

(4) Communications for RACES training drills and tests necessary to ensure the establishment and maintenance of orderly and efficient operation of the RACES as ordered by the responsible civil defense organization served. Such drills and tests may not exceed a total time of 1 hour per week. With the approval of the chief officer for emergency planning in the applicable State, Commonwealth, District or territory, however, such tests and drills may be conducted for a period not to exceed 72 hours no more than twice in any calendar year.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101203602-0602-1]

RIN 0648-BA29

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish Retention Standard; Emergency Rule

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

ACTION: Emergency rule; request for comments.

SUMMARY: NMFS is exempting, through this emergency rule, trawl catcher/processor vessels (C/Ps) that are not specified in regulation as American Fisheries Act (AFA) vessels, referred to throughout this rule as non-AFA trawl C/Ps, and Amendment 80 cooperatives from the groundfish retention standard (GRS) in the Bering Sea and Aleutian Islands management area. The GRS was implemented to increase the retention and utilization of groundfish caught by the non-AFA trawl C/Ps and to respond to bycatch reduction goals described in National Standard 9. NMFS recently discovered that the regulatory methodology used to calculate compliance with and to enforce the GRS percentages established for 2010 and 2011 effectively require the sector to meet GRS well above that considered by the North Pacific Fishery Management Council or that implemented by NMFS. As a result, the retention requirements are expected to impose significantly higher costs due to the increased level of retention and to generate an unanticipated level of noncompliance in the Amendment 80 fleet. Further,

monitoring and enforcement of the GRS has proven far more complex, challenging, and potentially costly than anticipated by NMFS. This emergency rule is necessary to exempt non-AFA trawl C/Ps and Amendment 80 cooperatives from the regulatory provisions of the GRS program before the end of the 2010 fishing season and prior to the start of the 2011 fishing season. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area, and other applicable law.

DATES: Effective December 15, 2010 through June 13, 2011. Comments must be received by January 14, 2011.

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-BA29, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal at <http://www.regulations.gov>.
- *Fax:* (907) 586-7557, Attn: Ellen Sebastian.
- *Mail:* P.O. Box 21668, Juneau, AK 99802.
- *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 be posted to <http://www.regulations.gov>, generally without change. No comments will be posted for public viewing until after the comment period has closed. All Personal Identifying Information (for example, 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). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Electronic copies of the Regulatory Impact Review (RIR), and the Categorical Exclusion prepared for this action may be obtained from <http://www.regulations.gov> or from the Alaska Region Web site at <http://alaskafisheries.noaa.gov>. The Environmental Assessment, RIR, and

Final Regulatory Flexibility Analysis for Amendment 79 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) and the Environmental Assessment, RIR, and Final Regulatory Flexibility Analysis for Amendment 80 to the FMP are available from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Seanbob Kelly, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the U.S. groundfish fisheries of the Bering Sea and Aleutian Islands management area (BSAI) in the Exclusive Economic Zone under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). The North Pacific Fishery Management Council (Council) prepared the FMP pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). 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.

Groundfish Retention Standard

The Groundfish Retention Standard (GRS) originally was adopted by the Council as Amendment 79 to the FMP in June 2003. The GRS was intended to increase retention of groundfish by non-American Fisheries Act (AFA) trawl catcher processors (C/Ps) that were equal to or greater than 125 ft (38.1 m) length overall (LOA). In adopting that action, the Council focused on non-AFA trawl C/Ps because, as a group, they had the lowest retained catch rates of any C/P sector operating in the BSAI groundfish fishery. The Council's stated policy objective for developing the GRS was based on the Council's commitment to "reducing bycatch, minimizing waste, and improving utilization of fish resources to the extent practicable * * * [and acknowledged] the fact that any solution to the problem of reducing discards must take into account the ability of NOAA Fisheries to monitor discards and adequately enforce any regulations that are promulgated."

The final rule implementing the GRS was effective January 20, 2008 (71 FR 17362, April 6, 2006), and required non-AFA trawl C/Ps 125 ft (38.1 m) LOA or greater to retain and utilize an increased percentage of groundfish caught during fishing operations; these percentages are referred to as groundfish retention standards. Non-AFA trawl C/Ps less than 125 ft (38.1 m) LOA initially were excluded from the GRS because GRS

compliance costs associated with observers and scale monitoring requirements were found to be higher for these vessels, and their contribution to the overall bycatch and discard of groundfish were minimal compared to vessels equal to or greater than 125 ft (38.1 m) LOA.

