

ending on or after the date of publication of these proposed regulations in the **Federal Register**.

Dated: February 9, 2009.

**Linda M. Kroening,**

*Deputy Commissioner for Services and Enforcement.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 070718366-7372-01]

RIN 0648-AV32

#### Fisheries of the Exclusive Economic Zone Off Alaska; Maximum Retainable Amounts for Non-American Fisheries Act Trawl Catcher/Processors

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

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

**SUMMARY:** NMFS proposes to amend regulations to change the time at which the amount of retained groundfish must be calculated to comply with the maximum retainable amounts (MRAs) of selected groundfish species caught by trawl catcher/processors (C/Ps) that are not eligible under the American Fisheries Act (AFA) to participate in directed fishing for pollock. This proposed action would apply to MRAs for yellowfin sole, rock sole, flathead sole, "other flatfish," arrowtooth flounder, Pacific cod, and Atka mackerel in the Bering Sea and Aleutian Islands management area (BSAI) and for Pacific ocean perch in the Aleutian Islands (AI). The proposed action is necessary to provide the non-AFA trawl C/Ps the opportunity to reduce discards and increase retention of these groundfish species. The proposed rule is intended to promote the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP).

**DATES:** Written comments must be received by March 16, 2009.

**ADDRESSES:** Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by "RIN 0648-

AV32", by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal website at <http://www.regulations.gov>.
- Mail: P. O. Box 21668, Juneau, AK 99802.

- Fax: (907) 586-7557.
- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

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

NMFS will accept anonymous comments (enter "N/A" in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

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

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS at **ADDRESSES** above and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or fax to 202-395(7285).

**FOR FURTHER INFORMATION CONTACT:** Jeff Hartman, 907-586-7442, or [jeff.hartman@noaa.gov](mailto:jeff.hartman@noaa.gov).

**SUPPLEMENTARY INFORMATION:** NMFS manages the U.S. groundfish fisheries in the BSAI under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* 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.

MRAs assist in limiting harvest of a species within its annual total allowable catch (TAC). Once the TAC for a species is reached, retention of that species becomes prohibited and all catch of that species must be discarded. Therefore,

NMFS closes a species to directed fishing before the entire TAC is taken to leave sufficient amounts of the TAC available for incidental catch. A species-specific MRA is used to manage the amount of a species left for incidental catch.

The MRA is the maximum weight of a species closed to directed fishing that may be retained onboard a vessel. MRAs are calculated as a percentage of the weight of catch of each species open to directed fishing that is retained onboard the vessel (the basis species). If the MRA for a species is 35 percent, then the percent of retained incidental species must be no more than 35 percent of the weight of basis species. For example, the MRA for rock sole caught in a directed fishery for yellowfin sole is 35 percent. If yellowfin sole is open to directed fishing (a basis species) and rock sole is closed to directed fishing, a vessel operator may retain rock sole in amounts up to 35 percent of the round weight equivalent of yellowfin sole that is onboard the vessel at any point in time during a fishing trip. All catch of rock sole in excess of the MRA must be discarded. To calculate retained amounts for rock sole and yellowfin sole, the vessel operator would estimate the processed weight of rock sole and yellowfin sole for a trip, convert those processed amounts to round weight equivalent of retained catch, and compare that estimate of retained catch with the 35 percent MRA for rock sole.

MRAs are applied to all groundfish species in the BSAI to reduce fishing effort on specific species when catch is approaching an annual TAC. MRAs are the primary tool used by NMFS to reduce or slow the catch of species when directed fishing for that species is closed. Directed fishing is defined in 50 CFR part 679 as "any fishing activity that results in the retention of an amount of a species or species group onboard a vessel that is greater than the MRA for that species or species group." Table 11 to 50 CFR part 679 provides the list of incidental catch and basis species and the MRA of each incidental catch species as a percentage of each basis species.

