

Issued in Washington, D.C. on December 5, 1997.

Edward R. English,

*Director, Office of Safety Enforcement,
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[FR Doc. 97-32510 Filed 12-11-97; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[I.D. 042597B]

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Gulf of Maine Harbor Porpoise Take Reduction Plan Regulations

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

ACTION: Reopening of public comment period.

SUMMARY: On August 13, 1997, NMFS published proposed regulations to implement a plan to reduce the bycatch and mortality of harbor porpoises that occur incidental to sink gillnet fishing in the Gulf of Maine. The public comment period for the proposed regulations ended on October 14, 1997. NMFS is hereby reopening the public comment period for an additional 30 days. The comment period will reopen on December 16, 1997, and extend until January 14, 1998.

DATES: Written comments must be received on or before January 14, 1998.

ADDRESSES: Send comments on the proposed regulations to Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910, or by calling (301) 713-2322. Copies of the draft Harbor Porpoise Take Reduction Plan (HPTRP) and Environmental Assessment are available upon request from Douglas Beach, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930, or from Donna Wieting, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Kevin Chu, NMFS, 508-495-2291 or Donna Wieting, NMFS, 301-713-2322.

SUPPLEMENTARY INFORMATION: On August 13, 1997 (62 FR 43302), NMFS published a proposed regulation to implement a plan to reduce the bycatch and mortality of harbor porpoises that

occur incidental to sink gillnet fishing in the Gulf of Maine. These regulations were based on a draft HPTRP submitted by the Gulf of Maine Harbor Porpoise Take Reduction Team (HPTRT) pursuant to the Marine Mammal Protection Act. The notice indicated that comments must be received by October 14, 1997.

NMFS has decided to reconvene the HPTRT on December 16 and 17, 1997. NMFS has, therefore, decided to reopen the public comment period on the proposed regulations for an additional 30 days from the first date of the HPTRT meeting.

Dated: December 8, 1997.

Patricia A. Montanio,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97-32474 Filed 12-11-97; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971124274-7274-01; I.D. 110597A]

RIN 0648-AH67

Fisheries of the Exclusive Economic Zone Off Alaska; Forage Fish Species Category

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 36 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and Amendment 39 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). This action would define a forage fish species category in both FMPs and implement associated management measures. The intended effect of this action is to prevent the development of a commercial directed fishery for forage fish, which are a critical food source for many marine mammal, seabird, and fish species. This action is necessary to conserve and manage the forage fish resource off Alaska and to further the goals and objectives of the FMPs.

DATES: Comments on the proposed rule must be received at the following address by January 26, 1998.

ADDRESSES: Comments must be sent to the Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori J. Gravel, or delivered to the Federal Building, 709 West 9th. Street, Juneau, AK. Copies of the proposed FMP amendments and the Environmental Assessment/Regulatory Impact Review (EA/RIR) prepared for Amendments 36 and 39 are available from NMFS at the above address, or by calling the Alaska Region, NMFS, at 907-586-7228.

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

SUPPLEMENTARY INFORMATION: The domestic groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) and of the Gulf of Alaska (GOA) are managed by NMFS under the FMPs. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing the groundfish fisheries of the BSAI and GOA appear at 50 CFR parts 600 and 679.

The Council has submitted Amendments 36 and 39 for Secretarial review and a Notice of Availability (NOA) of the FMP amendments was published on November 12, 1997 (62 FR 60682), with comments on the FMP amendments invited through January 12, 1997. Written comments may address the FMP amendments, the proposed rule, or both, but must be received by January 12, 1997, to be considered in the approval/disapproval decision on the FMP amendments.

Management Background and Need for Action

Forage fish are abundant fishes that are preyed upon by marine mammals, seabirds, and commercially important groundfish species. Forage fish perform a critical role in the complex ecosystem functions of the BSAI and the GOA by providing the transfer of energy from the primary or secondary producers to higher trophic levels.

Significant declines in marine mammals and seabirds in the BSAI and GOA have raised concerns that decreases in the forage fish biomass may contribute to the further decline of marine mammal, seabird, and commercially important fish populations. Forage fish are the principal diet of more than two thirds of Alaskan seabirds. In addition, many seabirds can subsist on a variety of invertebrates and fish during

nonbreeding months but can only raise their nestlings on forage fish. Small forage fish such as capelin, herring, sandlance, and eulachon have also been recognized as important prey items for a variety of marine mammal species including Northern fur seal, Steller sea lion, harbor seal, spotted seal, bearded seal, humpback whale, and fin whale. Additional information on forage fish and their role in the ecosystem is available in the EA/RIR prepared for Amendments 36 and 39 (see ADDRESSES).

