

processing capacities change more than 10 percent during any year shall notify the Regional Administrator in writing within 10 days after the change.

(iii) Atlantic herring processors, including processing vessels, must complete and submit all sections of the Annual Processed Products Report.

\* \* \* \* \*

(e) *Record retention.* Records upon which purchase reports are based must be retained and be available for immediate review for a total of 3 years after the date of the last entry on the report. Dealers must retain the required records at their principal place of business. Copies of fishing log reports must be kept on board the vessel for at least 1 year and available for review and retained for a total of 3 years after the date of the last entry on the log.

(f) \* \* \*

(1) *Dealer or processor reports.* (i) Detailed daily trip reports, required by paragraph (a)(1)(i) of this section, must be received within 24 hours of a purchase of fish from a fishing vessel, or by midnight of the next business day following the day fish are received from a fishing vessel. Reports of purchases made on a Friday, Saturday, or Sunday must be received by midnight of the following Monday. If no fish are purchased during a reporting week, the report so stating required under paragraph (a)(1)(i) of this section must be received within 3 days after the end of the reporting week, or by midnight on the following Tuesday.

(ii) Dealers who want to make corrections to their purchase reports via the electronic editing features may do so for up to 3 days following submission of the initial report. If a correction is needed more than 3 days following the submission of the initial purchase report, the dealer must contact NMFS directly to request an extension of time to make the correction.

(iii) To accommodate the potential lag in availability of some required data, price and disposition information may be submitted after the initial purchase report, but must be received within 3 days of the end of the reporting week, that is, by midnight on the following Tuesday. Dealers will be able to access an update procedure in which the dealer accesses and updates previously submitted price and disposition data for that reporting week.

(iv) Annual reports for a calendar year must be postmarked or received by February 10 of the following year. Contact the Regional Administrator (see Table 1 to § 600.502) for the address of NMFS Statistics.

\* \* \* \* \*

(3) *At-sea purchasers, receivers, or processors.* All persons, except persons on Atlantic herring carrier vessels, purchasing, receiving, or processing any Atlantic herring, summer flounder, Atlantic mackerel, squid, butterfish, scup, or black sea bass at sea for landing at any port of the United States must submit information identical to that required by paragraph (a)(1) of this section and provide those reports to the Regional Administrator or designee by the same mechanism and on the same frequency basis.

\* \* \* \* \*

[FR Doc. 04-1214 Filed 1-15-04; 2:41 pm]

BILLING CODE 3510-22-S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 040106005-4005-01; I.D. 121603C]

RIN 0648-AP73

#### Fisheries of the Exclusive Economic Zone off Alaska; Full Retention of Demersal Shelf Rockfish in the Southeast Outside District of the Gulf of Alaska

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS issues a proposed rule that would require full retention of demersal shelf rockfish (DSR) by certain vessels fishing in the Southeast Outside District (SEO) of the Gulf of Alaska (GOA). This proposed rule would require that the operator of a federally-permitted catcher vessel using hook-and-line or jig gear in the SEO must retain and land all DSR caught while fishing for groundfish or for Pacific halibut under the Individual Fishing Quota program (IFQ) in the SEO. Under existing Federal and State of Alaska regulations, all landed fish must be weighed and reported on State of Alaska fish tickets or, in the case of fish landed in a port outside of Alaska, on equivalent Federal or State documents. Current maximum retainable amounts (MRAs) for DSR in the SEO would be eliminated for catcher vessels but would remain in place for catcher/processors (CPs) in the SEO. This action is necessary to improve estimates of fishing mortality of DSR. This proposed

rule is intended to further the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP).

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

**ADDRESSES:** Comments may be sent to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Durall, or delivered to room 420 of the Federal Building, 709 West 9th Street, Juneau, AK. Comments may also be sent via facsimile (fax) to 907-586-7557. As an agency pilot test for accepting comments electronically, the Alaska Region, NMFS, will accept e-mail comments on this rule. The mailbox address for providing e-mail comments on this rule is DSR-0648-AP73@noaa.gov. Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for the proposed rule may be obtained from the Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Durall, or by calling the Alaska Region, NMFS, at (907) 586-7228. Send comments on collection-of-information requirements to NMFS, Alaska Region, and to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), Washington, DC 20503 (Attn: NOAA Desk Officer).

**FOR FURTHER INFORMATION CONTACT:** Nina Mollett, 907-586-7462 or Nina.Mollett@noaa.gov.

#### SUPPLEMENTARY INFORMATION:

##### Background

The groundfish fisheries in the exclusive economic zone (EEZ) of the GOA are managed under the FMP. One of the species groups managed under the FMP is DSR, an assemblage of seven rockfish species. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801, *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600 and 679.