Regulations at 50 CFR sections 679.27(j)(1) through (4) implement the GRS by prohibiting the owner or operator of a non-AFA trawl C/P equal to or greater than 125 ft (38.1 m) LOA from retaining an amount of groundfish during a fishing year that is less than the groundfish retention standard as determined by the equation used for determining GRS compliance at § 679.27(j)(2). Although compliance with the GRS percentages is calculated on an annual basis, the variables used to calculate annual retention are obtained from data collected throughout the year and from each haul by a vessel. NMFS implemented a different methodology for monitoring and enforcing annual retention standards in regulations implementing the GRS than that used in the Amendment 79 analysis in order to ensure that calculations were verifiable and enforceable on an individual vessel basis. The GRS was phased in to allow the affected vessels time to adjust to the retention requirements. The GRS schedule can be found at § 679.27(j)(4) and is listed below in Table 1.

TABLE 1—ANNUAL GROUND FISH RETENTION STANDARD

GRS Schedule	Annual GRS (percent)
2008	65
2009	75
2010	80
2011 and each year after	85

In June 2006, the Council adopted Amendment 80 to the FMP, which was implemented with a final rule published in 2007 and was fully effective starting with the 2008 fishing year (72 FR 52668, September 14, 2007). Among other measures, Amendment 80 authorized the allocation of specified groundfish species to harvesting cooperatives and established a catch share program for the non-AFA trawl C/Ps, also referred to as the Amendment 80 sector. Amendment 80 was intended to meet a number of policy objectives that included improving retention and utilization of fishery resources by the Amendment 80 sector, reducing potential bycatch reduction costs, encouraging fishing practices with lower discard rates, and improving

increasing the opportunity for increasing the value of harvested species. To meet these goals, Amendment 80 extended the GRS to non-AFA trawl C/Ps of all sizes by including C/P vessels less than 125 ft (38.1 m) LOA, and also extended the GRS to Amendment 80 harvesting cooperatives, rather than the individual vessels in the cooperative, to encourage fishing practices with lower discard rates.

The Council included all Amendment 80 sector vessels because some vessels, particularly the non-AFA trawl C/Ps less than 125 ft (38.1 m) LOA, could reduce the compliance costs associated with the GRS program if those vessels formed harvesting cooperatives under the Amendment 80 catch share program. Amendment 80 authorized a cooperative to meet the GRS by aggregating the retention rate of all vessels assigned to the cooperative. Owners of non-AFA C/Ps with relatively low retention rates could choose to join a cooperative, assign their harvest privilege to the cooperative, and allow vessels with higher retention rates to harvest the cooperative's exclusive allocation of fish. Additionally, for non-AFA trawl C/Ps that fish under a cooperative's exclusive harvest privilege, the costs associated with retaining less valuable fish under the GRS may be offset by increased profitability because they are no longer operating in a race for fish.

Recent and Unforeseen Issues With the GRS

In its March 2010 report to the Council, the Best Use Cooperative, a cooperative established under the cooperative formation provisions of Amendment 80, noted several issues that could pose potential compliance problems with the current GRS regulations. Specifically, the report stated that as retention requirements are increased through 2011, current GRS percentages may become economically impractical and unattainable.

In response to these concerns, the Council asked NMFS to assess the GRS and the issues raised by the Best Use Cooperative. In June 2010, NMFS reported to the Council the agency's opinion that unintended implementation, compliance, and enforcement issues are apparent with the GRS program. These issues center around (1) the regulatory methodology used to calculate annual GRS percentages for vessels and (2) the high enforcement and prosecution costs associated with the GRS.

