

Federal Communications Commission.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 030320066-3066-01; I.D. 022103D]

RIN 0648-AQ78

#### Fisheries of the Exclusive Economic Zone Off Alaska; Delay of Full Retention and Utilization Requirements for Rock Sole and Yellowfin Sole

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to implement Amendment 75 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). This amendment would delay the effective date of requirements for 100-percent retention and utilization requirements of rock sole and yellowfin sole from January 1, 2003, until June 1, 2004. The North Pacific Fishery Management Council (Council) submitted Amendment 75 to provide the Council and the affected industry with additional time to develop and assess alternatives to address groundfish discards in the groundfish fisheries of the Bering Sea and Aleutian Islands Management Area (BSAI). This action is designed to be consistent with the Magnuson-Stevens Fishery Management and Conservation Act (Magnuson-Stevens Act), the FMP, and other applicable laws.

**DATES:** Comments on the proposed rule must be received on or before May 12, 2003.

**ADDRESSES:** Comments may be sent to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Durall, or delivered to NMFS, Alaska Region, 709 West 9th Street, Room 453, Juneau, AK, 99801-1668, and marked Attn: Lori Durall. Comments also may be sent via facsimile (fax) to (907) 586-7557.

Comments will not be accepted if submitted via e-mail or the Internet.

Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for Amendment 75 may be obtained from NMFS at the above address or by calling the Sustainable Fisheries Division, Alaska Region, NMFS, at (907) 586-7228.

**FOR FURTHER INFORMATION CONTACT:** Kent Lind, 907-586-7228 or [kent.lind@noaa.gov](mailto:kent.lind@noaa.gov).

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the exclusive economic zone of the BSAI under the FMP. The Council prepared, and NMFS approved, the FMP under the authority of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*). Regulations implementing the FMP appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The Council has submitted Amendment 75 for Secretarial review and a Notice of Availability of the FMP amendment was published in the **Federal Register** on February 28, 2003, with comments on the FMP amendment invited through April 29, 2003. Comments may address the FMP amendment, the proposed rule, or both, but must be received by April 29, 2003, to be considered in the approval/disapproval decision on the FMP amendment. All comments received by April 29, 2003, whether specifically directed to the FMP amendment or the proposed rule, will be considered in the approval/disapproval decision on the FMP amendment.

#### Purpose and Need for Amendment 75

In 1997, the Council adopted a regulatory program to reduce the amount of groundfish discards in the groundfish fisheries off Alaska. This program, known as the Improved Retention/Improved Utilization (IR/IU) Program, was adopted as Amendment 49 to the FMP for the Groundfish Fishery of the BSAI and Amendment 49 to the FMP for Groundfish of the Gulf of Alaska (GOA) (Amendments 49/49). The IR/IU program requires that vessels fishing for groundfish in Alaska retain all pollock and Pacific cod beginning in 1998 when directed fishing for those species is open. On January 1, 2003, the program expanded to include all rock sole and yellowfin sole in the BSAI, and all shallow water flatfish in the GOA.

These requirements were set out in the final rule to implement Amendment 49 for the BSAI (62 FR 63880, December 3, 1997), and the final rule to implement

Amendment 49 for the GOA (62 FR 65379, December 12, 1997).

In the EA/RIR/IRFA prepared for BSAI Amendment 49, NMFS assessed the biological, economic and social impacts of improved retention and utilization. This analysis found that the proposed actions could result in significant economic impact on a substantial number of small entities, including a significant number of relatively small catcher/processor vessels that use trawl gear. Because of their size, these vessels are limited to freezing headed and gutted products.

To mitigate some of the effects that IR/IU regulations could have, the Council delayed implementation of the rules on the most negatively affected fisheries (i.e., those groundfish fisheries in which rock sole, yellowfin sole and shallow-water flatfish are caught and discarded) for a period of 5 years.

The Council recognized the need to conduct an assessment of the impacts of IR/IU regulations on small entities to determine whether a modification of the IR/IU regulations would minimize such impacts and continue to meet the Council's objectives. These objectives include ensuring healthy fisheries, reducing bycatch and waste, and improving utilization of fish resources with minimum negative effects of regulations on small entities.

To this end, the Council began an analysis in early 2002, to examine alternative approaches to current 100-percent retention requirements for rock sole and yellowfin sole that could achieve the Council's objectives of reducing bycatch but that would have less negative effects on industry. The analysis concluded that some entities currently participating in the groundfish fisheries of the BSAI might discontinue their participation due to the economic burden the existing rules could place on their operation.