The State manages all fisheries occurring within State waters, i.e., within three nautical miles of Alaska's coastline. The FMP defers to the State some management responsibility for the DSR fishery in the SEO, subject to Council and federal oversight. The State management regime must be consistent with the goals of the FMP. Commercial

harvests of DSR are managed within the total allowable catch (TAC) specified annually by NMFS in consultation with the Council. The DSR TAC for 2003 was published March 3, 2003 (68 FR 9924).

In accordance with the division of management under the FMP, existing State regulations for DSR establish fishing seasons (5 AAC 28.130) and gear restrictions (5 AAC 28.130), set harvest guidelines for directed DSR fishing based on the TAC (5 AAC 28.160), and limit the amount of DSR that can be retained as bait (5 AAC 28.190). Also, the State has a full retention requirement for DSR caught in State waters (5 AAC 28.171). The Council and NMFS establish the annual TAC for DSR (see § 679.20), regulate the catch of prohibited species in the DSR directed fishery (see § 679.21), set recordkeeping and reporting requirements (see § 679.5), and impose a maximum retention requirement for DSR caught incidentally in Federal fisheries (see § 679.20(d)-(e); Table 10 to Part 679).

#### Management Background and Need for Action

The DSR species group is composed of seven species of nearshore, bottom-dwelling rockfishes: Canary rockfish (*Sebastes pinniger*), China rockfish (*Sebastes nebulosus*), copper rockfish (*S. caurinus*), quillback rockfish (*S. maliger*), rosethorn rockfish (*S. helvomaculatus*), tiger rockfish (*S. nigrocinctus*), and yelloweye rockfish (*S. ruberrimus*). These species have been managed as a group in the GOA since 1988. All of them occur on the continental shelf and are generally associated with rugged, rocky demersal habitat. The dominant species in the group is yelloweye rockfish, which accounts for 90 percent of DSR landings over the past 5 years. Quillback rockfish accounts for 8 percent of DSR landings, and the other five species make up the remaining 2 percent. Compared to many fish species, DSR grow slowly, are extremely long-lived, and have a very low natural mortality rate. They are highly susceptible to overexploitation and are slow to recover once driven below the level of sustainable yield. Accurate estimates of DSR fishing mortality are important to avoid overfishing.

In 1996, NMFS and State stock assessment scientists identified the unreported mortality of DSR as a potential problem in preparing the annual DSR stock assessments. Strong anecdotal evidence pointed to a high level of unreported DSR discard mortality in the Pacific halibut hook-and-line gear fishery, which is the

primary fishery that encounters incidental catch of DSR in the SEO.

When the DSR fishery is closed to directed fishing, existing regulations at § 679.20(d)-(f) require fishermen to discard at sea any DSR that exceeds the MRAs set forth in Table 10 to Part 679 at any time during a fishing trip. At this time, the GOA fisheries that are prosecuted with hook-and-line or jig gear in the SEO are IFQ halibut and IFQ sablefish, and to some extent Pacific cod and "other species." The remaining GOA groundfish species are either prosecuted with trawl gear, which is prohibited in the SEO, or closed to directed fishing during the fishing year. Under the current regulations, if fishing for IFQ halibut, Pacific cod, or "other species," the MRA for DSR is an amount that is equivalent to 10 percent of the aggregate round weight of retained catch of halibut, Pacific cod, and some other species; if fishing for IFQ sablefish and certain other species, the MRA for DSR is an amount that is equivalent to 1 percent of the aggregate round weight of retained catch. If any IFQ halibut or IFQ sablefish is aboard, under § 679.7(f)(8) fishermen must retain all rockfish that they are not required to discard. The MRAs were established to discourage fishermen from targeting on DSR while fishing for halibut or groundfish species open to directed fishing. However, in some places the natural incidental catch rate of DSR may be much higher than the specified MRA, forcing fishermen to discard DSR that they cannot avoid catching. DSR do not survive being caught and discarded because rockfish have a closed swim bladder that expands when the fish are brought to the surface and cannot be contracted again.

In June 1999, the Council adopted a proposal from the State to require full retention of DSR in the SEO for the purpose of improving estimates of DSR bycatch mortality. A similar proposal was brought to the State Board of Fisheries (Board) to require full retention of DSR caught in State waters. In June 2000, the Board adopted, and the State enacted, a regulation requiring full retention of all rockfish caught in Inside waters, and of DSR in all State waters.

NMFS prepared a proposed rule to implement the Council's June 1999 action. The draft proposed rule would have required full retention of DSR and allowed fishermen to sell amounts of retained DSR that were less than or equal to specified limits of other retained catch. DSR in excess of those limits could be: (1) sold, with proceeds from the sale relinquished to the State, or (2) retained and used for personal use

or donation; but not traded, bartered or sold. This draft proposed rule was never published, because NMFS determined that it did not have the authority under the Magnuson-Stevens Act to regulate the proceeds from the sale of fish under the first option.