Current regulations at § 679.20(e) require, with one exception, that the MRAs apply at any time during a fishing trip. This MRA accounting period is known as "instantaneous," because the MRA may not be exceeded at any point in time during the fishing trip. The exception to this requirement, implemented in 2004 to reduce regulatory discards of pollock, allows the MRA for pollock retained by non-AFA vessels to apply at the end of each offload rather than at any time during

the trip. Regulatory discards of a species occur when regulations prohibit retention of some portion of the catch for a species that is closed to directed fishing.

The amount and rate of groundfish discards resulting from the non-AFA trawl C/P sector have been a continuing issue with the Council. Compared with other processing sectors participating in the groundfish fisheries of the BSAI, the Council concluded that these vessels consistently have had the highest groundfish discard (and lowest retention) amounts and rates. In 1995, the non-AFA trawl C/P sector retained 59 percent of all groundfish combined. The only other processor sector with a combined retention rate below 90 percent in 1995 was the longline C/P sector at 84 percent. Groundfish retention rates of non-AFA trawl C/Ps have increased somewhat in recent years. For example, in 1999 the non-AFA trawl C/P sector had an overall groundfish retention rate of 67 percent. In 2005, the retention rate for the non-AFA trawl C/P sector improved to 75 percent, but was still lower than the longline C/P and AFA-trawl C/P sectors. In 2006 through 2008, the non-AFA trawl C/P sector increased groundfish retention to between 77 and 78 percent of its total catch.

In October 2005, the Council received a request from representatives of the non-AFA trawl C/P sector to increase opportunity to reduce regulatory discards by delaying the MRA accounting period to the time of offload of groundfish from a vessel. The requesters noted that substantial portions of groundfish discard in the BSAI are regulatory discards. Representatives for the non-AFA trawl C/P sector testified to the Council that increasing the interval for accounting of an MRA would allow more time to accumulate species open to directed fishing to use as a basis for retaining catch of species closed to directed fishing. Testimony from the sector also suggested that under some conditions this additional time to accumulate basis species may reduce the amount of regulatory discards, particularly in situations when relatively high rates of incidentally caught species were taken early in a fishing trip.

In December 2006, the Council recommended this proposed action to allow non-AFA trawl C/Ps to apply MRAs at the end of the fishing trip for yellowfin sole, rock sole, flathead sole, "other flatfish," arrowtooth flounder, Atka mackerel, and Pacific cod in the BSAI, and for Pacific ocean perch in the AI. The Council also recommended that a new fishing trip begin any time a non-

AFA trawl C/P enters or leaves a Steller sea lion protection area closed to directed fishing for Atka mackerel or Pacific cod in the BSAI, and that the MRA accounting interval for those two species in Steller sea lion protection areas continue to apply at any time during a fishing trip.

NMFS proposes to amend MRA accounting for non-AFA trawl C/Ps to increase the interval of time MRAs would apply to the groundfish species recommended by the Council. The proposal would also amend the definition of a fishing trip and retain the current MRA accounting interval for Atka mackerel and Pacific cod in Steller sea lion protection areas, as recommended by the Council.

The purpose of this proposed action is to provide additional flexibility for the non-AFA trawl C/P sector to increase retention and decrease regulatory discards of certain groundfish species by extending the interval of time required to comply with MRAs, except inside Steller sea lion protection areas where current MRA accounting at any time during a fishing trip would continue to apply. This action is needed because of the less selective nature of the fisheries that the non-AFA trawl C/P sector participates in and its longstanding difficulties increasing its retained catch of groundfish. Other BSAI groundfish sectors can more easily catch higher proportions of a single species or are able to deliver mixed landings of groundfish to shoreside plants that are able to more efficiently utilize groundfish catch by processing a wider variety of fish products, including fish meal. This proposed action is consistent with National Standard 9 of the Magnuson-Stevens Act because it provides an opportunity for the non-AFA trawl C/Ps to minimize bycatch.

