

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The C season allowance of the pollock TAC in Statistical Area 630 is 3,517 metric tons (mt) as established by the final 2003 harvest specifications for groundfish of the GOA (68 FR 9924, March 3, 2003). In accordance with § 679.20(a)(5)(iii)(B), the Administrator, Alaska Region, NMFS, (Regional Administrator) hereby reduces the C season pollock TAC by 387 mt, the amount of the harvest previously taken in excess of the A and B season pollock allowances in Statistical Area 630 and split equally between the C and D seasons. The revised C season allowance of pollock TAC in Statistical Area 630 is therefore 3,130 mt (3,517 mt minus 387 mt).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the revised C season allowance of the pollock TAC in Statistical Area 630 has been reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 3,080 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the GOA.

Maximum retainable amounts may be found in the regulations at § 679.20(e) and (f).

#### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the C season TAC in Statistical Area 630, and

therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: August 27, 2003.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. 03-22338 Filed 8-27-03; 2:53 pm]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 030320066-3192-02; I.D. 022103D]

RIN 0648-AQ78

#### Fisheries of the Exclusive Economic Zone Off Alaska; Removal 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:** Final rule.

**SUMMARY:** NMFS issues regulatory changes to implement the partial approval of Amendment 75 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). As partially approved, this amendment eliminates all reference to the requirements for 100-percent retention and utilization of rock sole and yellowfin sole in the groundfish fisheries of the Bering Sea and Aleutian Islands Management Area (BSAI). This action is necessary to amend regulations to maintain consistency with the the Magnuson-Stevens Fishery Management and Conservation Act (Magnuson-Stevens Act), the FMP, and other applicable laws.

**DATES:** Effective on October 2, 2003.

**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, Alaska Region, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Durall, or by calling (907) 586-7228.

**FOR FURTHER INFORMATION CONTACT:** Jeff Hartman, NMFS, Alaska Region, 907-586-8743 or jeff.hartman@noaa.gov.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the exclusive economic zone of the BSAI under the FMP. The North Pacific Fishery Management Council (Council) prepared 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.

#### Purpose and Need for Amendment 75

The Sustainable Fisheries Act of 1996 (Public Law 104-297) effected numerous amendments to the Magnuson-Stevens Act, including the addition of a new National Standard 9. This standard requires that conservation and management measures, to the extent practicable, (A) minimize bycatch and, to the extent bycatch cannot be avoided, (B) minimize the mortality of such bycatch. In response to National Standard 9 the Council adopted a regulatory program in 1997 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. 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. Under Amendment 49, the IR/IU program expanded on January 1, 2003, to include all rock sole and yellowfin sole in the BSAI (flatfish IR/IU).

As the effective date of flatfish IR/IU approached, industry representatives testified to the Council that some sectors of the BSAI trawl fleet would not be able to accommodate full retention and utilization of rocksole and yellowfin sole due to insufficient markets and/or processing constraints and costs. Thus, flatfish IR/IU would force vessel owners to choose to no longer participate in the BSAI fisheries. In response, the Council initiated an analysis to assess these concerns and whether alternative management programs could be implemented by January 1, 2003, to reduce discard rates while still providing for historical participation in the BSAI fisheries.

In October 2002, the Council concluded that while several alternative proposals under consideration 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 a preferred alternative for Amendment 75 to the FMP to delay implementing the 100-percent retention requirements for rock sole and yellowfin sole until June 1, 2004. The intent of this action was to provide the Council and industry with additional time to develop alternative regulatory proposals to reduce discard amounts.

The Council submitted Amendment 75 for review by the Secretary of Commerce and a Notice of Availability of the FMP amendment was published in the **Federal Register** on February 28, 2003 (68 FR 9630). Comments on this proposed Amendment were invited through April 29, 2003. The proposed rule was published on March 28, 2003 (68 FR 15144), and was followed by a notice of additional supplementary information on April 18, 2003 (68 FR 19182), to summarize additional information on the Initial Regulatory Flexibility Analysis (IRFA). Comments on the proposed rule and supplementary information were invited through May 12, 2003. NMFS received 4 letters by the end of the comment periods on the proposed amendment and its implementing rule, all requesting an indefinite delay or removal of the flatfish IR/IU requirement for the BSAI groundfish fisheries. These comments are summarized and responded to in the Response to Comments section, below.

