

establish the IFQ program. These percentages would be applied to specific total allowable catch (TAC) amounts that were developed by the Council as part of Framework 19 to the FMP, which will establish scallop fishery management measures for the 2008 and 2009 fishing years. After determining the allowable levels of fishing based on updated survey information and fishing mortality targets, the TAC that would be allocated to the current limited access fleet and the IFQ scallop vessels, as well as the NGOM TAC and estimated landings under the Incidental catch LAGC scallop permit, would be specified through a separate rulemaking for Framework 19. Framework 19 also will specify management measures for the 2008 and 2009 fishing years that would be recommended if Amendment 11 is not approved.

Public comments are being solicited on Amendment 11 and its incorporated documents through the end of the comment period stated in this notice of availability. A proposed rule that would implement Amendment 11 will be published in the **Federal Register** for public comment. Public comments on the proposed rule must be received by the end of the comment period provided in this notice of availability of Amendment 11 to be considered in the approval/disapproval decision on the amendment. All comments received by January 29, 2008, whether specifically directed to Amendment 11 or the proposed rule for Amendment 11, will be considered in the approval/disapproval decision on Amendment 11. Comments received after that date will not be considered in the decision to approve or disapprove Amendment 11. To be considered, comments must be received by close of business on the last day of the comment period; that does not mean postmarked or otherwise transmitted by that date.

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

Dated: November 26, 2007.

Emily H. Menashes,

Deputy 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. 070816465-7466-01]

RIN 0648-AV96

Fisheries of the Exclusive Economic Zone Off Alaska; Prohibited Species Bycatch Management

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

ACTION: Proposed rule.

SUMMARY: NMFS proposes to repeal regulations providing for a groundfish vessel incentive program (VIP) that was designed to reduce the rate at which Pacific halibut and red king crab are taken as incidental catch in Alaska groundfish trawl fisheries. The VIP has not performed as intended because of the cost associated with enforcement, the relatively small number of vessels impacted by the regulation, and the implementation of more effective bycatch reduction programs. This action is necessary to reduce a regulatory burden on the industry and to reduce the administrative costs necessary to support a program no longer considered an effective means to reduce bycatch rates.

DATES: Written comments must be received by December 31, 2007.

ADDRESSES: You may submit comments, identified by 0648-AV96, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>;
- Mail: Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802; Attn: Ellen Sebastian, Records Officer;
- Hand delivery: 709 West 9th Street, Room 420A, Juneau, AK; or
- Fax: 907-586-7557, Attention: Sue Salvesson.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will

accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) for this action may be obtained from the addresses stated above or from the Alaska Region NMFS website at <http://www.fakr.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Ben Muse, 907-586-7228, or ben.muse@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

NMFS manages the U.S. groundfish fisheries of the exclusive economic zone off Alaska under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). The North Pacific Fishery Management Council (Council) prepared the FMPs pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations implementing the FMPs appear at 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

Fisheries off Alaska targeting groundfish incidentally catch other species as well. Some of these non-groundfish species are themselves the objects of valuable targeted fisheries and retention of these species is prohibited in the groundfish fishery. These prohibited species include Pacific halibut, Chinook and "Other" salmon, several crab species, and herring. Measures to restrict the catch of these species have been incorporated into the FMPs for the GOA and the BSAI and into regulation. Among these measures are prohibited species catch (PSC) limits. PSC limits restrict the amount of a prohibited species that may be taken incidentally in a groundfish fishery. Groundfish fisheries are routinely closed in all or part of a management area when a PSC limit is reached. These closures are expensive for industry because they mean that valuable groundfish are left unharvested.

Section 3.6.4 of the GOA FMP authorizes regulations to reduce halibut bycatch rates in fisheries subject to halibut PSC limits to increase the opportunity to fish groundfish TACs before established PSC limits are reached. Specifically, this provision is intended to encourage individual vessels to maintain average bycatch

rates within acceptable performance standards and discourage fishing practices that result in excessively high bycatch.

