

fishing year on April 1, 2021. The regulations at § 648.60(b)(2) require this closure to ensure that federally permitted scallop vessels do not harvest more than the allocated LAGC TAC for the NGOM Scallop Management Area. NMFS can only make projections for the NGOM closure date as trips into the area occur on a real-time basis and as activity trends appear. As a result, NMFS can typically make an accurate projection only shortly before the TAC is harvested. The rapid harvest rate that has occurred in the last 2 weeks makes it more difficult to project a closure well in advance. To allow federally permitted LAGC scallop vessels to continue taking trips in the NGOM Scallop Management Area during the period necessary to publish and receive comments on a proposed rule would result in vessels harvesting more than the 2021 LAGC TAC for the NGOM Scallop Management Area. This would result in excessive fishing effort in the area thereby undermining conservation objectives of the Atlantic Sea Scallop Fishery Management Plan and requiring more restrictive future management measures to make up for the excessive harvest. Also, the public had prior notice and full opportunity to comment on this closure process when we put the final NGOM management provisions in place for the 2021 fishing year on March 31, 2020 (85 FR 17754).

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

Dated: May 5, 2021.

**Jennifer M. Wallace,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 210504-0098]

RIN 0648-BK18

#### **Fisheries of the Exclusive Economic Zone Off Alaska; Removing the Processing Restrictions on Incidentally Caught Squid and Sculpin Species in the Gulf of Alaska and Bering Sea and Aleutian Islands Groundfish Fisheries**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues regulations to remove the regulatory restriction that limits processing of squids and sculpins to fishmeal only. This final rule is necessary to allow the processing and sale of squids and sculpins as products other than fishmeal and thereby to help prevent waste of the incidental catch of these ecosystem component (EC) species. This final rule is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Fishery Management Plans (FMP) for Groundfish of the Gulf of Alaska (GOA) and Bering Sea and Aleutian Islands Management Area (BSAI) (Groundfish FMPs), and other applicable laws.

**DATES:** Effective June 9, 2021.

**ADDRESSES:** Electronic copies of the Regulatory Impact Review (referred to as the “Analysis”) and the National Environmental Policy Act Categorical Exclusion prepared for this final rule may be obtained from [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Megan Mackey, 907-586-7228.

#### **SUPPLEMENTARY INFORMATION:**

##### **Authority for Action**

NMFS manages the groundfish fisheries in the exclusive economic zone (EEZ) of the BSAI and GOA under the Groundfish FMPs. The North Pacific Fishery Management Council (Council) prepared the Groundfish FMPs under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the Groundfish FMPs appear at 50 CFR parts 600 and 679.

The proposed rule to implement this action was published in the **Federal Register** on February 26, 2021, with comments invited through March 29, 2021 (86 FR 11716). NMFS received 5 comment letters containing a total of 3 unique comments. The comments are summarized and responded to under the heading Comments and Responses below.

A detailed review of the provisions and rationale for this action is provided in the preamble to the proposed rule (86 FR 11716, February 26, 2021) and is briefly summarized in this final rule.

##### **Background**

Squids and sculpins are defined in the EC category of the Groundfish FMPs. Directed fishing for EC species is prohibited. Incidental catch of squid species is retained in some groundfish fisheries and often utilized to prevent waste. Typically, sculpins are not

retained but can be in some circumstances.

The Council’s 2017 and 2019 actions to reclassify squids and sculpins, respectively, into the EC category of the Groundfish FMPs were based on the best available scientific information and were consistent with the National Standard (NS) guidelines. The Federal rulemakings to implement the Council’s actions prohibited the use or sale of incidentally caught squids and sculpins unless processed into fishmeal, in accordance with the regulations governing other EC species (85 FR 41427, July 10, 2020 (sculpin); 83 FR 31460, July 6, 2018 (squid)). The purpose of this action is to provide flexibility for the use of incidentally caught squids and sculpins, thereby reducing the waste of these EC species, and aligning the regulations with the long-standing use of incidentally caught squid species as bait.

The following sections of this preamble provide:

- A brief history of the restriction on processing and sale of squids and sculpins,
- The expected effects of and need for this action, and
- A description of the regulatory change made by this final rule.

