of Amendment 49 on certain trawl fisheries. Amendment 49 provides incentives for the Alaska groundfish industry to develop innovative solutions for reducing bycatch that also could be applicable to other fisheries throughout the United States and the world.

Comment 2: The EA/RIR/IRFA does not calculate net economic benefits or contain a cost benefit analysis as required under E.O. 12866.

Response: The Office of Information and Regulatory Affairs of the Office of Management and Budget has concurred with NMFS' determination that this rule is not significant for purposes of Executive Order 12866. Accordingly, the requirements of section 6(a)(3)(B) and (C), e.g., formal benefit/cost analysis, are not applicable to this regulatory action. However, the requirements of section 1(b), The Principles of Regulation, are applicable, including principle 6 which requires "each agency [to] assess both the costs and the benefits of the intended regulation and recognizing that some costs and benefits are difficult to quantify, propose, or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs." NMFS has fully complied with this requirement.

NMFS has noted repeatedly during the 4 years of analysis for Amendment 49 that the cost data necessary to conduct a rigorous, quantitative net benefit analysis are not available. When the industry has been invited to provide such data, it has declined to do so. Therefore, NMFS prepared an analysis on the basis of the best available scientific information. This largely gross revenue analysis was supplemented with qualitative assessments of the probable response of the affected sectors, the probable environmental response, as well as the potential price and market response, to the proposed action. Review and advice was sought from the Council's Advisory Panel and Scientific and Statistical Committee as well as other experts, from within the industry and outside the industry, in an effort to test the conclusions of the analysis against their respective

experience and expertise. Given the limitations on data, these experts consistently affirmed the analytical approach as well as the findings of the analysis. The EA/RIR/FRFA meets the rigor with which benefits and costs of amendments to the FMP have been analyzed, historically.

Comment 3: The IR/IU program may not satisfy Magnuson-Stevens Act provisions that require management programs "to the extent practicable and in the following priority—(A) minimize bycatch; and (B) minimize the mortality of bycatch which cannot be avoided." If no restrictions are placed on the production of fishmeal, many operations will have little incentive to reduce their bycatch of undersize fish and unwanted species. To satisfy this requirement, the program must demonstrate that such reductions are the result of increased avoidance of the types of unwanted pollock, Pacific cod, rock sole, and yellowfin sole that fishermen currently harvest. If the proposed program simply causes industry to retain and use bycatch without increasing the avoidance of these fish, the statutory requirement to minimize or avoid bycatch will remain unfulfilled.

Response: The Magnuson-Stevens Act defines the term "bycatch" as "fish which are harvested in a fishery, but which are not sold or kept for personal use, and includes economic discards and regulatory discards." Because the IR/IU program requires 100 percent retention of the four IR/IU species, bycatch of these species, as defined in the Magnuson-Stevens Act, will largely be eliminated in the groundfish fisheries of the BSAI.

With respect to the issue of "avoidance," the IR/IU program will provide significant incentives for all sectors of the industry to avoid unwanted harvest of IR/IU species. While operations that have the capacity to produce fishmeal may face less immediate incentives to avoid unwanted harvest of IR/IU species, the EA/RIR/FRFA concluded that the IR/IU program will provide an incentive for all sectors of the industry, including those with fishmeal processing capacity, to avoid the unwanted harvest of IR/IU species. This is so because processing fishmeal draws resources away from the production of higher value products. However, most catcher/processors and motherships with fishmeal processing capacity were designed to operate in the midwater pollock fishery. When participating in that fishery, these vessels already retain nearly 100 percent of their pollock and have little unwanted harvest of other groundfish

species. Consequently, the IR/IU program is expected to have less impact on these operations.

Operations that participate in less selective bottom trawl fisheries and that do not have the capacity to produce fish meal will have a significant incentive to avoid the harvest of unwanted or untargeted IR/IU species due to the cost of holding less valuable species in lieu of more valuable species. The Council expects that the economic incentive produced by the IR/IU program will generate innovative gear and fishing techniques as operators develop methods to comply with full retention requirements in a cost-effective manner. Currently, an association of factory trawlers configured for head-and-gut (H&G) processing is testing experimental fishing gear designed to reduce unwanted harvests of pollock and Pacific cod in flatfish fisheries.

The Council considered and rejected various proposals to limit production of fishmeal. Such proposals were considered to be unreasonably restrictive and of questionable benefit. A limit on fishmeal production would impose substantial additional costs on operations that have developed fishmeal plants for the purpose of processing fish waste, yet such limits would not increase benefits to the nation.

Comment 4: Section 313(f) of the Magnuson-Stevens Act requires that in implementing section 303(a)(11), the Council shall "submit conservation and management measures to lower, on an annual basis, for a period of not less than 4 years, the total amount of economic discards occurring in the fisheries under its jurisdiction." If the proposed IR/IU program is to satisfy this requirement, it must meet two criteria. First it must demonstrate annual reductions in the total amount of economic discards over a 4-year period. The proposed IR/IU program will result in a 1-year reduction in economic discards of pollock and Pacific cod, with no further reductions scheduled until 5 years later when a one time reduction in rock sole and yellowfin sole will be required. To satisfy the statutory requirement, the Council must identify where and how reductions in economic discards are to occur in years two, three, and four.

Response: See response to comment 3. The IR/IU program prohibits economic discards of pollock and Pacific cod beginning January 1, 1998, making additional reductions unnecessary for those species. With respect to bycatch of other species, the IR/IU program is but one element of the Council and NMFS's ongoing efforts to reduce bycatch and is not intended to reduce all forms of

bycatch occurring in the groundfish fisheries off Alaska. Other existing bycatch reduction programs include time and area closures, prohibited species catch limits, gear restrictions, support for gear research, and the vessel incentive program. Additional bycatch reduction programs are also under consideration by the Council.

Comment 5: The IR/IU proposal does not meet the goals identified by the Council's problem statement. Amendment 49 will fail to meet the Council's first goal to assure the long-term health of the fish stocks. The EA/RIR/IRFA concludes that the program, as designed, will fail to provide any conservation or positive environmental impact while most likely resulting in a decrease of long-term economic benefits to the nation. Of the industry sectors operating in the North Pacific, only the pollock and crab fleets lack a long-term stable fisheries-based economy due to limited stocks. This plan does nothing to address the waste of crab in the directed crab fisheries and will simply encourage more meal production rather than increase the supply of pollock available for surimi and fillet production.

Amendment 49 also will fail to meet the Council's second goal: reducing bycatch, minimizing waste, and improving utilization of fish resources. While some short attention was paid to defining waste, the EA/RIR/IRFA did not sufficiently analyze the real question raised by the program: Will we expend more resources and receive less benefit from our fish resources by implementing the proposal? The proposed IR/IU program will encourage continued economic loss and waste by (1) allowing fish that are currently discarded to be turned into meal, and (2) encouraging the use of resources to produce products worth less than the cost of production.

