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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 040223064-4136-02; I.D. 020404F]

Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska; Final 2004 Harvest Specifications for Skates

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

ACTION: Final 2004 harvest specifications for skates and associated management measures; closures.

SUMMARY: NMFS announces final 2004 harvest specifications for skates and associated management measures for the skate fishery of the Gulf of Alaska (GOA). This action is necessary to establish harvest limits and associated management measures for skates during the 2004 fishing year and to accomplish the goals and objectives of the Fishery Management Plan for Groundfish of the GOA (FMP). The intended effect of this action is to conserve and manage the skate resources in the GOA in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Effective at 1200 hrs, Alaska local time (A.l.t.), June 11, 2004, through 2400 hrs, A.l.t, December 31, 2004.

ADDRESSES: Copies of the Final Environmental Assessment (EA) and Final Regulatory Flexibility Analysis (FRFA) prepared for this action and the Final 2003 Stock Assessment and Fishery Evaluation (SAFE) report, dated November 2003, are available from NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Durall.

FOR FURTHER INFORMATION CONTACT: Tom Pearson, 907-481-1780 or e-mail at tom.pearson@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background for the Final 2004 Skate Harvest Specifications

NMFS manages the groundfish fisheries in the exclusive economic zone (EEZ) of the GOA under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP 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.

In October 2003, the Council made final recommendations on Amendment 63 to the FMP and submitted it for review by the Secretary of Commerce (Secretary) in November 2003. The Council proposed Amendment 63 to move skates from the "other species" category to the target species category in the FMP. By establishing skates as a target species, a directed fishery for skates in the GOA could be managed to reduce the potential of overfishing skates while providing an opportunity for achieving a long term sustainable yield from the skate resource in the GOA. NMFS published a Notice of Availability for Amendment 63 on December 2, 2003 (68 FR 67390) and a proposed rule to implement Amendment 63 on January 6, 2004 (69 FR 614). The Secretary approved Amendment 63 on February 27, 2004.

The FMP and its implementing regulations require NMFS, after consultation with the Council, to specify annually the total allowable catch (TAC) for each target species and for the "other species" category, the sum of which must be within the optimum yield (OY) range of 116,000 to 800,000 metric tons (mt) (see § 679.20(a)(1)(ii)). Regulations at § 679.20(c)(3)(i) further require NMFS to publish annually the final annual TAC. NMFS published the final 2004 groundfish harvest specifications in the **Federal Register** on February 27, 2004 (69 FR 9261). The final 2004 harvest specifications for skates in the GOA and associated management measures contained in this action amend the final 2004 groundfish harvest specifications.

The proposed harvest specifications for skates in the GOA were published in the **Federal Register** on March 4, 2004 (69 FR 10190). Comments were invited and accepted through March 19, 2004. NMFS received one letter of comment on the proposed specifications. This letter of comment is summarized and responded to in this document under the heading Response to Comments. Public consultation with the Council occurred during its December 2003 meeting in Anchorage, AK. After considering public comments, as well as biological and economic data that were available at the Council's December meeting, the Council recommended, and NMFS approved, the final 2004 harvest specifications for skates set forth in Table 1 of this action. No changes were made from the proposed to the final harvest specifications for skates. For 2004, the sum of skate TAC amounts is 6,993 mt.

Acceptable Biological Catch (ABC) and TAC Specifications

The final ABC and TAC levels for each species group are based on the best available biological and socioeconomic information, including methods used to calculate stock biomass, assumed distribution of stock biomass, and estimated incidental catch in other directed groundfish fisheries. In December 2003, the Council, its Advisory Panel (AP), and its Scientific and Statistical Committee (SSC) reviewed current biological and harvest information about the condition of groundfish stocks in the GOA. Most of this information was compiled initially by the Council's GOA Plan Team and is presented in the final 2003 SAFE report for the GOA groundfish fisheries, dated November 2003. The Plan Team annually produces such a document as the first step in the process of specifying TACs. The SAFE report contains a review of the latest scientific analyses and estimates of each species' biomass and other biological parameters, as well as summaries of the available information on the GOA ecosystem and the economic condition of the groundfish fisheries off Alaska. From these data and analyses, the Plan Team estimates an ABC for each species category.

