

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: September 30, 2010.

Carrie Selberg,

Acting Director,

Office of Sustainable Fisheries, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0912231441-0465-03]

RIN 0648-AY48

Fisheries of the Exclusive Economic Zone Off Alaska; Skate Management in the Groundfish Fisheries of the Bering Sea and Aleutian Islands; Groundfish Annual Catch Limits for the Bering Sea and Aleutian Islands Management Area and Gulf of Alaska

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to implement Amendments 95 and 96 to the Fishery Management Plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI) and Amendment 87 to the FMP for Groundfish of the Gulf of Alaska (GOA), (collectively referred to as “the FMPs”). Amendment 95 moves skates from the “other species” category to the “target species” category in the FMP. Amendments 96 and 87 revise the FMPs to meet the National Standard 1 guidelines for annual catch limits and accountability measures. These amendments move all remaining species groups from the “other species” category to the “target species” category, remove the “other species” and “non-specified species” categories from the FMPs, establish an “ecosystem component” category, and describe the current practices for groundfish fisheries management in the FMPs, as required by the guidelines. The final rule removes references to the “other species” category for purposes of the harvest specifications and adds skate species to the reporting codes for the BSAI groundfish fisheries. This action is intended to promote the goals and objectives of the Magnuson-Stevens

Fishery Conservation and Management Act, the FMPs, and other applicable laws.

DATES: Effective November 5, 2010.

ADDRESSES: Electronic copies of Amendments 95 and 96 to the FMP for Groundfish of the BSAI, Amendment 87 to the FMP for Groundfish of the GOA, the Environmental Assessments (EAs), and the Regulatory Impact Review (RIR) prepared for this action are available from NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802 or from the Alaska Region NMFS Web site at <http://www.alaskafisheries.noaa.gov/regs/summary.htm>.

FOR FURTHER INFORMATION CONTACT:

Melanie Brown, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fisheries in the exclusive economic zone of the BSAI and GOA are managed under the FMPs. The North Pacific Fishery Management Council (Council) prepared the FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations implementing the FMPs appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

Background

Amendment 95 was unanimously adopted by the Council in October 2009. This amendment moves skates from the “other species” category to the “target species” list in the BSAI FMP, allowing the management of skates as a target species complex or as individual skate species. NMFS trawl survey and catch information shows that 15 skate species occur in the BSAI. In the Bering Sea subarea, the most abundant species is the Alaska skate, while the most abundant species in the Aleutian Islands subarea is the whiteblotched skate. Individual species of skate could be listed under the skate complex in the “target species” list during the harvest specifications process to allow NMFS to separately manage harvest of these individual species.

The Council unanimously adopted Amendments 96 and 87 in April 2010. These amendments revise the FMPs to meet the Magnuson-Stevens Act requirements to establish annual catch limits (ACLs) and accountability measures (AMs), and conform to the National Standard 1 (NS1) guidelines (74 FR 3178, January 16, 2009). The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA), which was signed into law on January 12, 2007, included new requirements regarding ACLs and AMs, which

reinforce existing requirements to prevent overfishing and rebuild fisheries. The proposed rule for this action presents background on the NS1, MSRA requirements for ACLs and AMs, and harvest management of groundfish species (75 FR 41424, July 16, 2010).

The Council submitted Amendments 87, 95, and 96 for review by the Secretary of Commerce, and a notice of availability of the amendments was published in the **Federal Register** on July 2, 2010 (75 FR 38454), with comments on the amendments invited through August 31, 2010. The comments on the proposed rule were invited through August 30, 2010. The Secretary of Commerce approved the amendments to the FMPs on September 22, 2010.

Regulatory Amendments

This final rule revises definitions for “groundfish,” “license limitation groundfish,” and “target species,” in § 679.2, to remove reference to the “other species” category. Removing the term “other species category” from these definitions reduces confusion related to target species and the harvest specifications, as Amendments 96 and 87 remove the “other species” category from the FMPs for purposes of the harvest specifications, and leave only “target species” as a category for which NMFS must establish harvest specifications. This final rule revises the definition for “other species” to allow the continued management of BSAI and GOA sharks, sculpins, and octopuses, and GOA squids as a group for purposes of prohibited species catch under § 679.21 and maximum retainable amounts specified in Tables 10 and 11 to part 679.