##### **Brief History of the Restriction on Processing and Sale of Squids and Sculpins**

EC species are stocks that a fishery management council (council) or the Secretary of Commerce (Secretary) has determined do not require conservation and management, but desire to list in an FMP in order to achieve ecosystem management objectives (50 CFR 600.305(c)(5) and (d)(13) and 50 CFR 600.310(d)(1)). Retention and personal use of some EC species in the Groundfish FMPs (forage fish, grenadiers, squids, and sculpins) is allowed up to the applicable maximum retainable amount (MRA), which is the proportion or percentage of retained catch of a species closed for directed fishing (incidental catch species) to the retained catch of a species open for directed fishing (basis species) (50 CFR 679.20(e) and (i)). Current Federal regulations at 50 CFR 679.20(i)(4) and (5) prohibit the processing, barter, trade, and sale of EC species in Alaska (forage fish, grenadiers, squids, and sculpins) unless they are processed as fishmeal.

Amendment 96 to the BSAI FMP and Amendment 87 to the GOA FMP (Amendments 96/87) (75 FR 61639, October 6, 2010) established the EC category and designated prohibited species (defined in Table 2b to 50 CFR part 679, to include salmon, steelhead

trout, crab, halibut, and herring) and forage fish (defined in Table 2c to 50 CFR part 679 and § 679.20(i)) as EC species in both the Groundfish FMPs.

When Amendments 96/87 were recommended by the Council in 2010, the Council's stated intention was that prohibited species and forage fish would be in the new EC category. Because the retention, processing, and sale of prohibited species and forage fish was not permitted before their placement in the EC category, those restrictions remained in place and unchanged under Amendments 96/87. The Council did not indicate whether it intended that species added to the EC category at a later date would be subject to those same restrictions.

When the Council took action to recommend reclassifying squids in the EC category in 2017, harvesters and processors expected that incidentally caught squids in the groundfish fisheries could be processed and sold as bait, consistent with long-standing and common practice. Similarly, when the Council recommended reclassifying sculpins in the EC category in 2019, there was some interest in exploring food fish markets for incidentally caught sculpins, which have rarely been retained or processed. However, once squids and sculpins were reclassified in the EC category, existing Federal regulations at 50 CFR 679.20(i) applied to all EC species and prohibited the processing, barter, trade, and sale of squids and sculpins as anything other than fishmeal.

In October 2019, the Council initiated an analysis to reconsider the processing and sale restrictions on squids and sculpins in the EC category. No other species in the EC category were considered in this analysis. As a result, processing and sale restrictions will remain in place for prohibited species, forage fish, and grenadiers under this action.

#### **The Expected Effects of and Need for This Action**

Pursuant to this action, NMFS continues to manage squids and sculpins as EC species in the Groundfish FMPs. Directed fishing of squids and sculpins continues to be prohibited, and retention of squids and sculpins up to the MRA of 20 percent continues to be permitted. Recordkeeping and reporting requirements are maintained. The only change to current regulations is to remove the processing restrictions limiting processing and sale of squids and sculpins to fishmeal and include new regulations on allowable fish products for squids and sculpins.

Specifically, the regulations provide that retained catch of squids and sculpins not exceeding the MRA may be sold to a processor or processed into any product form—including (but not limited to) fishmeal, bait, and whole fish/food fish—for sale, barter, or trade. All other regulations pertaining to EC species remain in place.

The Council determined, and NMFS agrees, that this action will provide groundfish harvesters and processors with additional flexibility to conduct their business in an efficient manner by providing them with more options for the processing and sale of incidentally caught squids and sculpins up to the MRA, and will help reduce waste of these incidentally caught species.

#### **Final Rule**

This final rule removes the regulatory restriction that limits processing of incidentally caught squids and sculpins to fishmeal only and allows retained catch of squids and sculpins not exceeding the MRA to be sold to a processor or to be processed into any product form. This final rule is necessary to allow the processing and sale of squids and sculpins as products other than fishmeal and to help prevent waste of the incidental catch of these species. To make that change, this final rule revises language in 50 CFR 679.20(i).

#### **Comments and Responses**

NMFS received 5 comment letters containing a total of 3 unique comments.

*Comment 1:* Three commenters expressed support for this action.

*Response:* NMFS acknowledges these comments.

*Comment 2:* One commenter expressed support while also noting a concern that this action could encourage the fishing industry to push the limits of the MRA for squids and sculpins to obtain profit.