Section 3.6.4 of the BSAI FMP allows for implementation of regulatory measures to provide incentives to individual vessels to reduce bycatch rates of prohibited species for which PSC limits are established. While the GOA provisions are limited to halibut, the BSAI provisions authorize the creation of, and have been used to create, incentive programs for red king crab, as well as halibut. This provision has the same purpose as the corresponding provision in the GOA FMP, which is to increase the opportunity to harvest groundfish TACs.

Vessel Incentive Program

Regulations at 50 CFR 679.21(f) implement a vessel incentive program (VIP) under the authority of the FMPs. The program creates incentives for individual groundfish trawl operators to reduce their incidental catch rates of halibut and red king crab by imposing penalties on operations whose incidental catch rates exceed specified standards. Under the program, the Alaska Regional Administrator is required to publish fishery-specific bycatch rate standards for halibut in the GOA and BSAI, and red king crab in the BSAI two times a year. Observer data on the catch composition of harvests in subject fisheries is statistically analyzed. Vessels that appear to have exceeded the published bycatch rate standards are subject to prosecution. The program became effective in mid-1991.

Currently, vessels are subject to the VIP requirement if the groundfish catch of the vessel is observed on board the vessel, or on board a mothership that receives unsorted codends from the vessel, at any time during a weekly reporting period and the vessel is assigned to one of six trawl fisheries. As a practical matter, only groundfish trawl vessels carrying observers are subject to the VIP.

The trawl fisheries defined in the regulations that are subject to the VIP requirement include two GOA fisheries (GOA midwater pollock and GOA other trawl) and four BSAI fisheries (BSAI midwater pollock, BSAI yellowfin sole, BSAI bottom pollock, and BSAI other trawl). A vessel is assigned a fishery group based on the species composition in observed samples of its groundfish catch.

Regulations specify that a vessel's PSC rate during any fishing month may not exceed the bycatch rate standard specified by NMFS. Regulations require that bycatch rate standards for each

fishery be published twice a year in the **Federal Register**. These standards are established for Pacific halibut in the GOA and BSAI trawl fisheries; the non-pollock trawl fisheries also are held to a red king crab bycatch rate standard in Zone 1 of the BSAI. A vessel is non-compliant with a bycatch rate standard if the vessel's bycatch rate for a fishing month exceeds the bycatch rate standard established for that fishery.

Calculation of VIP bycatch rate standards and monitoring of PSC and target catch is dependent on data collected at-sea by observers. Observers sample hauls and gather information on the date and target species harvested, area of catch, total round weight of groundfish catch, total round weight of halibut PSC, and number of red king crab PSC. The Alaska Fisheries Science Center has developed observer sampling protocols, and algorithms for statistical analysis of bycatch information. The information is used to make statistical inferences about PSC rates for a vessel in a given month for a specific target species.

The VIP regulations require publication of the bycatch rate standards in the **Federal Register** for 30 days before they take effect, unless NMFS finds for good cause that such notification and public comment are impracticable, unnecessary, or contrary to the public interest. Bycatch rate standards are season and fishery specific. The Alaska Regional Administrator is required to publish bycatch rate standards for the first half of the year (before January 1) and for the second half of the year (before July 1). Although standards are required to be published bi-annually, the Regional Administrator may adjust bycatch rate standards as frequently as he or she considers appropriate. VIP bycatch rate standards, however, have not been published since the first half of 2003.

Regulations governing the determination of halibut and red king crab bycatch rates for individual vessels are at 50 CFR 679.21(f)(7) and (f)(8). Observers sample hauls and collect information about the Federal reporting area of harvest, round weight of groundfish, round weight of halibut, and number of red king crab. For VIP PSC rate calculation, observers randomly predetermine the hauls to sample, and randomly sample a minimum of 100 kg of fish from throughout the haul. Observers report to NMFS at least weekly with the information from sampled hauls, and allow the vessel operator to examine the data.

At the end of a month in which an observer has sampled at least 50 percent

of the vessel's total hauls (retrieved while an observer was onboard), the Regional Administrator calculates the vessel's PSC rate for halibut and red king crab based on observer data for each of the fisheries to which the vessel was assigned based on the vessel's catch composition during the month. The PSC rates reflect the weight of groundfish and halibut and the number of red king crab that were actually sampled. No extrapolations are made to the weight and numbers in sampled hauls, or the weight and numbers harvested in observed and unobserved hauls during the month.