NMFS has recently discovered that the regulatory methodology for

calculating vessel specific GRS percentages results in lower estimates of groundfish retention percentages than the analytical methodology used by the Council when it adopted the GRS (see Table 2 of this preamble). Using information from NMFS' catch accounting database and the methodology used in the Amendment 79 analysis to calculate retention, the retention of groundfish by vessels in the Amendment 80 sector increased from 71 percent in 2003, when the Council adopted the GRS, to 90 percent in 2009 (see Table 2 of this preamble). The 90 percent retention rate in 2009 surpassed the Council policy objective of an 85 percent groundfish retention rate by 2011. However, the regulatory methodology set forth at § 679.27(j)(2) and (3) and used by NMFS to determine GRS compliance, differs from the analytical methodology that the Council used to calculate the GRS percentages. The methodology at § 679.27(j)(2) and (3) indicates that the retention of groundfish by vessels in the sector had only increased from 65% in 2003 to 83% in 2009. NMFS had purposefully implemented the different methodology at § 679.27(j)(2) and (3) than that used in the Amendment 79 analysis in order to ensure that calculations were verifiable and enforceable on an individual vessel basis.

To calculate the percent of retained catch, both the analytical and regulatory methodologies divide the retained catch (numerator) by total catch (denominator). The total catch (denominator), in both methodologies is a vessel's groundfish catch, as weighted on a certified flow scale, by haul. However, the retained catch (numerator) in each methodology is estimated by different methods. In the regulatory methodology, the retained catch (numerator) is a vessel's total round weight equivalent of retained catch based on primary groundfish production and NMFS product recovery rates. In the analytical method (See Column B, Table 2 of this preamble), the calculation relied on estimates of retained catch (numerator) based on several observer calculations and estimations. This resulted in estimates of retained catch that are unlike those used in the regulatory approach (See Column C, Table 2 of this preamble) to determine retained catch compliance with the GRS. Section 1.2.6 of the RIR for this action provides a detailed explanation of the analytical and regulatory methodologies (see ADDRESSES).

TABLE 2—COMPARISON OF GROUND FISH RETENTION PERCENTAGES DERIVED UNDER THE APPROACH USED BY THE ANALYSIS SUPPORTING AMENDMENT 79 AND THE REGULATORY APPROACH FOR GRS COMPLIANCE

Year	Regulatory GRS (percent)	Total Catch	Retained catch	Round Weight Equivalent Reported Production	Analytical Approach for Selecting GRS (percent)	Regulatory Approach for Determining Compliance with GRS (percent)
		(A)	(B)	(C)	(B)/(A)	(C)/(A)
2003		281,083	200,631	183,260	71	65
2004		313,942	214,904	200,338	68	64
2005		300,814	235,627	216,210	78	72
2006		295,028	232,973	214,637	79	73
2007		317,540	246,199	223,560	78	70
2008	65	352,698	315,453	264,245	89	75
2009	75	325,252	292,416	268,632	90	83

Note: All weights are in metric tons.

As demonstrated in Table 2, the regulatory methodology results in retention rates that are consistently lower than those considered, and recommended, by the Council for Amendment 79 and approved by the Secretary. In 2008, this difference was 15 percentage points, while the difference in 2009 was 7 percentage points. Using the regulatory methodology to determine individual vessels' specific annual retention, in 2009 three vessels had a retention rate less than 76 percent, seven vessels had a retention rate between 76 percent and 80 percent, and the remaining 10 vessels had a retention rate greater than 80 percent. Of the three vessels with retention rates below 76 percent, one vessel appears to be under the GRS and an enforcement action is pending against this vessel. The other two vessels are not subject to an enforcement action because the vessels were members of an Amendment 80 cooperative in 2009 and the cooperative as a whole exceeded the GRS.

As the GRS increases to 80 percent in 2010 and 85 percent in 2011, a large number of vessels that met or exceeded the GRS regulatory requirement in 2009, will not likely meet the standard in 2010 and 2011. Since the regulatory calculation of GRS can vary by as much as 15 percentage points from the Amendment 79 methodology, it is mathematically possible that a vessel could retain 100 percent of its catch and still fall at or below the regulatory GRS compliance rate, thereby triggering a larger number of enforcement actions than anticipated under Amendment 79 or Amendment 80. The high probability that vessels will be unable to meet the GRS in 2010 and each following year represents an unnecessary burden to the Amendment 80 sector, considering that under the analytical methodology for

calculating compliance with the GRS, the Council's objectives for the GRS appear to be met and/or exceeded two years earlier than required.