To select groundfish species that were compatible with the purpose and need for this action, the Council reviewed the historical data on catch, TACs, Acceptable Biological Catch, and other biological and population data for a number of groundfish species. Each of the species selected by the Council was intended to provide the non-AFA trawl C/P sector additional opportunities to increase groundfish retention and avoid additional incentives for targeting a species closed to directed fishing, as well as not complicate the enforcement of MRAs. Two species that Council were considered for this action but rejected because they were not consistent with the Council's intent to increase retention of groundfish were Pacific Ocean perch in the BS and Greenland turbot.

If these proposed MRA accounting revisions were to become effective in combination with the remaining MRA regulations at 50 CFR part 679, three possible MRA accounting methods, shown in the table below, could apply to selected groundfish species listed in Table 11 to 50 CFR part 679. As shown in the table below, MRA accounting for a selected species in the BSAI could (1) apply any time during a fishing trip, (2) apply at the end of a fishing trip, (3) apply at offload, or (4) not apply (no MRA calculation required). Except for species caught outside a Steller sea lion protection area (listed in footnote <sup>a</sup> to the table below), or species caught inside a Steller sea lion protection area (listed in footnote <sup>b</sup> to the table below), MRA accounting for species listed in Table 11 to CFR part 679 would not be changed by the proposed action and MRAs for these species would continue to apply to non-AFA trawl C/Ps at any time during a fishing trip. Further, the MRA percentages in Table 11 to 50 CFR part 679 would continue to be used in any calculation of MRAs and no changes to these percentages would be made under this proposed rule.

*Amendment 80 C/Ps, non-Amendment 80 C/Ps, and MRA proposed revisions.* Requirements for applying and calculating MRAs to each groundfish species, shown in the table below, would depend upon the Amendment 80 (September 14, 2007; 72 FR 52668) access privileges granted to a non-AFA trawl C/P vessel, previous MRA regulations applicable to groundfish species, groundfish species selected by the Council for this proposed action, and location of retained groundfish product in the BSAI, as specified in this proposed action. Regulations establishing the Amendment 80 program affect how MRAs would apply to BSAI groundfish species, based upon whether a vessel is included in an Amendment 80 cooperative listed at § 679.2 or in the Amendment 80 limited access fishery listed at § 679.2 (see table below). Amendment 80 allocates several Bering Sea and Aleutian Islands (BSAI) non-pollock trawl groundfish species among trawl fishery sectors. The table below also depicts how MRA accounting would vary by existing MRA regulations for pollock and many other groundfish species that would not be revised by this proposal. MRA accounting would be affected by extending the interval of time required to comply with MRAs for yellowfin sole, flathead sole, rock sole, Pacific ocean perch in the AI, Pacific cod, Atka mackerel, "other flatfish," and arrowtooth flounder (see table below).

As explained in detail below, the location of retained catch of Atka mackerel and Pacific cod would impact MRA accounting, depending upon whether these species are retained inside or outside a designated Steller sea lion protection area. For example, if a non-AFA trawl C/P, in an Amendment 80 cooperative completed

one fishing trip inside a Steller sea lion protection area and a second fishing trip outside a Steller sea lion protection area, two different MRA accounting intervals would apply to retention of Pacific cod, as long as a single haul did not occur on both sides of a Steller sea lion protection area. If Pacific cod was closed to directed fishing both inside

and outside the Steller sea lion protection area, MRAs would apply at anytime (i.e. “instantaneously”) during that fishing trip inside the Steller sea lion protection area, and MRAs would apply at the end of a fishing trip outside the Steller sea lion protection area.