Members of the fishing industry and public have expressed concern that the current FMP structure may allow unrestricted commercial harvest to occur on forage fish species because these species are currently grouped into the "other species" and non-allocated categories of the FMPs. In addition, the International Council for the Exploration at Sea (ICES) has recently recommended that fishery managers develop measures to avoid the commercial targeting of food resources that are important to marine mammals and seabirds. Establishing forage fish as a separate category in the FMPs would provide the mechanism to better manage these species.

Forage Fish Species Category

Amendments 36 and 39 would establish a new species category for forage fish. The forage fish species category would include all species of the following families:

Osmeridae (eulachon, capelin, and other smelts),
Myctophidae (lanternfishes),
Bathylagidae (deep-sea smelts),
Ammodytidae (Pacific sand lance),
Trichodontidae (Pacific sand fish),
Pholidae (gunnels),
Stichaeidae (pricklebacks,
 warbonnets, eelblennys, cockscombs
 and shannys).

Gonostomatidae (bristlemouths,
 lightfishes, and anglemouths), and the
 Order *Euphausiacea* (krill).

These species have been grouped together because they are considered to be primary food resources for other marine animals and they have the potential to be the targets of a commercial fishery.

Management Measures Proposed for Forage Fish

Affected Vessels and Processors

The following management measures would apply to all vessels fishing for groundfish in the Federal waters of the BSAI or GOA or processing groundfish harvested in the Federal waters of the BSAI or GOA. These management

measures do not limit traditional or subsistence harvests of forage fish species from within State waters.

Prohibition on Directed Fishing

Under Amendments 36 and 39, directed fishing for forage fish would be prohibited at all times in the Federal waters of the BSAI and GOA. A maximum retainable bycatch (MRB) percentage of 2 percent would be established for forage fish, meaning that vessels fishing for groundfish could retain a quantity of forage fish equal to no more than 2 percent of the round weight or round-weight equivalent of groundfish species open to directed fishing that are retained on board the vessel during a fishing trip. NMFS data indicate that the aggregate percentage of forage fish incidentally caught in current groundfish fisheries rarely exceeds 2 percent, and many vessels rarely or never encounter catch of forage fish species. Consequently, bycatch of forage fish species is not considered a problem in the groundfish fisheries off Alaska, and the 2-percent MRB is unlikely to result in increased discards of forage fish species.

Harvest Quotas

Insufficient information exists upon which to specify a total allowable catch amount (TAC) for forage fish species. Therefore, Amendments 36 and 39 do not establish procedures for establishing an annual TAC for forage fish species. However, by establishing a new species category for forage fish, NMFS will be able to collect additional data on forage fish from vessel logbooks, weekly production reports, and observer reports. This information may be used to evaluate the need for and appropriateness of other management measures for forage fish species.

Limits on Sale, Barter, Trade or Processing

The sale, barter, trade, or processing of forage fish species would be prohibited for vessels fishing for groundfish in the Federal waters of the BSAI or GOA, or processing groundfish harvested in the BSAI or GOA, except that retained catch of forage fish species not exceeding the 2-percent MRB may be processed into fishmeal and sold. The Council chose to allow processing of forage fish into fishmeal within the 2-percent MRB amount to avoid placing an undue burden on operations that process unsorted processing waste into fishmeal. Industry representatives indicated that separating small quantities of forage fish from the volumes of fish and fish waste entering a fishmeal plant would be nearly

impossible. The small volumes of fishmeal production that would be allowed under this rule are not expected to provide an incentive for vessels to target on forage fish through "topping off" activity.

These restrictions would not apply to onshore processors due to limitations of the Secretary's authority under the Magnuson-Stevens Act. At the June 1997 Council meeting, the State of Alaska indicated that it intends to proceed with parallel forage fish regulations to restrict the harvest of forage fish within State waters and the processing of forage fish by onshore processors.

