subsequent proposed rule, will be considered by NMFS in its decision to approve, disapprove, or partially approve the amendment. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on the amendment or the proposed rule during their respective comment periods will be addressed in the final rule.

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

Dated: June 9, 2005.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 05–11917 Filed 6–15–05; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 050607152–5152–01; I.D. 052605B]

RIN 0648–AT04

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish Retention Standard

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 to implement Amendment 79 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). This action is necessary to reduce bycatch and improve utilization of groundfish harvested by catcher/processor trawl vessels in the Bering Sea and Aleutian Island management area (BSAI) that are not listed American Fisheries Act (AFA) catcher/processors referred to throughout this proposed rule as non-AFA catcher/processors. This action is intended to promote the management objectives of the Improved Retention/Improved Utilization (IRIU) program, the FMP, and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Written comments on the proposed rule must be received by August 1, 2005.

ADDRESSES: Written comments may be sent to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Lori Durall. Comments may be submitted by any of the following methods:

- E-mail: *BSA79PR–0648–AT04@noaa.gov*. Include in the subject line of email comments the following identifier: GRS. E-mail comments, with or without attachments, are limited to 5 megabytes;
- Webform at the Federal e-Rulemaking Portal: *http:www.regulations.gov*. Follow the instructions at that site for submitting comments;
- Mail to P.O. Box 21668, Juneau, AK 99802;
- Fax: to (907) 586–7557; or
- Hand Delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, AK.

Comments regarding the burden-hour estimates or other aspects of the collection-of information requirements contained in this rule should be submitted in writing to NMFS at the ADDRESSES above, and e-mail to David Rostker, OMB, by e-mail at *David__Rostker@omb.eop.gov* or by fax to 202–395–7285.

Copies of the Environmental Assessment/Regulatory Impact Review/ Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action may be obtained from the same mailing address above or from the NMFS Alaska Region website at *www.fakr.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Jason Anderson at *Jason.anderson@noaa.gov* or Jeff Hartman at *Jeff.hartman@noaa.gov*. Either may be contacted at (907) 586–7228.

SUPPLEMENTARY INFORMATION:

Background

NMFS manages the U.S. groundfish fisheries of the BSAI in the Exclusive Economic Zone under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP pursuant to the Magnuson-Stevens Act. Regulations implementing the FMP appear at 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

Public comments are being solicited on Amendment 79 through the end of the comment period specified in the notification of availability of the FMP amendment (NOA). The NOA published in the **Federal Register** on June 2, 2005 (70 FR 32287), with comments on the amendment invited through August 1, 2005. Public comments on the proposed rule must be received by the end of the comment period on the amendment, as published in the NOA, to be considered in the approval/disapproval decision on the amendment. All comments received by the end of the comment period on the amendment, whether specifically directed to the amendment, or the proposed rule, will be considered in the approval/disapproval decision. Comments received after that date will not be considered in the approval/ disapproval decision on the amendment. To be considered, written comments must received by the close of business on the last day of the comment period/ that does not mean postmarked or otherwise transmitted by that date.

This proposed action is one of several adopted by the Council in recent years to decrease regulatory and economic discards and increase catch utilization in the BSAI groundfish fisheries. Amendment 49 to the FMP was implemented on January 3, 1998 (62 FR 63880), establishing IRIU standards for pollock and Pacific cod beginning January 3, 1998, and for rock sole and yellowfin sole (flatfish) beginning January 1, 2003. In 2001, the Council determined that cost, market and logistical constraints would prevent non-AFA trawl catcher/processors from being able to comply with IRIU requirements for flatfish. In June 2002, the Council developed a problem statement for the development of alternatives to address the pending effective date of IRIU regulations for flatfish. In October 2002, the Council adopted Amendment 75 to the FMP which delayed the effective date of IRIU requirements for flatfish harvested in the BSAI until June 1, 2004. The Council's intent for this delay was to provide additional time for the development of bycatch reduction measures that could be more practically and effectively applied to the non-AFA trawl catcher/processor sector.

In October 2002, the Council also initiated the analysis of four new FMP amendments that were intended to augment or replace IRIU regulations for BSAI flatfish prior to the June 2004 effective date for this program. Amendment ''B'' would have created flatfish discard limits for the flatfish fisheries; Amendment 76 would exempt fisheries with less than a 5–percent IRIU flatfish bycatch rate from IRIU flatfish regulations; Amendment 79 (the proposed action) would establish a minimum groundfish retention standard (GRS); and Amendment 80 (as modified at the October 2004 Council meeting) would allocate specified target species and prohibited species catch (PSC) limits to non-AFA trawl catcher/processors and allow these vessels to form one or more fishery cooperatives.