**APPLICATION (OR CALCULATION) OF MRAS FOR THE NON-AFA TRAWL C/P SECTOR, BASED ON A VESSELS MEMBERSHIP IN AN AMENDMENT 80 COOPERATIVE AND RETENTION OF GROUND FISH INSIDE OR OUTSIDE A STELLER SEA LION (SSL) PROTECTION AREA**

Groundfish species listed in Table 11 to 50 CFR part 679	Vessels in an Amendment 80 cooperative, and retaining groundfish		Vessels not in an Amendment 80 cooperative, and retaining groundfish	
	outside a designated SSL protection area,	inside a designated SSL protection area,	outside a designated SSL protection area,	inside a designated SSL protection area,
yellowfin sole, flathead sole, rock sole, AI POP	do not apply		apply at the end of a fishing trip	
“other flatfish”/arrowtooth flounder	apply at the end of a fishing trip		apply at the end of a fishing trip	
Pollock	apply at offload		apply at offload	
Species listed in Table 11 to 50 CFR part 679 except as noted	apply at any time during a fishing trip except for species noted <sup>a</sup>	apply at any time during a fishing trip except for species noted <sup>b</sup>	apply at any time during a fishing trip except for species noted <sup>a</sup>	Apply at any time during a fishing trip except for species noted <sup>b</sup>
Pacific cod Atka mackerel	do not apply	apply at any time during a fishing trip	apply at the end of a fishing trip	apply at any time during a fishing trip

<sup>a</sup>Yellowfin sole, flathead sole, rock sole, pollock, “other flatfish”, arrowtooth flounder, Pacific cod, Atka mackerel and, AI POP.

<sup>b</sup>Yellowfin sole, flathead sole, rock sole, pollock, “other flatfish”, arrowtooth flounder, and AI POP.

Regulations governing the application of MRAs at § 679.20(e)(3) would be revised to add a new paragraph (e)(3)(iv) to specify that the calculation of MRAs by non-AFA trawl C/Ps for yellowfin sole, rock sole, flathead sole, Pacific ocean perch in the AI, “other flatfish,” and arrowtooth flounder, would apply at the end of a fishing trip. As shown in the table above, however, MRAs do not apply to yellowfin sole, rock sole, flathead sole and Pacific ocean perch in the AI for vessels in an Amendment 80 cooperative, because these fisheries are not closed to directed fishing for cooperative members under the Amendment 80 program. Members of an Amendment 80 cooperative are prohibited from exceeding the catch amounts assigned to the Amendment 80 cooperative at § 679.7(o)(4)(v). Therefore NMFS does not close the directed fishery for any Amendment 80 species (as defined at § 679.2) to members of an Amendment 80 cooperative except closures to directed fishing for Atka mackerel and Pacific cod inside Steller sea lion protection areas apply to members of an Amendment 80 cooperative as well as all other C/Ps.

This action would not impact MRA accounting for pollock retained in the BSAI, which would continue to be

applied at offload for vessels regardless of whether they are a member of an Amendment 80 cooperative, in the Amendment 80 limited access fishery, or are retaining groundfish inside or outside a Steller sea lion protection area (see table above). The existing regulations for applying pollock MRAs are located at § 679.20(e)(3)(iii).

*MRA accounting revisions for Pacific Cod and Atka mackerel in SSL protection areas.* A proposed paragraph (iv) would be added at § 679.20(e)(3) to specify how MRA accounting would apply to Pacific cod and Atka mackerel at the end of a fishing trip, except when inside a Steller sea lion protection area that is closed to directed fishing for these two species. In Steller sea lion protection areas closed to directed fishing, the current “instantaneous” MRA accounting interval would continue to apply at any time during a fishing trip to avoid any increase in catch of these species in the protection areas that are important to foraging Steller sea lions. Atka mackerel and Pacific cod are caught and retained or discarded by the non-AFA trawl C/P sector in these Steller sea lion protection areas. NMFS observer data show that 9 percent of the Atka mackerel caught in the Aleutian Islands

subarea (AI) by non-AFA trawl C/Ps are caught inside the Steller sea lion protection areas, and 97 percent of the Atka mackerel caught in the Bering Sea subarea (BS) by these vessels are caught inside the Steller sea lion protection areas. The Council determined that if it adopted the offload MRA accounting interval in Steller sea lion protection areas, Atka mackerel fishing effort in Steller sea lion protection areas could increase. At its August 2007 meeting, the Council affirmed that in its December 2006 recommendations, it had intended to maintain instantaneous MRA accounting for Pacific cod as well as Atka mackerel in both the BS and AI protection areas.

