

permit for the same calendar year for the commercial halibut fishery in Area 2A.

(3) No person shall fish for halibut in the directed halibut fishery in Area 2A during the fishing periods established in Section 8 from a vessel that has been used during the same calendar year for the incidental catch fishery during the salmon troll fishery as authorized in Section 8.

(4) No person shall fish for halibut in the directed commercial halibut fishery in Area 2A from a vessel that, during the same calendar year, has been used in the sport halibut fishery in Area 2A or that is licensed for the sport halibut fishery in Area 2A.

(5) No person shall retain halibut in the salmon troll fishery in Area 2A as authorized under Section 8 taken on a vessel that, during the same calendar year, has been used in the sport halibut fishery in Area 2A, or that is licensed for the sport halibut fishery in Area 2A.

(6) No person shall retain halibut in the salmon troll fishery in Area 2A as authorized under Section 8 taken on a vessel that, during the same calendar year, has been used in the directed commercial fishery during the fishing periods established in Section 8 for Area 2A or that is licensed to participate in the directed commercial fishery during the fishing periods established in Section 8 in Area 2A.

26. Previous Regulations Superseded

These regulations shall supersede all previous regulations of the Commission, and these regulations shall be effective each succeeding year until superseded.

Classification

IPHC Regulations

Because approval by the Secretary of State of the IPHC regulations is a foreign affairs function, *Jensen v. National Marine Fisheries Service*, 512 F.2d 1189 (9th Cir. 1975), 5 U.S.C. 553 does not apply to this notice of the effectiveness and content of the IPHC regulations. Because prior notice and an opportunity for public comment are not required to be provided for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable.

Catch Sharing Plan for Area 2A

An Environmental Assessment/Regulatory Impact Review was prepared on the proposed changes to the Plan. NMFS has determined that the proposed changes to the plan and the implementing management measures contained in and implemented by the IPHS regulations will not significantly affect the quality of the human environment, and the preparation of an environmental impact statement on the final action is not required by section 102(2)(C) of the National Environmental Policy Act or its implementing regulations. At the proposed rule state,

the Assistant General Counsel for Legislation and Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy of the Small Business Administration that this action will not have a significant economic impact on a substantial number of small entities. No comments were received on this certification. Consequently, no regulatory flexibility analysis has been prepared. This action has been determined to be not significant for purposes of E.O. 12866.

Catch Sharing Plan for Areas 4C, 4D, and 4E

At the proposed rule stage, the Assistant General Counsel for Legislation and Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy of the Small Business Administration that this revision of the CSP would not have a significant economic impact on a substantial number of small entities. No comments were received on this certification. Consequently, no regulatory flexibility analysis was prepared. This action has been determined to be not significant for purposes of E.O. 12866. The revision to CFR 300.63(b) made by this rule is not substantive in that it merely revises the description of the contents of the CSP to reflect that the Council no longer allocates for subareas 4A and 4B. Accordingly, it is not subject to a delay in effective date.

List of Subjects in 50 CFR Part 300

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Authority: 16 U.S.C. 773-773k.

Dated: March 12, 1998.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300 is amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

1. The authority citation for part 300, subpart E, continues to read as follows:

Authority: 16 U.S.C. 773-773k.

2. In § 300.63, paragraph (b) is revised to read as follows:

§ 300.63 Catch sharing plans and domestic management measures.

* * * * *

(b) The catch sharing plan for area 4 allocates the annual TAC among Areas 4C, 4D, and 4E, and will be implemented by the Commission in

annual management measures published pursuant to § 300.62.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971124274-8052-02; I.D. 110597A]

RIN 0648-AH67

Fisheries of the Exclusive Economic Zone Off Alaska; Forage Fish Species Category

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement Amendment 36 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and Amendment 39 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). This action creates a forage fish species category in both FMPs and implements associated management measures. The intended effect of this action is to prevent the development of a commercial directed fishery for forage fish, which are a critical food source for many marine mammal, seabird, and fish species. This action is necessary to conserve and manage the forage fish resource off Alaska and to further the goals and objectives of the FMPs. In addition, this action includes a technical amendment removing a date that is no longer applicable.

DATES: Effective April 16, 1998.

ADDRESSES: Copies of Amendments 36 and 39 and the Environmental Assessment/Regulatory Impact Review (EA/RIR) prepared for Amendments 36 and 39 are available from the Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori J. Gravel, or by calling the Alaska Region, NMFS, at 907-586-7228.