NMFS partially approved Amendment 75 on September 2, 2003 (68 FR 52412), by approving the removal of the January 1, 2003 effective date for the IRIU flatfish program from the FMP, and by disapproving the adjusted effective date of June 1, 2004. NMFS's decision on Amendment 75 had the effect of indefinitely delaying the IRIU flatfish program. With the indefinite delay of this program, Amendment 76 no longer had practical application in the BSAI and Amendment ''B'' was rejected by the Council as infeasible following discussions between industry representatives and fishery managers. However, the Council continued to develop Amendments 79 and 80. Amendment 79, which this rule proposes to implement, was adopted by the Council in June 2003. If approved, it would supercede Amendment 75. The Council continues to develop Amendment 80.

As part of Amendment 79, the Council adopted a revision to the maximum retainable amount (MRA) for pollock harvested by non-AFA vessels in the BSAI that would allow for increased retention of pollock incidentally harvested by non-AFA vessels. Before June 2003, the proposed GRS and pollock MRA revision were component parts of the same action to reduce discards in the BSAI. The Council recognized that the MRA change could have immediate benefits for reducing discard in groundfish fisheries however, and requested NMFS to expedite the proposed pollock MRA revision as a separate action. The revised MRA for pollock harvested by non-AFA vessels in the BSAI was implemented by a final rule published in the **Federal Register** on June 14, 2004 (69 FR 32901).

GRS Program

The Council's analysis of groundfish retention rates in the BSAI fishery revealed that vessels in the non-AFA trawl catcher/processor sector had the lowest retained catch rates of any groundfish trawl fishery in the BSAI. The EA/RIR/IRFA for Amendment 79 reported that the non-AFA trawl catcher/processor sector had a retained groundfish catch rate of 75.1 percent in 2001. However, during the same year in the BSAI, AFA trawl catcher/processors had a retained catch rate of 99.1 percent, pot catcher/processors had a retained catch rate of 93.5 percent and longline catcher/processors had a retained catch rate of 85.4 percent. In 2001, the non-AFA trawl catcher/processor sector accounted for 67 percent of all discards in the BSAI. For these reasons, the GRS program that would be authorized under Amendment 79 focuses on this sector for improved groundfish retention rates and reduced bycatch.

This action proposes to implement an annual GRS for non-AFA trawl catcher/processors equal to or greater than 125 ft (38.1 m) length overall (LOA). The percent of groundfish retained would be a percent calculated as a specified ratio of the round-weight equivalent of total retained groundfish to total groundfish catch. The owners or operators of these vessels would be required to meet this standard on an annual basis. The use of total groundfish catch in the denominator of the calculation, instead of total catch, is proposed to avoid a potential incentive to target on non-groundfish species and to recognize that retention of non-groundfish often is either impractical or prohibited. Further, the catch of groundfish that are required to be treated as prohibited species under 50 CFR 679.20(d)(2) would be removed from the GRS calculation for individual vessels. By removing groundfish that are in prohibited species status, vessel operators would not be held accountable for retaining catch that they are required to discard. Groundfish species closed to directed fishing would be included in the calculation for percent of groundfish retained, because species taken incidental to target species may be retained up to the MRA (50 CFR 679.20(e)). This constraint would provide an incentive to reduce incidental catch while providing flexibility to catch target species. The annual GRS ratios as adopted by the Council are shown below:

TABLE 1. GROUNDFISH RETENTION STANDARD

GRS Schedule	*Annual GRS*
2005	65%
2006	75%
2007	80%
2008 and each year after	85%

The Council considered several alternatives to an annual GRS. The Council's preferred alternative, however, included an annual GRS because it would increase the number of vessels that could comply with the GRS program and addressed NMFS enforcement concerns. The EA/RIR/IRFA prepared for this action indicates that, in general, more vessels would be in compliance with the GRS standard as the period over which the GRS is calculated is increased from a weekly assessment period to a year. Additionally, NMFS Enforcement expressed concerns that some of the calculation periods for the GRS under consideration by the Council (for example, weekly) were infeasible because recordkeeping and reporting processes did not allow NMFS to match catch and production estimates over those time periods.