To further reduce topping-off, the Council also recommended that a new fishing trip begin or end any time a non-AFA trawl C/P enters or leaves a Steller sea lion protection area that is closed to directed fishing for Atka mackerel or Pacific cod. Currently a fishing trip is triggered when a vessel enters or exits an area where a different directed fishing prohibition applies, including Steller sea lion protection areas. However, when directed fishing for Pacific cod or Atka mackerel is closed both inside and outside a Steller sea lion protection area, entering or

exiting the Steller sea lion protection area does not trigger the start of a new fishing trip because the directed fishing prohibitions are the same. This allows vessels to retain Pacific cod or Atka mackerel caught inside a Steller sea lion protection area using target species (basis species) accumulated outside the Steller sea lion protection areas. Requiring that a new fishing trip start each time a vessel enters or leaves a Steller sea lion protection area, regardless of the fishery closures that exist outside the Steller sea lion protection areas, limits the potential to top-off and target Pacific cod or Atka mackerel inside the protection areas. In addition, the new fishing trip trigger would assist NMFS in monitoring the two methods of MRA accounting that would apply inside the Steller sea lion protection areas (at the end of the trip for some species and at any point in time for other species). To institute the Council recommendations, NMFS proposes to revise the definition of a fishing trip at § 679.2 to add two new events that would trigger the end of a fishing trip for non-AFA trawl C/Ps. The proposed rule would amend the definition of a fishing trip at § 679.2 to require that a new fishing trip would start or end when a non-AFA trawl C/P entered or exited a Steller sea lion protection area that was closed to directed fishing for Pacific cod or Atka mackerel at § 679.22(a)(7)(i), (a)(7)(v), (a)(7)(vi), (a)(8)(i), (a)(8)(iv), and (a)(8)(v).

MRAs would always be applied or accounted for instantaneously during a non-AFA trawl C/P fishing trip to its retention of Atka mackerel and Pacific cod at § 679.20(e)(3)(iv). This provision would apply to any portion of a haul that occurs inside the Steller sea lion protection area described at § 679.22(a)(7)(i), (a)(7)(v), (a)(7)(vi), (a)(8)(i), (a)(8)(iv), and (a)(8)(v). If any portion of a haul made by a non-AFA trawl C/P occurred inside these Steller sea lion protection areas, then all the catch from that haul would be accounted for as a fishing trip that occurred inside the Steller sea lion protection area for purposes of calculating MRAs.

The purpose of the proposed MRA accounting requirements at § 679.20(e)(3)(iv) is to provide a verifiable account of retained catch for members of the non-AFA trawl C/P sector and NMFS, consistent with the intent of Steller sea lion protection measures. These proposed requirements would provide clear instructions to operators for calculating retained catch from a tow that occurs wholly or partially in a Steller sea lion protection

area. The requirement would also assist NOAA Office for Law Enforcement and the U.S. Coast Guard in monitoring compliance of retained catch for Pacific cod and Atka mackerel. It would better ensure compliance with Steller sea lion protection measures that prohibit directed fishing for these species in Steller sea lion protection areas because MRA accounting for these species would be applied at any time during a fishing trip inside protection areas. This MRA accounting regulation would continue to provide flexibility for a vessel to haul through a Steller sea lion protection area without retrieving gear and starting a new haul.