Classification

At this time, NMFS has not determined that the amendments that this rule would implement are consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce made the following certification to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

This action would affect a substantial number of small entities because the proposed management measures would apply to all vessels fishing for or processing groundfish in the Federal waters off Alaska. However, the impacts of the proposed action would not be "significant" the purpose of the Regulatory Flexibility Act (RFA). Compliance costs would not be significant because vessels fishing for groundfish rarely, if ever, incidentally harvest forage fish in quantities that would exceed the proposed 2-percent MRB. While vessel operators would be required to monitor catch and discards of forage fish as part of their normal recordkeeping and reporting requirements, these compliance costs would not reduce annual gross revenues by more than 5 percent, increase total costs of production by more than 5 percent, or result in compliance costs for small entities that are at least 10 percent higher than compliance costs as a percent of sales for large entities. The proposed action would affect fishermen who wish to target forage fish. Several vessel operators have expressed interest in pursuing the capelin fishery and have done so in the past. Alaska Department of Fish and Game records indicate that between 1984 and 1994, six vessels harvested a combined total of 1,493 mt of capelin from the Togiak region of Bristol Bay. These six vessels do not represent a substantial number of small entities for purposes of the RFA. Although NMFS does not have data on how great a

percentage of these six vessels' annual incomes derives from the directed capelin fishery, it is unlikely that any of these vessels would experience a greater than 5 percent reduction in gross annual income as a result of this rule given the small amount of capelin taken in the directed fishery. No commercial harvests of other forage fish species have been reported in Alaska.

An informal consultation under the Endangered Species Act was concluded for Amendments 36 and 39 on July 11, 1997. As a result of the informal consultation, the Regional Administrator determined that fishing activities under this rule are not likely to affect adversely endangered or threatened species.

This proposed 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, Recordkeeping and reporting requirements.

Dated: December 5, 1997.

Rolland A. Schmitt,
Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be 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. In § 679.2, the definition of "forage fish" is added in alphabetical order as follows:

§ 679.2 Definitions.

* * * * *

Forage fish means all species of the following families:

- (1) *Osmeridae* (eulachon, capelin and other smelts),
- (2) *Myctophidae* (lanternfishes),
- (3) *Bathylagidae* (deep-sea smelts),
- (4) *Ammodytidae* (Pacific sand lance),
- (5) *Trichodontidae* (Pacific sandfish),
- (6) *Pholidae* (gunnells),
- (7) *Stichaeidae* (pricklebacks,

warbonnets, eelblennys, cockscombs and shannys),

(8) *Gonostomatidae* (bristlemouths, lightfishes, and anglemouths), and the Order

(9) *Euphausiacea* (krill).

3. In § 679.20, a new paragraph (i) is added as follows:

§ 679.20 General limitations.

* * * * *

(i) *Forage fish*—(1) *Definition.* See § 679.2.

(2) *Applicability.* The provisions of § 679.20(i) apply to all vessels fishing for groundfish in the BSAI or GOA and to all vessels processing groundfish harvested in the BSAI and GOA.

(3) *Closure to directed fishing.* Directed fishing for forage fish is prohibited at all times in the BSAI and GOA.

(4) *Limits on sale, barter, trade, and processing.* The sale, barter, trade, or processing of forage fish is prohibited, except as provided in paragraph (i)(5) of this section.

(5) *Allowable fishmeal production.* Retained catch of forage fish not exceeding the maximum retainable bycatch amount may be processed into fishmeal for sale, barter, or trade.

* * * * *

4. In § 679.22, paragraph (c) is revised to read as follows:

§ 679.22 Closures.

* * * * *

(c) *Directed fishing closures.* See § 679.20(d) and § 679.20(i).

* * * * *

5. Table 2 to 50 CFR part 679 is amended by adding species codes 207

Gunnels, 208 Pricklebacks, 210 Pacific sandfish, 772 Lanternfishes, 209 Bristlemouths, lightfishes, and anglemouths (*Gonostomatidae*), 773 Deep-sea smelt (*Bathylagidae*), 774 Pacific sand lance, 800 Krill, in numerical order under as follows:

Table 2 to Part 679.—Species Codes

Code	Species
* * * * *	
GROUP CODES	
* * * * *	
207	Gunnels
208	Pricklebacks, warbonnets, eelblennys, cockscombs and shannys (family <i>Stichaeids</i>)
209	Bristlemouths, lightfishes, and anglemouths (family <i>Gonostomatids</i>)
210	Pacific sandfish
* * * * *	
772	Lanternfishes
773	Deep-sea smelts (family <i>Bathylagids</i>)
774	Pacific sand lance
800	Krill (family <i>Euphausiids</i>)

* * * * *

6. Tables 10 and 11 to 50 CFR part 679 are amended by adding a column for aggregate forage fish as follows:

In Table 10 to 50 CFR part 679, a column for "Aggregate Forage Fish" will be added between columns "Atka mackerel" and "Other species," and footnote 5 is added to read "Forage fish are defined at § 679.20(i)(1)."

