

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 031218322-3322-01; I.D. 111903A]

RIN 0648-AR73

Fisheries of the Exclusive Economic Zone off Alaska; Skates Management in the Groundfish Fisheries of the Gulf of Alaska

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule that would implement Amendment 63 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). Amendment 63, if approved, would move skates from the "other species" list to the "target species" list in the FMP. By listing skates as a target species, a directed fishery for skates in the Gulf of Alaska (GOA) may be managed to reduce the potential for overfishing skates. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the FMP, and other applicable laws.

DATES: Comments must be received by February 20, 2004.

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 Durall, or delivered to room 420 of the Federal Building, 709 West 9th Street, Juneau, AK. Comments may also be sent via facsimile (fax) to 907-586-7557. Comments will not be accepted if submitted via e-mail or Internet. Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for the proposed rule may be obtained from the same address.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, 907-586-7228 or melanie.brown@noaa.gov.

SUPPLEMENTARY INFORMATION: The groundfish fisheries in the exclusive economic zone of the GOA are managed 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.

The Council has submitted Amendment 63 for review by the Secretary of Commerce, and a Notice of Availability of the FMP amendment was published in the **Federal Register** on December 2, 2003 (68 FR 67390), with comments on the FMP amendment invited through February 2, 2004.

Comments may address the FMP amendment, the proposed rule, or both, but must be received by February 2, 2004, to be considered in the approval/disapproval decision on the FMP amendment. All comments received by that time, whether specifically directed to the FMP amendment or to the proposed rule, will be considered in the approval/disapproval decision on the FMP amendment.

Background

Amendment 63 is intended to respond to concerns that the rapidly developing skate fishery in the GOA may result in overfishing of skates. Amendment 63 to the FMP would move skates from the "other species" list to the "target species" list, allowing for the management of skates as a target species. Skates currently are managed as part of the other species complex with sharks, sculpins, octopus, and squid. The total allowable catch limit (TAC) for this complex is five percent of the aggregate of all TACs for groundfish of the GOA. Target species TACs are established for an individual species or species group and NMFS manages the directed fishery for each species to avoid exceeding the specified TACs. TACs usually are set at or below the acceptable biological catch (ABC) amount, which are below the overfishing levels (OFLs) for each target species or species group. The other species complex does not have an OFL or ABC amount due to the lack of biomass information for most of the species in the complex.

In 2003, a directed fishery for skates rapidly developed in the GOA. The 2003 skate harvest was 3,042 metric tons (mt), compared to 782 mt of skates harvested in 2002. Because skates are managed within the other species complex, the full TAC for the other species complex is available for a directed fishery for skates.

To reduce the potential for overfishing, the Council recommended that skates be managed as a target species. As a target species, OFL, ABC, and TAC amounts for skates would be established by annual harvest

specifications, allowing for more effective management of skates based on the best available scientific information. The development of OFL, ABC, and TAC amounts for the 2004 harvest specifications for skates would be based on scientific survey and harvest information from 2003 and prior years. Managing a directed fishery for skates so that OFL, ABC, and TAC amounts are not exceeded would reduce the potential for overfishing and would meet the conservation objectives of the Magnuson-Stevens Act.

This action proposes to implement Amendment 63. This action also would revise Table 10 of 50 CFR 679 to establish maximum retainable amounts (MRAs) of skates in other directed groundfish fisheries and to establish MRAs for other target groundfish in the directed fishery for skates. The listing of species groups under footnote 7 to the table for the other species complex would be revised to remove skates from the listing. A footnote 11 would be added to the MRAs column and row for skates to identify the managed skate species and the reporting codes. These changes are necessary to properly manage the retention of skates incidentally caught in other directed groundfish fisheries and the retention of other groundfish taken incidentally in the directed fishery for skates.

The definition of other species in the regulations also would be revised to reference 50 CFR 679.20(e) for Tables 10 and 11 instead of 50 CFR 679.20(c), which does not apply to Tables 10 and 11.

Classification

NMFS has not yet determined whether the amendment that this proposed rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. In making that determination, NMFS 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 the purposes of Executive Order 12866.

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) which describes any adverse impacts this proposed rule, if adopted, would have on directly regulated small entities. Because this action is closely linked to the annual harvest specifications, the EA/RIR/IRFA (see **ADDRESSES**) prepared for this action also analyzes the action to establish annual harvest specifications for the groundfish fisheries of the BSAI and GOA. The IRFA identifies two FMP change alternatives (no action and move skates

to the target list), and three specifications options that may be considered with the action alternative. The specification options will be further analyzed and considered in separate rulemaking for the annual harvest specifications to be completed in early 2004. A summary of the IRFA, as it pertains to this action, follows:

Amendment 63 amends the GOA FMP by moving skate species from the "other species" list and adding it to the "target species" list. Skates would receive their own OFL, ABC, and TAC. This action is proposed to give fishery managers better tools to protect the skate biomass in the face of a directed fishery that developed rapidly in 2003.