*Revision to definition for "fishing trip".* The definition of a fishing trip in § 679.2 would also be amended to require that a new fishing trip would start for a non-AFA trawl C/P when "any( fish or fish products are offloaded or transferred. This requirement would modify the current requirement that a fishing trip is triggered by the offload or transfer of (all( fish or fish product from the vessel, and would prevent partial offloads by non-AFA trawl C/P for purposes of calculating MRA amounts. Because MRA accounting for non-AFA trawl C/Ps would occur at the end of a fishing trip, partial offloads of groundfish that do not trigger a new fishing trip could reduce the effectiveness of MRA accounting for this sector. For example, if the offload consisted predominantly of groundfish that were closed to directed fishing, without offload of sufficient basis species to comply with the MRA, a vessel could then return to the fishing grounds numerous times and avoid matching the designated amount of basis and incidental amounts defined by an MRA. That vessel could continue this practice to avoid complying with an MRA and would not be in violation of MRA regulations.

*Compliance with proposed MRA revisions.* Compliance with MRA accounting at the end of a fishing trip would be monitored with the same reporting forms that are used for monitoring current MRA regulations. The trawl C/P Daily Cumulative Production Logbook and processed product onboard a vessel could be audited by enforcement officers during a vessel boarding. The uncertainty associated with unscheduled boardings and audits of retained catch would facilitate C/P compliance with MRA restrictions under the proposed rule. NOAA Office of Law Enforcement also would be able to review logbook and production reports submitted by the vessel operator to track and identify

intentional or unintentional MRA violations.

*Conservation issues associated with proposed MRA revisions.* Relaxed MRA accounting should not lead to an increase in catch for most groundfish species in the BSAI. The draft Environmental Assessment supporting this action concluded that these MRA proposals would not increase the risk of exceeding a TAC, cause conservation concerns, interfere with associated management objectives, or be unenforceable.

*Other Proposed Regulatory Amendments.* At § 679.20(e)(3)(iii), the citation defining which vessels qualify as non-AFA trawl C/Ps, would be revised. When the AFA was authorized by the Secretary of Commerce in FMP Amendments 61/61/13/8 (67 FR 79692, December 30, 2002), most AFA qualified trawl C/Ps were listed at § 679.4(l)(2)(i). For purposes of this action, non-AFA trawl C/Ps would be those trawl C/P vessels that are not listed at § 679.4(l)(2)(i). The proposed rule clarifies this definition of non-AFA trawl C/Ps in both § 679.2 and § 679.20(e)(3)(iii).

At § 679.20(d)(l)(iii)(B), the list of exceptions to the requirement to calculate MRAs at any time during a fishing trip, is expanded to include the proposed requirements at § 679.20(e)(3).

The definition of a "fishing trip" would be reorganized at § 679.2(l)(i) to clarify when a catcher/processor vessel or mothership is engaged in a fishing trip. At § 679.2(l)(i)(B) the sentence identifying that offload and transfer of fish product is one trigger for a fishing trip is also reorganized. These are both technical changes that reorganize the presentation of the correct fishing trip triggers but do not make substantive changes in these requirements.

#### Classification

Pursuant to section 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the NMFS Regional Administrator has determined that this proposed rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

An initial regulatory flexibility analysis (IRFA) was prepared, as 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, the reasons why it is being

considered, and a statement of the objectives of and the legal basis for this action are contained at the beginning of this section in the preamble and in the SUMMARY section of the preamble. A summary of the analysis follows. A copy of this analysis is available from NMFS (see ADDRESSES).

The directly regulated entities are the commercial fishing entities that operate non-AFA trawl C/P vessels in the BSAI groundfish fisheries. Under a conservative application of the Small Business Administration criterion and the best available data, the total number of small entities directly regulated by the proposed action is estimated as three out of a total of 22 vessels participating in 2006.

Impacts to small entities, while uncertain, are anticipated to be beneficial. This proposed rule is likely to reduce the burden of existing MRA accounting restrictions on the non-AFA trawl C/P sector by increasing the amount of time that these operations have to comply with MRAs for a selected group of species.

