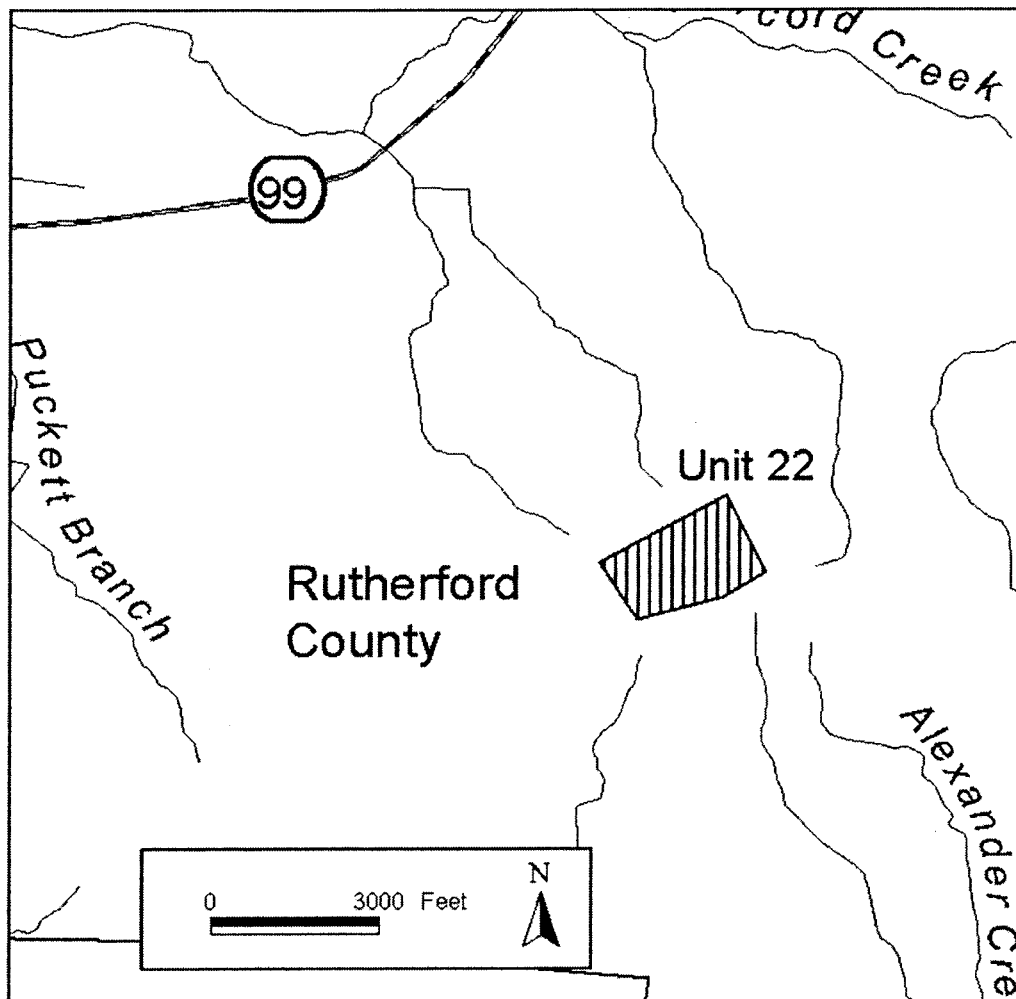


## Map 11 - Unit 22: critical habitat for Braun's rock-cress in Tennessee.



This map is provided only for illustrative purposes of critical habitat. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

Dated: January 16, 2004.

**Craig Manson,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 04-1625 Filed 1-28-04; 8:45 am]

BILLING CODE 4310-55-C

### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 040105003-4003-01; I.D. 122203F]

RIN 0648-AR41

#### Fisheries of the Exclusive Economic Zone Off Alaska; General Limitations

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

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

**SUMMARY:** NMFS proposes amending regulations establishing pollock Maximum Retainable Amounts (MRA) by adjusting the MRA enforcement period for pollock harvested in the Bering Sea and Aleutian Islands management area (BSAI) from enforcement at anytime during a fishing trip to enforcement at the time of offload. This action is necessary to reduce regulatory discards of pollock caught incidentally in the directed fisheries for non-pollock groundfish species. The intended effect of this action is to better utilize incidentally

caught pollock in accordance with the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP).