The purpose of the incremental increase of the annual GRS would be to provide additional time for vessels to adjust fishing operations to lower bycatch practices. If Amendment 79 is approved, NMFS anticipates the GRS to be effective January 20, 2006, and vessels would be required to retain at least 75 percent of their groundfish catch in the initial year of the program. The Council intended NMFS to approve Amendment 79 and implement the GRS program by 2005 with a GRS of 65 percent. However, Secretarial review of Amendment 79 and associated rulemaking was not initiated prior to the start of the 2005 fishing year. Because the GRS would be enforced on the basis of a calendar year, the 2006 fishing year would be the earliest the GRS program could be implemented. The EA/RIR/IRFA prepared for this action indicates that 16 BSAI non-AFA trawl catcher/processor vessels would be regulated by the GRS program. Data presented in the EA/RIR/IRFA to evaluate the effects of this action on these 16 vessels demonstrates that in 2001 the 16 non-AFA trawl catcher/processors retained 75.1 percent of their total groundfish catch. Furthermore, the analysis estimates that overall, the vessels regulated by this proposed action would retain 76.3 percent of total groundfish catch in 2006. For 2006, the analysis estimates that five of these 16 vessels would need to increase total groundfish retention to meet the 75–percent standard. NMFS understands that some vessels may incur an additional burden to meet a GRS of 75 percent rather than 65 percent for the first year of the program. The EA/RIR/IRFA and Council anticipate that this additional burden would be minimal because this sector has demonstrated groundfish retention amounts that frequently exceed 65 percent and have met the 75–percent level in 2001. It is NMFS's opinion that the starting level of 75 percent in 2006 is consistent with Council intent on this action and practicable according to the analysis presented on National Standards 7 and 9 in the EA/RIR/IRFA. However, NMFS requests public comment on the implementation of the GRS program at 75 percent in 2006. In

the event that NMFS determines, based on public comment, that the initiation of the GRS at 75 percent is not consistent with Council intent to gradually increase the GRS regardless of when the program is implemented, an initial GRS of 65 percent may be substituted for the 75 percent GRS in the final rule.

The FMP would establish the GRS as a tool for reducing discards of groundfish for any BSAI groundfish fishery sector. However, the Council specified that regulations implementing a GRS would only apply to non-AFA trawl catcher/processors that are 125 ft (38.1 m) LOA or greater. Data provided in the EA/RIR/IRFA indicate that other BSAI groundfish trawl sectors consistently achieve or exceed these standards. In 2001, non-AFA trawl catcher/processors less than 125 ft (38.1 m) LOA accounted for only 8 percent of the total catch of all non-AFA trawl catcher/processors and 7 percent of the retained catch. Given the relatively small contribution to this sector's overall harvest and recognizing that compliance costs associated with observers and scale monitoring requirements would be relatively higher for vessels less than 125 feet (38.1 m) LOA, the Council chose to exclude these vessels from the proposed GRS program.

The Council also specified that regulations implementing the GRS would require vessels subject to the GRS program to create products that yield at least 15 percent from each retained fish. Current regulations at § 679.27(i) set forth a 15–percent utilization requirement for all IRIU species. This action proposes to add groundfish listed in Table 2a to Part 679, except for any groundfish on prohibited species status, as IRIU species. Non-AFA trawl catcher/processors equal to or greater than 125 ft (38.1 m) LOA would be required to meet these current utilization standards for retained groundfish species used in the calculation for percent of retained groundfish.

Monitoring and Enforcement of the GRS

The GRS would be enforced on an individual vessel basis as opposed to a sector basis, so that those vessels that chronically fail to meet the standard could not impose a penalty on those vessels that consistently meet these requirements. All regulated vessels would be required to use NMFS-approved scales to determine the weight of total catch and either obtain sufficient observer coverage to ensure every haul is observed for verification that all fish are weighed or use an alternative scale use verification plan approved by NMFS. Each vessel would be required to provide a single location for observers to collect samples to reduce the potential of sample bias. Observer sampling of each haul would be necessary to determine the percentage of the total catch that is comprised of groundfish. This information would be used to estimate total groundfish weight used in the denominator of the GRS calculation. The round weight of retained groundfish catch would be calculated using NMFS standard product recovery rates (PRRs) set forth in regulations at Table 3 to Part 679. For each product/species combination, retained tonnage would be equal to primary product tonnage divided by the applicable PRR. For primary products that do not have a PRR specified in Table 3, NMFS would use best available data until a PRR could be established in regulation. Since all IRIU species must meet minimum utilization requirements at § 679.27(i), any primary product with a PRR less than 15 percent of the total weight of retained or lawfully transferred products produced from catch or receipt of that IR/IU species would not comply with this action. Further Council action and rulemaking would be required to include any primary product that could not meet these utilization standards.