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907-586-7228 or kent.lind@noaa.gov

SUPPLEMENTARY INFORMATION: The domestic groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands Management Area (BSAI) and of the Gulf of Alaska

(GOA) are managed by NMFS under the FMPs. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing the groundfish fisheries of the BSAI and GOA appear at 50 CFR part 679, and general regulations governing U.S. fisheries appear at 50 CFR part 600.

A notice of availability of amendments 36 and 39 was published on November 12, 1997 (62 FR 60682), with comments on the FMP amendments invited through January 12, 1998. A proposed rule to implement amendments 36 and 39 was published in the **Federal Register** on December 12, 1997 (62 FR 65402), with comments invited through January 26, 1998. One letter of comment was received and is summarized and responded to in the Response to Comments section. Additional information on this action is contained in the preamble to the proposed rule and in the EA/RIR (See ADDRESSES). Upon reviewing amendments 36 and 39, the Administrator, Alaska Region, NMFS, has determined that amendments 36 and 39 are necessary for the conservation and management of the groundfish fisheries of the BSAI and GOA and are consistent with the Magnuson-Stevens Act and with other applicable laws.

Response to Comments

The following comment summarizes the one letter received on the FMP amendments and proposed rule:

Comment. The Department of Interior believes that managing forage fish, by establishing a separate category for these species, will benefit the marine ecosystems of the North Pacific. The Department of the Interior supports approval of the amendments as well as issuance of the implementing regulations which would prohibit directed fishing on forage fish species, and the sale, barter, trade, or processing of forage fish.

Response. NMFS agrees with the conclusions of the Department of Interior and has approved amendments 36 and 39.

Elements of the Final Rule

The following is a summary of the main elements of the final rule.

Forage Fish Species Category

The rule defines forage fish species to mean all species of the following families:

Osmeridae (eulachon, capelin, and other smelts),

Myctophidae (lanternfishes),
Bathylagidae (deep-sea smelts),
Ammodytidae (Pacific sand lance),
Trichodontidae (Pacific sandfish),
Pholidae (gunnels),
Stichaeidae (pricklebacks, warbonnets, eelblennys, cockscombs and shannys),

Gonostomatidae (bristlemouths, lightfishes, and anglemouths), and the Order

Euphausiacea (krill).

These species have been grouped together because they are considered to be primary food resources for other marine animals and they have the potential to be the targets of a commercial fishery.

Affected Vessels and Processors

The requirements of the rule apply to all vessels fishing for groundfish in the Federal waters of the BSAI or GOA or processing groundfish harvested in the Federal waters of the BSAI or GOA. The rule does not apply to fishing for forage fish species within State waters.

Prohibition on Directed Fishing

The rule prohibits directed fishing for forage fish at all times in the Federal waters of the BSAI and GOA. The rule establishes maximum retainable bycatch (MRB) percentage of 2 percent for forage fish, meaning that vessels fishing for groundfish may retain a quantity of forage fish equal to no more than 2 percent of the round weight or round-weight equivalent of groundfish species open to directed fishing that are retained on board the vessel during a fishing trip. NMFS data indicate that the aggregate percentage of forage fish incidentally caught in current groundfish fisheries rarely exceeds 2 percent, and many vessels rarely or never encounter catch of forage fish species. Consequently, bycatch of forage fish species is not considered a problem in the groundfish fisheries off Alaska, and the 2-percent MRB is unlikely to result in increased discards of forage fish species.

Harvest Quotas

Insufficient information exists upon which to specify a total allowable catch amount (TAC) for forage fish species. Therefore, this action does not establish procedures for specifying an annual TAC for forage fish species. However, by establishing a new species category for forage fish, NMFS will be able to collect additional data on forage fish from vessel logbooks, weekly production reports, and observer reports. This information may be used to evaluate the need for and appropriateness of other

management measures for forage fish species.

Limits on Sale, Barter, Trade or Processing

The rule prohibits the sale, barter, trade, or processing of forage fish species by vessels fishing for groundfish in the Federal waters of the BSAI or GOA or processing groundfish harvested in the BSAI or GOA, except that retained catch of forage fish species not exceeding the 2-percent MRB may be processed into fishmeal and sold. The rule allows fishmeal processing of forage fish retained under the 2-percent MRB amount to prevent undue burdens on operations that process unsorted processing waste into fishmeal. Industry representatives have indicated that separating small quantities of forage fish from the volumes of fish and fish waste that typically enter fishmeal plants would be nearly impossible. The small volumes of fishmeal production allowed under this rule are not expected to provide an incentive for vessels to target on forage fish through "topping off" activity.

This rule does not apply to onshore processors due to limitations of the authority of the Secretary of Commerce under the Magnuson-Stevens Act. At the June 1997 Council meeting, the State of Alaska indicated that it intends to proceed with parallel forage fish regulations to restrict the harvest of forage fish within State waters and the processing of forage fish by onshore processors.