**DATES:** Comments must be received by March 1, 2004.

**ADDRESSES:** Comments may be mailed to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Durall. Hand delivery or courier delivery of comments may be sent to NMFS, 709 West 9th Street, Room 420, Juneau, AK 99801. Comments may also be sent via facsimile 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 MRA-0648-AR41@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.

**FOR FURTHER INFORMATION CONTACT:** Jason Anderson, 907-586-7228 or jason.anderson@noaa.gov.

**SUPPLEMENTARY INFORMATION:**

**Background**

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

This proposed action is one of several adopted by the Council to decrease regulatory and economic discards and increase catch utilization in the BSAI groundfish fisheries. Amendment 49 to the FMP was published as a final rule January 3, 1998 (62 FR 63880), and established retention and utilization standards for pollock and Pacific cod. In June 2003, the Council adopted Amendment 79 to the FMP, which would establish a minimum groundfish retention standard (GRS) for specified vessels in the BSAI. Along with Amendment 79, the Council also

adopted a revision to the MRA enforcement period for pollock harvested by non-American Fisheries Act (AFA) vessels in the BSAI. Prior to the June Council actions, the proposed GRS program and pollock MRA revision were considered as components of one action to reduce discard amounts in the BSAI. However, the Council recognized that the MRA change was simpler to implement than the GRS action and requested NMFS to expedite the proposed pollock MRA revision. In addition to these actions, the Council is considering sector allocations of BSAI groundfish and prohibited species, as well as the development of a fishery cooperative for non-AFA trawl catcher processors. The Council expects that the formation of a cooperative for non-AFA trawl catcher processors would eliminate the race for fish and provide vessel operators with the opportunity to change their behavior to avoid incidental catch and/or reduce discard amounts.

*Maximum Retainable Amounts*

Regulations at 50 CFR 679.20(e) establish rules for calculating and implementing MRA amounts for groundfish species or species groups that are closed to directed fishing. The MRA amount is calculated as a percentage of the retained amount of species closed to directed fishing relative to the retained amount of basis species or species groups open for directed fishing. Table 11 to 50 CFR 679 lists retainable percentages for BSAI groundfish species. Amounts that are caught in excess of the MRA percentage must be discarded. Current regulations limit vessels to MRA amounts at any time during a fishing trip. Under regulations implementing Amendment 49 to the FMP, vessels must retain all incidental catch of pollock and Pacific cod up to the MRA amount and discard the rest.

The EA/RIR/IRFA for this action [see **ADDRESSES**] demonstrates that over the last four years (1999 through 2002), pollock discards constitute the largest component of discards by non-AFA trawl catcher processors operating in the BSAI (18 percent of all non-AFA trawl catcher processor discards are pollock). Current levels of pollock caught incidentally by non-AFA trawl catcher-processors also significantly exceed the MRA. The analysis also demonstrated that other non-AFA vessels are only seldom affected by the MRA for pollock on a haul-by-haul basis. Because of the current regulatory structure which requires all non-AFA vessels to retain all incidental catch of pollock up to the MRA and to discard pollock at any

point in time in which the MRA is exceeded, it is presumed that all of these pollock discards are regulatory discards.

This proposed action is intended to increase the retention of pollock by non-AFA vessels in the BSAI, while not increasing the overall amount of pollock harvested by adjusting the MRA enforcement period so that the MRA for pollock caught in the BSAI by non-AFA vessels would be enforced at the time of offload rather than at any time during a fishing trip. Under the proposed regulations, vessels would be able to choose to retain pollock in excess of the MRA as long as the amount retained at the time of offload is at the current MRA percentage with respect to basis species or species groups retained. By allowing vessels to manage their MRA percentage for pollock on an offload-to-offload basis, additional pollock may be retained over the course of a fishing trip. For example, if a vessel operator catches pollock early in a trip in excess of the MRA amount, he or she may choose to retain the pollock and move to an area with lower incidental catch rates of pollock, thereby lowering the percentage of pollock retained, with respect to other basis species, prior to the offloading of catch. As long as the amount of pollock on board the vessel is at the appropriate MRA at the time of offload, the vessel operator would be in compliance.