The Plan Team recommended a single gulfwide overfishing level (OFL) for all skate species, a single gulfwide ABC for "other skates" (Genus *Bathyrhaja*), and ABCs for Big and Longnose skates (*Raja binoculata* and *Raja rhina*, respectively) combined in the Western, Central, and Eastern Regulatory Areas of the GOA. Additionally, the Plan Team recommended that the TAC for Big and Longnose skates in the Central Regulatory Area not exceed the calculated OFL for Big skates in that area (3,284 mt). The SSC concurred with the Plan Team's recommendation for a single gulfwide OFL for all skate species but recommended a separate ABC for Big and Longnose skates only in the Central Regulatory Area. The SSC believes that this breakout would be a better method to address the immediate management concerns in the Central Regulatory Area given the current data limitations, which include a lack of skate species composition data in the retained and discarded catch in previous years. The AP and Council concurred with the SSC's ABC recommendations which are presented in Table 1. The AP and the Council concurred with the Plan Team's TAC recommendation of 3,284 mt for Big and Longnose skates combined in the Central Regulatory Area. The AP and

Council recommended that the TAC for all skates, excluding Big and Longnose skates in the Central Regulatory Area, be set at the ABC level of 3,709 mt. These amounts are presented in Table 1.

TABLE 1.—FINAL 2004 ABCs, TACS, AND OFL FOR SKATES IN THE WESTERN (W), CENTRAL (C), EASTERN (E), AND GULFWIDE (GW) AREAS OF THE GULF OF ALASKA. (VALUES ARE IN METRIC TONS)

Species/Area	ABC	TAC	Overfishing
Big and Longnose skate ¹ /W and E and "Other" skates ² /GW	3,709	3,709	
Big and Longnose skate/C	4,435	3,284	
Total/GW	8,144	6,993	10,859

¹ Big skate means *Raja binoculata* and Longnose skate means *Raja rhina*.

² "Other" skates means *Bathyraja* spp.

With respect to the final 2004 harvest specifications for the groundfish fishery of the GOA, published on February 27, 2004 (69 FR 9261), this action would: (1) raise the gulfwide total OFL levels by 10,859 mt, from 649,460 mt to 660,319 mt, (2) raise the gulfwide total ABC levels by 8,144 mt, from 498,948 mt to 507,092 mt, (3) raise the "other species" TAC by 350 mt (5 percent of 6,993 mt), from 12,592 mt to 12,942 mt, (4) raise the gulfwide total TAC levels by 7,343 mt (6,993 mt + 350 mt), from 264,433 mt to 271,776 mt, which is within the required OY range of 116,000 mt to 800,000 mt, and (5) raise the non-exempt AFA catcher vessel "other species" sideboard limitation gulfwide total by 3 mt, from 113 mt to 116 mt.

Additional Management Measures

NMFS is adopting 4 management measures for skates that currently apply to "other species." First, NMFS published a proposed rule implementing Amendment 63 to the FMP on January 6, 2004 (69 FR 614) which proposed to establish the maximum retainable amount of incidental catch for skates equal to that for "other species" (Table 10 to part 679—Gulf of Alaska Retainable Percentages). These management measures will be implemented by the final rule for Amendment 63, which will be published separately in the **Federal Register** in the near future. The other management measures were published in the proposed specifications for skates on March 4, 2004 (69 FR 10190).

Second, halibut bycatch mortality in the directed trawl fishery targeting skates will accrue to PSC limits established for the shallow-water complex, and bycatch mortality in the directed hook-and-line fishery targeting skates will accrue to the limits established for hook-and-line gear other than demersal shelf rockfish.

Third, the halibut discard mortality rates will be based on those for "other species" i.e., 13 percent for hook-and-

line gear, 61 percent for trawl gear, and 17 percent for pot gear.