Response: See response to comments 3 and 4. Amendment 49 is only one of many efforts by the Council to reduce bycatch and ensure the long-term health of fish stocks. The Council is considering other efforts to reduce groundfish and crab bycatch including time and area closures, prohibited species catch limits, research into more selective fishing gear, and a vessel incentive program. The EA/RIR/IRFA prepared for Amendment 49 concluded that the program would provide a net benefit to the nation through a reduction in discards and improved utilization of species once they are harvested. The Council concurred in this conclusion as demonstrated by its unanimous vote to adopt Amendment 49.

Comment 6: While both of NMFS's Federal Register notices and the EA/RIR/IRFA analysis conclude that there will be no environmental benefit resulting from Amendment 49, Council on Environmental Quality (CEQ) regulations implementing NEPA still require the preparation of an environmental impact statement (EIS) for this major Federal action. CEQ regulations state that events which trigger an EIS include such indirect effects as changes in the use of ecosystems, and changes in historic and social effects, whether or not they are indirect or cumulative (40 CFR 1508.8(b)). An action also is significant when the effect on the human environment is highly controversial (40 CFR 1508.27(b)(4)) or is precedent setting (40 CFR 1508.27(b)(6)). The fact that the primary stated goal of the program is to avoid public censure of "waste" at the national level implies that this proposal is controversial. The EA/RIR/IRFA finds that the IR/IU program will significantly disadvantage an historic user group and is even intended solely for the purpose of meeting social needs. It certainly stands to establish a precedent for the nation. In other words, the EA/RIR/IRFA's findings clearly and unambiguously demonstrate that the IR/IU program is a major Federal action significantly impacting the human environment; therefore NEPA requires the preparation of an EIS.

Response: NMFS has determined that Amendment 49 will not affect significantly the quality of the human environment. Therefore, the preparation of an EIS on the final action is not required under section 102(2)(c) of NEPA or CEQ's implementing regulations. This finding of no significant impact is contained in the EA/RIR/IRFA for Amendment 49. Nevertheless, NMFS is currently preparing a broader EIS on the groundfish fisheries of the BSAI. This EIS will consider the impacts of the current groundfish management system including the IR/IU program.

Comment 7: The IRFA was flawed in that several reasonable traditional alternatives, currently used by NMFS and the State, were summarily rejected without discussion by the Council and were not analyzed in the IRFA. The Regulatory Flexibility Act (RFA) requires a description of "any significant alternatives . . . which minimize any significant economic impact" (5 U.S.C. 603(c)). The IRFA doesn't even mention an industry proposal to exempt unmarketable undersize fish from the proposed rule. Minimum size limits are currently used

in the halibut, crab, herring, and salmon fisheries. The Council has refused to consider industry proposals to only require retention of fish greater than 1.0 or 1.5 lb citing enforcement concerns. A minimum size standard applied to the IR/IU program would make this an effective program for reducing waste. The EA/RIR/IRFA itself bases its cost/benefit calculations on a set of minimum marketable sizes. Amendment 49, as proposed, should not be approved by NMFS, but should, instead, be returned to the Council for serious consideration of a viable alternative to mitigate the impact on the small H&G catcher/processors. The fact that, in effect, only one alternative was considered for improved retention is a serious defect in the analysis, and the fact that improved retention was considered a different option than improved utilization are disturbing attempts at arguing that three options were considered rather than one option and the *status quo*. Because the option of using traditional size restrictions is available, this alternative should be considered as viable for the purposes of analysis even if the Council did not intend to select that alternative.

Response: A wide variety of alternatives was considered during development of the IR/IU program. These alternatives were analyzed in a series of Council documents beginning with an Implementation Issues Analysis dated September 11, 1995. These documents were incorporated by reference into the final EA/RIR/IRFA. The Council considered and rejected minimum size limits for retention of IR/IU species because an exemption allowing the discard of undersize fish would have diluted the incentives for vessel operators to avoid the bycatch of juvenile fish in the first place. See also response to comment 12.

The RFA as supplemented contains the required discussion of alternative that will have less impact on small entities and the reasons such alternatives were rejected.

Comment 8: Much of the "full utilization" achieved by shore-based plants results from the production of fishmeal. The Environmental Protection Agency (EPA) has stated that shoreside pollock fishmeal processors lead the industry in terms of pollutant discharges. In contrast, the EPA found that discharges of seafood wastes to deeper unimpounded offshore waters by mobile at-sea processors do not create the same kinds of problematic waste piles as do shore-based processors (U.S. EPA, Response to Comments, Seafood Processors in Alaska, NPDES General Permit No. AK-G52-0000 (1995)). An

IR/IU program that allows meal to meet the increased utilization standard creates a pollution concern. Any IR/IU program should be designed to avoid or minimize rather than increase the impact of processing wastes on the ocean ecosystem.

Response: The potential environmental degradation resulting from shore-based groundfish processing varies on a case-by-case basis depending on the form of the discharged material and the location of the discharge. For this reason, the EPA no longer regulates shore-based surimi and fishmeal processors in the BSAI under the general permit cited in the comment. In general, fishmeal processing transforms the waste stream from solid to liquid form, which may have greater or lesser impacts on the environment depending on the location of the discharge. In many instances, liquid waste from fishmeal processing may have less impact on the environment than solid waste because it disperses more rapidly. As a result, the EPA now regulates each shore-based surimi and fishmeal processor under a separate NPDES permit which establishes limits on both solid and liquid waste discharges. Shore-based processors must continue to operate under the terms of their NPDES permits once the IR/IU program becomes effective.

Comment 9: If fishermen are required to retain and market juvenile, diseased, or damaged fish, the reputation of Alaska seafood products on the world market will be damaged.

Response: The final rule does not place restrictions on types of products a vessel may produce from IR/IU species, nor does it restrict the industry to production of products for human consumption. Small, damaged, or diseased fish may be processed into fishmeal, fish oil, minced fish, or other products not intended for human consumption. Operations with the capacity to produce fishmeal will have little difficulty processing fish that may not be fit for human consumption. Operations without the capacity to produce fishmeal may find it more difficult to handle such fish. However, NMFS does not expect processors to deliberately undermine the marketability of their food grade products by including fish that may be unsuitable for that purpose. NMFS expects that most operators will comply with the IR/IU program by developing a range of products and use below food grade fish to produce products not intended for human consumption.

Comment 10: Amendment 49 should allow for the live release of bycatch, as encouraged by the Magnuson-Stevens

Act. Vessel operators using longline, pot, and jig gear have the ability to carefully release bycatch. While pollock and Pacific cod have closed swim bladders and may not survive release, flatfish have open swim bladders and will survive.

Response: Longline, pot, and jig vessels do not encounter bycatch of rock sole and yellowfin sole in quantities sufficient to warrant a special exemption for those gear types. NMFS catch statistics indicate that longline, pot, and jig vessels operating in the BSAI encounter only negligible amounts of rock sole and yellowfin sole. Longline bycatch of these species averages 0.0 percent for rock sole and 0.2 percent for yellowfin sole as a percentage of total catch. Bycatch of these species by pot and jig vessels is virtually unreported. Consequently, a full retention requirement for rock sole and yellowfin sole is expected to have a negligible effect on vessels using longline, pot, and jig gear.