NMFS proposes to prohibit the mixing of catch from two or more hauls prior to sampling by an observer. NMFS proposes this prohibition because all hauls must be observed and sampled, and it is not possible to obtain a discrete sample if hauls are mixed. Non-AFA catcher/processors using trawl gear occasionally mix catch from two or more hauls prior to sampling by an observer. However, the amount of groundfish retained under the GRS would be calculated based on the proportion of groundfish in each haul. To determine the proportion of groundfish in each haul, each haul would be sampled by an observer for species composition. The proportion of groundfish in each species composition sample would be extrapolated to the total haul weight. For purposes of calculating the percent of retained groundfish, NMFS would not be able to determine accurately the total haul weight of groundfish or species composition for a specific haul if two or more hauls are mixed.

Recent enforcement actions concerning intentional presorting of catch to bias observed catch rates of Pacific halibut document the incentive for biasing observer samples to optimize groundfish catch relative to constraining PSC or other groundfish catch. However, NMFS believes the ability to bias observer samples could be reduced under the GRS in comparison with the status quo by implementing the monitoring provisions that would be required under this rule. These include space and catch access provisions that would be approved by NMFS and that would allow observers to monitor all catch between the bin and the scale used to weigh total catch.

Recent enforcement actions also have identified an issue with observers not being willing to serve as witnesses in enforcement actions because of inconvenience, cost, and the need for the observer to refamiliarize herself or himself with the data and other records relating to the alleged violation. This could be a particular problem when numerous observers may have information regarding evidence necessary to prove the violations of the GRS. To address this issue, and to acknowledge the critical role observers play in effective management and enforcement of Alaska fisheries, NMFS intends to implement a program that provides for payment of witness fees to any observer who, at the request of an enforcement attorney, assists in the prosecution of an enforcement action. NMFS believes that this program will mitigate, to some degree, the inconvenience and other detriments that may otherwise dissuade an observer from assisting the government in proving its case.

Authority for Bycatch Reduction, the National Standards and the GRS

The EA/RIR/IRFA for Amendment 79 (see **ADDRESSES**), provides information on Magnuson-Stevens Act requirements to reduce bycatch and increase retention of catch. The analysis also highlights the relevance of National Standards 7 and 9 in the selection of the Council's preferred alternative. In their deliberations, the Council stated that its adoption of Amendment 79 balances conservation through reductions in discards (National Standard 9) and minimizes costs where practicable (National Standard 7) by enforcing higher retention rates only on the specific section of the fleet with the largest problem.

Reduction of bycatch for fisheries and other living marine resources has become a national and global concern. For example, on March 6, 2003, NMFS issued a National Bycatch Strategy to address issues related to the management of bycatch within the Nation's fisheries. To provide the authority for programs like the GRS, Congress amended the Magnuson-Stevens Act to require each fishery management plan approved by the

Secretary to ''establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable and in the following priority- (A) minimize bycatch; and (B) minimize the mortality of bycatch which cannot be avoided.'' Also, NMFS regulations at 50 CFR part 600.350(d)(3) provide guidance on factors that should be considered in determining the practicability of a particular management action to minimize bycatch or the mortality of bycatch. Relevant factors were considered and assessed in the EA/RIR/IRFA prepared for this action and are summarized below.

Comparing GRS Tradeoffs

The Council deliberated on Magnuson-Stevens Act requirements to reduce bycatch and concluded that progress made in adhering to the National Standards and potential consumer and environmental benefits from improved retention and utilization of groundfish offset the costs of enforcement, increased observers, vessel modifications, operational adjustments and recordkeeping and reporting. The EA/RIR/IRFA describes these conclusions relative to conservation goals through reductions in discards (National Standard 9) and minimization of costs where practicable (National Standard 7) by enforcing higher retention rates only on the specific section of the fleet with a recent history of higher discard rates relative to other BSAI groundfish fisheries. The analysis notes that the growing national and regional emphasis on reduction of discards reflects national and regional consumer interest in and potential for non-market, non-consumptive, or environmental benefits for this type of program. The analysis also recognizes the technical difficulty of quantifying those potential benefits. The Council also evaluated a range of alternatives to Amendment 79 that would have imposed greater compliance costs on industry, such as a proposal for full retention of specified flatfish species in the original IRIU program implemented under Amendment 49. The Council considered and rejected recommendations to enforce the GRS on other BSAI groundfish sectors, concluding that an application of the action to the target fleet with the highest discard rates would provide the greatest benefit in bycatch reduction through the GRS program. At the same time, the preferred alternative also would mitigate the cost of the program on the industry and sector it most directly impacts. For example, the preferred alternative would mitigate the adverse impacts of the program by excluding non-AFA trawl catcher/processor vessels less than 125 ft (38.1 m) LOA. Non-AFA trawl catcher/processor vessels have ''specific and particular operational concerns'' associated with the enforcement and monitoring requirements of the GRS. It also gradually would phase in the GRS program over time which would allow the affected vessels to adjust to the retention requirements. This phase-in would provide that portion of the industry most impacted by GRS requirements with the opportunity to continue targeting rock sole and yellowfin sole, while working to reduce discards in these fisheries.