Finally, the sideboard limitations for non-exempt AFA catcher vessels for skates gulfwide will be based on the ratio of 1995–1997 non-exempt AFA catcher vessel catch of "other species" to 1995–1997 "other species" TAC, which is 0.9 percent. These amounts are 33 mt (3,709 mt × 0.009) for all skates gulfwide, except Big and Longnose skates in the Central Regulatory Area, and 30 mt (3,284 mt × 0.009) for Big and Longnose skates in the Central Regulatory Area. Based on these sideboard limitations, and in accordance with § 679.20(d)(1)(iii), NMFS has established a directed fishing allowance of 0 mt for these targets. Therefore, NMFS is closing directed fishing for all skates gulfwide for the duration of the 2004 fishing year by non-exempt AFA catcher vessels.

Response to Comments

NMFS received one letter of comment in response to the proposed 2004 harvest specifications for skates in the GOA (69 FR 10190, March 4, 2004) and the Environmental Assessment/Initial Regulatory Flexibility Analysis (EA/IRFA) for a Revision to the Skate Harvest Specifications for the Year 2004, implemented under the authority of the Fishery Management Plan for Groundfish of the Gulf of Alaska. The letter contained four separate comments concerning the proposed 2004 harvest specifications for skates and their effect on the "other species" category TAC in the GOA that are summarized and responded to below. The letter also incorporated by reference comments that were submitted on the notice of availability for Amendment 63 (68 FR 67390, December 2, 2003). Those comments are summarized and responded to in the final rule implementing Amendment 63.

Comment 1. Due to the sensitive life history of skates (slow growth, late maturity, long life, and low fecundity) NMFS should adopt an exceptionally

cautious management approach as frameworked in Option 3 (with suboption 1) analyzed in the EA/IRFA. The proposed 2004 skates harvest specifications are risk-prone and fail to prevent directed fishing for skates, fail to prevent localized depletion (especially of Big and Longnose skates), and fail to prevent the skate stocks from being depleted to levels considered near extinction.

Response. Option 3 was analyzed in the EA prepared for this action and considered by the GOA Plan Team, the Council, and its SSC, and AP. Option 3 would create separate OFLs, ABCs, and TACs for three skate targets (Big skates, Longnose skates, and other skates) in three separate management areas (Eastern, Central, and Western) in the GOA. Of all the options considered, the EA acknowledged that Option 3 would provide the most protection for skates in the GOA. Pacific ocean perch (POP) in the GOA is managed in this manner. The rationale for the management of POP in this manner is that they are long lived, slow to mature, and could be subject to localized depletion. These observations are just as relevant for skates. However, no evidence is available to show that localized depletion of any skate species has occurred or is occurring. The estimated skate biomass, based on NMFS trawl surveys, has increased from 13,575 mt in 1984 to 25,953 mt in 2003 in the Eastern GOA, from 23,534 mt in 1984 to 75,628 mt in 2003 in the Central Regulatory Area, and from 4,067 mt in 1984 to 15,089 mt in 2003 in the Western Regulatory Area. However, given the sensitive life history of skates, Option 3 is a viable management option and should continue to be considered in the future as more information on the biology and condition of the skate stocks becomes available or if directed fisheries for skates in other areas begin to be developed in the future.

Based on the lack of information available regarding skates, the SSC recommended that a single gulfwide

OFL be established for skates in 2004, and that a single ABC should be established for skates gulfwide with the exception of Big and Longnose skates in the Central Regulatory Area. The SSC noted that Big and Longnose skates in the Central Regulatory Area require additional protection at this time, since the 2003 directed fishery for skates preferentially targeted these two species and fishing effort was concentrated in the Central Regulatory Area. The Council and its committees also sought to avoid having to establish finely divided target fisheries with small regional quotas, which if unexpectedly reached, could have detrimental impacts on other more fully developed fisheries. The Plan Team recognized that landings of skates in the Central Regulatory Area were comprised mostly of Big skates and made a TAC recommendation for Big and Longnose skates in the Central Regulatory Area (3,284 mt) below the ABC level (4,435 mt) to prevent reaching the OFL for Big skates in this area. The AP and Council concurred with this recommendation, and it is incorporated into the final 2004 skate harvest specifications for the GOA.

