

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

[Docket No. 970806191-7279-02; I.D. 072297A]

RIN 0648-AJ71

**Fisheries of the Exclusive Economic Zone Off Alaska; Improved Retention/Improved Utilization**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule to implement Amendment 49 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). This final rule requires all vessels fishing for groundfish in the Gulf of Alaska (GOA) to retain all pollock and Pacific cod beginning January 1, 1998, and all shallow water flatfish beginning January 1, 2003. This final rule also establishes a 15-percent minimum utilization standard for all at-sea processors beginning January 1, 1998, for pollock and Pacific cod and, beginning January 1, 2003, for shallow-water flatfish. This action is necessary to respond to socioeconomic needs of the fishing industry that have been identified by the North Pacific Fishery Management Council (Council) and is intended to further the goals and objectives of the FMP.

**DATES:** Effective January 12, 1998.

**ADDRESSES:** Copies of Amendment 49 and the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this action may be obtained from NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori J. Gravel. Send comments regarding burden estimates or any other aspect of the data requirements, including suggestions for reducing the burdens, to NMFS and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503, Attn: NOAA Desk Officer.

**FOR FURTHER INFORMATION CONTACT:** Kent Lind, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The domestic groundfish fisheries in the exclusive economic zone of the GOA are managed by NMFS under the FMP. The FMP was prepared by the Council under the Magnuson-Stevens Fishery Conservation and Management Act

(Magnuson-Stevens Act). Regulations governing the groundfish fisheries of the GOA appear at 50 CFR parts 600 and 679.

At its June 1997 meeting, the Council adopted Amendment 49 to the FMP and recommended that NMFS initiate a rulemaking to implement the amendment. A notice of availability of Amendment 49 was published in the **Federal Register** on July 29, 1997 (62 FR 40497), and invited comment on the amendment through September 29, 1997. No comments were received by the end of the comment period on Amendment 49. A proposed rule to implement Amendment 49 was published in the **Federal Register** on August 18, 1997 (62 FR 43977). Comments on the proposed rule were invited through October 2, 1997. No comments were received by the end of the comment period on the proposed rule.

In September 1996, the Council adopted an Improved Retention/Improved Utilization (IR/IU) program for the Bering Sea and Aleutian Islands Management Area (BSAI) as Amendment 49 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. A final rule to implement Amendment 49 in the BSAI was published on December 3, 1997 (62 FR 63880). During development of the IR/IU program for the BSAI, the Council began to consider a parallel IR/IU program for the GOA, also designated as Amendment 49. Amendments 49 and 49 are the result of over 3 years of analysis and debate by the Council of alternative solutions to the problem of discards occurring in the groundfish fisheries off Alaska. The management background and need for the IR/IU program in the GOA are described in the proposed rule for the IR/IU program in the GOA (62 FR 43977).

**Elements of the Final Rule**

This final rule to implement Amendment 49 in the GOA expands the geographical scope of the final rule published to implement Amendment 49 in the BSAI (62 FR 63880, December 3, 1997). Two changes are made to the IR/IU program set out at § 679.27 to extend the program to the GOA. First, paragraph (a) *Applicability*, is amended to extend the IR/IU program to the GOA, and second, paragraph (b) *IR/IU species*, which lists species covered by the program, is revised to add the shallow-water flatfish species complex for the GOA.

To assist the vessel owners and operators in compliance with IR/IU requirements in the GOA, key elements

of the IR/IU program are summarized below.

**Affected Vessels and Processors**

The IR/IU program applies to all vessels fishing for groundfish in the GOA and all at-sea processors processing groundfish harvested in the GOA, regardless of vessel size, gear type, or target fishery. Because the Magnuson-Stevens Act does not authorize NMFS to regulate on-shore processing of fish, the requirements of this final rule do not extend to shore-based processors.