A summary of the analysis on Amendment 75, including the Council's preferred alternative, was provided in the proposed rule (68 FR 15144, March 28, 2003) and the Notice of Availability of Supplemental Information (68 FR 19182 April 18, 2003). On May 29, 2003, the Secretary of Commerce partially approved the Council's preferred alternative for Amendment 75. In doing so, the Secretary continued the IR/IU program for pollock and Pacific cod, but delayed indefinitely the flatfish IR/IU program by removing reference to this program from the FMP. Full approval of the Council's preferred alternative would have been inconsistent with the Administrative Procedure Act, which requires that the administrative record for an action include an explanation of the rational connection between the analysis and decision. The administrative record for Amendment 75 shows that if flatfish IR/IU regulations were to be implemented after the 18-month delay date of June 2004, they would result in significant adverse economic impacts on some participants in the groundfish fisheries.

However, the record for this action does not show how overall benefits outweigh the costs. Approval of Amendment 75 also would have resulted in significant adverse economic impacts that are inconsistent with the problem statement for Amendment 75, National Standard 7 and National Standard 9. Thus, partial approval of Amendment 75 was necessary to provide sufficient opportunity for the Council to either develop a record for Amendment 75 or develop other options for refining the IR/IU program, without the immediate imposition of full retention of IR/IU flatfish species in the BSAI.

#### **Elements of the Final Rule**

This final rule would remove regulatory requirements for retention and utilization of rock sole and yellowfin sole in the BSAI. No other regulatory actions are contained in this final rule.

#### **Changes from the Proposed Rule to the Final Rule**

This final rule differs from the proposed rule in that it does not include a delay in the implementation of the IR/IU retention and utilization requirements for rock sole and yellowfin sole in the BSAI. Instead, regulatory provisions for flatfish IR/IU are removed. This change is necessary to conform regulations to the partial approval of Amendment 75.

#### **Response to Comments**

The proposed rule to implement Amendment 75 was published on March 28, 2003 (68 FR 15144), with comments invited through May 12, 2003. NMFS received 4 comment letters on the proposed rule, all of which address the adverse economic implications of the BSAI flatfish IR/IU program.

*Comment:* NMFS should rescind the flatfish IR/IU program in the BSAI, or put it on indefinite hold, because a delay until June 2004 will not provide sufficient time to implement alternative strategies to reduce discards of these species. Furthermore, significant progress already has been made voluntarily to reduce discards since 1997. The non-American Fisheries Act trawl catcher processor fleet alone has reduced yellowfin sole and rock sole discards by over 40 percent during the past 5 years.

*Response:* As explained above, the Secretary has determined that the proposed delay of the flatfish IR/IU program was inconsistent with the Administrative Procedure Act and National Standards 7 and 9. Thus, the existing provisions for flatfish IR/IU in

the BSAI were removed from the FMP and its implementing regulations.

#### **Classification**

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

The Council prepared an initial regulatory flexibility analysis (IRFA) that described the economic impact of the proposed rule, if adopted, would have on small entities. A summary of the IRFA was included in the Notice of Availability of Supplementary Information (68 FR 19182, April 18, 2003). The IRFA identified small and large entities that could be affected by the proposed rule and associated alternatives in the analysis. In Alternative 1 (the status quo) the imposition of a 100 percent IR/IU flatfish retention standard for rock sole and yellowfin sole in the BSAI would decrease revenues of small vessels while having little impact on larger vessels. This reduction in revenues could cause some of the smaller sized head and gut trawl catcher/processor vessels to exit fisheries in which these species are caught. Alternative 2, which would have allowed some discards of flatfish species, was anticipated to have some economic and operational impacts on small entities, but also was deemed to be impossible to enforce. Alternative 3 would have delayed imposition of IR/IU flatfish rules for up to 3 years, with the expectation that some form of fishing cooperative system would ease the economic burden of IR/IU flatfish rules in the BSAI. Alternative 4 would have exempted selected fisheries from IR/IU flatfish regulations based upon historical flatfish discard rates, but this would not mitigate the immediate burden on small head and gut catcher/processor vessels. The Council's preferred alternative was a modification of Alternative 3 that proposed a delay of IR/IU flatfish regulations for 18 months to temporarily ease the economic burden of flatfish IR/IU but ultimately would impose the full economic burden, unless other mitigating regulatory actions were to be implemented before the date that IR/IU flatfish rules would be implemented. No comments were submitted in response to the IRFA.