Comment 11: The final rule should contain exemptions for diseased, contaminated, parasite-ridden, or damaged fish. Contaminated, diseased, parasite-ridden, or damaged fish are inevitably encountered in the course of fishing and processing activities. Retention of such fish is in conflict with Food and Drug Administration (FDA) Hazard Analysis Critical Control Point (HACCP) requirements. In fact, the HACCP plans drafted by many companies actually require the discard of fillet products with large amounts of parasites in them.

Response: NMFS recognizes that some fish may enter a processing facility that may be below food grade (see response to comment 9). However, the final rule does not limit the type of products a processor may produce from its retained catch, nor does it establish a minimum recovery rate for each fish. The 15-percent minimum utilization rate requirement in the final rule applies to a vessel's aggregate production from each IR/IU species during a fishing trip, rather than each individual fish. Many processors in the BSAI currently utilize damaged and parasite ridden fish in a variety of products such as fishmeal, fish oil, minced fish, and bait that are not intended for human consumption.

Federal HACCP regulations require processors to address food safety hazards in their HACCP plans. However, nothing in the HACCP regulations requires processors to discard fish that are below food grade. Such fish may be utilized in a variety of non-food products. Seafood processors that currently rely on discarding of whole fish to comply with

HACCP requirements will need to modify their HACCP plans to comply with the provisions of the IR/IU program.

The Council and NMFS considered and rejected various exemptions for damaged and parasite-ridden fish for a variety of reasons. An exemption allowing discards of fish that are damaged in the course of handling and processing could undermine the effectiveness of the IR/IU program and render it unenforceable. NMFS believes that such an exemption would provide an incentive for processors to deliberately damage quantities of IR/IU species that they would prefer not to retain and process for economic reasons.

NMFS does not have statistics on the percentage of fish that are rendered unsuitable for food products as a result of parasites. Various parasites are commonly encountered in BSAI groundfish catches, and processors have developed various techniques for parasite removal during processing. An exemption that would allow discarding of fish with parasites could undermine the effectiveness of the IR/IU program and allow wholesale discards of marketable fish because some form of parasite is likely to be encountered in most pollock and Pacific cod.

The Council and NMFS recognize that retention of damaged fish may pose a problem for certain sectors of the industry. Processors with the capacity to produce fishmeal are unlikely to be affected because damaged and parasite-ridden fish are suitable for fishmeal processing. Processors without fishmeal plants may find it more difficult to produce marketable products from damaged fish. To address these concerns, the Council voted to establish an IR/IU implementation committee composed of representatives from industry, conservation groups, and management agencies. This IR/IU implementation committee will be charged with examining problems that surface during implementation of the IR/IU program and providing the Council and NMFS with recommendations for changes and modifications to the program that may prove necessary. NMFS intends to work closely with the Council and industry during implementation of Amendment 49 to further refine aspects of the program as problems become apparent during implementation.

Comment 12: The proposed IR/IU program should contain exemptions for undersize fish. Most fish processing equipment is limited to processing fish within certain size ranges. For technological reasons, some processors may be unable to process fish that fall

outside these size parameters. A minimum size standard would increase the net economic benefits to the nation as a result of the IR/IU program by not imposing costs on industry to process unmarketable undersize fish.

Response: Processors with fishmeal plants will have no difficulty processing undersize or juvenile fish. However, NMFS recognizes that processors without fishmeal plants may be forced to process undersize fish into products of little or no value, such as whole frozen fish. During early development of the IR/IU program, the Council considered and rejected exemptions for juvenile fish because an exemption allowing the discard of undersize fish would not have provided vessel operators an incentive to avoid the bycatch of juvenile fish in the first place. The intent of the IR/IU program is to provide industry with incentives to develop more selective fishing techniques, and that objective is also underscored in the Magnuson-Stevens Act. To that end, NMFS is currently sponsoring research into more selective fishing gear such as larger mesh codends and trawl escape panels, and believes that fishing selectivity will improve as vessel operators endeavor to avoid bycatch of juvenile fish. To the extent that vessel operators are able to avoid the capture of juvenile fish in the first place, the impacts of the full retention requirement will be reduced.

Comment 13: The IR/IU program should not require the retention and utilization of previously-caught fish which may be brought on board a vessel through fishing or retrieval of lost gear. For example, last year a vessel retrieved a codend that had been lost in a pollock fishery 4 months earlier. The codend was still full of pollock (approximately 80 mt). The fish had begun to putrefy and the gas caused the codend to float to the surface. The vessel that retrieved the codend had to bring the fish on board to dump the codend. According to the proposed rule, that vessel would have been required to retain all pollock brought on board the vessel without distinction as to their condition or the circumstances involved. During the yellowfin sole fishery, dead yellowfin sole commonly are caught that had been previously discarded by other vessels. Under the IR/IU program, discard of IR/IU species may be required for a vessel to comply with directed fishing closures. Vessels should not be required to retain and utilize dead and putrefying fish that were previously caught and discarded by other vessels.

Response: NMFS agrees. The final rule has been modified to allow for the discard of previously caught fish. Vessel

operators should not log previously caught fish as part of their round-weight catch of an IR/IU species. NMFS daily fishing logbooks and daily cumulative production logbooks already provide discard code 97 for previously discarded (decomposed) fish taken with trawl gear in current fishing efforts. This code also should be used when logging discards of previously caught IR/IU species.

Comment 14: Since the purpose of the IR/IU program is to reduce waste in the groundfish fishery, NMFS should review the advisability of maintaining the current restrictions on the amount of pollock roe a vessel is allowed to have on board at any point in time. Those restrictions were adopted as an indirect method of prohibiting the practice of roe-stripping. Although well intended, and supported by industry at the time they were initially imposed, the current regulations have actually resulted in the discarding of roe during time periods of peak roe recovery. Such a result is incongruous in light of current efforts to reduce waste in the fishery—especially in view of the discarding restrictions incorporated in Amendment 49. NMFS should reconsider the need for the roe retention limits once IR/IU regulations go into effect and, if possible, increase the amount of retainable roe so as to avoid situations where vessels are required to discard the most valuable of all products produced by the pollock fishery.

Response: NMFS agrees. The current regulations governing retention of pollock roe were adopted by NMFS in 1990 to implement Amendment 13/19 to the groundfish fishery management plans for the BSAI and GOA. Amendment 13 to the BSAI FMP states:

Roe-stripping is prohibited, and the Regional Director is authorized to issue regulations to limit this practice to the maximum extent practicable. It is the Council's policy that the pollock harvest shall be utilized to the maximum extent possible for human consumption.

Among the options considered by the Council during analysis of Amendments 13/19 was an option that would have required full utilization of pollock, a more restrictive option than the prohibition on roe stripping that was adopted by the Council at that time. The IR/IU program established by Amendment 49 in effect implements the more restrictive roe-stripping prohibition originally rejected by the Council for Amendment 13. Consequently, previously adopted regulations that limit roe-stripping through maximum retainable percentages may be redundant and unnecessary. For that reason, NMFS

intends to work with the Council and the Council's IR/IU implementation committee to determine if existing limits on roe retention continue to serve a purpose after implementation of the IR/IU program.