Enforcement actions may be taken if a vessel's bycatch rate for a fishing month exceeds the bycatch rate standard established for that fishery.

The VIP imposes potential costs on fishermen with high observed prohibited species bycatch rates. This has created an incentive for fishermen to reduce these observed rates. They can do this by changing the patterns of their fishing behavior. They can also do this by manipulating the observer reported rates. For example, fishing operations may arrange to pre-sort their catches, to eliminate some or all of the prohibited species before these reach the observer station. These are illegal actions, and their incidence is unknown. However, it is known that the VIP increases the incentives for these actions. Anecdotal evidence from knowledgeable persons in the Observer Program and NOAA Enforcement suggests that the incidence of these activities may be serious. Pre-sorting may affect the accuracy of observer reports of halibut and red king crab bycatch and bycatch rates.

Effective enforcement of the VIP imposes significant costs on the observer program and NMFS. Resources for the management of the program and enforcement of the rule have to be taken from other high priority management and enforcement responsibilities. It also is not clear from experience with the program that it has had, or will have, a significant deterrent effect or has led to the harvest of significant additional amounts of target groundfish. Part of the problem may be the limited coverage of the program. As a practical matter, sufficient observations of hauls usually only occur on vessels with 100 percent observer coverage. This has a tendency to limit the program to trawl vessels equal to or greater than 125 feet length overall (LOA); these are the trawlers that are required to carry that level of coverage.

The authorizing provisions in both FMPs make clear that the purpose of a VIP is to enable industry to harvest larger proportions of groundfish TACs.

Repeal of the VIP will not affect managers' ability to protect the sustainability of halibut and red king crab stocks because the groundfish fisheries will continue to be managed to maintain bycatch within the PSC limits. Repeal of the VIP also will not affect managers' ability to protect the sustainability of groundfish stocks by maintaining harvests within TAC and Acceptable Biological Catch (ABC) limits.

Furthermore, the establishment of fishery cooperatives and the stringent catch monitoring provisions implemented by NMFS to monitor cooperative-specific allocations of groundfish and prohibited species, including halibut and red king crab, are other means to reduce bycatch.

Cooperative members receive a joint allocation of PSC, and this creates incentives and capabilities for cooperatives to control individual operation PSC bycatch rates to maximize the value of the cooperative's PSC allocation.

In June 2003 the Council initiated an amendment to repeal the VIP given concerns about its effectiveness, concerns over its potential to absorb resources that could be utilized by other, important management and enforcement functions, concerns about the incentive created for pre-sorting of bycatch, and developments in other bycatch reduction programs that have occurred since 1991. In October 2003, the Council reviewed a NMFS discussion paper and made a preliminary identification of alternatives for analysis. The Council requested that a discussion of alternatives for analysis be placed on the agenda in December 2003 for additional public testimony. In December 2003 the Council reiterated its approval of the alternatives it had adopted in October and scheduled initial review of the draft for its April 2004 meeting.

In October 2006 the Council initially reviewed the EA/RIR/IRFA and (a) identified repeal of the VIP regulations, without modification of authorizing language in the FMPs, as its preferred alternative; (b) approved release of the EA/RIR/IRFA for public review; and (c) scheduled final action for its December 2006 meeting in Anchorage, Alaska. In December 2006 the Council took final action, adopting the preferred alternative it had identified in October 2006.

Proposed Regulatory Changes

This action would repeal 50 CFR 679.21(f), which imposes the requirement for compliance with the

VIP and describes procedures for assignment of vessels to fisheries, notification of bycatch rate standards, analysis of the factors on which bycatch rate standards are to be based, public comment, publication of notification in the **Federal Register**, use of observer data to calculate rates, calculation of individual vessel rates, and determining whether a vessel is in compliance with bycatch rate standards.

This action also would repeal 50 CFR 679.7(a)(5) which specifically prohibits vessels from exceeding a bycatch rate standard specified under 50 CFR 679.21(f).

This proposed rule would not modify the BSAI and GOA FMPs, which contain language permitting the Council to adopt a VIP. Therefore, the Council would retain the authority to develop a new VIP if it chooses.