Description of Regulations Specific to the GRS Program

Current recordkeeping and reporting regulations at § 679.5(a)(7)(iv)(C)(*3*) require the owners or operators of a catcher/processor using trawl gear to record an estimate of total round weight of groundfish by haul in a NMFS daily cumulative production logbook (DCPL). Other regulations, including those that would implement monitoring requirements for the GRS, require all catch on certain catcher/processors to be weighed on NMFS-approved scales. Proposed revisions to regulations at § 679.5(a)(7)(iv)(C)(*3*) would require all vessel owners or operators of vessels subject to the GRS to record in the DCPL the total catch scale weight for each haul. This would increase the quality of data available to NMFS managers and provide NMFS enforcement with a tool to verify total catch weight for vessels subject to the GRS program.

Proposed regulations at § 679.7(m) establish prohibitions specific to the GRS program. Regulations at § 679.7(m)(1) would prohibit owners or operators from discarding groundfish in an amount greater than allowed under the GRS program.

Regulations at § 679.7(m)(2) would prohibit owners or operators from failing to submit, submitting inaccurate information, or intentionally submitting false information that relates to the GRS program.

Regulations at § 679.7(m)(3) would (1) prohibit an owner or operator from processing or discarding any catch that was not weighed on a NMFS-approved scale that complies with requirements described at § 679.28(b), (2) prohibit the sorting of catch prior to the catch passing over the scale, and (3) require that all catch be available to be sampled by an observer.

Regulations at § 679.7(m)(4) would prohibit the processing of any catch by a vessel that does not comply with observer sampling station requirements described at § 679.28(d). Also, as previously described, regulations at § 679.7(m)(5) would prohibit the mixing of catch from two or more hauls.

Regulations at § 679.27(b)(4) would describe the specific groundfish species to be used in the GRS calculation. This would include all species listed in Table 2a to 50 CFR part 679, except for listed groundfish species that are in prohibited species status. By establishing these species as IRIU species, they would be subject to the 15–percent utilization requirements currently found at § 679.27(i). Regulations at § 679.27(j)(1) would also describe the vessels that would be required to comply with the GRS program and the time period for which the GRS would be calculated.

Regulations at § 679.27(j)(2)(i) would show the equation used for the GRS calculation and describe the variable and source of the variable used in each component of the calculation. Also, § 679.27(j)(2)(ii) would describe the schedule for increasing GRS percentages from 2006 through 2008 and beyond. As described above, the GRS is proposed to be implemented in 2006 at the 2006 level of 75 percent, although NMFS specifically requests public comment on whether a first year rate of 65 percent may be more appropriate.

Regulations at § 679.27(j)(3) would describe the monitoring requirements for vessels subject to the GRS program. Section 679.27(j)(3)(i) would require vessels subject to the GRS program to comply with minimum observer coverage requirements at § 679.50(c)(6). These requirements are described below. Regulations at § 679.27(j)(3)(ii) would require vessels to weigh each haul on a NMFS-approved scale and comply with catch weighing requirements described at § 679.28(b). Also, the vessel owner or operator would be required to ensure that catch from each haul is available to be sampled by an observer from a single location at a single collection point. Regulations at § 679.27(j)(3)(iii) would require the owner or operator to provide an observer sampling station that meets requirements described at § 679.28(d).

Vessels required to comply with the GRS program also may operate in areas other than the BSAI. Total retained groundfish is calculated from total fish product divided by the PRR for each species. For purposes of enforcing GRS requirements, it is necessary to separate fish or fish product subject to the GRS program from fish or fish product not subject to the GRS program. Regulations at § 679.27(j)(4) would require all owners or operators required to comply

with the GRS program to either (1) offload or transfer all fish or fish product prior to harvesting fish outside of the BSAI; or (2) ensure that the vessel is in compliance with recordkeeping and reporting and monitoring requirements described above and at § 679.5(a)(7)(iv)(C) and § 679.27(j)(3) at all times when fishing outside the BSAI. These requirements will improve the enforcement of this proposed action by assuring that all hauls used to estimate the GRS are observed, and that a record is created by the vessel operator to compare with the observer record.

Regulations at § 679.27(j)(5) would require all vessels required to comply with the GRS program that have BSAI groundfish on board, groundfish product on board, or receive deliveries of unsorted catch from vessels not required to comply with the GRS program, to comply with monitoring requirements described above and at § 679.27(j)(3). For purposes of enforcing GRS requirements, this requirement is necessary to separate fish or fish product subject to the GRS program from fish or fish product not subject to the GRS program.