The State of Alaska (State) is developing a parallel IR/IU program for shore-based processors. The State anticipates that parallel IR/IU regulations requiring retention and utilization of pollock by shoreside processors will be in place by January 1, 1998, while parallel regulations requiring retention and utilization of Pacific cod by shoreside processors will be in place by mid-1998.

**IR/IU Species**

The IR/IU program for the GOA defines pollock, Pacific cod, and the shallow-water flatfish species group as IR/IU species. In the FMP and in the annual harvest specifications, the shallow-water flatfish species group is defined as all flatfish species, other than deep-water flatfish (Dover sole and Greenland turbot), flathead sole, rex sole, and arrowtooth flounder. Retention and utilization requirements apply to pollock and Pacific cod beginning January 1, 1998, and to shallow-water flatfish beginning January 1, 2003. The purpose of the 5-year delay for shallow-water flatfish is to provide industry with sufficient time to develop more selective fishing techniques and/or markets for these fish.

**Minimum Retention Requirements**

The IR/IU program establishes minimum retention requirements by vessel type (catcher vessel, catcher/processor, and mothership) and by the directed fishing status of the IR/IU species (open to directed fishing, closed to directed fishing, and retention prohibited). In general, vessel operators are required to retain 100 percent of their catch of an IR/IU species unless a closure to directed fishing limits retention of that species. When a closure to directed fishing limits retention of an IR/IU species, the vessel operator is required to retain all catch of that species up to the maximum retainable bycatch (MRB) amount in effect for that species, and to discard catch in excess of the MRB amount. The specific retention requirements by vessel type

and directed fishing status are set out at § 679.27(c) and are repeated below:

If you own or operate a * * *	and * * *	you must retain on board until lawful transfer * * *
(i) catcher vessel	(A) directed fishing for an IR/IU species is open .....	all fish of that species brought on board the vessel.
	(B) directed fishing for an IR/IU species is prohibited .....	all fish of that species brought on board the vessel up to the MRB amount for that species.
(ii) catcher/processor.	(C) retention of an IR/IU species is prohibited .....	no fish of that species.
	(A) directed fishing for an IR/IU species is open .....	a primary product from all fish of that species brought on board the vessel.
	(B) directed fishing for an IR/IU species is prohibited .....	a primary product from all fish of that species brought on board the vessel up to the point that the round-weight equivalent of primary products on board equals the MRB amount for that species.
(iii) mothership ...	(C) retention of an IR/IU species is prohibited .....	no fish or product of that species.
	(A) directed fishing for an IR/IU species is open .....	a primary product from all fish of that species brought on board the vessel.
	(B) directed fishing for an IR/IU species is prohibited .....	a primary product from all fish of that species brought on board the vessel up to the point that the round-weight equivalent of primary products on board equals the MRB amount for that species.
	(C) retention of an IR/IU species is prohibited .....	no fish or product of that species.

### Additional Retention Requirements

#### *Bleeding Codends and Shaking Longline Gear*

The minimum retention requirements set out at § 679.27(c) apply to all fish of each IR/IU species that are brought on board a vessel. Any activity intended to cause the discarding of IR/IU species prior to their being brought on board a vessel, such as bleeding codends or shaking fish off longlines, is prohibited. NMFS recognizes that some escapement of fish from fishing gear does occur in the course of fishing operations. Therefore, incidental escapement of IR/IU species, such as fish squeezing through mesh or dropping off longlines,

will not be considered a violation unless the escapement is intentionally caused by action of the vessel operator or crew.

#### *At-Sea Discard of Products*

Any product from an IR/IU species may not be discarded at sea, unless such discarding is necessary to meet other requirements of 50 CFR part 679.

#### *Discard of Fish or Product Transferred From Other Vessels*

The retention requirements of this final rule apply to all IR/IU species brought on board a vessel, whether caught by that vessel or transferred from another vessel. Discard of IR/IU species or products that were transferred from another vessel is prohibited.