Subsequently, NMFS amended the EA/RIR/IRFA to include two new alternatives that were intended to meet the Council's objective for enhanced accounting of DSR mortality under existing statutory authority. In February 2003, after review of this analysis, the Council adopted an alternative that is similar to the one previously adopted, except that retained amounts of DSR that are over the specified sale limits would not be allowed to enter the stream of commerce.

The Council's objectives in designing the original proposed rule, and the variation that it adopted in February 2003, can be summed up as follows:

1. To improve data collection on the incidental catch of DSR in the halibut and groundfish hook-and-line fisheries in the SEO in order to more accurately estimate DSR fishing mortality, improve DSR stock assessments, and evaluate whether current MRAs are the appropriate levels for DSR in the SEO;
2. To minimize waste to the extent practicable while meeting these goals;
3. To avoid either increasing incentives to target on DSR or increasing incentives to discard DSR that is caught in excess of the amount that can legally be sold for profit; and
4. To maintain a consistent approach within State and Federal regulations that govern the retention and disposition of DSR.

These four objectives, and the manner in which they would be achieved under the proposed rule, are discussed in detail below.

#### Improving Data Collection

Some information on DSR is collected from fishermen via logbook requirements under current regulations, but the data obtained this way are incomplete. NMFS requires groundfish vessel operators of vessels at least 60 feet (18.3 meters) in length overall to record discards in daily fishing logbooks, but most of the vessels that fish with hook-and-line and jig gear in the SEO are less than 60 feet (18.3 meters) in length. The International Pacific Halibut Commission requires all vessels 26 feet (7.9 meters) or greater to keep logbooks of their halibut fishing operations, but does not require them to record rockfish bycatch. State fish tickets include a box for reporting discards at sea, but anecdotal evidence, supported by data from International

Pacific Halibut Commission surveys, indicates that the requirements to report at-sea discards, including DSR, frequently are ignored and the discards go unreported.

A more thorough reporting system exists for landed fish. Under State regulations at 5 AAC 39.110(c), all fish caught in State waters or in the EEZ and landed at Alaskan ports must be weighed and reported on Alaska Department of Fish and Game (ADF&G) fish tickets. This is the responsibility either of the buyer of raw fish, or of the fisherman who sells to a buyer not licensed to process fish, or who processes his or her own catch. DSR landed in ports outside of Alaska must also be reported under existing federal and State regulations. State-licensed fishermen who catch fish in State waters and land it in ports outside of Alaska must, under State regulations, complete an ADF&G fish ticket or equivalent document estimating weights by species, with gear and location information; more precise information is generally obtained from fish tickets filled out by the out-of-State processors. Fishermen who catch fish in the EEZ and land it outside of Alaska are not covered by these State requirements but, under federal regulations at § 679.5(k), they must submit a vessel activity report estimating the weight of the fish or fish products, by species.

By mandating the complete retention of all DSR caught by catcher vessels fishing in the SEO, the proposed rule would be likely to result in much better information on the incidental catch of DSR by these vessels, because data on retained and landed fish are more fully captured by the existing reporting system. NMFS recognizes that improved data collection on incidental catch of DSR under the proposed rule is dependent on fishermen retaining all of the DSR that they catch and that some fishermen, without increased monetary incentives (i.e., the ability to sell all retained DSR), may choose to violate the proposed rule if it is ultimately implemented. However, the amount of DSR landed has increased substantially under the State's DSR full retention regulations that were promulgated in 2001: Over 42,000 lbs (19,051 kg) of DSR were forfeited in Southeast Alaska in 2001, compared to less than 16,000 lbs (7,257 kg) in 2000. A large part of this increase came from fishermen active in Federal waters of the SEO to whom the full retention requirements did not apply. Deliveries in this category reported from Federal waters rose from 8,760 pounds (3,973 kg) in 2000 to 22,931 pounds (10,401 kg) in 2001. The increase in deliveries from

Federal waters accounted for 45 percent of the total increase in deliveries.

CPs would not be included in the full retention requirements of this proposed rule, but would be required to observe current MRA limits. For the observed CPs in the SEO from 2001 through the present, DSR species were infrequently caught, because typically the CPs are fishing for sablefish in deeper waters than that preferred by DSR species. Only 4.4 percent of 159 sampled sets included DSR species; the average percentage of DSR in the catch was only 0.11. Therefore, it did not seem necessary and would unduly complicate matters to include CPs in the new DSR full retention and landing requirements. Because most CPs carry NMFS-certified observers, NMFS will continue to use observer data to estimate DSR mortality within this sector.

