

twenty-four (24), a car located no less than two-thirds (2/3) of the way through the consist (counting from the first car in the train) must be equipped with an emergency brake valve readily accessible to a crew member;

(iii) Prior to descending a section of track with an average grade of two percent or greater over a distance of two continuous miles, the engineer of the train shall communicate with the conductor, to ensure that a member of the crew with a working two-way radio is stationed in the car with the rearmost readily accessible emergency brake valve on the train when the train begins its descent; and

(iv) While the train is descending a section of track with an average grade of two percent or greater over a distance of two continuous miles, a member of the train crew shall occupy the car that contains the rearmost readily accessible emergency brake valve on the train and be in constant radio communication with the locomotive engineer. The crew member shall remain in this car until

the train has completely traversed the heavy grade.

* * * * *

(g) Except on passenger trains required to be equipped with a two-way end-of-train device (which are provided for in paragraph (h) of this section), en route failures of a two-way end-of-train device shall be handled in accordance with this paragraph. * * *

* * * * *

(2) [Reserved]

(h) A passenger train required to be equipped with a two-way end-of-train device that develops an en route failure of the device (as explained in paragraph (g) of this section) shall be operated in accordance with the following:

(1) The train shall not operate over a section of track with an average grade of two percent or greater over a distance of two continuous miles until an operable two-way end-of-train device is installed on the train;

(2) A member of the train crew will be immediately positioned in the car

which contains the rearmost readily accessible emergency brake valve on the train and shall be equipped with an operable two-way radio that communicates with the locomotive engineer;

(3) The locomotive engineer shall periodically make running tests of the train's air brakes until the failure is corrected; and

(4) Each en route failure shall be corrected at the next location where the necessary repairs can be conducted or at the next location where a required brake test is to be performed, whichever is reached first.

3. Appendix A to Part 232, "Schedule of Civil Penalties," is amended by revising the heading of the entry for § 232.23 and revising the entry for § 232.23(g) and adding an entry for § 232.23(h), to read as follows:

Appendix—A to Part 232—Schedule of Civil Penalties

* * * * *

Section	Violation	Willful violation
* * * * *		*
232.23 Operating standards:		
* * * * *		*
(g) En route failure, freight	5,000	7,500
(h) En route failure, passenger	5,000	7,500
* * * * *		*

Issued in Washington, DC, on January 12, 1998.

Jolene M. Molitoris,
Administrator.

[FR Doc. 98-1082 Filed 1-15-98; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 052097C]

Fisheries of the Northeastern United States; Decision on Petition for Rulemaking for Redistribution of the Summer Flounder Quota

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

ACTION: Decision on petition for rulemaking.

SUMMARY: NMFS announces its decision to not undertake the rulemaking requested in a petition submitted by the State of Connecticut, Commissioner of Environmental Protection (Connecticut). Connecticut petitioned the Secretary of Commerce (Secretary) to eliminate the current state-specific allocation of the commercial quota for summer flounder and implement one of two options specified in its place. The decision to deny the petition at this time is based on public comments received on this petition for rulemaking and on the Mid-Atlantic Fishery Management Council's (Council) and on the Atlantic States Marine Fisheries Commission's (Commission) decision to retain the current state-by-state quota system for summer flounder in Amendment 10 to the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP).

FOR FURTHER INFORMATION CONTACT: Gary C. Matlock, Ph.D., Director, Office of Sustainable Fisheries, (301) 713-2334, or Mark R. Millikin, (301) 713-2341.

SUPPLEMENTARY INFORMATION: On June 2, 1997 (62 FR 29694), NMFS published a notice of receipt of a petition for rulemaking submitted by Connecticut. The petition requested the Secretary to implement either a commercial allocation for summer flounder of two winter coastwide periods and a state-by-state summer period, or a coastwide allocation system for all three periods (two winter periods and a summer period). Connecticut further petitioned that any regulation implementing a state-by-state allocation system base the percent shares for each state upon landings data for the period 1990 through 1992. On behalf of the Secretary, NMFS considered the petition and comments received on the petition.