Many participants in this sector have expressed strong concern about the feasibility of achieving the 2010 and 2011 GRS percentages under existing regulatory provisions. The Council recognized that the cooperative provisions, which were intended to increase retention rates by encouraging underperforming members of the Amendment 80 sector to assign their harvest privilege to a cooperative, may not be effective if a large portion of the fleet is unable to comply with the GRS. A cooperative may not be able to absorb the additional catch shares from underperforming vessels due to the limited fishing seasons and recent reductions in fleet capacity, including vessels exiting the fishery and one vessel lost at sea. Furthermore, NMFS has determined that the provisions of Amendment 80, which promote cooperative formation, will be undermined as more vessels are unable to meet the GRS. There is little incentive for an Amendment 80 cooperative to include underperforming vessels due to the potential for reduced retention rates at the cooperative level.

When the GRS program was approved by NMFS, NMFS anticipated difficulties in prosecuting vessel-specific violations of the GRS. These concerns primarily focused on the GRS's reliance on an annual groundfish retention percentage based in part on data collected by numerous observers deployed on a vessel over the course of a year, and the fact that observers may not be available (in future years) to support the prosecution process. These concerns persisted under Amendment 80 because the number of observers necessary to support an enforcement case and

associated prosecution would increase substantially in enforcement actions including multiple vessels.

In early 2010, the NOAA Office of Law Enforcement (OLE) began to investigate an alleged violation of the GRS for the 2009 fishing year. This alleged violation involves a vessel, not part of an Amendment 80 cooperative, that fished for a portion of the fishing year. This case, which appeared to be a relatively simple GRS case, created an opportunity to evaluate the evidence collection processes necessary for prosecution of a GRS violation. This evaluation showed that the sufficiency of data sets for prosecution purposes must be examined for each vessel and that the evidence collection process may result in an unanticipated increase in enforcement costs. Prior to considering an alleged GRS violation for prosecution, OLE investigators must perform a detailed analysis and verification of the sampling procedures and protocols employed by embarked observers, and must find that the observed data have a high degree of reliability. This task is both time and labor intensive.

Recent experience shows that the estimated cost to NOAA OLE for an investigation of a simple case is \$50,000 or more per vessel. Enforcement costs are likely to increase significantly depending on vessel size, number and availability of observers, and the portion of the season actively fished by the vessel. If the number of vessels investigated for GRS noncompliance increase, the cost of investigating a suspected violation of the GRS is also expected to rise to levels significantly higher than anticipated under Amendment 79 or Amendment 80.

A recent Office of the Inspector General investigation of OLE recommended greater emphasis on

prioritizing enforcement work at the regional and national levels, <http://www.oig.doc.gov/oig/reports/2010/OIG-19887.pdf>. Given the limited resources available to OLE, NMFS must balance the priority of particular regulatory schemes with overall enforcement time and personnel demands. Furthermore, the report recommended targeting regional enforcement operations on actions that warrant focused enforcement. Knowledge gained through the current one-vessel GRS case indicates future investigations will be much more labor and time intensive than expected. This level of investment does not appear to coincide with regional priorities, or NMFS's national enforcement objectives, considering the current high level of groundfish retention in the sector.

At this time, NMFS is unable to predict the magnitude of the level of noncompliance that will result under the regulatory methodology for calculating compliance with the 2010 and 2011 GRS. However, the disparity between the analytical methodology for establishing the GRS and the regulatory methodology for calculating compliance with the GRS poses serious concern. Therefore, NMFS has encouraged the Council to consider the implications of continuing to dedicate agency resources to the GRS. NMFS and representatives for the Amendment 80 sector recommended that the Council consider a more flexible, non-regulatory approach for assessing whether or not the Amendment 80 sector is maintaining recent improvements to retention rates. This suggested non-regulatory approach would include withdrawing the specific regulatory provisions for the GRS and instead relying on cooperative formation and annual reports to the Council on cooperative activity relative to catch and discard percentages to ensure that recent improvements in discard rates are maintained.

In response to this input, the Council initiated an analysis of alternatives to address the compliance and enforcement issues identified with the GRS and will consider an analysis supporting an FMP amendment to remove the GRS at its December 2010 meeting. While the FMP amendment and associated regulations are being developed, the Council requested that NMFS implement an emergency rule to exempt non-AFA trawl C/Ps from the GRS for the 2010 and 2011 fishing years.

