

to give 60-days' notice to attaching parties before facility modifications are undertaken, even in instances where a government or a government agency requires service to new customers in less than 60 days.

Allocation of costs: The statute does not require that an attaching entity receive compensation for modification costs it incurred that create excess rights-of-way that are later sold to other entrants by utility.

State certification: States that have previously certified their regulation of rates, terms and conditions of pole attachments need not re-certify in order to assert their jurisdiction over access. However, if a state that has not previously certified its authority over rates, terms and conditions wishes to begin to assert such jurisdiction, including jurisdiction over access pursuant to section 224(f), the state must certify in order to assert jurisdiction.

Ordering Clauses

3. Pursuant to sections 224, 251 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 224, 251 and 303(r), the Order on Reconsideration is *Adopted*.

4. Pursuant to section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and section 1.106 of the Commission's rules, 47 CFR. 1.106 (1995), that the petitions for reconsideration or clarification are *Denied in Part and Granted in Part*.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990720198-9307-02; I.D. 070799B]

RIN 0648-AM36

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

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

ACTION: Final rule.

SUMMARY: NMFS issues a regulatory amendment that separates shorttraker

and rougheye (SR/RE) rockfish from the aggregated rockfish species group for purposes of calculating maximum retainable bycatch (MRB) and reduces the percentages for SR/RE rockfish in the Eastern Regulatory Area (ERA) of the Gulf of Alaska (GOA) 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 Groundfish of the Gulf of Alaska (FMP).

DATES: Effective January 5, 2000.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this action may be obtained from NMFS, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel or by calling the Alaska Region, NMFS, at 907-586-7228.

FOR FURTHER INFORMATION CONTACT:

Shane Capron, 907-586-7228 or shane.capron@noaa.gov.

SUPPLEMENTARY INFORMATION: Fishing for groundfish by U.S. vessels in the exclusive economic zone of the GOA 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 US vessels is governed by regulations implementing the FMP at 50 CFR part 679. General regulations governing Federal fisheries are also found at 50 CFR part 600.

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 that are closed to directed fishing relative to the amount of other species retained on board the vessel that are open for directed fishing. The MRB percentages serve as a management tool to slow down the harvest rates of non-target species by limiting the amount that can be retained on board a vessel. This total also is used to minimize regulatory discard of non-target species when they are taken incidental to other directed fisheries because MRBs avoid or delay placing a species on "prohibited" status, which prohibits any retention. The MRB percentages reflect a balance between slowing harvest rates and minimizing the potential for undesirable discard. Although directed fishing for a species or species group may be prohibited

under 50 CFR 679.20(d)(1)(iii), fishermen may "top off" their retained catch of these species by deliberately targeting the incidental species up to the MRB amount.

This final rule makes the following regulatory changes: (1) Removes SR/RE rockfish from the GOA-wide aggregated rockfish species group for deep-water complex species (primarily Pacific ocean perch and sablefish), (2) Creates a new species group for SR/RE rockfish in the ERA of the GOA for deep-water complex species, and (3) Sets the new SR/RE rockfish MRB at 7 percent relative to deep-water complex species. This final rule does not change the MRB of 5 percent for SR/RE rockfish in the GOA-wide aggregated rockfish category relative to shallow-water complex species.

Additional information on this action is contained in the preamble to the proposed rule and the EA/RIR/FRFA. The proposed rule was published in the **Federal Register** on August 3, 1999 (64 FR 42080), and the public comment period ended on September 2, 1999. NMFS received no comments on the proposed rule and no changes from the proposed rule are made in this final rule.

Compliance Guide for Small Entities

In compliance with the Small Business Regulatory Enforcement Fairness Act of 1996, NMFS is publishing this paragraph as a compliance guide that explains how small entities must comply with the regulatory changes made by this final rule. This rule changes the maximum retainable amounts of SR/RE rockfish in the ERA of the GOA and affects all small entities that participate in groundfish fisheries in the ERA of the GOA and experience incidental catch of SR/RE rockfish. Affected fishermen should be aware that the MRB rates have changed for SR/RE in the ERA of the GOA. Affected fishermen must comply with the regulations concerning MRB rates at § 679.20(e) and Table 10 to part 679.

Classification

The Administrator, Alaska Region, NMFS (Regional Administrator), determined that this final rule is necessary for the conservation and management of the groundfish fisheries of the GOA. The Regional Administrator also determined that this final rule is consistent with the Magnuson-Stevens Act and other applicable law. This action has been determined to be not significant for purposes of E.O. 12866.

NMFS prepared a Final Regulatory Flexibility Analysis (FRFA) that describes the impact this final rule will

have on small entities. A copy of this analysis is available from NMFS (see ADDRESSES). NMFS received no comments on the Interim Regulatory Flexibility Analysis prepared for the proposed rule for this action.