In considering this petition, NMFS also considered actions surrounding Amendment 10 to the FMP (Amendment 10) as they relate to the summer flounder quota. Amendment 10 was approved by NMFS on November 21, 1997 (62 FR 63872, December 3,

1997). In Amendment 10, the Council and Commission reconsidered the method by which the FMP allocates the quota for the summer flounder commercial fishery. All of the alternatives advocated by Connecticut in its petition were thoroughly considered by the Council in the development of Amendment 10. After considering the alternatives, the Council and Commission chose to maintain the status quo for the commercial summer flounder fishery and to retain the current state-by-state allocation. The Council and Commission noted during the discussions of Amendment 10 that many states have developed quota management systems to account for seasonal variations in abundance and in the size of the vessels that target summer flounder. With a coastwide system, as suggested in Connecticut's petition, states would lose that flexibility either during the winter or over the entire year.

No alternative system was identified that could provide the same level of equity as the current system, particularly between the northern and the southern states and between the small day boats and larger offshore vessels. The Council and Commission further noted that revising the years for the baseline allocation to 1990-92 was discussed at length during the development of Amendment 10. This time period was rejected under Amendment 10 because the shorter time period did not account adequately for historical participation in the fishery when summer flounder were more abundant and generally more available to the fishery along the entire coast. In light of the deficiencies noted in the alternatives, the Council and Commission decided to maintain the current state-by-state system.

Given that the Council and Commission thoroughly considered these proposed alternatives before proposing to retain the state-by-state allocation system and that the Council's actions were determined to be consistent with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the national standards, and other applicable laws, NMFS could find no compelling justification for any action other than what was approved in Amendment 10.

Since the approved commercial quota allocation system complies with the Magnuson-Stevens Act and other applicable laws, NMFS believes that any changes to the allocation system are better handled through the FMP amendment process, which affords all members of the affected public an opportunity to comment on proposed

measures. Connecticut participated in the Amendment 10 process as a member of the Commission but was not able to convince the Council or the Commission to make the modification it advocates.

In October 1997, the Commission attempted again to address the issue of different minimum fish sizes in various states over past years. The Commission conducted public hearings on a proposed Commission amendment (Amendment 11) in October 1997. Amendment 11 contained an analysis that would be used to redistribute the quota among the states. The redistribution would have been achieved for 1998 through the quota transfer provision already contained in the FMP. The Commission Board disapproved Amendment 11 during the annual meeting held on October 20-23, 1997. The disapproval noted that "the Board could find no compromise sufficient to resolve the many regional differences invoked by this Amendment."

Comments and Responses

A total of 74 letters; including 1 letter from the Commonwealth of Massachusetts, 1 letter from the State of New Hampshire, 1 letter from the State of Connecticut, 1 cosigned letter from Connecticut senators and from one representative, 1 letter from the Southern New England Fishermen's and Lobstermen's Association, and 33 individual form letters and 36 individual form postcards were received during the comment period for this action, which ended on August 1, 1997. Several of the letters contained comments on the FMP in general or offered suggestions for future management that are not within the scope of this action. Only comments relevant to the proposed petition for rulemaking that were received by NMFS prior to the close of business on the date specified as the close of comments were considered for this action.

Comment: The State of New Hampshire, the Commonwealth of Massachusetts, and several individuals support the petition. New Hampshire specifically agreed with Connecticut's point in the petition regarding the inequities in state quota shares based on historical summer flounder landings because some states had smaller minimum fish sizes than those implemented by Connecticut and by other states during the base period 1980-89. Connecticut Senators Lieberman and Dodd and Representative Gejdenson also feel that the current quota system did not take into consideration the stricter

conservation requirements in some states, including in Connecticut. New Hampshire feels that the current system is flawed and in need of correction.

Response: NMFS believes the Council addressed the minimum fish size issue clearly in Amendment 10 to the FMP. The Council explained that landings data reflect minimum size regulations implemented in each of the states. Landings do not reflect the actual sizes of fish available to the gear, caught by commercial fishermen, and discarded dead. Hypothetically speaking, if more restrictive minimum size regulations had been implemented in southern states during those years, more fish would have been discarded dead and there would have been increased pressure on, and increased landings of, larger fish. As such, the availability of larger fish to the northern states could have been reduced. Consequently, the landings in the northern states could have been reduced. In reality, the fact that some northern states had a larger minimum size than some southern states reflects that fewer fish smaller than that length had been traditionally available to commercial fishermen in the northern states.