This final rule revises § 679.20 by removing the term “other species category” in paragraphs related to harvest limits, reserves, harvest specifications, and fishery closures. This revision ensures the regulations for harvest specifications and “target species” management are consistent with Amendments 96 and 87, which remove “other species” from the FMP for purposes of harvest specifications and inseason management.

This final rule revises § 679.25 to remove the “other species” category from the paragraph related to reopening an area to achieve total allowable catch (TAC) for a target species. This revision ensures the regulations are consistent with removing “other species” from the FMP for purposes of target species management.

This final rule revises Table 2a to part 679 by adding whiteblotched, Alaska, and Aleutian skates, as well as the scientific names for individual skate

species. Adding these individual skate species and the scientific names facilitates the reporting of individual skate species taken during groundfish harvest and provides more detailed information regarding skate harvests for stock assessments and fisheries management. This revision ensures the regulations are consistent with Amendment 95, providing the species-specific information to support managing skates as a target species group or as individual target species.

Comments and Responses

NMFS received two letters of comment, which included four distinct comments, in response to proposed Amendment 87 to the GOA FMP and Amendments 95 and 96 to the BSAI FMP (75 FR 41424, July 16, 2010). These letters were from organizations representing trawl catcher/processors targeting groundfish in the BSAI and GOA. NMFS made no changes to the final rule from the proposed rule. The comments are summarized and responded to below.

Comment 1: The dissolution of the "other species" category into its major taxonomic complexes and management of those species complexes under Tier 6 would result in the overfishing limits (OFLs) and acceptable biological catch limits (ABCs) being frequently reached and cause the closure of other directed fisheries. These closures would provide no additional benefit to these species complexes.

Response: The OFLs and ABCs are established annually by harvest specifications (75 FR 11778 and 75 FR 11749, March 12, 2010). Under this final action, the OFLs and TACs for the complexes currently managed under the "other species" category could be set at a level that may be reached during the fishing year. As described in Section 1.5.2.1 in the EA for Amendments 96 and 87, NMFS will take initial inseason management measures necessary to prevent exceeding the TACs of these complexes, such as closing the complex to directed fishing. NMFS may implement large scale fisheries closures to prevent the OFL from being exceeded if other actions would not adequately limit fishing mortality. A Tier 6 OFL is based on the average historical catch over a period of years and is used for stocks that do not have enough biomass information to be managed at Tier 5 or higher. In the absence of enough information to manage stocks at Tier 5 or higher information level, a Tier 6 OFL represents a reasonable means of preventing overfishing. Section 1.5.2.1 of the EA for Amendments 96 and 87

describe the tier system for setting ABCs and OFLs (*see ADDRESSES*).

NMFS and the Council recognize the concern that setting OFLs based on historical catch may result in fisheries restrictions that otherwise would not be used if the OFL could be set based on the stock's biomass. Even though it is not based on stock abundance, a Tier 6 OFL is intended to meet NMFS's legal obligation to prevent overfishing. It is necessary to break out the complexes from the "other species" category to ensure that the TACs and ACLs for these complexes can prevent overfishing. The Council sponsored a workshop on July 8, 2010, to address the issues associated with, and alternatives to, Tier 6 management. The Tier 6 workshop report was discussed at the September 2010 Groundfish Plan Team meeting and is scheduled for discussion by the Council's Scientific and Statistical Committee (SSC) in October 2010. The Tier 6 workshop report, Plan Team, and SSC minutes are available from the Council at <http://alaskafisheries.noaa.gov/npsmc/default.htm>. One alternative previously adopted for a Tier 6 stock (squid and octopus in the GOA) was to set the OFL at the maximum catch of the stock over a set period of years. The Council has expressed an interest in developing FMP amendments to address these concerns. NMFS will determine the appropriate management measures to take to prevent reaching the OFL, including the consideration of closing other directed fisheries, if necessary. The types of management options that NMFS may use inseason to prevent overfishing are described in Section 1.5.2.1 of the EA for Amendments 96 and 87 (*see ADDRESSES*). The type of action to prevent overfishing may depend on the species, fisheries, and locations.

Comment 2: NMFS inseason managers have the flexibility to gather fleet catch information in real time, and identify discrete areas of high incidental catch. This could result in fine scale closures for individual sectors, and avoid the unneeded potentially catastrophic economical effects associated with large area, fleet-wide closures. The Bering Sea fleet is rationalized and is managed under a cooperative system capable of assisting NMFS in fleet communication, data distribution, and implementing voluntary management measures to avoid large scale fleet or area closures. NMFS is encouraged to use its management flexibility to avoid large fleet shutdowns.