The objective of this action is to increase the control managers have over the fishing mortality of skates, to prevent overfishing of skates, to maintain healthy skate stocks, and to make a sustainable fishery for skates more likely.

The legal basis for this action is found in the Magnuson-Stevens Act and in the GOA groundfish FMP promulgated pursuant to that act.

The IRFA for this action ascertained that 933 hook-and-line catcher vessels, 15 hook-and-line catcher-processors, 117 trawl catcher vessels, and four trawl catcher-processors, might be directly regulated by this action. All of these vessels are considered "small entities" as defined by the RFA. In 2001, average Alaskan groundfish revenues for the small entities were \$70,000 for hook-and-line catcher vessels, \$1.83 million

for hook-and-line catcher-processors, \$350,000 for trawl catcher vessels, and \$1.8 million for trawl catcher-processors.

This action has the potential to limit harvests and fishery gross revenues in the short run to protect the biomass and preserve the fishery for the long term. The actual impacts would depend on the way the Council chooses to incorporate skates into the specifications, and on the annual specifications recommendations made by the Council.

Nothing in the proposed action would result in changes in reporting or recordkeeping requirements.

The analysis did not reveal any Federal rules that duplicate, overlap, or conflict with the proposed action.

The IRFA evaluated a no-action alternative to the preferred alternative. Under this no-action alternative, skates would have remained in the "other species" list. Since the "other species" complex TAC in 2003 (11,260 mt) is larger than the projected OFL for skates indicated in the EA (10,322 mt), harvest in a targeted skate fishery could drive down the skate biomass and reduce its reproductive potential. While revenues from the fishery would be higher in the short run, they would be lower in the longer run, as a reduced biomass supports a smaller (or perhaps no) commercial skate fishery. Thus, while this alternative may have imposed fewer short run restrictions on small fishing operations, it did not meet the objectives of providing protection to the

skate stocks in the GOA and thereby protecting the future of a sustainable fishery.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: December 30, 2003.

Rebecca Lent,

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

For reasons set out 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 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; 16 U.S.C. 1540(f).

2. In § 679.2, the definition "Other species" is revised to read as follows:

§ 679.2 Definitions.

* * * * *

Other species is a category that consists of groundfish species in each management area that are not specified as target species (see Tables 10 and 11 to this part pursuant to § 679.20(e)).

* * * * *

3. Table 10 to part 679 is revised to read as follows:

BILLING CODE 3510–22–S

Table 10 to Part 679—Gulf of Alaska Retainable Percentages

BASIS SPECIES		INCIDENTAL CATCH SPECIES														
Code	Species	Pollock	Pacific cod	DW flat ⁽²⁾	Rex sole	Flathead sole	SW flat ⁽³⁾	Arrowtooth	Sablefish	Aggregated rockfish ⁽⁸⁾	SR/RE ERA ⁽¹⁾	DSR SEO ⁽⁶⁾	Atka mackerel	Aggregated forage fish ⁽⁵⁾	Skates ⁽¹¹⁾	Other species
110	Pacific cod	20	na ⁹	20	20	20	20	35	1	5	(1)	10	20	2	20	20
121	Arrowtooth	5	5	0	0	0	0	na ⁹	0	0	0	0	0	2	0	0
122	Flathead sole	20	20	20	20	na ⁹	20	35	7	15	7	1	20	2	20	20
125	Rex sole	20	20	20	na ⁹	20	20	35	7	15	7	1	20	2	20	20
136	Northern rockfish	20	20	20	20	20	20	35	7	15	7	1	20	2	20	20
141	Pacific ocean perch	20	20	20	20	20	20	35	7	15	7	1	20	2	20	20
143	Thornyhead	20	20	20	20	20	20	35	7	15	7	1	20	2	20	20
152/ 151	Shortraker/ rougheye ⁽¹⁾	20	20	20	20	20	20	35	7	15	na ⁹	1	20	2	20	20
193	Atka mackerel	20	20	20	20	20	20	35	1	5	(1)	10	na ⁹	2	20	20
270	Pollock	na ⁹	20	20	20	20	20	35	1	5	(1)	10	20	2	20	20
710	Sablefish	20	20	20	20	20	20	35		15	7	1	20	2	20	20
	Flatfish, deep water ⁽²⁾	20	20	na ⁹	20	20	20	35	7	15	7	1	20	2	20	20
	Flatfish, shallow water ⁽²⁾	20	20	20	20	20	na ⁹	35	1	5	(1)	10	20	2	20	20
	Rockfish, other ⁽⁴⁾	20	20	20	20	20	20	35	7	15	7	1	20	2	20	20
	Rockfish, pelagic ⁽⁶⁾	20	20	20	20	20	20	35	7	15	7	1	20	2	20	20
	Rockfish, DSR-SEO	20	20	20	20	20	20	35	7	15	7	na ⁹	20	2	20	20
	Skates ⁽¹¹⁾	20	20	20	20	20	20	35	1	5	(1)	10	20	2	na ⁹	20
	Other species ⁽⁷⁾	20	20	20	20	20	20	35	1	5	(1)	10	20	2	20	na ⁹
	Aggregated amount of non-groundfish species	20	20	20	20	20	20	35	1	5	(1)	10	20	2	20	20