Comment: Connecticut Senators Lieberman and Dodd and Representative Gejdenson support a coastwide quota and uniform landing limits, as described in the petition.

Response: As with the response to the comment above, NMFS believes the Council addressed the coastwide quota and uniform trip limits issue clearly in Amendment 10 to the FMP. The Council and Commission determined, and NMFS agrees, that a coastwide quota would not provide the flexibility afforded under the state-by-state system. Since the inception of the current system, state personnel have developed and refined management systems to account for seasonal variations in abundance, as well as in the vessels that harvest summer flounder. In addition, the Council and Commission noted, and NMFS agrees, that it would be difficult to design a coastwide system that provides for an equitable distribution between the northern and southern participants, as well as between the smaller day boats and the larger offshore vessels. Uniform landing limits, it was noted, may not be suitable for all vessels, gears, or areas. For these reasons, the Council and Commission concluded that the coastwide systems proposed in Amendment 10, and again proposed by this petition, were found to not provide the same level of equity to all user groups and areas as the existing quota allocation system.

Comment: The Commonwealth of Massachusetts commented that, since the commercial quota allocation and management regimes for the related fisheries of summer flounder, scup, and black sea bass are all different, the state-by-state allocation system for summer flounder discriminates between residents of different states and violates national standard 4.

Response: That three fisheries have different allocation systems does not mean that one is discriminatory. Each system was implemented through an FMP amendment that was found consistent with all of the national standards. NMFS notes that to recognize the varying levels of historical participation in each of the states is not inherently discriminatory. Because each state participated in a fishery to varying degrees, each state receives a different portion of the whole, reflecting its relative level of historical participation. The same basis for distribution is employed for all states. Thus, there is no discrimination between residents of different states.

Comment: The State of Connecticut feels that the current commercial quota management system violates (1) national standard 1 (overfishing) because it has not prevented overfishing, (2) national standard 5 (efficiency) because it does not consider efficiency in the utilization of the resource, (3) national standard 7 (minimize costs) because it fails to minimize costs, and (4) national standard 10 (safety at sea) because fishermen travel to states with the most favorable trip limit, increasing the risk of mishap or disaster at sea. The Commonwealth of Massachusetts also feels that the current state-specific commercial quota system violates national standard 1 because it has been unsuccessful in reducing fishing mortality although it has been implemented for 5 years. Massachusetts urges NMFS to develop the regulations suggested in the petition since, as the current system has not reduced fishing mortality, quotas are likely to get smaller. Lastly, Massachusetts notes that the current system forces fishermen to travel to ports that are open to landings or that have higher trip limits, therefore increasing the risk to vessel and life at sea, in violation of national standard 10 and negatively impacting New England ports, which lose those landings while other ports benefit from them.

Response: Since Amendment 10 to the FMP contemplated alternatives to the commercial quota allocation method, the Council was required to review all alternatives for consistency with the national standards. As with the minimum fish size issue, NMFS

believes the Council addressed this issue adequately and clearly in that document. The points of those discussions are reiterated here.

National standard 1 - The most recent stock assessment, completed in August 1997, indicates that the summer flounder stock is at a medium level of historical (1968-96) abundance and is overexploited. The fishing mortality rate (F) estimated for 1996 was 1.0 (an exploitation rate of 58 percent). While this estimate of fishing mortality is above the overfishing definition ($F_{max} = 0.24$), it is significantly below the peak fishing mortality rate estimated for 1992 ($F = 2.1$). More importantly, the spawning stock biomass estimate for 1996 indicated the highest level since 1983. Additionally, the age structure is improving, with 34 percent of the biomass age 2 and older in 1996, compared with 17 percent in 1992. The size of the stock older than age 2 is an important indicator of the stock health, as it may reflect more accurately the number of successful spawners. While the stock is showing signs of improvement, the improvement is not occurring at as high a rate as anticipated by managers. NMFS notes that quota overages and unaccounted for mortality (underreporting and/or discard) are more likely to explain the slow recovery than the manner in which the quota is allocated. Overall, the management scheme is allowing a stock rebuilding and a progression toward an end of overfishing.