Regulations at §§ 679.50(c)(6)(i) and (c)(6)(ii) would describe observer coverage and observer workload requirements for vessels subject to the GRS program. The owner or operator of a vessel subject to the GRS program would be required to provide two Level 2 NMFS-certified observers, at least one of which must be certified as a lead Level 2 observer, for each day the vessel is used to harvest or process fish in the BSAI. The owner or operator would be required to provide more than two observers if workload restrictions would otherwise preclude sampling duties. The time required for an observer to complete sampling, data recording, and data communications would not be permitted to exceed 12 hours in a 24-hour period and the observer would not be permitted to conduct sampling duties for more than 9 hours in each 24-hour period. NMFS could authorize an alternative processing plan that could allow the vessel to carry only one lead Level 2 NMFS-certified observer if the vessel owner or operator supplies vessel logbook or observer data to NMFS that demonstrates these duties can be completed within these workload restrictions. NMFS would not authorize an alternative processing plan if it would require the observer to divide 12-hour shifts into shifts of less than 6 hours.

Classification

At this time, NMFS has not determined that the FMP amendment that this proposed 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.

NMFS prepared an initial regulatory flexibility analysis (IRFA) as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact 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 provided above. A copy of the IRFA is available from NMFS (see **ADDRESSES**). A summary of the analysis follows.

This proposed action is intended to decrease regulatory and economic discards and increase catch utilization in the BSAI groundfish fisheries by implementing an annual GRS for non-AFA trawl catcher/processors equal to or greater than 125 ft (38.1 m) LOA. The percent of groundfish retained would be a percent calculated as a specified ratio of the round-weight equivalent of total retained groundfish to total groundfish catch. The GRS would gradually increase from 75 percent in 2006 to 85 percent in 2008.

The GRS program would apply only to non-AFA catcher/processors using trawl gear that are 125 ft (38.1 m) LOA or greater. Sixteen head-and-gut trawl catcher/processors meet these criteria. Based on the best available data, it is improbable that any of these vessels are small entities. However, NMFS does not have the level of data and information to make a statistically confident estimation of the number of small entities affected by this proposed action. Therefore, an IRFA has been prepared.

Alternative 1 described in the EA/RIR/IRFA is the status quo alternative. Current regulations regarding retention and discards would remain in effect.

Alternative 2 would establish a GRS of 70 percent. The standard would apply to non-AFA trawl catcher/processors 125 ft (38.1 m) LOA or greater and enforced at the sector level. Compliance with the GRS would be determined at the end of a fishing year. The MRA for pollock would be increased to 35 percent for all non-AFA trawl catcher/processors, including vessels less than 125 ft (38.1 m) LOA, and compliance with the pollock MRA would be monitored and enforced on each vessel at the end of each offload. NMFS-approved scales, a certified observer sampling station, and observer coverage of every haul would be used to measure and verify total catch. Alternative processing plans, approved by NMFS, could be substituted for observer coverage of every haul. Retained catch would be calculated using NMFS standard PRRs.

Alternative 3 would establish a GRS of 85 percent for January through May of each calendar year. The GRS would increase to 90 percent for the remainder of the year. The GRS would apply to individual non-AFA catcher/processors 125 feet (38.1 m) LOA or greater. Non-AFA catcher/processors less than 125 feet (38.1 m) LOA would be exempt from the GRS program if their weekly production is less than 600 mt. The MRA for pollock would be revised so that it is enforced at any time. Compliance with the GRS would be monitored and enforced at the end of each week for each area and gear type. NMFS-approved scales, a certified observer sampling station, and observation of every haul would be used to measure and verify total catch. Retained catch would be calculated using standard PRRs.

Alternative 4 is the preferred alternative, and would implement a gradually increasing annual GRS for non-AFA trawl catcher/processors equal to or greater than 125 ft (38.1 m) length overall (LOA). This alternative, including provisions to monitor and enforce this action, is described in further detail above in the preamble to this proposed action.

Retaining additional groundfish is not expected to generate additional revenues, and could result in lower revenues if these fish displace higher value fish. Vessels subject to the GRS program could incur operating costs associated with holding, processing, transporting, and transferring fish that are of relatively low value. However, changes in technology, fishing techniques, and markets could reduce these potential costs.