Participants in the directed pollock fishery have expressed concern that the adjusted enforcement period could lead to additional pollock catches and necessitate an increase in the amount of pollock allocated to the incidental catch allowance (ICA), with a consequent reduction in the amount of pollock allocated to the AFA directed pollock fisheries. The EA/RIR/IRFA prepared for this action demonstrates that the actual amount of incidentally caught pollock is consistently lower than the pollock ICA. However, the analysis acknowledges that if pollock were a desired catch for the non-AFA fleet, the proposed change to MRA regulations would allow vessels additional opportunity to "top off" their trips with additional pollock. While this behavior currently is possible, it has not been demonstrated by vessels in the non-AFA fleet.

Currently, fisheries managers establish the pollock ICA through the annual harvest specification process. The ICA for an upcoming year is established based on an examination of the historical incidental catch of pollock in non-pollock fisheries. NMFS provides information to the Council annually to guide the ICA specification and will continue to make this

information available to the Council and interested public. The amount of pollock harvested by non-AFA eligible vessels would continue to be well documented. Should incidental catch rates or amounts increase, the Council could initiate regulatory action to reduce incidental catch rates to levels closer to historical amounts. Any adjustment to the ICA would occur within the annual harvest specification process.

Current regulations at § 679.20(d)(1)(iii)(B) require vessels to be in compliance with MRA regulations at any time during a fishing trip. The proposed action would enforce MRA amounts for pollock caught by non-AFA vessels in the BSAI only at the time of offload. Current regulations at § 679.20(e) do not differentiate between catcher vessels and catcher processors. However, the definition of fishing trip is different for each vessel type and the MRA is enforced differently for each vessel type. Proposed regulations would clarify MRA requirements for catcher vessels at § 679.20(e)(2)(iv). Catcher vessels may fish within more than one statistical reporting area during the same fishing trip. The proposed regulations would clarify that the lowest MRA for any of the areas where fish are harvested during a fishing trip would apply at any time during the fishing trip and would be enforceable instantaneously. This is the existing enforcement protocol. MRA requirements for catcher processors at § 679.20(e)(2)(v) would remain unchanged except to reference the proposed change to the pollock MRA accounting period from anytime during a fishing trip to the time of offload. These proposed changes would apply to vessels fishing in the Gulf of Alaska (GOA) and the BSAI.

The proposed regulations at § 679.20(e)(2)(vi) would make the MRA for pollock caught by non-AFA eligible vessels in the BSAI management area enforceable at the time of offload.

#### *Increased Retention/Increased Utilization (IR/IU)*

Proposed changes to the IR/IU regulations would apply to vessels fishing in the Gulf of Alaska (GOA) and the BSAI

Regulations at 679.27(c)(2) describe retention requirements for IR/IU species. In § 679.27, paragraphs (c)(2)(i)(B), (c)(2)(ii)(B), (c)(2)(iii)(B), and (i)(2) refer to the "MRB" amount when directed fishing for an IR/IU species is prohibited. "MRB" is an acronym for maximum retainable bycatch and was changed to MRA due to inconsistency with the definition of bycatch in the

Magnuson-Stevens Act. The regulatory text in these paragraphs would be amended to reflect current language and to provide consistency with other regulatory text.

Current regulations at § 679.27(c)(2)(ii)(B) require vessels to retain IR/IU species up to the MRA amount for that species and are enforced at any time during a fishing trip. The proposed regulations would provide an exception for pollock caught by non-AFA eligible vessels in the BSAI.

#### **Classification**

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

An initial regulatory flexibility analysis (IRFA) was prepared, required by section 603 of the Regulatory Flexibility Act (RFA).

The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are described above. A copy of the IRFA is available from NMFS (see **ADDRESSES**). A summary of the analysis follows:

The change in the enforcement period for the pollock MRA would apply to all non-AFA vessels that catch BSAI pollock as an incidental species, regardless of vessel size, gear type or target fishery. However, non-AFA trawl catcher processors (head-and-gut sector) catch significant amounts of pollock incidentally in other groundfish fisheries. Other non-AFA vessels are seldom affected by the MRA for pollock on a haul-by-haul basis.

