

Dated: January 9, 1998.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 971231319-7319-01; I.D.  
112697A]

RIN 0648-AK09

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

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

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

**SUMMARY:** NMFS proposes a regulatory amendment to separate shortraker rockfish and rougheye rockfish (SR/RE) from the aggregated rockfish bycatch species group and reduce maximum retainable bycatch (MRB) percentages for SR/RE in the Aleutian Islands Subarea (AI) groundfish fisheries. This action is necessary to slow the harvest rate of SR/RE thereby reducing the potential for overfishing. This action is intended to further the objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands (FMP).

**DATES:** Comments must be received at the following address by February 17, 1998.

**ADDRESSES:** Comments may be sent to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) prepared for this action may be obtained from the same address or by calling the Alaska Region, NMFS, at 907-586-7228.

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

**SUPPLEMENTARY INFORMATION:** Fishing for groundfish by U.S. vessels in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) is managed by NMFS according to the FMP. The FMP was

prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

Regulations at 50 CFR 679.20(e) establish MRB percentages for groundfish species or species groups that are closed to directed fishing. The MRB amount is calculated as a percentage of the species on bycatch status relative to the amount of other species retained onboard the vessel that are open for directed fishing. MRB percentages serve as a management tool to slow down the harvest rates of bycatch species by limiting the amount that can be retained on board a vessel. By not placing the bycatch species on "prohibited" status, thereby prohibiting all retention, MRB's also serve to minimize regulatory discard of bycatch species when they are taken incidental to other directed fisheries. MRB percentages reflect a balance between the need to slow harvest rates while at the same time, minimizing the potential for undesirable discard. Although MRB percentages limit the incentive to target on a bycatch species, fishermen can "top off" their retained catch with these species up to the MRB amount by deliberately targeting the bycatch species.

At its June 1997 meeting, the Council requested that NMFS initiate a regulatory amendment to reduce the MRB percentages for SR/RE to reduce harvest rates of SR/RE in the groundfish fisheries, thereby reducing the potential for overfishing and minimizing industry incentives to top off retained catch with SR/RE. Based on the analysis presented to the Council at its September 1997 meeting, the Council recommended that SR/RE be separated from the aggregated rockfish bycatch species group, and that MRB percentages for SR/RE in the AI be reduced to 7 percent relative to deep-water complex species (primarily POP) and to 2 percent relative to shallow-water complex species (primarily Atka mackerel). The MRB percentage relative to arrowtooth flounder would remain at 0 percent. Further justification for these MRB adjustments is discussed below.

#### Separation of SR/RE From Aggregated Rockfish

MRB percentages are established for aggregate rockfish species that are closed to directed fishing. Rockfish species were aggregated because of concerns that separate MRB percentages for each rockfish TAC category would increase the overall amount of rockfish

that could be retained and increase incentives to vessel operators to "top off" their retained catch of target species with rockfish. As part of the aggregate rockfish MRB, the combined amounts of rockfish on bycatch status must not exceed specified percentages of other retained species that are open to directed fishing. These percentages are 15 percent relative to deep-water complex species (other rockfish species, sablefish, Greenland turbot, and flathead sole) and 5 percent relative to shallow-water complex species (Atka mackerel, pollock, Pacific cod, yellowfin sole, rock sole, "other flatfish", squid, and other species).

SR/RE are highly valued, but amounts available to the commercial fisheries are limited by a relatively small TAC amount that is fully needed to support bycatch needs in other groundfish fisheries. As a result, the directed fishery for SR/RE typically is closed at the beginning of the fishing year. Nonetheless, bycatch amounts of SR/RE can exceed TAC and approach the overfishing level. In 1997, the SR/RE bycatch in the Pacific ocean perch (POP) and Atka mackerel trawl fisheries (778 mt and 162 mt, respectively) exceeded the acceptable biological catch and caused overfishing concerns. This resulted in the closure of these and other trawl fisheries in the AI, as well as the hook-and-line gear fisheries for Pacific cod and Greenland turbot. Although closure of the individual fishing quota (IFQ) fisheries for AI sablefish and halibut was a possibility, SR/RE bycatch did not reach the overfishing level and those fisheries remained open.

Based on the discussion above, NMFS proposes to remove SR/RE from the aggregated rockfish bycatch species group and establish an SR/RE bycatch species group for the AI.