Stock assessments based on improved catch data could lead to changes in management. If the bycatch mortality of DSR in the groundfish and IFQ halibut fisheries is significantly higher than currently estimated, the directed fishery for DSR could be reduced to decrease the risk of overfishing. In 2002, the directed fishery for DSR was pre-empted by the IFQ halibut fishery in East Yakutat a State-designated management area because the anticipated mortality of DSR in the East Yakutat halibut fishery was greater than its area-specific allowable biological catch. The reverse might occur the DSR directed fishery quota could be increased in the less likely event that DSR incidental catch rates and fishing mortality are lower than currently estimated.

In developing this proposed rule, NMFS considered as an alternative the institution of an observer program for the IFQ halibut fishery. Under this alternative, observers may eventually be used to help collect DSR data in the context of a comprehensive observer program in the Gulf of Alaska. However, one problem such a program would encounter is the variability of catch in the DSR fisheries. Yelloweye and the other DSR species have specialized habitat needs, which means that they are more sparsely distributed than most other species. Statistics from an International Pacific Halibut Commission survey in 2003 measured incidental catch rates of yelloweye in the halibut hook-and-line fishery ranging from 0 to 83 percent for individual sets. The mean ranged from 3 percent in the East Yakutat subdistrict to 18 percent in the Northern Southeast Outside subdistrict. A review of similar 1998 survey data by ADF&G concluded that fishing patterns, including area, depth, and season fished, greatly affect

incidental catch rates. Therefore, in order to be effective, a sampling program for DSR likely would require that a high percentage of vessels carry observers. Such a program would be costly for the halibut fleet as well as impracticable because halibut vessels might be unable to accommodate observers due to space limitations.

### Avoiding Waste

The second objective of this action is to avoid wasting DSR that are killed as a result of fishing activity. DSR suffer internal injuries when they are brought to the surface, and the mortality rate for incidentally-caught DSR in Alaska is 100 percent. Some fishermen have expressed dissatisfaction with the current regulations, which require them to discard dead fish that could otherwise be used for human consumption. By requiring the retention and landing of all DSR that are caught, the proposed rule would eliminate the discard of DSR at sea and would create the potential for increased human consumption through personal use and charitable donations.

The extent to which DSR in excess of the amount that could be sold is made available for human consumption under the proposed rule depends partly on whether a workable donation system could be set up in the larger communities involved. Some of the DSR retained under this rule would be kept for personal use, but presumably if too much DSR were landed, fishermen would not want to retain it. A donation program that would distribute the fish to charities locally or nationwide, but one that would not generate profits which could lead to targeting of DSR, is one possibility being explored. It is not clear however whether such a program will be feasible for DSR even in the larger communities involved Sitka and Juneau because of the costs involved in filleting and storing relatively small amounts of fish at a time. NMFS anticipates that much of the DSR in excess of the amount that could be sold will become part of the processors' waste stream.

### Avoiding Unwanted Incentives

The proposed full retention program is intended to enhance the collection of DSR catch data without encouraging increased "topping off" of DSR by fishermen engaged in directed groundfish and halibut fisheries. "Topping off" occurs when a vessel operator deliberately targets a valuable species that is closed to directed fishing, in order to ensure that the vessel retains the maximum amount of that species allowed by law. The current MRAs for

DSR in the IFQ Pacific halibut and groundfish fisheries allow fishermen to top off on trips where the rate of incidental DSR catch is less than the specified MRA. In areas where the rate exceeds the MRA, fishermen are required to discard the overage.

Maintaining a limit on the amount of retained DSR that may be sold for profit is designed to eliminate any incentive for increased topping off activity. Under the proposed rule, amounts of DSR that exceed the amount that could be sold would be prohibited from entering the stream of commerce, but, for example, could be retained for personal consumption, donated to a State-recognized charity, or discarded. A donation program, or the option to keep the fish, would give fishermen who dislike discarding dead fish on principle an incentive for complying with the regulations and bringing the fish to port.

#### **Maintaining Consistency between State and Federal Regulations**

At present, fishermen are subject to two very different sets of Federal and State regulations concerning management of incidentally caught DSR. The proposed rule would establish Federal regulations that are very similar, although not identical, to existing State regulations concerning management of incidentally caught DSR. State regulations require fishermen to surrender the proceeds from the sale of DSR in excess of the MRAs to the State (5 AAC 28.171(a)). These proceeds are deposited in the State's Fish and Game Fund, and used primarily for research. Under the proposed rule, however, amounts of DSR caught in Federal waters that exceed the proscribed sale limits could not be sold or allowed to enter the stream of commerce.