In recent years, 23 to 24 vessels in the head-and-gut trawl catcher processor sector have fished in the BSAI. Ownership of the active vessels is concentrated in 10 companies. One of the listed companies is an independent company that acts as a manager of four vessels, each of which is an independently owned corporation with different ownership structures. Therefore, the IRFA treated these vessels as four independent companies. Analysis of the three year average of estimated annual receipts of the head-and-gut trawl catcher processor sector indicated that 1 of the 13 companies operating in the sector in 2002 would have been defined as a small entity with receipts of less than \$3.5 million. The company operates a single vessel that is less than 125 feet.

During the development of the GRS, several options regarding the MRA for pollock were developed and discussed, including several options relating to the time interval for enforcement, as well as

options to alter the MRA percent during the season. The status quo is the first alternative to the preferred action. Under the status quo alternative, the MRA for pollock continues to be enforced on an instantaneous basis, i.e., it is unlawful for a vessel to retain pollock in an amount that exceeds the MRA at any time during a fishing trip. The status quo would not lead to increased retention of pollock caught by non-AFA vessels in the BSAI. The status quo was rejected because it would not accomplish the objectives of the action. As noted, this alternative remains the "baseline" for purposes of the MRA analysis.

A second alternative was considered, i.e., to change the MRA enforcement interval for pollock. This alternative would change the enforcement of the pollock MRA to a set interval of time. Modifying the time of enforcement to an interval of time would allow vessels that would have otherwise been forced to discard pollock to retain additional pollock, as long as they were under the MRA for the specified interval. For example, suppose a vessel's first haul of a trip is 25 percent pollock. Under the current instantaneous enforcement rules, the vessel would be required to discard at least 5 percent of the haul. Under a modified enforcement interval the vessel would have the option of keeping the additional five percent, as long as the vessel's total retained pollock amounted to no more than 20 percent of retained non-pollock groundfish by the end of the specified enforcement interval. The MRA for pollock would remain at 20 percent. Only the enforcement accounting interval would be adjusted. Several enforcement intervals were considered as suboptions, but not adopted and are summarized in the EA/RIR/IRFA. While longer intervals were feasible from an enforcement perspective, they were judged by the Council as inconsistent with the problem statement and the goal to discourage covert targeting of pollock by non-AFA vessels. For example, if the MRA for pollock was calculated over the entire 'A' season it would be quite easy for non-AFA vessels to focus an entire trip on pollock (say, while roe content was at its peak) and still remain within the MRA. This would clearly be incongruous with the AFA which reserves the target pollock fishery exclusively for AFA eligible vessels and processors.

The third alternative considered was to change the MRA percentage for pollock. This option would adjust the MRA percentage for pollock to allow for greater retention by head and gut trawl catcher processor (HT-CPs). Increasing

the MRA percentage for pollock could increase the retention of pollock by reducing the number of instances when a vessel caught enough pollock to necessitate pollock discards. On the other hand, there is the possibility that increasing the MRA percentage of pollock would also increase the incentive to catch more pollock. While the HT-CP sector currently operates well under its ICA for pollock, raising the MRA percentage for pollock could increase the chance that the ICA would have to be increased if the overall amount of retained pollock approached the current ICA. If the ICA increased, it would reduce the amount of pollock available to the directed fishery.

The fourth alternative was also considered, namely, to allow fishery managers to adjust the MRA percentage for pollock in season. This option was rejected because the complexities of intra-season rulemaking made the option infeasible.

The preferred alternative is to change the enforcement interval of the pollock MRA to an offload to offload basis. Modifying the enforcement period to an offload to offload interval would allow vessels that would have otherwise been forced to discard pollock to retain additional pollock, as long as they were under the MRA for the trip. For example, suppose a vessel's first haul of a trip is 25 percent pollock. Under the current instantaneous enforcement rules, the vessel would be required to discard at least 5 percent of the haul. Under this alternative the vessel would have the option of keeping the additional five percent as long as the vessel's total retained pollock amounted to no more than 20 percent of retained non-pollock groundfish by the time of the next offload. The MRA for pollock would remain at 20 percent. Only the enforcement accounting interval would be adjusted.