Notes to Table 10 to Part 679				
1	Shortraker/rougheye rockfish			
	SR/RE			
	shortraker/rougheye rockfish (171)			
	shortraker rockfish (152)			
	rougheye rockfish (151)			
	shortraker/rougheye rockfish in the Eastern Regulatory Area.			
	Where numerical percentage is not indicated, the retainable percentage of SR/RE is included under Aggregated Rockfish			
2	Dover sole, Greenland turbot, and deep-sea sole			
3	Shallow water flatfish			
4	Other rockfish			
	Flatfish not including deep water flatfish, flathead sole, rex sole, or arrowtooth flounder			
	Western Regulatory Area			
	Central Regulatory Area			
	West Yakutat District			
Southeast Outside District				
means slope rockfish and demersal shelf rockfish				
means slope rockfish				
Slope rockfish				
	<u>S. aurora</u> (aurora)	<u>S. variegatus</u> (harlequin)	<u>S. brevispinis</u> (silvergrey)	
	<u>S. melanostomus</u> (blackgill)	<u>S. wilsoni</u> (pygmy)	<u>S. diploproa</u> (splitnose)	
	<u>S. paucispinis</u> (bocaccio)	<u>S. babcocki</u> (redbanded)	<u>S. saxicola</u> (stripetail)	
	<u>S. goodei</u> (chilipepper)	<u>S. proriger</u> (redstripe)	<u>S. miniatus</u> (vermillion)	
	<u>S. crameri</u> (darkblotch)	<u>S. zacentrus</u> (sharpchin)	<u>S. reedi</u> (yellowmouth)	
	<u>S. elongatus</u> (greensstriped)	<u>S. jordani</u> (shortbelly)		
	In the Eastern GOA only, Slope rockfish also includes <u>S. polypsipinus</u> . (Northern)			
5	Pelagic shelf rockfish	<u>S. ciliatus</u> (dusky)	<u>S. entomelas</u> (widow)	<u>S. flavidus</u> (yellowtail)
6	Demersal shelf rockfish (DSR)	<u>S. pinniger</u> (canary)	<u>S. maliger</u> (quillback)	<u>S. ruberrimus</u> (yelloweye)
		<u>S. nebulosus</u> (china)	<u>S. helvomaculatus</u> (rosethorn)	
		<u>S. caurinus</u> (copper)	<u>S. nigrocinctus</u> (tiger)	
DSR-SEO = Demersal shelf rockfish in the Southeast Outside District				

7	Other species	sculpins	octopus	sharks	squid	
8	Aggregated rockfish	means rockfish of the genera <u>Sebastes</u> and <u>Sebastolobus</u> defined at § 679.2 except in: Southeast Outside District (SEO) Eastern Regulatory Area (ERA)				where DSR is a separate category for those species marked with a numerical percentage where SR/RE is a separate category for those species marked with a numerical percentage
9	N/A	not applicable				
10	Aggregated forage fish (all species of the following families)					
	Bristlemouths, lightfishes, and anglemouths (family <u>Gonostomatidae</u>)					209
	Capelin smelt (family <u>Osmeridae</u>)					516
	Deep-sea smelts (family <u>Bathylagidae</u>)					773
	Eulachon smelt (family <u>Osmeridae</u>)					511
	Gunnels (family <u>Pholidae</u>)					207
	Krill (order <u>Euphausiacea</u>)					800
	Laternfishes (family <u>Myctophidae</u>)					772
	Pacific herring (family <u>Clupeidae</u>)					235
	Pacific Sand fish (family <u>Trichodontidae</u>)					206
	Pacific Sand lance (family <u>Ammodytidae</u>)					774
	Pricklebacks, war-bonnets, eelblennys, cockscombs and Shannys (family <u>Stichaeidae</u>)					208
	Surf smelt (family <u>Osmeridae</u>)					515
11	Skates Species and Groups					
	Big Skates (702)					
	Longnose Skates (701)					
	Other Skates (700)					