Comment 15: The IR/IU program should contain a provision to allow trawlers to bleed codends when necessary for vessel safety. On occasion a vessel may accidentally harvest more fish than can be safely brought on board. Vessel operators should not be faced with either bringing the fish on board and risking the safety of the entire crew and vessel, or violating IR/IU regulations by discarding the portion of the catch that cannot be brought on board safely.

Response: The Council's IR/IU industry committee considered and rejected proposals to allow codend bleeding. The IR/IU committee believed that this practice should stop, and that a prohibition on bleeding codends would provide an incentive for fishermen to fish in a more cautious manner when their holds are near capacity. In addition, many catcher vessels have the capacity to carry excess catch on deck safely, although fish retained in such a manner (without refrigeration) may not be desired by the processor to which they are delivering. NMFS Enforcement and the U.S. Coast Guard generally are not in a position to evaluate whether a particular instance of discarding was motivated by legitimate safety concerns or by economic reasons. Nevertheless, should a vessel operator believe it necessary for the safety of the vessel to bleed a codend, the amount of discards should be entered into the vessel's daily fishing log along with a description of the extenuating circumstances. NMFS will review such instances on a case-by-case basis with consideration given to the extent of the violation and possible mitigating circumstances.

Comment 16: The IR/IU program should provide a buffer between maximum retainable bycatch (MRB) percentages under the directed fishing standards and the IR/IU minimum retention requirements. Under the proposed rule, the combination of these two standards results in a single point (20 percent for pollock and Pacific cod and 35 percent for rock sole and yellowfin sole) that a vessel operator must achieve to comply with both standards simultaneously. Without onboard scales, no catcher vessel can retain precisely 20 percent of an IR/IU species. This is true for both vessels that partially sort their catch on board and for those that pump fish directly into refrigerated seawater. This situation is

an untenable position for a catcher vessel and differs greatly from the situation for a catcher/processor, which may meet both standards by monitoring the number of cases of product on board and maintaining appropriate ratios. If MRB requirements take precedence over IR/IU requirements then the proposed rule should lower the retention standard when an IR/IU species is closed to directed fishing to provide a range of 15 to 20 percent for pollock and Pacific cod and 25 to 35 percent for rock sole and yellowfin sole within which catcher vessels could retain or discard IR/IU species at their option.

Response: The Council, through its IR/IU industry committee, considered and rejected a proposal to provide a buffer between IR/IU retention requirements and MRB amounts. The IR/IU industry committee recommended, instead, that this issue be reexamined once the program is underway and that possible solutions could be developed at that time if necessary.

When an IR/IU species is closed to directed fishing, the IR/IU program does not require a vessel operator to retain exactly the MRB amount for that species. Rather, the program simply requires the retention of all catch of that species up to the MRB amount in effect for that species. A vessel operator who maintains a bycatch rate below the MRB percentage in effect for an IR/IU species will avoid the difficult scenario described in the comment. The avoidance of bycatch is an underlying objective of the Magnuson-Stevens Act and one objective of the IR/IU program is to encourage vessel operators to simply avoid the harvest of IR/IU species when those species are closed to directed fishing. To that end, NMFS is actively promoting the development of more selective gear technologies and is assisting industry efforts to identify and avoid areas with high bycatch rates. NMFS believes that attempts should first be made to avoid excessive bycatch of IR/IU species closed to directed fishing before retention standards are relaxed to accommodate discards of such bycatch.

Comment 17: The 15-percent minimum utilization rate standard in the proposed rule depends on accurate estimates of a vessel's total catch. We are concerned that measurement error by observers in the calculation of total catch of each IR/IU species may make a vessel accountable for processing more fish than it actually caught. Due to the vagaries of species composition sampling, an observer's estimate of total catch of an IR/IU species during a specific haul may differ from the

vessel's actual catch by a significant percentage. Based on our experience with the accuracy of species composition sampling, this "phantom fish" problem could occur to a significant degree.

Response: NMFS recognizes the problems associated with calculating the total catch of each IR/IU species on a haul-by-haul basis. However, the IR/IU program does not depend on observer estimates of total catch of each IR/IU species for monitoring and enforcement of the 15-percent minimum utilization rate. Instead, each processor is required to log its total catch weight of each IR/IU species on a haul-by-haul basis. NMFS logbooks will be revised to accommodate collection of this data. When verifying compliance with the 15-percent minimum utilization rate, a catcher/processor's logged round-weight catch of an IR/IU species will be compared against the weight of products produced from that IR/IU species.

At this point, NMFS has not established specific guidelines or procedures for measurement of the round-weight catch of IR/IU species on board vessels. Vessel operators are free to measure their round-weight catch of each IR/IU species in the manner they determine to be most appropriate to their circumstances. When observers are present, vessel operators are free to use the observer's estimate of total catch, or they may independently measure the round-weight catch of each IR/IU species.

NMFS chose not to base monitoring and enforcement of the 15-percent utilization standard on observer estimates of round-weight catch because not all vessels have 100-percent observer coverage, and observers, when present, may not sample every haul. If observer estimates were used to monitor compliance with the IR/IU program, then vessels without observer coverage would, in effect, be exempt from the program. Nevertheless, NMFS may use observer data as well as any additional information that may be available to verify the accuracy of a vessel's logged round-weight catch of IR/IU species. The deliberate under-logging of round-weight catch to evade minimum utilization requirements is a violation of NMFS recordkeeping and reporting requirements and would be subject to enforcement action.

Comment 18: As indicated in the EA/ RIR/IRFA, implementation of the IR/IU program requires parallel State of Alaska (State) regulations for onshore processors. In the absence of parallel State regulations, catcher vessels will be placed in an untenable position if onshore processors refuse to accept their

catch and Federal regulations prohibit them from discarding at sea. Therefore, implementation of the IR/IU program should be delayed until State IR/IU regulations are in place.

Response: The State is currently developing a parallel IR/IU program that would establish retention and utilization requirements for onshore processors, and require onshore processors to accept deliveries of IR/IU species. The Alaska Department of Fish and Game (ADF&G) has indicated that under existing State statutes that prohibit roe stripping and waste of pollock, the State has authority to implement IR/IU regulations to govern onshore processing of pollock. ADF&G has indicated that the State is proceeding with implementation of IR/IU regulations to govern onshore processing of pollock that would be effective January 3, 1998. However, ADF&G has indicated that parallel IR/IU regulations to govern onshore processing of Pacific cod may not be in place until mid-1998 because a statutory change is necessary before the State can regulate onshore processing of Pacific cod.

At the September 1997 Council meeting, NMFS met with representatives for catcher vessel operators and concluded that parallel State regulations for pollock will address the concerns of the catcher vessel fleet on an interim basis provided the State also proceeds with parallel State regulations for Pacific cod. Catcher vessel operators are most concerned about being able to deliver pollock bycatch to processors that have not traditionally processed pollock in the past. Catcher vessel operators indicate that they are much less concerned about finding onshore markets for Pacific cod.