While changing the enforcement interval for the pollock MRA is likely to result in an overall reduction of discards of pollock, the economic impact of the change on vessels specifically in the head and gut trawl catcher processor (HT-CP) sector is uncertain. The main factors that could determine the size and distribution of economic impact on the HT-CP sector are (1) the value of pollock relative to the value of groundfish normally caught by the sector, (2) the amount of pressure vessels operators are experiencing to reduce discards, and 3) strategic behavior of individual vessels.

If pollock has a lower relative value than the targeted species, and vessels operate without regard to pressure to reduce discards, the change in the

enforcement interval is unlikely to have any significant economic effect vessels will continue to discard pollock at current levels, while remaining within the retention requirements of IR/IU regulations. If, on the other hand, vessels choose to reduce discards of pollock to alleviate increasing pressure from the Council and the public at large, they could experience negative economic consequences. Assuming vessel catch is constrained by hold space, the amount of product from higher-valued species that would be displaced by the increased retention of pollock, under this scenario, may be substantial.

If pollock has a higher relative value than other species in the catch, as it does during the pollock roe season, the impact on the HT-CP sector from changing the enforcement accounting interval could be positive. Currently, pollock catches appear to be higher during the first part of the trip compared to latter parts of the trip. Under the current regulations, vessels are likely to be forced to discard valuable pollock during the early part of the trip until they have harvested and retained sufficient amounts of non-pollock target species to build up a "ballast" of retained product, which they can count against retained pollock. Then later in the trip they can "top-off" if they wish. Thus under the current regulations vessels may be forced to "catch pollock" twice if they wish to retain the maximum amount of pollock allowed. With the change in the regulation, again assuming pollock is a desired species, vessels will have the option to keep pollock caught in the early part of the trip, even if they have not yet caught and retained sufficient non-pollock species to comply with the MRA. Because they are able to keep all pollock as it comes on board, it is unlikely that vessels will need to "top-off" later in the trip. Thus the proposed action may reduce overall pollock catches by the HT-CPs.

The alternative allows non-AFA vessels to retain additional pollock caught incidentally in the BSAI management area, thereby helping to meet the Council's goals and objectives to reduce discards in the groundfish fisheries off Alaska.

This regulation does not impose new recordkeeping or reporting requirements on the regulated small entities. This 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: January 13, 2004.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

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

**PART 679 FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA**

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

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

2. In § 679.20, paragraphs (d)(1)(iii)(B) and (e)(2)(iv) are revised and paragraphs (e)(2)(v) and (e)(2)(vi) are added to read as follows:

**§ 679.20 General Limitations.**

\* \* \* \* \*

- (d) \* \* \*
- (1) \* \* \*
- (iii) \* \* \*

(B) Retention of incidental species. Except as described in 679.20(e)(2)(vi), if directed fishing for a target species, species group, or the "other species" category is prohibited, a vessel may not retain that incidental species in an amount that exceeds the maximum retainable amount, as calculated under paragraphs (e) and (f) of this section, at any time during a fishing trip.

\* \* \* \* \*

- (e) \* \* \*
- (2) \* \* \*

(iv) For catcher vessels, the maximum retainable amount for vessels fishing during a fishing trip in areas closed to directed fishing is the lowest maximum retainable amount applicable in any area, and this maximum retainable amount must be applied at any time for the duration of the fishing trip.

(v) For catcher/processors fishing in an area closed to directed fishing for a species or species group and not subject to 679.20(e)(2)(vi), the maximum retainable amount for that species or species group applies at any time for the duration of the fishing trip.

(vi) For all vessels not listed in subpart F of this section, the maximum retainable amount for pollock harvested in the BSAI is calculated at the end of each offload and is based on the basis species harvested since the previous offload. For purposes of this paragraph, offload means the removal of any fish or fish product from the vessel that harvested the fish or fish product to any other vessel or to shore.