This action is being taken because harvest of SR/RE has significantly exceeded the total allowable catch (TAC) for SR/RE in the ERA of the GOA in each of the last 4 years. In 1998, while participating in the rockfish fisheries, 23 small trawl catcher vessels and 17 catcher/processors accounted for 772 mt of SR/RE harvest in the GOA (roughly 45 percent of the total harvest of SR/RE). Also in 1998, 484 small hook-and-line catcher vessels harvested 710 mt of SR/RE while participating in the sablefish fishery. Of the total 1,482 mt of SR/RE harvested by these two sectors, only 1,064 mt was actually retained (about 72 percent of the total catch amount). About 50 percent of the SR/RE harvested was in SR/RE directed hauls. These hauls, composed primarily of SR/RE, are likely to be "top off"

hauls, some of which would no longer be available given the reduced ability to "top off" at historic levels. Any marginal loss in the short-term due to reduced retention of SR/RE would be offset by the long-term viability of the fishery by harvesting at maximum acceptable biological levels.

The preferred alternative, which this rule implements, of reducing the MRB for SR/RE in the ERA of the GOA was found to be the least restrictive on small entities while maximizing the harvest of SR/RE within the TAC amount. Under the status quo alternative, fishing mortality of SR/RE would continue at levels above the acceptable biological catch and would likely cause adverse impacts to the fishery resulting in reduced stocks; therefore, the alternative was rejected. The alternative of reducing the MRB in all areas of the GOA also was rejected because it was too restrictive on entities fishing in areas that have not exceeded acceptable harvest amounts within the last 3 years.

This final rule does not contain reporting, recordkeeping, or compliance

requirements and no relevant Federal rules duplicate, overlap, or conflict with this final rule.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: November 30, 1999.

Garry F. Mayer,

Acting 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 part 679 continues to read as follows:

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

2. In part 679, Table 10 to Part 679—Gulf of Alaska Retainable Percentages is revised to read as follows:

* * * * *

TABLE 10 TO PART 679.—GULF OF ALASKA RETAINABLE PERCENTAGES [Incidental Catch Species ¹]

	Pollock	Pacific cod	Deep flatfish	Rex sole	Flat-head sole	Shallow flatfish	Arrowtooth	Sablefish	Aggregated rockfish ²	SR/RE ERA ³	DSR SEO ⁴	Atka mackerel	Aggregated forage fish ⁵	Other species
BASIS SPECIES ¹														
Pollock	⁶ na	20	20	20	20	20	35	1	5	⁶ na	10	20	2	20
Pacific cod	20	⁶ na	20	20	20	20	35	1	5	⁶ na	10	20	2	20
Deep flatfish	20	20	⁶ na	20	20	20	35	7	15	7	1	20	2	20
Rex sole	20	20	20	⁶ na	20	20	35	7	15	7	1	20	2	20
Flathead sole	20	20	20	20	⁶ na	20	35	7	15	7	1	20	2	20
Shallow flatfish	20	20	20	20	20	⁶ na	35	1	5	⁶ na	10	20	2	20
Arrowtooth	5	5	0	0	0	0	⁶ na	0	0	0	0	0	2	0
Sablefish	20	20	20	20	20	20	35	⁶ na	15	7	1	20	2	20
Pacific ocean perch	20	20	20	20	20	20	35	7	15	7	1	20	2	20
Shortraker/rougheye	20	20	20	20	20	20	35	7	15	⁶ na	1	20	2	20
Other rockfish	20	20	20	20	20	20	35	7	15	7	1	20	2	20
Northern rockfish	20	20	20	20	20	20	35	7	15	7	1	20	2	20
Pelagic rockfish	20	20	20	20	20	20	35	7	15	7	1	20	2	20
DSR—SEO	20	20	20	20	20	20	35	7	15	7	⁶ na	20	2	20
Thornyhead	20	20	20	20	20	20	35	7	15	7	1	20	2	20
Atka mackerel	20	20	20	20	20	20	35	1	5	⁶ na	10	⁶ na	2	20
Other species	20	20	20	20	20	20	35	1	5	⁶ na	10	20	2	⁶ na
Aggregated amount of non-groundfish species	20	20	20	20	20	20	35	1	5	⁶ na	10	20	2	20

¹ For definition of species, see Table 1 of the GOA groundfish specifications.
² Aggregated rockfish means rockfish defined at § 679.2 except in the Southeast Outside District where demersal shelf rockfish (DSR) is a separate category and in the Eastern Regulatory Area where shortraker/rougheye (SR/RE) rockfish is a separate category for the deep water complex only.
³ SR/RE ERA=shortraker/rougheye rockfish in the Eastern Regulatory Area.
⁴ SEO=Southeast Outside District.
⁵ Forage fish are defined at § 679.2.
⁶ na=not applicable.

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