#### Reduction of the SR/RE MRB Percentages

The majority of SR/RE bycatch is taken in the POP and Atka mackerel fisheries. Based on data reported by the industry since 1995, the amount of retained SR/RE bycatch in the POP fishery has ranged from 4.5 to 5.7 percent. During the same time period, the retained amount of SR/RE in the Atka mackerel fishery relative to other retained catch has ranged from 0.08 to 0.2 percent.

Analyses of 1995-1996 observer data from observed hauls in the AI Atka mackerel and POP fisheries indicate that most SR/RE bycatch is taken in the minority of hauls. In the Atka mackerel fishery during 1995 and 1996, only 2 percent of observed hauls had bycatch

rates higher than 2 percent, but those hauls were responsible for 50 percent of the observed SR/RE bycatch. In the POP fishery during 1995, only 10 percent of the observed hauls exceeded a bycatch rate of 7 percent but these hauls were responsible for 50 percent of the SR/RE bycatch. In the 1996 POP fishery, 29 percent of the observed hauls exceeded a bycatch rate of 7 percent, but were responsible for 78 percent of the SR/RE bycatch.

To the extent that these high-bycatch hauls represent topping off, a reduction in MRB percentages would limit the incentive to do so and reduce the risk of approaching the overfishing level for SR/RE stocks. At the same time, the proposed MRB percentages would be at a level that is unlikely to increase regulatory discards.

### Classification

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant impact on a substantial number of small entities. NMFS prepared a regulatory impact review (RIR) that describes the impact this proposed rule, if adopted, would have on small entities.

The Small Business Administration has defined all fish-harvesting or hatchery businesses that are independently owned and operated, not dominant in their field of operation, with annual receipts not in excess of \$3,000,000 as small businesses. Additionally, seafood processors with 500 employees or fewer, wholesale industry members with 100 employees or fewer, not-for-profit enterprises, and government jurisdictions with a population of 50,000 or less are considered small entities. NMFS has determined that a "substantial number" of small entities would generally be 20 percent of the total universe of small entities affected by the regulation. A regulation would have a "significant economic impact" on these small entities if it reduced annual gross revenues by more than 5 percent, increased total costs of production by more than 5 percent, resulted in compliance costs for small entities that are at least 10 percent higher than compliance costs as a percent of sales for large entities, or would be likely to cause approximately 2 percent of the affected small business to go out of business. NMFS assumes that catcher vessels participating in

the Alaska groundfish fisheries are "small entities" for purposes of the Regulatory Flexibility Act (RFA).

In 1996, 213 vessels participated in the Aleutian Islands groundfish fisheries all of which would be affected by this rule. Of these, 140 vessels (66 percent) were catcher vessels and would be considered small entities by NMFS. One hundred percent of these small entities would be affected by this rule. Thus, this rule affects a "substantial number of small entities."

This rule could have a variety of different impacts on different entities depending on each small entity's previous fishing history. For vessels that have never landed SR/RE, this rule's impacts would be strictly beneficial in that the only impacts would be that there would be less likelihood of other fisheries in which those vessels operate being closed due to excessive SR/RE bycatch. For entities that have historically landed SR/RE, this rule's impact could vary as well. NMFS' data indicate that most vessels typically harvest SR/RE at a rate substantially below this rule's new MRB of 7 percent. Vessels in the POP fishery typically harvest SR/RE at a rate ranging from 4.5 to 5.7 percent. Vessels in the Atka mackerel fishery typically have SR/RE bycatch rates of .08 to 0.2 percent. Forty-eight small entities landed SR/RE in 1996. For those vessels whose SR/RE bycatch rates are already under 7 percent, this rule's impacts will be only positive as well. However, it is possible that one or more of these 48 small entities landed SR/RE at a rate greater than 7 percent. For any such vessel, this rule could result in an economic loss.