Each option for the management of skates analyzed in the EA prepared for this action considered two suboptions. Suboption 1 would set TACs at the ABC level or a lower level sufficient to meet anticipated incidental catch needs in other directed fisheries during the fishing year. Suboption 1 would have the effect of prohibiting directed fishing for skates throughout the year. Suboption 2 would set TACs at ABC levels, allowing the Regional Administrator, after deducting anticipated incidental catch needs, to establish a directed fishing allowance for skates. The Council recommended Suboption 2. In either case, the retention of skates would be prohibited once TAC levels are reached. The Council's recommended TACs would allow for a modest directed fishery of about 1,000 mt in each of two specified skate fisheries. When this directed fishing allowance is reached, skates would be placed on bycatch status and directed fishing would be prohibited. The Council recommended, and NMFS is establishing, TACs for skates (totaling 6,993 mt) that are below ABC levels (totaling 8,144 mt) and substantially below the 2003 TAC for "other species" (11,260 mt) in the GOA.

These skate specifications do not constitute a risk-prone management approach. OFL and ABC levels are calculated using a risk-adverse tier 5 assessment where the OFL is set at the level estimated to be the natural mortality rate multiplied by the biomass

estimate of skates. The ABC is set at 75 percent of that amount. The directed fishing allowances are set at conservative levels which include for the first time, estimates of incidental catch in the halibut fishery. Finally, NMFS assumes that the mortality of all groundfish, including skates, discarded at sea is 100 percent. This is a conservation assumption because skates are robust fish, with mortality rates that could be similar to or better than those of halibut released at sea in similar conditions. In the unlikely event that the entire TAC for skates were harvested, the conservative basis for setting the TACs would prevent the skate stocks from being depleted to levels considered near extinction.

Comment 2. We are concerned that once the TAC for Big and Longnose skates is reached in the Central GOA, fishing effort may shift and over exploit these and other skate species in other regions.

Response. Because the skate TACs are set conservatively, over exploitation of skate stocks is unlikely. Almost two thirds of the skate TACs have been reserved for incidental catch in other fisheries, including for the first time, the halibut fishery. Over the past 15 years, total skate catch has varied from 1 mt to 110 mt annually in the Eastern GOA and from 0 mt to 263 mt in the Western GOA. At this time no processors purchase skates in either the Eastern or Western GOA. The vessels currently participating in the skate fishery are mostly small hook-and-line vessels for which travel back and forth to fishing grounds in other management areas would not be feasible. The implementation of these specifications will reduce the total catch of skates during 2004 in the GOA compared to 2003 levels.

Comment 3. We are concerned that this action will raise the TAC for the "other species" category by 350 mt, rather than lowering it as we strongly advocate. This action will increase the allowable catches for such vulnerable species as sharks in the "other species" category.

Response. NMFS does not set ABCs for separate species in the "other species" category as stock assessments are not prepared for these species. Rather, the FMP set the TAC for the "other species" category at 5 percent of the total sum of TACs of groundfish for which stock assessments have been prepared. The suggested change to lower the "other species" TAC will require an FMP amendment. At this time, species in the "other species" category are not targeted in the GOA and the catch of these species is

incidental to directed fisheries targeting other species. While this action does raise the TAC for "other species" by 350 mt, this action will not necessarily result in an increased catch of "other species" in the GOA because these species are not presently targeted by any fishery in the GOA.