Regulations at 50 CFR 679.50(k) authorize NMFS Alaska Region to publish individual vessel bycatch rates for specified prohibited species. Nothing in this proposed action would affect this authority, and the Alaska Region will continue to publish these bycatch rates on its website.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMPs, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

NMFS prepared an 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 copy of the IRFA is available from NMFS (see **ADDRESSES**). A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of the preamble and in the SUMMARY section of the preamble. A summary of the remainder of the analysis follows.

In 2005 a total of 78 catcher vessels and 3 catcher/processor vessels reported gross annual receipts of \$4.0 million or less from fishing groundfish and other species using trawl gear in the GOA, and can therefore be characterized as small entities under the SBA size standards. Between 2002 and 2005, the total number of trawl vessels generating \$4.0 million or less in revenue has ranged from a low of 81 in 2004 and 2005, to a high of 112 in 2002. Average gross revenue (from all fishing sources

in Alaska) generated by these vessels was approximately \$840,000 in 2005, which was an increase from \$730,000 in 2004 and \$590,000 in 2002. Thus, the proposed alternatives may directly regulate between 81 and 112 small entities in the GOA. There has been a general decline in the number of vessels that qualify as a small entity in the GOA, so the most recent (2005) estimate of 81 vessels was used for the analysis. This estimate is almost certainly an overestimate of the number of small entities actually directly regulated by this action since it does not take account of affiliations among the entities. Data necessary to fully assess such linkages are not currently available.

The BSAI management area has a larger number of trawl vessels considered small entities than the GOA. In 2005, 99 catcher vessels and 2 catcher/processor vessels reported gross annual receipts of \$4.0 million or less, from all their fishery production off Alaska. Between 2002 and 2005, the total number of vessels categorized as small entities in these BSAI fisheries has ranged from a low of 101 in 2005 to a high of 123 in 2002. Between 2002 and 2003, the average gross revenue (from all Alaskan fishing sources) generated by these vessels has ranged from a low of \$1.20 million in 2003 to a high of \$1.60 million in 2005. Thus, the proposed alternatives may directly regulate, on average, 113 trawl vessels that are considered small entities. This estimate is almost certainly an overestimate of the number of small entities actually directly regulated by this action, since it does not take account of affiliations among the entities. As is the case for the GOA, data necessary to fully assess such linkages are not currently available.

Two alternatives to the proposed action were examined. Alternative 1 was the "No Action" alternative. Under this alternative the VIP would have remained in place. This alternative would have involved a renewed commitment to investigating violations, and prosecuting violators. As noted earlier, the Council and NMFS have had concerns about the effectiveness of this program and its potential to mislead estimates of PSC incidental catches. Moreover, cooperatives offer new methods to control PSC bycatch rates. Alternative 2 would retain the program, but would reduce the frequency with which PSC rates are published. This alternative would reduce the administrative costs of Alternative 1, but would retain its most serious consequences. Alternative 3, which would repeal the VIP provisions of regulation, was chosen as the proposed

alternative because it was the only alternative that meets the objectives of this action. Alternatives 1 and 2 would renew the VIP. If the VIP were effective, it could lead to reduced bycatch rates and the harvest of larger proportions of TACs in certain trawl fisheries.

However, as noted, there are important concerns about the program's potential for successful reduction in bycatch rates. As a practical matter, 100 percent observer coverage is required to make a case against a trawl operator for exceeding the PSC rate. This level of observer coverage is available only on trawl vessels greater than or equal to 125 feet LOA. Enforcement efforts would be principally directed against this class of vessels. Small entities, as defined by the Small Business Administration (SBA), could occur among both vessels greater than or equal to 125 feet LOA, and less than or equal

to 125 feet LOA. Alternative 3 would best meet the objective of this action and avoid the potential costs that might be imposed on directly regulated small entities by enforcement activities.

This regulation would not impose new recordkeeping and reporting requirements on the regulated small entities.

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

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: November 26, 2007.

Samuel D. Rauch III

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

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 679 as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 is revised to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108-447.

§ 679.7 [Amended]

2. In § 679.7, remove and reserve paragraph (a)(5).

§ 679.21 [Amended]

3. In § 679.21, remove and reserve paragraph (f).

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