National standard 5 - The Council and Commission have developed a system that is intended to operate at the lowest possible cost with regard to effort, administration, and enforcement, given the objectives of the FMP. NMFS has determined that the state-by-state allocation system makes efficient use of fishery resources and is, therefore, consistent with national standard 5.

National standard 7 - Amendment 10, a joint document from both the Council and Commission, contains management measures that will be implemented by the Commission as part of its interstate management process. These measures, called compliance criteria, include a requirement that states document all summer flounder commercial landings in their states. This will aid in the elimination of double counting of any landings and, therefore, help keep enforcement costs down, as much effort is spent tracking down landings in order to maintain the integrity of the quota. Such costs are independent of the allocation system. Under any other scenario proposed in this petition, costs are still incurred with regard to quota

monitoring, enforcement of trip limits, and seasons.

National standard 10 - The state-by-state quota allocation system for summer flounder is not inconsistent with national standard 10. Many of the New England vessels are permitted to land in neighboring states. These and other vessels have traditionally traveled long distances to fish for and land summer flounder, so risks at sea cannot be ascribed solely to behavior resulting from a state-by-state quota allocation. The state-by-state quota system does not require a vessel to travel to distant ports, and an individual vessel operator must weigh the benefits of landing in a distant port versus the costs associated with that travel with regard to steaming time, fuel consumption, weather, and other factors.

Comment: Connecticut's petition stated that, should the alternative embracing a state-by-state summer allocation be implemented, the percent shares for each state should be based upon landings data for the period 1990 through 1992.

Response: When the quota allocation system was developed, the Council and Commission reviewed the history of the fishery and recommended a 10-year time frame as the appropriate historical period upon which quotas would be based. This decision was discussed thoroughly. While proposals were made to shorten the period to as little as 3 years, it was recognized that short-term variations in landings did occur and that quotas based on a short time series would penalize one segment of the fishery while granting others what was considered an excessive share. The states, through the Commission, approved the 10-year time period and the method of allocating the quota.

Comment: One form letter requests the Secretary to use his office to assure that Council plans comply with the requirements of the Magnuson-Stevens Act which, the letter states, the plans do not currently do.

Response: The Magnuson-Stevens Act requires that any management plan prepared, and any regulation promulgated to implement any such plan, shall be consistent with the 10 national standards for fishery conservation and management, other provisions of the Magnuson-Stevens Act, and other applicable laws. Indeed, any Council regulatory submission adopted by NMFS has been thoroughly reviewed for its consistency with every applicable legal requirement. There is no exception to this requirement.

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

Dated: January 9, 1998.

David L. Evans,

*Deputy Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

[FR Doc. 98-1154 Filed 1-15-98; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971231319-7319-01; I.D.
112697A]

RIN 0648-AK09

Fisheries of the Exclusive Economic Zone Off Alaska; Maximum Retainable Bycatch Percentages

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes a regulatory amendment to separate shortraker rockfish and rougheye rockfish (SR/RE) from the aggregated rockfish bycatch species group and reduce maximum retainable bycatch (MRB) percentages for SR/RE in the Aleutian Islands Subarea (AI) groundfish fisheries. This action is necessary to slow the harvest rate of SR/RE thereby reducing the potential for overfishing. This action is intended to further the objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands (FMP).

DATES: Comments must be received at the following address by February 17, 1998.

ADDRESSES: Comments may be sent to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) prepared for this action may be obtained from the same address or by calling the Alaska Region, NMFS, at 907-586-7228.

FOR FURTHER INFORMATION CONTACT: Alan Kinsolving, 907-586-7228.