### *IR/IU Species Used as Bait*

IR/IU species may be used as bait provided the bait is physically attached to authorized fishing gear when deployed. Dumping IR/IU species as loose bait (i.e., chumming) is prohibited.

### Minimum Utilization Requirements

Beginning January 1, 1998, all catcher/processors and motherships are required to maintain a 15-percent utilization rate for each IR/IU species. Calculation of a vessel's utilization rate depends on the directed fishing status of the IR/IU species in question. The minimum utilization requirements are set out at § 679.27(i) and in the following table:

If * * *	your total weight of retained or lawfully transferred products produced from your catch or receipt of that IR/IU species during a fishing trip must * * *
(1) directed fishing for an IR/IU species is open.	equal or exceed 15 percent of the round-weight catch or round-weight delivery of that species during the fishing trip.
(2) directed fishing for an IR/IU species is prohibited.	equal or exceed 15 percent of the round-weight catch or round-weight delivery of that species during the fishing trip or 15 percent of the MRB amount for that species, whichever is lower.
(3) retention of an IR/IU species is prohibited.	equal zero.

### Recordkeeping Requirements

The IR/IU program for the BSAI contained changes to existing recordkeeping requirements to aid the monitoring and enforcement of the IR/IU program. Because NMFS uses the same logbooks for both the BSAI and GOA, the recordkeeping requirements for the GOA were included in the collection-of-information request approved by the Office of Management and Budget (OMB) for the BSAI IR/IU program (OMB control number 0648-0213). The IR/IU-related recordkeeping

requirements are as follows: Beginning January 1, 1998, all catcher vessels and catcher/processors that are currently required to maintain NMFS logbooks are required to log the round weight catch of pollock and Pacific cod in the NMFS catcher vessel daily fishing logbook or daily catcher/processor logbook (DCPL) on a haul-by-haul or set-by-set basis. Motherships are required to log the receipt of round weight of pollock and Pacific cod in the mothership DCPL on a delivery-by-delivery basis. Beginning January 1, 2003, this requirement

extends to rock sole and yellowfin sole in the BSAI and the shallow-water flatfish complex in the GOA. These changes are necessary to provide vessel operators and enforcement agents with round weight information for each IR/IU species in order to monitor compliance with the IR/IU program.

### Classification

The Administrator, Alaska Region, NMFS, determined that Amendment 49 is necessary for the conservation and management of the groundfish fishery of

the GOA and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

An RIR was prepared for this final rule that describes the management background, the purpose and need for action, the management action alternatives, and the social impacts of the alternatives. The RIR also estimates the total number of small entities affected by this action and analyzes the economic impact on those small entities.

An FRFA was prepared that describes the impact this action will have on small entities. In 1996, of the 444 vessels that participated in the GOA trawl fishery, 404 were determined to be small entities. The analysis concluded that the economic effects on longline, pot, and jig gear vessels would not be significant. The economic effects on trawl vessels participating in the pollock, sablefish, deep-water flatfish, shallow-water flatfish, rockfish, and Atka mackerel fisheries also would not be significant. The analysis concluded that the economic effects on some trawl vessels participating in the Pacific cod, arrowtooth flounder, and rex sole fisheries could be significant. Finally, the analysis concluded that the overall economic effects on vessels participating in the flathead sole fishery would be significant. This action will have a significant economic impact on an estimated 96 trawl vessels (24 percent of the GOA trawl fleet determined to be small entities).

The analysis also concluded that for fish for which markets are limited or undeveloped (e.g., small Pacific cod, and some flatfish species) 100-percent retention requirements will impose direct operational costs that probably cannot be offset (in whole or in part) by expected revenues generated by the sale of the additional catch. No quantitative estimate can be made of these costs at present. In general, the impacts on any operation will vary inversely with the size and configuration of the vessel, hold capacity, processing capability, markets, and market access, as well as the specific composition and share of the total catch of pollock, Pacific cod, and shallow-water flatfish. The burden will tend to fall most heavily upon the smallest, least diversified operations, especially smaller catcher/processors. The ability of smaller catcher/processors to adapt to the proposed IR/IU program will be further limited due to such programs such as the vessel moratorium, license limitation, and Coast Guard load-line requirements that place severe limits on reconstruction to increase vessel size and/or processing capacity.

