

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971231319-8070-02; I.D. 112697A]

RIN 0648-AK09

Fisheries of the Exclusive Economic Zone Off Alaska; Maximum Retainable Bycatch Percentages

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

ACTION: Final rule.

SUMMARY: NMFS implements a regulatory amendment to establish separate maximum retainable bycatch (MRB) percentages for shorttraker rockfish and rougheye rockfish (SR/RE) in the Aleutian Islands Subarea (AI) groundfish fisheries. This action is necessary to slow the harvest rate of SR/RE, which will reduce the potential for overfishing. This action is intended to further the objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP).

DATES: Effective April 30, 1998.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review prepared for this action may be obtained from the Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or by calling the Alaska Region, NMFS, at 907-586-7228.

FOR FURTHER INFORMATION CONTACT: Alan Kinsolving, 907-586-7228.

SUPPLEMENTARY INFORMATION: Fishing for groundfish by U.S. vessels in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) is managed by NMFS according to the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

Regulations at 50 CFR 679.20(e) establish MRB percentages for groundfish species or species groups that are closed to directed fishing. The

MRB amount is calculated as a percentage of the species closed to directed fishing (bycatch species) relative to the amount of other species retained onboard the vessel that are open for directed fishing. Amounts of a bycatch species onboard a vessel that are below or equal to the specified MRB percentage for that species may be retained. Amounts that are in excess of the MRB percentage must be discarded. Such discards that are required by the regulations are known as regulatory discards.

MRB percentages serve as a management tool to slow the harvest rates of bycatch species by limiting the amount that can be retained on board a vessel. By not placing the bycatch species on "prohibited" status, thereby prohibiting all retention, MRBs also serve to minimize regulatory discard of bycatch species when they are taken incidental to other directed fisheries. MRB percentages reflect a balance between the need to reduce the harvest rate of bycatch species and the desire to minimize regulatory discard of the bycatch species. Although MRB percentages limit the incentive to target on a bycatch species, fishermen can "top off" their retained catch with these species up to the MRB amount by deliberately targeting the bycatch species.

Currently, MRBs are established for aggregate rockfish species that are closed to directed fishing. As part of the aggregate rockfish MRB, the combined amounts of SR/RE and other rockfish closed to directed fishing must not exceed the following percentages of other species that are open to directed fishing: (a) 15 percent relative to deepwater species (other rockfish species, sablefish, Greenland turbot, and flathead sole), (b) 5 percent relative to shallow water species (Atka mackerel, pollock, yellowfin sole, rock sole, "other flatfish", squid, and other species) and (c) 0 percent relative to arrowtooth flounder.

SR/RE are highly valued, but amounts available to the commercial fisheries are limited by a relatively small total allowable catch (TAC) amount that is fully needed to support bycatch needs in other groundfish fisheries. As a result, the directed fishery for SR/RE typically is closed at the beginning of the fishing year. Nonetheless, bycatch amounts of SR/RE can exceed TAC and approach the specified overfishing level. When the overfishing level of SR/RE is reached, NMFS must close all other

fisheries in which SR/RE is taken as bycatch.

In response to this problem, the Council recommended that NMFS establish separate MRB percentages for SR/RE lower than the current MRB percentages for SR/RE. A proposed rule to implement this regulatory amendment was published in the **Federal Register** on January 16, 1998 (63 FR 2654) with comments invited through February 17, 1998. No letters of comment were received.

This action separates SR/RE from the aggregated rockfish bycatch species group and establishes MRB percentages for SR/RE in the AI at 7 percent relative to deepwater complex species and to 2 percent relative to shallow water complex species. The MRB percentage relative to arrowtooth flounder remains at 0 percent.

Classification

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the measures this rule would implement would not have a significant economic impact on a substantial number of small entities. The basis for this certification was published in the proposed rule, (63 FR 2654, January 16, 1998). No comments were received regarding this certification. Thus, a regulatory flexibility analysis was not prepared.

This final rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: March 25, 1998.

Gary Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out 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 part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.* and 3631 *et seq.*

2. In part 679, Table 11 is revised to read as follows:

TABLE 11.—BERING SEA AND ALEUTIAN ISLANDS MANAGEMENT AREA RETAINABLE PERCENTAGES

	Pollock	Pacific cod	Atka mackerel	Arrowtooth	Yellowfin sole	Other flatfish	Rock sole	Flathead sole	Greenland turbot	Sablefish	Shortraker/rougheye (AI)	Aggregated rockfish	Squid	Aggregate forage fish	Other species
Basis Species ¹															
Pollock	na ⁴	20	20	35	20	20	20	20	1	1	2	5	20	2	20
Pacific cod	20	na ⁴	20	35	20	20	20	20	1	1	2	5	20	2	20
Atka mackerel	20	20	na ⁴	35	20	20	20	20	1	1	2	5	20	2	20
Arrowtooth	0	0	0	na ⁴	0	0	0	0	0	0	0	0	0	2	0
Yellowfin sole	20	20	20	35	na ⁴	35	35	35	1	1	2	5	20	2	20
Other flatfish	20	20	20	35	35	na ⁴	35	35	1	1	2	5	20	2	20
Rock sole	20	20	20	35	35	35	na ⁴	35	1	1	2	5	20	2	20
Flathead sole	20	20	20	35	35	35	35	na ⁴	35	15	7	15	20	2	20
Greenland turbot	20	20	20	35	20	20	20	20	na ⁴	15	7	15	20	2	20
Sablefish	20	20	20	35	20	20	20	20	35	na ⁴	7	15	20	2	20
Other rockfish	20	20	20	35	20	20	20	20	35	15	7	15	20	2	20
Other red rockfish-BS ..	20	20	20	35	20	20	20	20	35	15	na ⁴	15	20	2	20
Pacific ocean perch ..	20	20	20	35	20	20	20	20	35	15	7	15	20	2	20
Sharpchin/Northern-AI	20	20	20	35	20	20	20	20	35	15	7	15	20	2	20
Shortraker/Rougheye-AI	20	20	20	35	20	20	20	20	35	15	na ⁴	15	20	2	20
Squid	20	20	20	35	20	20	20	20	1	1	2	5	na ⁴	2	20
Other species	20	20	20	35	20	20	20	20	1	1	2	5	20	2	na ⁴
Aggregated amount non-groundfish species	20	20	20	35	20	20	20	20	1	1	2	5	20	2	20

¹ For definition of species, see Table 1 of the Bering Sea and Aleutian Islands groundfish specifications.

² Aggregated rockfish of the genera *Sebastes* and *Sebastes* except in the Aleutian Islands Subarea where shortraker and rougheye rockfish is a separate category.

³ Forage fish are defined at § 679.2.

⁴ na = not applicable.

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