SUPPLEMENTARY INFORMATION: Fishing for groundfish by U.S. vessels in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) is managed by NMFS according to the FMP. The FMP was

prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

Regulations at 50 CFR 679.20(e) establish MRB percentages for groundfish species or species groups that are closed to directed fishing. The MRB amount is calculated as a percentage of the species on bycatch status relative to the amount of other species retained onboard the vessel that are open for directed fishing. MRB percentages serve as a management tool to slow down the harvest rates of bycatch species by limiting the amount that can be retained on board a vessel. By not placing the bycatch species on "prohibited" status, thereby prohibiting all retention, MRB's also serve to minimize regulatory discard of bycatch species when they are taken incidental to other directed fisheries. MRB percentages reflect a balance between the need to slow harvest rates while at the same time, minimizing the potential for undesirable discard. Although MRB percentages limit the incentive to target on a bycatch species, fishermen can "top off" their retained catch with these species up to the MRB amount by deliberately targeting the bycatch species.

At its June 1997 meeting, the Council requested that NMFS initiate a regulatory amendment to reduce the MRB percentages for SR/RE to reduce harvest rates of SR/RE in the groundfish fisheries, thereby reducing the potential for overfishing and minimizing industry incentives to top off retained catch with SR/RE. Based on the analysis presented to the Council at its September 1997 meeting, the Council recommended that SR/RE be separated from the aggregated rockfish bycatch species group, and that MRB percentages for SR/RE in the AI be reduced to 7 percent relative to deep-water complex species (primarily POP) and to 2 percent relative to shallow-water complex species (primarily Atka mackerel). The MRB percentage relative to arrowtooth flounder would remain at 0 percent. Further justification for these MRB adjustments is discussed below.

Separation of SR/RE From Aggregated Rockfish

MRB percentages are established for aggregate rockfish species that are closed to directed fishing. Rockfish species were aggregated because of concerns that separate MRB percentages for each rockfish TAC category would increase the overall amount of rockfish

that could be retained and increase incentives to vessel operators to "top off" their retained catch of target species with rockfish. As part of the aggregate rockfish MRB, the combined amounts of rockfish on bycatch status must not exceed specified percentages of other retained species that are open to directed fishing. These percentages are 15 percent relative to deep-water complex species (other rockfish species, sablefish, Greenland turbot, and flathead sole) and 5 percent relative to shallow-water complex species (Atka mackerel, pollock, Pacific cod, yellowfin sole, rock sole, "other flatfish", squid, and other species).

SR/RE are highly valued, but amounts available to the commercial fisheries are limited by a relatively small TAC amount that is fully needed to support bycatch needs in other groundfish fisheries. As a result, the directed fishery for SR/RE typically is closed at the beginning of the fishing year. Nonetheless, bycatch amounts of SR/RE can exceed TAC and approach the overfishing level. In 1997, the SR/RE bycatch in the Pacific ocean perch (POP) and Atka mackerel trawl fisheries (778 mt and 162 mt, respectively) exceeded the acceptable biological catch and caused overfishing concerns. This resulted in the closure of these and other trawl fisheries in the AI, as well as the hook-and-line gear fisheries for Pacific cod and Greenland turbot. Although closure of the individual fishing quota (IFQ) fisheries for AI sablefish and halibut was a possibility, SR/RE bycatch did not reach the overfishing level and those fisheries remained open.

Based on the discussion above, NMFS proposes to remove SR/RE from the aggregated rockfish bycatch species group and establish an SR/RE bycatch species group for the AI.

Reduction of the SR/RE MRB Percentages

The majority of SR/RE bycatch is taken in the POP and Atka mackerel fisheries. Based on data reported by the industry since 1995, the amount of retained SR/RE bycatch in the POP fishery has ranged from 4.5 to 5.7 percent. During the same time period, the retained amount of SR/RE in the Atka mackerel fishery relative to other retained catch has ranged from 0.08 to 0.2 percent.

Analyses of 1995-1996 observer data from observed hauls in the AI Atka mackerel and POP fisheries indicate that most SR/RE bycatch is taken in the minority of hauls. In the Atka mackerel fishery during 1995 and 1996, only 2 percent of observed hauls had bycatch