In June 2002, therefore, the Council revised its IR/IU problem statement to state that 100-percent retention of rock sole and yellowfin sole would result in severe economic losses to certain participants in the fishery, while less than 100-percent retention of only those species would not be enforceable. The Council also began an analysis of a variety of alternative regulatory approaches that would provide for reductions in groundfish discards in a less burdensome manner.

In October 2002, the Council concluded that while several alternative proposals under analysis showed merit, they were not sufficiently developed and analyzed in a manner that would allow for implementation on January 1, 2003. Therefore, the Council adopted

BSAI Amendment 75 to delay implementing the 100-percent retention requirements for rock sole and yellowfin sole in the BSAI until June 1, 2004, to provide the Council and industry with additional time to develop alternative regulatory proposals. Also in October 2002, the Council considered whether to delay 100-percent retention requirements for shallow water flatfish in the GOA groundfish fisheries. The Council concluded, however, that full retention of shallow water flatfish in the GOA is practicable and would not result in the same economic burden as would the same requirement for rock sole and yellowfin sole in the BSAI groundfish fisheries. Therefore, the Council decided not to delay 100-percent retention requirements for shallow water flatfish in the GOA.

#### Elements of the Proposed Rule

This proposed rule would delay the effective date for IR/IU retention and utilization requirements for rock sole and yellowfin sole in the BSAI until June 1, 2004. No other regulatory actions are contained in this proposed rule.

#### Classification

At this time, NMFS has not determined that the FMP amendment that this rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Council prepared an IRFA that describes the economic impact that this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the **SUPPLEMENTARY INFORMATION** section of the preamble. This proposed rule does not duplicate, overlap, or conflict with other Federal rules. There are no new reporting or recordkeeping requirements contained

in any of the alternatives considered for this action.

There are 176 small entities (all catcher vessels) and 34 large entities (6 catcher vessels, 24 head and gut catcher processors, and 4 surimi catcher processors) active in these fisheries. Since per vessel costs are not available for these vessels, individual vessel profitability could not be estimated. Therefore, changes in gross revenue of the 176 vessels are used as a proxy for changes in individual vessel profitability. Furthermore, assumptions are made that revenues losses and gains are shared equally among these vessels and discards represent a displacement of revenue tonnage if hold space is limited. There are no economic impacts resulting from disproportionate sizes of vessels in the fishery.

A copy of the complete analysis can be obtained from the NMFS (see **ADDRESSES**) or via the Internet at <http://www.fakr.noaa.gov/>.

A summary of the analysis follows:

The preferred alternative would delay implementation of IR/IU flatfish regulations in the BSAI fisheries until June 2004. The economic impact of the preferred alternative on individual vessels is expected to be minimal.

Alternative 1, which represents a 100-percent retention requirement, would lead to decreases in gross revenue for the affected fisheries and could yield substantial decreases in gross revenue associated with rock sole in the Pacific cod fishery. Alternative 2 would allow some discards of the IR/IU flatfish species. The percent retention requirement would be set independently for each species and would range from 50-percent to 90-percent. The analysis of the effects of alternative retention requirements on catcher vessels shows that virtually 100-percent of the catch of rock sole and yellow sole is discarded in all the fisheries in which rock sole and yellow sole are caught. Consequently, any retention requirement for rock sole or yellow sole would be expected to result in adverse economic and operational impacts. A full retention requirement for rock sole would have the greatest effect, and this requirement would

result in less than a five percent displacement in revenue tonnage for all catcher vessel classes.

Alternative 3 would delay implementation of IR/IU flatfish rules for up to 3 years. Delaying implementation will postpone the severe economic consequences discussed under Alternatives 1 and 2. Alternative 4 exempts fisheries from IR/IU flatfish regulations if flatfish discards are less than 5 percent of total groundfish catch. Discards exceed 5 percent in most flatfish fisheries and in Pacific cod trawl fisheries in the BSAI. The revenue reductions of this alternative are similar to those of Alternative 1. A copy of the IRFA is available from NMFS (see **ADDRESSES**).

#### List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: March 24, 2003.

#### Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 679 is proposed to be 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.*; Title II of Division C, Pub. L. 105-277; Sec. 3027, Pub. L. 106-31, 113 Stat. 57.

2. In § 679.27, paragraphs (b)(3) and (b)(4) are revised to read as follows:

#### § 679.27 Improved Retention/Improved Utilization Program.

\* \* \* \* \*

(b) \* \* \*

(3) Rock sole in the BSAI (beginning June 1, 2004).

(4) Yellowfin sole in the BSAI (beginning June 1, 2004).

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