The Council has requested the State to prepare a report within three years of the effective date of this regulation, if adopted as final, analyzing the success of this program in achieving its primary goal of better data collection, and recommending whether the program should continue or whether a maximum retention rate should be reinstated for DSR.

#### **Elements of the Proposed Rule**

This proposed rule has two main provisions. The first provision addresses retention and landing requirements. The operator of a federally-permitted catcher vessel using hook-and-line or jig gear would be required to retain and land all DSR that is caught while fishing for groundfish or IFQ halibut in the SEO.

The proposed rule contains no new recordkeeping or recording requirements. As explained in the

"Improving Data" collection section of this proposed rule, landed fish must be reported under existing federal and State regulations.

The second provision addresses disposal of retained amounts of DSR. Under the proposed rule, if a person wanted to sell retained DSR, he (or she) would be limited to no more than 10 percent of the aggregate round weight equivalent of IFQ halibut and groundfish, other than IFQ sablefish, that he retained onboard the vessel; for IFQ sablefish, the amount of retained DSR a fisherman could sell for profit would be limited to no more than 1 percent of the aggregate round weight equivalent of IFQ sablefish he retained onboard the vessel. Fishermen could use amounts of retained DSR in excess of these sale limits for other purposes, including personal consumption or donation, but this amount of DSR would be prohibited from entering commerce through sale, barter, or trade.

Table 10 would be amended by adding a footnote to the DSR column cross referencing § 679.20(j).

#### **Classification**

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

There are no federalism implications as that term is defined in E.O. 13132. However, NMFS has been in contact with state officials to ensure that they are aware of the provisions in this proposed rule.

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA). The IRFA describes any adverse impacts this proposed rule, if adopted, would have on directly regulated small entities. A copy of this analysis is available from the NMFS (see **ADDRESSES**). This IRFA evaluates the effects of the proposed action on regulated small entities. The reasons for the action, a statement of the objectives of the action, and the legal basis for the proposed rule, are discussed earlier in the preamble. The directly regulated entities are those vessels taking DSR as incidental catch in halibut and groundfish fisheries in Federal waters of the SEO and the processors buying the DSR from them. NMFS estimates that 423 vessels participated in these fisheries in 2000 (before the State regulations requiring full retention of DSR caught in State waters were implemented). Most of these vessels were less than 60 feet (18.3 meters) in length, fishing with hook-and-line gear and jig gear. Average gross revenues for these vessels from the Alaskan halibut and groundfish fisheries were about \$262,000. Average gross revenues from all fisheries for

these entities are undoubtedly higher, since many of these vessels participate in other fisheries. In the years from 1996 to 2001, between 17 and 26 plants bought groundfish in Southeast Alaska. In 2000, the average gross revenues for these plants were about \$12 million. NMFS estimates that the fishing and processing operations regulated under this proposed rule are small entities within the meaning of the Regulatory Flexibility Act.

Under this proposed rule, small entities may experience increased costs associated with handling the additional DSR, storing them on the vessel until it reaches port, and unloading and disposing of the fish. Some fishermen may incur additional costs as a result of changing their fishing patterns for their target species in order to avoid DSR bycatch. Handling and delivery costs would take the form of increased work effort required on the vessel, but would not affect the operation's cash flow. Costs may be higher on smaller vessels using refrigerated sea water (RSW) that lack deck space for special DSR totes, or on vessels that would otherwise have filled their holds with their target fish, but that are unable to give the need to retain a larger amount of DSR. Fishermen will also face costs of disposing of the excess DSR on shore since they will not be allowed to sell the excess. Fishermen may only use the excess DSR for personal use, donate it for charitable purposes, or discard it. Small processors would face the costs of weighing and recording additional DSR that may be landed. They are likely to play a role in helping vessel owners to dispose of DSR in excess of the amount that could be sold. These actions could include allowing employees to fillet and take excess DSR, adding DSR waste to the processors' waste streams, or coordinating with donation programs to take excess DSR. Processors would no longer be able to sell excess DSR from federal waters. In 2001, excess DSR totaled approximately ten metric tons (the largest annual volume listed), equivalent to about \$16,000 in gross revenues from this source.

The Council's preferred alternative does not impose any new recordkeeping requirements on regulated entities. NMFS has not been able to identify any relevant Federal rules that may duplicate, overlap, or conflict with the preferred alternative.