Response: As described in the EA for this action, NMFS does intend to use small scale area and gear closures, as well as other inseason management

measures short of large scale closures, to avoid OFL and ABC overages when possible. NMFS intends to work with the industry to achieve these goals and notes that cooperatives engaged in voluntary actions can be of great assistance.

Comment 3: It is unclear what action NMFS can or will take when the harvest of one of the other species groups (sharks, skates, sculpins, octopus, or squid) approaches overfishing.

Response: See the response to Comment 2. NMFS has the ability to implement inseason localized area and gear closures to prevent the ABCs from being reached, and the industry has demonstrated the ability to voluntarily avoid fishing in areas of high incidental catch (e.g., avoiding squid in the 2006 BSAI pollock fishery). The EA prepared for this action discusses in detail possible actions NMFS could undertake to avoid overfishing of these stocks. The EA/RIR for this action is available from NMFS (*See ADDRESSES*).

Comment 4: This action has been rushed with no time to request additional information such as fisheries impacts and did not attempt to quantify the potential cost to commercial fisheries. This information is necessary to make a considered decision. The action should be disapproved in favor of the status quo.

Response: This action must be implemented in 2011 to comply with the provisions mandated by the Magnuson-Stevens Act. The EA/RIR prepared for this action considers the impacts on fisheries and potential costs to the industry, using the best information available on the economic impacts of this action. This analysis was available to the public during the public comment period and Secretarial review of the proposed amendments. The EA/RIR for this action is available from NMFS (*See ADDRESSES*). As noted in the response to Comment 1, the Council has expressed an interest in considering FMP amendments (e.g., moving squid from target species to the ecosystem component species) to address some of the issues raised in the consideration of this action.

Classification

The Administrator, Alaska Region, NMFS, determined that the FMP Amendments 87, 95, and 96 are necessary for the conservation and management of the groundfish fisheries and that they are consistent with the Magnuson-Stevens Act and other applicable laws.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: October 1, 2010.

Samuel D. Rauch III,

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

■ For reasons set out in the preamble, 50 CFR part 679 is 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.*; 3631 *et seq.*; Pub. L. 108–447.

■ 2. In § 679.2, revise paragraph (2) of the definition for “Groundfish”, and the definitions of “License limitation groundfish”, “Other species”, and “Target species” to read as follows:

§ 679.2 Definitions.

* * * * *
Groundfish * * *
 * * * * *

(2) Target species specified annually pursuant to § 679.20(a)(2) (See also the definitions for: *License limitation groundfish*; *CDQ species*; and *IR/IU species* of this section).

* * * * *

License limitation groundfish means target species specified annually pursuant to § 679.20(a)(2), except that demersal shelf rockfish east of 140° W. longitude, sablefish managed under the IFQ program, and pollock allocated to the Aleutian Islands directed pollock fishery and harvested by vessels 60 feet (18.3 m) LOA or less, are not considered license limitation groundfish.

* * * * *

Other species is a category of target species for the purpose of MRA and PSC management that consists of groundfish species in each management area. These target species are managed as an other species group and identified in Tables

10 and 11 to this part pursuant to § 679.20(e).

* * * * *

Target species are those species or species groups for which a TAC is specified pursuant to § 679.20(a)(2).

* * * * *

■ 3. In § 679.20, revise paragraphs (a)(1)(i) introductory text, (a)(2), (a)(3) introductory text, (a)(3)(i), (b)(1)(i), (b)(2) introductory text, (c)(1)(iii), (c)(1)(iv), (c)(3)(ii), (c)(3)(iii), (d)(1)(i), (d)(1)(iii)(B), and (d)(2) to read as follows:

§ 679.20 General limitations.

(a) * * *

(1) * * *

(i) *BSAI and GOA*. The OY for BSAI and GOA target species is a range or specific amount that can be harvested consistently with this part, plus the amounts of “nonspecified species” taken incidentally to the harvest of target species. The species categories are defined in Table 1 of the specifications as provided in paragraph (c) of this section.