Each of the action alternatives would provide additional opportunity for non-AFA trawl C/P vessels to increase retention of selected groundfish species. Alternative 1 (no action), would continue to apply the current instantaneous MRA accounting regulations. These regulations require that for all groundfish other than pollock, an MRA may not be exceeded at any point during a fishing trip. The existing accounting and enforcement of MRAs may result in some small and large entity non-AFA trawl C/Ps selectively discarding incidentally caught species so as to not exceed the instantaneously enforced MRA. In some years, this constraint could result in additional discards of groundfish that would otherwise be retained.

The Council also considered Alternatives 2 and 3 for relaxing MRA accounting and several species options to include within these alternatives. Alternative 2 would change the time interval for accounting for selected species that may be retained in the BSAI, including Steller sea lion protection areas, to the end of a fishing trip. This alternative is intended to increase the time allowed for an entity to meet required retention percentages published in regulation, but lacks the instantaneously applied MRA accounting requirements, additional trip triggers, and C/P reporting requirements anytime a non-AFA trawl C/P enters or leaves a Steller sea lion protection area, included in Alternative 4.

Under Alternative 3, MRA accounting would be extended beyond a weekly

reporting period to the time of offload which may increase the amount of species harvested when that species is closed to directed fishing. More frequently, larger vessels in the non-AFA trawl C/P sector offload every 6 to 7 days, while smaller vessels may offload every 7 to 10 days. Absent any other trip ending events, a trip could increase to as many as 10 days. The IRFA discusses a significant monitoring and enforcement issue with Alternative 3. Compliance monitoring of offload-based accounting would depend upon inspection of holds and product by NOAA Office of Law Enforcement primarily at the point of offload. The longer interval of time to comply with an MRA under in this alternative could provide a vessel operator with some incentive to inaccurately report weekly production, if that person believed that no enforcement officer would be present at the point of landing.

Alternative 4 is the preferred alternative selected by the Council. This alternative would allow non-AFA trawl C/Ps to apply MRAs at the end of a fishing trip for 8 species of groundfish to provide greater flexibility for operators to retain groundfish species in the BSAI without creating some of the enforcement and management concerns associated with Alternatives 2 and 3.

Small entities may have greater flexibility to improve the value of a fishing trip under Alternative 2 or 3 compared with the preferred alternative; however the EA for this action identified a concern for Steller sea lions under these two alternatives. It is possible that localized depletion of Atka mackerel and Pacific cod in Steller sea lion protected areas could occur under Alternatives 2 and 3 if vessels in the non-AFA trawl C/P sector were to increase catch of these two groundfish species during a fishing trip. This could lead to further consultation under the Endangered Species Act for Steller sea lions. The preferred alternative, in contrast, retains the status quo MRA accounting in Steller sea lion protection areas for Atka mackerel and Pacific cod. NMFS cannot determine the impacts on distribution of catch or impacts on communities of any of the alternatives because these regulatory alternatives are not anticipated to significantly change the total amount of groundfish processed or delivered to communities compared with existing management measures implemented for BSAI groundfish fisheries. Changes in economic activity within a given community could result from slightly larger, or a different, distribution of offloaded products, but the magnitude

of the change between any of the alternatives is expected to be small.

The operator of a non-AFA trawl catcher/processor would be required at § 679.5 to start a new C/P trawl gear daily cumulative production logbook page (logsheet) at the beginning of each fishing trip. This information would be required to properly aggregate production by fishing trip and to assist both the vessel operator and authorized officers to monitor compliance of MRAs.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA), which has been approved by OMB under Control Number 0648-0213. Public reporting burden for the catcher/processor trawl gear daily fishing cumulative logbook is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or fax to 202-395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall 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.

Dated: February 9, 2009.

**Samuel D. Rauch III**

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

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

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

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

**Authority:** 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, 3631 *et seq.*; and Pub. L. 108(199, 118 Stat. 110.