In 1996, small entities took only 0.2 percent of the total SR/RE that was landed. Using an assumed exvessel price of \$1.10 per pound, the total value of the 1996 SR/RE retained catch is estimated at \$1.8 million, of which less than \$3,600 was taken by the 48 small entities (34 percent of the total universe of small entities, a substantial number). Data is not available on how many, if any, small entities have historically landed SR/RE at a bycatch rate greater than 7 percent. However, if NMFS assumes that all 48 small entities retained bycatch at the maximum rate of 14 percent, then the most any vessel could stand to lose as a result of this rule would be 50 percent (because the new maximum retainable level, 7 percent, is one-half of the current maximum retainable level, 14 percent) of \$3,600, divided by 48: \$37.50 per vessel. If only 20 percent of the affected small entities (28 vessels) landed SR/RE at a rate higher than 7 percent, the greatest economic loss they could be expected to suffer would be \$64.30. If only 10 percent of the small entities landed over 7 percent of SR/RE, the most these vessels could expect to lose as a result of this rule

would be \$129 each. Based on the total value of the SR/RE landed by small entities, NMFS can conclude that very few, if any, small entities would be likely to experience a reduction in gross annual income of greater than 5 percent or be forced to go out of business because of this rule. In addition, any losses would be offset for these vessels to the extent that other lucrative fisheries such as POP and Sitka mackerel would not risk early closure due to excessive SR/RE bycatch.

Also, data indicate that this rule is not likely to result in compliance costs proportionally higher for small entities than for large entities. Annual compliance costs are not likely to increase production costs by more than 5 percent. Compliance costs as a percent of sales for small entities are not likely to be greater than 10 percent of sales for large entities.

Thus although NMFS is not able to ascertain the exact number of small entities that would experience negative economic impact as a result of this rule, NMFS is able to conclude that substantially fewer than 20 percent of the affected small entities would experience any negative impact at all, and that in no case would this rule result in a significant impact on a substantial number of small entities.

As a result, a regulatory flexibility analysis was not prepared. A copy of the EA/RIR is available from NMFS (See ADDRESSES).

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

### List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: January 12, 1998.

**David L. Evans,**

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

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

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

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

	Bycatch Species <sup>1</sup>													
	Pollock	Pacific cod	Atka mackerel	Arrowtooth	Yellowfin sole	Other flatfish	Rocksole	Flathead sole	Greenland turbot	Sablefish	Shortraker rougheye (AI)	Aggregated rockfish <sup>2</sup>	Squid	Other species
Basis species:														
Pollock .....	<sup>3</sup> na	20	20	35	20	20	20	20	1	1	2	5	20	20
Pacific cod .....	20	<sup>3</sup> na	20	35	20	20	20	20	1	1	2	5	20	20
Atka mackerel .....	20	20	<sup>3</sup> na	35	20	20	20	20	1	1	2	5	20	20
Arrowtooth .....	0	0	0	<sup>3</sup> na	0	0	0	0	0	0	0	0	0	0
Yellowfin sole .....	20	20	20	35	<sup>3</sup> na	35	35	35	1	1	2	5	20	20
Other flatfish .....	20	20	20	35	35	<sup>3</sup> na	35	35	1	1	2	5	20	20
Rocksole .....	20	20	20	35	35	35	<sup>3</sup> na	35	1	1	2	5	20	20
Flathead sole .....	20	20	20	35	35	35	35	<sup>3</sup> na	35	15	7	15	20	20
Greenland turbot .....	20	20	20	35	20	20	20	20	<sup>3</sup> na	15	7	15	20	20
Sablefish .....	20	20	20	35	20	20	20	20	35	<sup>3</sup> na	7	15	20	20
Other rockfish .....	20	20	20	35	20	20	20	20	35	15	7	15	20	20
Other red rockfish—BS .....	20	20	20	35	20	20	20	20	35	15	7	15	20	20
Pacific ocean perch .....	20	20	20	35	20	20	20	20	35	15	7	15	20	20
Sharpchin/Northern—AI .....	20	20	20	35	20	20	20	20	35	15	7	15	20	20
Shortraker/Rougheye—AI .....	20	20	20	35	20	20	20	20	35	15	<sup>3</sup> na	15	20	20
Squid .....	20	20	20	35	20	20	20	20	1	1	2	5	<sup>3</sup> na	20
Other species .....	20	20	20	35	20	20	20	20	1	1	2	5	20	<sup>3</sup> na
Aggregated amount non-groundfish species .....	20	20	20	35	20	20	20	20	1	1	2	5	20	20

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

<sup>2</sup> Aggregated rockfish of the genera Sebastes and Sebastolobus except in the Aleutian Islands Subarea where shortraker and rougheye rockfish is a separate category.

<sup>3</sup>na=not applicable.

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