Vessels subject to this proposed action would be required to comply with the monitoring components described in the preamble above. NMFS estimates 7 of the 16 vessels subject to the GRS program would be required to install NMFS-approved flow scales, which are estimated to cost approximately $50,000 each. Equipment necessary to comply with observer sampling station requirements is estimated to cost between $6,000 and $12,000. Installation of this equipment is estimated to cost between $20,000 and $100,000. Under the GRS program, every haul would be required to be available for sampling by a NMFS-

certified observer. This requirement would likely necessitate an additional observer on each vessel, which is estimated to cost $82,000 per vessel per year.

This action proposes to revise recordkeeping and reporting requirements for vessels subject to the GRS. Proposed revisions to regulations would require all vessel owners or operators of vessels subject to the GRS to record in the DCPL the total catch scale weight for each haul. This would increase the quality of data available to NMFS managers and provide NMFS enforcement with a tool to verify total catch weight for vessels subject to the GRS program.

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

This proposed rule contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval under OMB No. 0648–0330. Public reporting burden per response for: at-sea scale inspection report/sticker is estimated to average 6 minutes; record of daily scale tests is estimated to average 45 minutes; printed output of at-sea scale weight is estimated to average 45 minutes; observer sampling station inspection request is estimated to average 2 hours; and prior notice to observer of scale test is estimated to average 2 minutes.

This proposed rule contains a collection-of-information requirement subject to the PRA and which has been approved by OMB under control number OMB 0648–0213. Public reporting burden for catcher/processor trawl gear daily cumulative production logbook is estimated to average 30 minutes per response.

Estimated response times include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS Alaska Region at the **ADDRESSES** above, and e-mail to *David__Rostker@omb.eop.gov*, or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: June 10, 2005.

Rebecca Lent,

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

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended to read 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.*; 1540(f); 1801 *et seq.*; 1851 note; 3631 *et seq.*

2. In § 679.2, a definition of ''Groundfish Retention Standard (GRS)'' is added to read as follows:

§ 679.2 Definitions.

* * * * *

Groundfish Retention Standard (GRS) means the retention and utilization standard for groundfish described at § 679.27(j) of this part.

* * * * *

3. In § 679.5, paragraph (a)(7)(iv)(C)(*3*) is revised to read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

(a) * * *
(7) * * *
(iv) * * *
(C) * * *

Enter ...	In a ...	If a ...
* * * * * * * (*3*) Estimated total round weight of groundfish by haul. If the owner or operator of the vessel is required to comply with the GRS program described at § 679.27(j), the operator or manager must enter the round weight total of all catch by haul as measured by the NMFS-approved scale. * * * * * * *	Trawl DCPL	C/P

* * * * *

4. In § 679.7, paragraph (m) is added to read as follows:

§ 679.7 Prohibitions.

* * * * *

(m) *Prohibitions specific to GRS.* It is unlawful for the owner or operator of a catcher/processor that is 125 ft (38.1 m) LOA or longer and not listed in § 679.4(l)(2)(i) and using trawl gear in the BSAI to:

(1) Retain an amount of groundfish during a fishing year that is less than the amount of groundfish required to be retained under the GRS program described at § 679.27(j).

(2) Fail to submit, submit inaccurate information, or intentionally submit false information on any report, application or statement required under this part.

(3) Process or discard any catch not weighed on a NMFS-approved scale that complies with the requirements of § 679.28(b). Catch must not be sorted before it is weighed and each haul must be available to be sampled by an observer for species composition.

(4) Process any groundfish without an observer sampling station that complies with § 679.28(d).

(5) Combine catch from two or more hauls.

5. In § 679.27, paragraphs (b)(4) and (j) are added to read as follows:

§ 679.27 Improved Retention/Improved Utilization Program.

* * * * *

(b) * * *

(4) All species listed in Table 2a to this part for purposes of the GRS program described in § 679.27(j), except

for groundfish in prohibited species status at the end of each reporting week.

* * * * *

(j) *Groundfish retention standard*—(1) *Applicability.* The operator of a catcher/processor that is 125 ft (38.1 m) LOA or longer, not listed in § 679.4(l)(2)(i), and using trawl gear must comply with the GRS set forth under § 679.27(j)(2)(ii) while fishing for or processing groundfish caught from the BSAI between January 1 and December 31 of each year. The owner of a catcher/processor 125 ft (38.1 m) LOA or longer is required to ensure that the operator complies with the GRS program set forth under § 679.27(j)(2)(ii). No part of the GRS program supersedes minimum retention or utilization requirements for IR/IU species found in this section.

(2) *Percent of groundfish retained calculation.* (i) For any fishing year, the percent of groundfish retained by each vessel identified under paragraph (j)(1)(i) of this section would be calculated using the following equations:

$$GFroundweight = \sum_{i=1}^{n} (PWspecies_n / PRRspecies_n)$$

Substituting the value for *GFroundweight* into the following equation,

GFR% = *(GFroundweight/TotalGF)**100

Where:

GFroundweight = the total annual round weight equivalent of all retained product weights for each IR/IU groundfish species.