Changes From the Proposed Rule

In the proposed change to Table 2 to 50 CFR Part 679, the order *Euphausiacea* was incorrectly identified as a family. This error has been corrected in the final rule. No other changes have been made in the final rule.

A technical amendment is made to § 679.20(c)(5) by deleting a date that is no longer applicable.

Classification

At the proposed rule stage, the Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

An informal consultation under the Endangered Species Act was concluded for amendments 36 and 39 on July 11,

1997. As a result of the informal consultation, the Regional Administrator determined that fishing activities under this rule are not likely to adversely affect endangered or threatened species or critical habitat.

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

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: March 10, 1998.

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 definition of “forage fish” is added in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

Forage fish means all species of the following families:

- (1) *Osmeridae* (eulachon, capelin and other smelts),
- (2) *Myctophidae* (lanternfishes),
- (3) *Bathylagidae* (deep-sea smelts),
- (4) *Ammodytidae* (Pacific sand lance),
- (5) *Trichodontidae* (Pacific sandfish),
- (6) *Pholidae* (gunnels),
- (7) *Stichaeidae* (pricklebacks, warbonnets, eelblennys, cockscombs and shannys),
- (8) *Gonostomatidae* (bristlemouths, lightfishes, and anglemouths), and
- (9) The Order *Euphausiacea* (krill).

* * * * *

3. In § 679.20, paragraph (c)(5) is amended by removing the phrase “(Applicable through December 31, 1996)” and a new paragraph (i) is added as follows:

§ 679.20 General limitations.

* * * * *

(i) *Forage fish*—(1) *Definition.* See § 679.2.

(2) *Applicability.* The provisions of § 679.20(i) apply to all vessels fishing for groundfish in the BSAI or GOA, and to all vessels processing groundfish harvested in the BSAI or GOA.

(3) *Closure to directed fishing.* Directed fishing for forage fish is

prohibited at all times in the BSAI and GOA.

(4) *Limits on sale, barter, trade, and processing.* The sale, barter, trade, or processing of forage fish is prohibited, except as provided in paragraph (i)(5) of this section.

(5) *Allowable fishmeal production.* Retained catch of forage fish not exceeding the maximum retainable bycatch amount may be processed into fishmeal for sale, barter, or trade.

4. In § 679.22, paragraph (c) is revised to read as follows:

§ 679.22 Closures.

* * * * *

(c) *Directed fishing closures.* See § 679.20(d) and § 679.20(i).

* * * * *

Table 2 to Part 679 [Amended]

5. Table 2 to 50 CFR part 679 is amended by adding species codes 207 Gunnels; 208 Pricklebacks, warbonnets, eelblennys, cockscombs and shannys (family *Stichaeidae*); 209 Bristlemouths, lightfishes, and anglemouths (family *Gonostomatidae*); 210 Pacific sandfish; 772 Lanternfishes; 773 Deep-sea smelts (family *Bathylagidae*); 774 Pacific sand lance; and 800 Krill (order *Euphausiacea*); in numerical order as follows:

TABLE 2 TO PART 679.—SPECIES CODES

Code	Species
* * * * *	
Group Codes:	
* * * * *	
207	Gunnels.
208	Pricklebacks, warbonnets, eelblennys, cockscombs and shannys (family <i>Stichaeidae</i>).
209	Bristlemouths, lightfishes, and anglemouths (family <i>Gonostomatidae</i>).
210	Pacific sandfish.
* * * * *	
772	Lanternfishes.
773	Deep-sea smelts (family <i>Bathylagidae</i>).
774	Pacific sand lance.
800	Krill (order <i>Euphausiacea</i>).
* * * * *	

Tables 10 and 11 to Part 679 [Amended]

6. Tables 10 and 11 to 50 CFR part 679 are amended by adding a column for aggregate forage fish as follows:

In Table 10 to 50 CFR part 679, a column for “Aggregate Forage Fish” is added between columns “Atka mackerel” and “Other species,” and

footnote 5 is added to read “Forage fish are defined at § 679.2.” Table 10, as revised, reads as follows:

TABLE 10.—GULF OF ALASKA RETAINABLE PERCENTAGES

	Bycatch species ¹												
	Pollock	Pacific cod	Deep flatfish	Rex sole	Flat-head sole	Shallow flatfish	Arrowtooth	Sablefish	Aggregated rockfish ²	DSR SEEO ⁴	Atka mackerel	Aggregate forage fish ⁵	Other species
Basis Species													
Pollock	³ na	20	20	20	20	20	35	1	5	10	20	2	20
Pacific cod	20	³ na	20	20	20	20	35	1	5	10	20	2	20
Deep flatfish	20	20	³ na	20	20	20	35	7	15	1	20	2	20
Rex sole	20	20	20	20	³ na	20	35	7	15	1	20	2	20
Flathead sole	20	20	20	20	³ na	20	35	7	15	1	20	2	20
Shallow flatfish	20	20	20	20	20	³ na	35	1	5	10	20	2	20
Arrowtooth	5	5	0	0	0	0	³ na	0	0	0	0	2	20
Sablefish	20	20	20	20	20	20	35	³ na	15	1	20	2	20
Pacific Ocean perch	20	20	20	20	20	20	35	7	15	1	20	2	20
Shortraker/rougheye	20	20	20	20	20	20	35	7	15	1	20	2	20
Other rockfish	20	20	20	20	20	20	35	7	15	1	20	2	20
Northern rockfish	20	20	20	20	20	20	35	7	15	1	20	2	20
Pelagic rockfish	20	20	20	20	20	20	35	7	15	1	20	2	20
DSR—SEEO	20	20	20	20	20	20	35	7	15	³ na	20	2	20
Thornyhead	20	20	20	20	20	20	35	7	15	1	20	2	20
Atka mackerel	20	20	20	20	20	20	35	1	5	10	³ na	2	20
Other species	20	20	20	20	20	20	35	1	5	10	20	2	³ na
Aggregated amount non-groundfish species	20	20	20	20	20	20	35	1	5	10	20	2	20

¹ For definition of species, see Table 1 of the Gulf of Alaska groundfish specifications.

² Aggregated Rockfish means any rockfish except in the Southeast Outside District where demersal shelf rockfish (DSR) is a separate category.

³ na=not applicable.

⁴ SEEO=Southeast Outside District.

⁵ Forage fish are defined at § 679.2.

In Table 11 to 50 CFR part 679, a column for "Aggregate Forage Fish" is added between columns "Squid" and

"Other species," footnote 3 is redesignated as footnote 4, and a new footnote 3 is added to read "Forage fish

are defined at § 679.2." Table 11, as revised, reads as follows:

TABLE 11.—BERING SEA AND ALEUTIAN ISLANDS MANAGEMENT AREA RETAINABLE PERCENTAGES

	Bycatch species ¹													
	Pollock	Pacific cod	Atka mackerel	Arrowtooth	Yellowfin sole	Other flatfish	Rock sole	Flat-head sole	Greenland turbot	Sablefish	Aggregated rockfish ²	Squid	Aggregate forage fish ³	Other species
Basis species¹														
Pollock	⁴ na	20	20	35	20	20	20	20	1	1	5	20	2	20
Pacific cod	20	na	20	35	20	20	20	20	1	1	5	20	2	20
Atka mackerel	20	20	na	35	20	20	20	20	1	1	5	20	2	20
Arrowtooth	0	0	0	na	0	0	0	0	0	0	0	0	2	0
Yellowfin sole	20	20	20	35	na	35	35	35	1	1	5	20	2	20
Other flatfish	20	20	20	35	35	na	35	35	1	1	5	20	2	20
Rock sole	20	20	20	35	35	35	na	35	1	1	5	20	2	20
Flathead sole	20	20	20	35	35	35	35	na	35	15	15	20	2	20
Greenland turbot	20	20	20	35	20	20	20	20	na	15	15	20	2	20
Sablefish	20	20	20	35	20	20	20	20	35	na	15	20	2	20
Other rockfish	20	20	20	35	20	20	20	20	35	15	15	20	2	20
Other red rockfish-BS	20	20	20	35	20	20	20	20	35	15	15	20	2	20
Pacific Ocean perch	20	20	20	35	20	20	20	20	35	15	15	20	2	20
Sharpchin/Northern-AI	20	20	20	35	20	20	20	20	35	15	15	20	2	20
Shortraker/Rougheye-AI	20	20	20	35	20	20	20	20	35	15	15	20	2	20
Squid	20	20	20	35	20	20	20	20	1	1	5	⁴ na	2	20
Other species	20	20	20	35	20	20	20	20	1	1	5	20	2	⁴ na
Aggregated amount non-groundfish species	20	20	20	35	20	20	20	20	1	1	5	20	2	20

¹ For definition of species, see Table 1 of the Bering Sea and Aleutian Islands groundfish specifications.

² Aggregated rockfish of the genera *Sebastes* and *Sebastolobus*.

³ Forage fish are defined at § 679.2.

⁴ na = not applicable.