The EA/RIR/IRFA evaluated four alternatives: (1) The status quo, (2) full retention allowing all retained DSR to enter the stream of commerce, (3) full retention prohibiting certain amounts of DSR from entering the stream of commerce, and (4) use of an observer

program. Alternative 3 is the preferred alternative. Alternative 1 imposes no adverse impacts on small entities, but fails to advance the action objectives of providing new information on DSR, reducing DSR wastage, and maintaining consistency between State and Federal regulations. Alternative 2 may be less costly than Alternative 3 in that fishermen could allow processors to sell the excess DSR and relinquish the proceeds to the State. However, if processors sold the DSR under Alternative 2, the possibility would exist for them to find roundabout ways to repay fishermen for bringing in excess DSR, thus adding an incentive for vessels to target on DSR. Alternative 3 is discussed in detail in the preamble. Under Alternative 4, fishermen face additional costs for observer coverage, including travel and logistical expenses for observers, and an additional cost of about \$330/day for 30 percent of days at sea. This alternative would provide new information on the status of DSR stocks, but would not reduce DSR waste or reduce the inconsistency between State and Federal regulations. Using observers for the DSR incidental catch fishery might become more feasible in the future in the context of a comprehensive restructuring of the observer program that would include funding for the observers so that the entire cost did not fall on fishermen.

The Council considered but rejected several other alternatives because they did not appear to be effective solutions to the stated goals. Those mentioned in the EA include: (a) open the directed DSR fishery during halibut IFQ seasons and require full retention, (b) defer all management of DSR to the State, and (c) implement an IFQ fishery for DSR. The EA also discussed the option of an exempted fishing permit (EFP) conducted in order to obtain bycatch data. However, although such a program might allow more flexibility in design, it would depend on voluntary participation, and would therefore not enable the State to obtain a full census.

A copy of the IRFA is available from NMFS (see ADDRESSES).

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) that have been approved by the Office of Management and Budget (OMB). These collections are provided below by OMB control number:

**OMB No. 0648-0213** This collection contains the recordkeeping and reporting forms and logbooks in which species, including the DSR, are recorded and reported. Total public reporting burden for this family of forms is

estimated at 32,329 hours. This estimate covers all forms of logbooks, and is not necessarily indicative of the burden associated with those to whom this rule applies. No measurable increase in burden is associated with this proposed rule because activity under this proposed rule is included in the existing collection.

**OMB No. 0648-0206** Public reporting burden is estimated to average 21 minutes for a Federal Fisheries Permit application and 20 minutes for a Federal Processor Permit application. The estimated response times shown include the time to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information.

Public comment is sought regarding: whether this proposed collection of information is 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 law, no person is required to respond to nor shall a 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, Recordkeeping and reporting requirements

Dated: January 13, 2004.

**John Oliver,**

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

#### PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

**Authority:** Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; Title II of Division C, Pub. L. 105-277; Sec. 3027, Pub. L. 106-31, 113 Stat. 57; 16 U.S.C. 1540(f).

2. In § 679.20, paragraph (j) is added to read as follows:

#### § 679.20 General limitations.

\* \* \* \* \*

(j) *Full retention of Demersal shelf rockfish (DSR) in the Southeast Outside District of the GOA (SEO)*

(1) *Retention and landing requirements.* The operator of a catcher vessel that is required to have a federal fisheries permit, or that harvests IFQ halibut with hook and line or jig gear, must retain and land all DSR that is caught while fishing for groundfish or IFQ halibut in the SEO.

(2) *Disposal of DSR when closed to directed fishing.* When DSR is closed to directed fishing in the SEO, the operator of a catcher vessel that is required to have a Federal fisheries permit under § 679.4 (b), or the manager of a shoreside processor that is required to have a Federal processor permit under § 679.4(f), must dispose of DSR retained and landed in accordance with paragraph (j)(1) of this section as follows:

(i) *Ten percent limit on sale of DSR caught while fishing with hook-and-line or jig gear for IFQ halibut or groundfish species other than sablefish in the SEO.* A person may sell, barter, or trade a round weight equivalent amount of DSR that is less than or equal to 10 percent of the aggregate round weight equivalent of IFQ halibut and groundfish species, other than sablefish, that are landed during the same fishing trip.

(ii) *One percent limit on sale of DSR caught while fishing with hook-and-line or jig gear for IFQ sablefish in the SEO.* A person may sell, barter, or trade a round weight equivalent amount of DSR that is less than or equal to 1 percent of the aggregate round weight equivalent of IFQ sablefish that are landed during the same fishing trip.

(iii) *Disposal of amounts of DSR that are in excess of the sale limits.* Amounts of DSR retained by catcher vessels under paragraph (j)(1) of this section that are in excess of the limits specified in paragraphs (j)(2)(i) and (ii) may be put to any use, including but not limited to personal consumption or donation, but must not enter commerce through sale, barter, or trade.

