

Atlantic EEZ. Implementation of any program that limits participation or effort in the penaeid shrimp fishery would require preparation of a FMP amendment followed by Secretary of Commerce (Secretarial) review, approval, and implementation. Secretarial review involves publication of a notice of availability of the FMP amendment and publication of proposed and final rules, with pertinent public comment periods.

Establishment of a control date does not commit the Council or NMFS to any particular management regime or criteria for entry into this fishery. Fishermen are not guaranteed future participation in the fishery regardless of their entry date or intensity of participation in the fishery before or after the control date under consideration. The Council may choose to use a different control date or a management regime that does not make use of such a date or to give variably weighted consideration to fishermen active in the fishery before and after the control date. Other qualifying criteria, such as documentation of landings and sales, may be applied for entry. The Council may also choose to take no further action to control entry or access to the fishery, in which case the control date may be rescinded.

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

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: February 27, 2004.

**William T. Hogarth,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 040223064-4064-01; I.D. 020404F]

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

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

**ACTION:** Proposed 2004 harvest specifications for skates and associated

management measures; request for comments.

**SUMMARY:** NMFS proposes 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. 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:** Comments must be received by March 19, 2004.

**ADDRESSES:** Comments must be sent to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Durall, or delivered to room 401 of the Federal Building, 709 West 9<sup>th</sup> Street, Juneau, AK. Comments also may be sent via facsimile (fax) to 907-586-7557 or by e-mail. The mailbox address for providing e-mail comments is [2004-Skates-TAC@noaa.gov](mailto:2004-Skates-TAC@noaa.gov). Include in the subject line of the e-mail comment the following document identifier: 2004 Skates TAC Specifications.

Copies of the final 2003 Stock Assessment and Fishery Evaluation (SAFE) report, dated November 2003, are available from the North Pacific Fishery Management Council, 605 West 4<sup>th</sup> Avenue, Suite 306, Anchorage, AK 99510 or from its homepage at <http://www.fakr.noaa.gov/npfmc>. Copies of the Environmental Assessment/Initial Regulatory Flexibility Analysis (EA/IRFA) prepared for this action are available from NMFS (see **ADDRESSES**) and comments must be received by March 19, 2004.

**FOR FURTHER INFORMATION CONTACT:** Tom Pearson, Sustainable Fisheries Division, Alaska Region, 907-481-1780 or e-mail at [tom.pearson@noaa.gov](mailto:tom.pearson@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

NMFS manages the groundfish fisheries in the exclusive economic zone off Alaska under the Fishery Management Plan for Groundfish of the GOA (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 Amendment 63 for Secretarial approval. Amendment 63 would move skates from the "other species" list to the "target species" list in the FMP. By listing skates as a target species, a directed fishery for skates in the GOA may 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. On December 2, 2003, NMFS published a Notice of Availability on Amendment 63, inviting public comments through February 2, 2004 (68 FR 67390). The Secretary of Commerce approved Amendment 63 on February 27, 2004.

The FMP and 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) (§ 679.20(a)(1)(ii)). Regulations at § 679.20(c)(1) further require NMFS to publish annually, and solicit public comment on the proposed annual TACs. The proposed specifications set forth in Table 1 satisfies these requirements. For 2004, the sum of the proposed TAC amounts for skates is 6,993 mt. Pending Secretarial approval of Amendment 63 to the GOA FMP, NMFS will publish, under § 679.20(c)(3), the final skate specifications for 2004 after considering public comments received within the comment period (see **DATES**).

#### Proposed Acceptable Biological Catch (ABC) and TAC Specifications

The proposed 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 initially compiled by the Council's GOA Plan Team and is presented in the final 2003 Stock Assessment and Fishery Evaluation (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 *Bathyraja*), and ABCs for Big and Longnose skates (*Raja binoculata* and *Raja rhina*) 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 both 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.—PROPOSED 2004 ABCS, TACS, AND OFL FOR SKATES IN THE WESTERN (W), CENTRAL (C), EASTERN (E), AND GULFWIDE (GW) REGULATORY AREAS OF THE GULF OF ALASKA. (VALUES ARE IN METRIC TONS)

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

<sup>1</sup> Big skate means *Raja binoculata* and Longnose skate means *Raja rhina*.

<sup>2</sup> "Other" skates means *Bathyraja* spp.

With respect to the Council's recommendations for final 2004 harvest specifications for groundfish this proposed 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 American Fisheries Act (AFA) catcher vessel "other species" sideboard limitation gulfwide total by 3 mt, from 113 mt to 116 mt.

#### Additional Management Measures

With respect to other management measures for groundfish in the GOA, NMFS proposes to adopt identical management measures for skates that currently apply to "other species." NMFS proposes that the maximum retainable amount of incidental catch for "other species" listed in Table 10 to 50 CFR part 679 would apply to skates as well. NMFS will consider comments on the maximum retainable amount of incidental catch for "other species" received within the comment period (see **DATES**). NMFS proposes that for halibut prohibited species management, bycatch mortality in the directed trawl fishery targeting skates would accrue to prohibited species catch (PSC) limits

established for the shallow-water complex and bycatch mortality in the directed hook-and-line fishery targeting skates would accrue to the PSC limits established for hook-and-line gear other than demersal shelf rockfish. NMFS proposes that the halibut discard mortality rates would be based on those for "other species": 13 percent for hook-and-line gear, 61 percent for trawl gear, and 17 percent for pot gear. NMFS proposes to base sideboard limitations for non-exempt AFA catcher vessels for skates on a gulfwide basis on the ratio of 1995 to 1997 non-exempt AFA catcher vessel catch of "other species" to 1995 to 1997 "other species" TAC which is 0.9 percent. These amounts are 33 mt (3,709 mt x 0.009) for all skates gulfwide except Big and Longnose skates in the Central Regulatory Area and 30 mt (3,284 mt x 0.009) for Big and Longnose skates in the Central Regulatory Area. Based on these sideboard limitations, NMFS further proposes to close directed fishing for all skates gulfwide for the duration of the 2004 fishing year by non-exempt AFA catcher vessels.