Comment 19: The EA/RIR/IRFA clearly concludes that adoption of parallel IR/IU regulations by the State is critical to the success of the program. The State, acting through the Commissioner of Fish and Game, recently argued in Alaska Superior Court that regulations allowing the roe stripping of salmon and discard of 100 percent of the salmon carcasses were legal under the Alaska anti-waste statute (*Callaghan v. Alaska*, No. 3AN-96-8963 Civ., Slip Op. (3d Super. Ct. Alaska July 14, 1997)). In *Callaghan*, the State Attorney General justified the discard of salmon citing the Commissioner of Fish and Game's finding that harvesters "might not harvest these salmon because of lack of markets." In finding for the State, the Court relied in part on a finding by the Commissioner of Fish and Game that "catching and processing the entire fish would result in a

financial loss" (*Id.* at 8). In short, the State prevailed arguing that (1) it is not waste to discard unmarketable fish, and (2) ADF&G and the State Attorney General are justified in not enforcing the State of Alaska anti-waste laws. We believe, therefore, that NMFS cannot reasonably conclude that the State of Alaska will implement or enforce parallel IR/IU regulations for onshore processors. Without implementation and enforcement of parallel State regulations, the IR/IU program should be disapproved.

Response: See response to comment 18. Throughout Council development of the IR/IU program, the State has expressed its intent to promulgate parallel IR/IU regulations for onshore processors. The State was a principal proponent of the IR/IU program throughout the Council process, and NMFS has no reason to believe that the State will fail to follow through with its commitment to implement parallel IR/IU regulations for onshore processors.

Comment 20: NMFS' ability to determine if the proposed IR/IU program satisfies the law and meets the intent of the Council depends on its ability to monitor and measure the extent to which vessels avoid bycatch. However, the proposed program includes no such monitoring mechanism. In fact, throughout the proposed amendment, and also the proposed rule, limitations and difficulties associated with monitoring, enforcement, and compliance with the program are prominent. There is no explicit discussion of a monitoring system geared to assess the efficacy of the program. Further, at the June 1997 Council meeting, representatives of NMFS recognized that the program does not include suitable methods by which to measure its success in meeting stated intent or satisfying legal requirements.

This lack of a monitoring program is directly counter to the draft regulations NMFS will soon propose to help Councils implement bycatch reduction requirements. The proposed revisions to the guidelines for Magnuson-Stevens Act national standards include the following section for bycatch reduction requirements:

Implementation and monitor selected [bycatch reduction] management measures. Effects of implemented measures should be evaluated routinely. Monitoring systems should be established prior to fishing under the selected management measures. Where applicable, implementation plans should be developed and coordinated with industry and other concerned organizations to identify opportunities for cooperative data collection, coordinating data management for cost efficiency and avoidance of duplicate effort.

Response: Monitoring and evaluation of the IR/IU program will be accomplished primarily through the use of existing sources of data on the catch, retention, and utilization of IR/IU species in the BSAI. The groundfish fisheries of the BSAI are among the most extensively monitored fisheries in the United States and are subject to the most extensive observer coverage requirements of any fishery in the United States. NMFS's groundfish monitoring program gathers data from a variety of sources including observer reports, industry-submitted weekly production reports, NMFS daily fishing logbooks, and ADF&G fish tickets. These data sources will enable NMFS to assess the effectiveness of the IR/IU program on a fleet-wide basis. Where necessary, existing data collection programs are being adjusted to accommodate the collection of data necessary for monitoring the IR/IU program. For example, NMFS catcher vessel daily fishing logbook, catcher/processor daily fishing logbook and mothership cumulative production logbooks are being revised to accommodate the collection of round-weight catch data for IR/IU species on a haul-by-haul basis.

Changes From the Proposed Rule

Four changes were made from the proposed rule in response to comments:

1. A provision was added at § 679.27(h) to allow for the discard of previously caught fish.
2. The prohibition on discard of products from IR/IU species at § 679.27(e) was revised to allow the discard of products when necessary to comply with a directed fishing closure.
3. The definition of "fishing trip" at § 679.2 was revised to specify that it applies to the IR/IU program as well as to directed fishing closures.
4. The proposed rule contained separate utilization requirements based on a fishing trip for catcher/processors and a reporting week for motherships. In the final rule, these were combined into a single utilization standard based on a fishing trip for both catcher/processors and motherships.

Summary of the Final Rule and Guide to Compliance

The following section in question-and-answer format describes and summarizes the requirements of the final rule and is intended to serve as a compliance guide for vessel owners and operators.

Who Must Comply With IR/IU Regulations?

If you own or operate a vessel fishing for groundfish in the BSAI or processing groundfish harvested in the BSAI, you must comply with the IR/IU regulations regardless of your vessel's size, gear type, or target fishery. Because the Magnuson-Stevens Act does not authorize NMFS to regulate onshore processing of fish, these requirements do not apply to onshore processors. Parallel regulations to extend IR/IU requirements to onshore processors will be issued by the State of Alaska.

Which Species Must Be Retained?

The IR/IU program defines four groundfish species as IR/IU species: pollock, Pacific cod, rock sole, and yellowfin sole. Retention and utilization requirements apply to pollock and Pacific cod beginning January 3, 1998. The requirements will apply to rock sole and yellowfin sole beginning January 1, 2003. The purpose of the 5-year delay for rock sole and yellowfin sole is to provide industry with sufficient time to develop more selective fishing techniques and/or markets for these fish.

What Are the Retention Requirements for Catcher Vessels When Directed Fishing Is Open?

The retention requirements for all vessels are set out in table format at § 679.27(c)(2). If you own or operate a catcher vessel, and directed fishing for an IR/IU species is open, you must retain all fish of that species brought on board your vessel until the fish are lawfully transferred or sold to an authorized party such as a processor operating with a Federal processor permit. This requirement applies to all IR/IU species you have caught as well as all IR/IU species you have received via transfer from another vessel.

What Are the Retention Requirements for Catcher Vessels When Directed Fishing Is Closed?

If you own or operate a catcher vessel and an IR/IU species is closed to directed fishing, you must retain all fish of that species up to the MRB amount in effect for that species. If your catch of an IR/IU species exceeds the MRB amount in effect for that species, your catch in excess of the MRB amount must be discarded. Because the MRB amount for a vessel is a running total based on the retained catch of species open to directed fishing, you may find it necessary to discard excess bycatch of an IR/IU species during the early part of a fishing trip and may not subsequently encounter any additional bycatch of that

IR/IU species during the fishing trip. In such an instance, you would be in compliance with the IR/IU program even though the percentage of that IR/IU species in your delivery may be below the MRB and you discarded catch of that species earlier in the fishing trip.