2. In § 679.2, under the definition of "Fishing trip", revise paragraphs (1)(i) introductory text, (1)(i)(B), (1)(i)(E), and (1)(ii) and add paragraph (1)(iii) to read as follows:

§ 679.2 Definitions.

\* \* \* \* \*

*Fishing trip* means:

(1) \* \* \*

(i) *For all catcher/processor vessels or motherships.* Except as provided in paragraph (1)(ii) of this definition, an operator of a catcher/processor or mothership is engaged in a fishing trip from the time the harvesting, receiving, or processing of groundfish is begun or resumed in an area until any of the following events occur:

\* \* \* \* \*

(B) All fish or fish product are offloaded or transferred from that vessel;

\* \* \* \* \*

(E) The end of a weekly reporting period.

(ii) *For non-AFA trawl catcher/processors.* For those catcher/processors using trawl gear and not listed at § 679.4(l)(2)(i), a new fishing trip begins from the time the harvesting, receiving, or processing of groundfish is begun in an area until any of the following events occur:

(A) Any of the events listed in paragraphs (1)(i)(A) through (E) of this definition;

(B) The vessel enters or leaves a Steller sea lion protection area described at § 679.22(a)(7)(i), (a)(7)(v), (a)(7)(vi), (a)(8)(i), (a)(8)(iv), and (a)(8)(v); or

(C) Any fish or fish product are offloaded or transferred from that vessel.

(iii) *Catcher vessels.* A catcher vessel is engaged in a fishing trip from the time the harvesting of groundfish is begun until the offload or transfer of all fish or fish product from that vessel.

\* \* \* \* \*

3. In § 679.5, paragraph (c)(4)(iv)(B)(3) is added to read as follows:

(e) \* \* \*

(3) \* \* \*

§ 679.5 Recordkeeping and reporting (R&R).

\* \* \* \* \*

(c) \* \* \*

(4) \* \* \*

(iv) \* \* \*

(B) \* \* \*

(3) *For non-AFA trawl catcher/processors.* The operator of a catcher/processor using trawl gear and not listed at § 679.4(l)(2)(i) must start a separate logsheet page at the beginning of a new fishing trip as defined at § 679.2. If a logsheet page represents the start of a new fishing trip, write "Start of a new fishing trip" in the Comments section of the logsheet page.

\* \* \* \* \*

4. In § 679.20, revise paragraph (d)(1)(iii)(B), (e)(3)(ii), the first sentence of paragraph (e)(3)(iii) and add paragraph (e)(3)(iv) to read as follows:

§ 679.20 General limitations.

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(iii) \* \* \*

(B) *Retention of incidental species.* Except as described in paragraphs (e)(3)(iii) and (iv) of this section, 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.

\* \* \* \* \*

(ii) Except as provided in paragraphs (e)(3)(iii) and (iv) of this section, for catcher/processors fishing in an area closed to directed fishing for a species or a species group, the maximum retainable amount applies at any time during a fishing trip.

(iii) For all vessels not listed in § 679.4(l)(2)(i), the maximum retainable amount for pollock harvested in the BSAI applies at the end of each offload and is based on the basis species harvested since the previous offload. \*

(iv) For catcher/processors using trawl gear and not listed in § 679.4(l)(2)(i), the maximum retainable amounts for yellowfin sole, flathead sole, other flatfish, rock sole, arrowtooth flounder, Atka mackerel, and Pacific cod in the BSAI, and Pacific ocean perch in the AI apply at the end of a fishing trip, except the MRA for Pacific cod and Atka mackerel apply at any point in time during a fishing trip inside the Steller sea lion protection areas described at § 679.22(a)(7)(i), (a)(7)(v), (a)(7)(vi), (a)(8)(i), (a)(8)(iv), and (a)(8)(v). In addition, if any portion of a trawl haul is from inside these Steller sea lion protection areas, then all of the catch from that haul must be attributed to the fishing trip that occurred inside the Steller sea lion protection area for purposes of calculating maximum retainable amounts.

\* \* \* \* \*

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