PWspecies$_n$ = the total annual product weight for each groundfish species listed in Table 2a to this part by product type as reported in the vessel's weekly production report required at § 679.5(i).

PRRspecies$_n$ = the standard product recovery rate for each groundfish species and product combination listed in Table 3 to Part 679.

GFR% = the groundfish retention percentage for a vessel calculated as GFroundweight divided by the total weight of groundfish catch.

TotalGF = the total groundfish catch weight as measured by the flow scale measurement, less any non-groundfish, PSC species or groundfish species on prohibited species status under § 679.20.

(ii) The following table displays annual minimum groundfish retention requirements for each vessel required to comply with the GRS program under paragraph (j)(1)(i) of this section:

GROUNDFISH RETENTION STANDARD	
GRS Schedule	*Annual GRS*
2006	75%
2007	80%
2008 and each year after	85%

(3) *Monitoring requirements*—(i) *Observer coverage requirements.* In addition to complying with minimum observer coverage requirements at § 679.50(c), the owner or operator of a vessel required to comply with the GRS program must comply with observer coverage requirements as described at § 679.50(c)(6) at all times the vessel is used to harvest groundfish in the BSAI with trawl gear.

(ii) *Catch weighing.* For each haul, all catch caught by a vessel required to comply with the GRS program must be weighed on a NMFS-approved scale and made available for sampling by a NMFS certified observer at a single location. The owner or operator of a vessel required to comply with the GRS program must ensure that the vessel is in compliance with the scale requirements described at § 679.28(b), that each haul is weighed separately, and that no sorting of catch takes place prior to weighing. All weighed catch must be recorded as required at § 679.5(a)(7)(iv)(C).

(iii) *Observer sampling station.* The owner or operator of a vessel required to comply with the GRS program must provide an observer sampling station as described at § 679.28(d) and the owner of a vessel required to comply with the GRS program must ensure that the vessel operator complies with the observer sampling station requirements described at § 679.28(d) at all times the vessel is used to harvest groundfish in the BSAI. In addition to the requirements at § 679.28(d)(7)(ii), observers must be able to sample all catch from a single point along the conveyer belt conveying unsorted catch, and when standing where unsorted catch is collected, the observer must be able to see that no catch has been removed between the bin and where unsorted catch is collected.

(4) *Requirements for vessels that also harvest groundfish outside of the BSAI.* The operator of a vessel required to comply with the GRS program must offload or transfer all fish or fish product prior to harvesting fish outside the BSAI, unless the operator of the vessel is in compliance with the recordkeeping and reporting and monitoring requirements described at § 679.5(a)(7)(iv)(C) and § 679.27(j)(3) at all times the vessel harvests or processes groundfish outside the BSAI.

(5) *Requirements for vessels receiving deliveries of unsorted catch.* The owner or operator of a vessel required to comply with § 679.27(j) that receives deliveries of unsorted catch while processing or possessing fish subject to the GRS program must comply with § 679.27(j)(3) while processing deliveries of unsorted catch.

6. In § 679.50, paragraph (c)(6) is added to read as follows:

§ 679.50 Groundfish Observer Program applicable through December 31, 2007.

* * * * *

(c) * * *

(6) *Catcher/processors 125 ft (38.1 m) LOA or longer and not listed in § 679.4(l)(2)(i) using trawl gear in the BSAI*—(i) *Coverage requirement.* The owner or operator of a catcher/processor using trawl gear and not listed in § 679.4(l)(2)(i) must provide at least two level 2 NMFS-certified observers, at least one of which must be certified as a lead level 2 observer, for each day that the vessel is used to harvest or process groundfish in the BSAI. More than two observers are required if the observer workload restriction at paragraph (c)(6)(ii) of this section would otherwise preclude sampling as required under § 679.27(j)(3). NMFS may authorize the vessel to carry only one lead level 2 observer if the vessel owner or operator supplies vessel logbook or observer data that demonstrate that one level 2 observer can complete sampling, data recording, and data communication duties within the workload requirements described in § 679.50(c)(6)(ii) under an alternative processing plan. NMFS will not authorize an alternative processing plan with only one lead level 2 observer if it would require the observer to divide a 12-hour shift into shifts of less than 6 hours.

(ii) *Observer work load.* The time required for the observer to complete sampling, data recording, and data communication duties must not exceed 12 consecutive hours in each 24-hour

period, and the observer must not conduct sampling duties more than 9 hours in each 24-hour period.

* * * * *

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