In instances where directed fisheries have developed rapidly for species in the "other species" category, the Council has recommended, and NMFS has implemented, FMP amendments to remove those targeted species from the "other species" category so that they can be managed separately. This was the case in 1992, when the Council recommended, and NMFS implemented, Amendment 31 which removed Atka mackerel from the "other species" category, and more recently, when the Council recommended Amendment 63 in 2003 which removed skates from the "other species" category. If a single species, such as sharks, in the "other species" category was targeted to the exclusion of other species in the category at levels up to the "other species" TAC, then such harvest levels probably would be unsustainable and detrimental to the targeted fish stock and the Council and NMFS likely would act to manage such harvests at sustainable levels.

Rather than approach concerns about "other species" in a piecemeal fashion, the Council is developing an FMP amendment with a more comprehensive approach toward the management of nontarget species. An ad hoc committee has suggested that one management approach could be to place the newly formed nontarget species category on bycatch status year round and prohibit directed fishing for these species until an adequate stock assessment for the species could be prepared that demonstrated what (if any) directed fishing activities would be sustainable. Species that could be considered for inclusion in the nontarget species categories are: (1) all the species currently in the "other species" category, such as sharks, (2) species for which stock assessments are currently poor, such as Atka mackerel in the GOA, (3) species that are a very minor component of a larger category, such as deep water sole in the deep water flatfish category, (4) species that are uncommon in the GOA or at the edge of their geographic range, such as several species in the other slope rockfish category, (5) all forage fish, and (6) nonspecified species such as grenadiers, wrymouths, prowlfish, etc.

Comment 4. If a reduction of the "other species" TAC is not possible under the current FMP, we strongly urge

NMFS not to implement Amendment 63 and to prohibit directed fishing for skates until harvests of both skates and "other species" combined will not exceed the catch of "other species" in 2003.

Response. Failure to implement Amendment 63 and these 2004 harvest specifications for skates would mean that conservation and management measures needed for skates would not be available. No additional protection would be provided for "other species" because the TAC for "other species" is not reached. With the implementation of these harvest specifications for skates in 2004, the total, combined catch of skates and "other species" in 2004 likely will be lower than the 2003 "other species" catch. A significant increase or decrease in the incidental catch of the species remaining in the "other species" category is not likely. Also, the 2004 management measures include setting the skate directed fishing allowances at lower levels than the skate directed fishing catch in 2003. Therefore, a reduction in the total catch of skates (including Big and Longnose skates in the Central GOA) is likely in 2004, compared to 2003.

Not implementing Amendment 63 would place skate species at risk of overfishing. The implementation of Amendment 63 will improve the protection for skates, and will not adversely impact the species in the "other species" category because of the lack of interest in a directed fishery on these species. NMFS will carefully monitor the harvest of "other species" to determine if a directed fishery develops on any of the species in this complex and to determine what appropriate steps may be needed to prevent overfishing.

Classification

The Administrator, Alaska Region, NMFS (Regional Administrator), has determined that this final specification is necessary for the conservation and management of the groundfish fisheries of the BSAI and GOA. The Regional Administrator also has determined that this final specification is consistent with the Magnuson-Stevens Act and other applicable laws. No relevant Federal rules exist that may duplicate, overlap, or conflict with this action.

A FRFA was prepared for the final 2004 harvest specifications for skates to address the statutory requirements of the Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Fairness Act of 1996.

Issues Raised by Public Comments on the IRFA

The proposed rule was published in the **Federal Register** on March 4, 2004 (69 FR 10190). An Initial Regulatory Flexibility Analysis (IRFA) was prepared for the proposed rule, and described in the Classification section of the preamble to that rule. The public comment period ended on March 19, 2004. No comments were received on the IRFA or regarding the economic impact of this rule.

Number and Description of Small Entities Affected by the Rule

The entities directly regulated by this action, if adopted, would be the fishing operations harvesting species in the "other species" complex in the GOA, using hook-and-line or trawl gear. These vessels may be targeting skates (the only species in the "other species" category currently fished as a target), or they may be harvesting skates and other species in the "other species" category incidental to other targeted fishing operations (e.g., fishing for Pacific cod or shallow-water flatfish). Since any hook-and-line or trawl operation in the GOA may harvest the "other species" complex, the universe of potentially affected operations includes all GOA hook-and-line and trawl vessels. Pot gear is not an effective gear for targeting skates because regulations limit the size of tunnel openings to no more than 36 inches (91 cm) in circumference.