Emergency Action

This emergency rule exempts non-AFA trawl C/Ps and Amendment 80 cooperatives from the GRS regulations at § 679.27(j)(1) through (4), including

the minimum GRS percentages established for 2010 and 2011. This action would be implemented for 180 days, and would span two groundfish fishing years. An exemption from a portion of a fishing year precludes the calculation of annual compliance with the GRS; therefore, the practical effect of this emergency rule is that the non-AFA trawl C/Ps will be exempt from both the 2010 and 2011 GRS requirements. This emergency rule does not exempt non-AFA trawl C/Ps from the recordkeeping, permitting, or monitoring regulations at § 679.93; those requirements must remain effective to ensure proper catch accounting under the Amendment 80 quota-based catch share program.

Section 305(c) of the Magnuson-Stevens Act provides authority for rulemaking to address an emergency. Under that section, a Council may recommend emergency rulemaking, if it finds an emergency exists.

At its June 2010 meeting, the Council voted 10 to 1 to request that NMFS promulgate an emergency rule to relieve the GRS requirement for the non-AFA trawl C/Ps. The Council determined that an emergency exists because the regulations established to calculate compliance with annual GRS rates require a level of retention much higher than that intended by the Council. This discrepancy has only recently been identified and is aggravated by the scheduled increase in required retention rates in 2010 and 2011. In addition, the regulatory methodology requires a level of minimum retention higher than that contemplated when NMFS approved Amendment 79. The regulatory GRS rates cannot be sustained by many non-AFA trawl C/Ps; they create compliance costs above those anticipated when the GRS was approved, and they cannot be effectively enforced. Additional and potentially significant compliance costs associated with the 2010 and 2011 GRS percentages are not warranted because the improvements in retention rates by the non-AFA trawl C/Ps through 2009 have met Council objectives.

Enforcement of the GRS has proven far more complex, challenging, and potentially more costly than anticipated. Given the estimated increase in groundfish retention since 2003, it appears that the Council's policy objectives to decrease bycatch and waste in the non-AFA trawl C/P sector have been largely successful. The Amendment 80 sector has operated under a cooperative system for nearly 3 years in a manner that seems to facilitate compliance with the GRS to date (See Table 2 of this preamble). In addition, NMFS now has experience indicating that the costs to NOAA of developing a GRS compliance case are

high and will increase if GRS noncompliance increases in 2010 and 2011. Given that NMFS's management objectives for the GRS seem to be met generally, other enforcement and prosecution priorities should take precedence over allocating additional resources to the enforcement of the GRS.

Exempting non-AFA trawl C/Ps and Amendment 80 cooperatives from the minimum GRS requirements at § 679.27(j)(1) through (4) before the end of the 2010 fishing year and prior to the start of the 2011 fishing year will enable the Amendment 80 sector to engage in ongoing civil contract agreements addressing groundfish discard rates and associated reports to the Council on its progress toward minimizing discard while the Council develops an FMP amendment to permanently address this situation. Without this exemption, regulatory compliance with the GRS may not be possible for the Amendment 80 fleet and may result in noncompliance rates that were unanticipated with this program.

In making this recommendation, the Council considered the NMFS policy guidelines for the development and approval of regulations to address emergencies. Emergency rulemaking is intended for circumstances that are extremely urgent, where substantial harm to or disruption of the fishery would be caused in the time it would take to follow standard rulemaking procedures (62 FR 44421, August 21, 1997). An emergency is a situation that results from recent, unforeseen events or recently discovered circumstances; presents serious conservation or management problems in the fishery; and can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process.

NMFS finds that an emergency exists because:

- Recent and unforeseen discrepancies between the analytical methodology used to establish the GRS percentages and the regulatory methodology used to monitor and enforce these percentages impose higher retention standards than those adopted by the Council or approved by the Secretary.
- Recent and unanticipated consequences of regulations implementing the GRS at § 679.27(j)(1) through (4) have been determined to unduly constrain the non-AFA trawl C/Ps in 2010 and 2011 potentially leading to widespread noncompliance with the GRS.

- Enforcing the GRS in 2010 and 2011 as currently written is likely to result in an unanticipated and significant increase in enforcement costs. The strong likelihood that a large portion of vessels will be unable to comply with the 2010 and 2011 GRS percentages presents a serious management and enforcement problem.

- Recent recognition that the 2010 and 2011 GRS percentages could disrupt or impede participation of some vessels in Amendment 80 cooperatives erodes overall policy and management objectives for the Amendment 80 catch share program.