#### Classification

The Administrator, Alaska Region, NMFS (Regional Administrator), has determined that this proposed specification is necessary for the conservation and management of the groundfish fisheries of the Bering Sea and Aleutian Islands and GOA. The Regional Administrator also has determined that this proposed

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.

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

NMFS prepared an IRFA for this action in accordance with the provisions of the Regulatory Flexibility Act (RFA) of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. Section 603(b)). A copy of this analysis is available from the Council (see **ADDRESSES**). This IRFA evaluates the effects of the proposed action on regulated small entities. The reasons for the action, a statement of the objectives of the action, and the legal basis for the proposed rule, are discussed earlier in the preamble.

The small entities that may be directly regulated by this action are those that harvest or may harvest skates in the Central Regulatory Area, either in a targeted skate fishery, or incidentally, while harvesting other species. Vessels fishing with hook-and-line or trawl gear in the GOA may fall into these categories. Pot gear is not 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 directly regulated small entities included 665 hook-and-line vessels and 124 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. These numbers remain accurate for 2004. These counts are believed to overestimate the numbers of small entities affected since they only take account of operation revenues from groundfish fishing in Alaska, and they do not take account of affiliations between fishing operations and associated processors, or other associated fishing operations. 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 this fishery, producing an estimated ex-vessel gross revenue of about \$1.7 million. This suggests average revenues for these vessels were about \$11,000.

The Council's proposed specifications could adversely affect small entities harvesting skates in the fishery that has begun to target Big and Longnose skates in the Central Regulatory Area, and could adversely affect small entities in the fisheries harvesting skates incidentally in the Central Regulatory Area. Also, the measures might adversely affect small entities in fisheries harvesting skates incidentally outside of the Central Regulatory Area.

This preferred option would not necessarily eliminate the directed skate fishery in the Central Regulatory Area. A directed fishery could occur if estimated incidental catch needs were sufficiently smaller than the TAC. The Skates SAFE document estimates suggest that this would be the case. The Big/Longnose TAC would be 3,284 mt and estimated bycatch needs are 2,214 mt. This leaves a residual of 1,070 mt for a directed fishery. This, however, is significantly below the 1,700 mt estimated to have been caught in the directed fishery in 2003. Thus, the Council's preferred option is likely to adversely affect the small entities that began to target skates in 2003.

Skates are also taken incidentally in fisheries for other species. Incidental

skate catches appear to be relatively important (over 300 mt in total during 1997–2002) in the trawl fisheries for arrowtooth flounder, flathead sole, Pacific cod, rex sole, rockfish and shallow water flats, and in the hook-and-line fisheries for rockfish, sablefish, Pacific cod, and halibut. If estimated targeted and incidental catches of skates reached TAC levels, skates would become a prohibited species and retention of incidental skate catches would be prohibited. If estimated catches approach OFL levels, fisheries taking skates incidentally may be closed, or restricted in regions with high incidental skate catches, in order to protect the skate stocks.

Although fishing in fisheries targeting other species, but harvesting skates incidentally, could be stopped if estimated skate catches approach the OFL level, this is an unlikely outcome. Fishery managers manage stocks to stay within TACs, and rarely approach OFLs. In addition to actually closing a fishery, managers may also have the option of restricting its operations in regions where incidental skate catches are relatively high. Moreover, the high level of species aggregation in this option reduces the likelihood of this. Although this outcome appears unlikely, it remains a concern.

The preferred alternative was compared to the five other options. Option 1 would have created a single GOA-wide OFL, ABC, and TAC for all skate species. This would have had the smallest impact on small entities. However it did not provide protection for individual skate species and it did not provide protection against localized depletion of skate stocks. Option 2 would have created separate GOA-wide OFLs, ABCs, and TACs for Big skates, Longnose skates, and for "other skates." By increasing the number of separate OFLs, this may have increased the potential for closure of fisheries taking skates incidentally. This option would not have provided protection against localized depletion of skates. Option 3 would have created a separate OFL, ABC and TAC for each of the three

species or species groups just described, in each of the three main management areas of the GOA. This option would have created the greatest potential (of the options examined) for a closure of a fishery taking skates incidentally to harvests of another species. This option would have provided the greatest protection to skates. Option 4 kept the management area OFLs, ABCs and TACs for Big skates and Longnose skates, but created a single GOA-wide OFL, ABC and TAC for "other skates". This reduced the potential for closures compared to Option 3, but increased them relative to Options 1 and 2. Option 5 created 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 Regulatory Area a TAC would be established for the combined Big/Longnose grouping. This TAC would be set conservatively. This reduced the potential for closures compared to Option 3 and 4. The preferred option, Option 6, used the Central Regulatory Area protections for Big/Longnose skates in Option 5 in order to protect the species and area that were the focus of the directed fishery, and combined them with the provisions in Option 1 that minimized other burdens on small entities.

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.

**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: February 27, 2004.

**Rebecca Lent,**

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