\* \* \* \* \*

3. In § 679.27, the table in paragraph (c)(2) and the table in paragraph (i) are revised to read as follows:

§ 679.27 Improved Retention/Improved Utilization Program. (c) \* \* \*  
 \* \* \* \* \* (2) \* \* \*

IF YOU OWN OR OPERATE A	AND	YOU MUST RETAIN ON BOARD UNTIL LAWFUL TRANSFER
(i) Catcher vessel	(A) Directed fishing for an IR/IU species is open, (B) Directed fishing for an IR/IU species is prohibited, (C) Retention of an IR/ IU species is prohibited,	all fish of that species brought on board the vessel. all fish of that species brought on board the vessel up to the MRA amount for that species. no fish or product of that species.
(ii) Catcher/processor	(A) Directed fishing for an IR/IU species is open, (B) Directed fishing for an IR/IU species is prohibited, (C) Retention of an IR/ IU species is prohibited,	a primary product from all fish of that species brought on board the vessel. a primary product from all fish of that species brought on board the vessel up to the point that the round-weight equivalent of primary products on board equals the MRA amount for that species, except when exceeded as provided for in 679.20 (e)(2)(vi). no fish or product of that species.
(iii) Mothership	(A) Directed fishing for an IR/IU species is open, (B) Directed fishing for an IR/IU species is prohibited, (C) Retention of an IR/ IU species is prohibited,	a primary product from all fish of that species brought on board the vessel. a primary product from all fish of that species brought on board the vessel up to the point that the round-weight equivalent of primary products on board equals the MRA amount for that species no fish or product of that species.

\* \* \* \* \* (i) \* \* \*

IF...	then your total weight of retained or lawfully transferred products produced from your catch or receipt of that IR/IU species during a fishing trip must...
(1) directed fishing for an IR/IU species is open,	equal or exceed 15 percent of the round-weight catch or round-weight delivery of that species during the fishing trip.
(2) directed fishing for an IR/IU species is prohibited,	equal or exceed 15 percent of the round-weight catch or round-weight delivery of that species during the fishing trip or 15 percent of the MRA amount for that species, whichever is lower.
(3) retention of an IR/IU species is prohibited,	equal zero

[FR Doc. 04-1810 Filed 1-28-04; 8:45 am]  
 BILLING CODE 3510-22-S

**DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
**50 CFR Part 679**

[Docket No. 040115020-4020-01; I.D. 010204B]

RIN 0648-AR07

**Individual Fishing Quota (IFQ) Program for Pacific Halibut and Sablefish; Groundfish fisheries of the Exclusive Economic Zone (EEZ) off the coast of Alaska; Recordkeeping and Reporting**

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

**ACTION:** Proposed rule.

**SUMMARY:** NMFS proposes to revise port codes (Tables 14a and 14b) used in data collection for the Federal groundfish fisheries in the EEZ off the coast of Alaska and the Individual Fishing Quota (IFQ) Program. This revision would remove unnecessary or potentially conflicting regulations, facilitate enforcement efforts, and standardize collection of port-of-landing information. The action is necessary to standardize collection and analysis of port information. This action is intended to meet the conservation and management requirements of the Northern Pacific Halibut Act of 1982 (Halibut Act) with respect to halibut and of the Magnuson-Stevens Fishery Conservation and Management Act, (Magnuson-Stevens Act) with respect to groundfish and to further the goals and objectives of the Alaska groundfish fishery management plans.

**DATES:** Comments must be received by March 1, 2004.

**ADDRESSES:** Comments may be mailed to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 1668, Attn: Lori Durall. Hand delivery or courier delivery of comments may be sent to NMFS, 709 West 9th Street, Room 420, Juneau, AK 99801. Comments may also be sent via facsimile to 907 586 7557. As an agency pilot test for accepting comments electronically, the Alaska Region, NMFS, will accept e-mail comments on this proposed rule. The mailbox address for providing e-mail comments on this proposed rule is RPC-0648-AR07@noaa.gov.

Copies of the Regulatory Impact Review (RIR) prepared for this proposed regulatory action are available from NMFS at Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 1668, Attn: Lori Durall, or by