The economic impacts imposed by this rule would not be alleviated by modifying reporting requirements for small entities. Where relevant, this final rule employs performance standards rather than design standards and allows maximum flexibility in meeting its requirements. The Council considered and rejected the following alternatives that might have mitigated impacts on small entities: (1) An alternative that would have allowed exemptions or modified phase-in periods based on vessel size was rejected because it would have diluted the reductions in bycatch and discards and would have provided an unfair advantage to a certain sector of the industry; (2) a "harvest priority program" that would have rewarded vessels demonstrating low bycatch was rejected because it would not reduce discard rates expeditiously enough; and (3) a voluntary bycatch and discard reduction program was rejected because it would not have met statutory requirements of the Magnuson-Stevens Act. In selecting its preferred alternative for Amendment 49, the Council minimized the economic impact of the IR/IU program on small entities in a variety of ways. First, the Council adopted a 5-year delay in the effective date for rock sole and yellowfin sole to provide industry with sufficient time to develop more selective fishing techniques and/or markets for fish that are currently being discarded. Second, the Council rejected utilization alternatives that would have limited product forms or placed limits on fishmeal production, in order to allow industry more flexibility in complying with the utilization requirements of the IR/IU program. Finally, the Council rejected monitoring alternatives that would have imposed substantial costs in the form of increased observer coverage requirements or required a full time compliance monitor aboard all vessels. A copy of this analysis is available from NMFS (see ADDRESSES).

This rule contains a collection-of-information requirement subject of the Paperwork Reduction Act. The collection of this information has been approved by the Office of Management and Budget, OMB Control Number 0648-0213.

Under this revision to the collection-of-information requirement, vessel operators would be required to log the round weight of each IR/IU species on a haul-by-haul basis for catcher vessels and catcher/processors and on a delivery-by-delivery basis for motherships. The estimated current and new public reporting burdens for these collections of information are as follows: For catcher vessels using fixed

gear, the estimated burden would increase from 20 minutes to 23 minutes; for catcher vessels using trawl gear, the estimated burden would increase from 17 minutes to 22 minutes; for catcher/processors using fixed gear, the estimated burden would increase from 32 minutes to 35 minutes; for catcher/processors using trawl gear, the estimated burden would increase from 29 minutes to 34 minutes; for motherships, the estimated burden would increase from 28 to 33 minutes.

Public comment is sought regarding: Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these, or on any other aspect of the collection of information, to NMFS and OMB (see ADDRESSES).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person 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 number.

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

#### List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: December 8, 1997.

**Rolland A. Schmitten,**

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

For the 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 50 CFR part 679 continues to read as follows:

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

2. Section 679.27 is amended by revising paragraphs (a) and (b) to read as follows:

##### **§ 679.27 Improved Retention/Improved Utilization Program.**

(a) *Applicability.* The owner or operator of a vessel that is required to

obtain a Federal fisheries or processor permit under § 679.4 must comply with the IR/IU program set out in this section while fishing for groundfish in the GOA or BSAI, fishing for groundfish in waters of the State of Alaska that are shoreward of the GOA or BSAI, or when processing groundfish harvested in the GOA or BSAI.

(b) *IR/IU species*. The following species are defined as “IR/IU species” for the purposes of this section:

- (1) Pollock.
- (2) Pacific cod.
- (3) Rock sole in the BSAI (beginning January 1, 2003).
- (4) Yellowfin sole in the BSAI (beginning January 1, 2003).
- (5) Shallow-water flatfish species complex in the GOA as defined in the annual harvest specifications for the GOA (beginning January 1, 2003).

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