* * * * *

(2) *TAC*. NMFS, after consultation with the Council, will specify and apportion the annual TAC and reserves for each calendar year among the GOA and BSAI target species. TACs in the target species category may be split or combined for purposes of establishing new TACs with apportionments thereof under paragraph (c) of this section. The sum of the TACs so specified must be within the OY range specified in paragraph (a)(1) of this section.

(3) *Annual TAC determination*. The annual determinations of TAC for each target species and the reapportionment of reserves may be adjusted, based upon a review of the following:

(i) *Biological condition of groundfish stocks*. Resource assessment documents prepared annually for the Council that provide information on historical catch trend; updated estimates of the MSY of the groundfish complex and its component species groups; assessments of the stock condition of each target species; assessments of the multispecies and ecosystem impacts of harvesting the groundfish complex at current levels, given the assessed condition of stocks, including consideration of rebuilding depressed stocks; and alternative harvesting strategies and related effects on the component species group.

* * * * *

(b) * * *

(1) * * *

(i) *Nonspecified reserve*. Fifteen percent of the BSAI TAC for each target species, except pollock, the hook-and-line and pot gear allocation for

sablefish, and the Amendment 80 species, which includes Pacific cod, is automatically placed in the nonspecified reserve before allocation to any sector. The remaining 85 percent of each TAC is apportioned to the initial TAC for each target species that contributed to the nonspecified reserve. The nonspecified reserve is not designated by species or species group. Any amount of the nonspecified reserve may be apportioned to target species that contributed to the nonspecified reserve, provided that such apportionments are consistent with paragraph (a)(3) of this section and do not result in overfishing of a target species.

* * * * *

(2) *GOA*. Initial reserves are established for pollock, Pacific cod, flatfish, squids, octopuses, sharks, and sculpins, which are equal to 20 percent of the TACs for these species or species groups.

* * * * *

(c) * * *

(1) * * *

(iii) *GOA*. The proposed specifications will specify for up to two fishing years the annual TAC for each target species and apportionments thereof, halibut prohibited species catch amounts, and seasonal allowances of pollock and Pacific cod.

(iv) *BSAI*. The proposed specifications will specify for up to two fishing years the annual TAC for each target species and apportionments thereof, PSQ reserves and prohibited species catch allowances, seasonal allowances of pollock, Pacific cod, and Atka mackerel TAC (including pollock, Pacific cod, and Atka mackerel CDQ), and CDQ reserve amounts.

* * * * *

(3) * * *

(i) *GOA*. The final specifications will specify for up to two fishing years the annual TAC for each target species and apportionments thereof, halibut prohibited species catch amounts, and seasonal allowances of pollock and Pacific cod.

(iii) *BSAI*. The final specifications will specify for up to two fishing years the annual TAC for each target species and apportionments thereof, PSQ reserves and prohibited species catch allowances, seasonal allowances of pollock (including pollock, Pacific cod, and Atka mackerel CDQ), and CDQ reserve amounts.

* * * * *

(d) * * *

(1) * * *

(i) *General*. If the Regional Administrator determines that any

allocation or apportionment of a target species specified under paragraph (c) of this section has been or will be reached, the Regional Administrator may establish a directed fishing allowance for that species or species group.

* * * * *

(iii) * * *

(B) Retention of incidental species.

Except as described in § 679.20(e)(3)(iii), if directed fishing for a target species or species group 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.

* * * * *

(2) Groundfish as prohibited species closure. When the Regional Administrator determines that the TAC of any target species specified under paragraph (c) of this section, or the share of any TAC assigned to any type of gear, has been or will be achieved prior to the end of a year, NMFS will publish notification in the **Federal Register** requiring that target species be treated in the same manner as a prohibited species, as described under § 679.21(b), for the remainder of the year.

* * * * *

■ 4. In § 679.25, revise paragraph (a)(2)(iii)(D) to read as follows:

§ 679.25 Inseason adjustments.

- (a) * * *
- (2) * * *
- (iii) * * *

(D) Reopening of a management area or season to achieve the TAC or gear share of a TAC for any of the target species.