*Response:* Based on the Analysis, there is limited profit reason to expect the MRA to be pushed to its limits given that squids are low value and there is no current market for sculpins. The primary use of incidentally caught squids would be bait, however squids do not represent a significant portion of production for any processing community in the BSAI or GOA. In addition, the existing MRA for squids and sculpins of 20 percent is an appropriate and effective way to restrict retention while still allowing flexibility in operations. The MRA of 20 percent for squids and sculpins has been in place even before these species were moved to the EC category when there

were no processing restrictions. At that time the instances of exceeding the 20 percent MRA were very rare. Finally, catch monitoring is in place to monitor whether the MRA is exceeded. If there are overages, that would be a regulatory violation that could result in enforcement action.

*Comment 3:* One commenter stated that the classification of squids and sculpins as EC species is illegal and asserted that removing processing restrictions on squids and sculpins is inconsistent with the Magnuson-Stevens Act and NMFS's regulatory guidance. Specifically, the commenter stated that EC species do not have conservation and management measures and that NMFS is not able to prevent overfishing consistent with NS 1 without such measures. The commenter also stated that classifying species as EC species does not address NS 9's requirements to reduce bycatch to the extent practicable. Finally, the commenter asserts that the classification of squids and sculpins in the EC category is not consistent with the NS guidelines, and that the EC category is not authorized by, or consistent with, the Magnuson-Stevens Act.

*Response:* This general issue of the classification of EC species is outside the scope of this narrow rulemaking. However, we note that, when NMFS revised the NS guidelines in 2016 (81 FR 71858, October 18, 2016), NMFS included a new regulatory section addressing stocks in need of conservation and management (50 CFR 600.305(c)). The concept of EC species had been introduced in an even earlier 2009 rulemaking to revise the NS guidelines, and the 2016 rule was clear that it intended to provide further guidance on the question of what stocks require conservation and management without changing the previous 2009 guidance on the optional usage of EC species. NMFS addressed this in the 2016 final rule, and also responded to comments regarding whether 50 CFR 600.305(c) was consistent with the Magnuson-Stevens Act and its definition of "conservation and management" at 16 U.S.C. 1802(5) (81 FR 71858, see Comments and Responses Five, Seven, and Eleven). Those responses and the explanations regarding the 2009 and 2016 rulemakings are not repeated here.

While the commenter also argues that the classification of squids and sculpins as EC species was not consistent with the NS and NS guidelines, that issue is likewise outside the scope of this specific rulemaking. The classification of squids and sculpins as EC species occurred in previous rulemakings (85

FR 41427, July 10, 2020 (sculpin); 83 FR 31460, July 6, 2018 (squid)). A detailed review of the provisions and rationale for those actions is provided in their accompanying rulemakings. This action does not change the EC status of squids and sculpins, MRAs for squids and sculpins, or recordkeeping and reporting requirements. The only change to current regulations is to remove the processing restrictions limiting processing and sale of squids and sculpins to fishmeal, and include new regulations on allowable fish products for squids and sculpins. As noted in Section 4.6 of the Analysis, this action would not be expected to increase the amount of squids and sculpins caught incidentally, as this action addresses only whether that incidental harvest could be processed and sold.

In the prior actions classifying squids and sculpins as EC species, the Council and NMFS considered the Magnuson-Stevens Act's requirements, including the NS, and the NS guidelines. Regarding the EC status of squids and sculpins, if conservation and management is determined to be not necessary for a species, a council may recommend moving that species to the EC category of the FMP and adopting management measures for that species. Any recommendation by a council as to whether conservation and management is required for a species needs to be consistent with the NS of the Magnuson-Stevens Act. The NS general guidelines at 50 CFR 600.305(c) lay out a non-exhaustive list of 10 factors a council should consider when deciding whether stocks require conservation and management. The Council and NMFS considered these 10 factors for both squids and sculpins and determined in those prior actions that, because there is no directed fishing for these species and because there are few economic or ecological benefits to be gained by managing squids and sculpins as target stocks, moving these species to the EC category of the Groundfish FMPs was consistent with 50 CFR 600.305(c) and was consistent with the Magnuson-Stevens Act's NS. Both analyses for moving squids and sculpins to the EC category indicated that neither species was experiencing overfishing, and, in the absence of a directed fishery, squids and sculpins are very unlikely to become overfished. The 20 percent MRA for both species, which remains in place as it was before both species were moved to the EC, along with the retention of recordkeeping and reporting requirements, will ensure that there is no overfishing in accordance with NS 1.