- Exempting participants from the GRS before the end of 2010 and prior to the 2011 fishing year provides immediate benefits from the costs identified above that outweigh the value of the deliberative notice-and-comment rulemaking process. In addition, notice-and-comment rulemaking would not relieve restrictions with sufficient time to offset the potential costs of compliance in 2010. The agency has determined that the GRS regulations are currently unacceptable, and non-AFA trawl C/Ps and Amendment 80 cooperatives must be exempted as soon as possible.

Although this emergency rule exempts non-AFA trawl C/Ps from the 2010 and 2011 GRS standards, non-AFA trawl C/Ps will continue to participate in Amendment 80 cooperatives and associated civil contract agreements to maintain discard rates that are consistent with Council intent and the Magnuson-Stevens Act requirement that each fishery management plan and the implementing regulations be consistent with the national standards for fishery conservation and management, including National Standard 9 which requires regulations to minimize bycatch to the extent practicable. The circumstances that justified the increasing constraint on fishing operations to increase groundfish retention have changed, and the regulatory constraint and associated GRS standards established for the 2010 and 2011 fishing years no longer achieve the goals that led to their establishment under Amendments 79 and 80. Therefore, exempting the Amendment 80 sector from the current constraints should relieve an unnecessary and unanticipated burden, eliminate unanticipated and significant

compliance costs and enforcement costs, and enhance resource management and conservation through ongoing commitments by the Amendment 80 sector to continue to pursue cooperative agreements and civil contracts to maintain recent improvements in groundfish retention rates.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this emergency rule is consistent with the national standards and other provisions of the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws. The rule may be extended for a period of not more than 186 days as described under section 305(c)(3)(B) of the Magnuson-Stevens Fishery Conservation Management Act.

The Assistant Administrator for Fisheries, NOAA, finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be impracticable and contrary to the public interest. This action would allow the GRS restriction to be relieved before the end of 2010, and prior to the 2011 fishing year, to address unforeseen and unnecessary compliance costs to the non-AFA trawl C/Ps, address enforcement and prosecution concerns associated with unattainable GRS standards as calculated under existing regulations, and provide for enhanced flexibility of the Amendment 80 sector to engage in an ongoing and more flexible approach for meeting Council objectives to minimize bycatch in this fleet. After NMFS discovered the unforeseen compliance and enforcement costs and the enforcement and prosecution concerns, it determined that maintaining the existing GRS percentages for 2010 and 2011 is neither warranted nor achievable. This action would address these issues by exempting non-AFA trawl C/Ps and Amendment 80 cooperatives from the minimum GRS requirements at § 679.27(j)(1) through (4) before the end of the 2010 fishing year and prior to the start of the 2011 fishing year, and will enable the Amendment 80 sector to engage in ongoing civil contract agreements addressing groundfish discard rates and associated reports to the Council on its progress toward minimizing discard.

Without the exemption implemented by this rule, regulatory compliance with the GRS may not be possible for the Amendment 80 fleet and may result in noncompliance rates that were unanticipated with this program. Maintaining the regulations as currently written for non-AFA trawl C/Ps for 2010 and into 2011 would result in unavoidable noncompliance with the GRS regulations by some fishery participants, increased compliance costs by industry participants, and unwarranted enforcement and prosecution costs to NMFS.

NMFS was not able to implement this action earlier as NMFS was not fully aware of the enforcement and prosecution concerns and additional compliance and enforcement costs with the GRS until shortly before the June 2010 Council meeting. After the Council recommended this emergency rule, NMFS and OLE required additional time to assess and substantiate the problems identified by the Council and the Amendment 80 sector representatives. NMFS has completed this process and is now implementing the exemption through this final rule to meet the objectives of this action. This emergency rule has broad support from the Council and the affected industry.

For the reasons above, the Assistant Administrator for Fisheries finds good cause under 5 U.S.C. 553(d)(1) to waive the 30-day delay in effectiveness provision of the Administrative Procedure Act.

This emergency rule has been determined to be not significant for purposes of Executive Order 12866. The RIR prepared for this action is available from NMFS (*see ADDRESSES*).

This emergency rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is not subject to the requirement to provide prior notice and opportunity for public comment pursuant to 5 U.S.C. 553 or any other law.

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108–447.

Dated: December 9, 2010.

Samuel D. Rauch III,

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

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