NMFS prepared a final regulatory flexibility analysis (FRFA) for the partial approval of Amendment 75 that contains the items specified in 5 U.S.C. 604(a). The FRFA consists of the IRFA, the comments and responses to the proposed rule, and the analyses completed in support of this action. A copy of the IRFA is available from the Council (see **ADDRESSES**). The preamble

to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated in its entirety here.

#### Statement of Objective and Need

A description of the reasons why this action is being considered, and the objectives of and legal basis for this action are contained in the preamble to the proposed rule and are not repeated here.

#### Summary of Significant Issues Raised in Public Comments

No public comments were received that related to the IRFA on this rule. Although 4 comments were received on the general economic impacts of the IR/ IU program, these comments were not specific to the analyses contained in the IRFA. For a summary of the comments received, refer to the section above titled "Comments and Responses."

#### Description and Estimate of Number of Small Entities to Which the Rule Will Apply

A description and estimate of the number of small entities to which the rule will apply is provided in the IRFA and IRFA summary contained in the Classification section of the proposed rule and in the notice of additional supplementary information and is not repeated here. The final rule has been modified from the proposed rule and the FRFA includes an analysis of the approved alternative that would permanently mitigate the impacts of flatfish IR/IU upon small entities by removing all reference to flatfish IR/IU in the BSAI FMP and implementing regulations. The number of small entities to which the rule will apply has not been affected by these changes.

#### Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

A description of projected reporting, recordkeeping, and other compliance requirements is provided in the IRFA and IRFA summary contained in the Classification section of the proposed rule and is not repeated here.

#### Steps Taken to Minimize Economic Impacts on Small Entities

Environmental impacts of the alternatives, including the Council's preferred Alternative and the Approved alternative, are expected to be insignificant based on the information and assessments are contained in Chapter 2 of the EA/RIR/FRFA. The Council's preferred alternative, and alternatives 1 through 4, would not have fully mitigated the adverse economic effects of IR/IU rules for flatfish on small entities because neither the Council nor the Secretary could guarantee that mitigating actions would have relieved the costs of full retention of IR/IU flatfish species by June 2004. The partial approval action of May 2003, will allow the benefits of the economic activity associated with these fisheries to accrue to vessel operators, crew and fishing communities, until the Council chooses to implement new IR/ IU policies. Furthermore, the partial approval action will provide Council, industry, and the managing agencies time to develop measures that may meet bycatch reduction needs, while allowing the industry to continue to provide fishery benefits to the nation. A copy of this analysis is available from NMFS (see ADDRESSES).

#### Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is

required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. This paragraph serves as the small entity compliance guide. Small entities are not required to take any additional actions to comply with this action. This action does not require any additional compliance from small entities. Copies of this final rule are available from NMFS (see ADDRESSES) and at the following web site: <http://www.fakr.noaa.gov/>

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

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: August 26, 2003.

**Rebecca Lent,**

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

■ For the reasons set forth 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.*; Title II of Division C, Pub. L. 105-277; Sec. 3027, Pub. L. 106-31, 113 Stat. 57.

#### § 679.27 [Amended]

■ 2. In § 679.27, paragraphs (b)(3) and (b)(4) are removed and paragraph (b)(5) is redesignated as (b)(3).

[FR Doc. 03-22342 Filed 8-29-03; 8:45 am]

BILLING CODE 3510-22-S