* * * * *

■ 5. Revise Table 2a to part 679 to read as follows:

TABLE 2A TO PART 679—SPECIES CODES: FMP GROUND FISH

Species description	Code
Atka mackerel (<i>greenling</i>)	193
Flatfish, miscellaneous (flatfish species without separate codes)	120
Flounder:	
Alaska plaice	133
Arrowtooth and/or Kamchatka	121
Starry	129
Octopus, North Pacific	870
Pacific cod	110
Pollock	270
Rockfish:	
Aurora (<i>Sebastes aurora</i>)	185
Black (BSAI) (<i>S. melanops</i>)	142
Blackgill (<i>S. melanostomus</i>)	177
Blue (BSAI) (<i>S. mystinus</i>)	167
Bocaccio (<i>S. paucispinis</i>)	137

TABLE 2A TO PART 679—SPECIES CODES: FMP GROUND FISH—Continued

Species description	Code
Canary (<i>S. pinniger</i>)	146
Chilipepper (<i>S. goodei</i>)	178
China (<i>S. nebulosus</i>)	149
Copper (<i>S. caurinus</i>)	138
Darkblotched (<i>S. crameri</i>)	159
Dusky (<i>S. variabilis</i>)	172
Greenstriped (<i>S. elongatus</i>)	135
Harlequin (<i>S. variegatus</i>)	176
Northern (<i>S. polyspinis</i>)	136
Pacific Ocean Perch (<i>S. alutus</i>)	141
Pygmy (<i>S. wilsoni</i>)	179
Quillback (<i>S. maliger</i>)	147
Redbanded (<i>S. babcocki</i>)	153
Redstripe (<i>S. proriger</i>)	158
Rosethorn (<i>S. helvomaaculatus</i>)	150
Rougheye (<i>S. aleutianus</i>)	151
Sharpchin (<i>S. zacentrus</i>)	166
Shortbelly (<i>S. jordani</i>)	181
Shortraker (<i>S. borealis</i>)	152
Silvergray (<i>S. brevispinis</i>)	157
Splitnose (<i>S. diploproa</i>)	182
Stripetail (<i>S. saxicola</i>)	183
Thornyhead (all <i>Sebastolobus</i> species)	143
Tiger (<i>S. nigrocinctus</i>)	148
Vermilion (<i>S. miniatus</i>)	184
Widow (<i>S. entomelas</i>)	156
Yelloweye (<i>S. ruberrimus</i>)	145
Yellowmouth (<i>S. reedi</i>)	175
Yellowtail (<i>S. flavidus</i>)	155
Sablefish (<i>blackcod</i>)	710
Sculpins	160
Sharks:	
Other (if salmon, spiny dogfish or Pacific sleeper shark—use specific species code)	689
Pacific sleeper	692
Salmon	690
Spiny dogfish	691
Skates:	
Whiteblotched (<i>Bathyraja maculata</i>)	705
Aleutian (<i>B. aleutica</i>)	704
Alaska (<i>B. parmifera</i>)	703
Big (<i>Raja binoculata</i>)	702
Longnose (<i>R. rhina</i>)	701
Other (if Whiteblotched, Aleutian, Alaska, Big, or Longnose—use specific species code listed above)	700
Sole:	
Butter	126
Dover	124
English	128
Flathead	122
Petrale	131
Rex	125
Rock	123
Sand	132
Yellowfin	127
Squid, majestic	875
Turbot, Greenland	134

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0911031392-0457-02]

RIN 0648-AY34

Fisheries of the Exclusive Economic Zone Off Alaska; Modified Nonpelagic Trawl Gear and Habitat Conservation in the Bering Sea Subarea

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

ACTION: Final rule.

SUMMARY: NMFS hereby issues a final rule that implements Amendment 94 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). Amendment 94 requires participants using nonpelagic trawl gear in the directed fishery for flatfish in the Bering Sea subarea to modify the trawl gear to raise portions of the gear off the ocean bottom. Amendment 94 also changes the boundaries of the Northern Bering Sea Research Area to establish the Modified Gear Trawl Zone (MGTZ) and to expand the Saint Matthew Island Habitat Conservation Area. Nonpelagic trawl gear also is required to be modified to raise portions of the gear off the ocean bottom if used in any directed fishery for groundfish in the MGTZ.

This action is necessary to reduce potential adverse effects of nonpelagic trawl gear on bottom habitat, to protect additional blue king crab habitat near St. Matthew Island, and to allow for efficient flatfish harvest as the distribution of flatfish in the Bering Sea changes. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable laws.

DATES: Effective January 20, 2011.

ADDRESSES: Electronic copies of Amendment 94, maps of the action area, the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA), and Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this action may be obtained from NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802, or from the Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, 907-586-7228.