The simplest way to simultaneously comply with directed fishing closures and the IR/IU retention requirements is to avoid excessive bycatch of IR/IU species that are closed to directed fishing. If you catch less than the MRB percentage for an IR/IU species, you simply retain your entire catch of that species and avoid the difficulty associated with calculating how much fish to discard. While NMFS encourages vessel operators to avoid bycatch of IR/IU species that are closed to directed fishing, at times avoidance may be difficult. Vessel operators who frequently exceed the MRB amount in effect for an IR/IU species are encouraged to develop appropriate catch measurement techniques, such as measured fish-hold volumes or on-board scales. At this point, NMFS has not established standards for measurement of catch on catcher vessels and intends to seek input from industry on appropriate and cost-effective measurement techniques.

What Are the Retention Requirements for Catcher/Processors When Directed Fishing Is Open?

If you own or operate a catcher/processor and directed fishing for an IR/IU species is open, you must retain a primary product from all fish of that species brought on board your vessel until such products are lawfully transferred to an authorized party. This includes all fish you have caught as well as all fish you have received via transfer from another vessel. You may use any primary product, except roe, to meet this minimum retention requirement. The IR/IU program does not limit or define the types of primary products that must be produced from each IR/IU species, provided that all primary and ancillary products are logged in your daily cumulative production logbook (DCPL). In addition, whole fish may be considered a product for the purpose of this program provided that they are logged as whole fish in your DCPL.

What Are the Retention Requirements for Catcher/Processors When Directed Fishing Is Closed?

If you own or operate a catcher/processor and an IR/IU species is closed to directed fishing, you must retain a primary product from all fish of that species brought on board your vessel up to the point that the round-weight

equivalent of primary products from that species equals the MRB amount for that species. The simplest way to meet this requirement is to avoid bycatch of an IR/IU species that is closed to directed fishing so that your production from that species does not approach the MRB percentage in effect for that species.

To monitor your vessel's compliance, you must track, on a running basis, both the round-weight equivalent of primary products from your basis species, i.e., those species open to directed fishing, and the round-weight equivalent of your primary products from the IR/IU species closed to directed fishing. As long as the round-weight equivalent of your primary products from the IR/IU species closed to directed fishing is at or below the MRB amount in effect for that species, you must retain a primary product from all catch of that species. If during the course of a fishing trip you find that you have exceeded the MRB amount for an IR/IU species, you are permitted to discard product from that species, if necessary, to bring your operation into compliance with the directed fishing closure. This is the only instance in which you are permitted to discard products from IR/IU species.

What Is the Definition of a Fishing Trip?

The definition of a fishing trip used to monitor compliance with the IR/IU program is the same definition of a fishing trip currently used to monitor compliance with directed fishing closures. You are engaged in a fishing trip from the time you begin or resume harvesting, receiving, or processing groundfish in an area until: (1) You offload or transfer all fish or fish product from your vessel; (2) you enter or leave an area where a different directed fishing prohibition applies; or (3) you come to the end of a weekly reporting period, whichever comes first. This definition of fishing trip applies to catcher vessels, catcher processors, and motherships.

What Are the Retention Requirements for Motherships?

The retention requirements for motherships and catcher/processors are identical. No distinction is made between IR/IU species that you have caught and IR/IU species you have received through transfer or delivery from another vessel.

Under What Circumstances May IR/IU Species Be Released Before They Are Brought on Board?

The intentional discard of IR/IU species prior to bringing them on board

your vessel, such as bleeding codends or shaking fish off longlines, is prohibited. However, NMFS recognizes that some escapement of fish from fishing gear does occur in the course of fishing operations. Therefore, incidental escapement of IR/IU species, such as fish squeezing through mesh or accidentally dropping off longlines, will not be considered a violation unless the escapement is intentionally caused by action of the vessel operator or crew.

What if I Must Bleed a Codend for the Safety of My Vessel?

The IR/IU program contains no exemption to allow the bleeding of codends for safety reasons. NMFS urges vessel operators to fish in a cautious manner when their fish holds are near capacity to avoid catching more fish than can be retained safely. If you believe that circumstances require you to bleed a codend or otherwise discard IR/IU species for the safety of your vessel, you must log the amount of discard in your daily fishing logbook (DFL) and describe the circumstances surrounding the incident. Failure to log such an incident is a violation of NMFS recordkeeping and reporting requirements. NMFS will review such incidents on a case-by-case basis with consideration given to the extent of the violation and possible mitigating circumstances.

Must I Retain Bycatch of Decomposed Fish Previously Discarded by Other Operations?

You may discard any bycatch of previously discarded fish. When you encounter such fish, they should not be recorded in your logbook as part of your round-weight catch of an IR/IU species. Discards of previously discarded fish should be logged using discard code 97, which is for discards of previously discarded, i.e., decomposed, fish taken with trawl gear in current fishing efforts.

May I Discard Any Products Produced From IR/IU Species?

Discard of retained products from an IR/IU species is prohibited unless discarding of product is necessary to comply with a directed fishing closure.

May I Discard Fish or Products Transferred From Another Vessel?

The retention requirements of the IR/IU program apply to all fish brought on board your vessel, regardless of whether they were harvested by your vessel or transferred from another vessel. You are prohibited from discarding any products produced from IR/IU species that were transferred to you from another vessel.

May I Use IR/IU Species as Bait?

IR/IU species may be used as bait provided the bait is physically attached to authorized fishing gear when deployed. Dumping IR/IU species as loose bait (e.g., chumming) is prohibited.

How Is the 15-Percent Minimum Utilization Rate Calculated When Directed Fishing Is Open?

If directed fishing for an IR/IU species is open, your total weight of retained or lawfully transferred products produced from IR/IU species harvested or received by your vessel during a fishing trip must equal or exceed 15-percent of your round-weight catch of that species during the same fishing trip.

How Is the 15-Percent Minimum Utilization Rate Calculated When Directed Fishing Is Closed?

When directed fishing for an IR/IU species is closed, your total weight of retained or lawfully transferred products produced from IR/IU species harvested or received by your vessel during a fishing trip must equal or exceed either 15-percent of the MRB amount in effect for that species or 15-percent of the round-weight catch of that species, whichever is lower. You are only required to utilize those fish that you are required to retain under the retention requirements of the IR/IU program. For example, if you have minimal bycatch of an IR/IU species closed to directed fishing (below the MRB amount), your total weight of retained products must equal or exceed 15-percent of your round-weight catch of that species. If your bycatch of an IR/IU species closed to directed fishing is high enough that you are forced to discard a portion of your catch to avoid exceeding the MRB amount, the 15-percent utilization rate would be applied against the MRB amount and not against your total catch of that species prior to discarding. You must simultaneously comply with both the retention and utilization requirements of the IR/IU program. Compliance with one standard in the absence of the other would be a violation.

How Do Utilization Requirements Differ Between Catcher/Processors and Motherships?

The only difference between the utilization requirements for catcher/processors and motherships is that the 15-percent minimum utilization rate is applied during the course of a fishing trip for catcher/processors and during the course of a reporting week for motherships. For the purpose of the IR/IU program, NMFS has defined the term

“fishing trip” in the same manner as it is defined for the purpose of monitoring directed fishing closures.

How Do I Calculate My Round-Weight Catch of IR/IU Species?