In 2001, the universe of potentially affected vessels included 670 hook-and-line vessels and 138 trawlers. Of these, 650 were small hook-and-line catcher vessels, 15 were small hook-and-line catcher/processors, 120 were small trawl catcher vessels, and 4 were small trawl catcher/processors. This size determination is based on operation revenues from groundfish fishing in Alaska. Moreover, the data are not available to take account of affiliations between fishing operations and associated processors, or other associated fishing operations. For these reasons, these counts may overstate the numbers of small entities potentially directly regulated by the proposed action. Average Alaska groundfish revenues, in 2001, for these small entities were \$100,000 for hook-and-line catcher vessels, \$1.82 million for hook-and-line catcher/processors, \$370,000 for trawl catcher vessels, and \$1.80 million for trawl catcher/processors. The directed skate fishery emerged in 2003; 77 hook-and-line catcher vessels, 53 trawl catcher vessels, 13 hook-and-line catcher/processors, and 10 trawl catcher/processors, took part in the

fishery in 2003, producing an estimated ex-vessel gross revenue of about \$1.7 million. This suggests average revenues for these vessels were about \$11,000.

Description of Other Alternatives Analyzed

Alternative 1 creates a single GOA-wide OFL and ABC for all skate species. This alternative fails to protect the stocks. It provides no protection against localized depletion or against selective fishing for larger skates. The National Environmental Policy Act analysis determined that this alternative had a "significantly adverse" environmental impact.

Alternative 2 creates three GOA-wide OFLs for skate species or species groups (Big skates, Longnose skates, and Other skates) and three GOA-wide ABCs for the same species or species groups. This alternative did not provide protection against spatial depletion of skate stocks, particularly those in the Central GOA.

Alternative 3 creates a separate OFL and a separate ABC for each of the species and species groups defined under Option 2, in the Western, Central and Eastern management areas. This alternative provided the greatest level of protection for skate stocks, however, the multiplicity of relatively small OFLs under this alternative created the greatest potential for the closure of a fishery harvesting skates incidentally while targeting another species.

Alternative 4 combines the Big skate and Longnose skate management area-specific OFLs and ABCs of Alternative 3, with the GOA-wide OFL and ABC for Other skates in Alternative 2. It therefore falls between these in terms of its adverse impacts on small entities. This alternative aggregates the "Other skates" OFLs across all three areas, but retains separate Big and Longnose skate OFLs in each of the three management areas (a total of six OFLs). These separate OFLs were a source of concern to industry.

Alternative 5 creates a GOA-wide OFL for all species combined. ABCs would be established in each management area in the GOA for a Big/Longnose skate grouping. A GOA-wide ABC would be established for "Other" skates. In the Central GOA a TAC would be established for combined Big and Longnose skate catch. This TAC will equal 10 percent of the estimated biomass of Big skates in the Central Area (this would have been the OFL for Big skates in this area if such an OFL had been promulgated). This option was meant to be in place for one year, and to be reviewed at the end of 2004, in light of species-specific harvest data to be collected in 2004. This alternative

was explicitly crafted to protect skate stocks while imposing a relatively small burden on fishing operations. While it is less burdensome on small operations than Alternatives 2, 3, and 4, it has more separate TACs and ABCs than Alternative 6, the preferred alternative.

Recordkeeping and Reporting Requirements

The action does not impose new recordkeeping or reporting requirements on small entities. The analysis did not reveal any Federal rules that duplicate, overlap or conflict with the proposed action.

This action is authorized under 50 CFR 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; 16 U.S.C. 1540(f); Pub. L. 105 277, Title II of Division C; Pub L. 106 31, Sec. 3027; and Pub L. 106 554, Sec. 209.

Dated: May 5, 2004.

Rebecca Lent,

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

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