3. In 50 CFR part 679, Table 10 is revised as follows:

**BILLING CODE 3510-22-S**

Table 10 to Part 679--Gulf of Alaska Retainable Percentages

BASIS SPECIES		INCIDENTAL CATCH SPECIES (for DSR caught on catcher vessels in the SEO, see § 679.20 (j) <sup>(6)</sup> )													
Code	Species	Pollock	Pacific cod	DW flat <sup>(2)</sup>	Rex sole	Flathead sole	SW flat <sup>(3)</sup>	Arrowtooth	Sablefish	Aggregated rockfish <sup>(8)</sup>	SR/RE ERA <sup>(1)</sup>	DSR SEO (C/Ps only): <sup>(6)</sup>	Atka mackere 1	Aggregated forage fish <sup>(10)</sup>	Other species <sup>(7)</sup>
110	Pacific cod	20	na <sup>9</sup>	20	20	20	20	35	1	5	<sup>(1)</sup>	10	20	2	20
121	Arrowtooth	5	5	0	0	0	0	na <sup>9</sup>	0	0	0	0	0	2	0
122	Flathead sole	20	20	20	20	na <sup>9</sup>	20	35	7	15	7	1	20	2	20
125	Rex sole	20	20	20	na <sup>9</sup>	20	20	35	7	15	7	1	20	2	20
136	Northern rockfish	20	20	20	20	20	20	35	7	15	7	1	20	2	20
141	Pacific ocean perch	20	20	20	20	20	20	35	7	15	7	1	20	2	20
143	Thornyhead	20	20	20	20	20	20	35	7	15	7	1	20	2	20
152/ 151	Shorraker/ rougheye <sup>(1)</sup>	20	20	20	20	20	20	35	7	15	na <sup>9</sup>	1	20	2	20
193	Atka mackerel	20	20	20	20	20	20	35	1	5	<sup>(1)</sup>	10	na <sup>9</sup>	2	20
270	Pollock	na <sup>9</sup>	20	20	20	20	20	35	1	5	<sup>(1)</sup>	10	20	2	20
710	Sablefish	20	20	20	20	20	20	35	7	15	7	1	20	2	20
	Flatfish, deep water <sup>(2)</sup>	20	20	na <sup>9</sup>	20	20	20	35	7	15	7	1	20	2	20
	Flatfish, shallow water <sup>(3)</sup>	20	20	20	20	20	na <sup>9</sup>	35	1	5	<sup>(1)</sup>	10	20	2	20

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Code	Species	Pollock	Pacific cod	DW flat <sup>(2)</sup>	Rex sole	Flathead sole	SW flat <sup>(3)</sup>	Arrowtooth	Sablefish	Aggregated rockfish <sup>(8)</sup>	SR/RE ERA <sup>(1)</sup>	DSR SEO (C/Ps only): <sup>(6)</sup>	Atka mackere	Aggregated forage fish <sup>(10)</sup>	Other species <sup>(7)</sup>
	Rockfish, other <sup>(4)</sup>	20	20	20	20	20	20	35	7	15	7	1	20	2	20
	Rockfish, pelagic <sup>(5)</sup>	20	20	20	20	20	20	35	7	15	7	1	20	2	20
	Rockfish, DSR-SEO <sup>(6)</sup>	20	20	20	20	20	20	35	7	15	7	na <sup>9</sup>	20	2	20
	Other species <sup>(7)</sup>	20	20	20	20	20	20	35	1	5	<sup>(1)</sup>	10	20	2	na <sup>9</sup>
	Aggregated amount of non-groundfish species	20	20	20	20	20	20	35	1	5	<sup>(1)</sup>	10	20	2	20

Notes to Table 10 to Part 679		
1	Shorthead/rougheye rockfish	
	SR/RE	
	shorthead/rougheye rockfish (171)	
	shorthead rockfish (152)	
SR/RE ERA	rougheye rockfish (151)	
	shorthead/rougheye rockfish in the Eastern Regulatory Area.	
Where numerical percentage is not indicated, the retainable percentage of SR/RE is included under Aggregated Rockfish		
2	Deep-water flatfish Dover sole, Greenland turbot, and deep-sea sole	
3	Shallow water flatfish Flatfish not including deep water flatfish, flathead sole, rex sole, or arrowtooth flounder	
4	Other rockfish	
	Western Regulatory Area	
	Central Regulatory Area	
	West Yakutat District	
means slope rockfish and demersal shelf rockfish		
Southeast Outside District		
means slope rockfish		
Slope rockfish		
<u>S. aurora</u> (aurora)	<u>S. variegatus</u> (harlequin)	<u>S. brevispinis</u> (silverygrey)
<u>S. melanostomus</u> (blackgill)	<u>S. wilsoni</u> (pygmy)	<u>S. diploproa</u> (splitnose)
<u>S. paucispinis</u> (bocaccio)	<u>S. babcocki</u> (redbanded)	<u>S. saxicola</u> (stripetail)
<u>S. goodei</u> (chilipepper)	<u>S. proniger</u> (redstripe)	<u>S. miniatus</u> (vermillion)
<u>S. crameri</u> (darkblotch)	<u>S. zacentrus</u> (sharpchin)	<u>S. reedi</u> (yellowmouth)
<u>S. elongatus</u> (greenstriped)	<u>S. jordani</u> (shortbelly)	