If you operate a catcher vessel or catcher processor, you must record the round-weight catch of all IR/IU species on a haul-by-haul basis. If you operate a mothership, you must record the round weight of all IR/IU species received on a delivery-by-delivery basis. If you have an observer aboard your vessel, you are free to use the observer's estimates of round-weight catch of each IR/IU species, but you are not required to do so. At this point, NMFS has not established specific guidelines or procedures for measurement of the round-weight catch of IR/IU species on board vessels. Vessel operators are free to measure their round-weight catch of each IR/IU species in the manner they determine to be most appropriate to their circumstances. However, NMFS may verify the accuracy of a vessel's reported round-weight catch of IR/IU species by comparison to observer data and by any other means that may be available. Deliberate under-logging of the round-weight catch of an IR/IU species is a violation of NMFS recordkeeping and reporting requirements and is subject to enforcement action.

What Changes to Recordkeeping and Reporting Requirements Are Included in the IR/IU Program?

This final rule includes changes to existing recordkeeping requirements to aid the monitoring and enforcement of the IR/IU program. Beginning January 3, 1998, all catcher vessels and catcher/processors that are currently required to maintain NMFS logbooks are required to log the round-weight catch of pollock and Pacific cod in the NMFS catcher vessel DFL or catcher/processor DCPL on a haul-by-haul or set-by-set basis. Motherships are required to log the receipt round weight of pollock and Pacific cod in the mothership DCPL on a delivery-by-delivery basis. Beginning January 1, 2003, this requirement will extend to rock sole and yellowfin sole. These changes are necessary to provide vessel operators and enforcement agents with round-weight information for each IR/IU species in order to monitor compliance with the IR/IU program.

Additional Technical Changes to Existing Regulations

The definition of “fishing trip” at § 679.2 is revised to specify that it applies to the IR/IU program as well as to directed fishing closures. This change

is necessary to clarify the meaning of the term "fishing trip" as it applies to the IR/IU program.

The definition of "round weight or round-weight equivalent" at § 679.2 is revised by restricting the definition to "round-weight equivalent". The term "round weight" is already defined by NMFS in regulations appearing at 50 CFR part 600 and does not need to be re-defined in regulations at § 679.2.

The prohibition on discard of pollock product at § 679.20(g)(5)(ii) is revised to allow the discard of product when necessary to comply with a directed fishing closure. This change is necessary to prevent a conflict with the regulations at § 679.20(i) that implement the IR/IU program.

Regulations at § 679.50 (c) and (d), which specify observer coverage requirements for motherships based on "round weight or round-weight equivalent" of groundfish processed, are revised by removing the term "round weight." Observer coverage requirements for motherships during a calendar month would be based only on the round-weight equivalent of groundfish processed. This change is necessary because the terms "round weight" and "round-weight equivalent" would no longer be synonymous under the final rule.

Classification

The Administrator, Alaska Region, NMFS, determined that Amendment 49 is necessary for the conservation and management of the groundfish fishery of the BSAI and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act. The collection of this information has been approved by the Office of Management and Budget, OMB Control Number 0648-0213.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

Public comment is sought regarding: Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information,

including through the use of automated collection techniques or other forms of information technology.

An RIR was prepared for this final rule that describes the management background, the purpose and need for action, the management action alternatives, and the social impacts of the alternatives. The RIR also estimates the total number of small entities affected by this action and analyzes the economic impact on those small entities.

An FRFA has been prepared for this action and consists of the EA/RIR/FRFA and the preambles to the proposed and final rules implementing this action. The analysis examines the economic effects of this final rule by fishery and gear type and makes the following conclusions: (1) The economic effects of the final rule on vessels using longline, jig, and pot gear would not be significant; (2) the economic effects of the final rule on trawl catcher vessels and shore-based processors would not be significant; and (3) the economic effects of the final rule on trawl catcher/processor operations may or may not be significant depending upon the fishery as well as the size and processing capacity of the vessel in question.

Under the category of trawl catcher/processors, the economic effects on vessels participating in the pollock, sablefish, Greenland turbot, rockfish, and Atka mackerel fisheries would not be significant. However, the economic effects on vessels participating in the Pacific cod, rock sole, yellowfin sole, flathead sole and "other" flatfish fishery would be significant. The reason is that the bycatch of IR/IU species in these fisheries is substantial. The quantity of additional retained catch that operators in these fisheries would be required to handle under the final rule would impose significant operational costs on these fisheries, taken as a whole. This is especially true for products for which markets are limited or undeveloped (e.g., small Pacific cod, male rock sole, and H&G pollock). Current prices for these products may be insufficient to cover the costs of their production.

In general, the impacts on any individual factory trawler operation would vary inversely with the size and configuration of the vessel, hold capacity, processing capability, markets and market access, as well as the specific composition and share of the total catch of the four IR/IU species. The burden would tend to fall most heavily upon the smallest, least diversified operations among the current fleet. In addition, the groundfish vessel moratorium, proposed license limitation

program, and U.S. Coast Guard load-line requirements severely limit reconstruction to increase vessel size and/or processing capacity. These restrictions are expected to further limit the ability of smaller catcher/processors to adapt to the proposed IR/IU program.

NMFS data indicate that in 1995, 44 at-sea processors participated in the BSAI Pacific cod trawl fishery (4 motherships and 40 catcher/processors); 38 at-sea processors participated in the BSAI rock sole fishery (2 motherships and 36 catcher/processors); 48 at-sea processors participated in the BSAI yellowfin sole fishery (4 motherships and 44 catcher/processors); 19 catcher/processors participated in the flathead sole fishery; and 23 at-sea processors participated in the "other" flatfish fishery (1 mothership and 22 catcher/processors).

In selecting its preferred alternative for Amendment 49, the Council minimized the economic impact of the IR/IU program on small entities in a variety of ways. First, the Council adopted 5-year delay in the effective date for rock sole and yellowfin sole to provide industry with sufficient time to develop more selective fishing techniques and/or markets for fish that are currently being discarded. Second, the Council rejected utilization alternatives that would have limited product forms or placed limits on fishmeal production, in order to allow industry more flexibility in complying with the utilization requirements of the IR/IU program. Finally, the Council rejected monitoring alternatives that would have imposed substantial costs in the form of increased observer coverage requirements or required a full time compliance monitor aboard all vessels. For reasons set forth in this preamble above, alternatives that would have further minimized economic impacts on small entities were rejected.

This final rule has been determined to be not significant for the purposes of E.O. 12866.

The Administrator, Alaska Region, NMFS determined that fishing activities conducted under this rule would not affect endangered and threatened species listed or critical habitat designated pursuant to the Endangered Species Act in any manner not considered in prior consultations on the groundfish fisheries of the BSAI.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: November 26, 1997.

David L. Evans,
Deputy Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.2, the definitions of “IR/IU” and “IR/IU species” are added in alphabetical order, paragraph (1) in the definition of “Fishing trip” is revised and the definition and heading of “Round weight or round-weight equivalent” are revised to read as follows:

§ 679.2 Definitions.