In addition, the Council and NMFS considered measures to minimize incidental catch and mortality of EC species, consistent with NS 9, and to protect their role in the ecosystem, consistent with 50 CFR 600.305(c)(5). EC species do not require specification of biological reference points, but will be monitored as new, pertinent scientific information becomes available to determine changes in their status or their vulnerability to groundfish fisheries. By prohibiting directed fishing, maintaining the MRA, and maintaining recordkeeping and reporting requirements, the Council and NMFS recognized in those prior actions that the status quo is effectively being maintained while precluding any significant increase in bycatch. Retention of recordkeeping and reporting requirements provides information necessary should bycatch increase to levels such that conservation and management become necessary.

The Council has multiple tools to manage incidental catch, including maintaining a MRA to meet Council objectives. Contrary to the commenter's assertion that EC species do not have conservation and management measures, there are management measures in place for all EC species, consistent with 50 CFR 600.305(c)(5), and EC species continue to be listed and managed under the Groundfish FMPs. This includes a prohibition on directed fishing, a limit on retention (the 20 percent MRA for squids and sculpins), and recordkeeping and reporting requirements to track retention of EC species. As stated above, this rulemaking does not change any of these management measures for squids and sculpins (or any other EC species).

With regard to this specific action (removing processing restrictions on squids and sculpins), these species would continue to be managed as EC species in the Groundfish FMPs. Targeting of squids and sculpins would continue to be prohibited, but retention of squids and sculpins up to the MRA of 20 percent would be permitted. Recordkeeping and reporting requirements would be maintained. The purpose of this action is to help prevent waste of the incidental catch of these species up to the 20 percent MRA and to align regulations with the longstanding use of squid bycatch as bait. Preventing waste of incidentally caught species increases net benefits to the nation. In sum, as Section 5 of the Analysis for this action indicates, this action is consistent with the Magnuson-Stevens Act, the NS, and NMFS regulatory guidance. Specifically, the removal of processing restrictions on

squids and sculpins mitigates the waste of these incidentally caught species, while management measures remain in place as tools to minimize and monitor bycatch of these species, to protect the roles of these species in the ecosystem, and to determine if later changes are necessary to their EC status.

#### Changes From the Proposed Rule

No changes were made from the proposed rule.

#### Classification

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the Council's regulatory amendment, the Groundfish FMPs, other provisions of the Magnuson-Stevens Act, and other applicable laws.

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

#### *Certification Under the Regulatory Flexibility Act*

The Chief Counsel for Regulation for the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule contains no information collection requirements under the

Paperwork Reduction Act of 1995.

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

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: May 5, 2021.

#### **Samuel D. Rauch, III**

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

For reasons set out in the preamble, NMFS amends 50 CFR part 679 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.*; 3631 *et seq.*; Pub. L. 108–447; Pub. L. 111–281.

■ 2. In § 679.20, revise paragraph (i) to read as follows:

**§ 679.20 General limitations.**

\* \* \* \* \*

(i) *Forage fish, grenadiers, squids, and sculpins*—(1) *Definition*. See Table 2c to this part.

(2) *Applicability*. The provisions of this paragraph (i) apply to all vessels fishing for groundfish in the BSAI or GOA, and to all vessels processing groundfish harvested in the BSAI or GOA.

(3) *Closure to directed fishing*. Directed fishing for forage fish, grenadiers, squids, and sculpins is prohibited at all times in the BSAI and GOA.

(4) *Limits on sale, barter, trade, and processing of forage fish and grenadiers*. The sale, barter, trade, or processing of forage fish and grenadiers is prohibited, except as provided in paragraph (i)(5) of this section.

(5) *Allowable fishmeal production of forage fish and grenadiers*. Retained catch of forage fish or grenadiers not

exceeding the maximum retainable amount may be processed into fishmeal for sale, barter, or trade.

(6) *Allowable fish products for squids and sculpins*. Retained catch of squids and sculpins not exceeding the maximum retainable amount may be sold to a processor or processed into any product form, including (but not limited to) fishmeal, bait, and whole fish/food fish, for sale, barter, or trade.

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