Notes to Table 10 to Part 679													
	In the Eastern GOA only, Slope rockfish also includes <i>S. polyspinus</i> . (Northern)												
5	<table border="1"> <tr> <td>Pelagic shelf rockfish</td> <td><i>S. ciliatus</i> (dusky)</td> <td><i>S. entomelas</i> (widow)</td> <td><i>S. flavidus</i> (yellowtail)</td> </tr> <tr> <td rowspan="3">Demersal shelf rockfish (DSR)</td> <td><i>S. pinniger</i> (canary)</td> <td><i>S. maliger</i> (quillback)</td> <td rowspan="3"><i>S. ruberrimus</i> (yelloweye)</td> </tr> <tr> <td><i>S. nebulosus</i> (china)</td> <td><i>S. helvonomaculatus</i> (rosethorn)</td> </tr> <tr> <td><i>S. caurinus</i> (copper)</td> <td><i>S. nigrocinctus</i> (tiger)</td> </tr> </table>	Pelagic shelf rockfish	<i>S. ciliatus</i> (dusky)	<i>S. entomelas</i> (widow)	<i>S. flavidus</i> (yellowtail)	Demersal shelf rockfish (DSR)	<i>S. pinniger</i> (canary)	<i>S. maliger</i> (quillback)	<i>S. ruberrimus</i> (yelloweye)	<i>S. nebulosus</i> (china)	<i>S. helvonomaculatus</i> (rosethorn)	<i>S. caurinus</i> (copper)	<i>S. nigrocinctus</i> (tiger)
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6	DSR-SEO = Demersal shelf rockfish in the Southeast Outside District The operator of a catcher vessel that is required to have a Federal fisheries permit, or that harvests IFQ halibut with hook and line or jig gear, must retain and land all DSR that is caught while fishing for groundfish or IFQ halibut in the SEO. Limits on sale and requirements for disposal of DSR are set out at § 679.20 (j).												
7	<table border="1"> <tr> <td>Other species</td> <td>sculpins</td> <td>skates</td> <td>octopus</td> </tr> <tr> <td></td> <td>sharks</td> <td>squid</td> <td></td> </tr> </table>	Other species	sculpins	skates	octopus		sharks	squid					
Other species	sculpins	skates	octopus										
	sharks	squid											
8	<p>Aggregated rockfish</p> <p>means rockfish of the genera <i>Sebastes</i> and <i>Sebastolobus</i> defined at § 679.2 except in:</p> <table border="1"> <tr> <td>Southeast Outside District (SEO)</td> <td>where DSR is a separate category for those species marked with a numerical percentage</td> </tr> <tr> <td>Eastern Regulatory Area (ERA)</td> <td>where SR/RE is a separate category for those species marked with a numerical percentage</td> </tr> </table>	Southeast Outside District (SEO)	where DSR is a separate category for those species marked with a numerical percentage	Eastern Regulatory Area (ERA)	where SR/RE is a separate category for those species marked with a numerical percentage								
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9	N/A												
10	<p>Aggregated forage fish (all species of the following families)</p> <table border="1"> <tr> <td>Bristlemouths, lightfishes, and anglemouths (family <i>Gonostomatidae</i>)</td> <td>209</td> </tr> <tr> <td>Capelin smelt (family <i>Osmeridae</i>)</td> <td>516</td> </tr> <tr> <td>Deep-sea smelts (family <i>Bathylagidae</i>)</td> <td>773</td> </tr> </table>	Bristlemouths, lightfishes, and anglemouths (family <i>Gonostomatidae</i> )	209	Capelin smelt (family <i>Osmeridae</i> )	516	Deep-sea smelts (family <i>Bathylagidae</i> )	773						
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Notes to Table 10 to Part 679	
Eulachon smelt (family <u>Osmeridae</u> )	511
Gunnels (family <u>Pholidae</u> )	207
Krill (order <u>Euphausiacea</u> )	800
Laterfishes (family <u>Myctophidae</u> )	772
Pacific herring (family <u>Clupeidae</u> )	235
Pacific Sand fish (family <u>Trichodontidae</u> )	206
Pacific Sand lance (family <u>Ammodytidae</u> )	774
Pricklebacks, war-bonnets, eelblennys, cockscombs and Shannys (family <u>Stichaeidae</u> )	208
Surf smelt (family <u>Osmeridae</u> )	515