* * * * *

Fishing trip means: (1) With respect to groundfish directed fishing closures or the IR/IU program, an operator of a vessel is engaged in a fishing trip from the time the harvesting, receiving, or processing of groundfish is begun or resumed in an area until:

(i) The effective date of a notification prohibiting directed fishing in the same area under § 679.20 or § 679.21;

(ii) The offload or transfer of all fish or fish product from that vessel;

(iii) The vessel enters or leaves an area where a different directed fishing prohibition applies; or

(iv) The end of a weekly reporting period, whichever comes first.

* * * * *

IR/IU means the improved retention/improved utilization program set out at § 679.27.

IR/IU species means any groundfish species that is regulated by a retention or utilization requirement set out at § 679.27.

* * * * *

Round-weight equivalent means the weight of groundfish calculated by dividing the weight of the primary product made from that groundfish by the PRR for that primary product as listed in Table 3 of this part, or, if not listed, the weight of groundfish calculated by dividing the weight of a primary product by the standard PRR as determined using the best available evidence on a case-by-case basis.

* * * * *

3. In § 679.5, paragraphs (c)(3)(ii)(G) and (e)(2)(ii)(F) are added to read as follows:

§ 679.5 Recordkeeping and reporting.

* * * * *

(c) * * *

(3) * * *

(ii) * * *

(G) The round-weight catch of pollock and Pacific cod.

* * * * *

(e) * * *

(2) * * *

(ii) * * *

(F) The receipt round weight of pollock and Pacific cod.

* * * * *

4. In § 679.20, paragraph (g)(5)(ii) is revised to read as follows:

§ 679.20 General Limitations.

* * * * *

(g) * * *

(5) * * *

(ii) *No discard of processed product.* Any pollock product that has been processed may not be discarded at sea unless such discarding is necessary to meet other requirements of this part.

* * * * *

5. Section 679.27 is added to subpart B to read as follows:

§ 679.27 Improved Retention/Improved Utilization Program.

(a) *Applicability.* The owner or operator of a vessel that is required to obtain a Federal fisheries or processor permit under § 679.4 must comply with the IR/IU program set out in this section while fishing for groundfish in the BSAI, fishing for groundfish in waters of the State of Alaska that are shoreward of the BSAI, or when processing groundfish harvested in the BSAI.

(b) *IR/IU species.* The following species are defined as “IR/IU species” for the purposes of this section:

- (1) Pollock.
- (2) Pacific cod.
- (3) Beginning January 1, 2003, rock sole.
- (4) Beginning January 1, 2003, yellowfin sole.

(c) *Minimum retention requirements—*(1) *Definition of retain on board.* Notwithstanding the definition at 50 CFR 600.10, for the purpose of this section, to retain on board means to be in possession of on board a vessel.

(2) The following table displays minimum retention requirements by vessel category and directed fishing status:

| If you own or operate a | And | You must retain on board until lawful transfer |
|-------------------------------|--|---|
| (i) Catcher vessel | (A) Directed fishing for an IR/IU species is open (B) Directed fishing for an IR/IU species is prohibited | all fish of that species brought on board the vessel. all fish of that species brought on board the vessel up to the MRB amount for that species. |
| (ii) Catcher/ processor | (C) Retention of an IR/IU species is prohibited (A) Directed fishing for an IR/IU species is open (B) Directed fishing for an IR/IU species is prohibited | no fish of that species. a primary product from all fish of that species brought on board the vessel. a primary product from all fish of that species brought on board the vessel up to the point that the round-weight equivalent of primary products on board equals the MRB amount for that species. |
| (iii) Mothership | (C) Retention of an IR/IU species is prohibited (A) Directed fishing for an IR/IU species is open (B) Directed fishing for an IR/IU species is prohibited (C) Retention of an IR/IU species is prohibited | no fish or product of that species. a primary product from all fish of that species brought on board the vessel. a primary product from all fish of that species brought on board the vessel up to the point that the round-weight equivalent of primary products on board equals the MRB amount for that species. no fish or product of that species. |

(d) *Bleeding codends and shaking longline gear.* Any action intended to discard or release an IR/IU species prior to being brought on board the vessel is prohibited. This includes, but is not limited to bleeding codends and shaking or otherwise removing fish from longline gear.

(e) *At-sea discard of product.* Any product from an IR/IU species may not be discarded at sea, unless such discarding is necessary to meet other requirements of this part.

(f) *Discard of fish or product transferred from other vessels.* The

retention requirements of this section apply to all IR/IU species brought on board a vessel, whether harvested by that vessel or transferred from another vessel. At-sea discard of IR/IU species or products that were transferred from another vessel is prohibited.

(g) *IR/IU species as bait.* IR/IU species may be used as bait provided that the deployed bait is physically secured to authorized fishing gear. Dumping of unsecured IR/IU species as bait (chumming) is prohibited.

(h) *Previously caught fish.* The retention and utilization requirements

of this section do not apply to incidental catch of dead or decomposing fish or fish parts that were previously caught and discarded at sea.

(i) *Minimum utilization requirements.* If you own or operate a catcher/processor or mothership, the minimum utilization requirement for an IR/IU species harvested in the BSAI is determined by the directed fishing status for that species according to the following table:

| If * * * | then your total weight of retained or lawfully transferred products produced from your catch or receipt of that IR/IU species during a fishing trip must * * * |
|--|---|
| (1) directed fishing for an IR/IU species is open, | equal or exceed 15 percent of the round-weight catch or round-weight delivery of that species during the fishing trip. |
| (2) directed fishing for an IR/IU species is prohibited, | equal or exceed 15 percent of the round-weight catch or round-weight delivery of that species during the fishing trip or 15 percent of the MRB amount for that species, whichever is lower. |
| (3) retention of an IR/IU species is prohibited, | equal zero. |

6. In § 679.50, paragraphs (c)(1)(i), (c)(1)(ii), (c)(3) introductory text, (d)(1), and (d)(2) are revised to read as follows:

§ 679.50 Groundfish Observer Program applicable through December 31, 1997.

* * * * *

(c) * * *

(1) * * *

(i) A mothership of any length that processes 1,000 mt or more in round-weight equivalent of groundfish during a calendar month is required to have an observer aboard the vessel each day it receives or processes groundfish during that month.

(ii) A mothership of any length that processes from 500 mt to 1,000 mt in

round-weight equivalent of groundfish during a calendar month is required to have an observer aboard the vessel at least 30 percent of the days it receives or processes groundfish during that month.

* * * * *

(3) *Assignment of vessels to fisheries.* At the end of any fishing trip, a vessel's retained catch of groundfish species or species groups for which a TAC has been specified under § 679.20, in round-weight equivalent, will determine to which fishery category listed under paragraph (c)(2) of this section the vessel is assigned.

* * * * *

(d) * * *

(1) Processes 1,000 mt or more in round-weight equivalent of groundfish during a calendar month is required to have an observer present at the facility each day it receives or processes groundfish during that month.

(2) Processes 500 mt to 1,000 mt in round-weight equivalent of groundfish during a calendar month is required to have an observer present at the facility at least 30 percent of the days it receives or processes groundfish during that month.

* * * * *

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