In Table 11 to 50 CFR part 679, a column for "Aggregate Forage Fish" will be added between columns "Squid" and "Other species," and footnote 3 will be redesignated as footnote 4, and a new footnote 3 is added to read "Forage fish are defined at § 679.20(i)(1)."

The tables, as amended, read as follows:

TABLE 10.—CURRENT GULF OF ALASKA RETAINABLE PERCENTAGES

	Bycatch Species ¹												
	Pol-lock	Pacific cod	Deep flatfish	Rex sole	Flat-head sole	Shallow flatfish	Arrow-tooth	Sablefish	Aggregated rockfish ²	DSR SEEO ⁴	Atka mackerel	Aggregated Forage fish ⁵	Other species
Basis Species													
Pollock	³ na	20	20	20	20	20	35	1	5	10	20	2	20
Pacific cod	20	³ na	20	20	20	20	35	1	5	10	20	2	20
Deep flatfish	20	20	³ na	20	20	20	35	7	15	1	20	2	20
Rex sole	20	20	20	³ na	20	20	35	7	15	1	20	2	20
Flathead sole	20	20	20	20	³ na	20	35	7	15	1	20	2	20
Shallow flatfish	20	20	20	20	20	³ na	35	1	5	10	20	2	20
Arrowtooth	5	5	0	0	0	0	³ na	0	0	0	0	2	20
Sablefish	20	20	20	20	20	20	35	³ na	15	1	20	2	20
Pacific Ocean perch	20	20	20	20	20	20	35	7	15	1	20	2	20
Shortraker/rougheye	20	20	20	20	20	20	35	7	15	1	20	2	20
Other rockfish	20	20	20	20	20	20	35	7	15	1	20	2	20
Northern rockfish	20	20	20	20	20	20	35	7	15	1	20	2	20
Pelagic rockfish	20	20	20	20	20	20	35	7	15	1	20	2	20
DSR-SEEO	20	20	20	20	20	20	35	7	15	³ na	20	2	20

TABLE 10.—CURRENT GULF OF ALASKA RETAINABLE PERCENTAGES—Continued

	Bycatch Species ¹												
	Pol- lock	Pa- cific cod	Deep flat- fish	Rex sole	Flat- head sole	Shal- low flat- fish	Arrow- tooth	Sa- ble- fish	Ag- gre- gated rock- fish ²	DSR SEEO ⁴	Atka mack- erel	Ag- gre- gate For- age fish ⁵	Other species
Thornyhead	20	20	20	20	20	20	35	7	15	1	20	2	20
Atka mackerel	20	20	20	20	20	20	35	1	5	10	³ na	2	20
Other species	20	20	20	20	20	20	35	1	5	10	20	2	³ na
Aggregated amount non-groundfish species	20	20	20	20	20	20	35	1	5	10	20	2	20

¹ For definition of species, see Table 1 of the Gulf of Alaska groundfish specifications.² Aggregated rockfish means rockfish of the genera *Sebastes* and *Sebastolobus* except in the southeast Outside District where demersal shelf rockfish (DSR) is a separate category.³ na = not applicable.⁴ SEEO = Southeast Outside District.⁵ Forage fish are defined at § 679.20(i)(1).

TABLE 11.—BERING SEA AND ALEUTIAN ISLANDS MANAGEMENT AREA RETAINABLE PERCENTAGES

	Bycatch species ¹													
	Pol- lock	Pa- cific cod	Atka mack- erel	Arrow- tooth	Yel- lowfin sole	Other flat- fish	Rock sole	Flat- head sole	Green- land turbot	Sable- fish	Ag- gre- gated rock- fish ²	Ag- gre- gate For- age fish ³	Squid	Other spe- cies
Basis Species¹														
Pollock	⁴ na	20	20	35	20	20	20	20	1	1	5	20	2	20
Pacific cod	20	na	20	35	20	20	20	20	1	1	5	20	2	20
Atka mackerel	20	20	na	35	20	20	20	20	1	1	5	20	2	20
Arrowtooth	0	0	0	na	0	0	0	0	0	0	0	0	2	0
Yellowfin sole	20	20	20	35	na	35	35	35	1	1	5	20	2	20
Other flatfish	20	20	20	35	35	na	35	35	1	1	5	20	2	20
Rock sole	20	20	20	35	35	35	na	35	1	1	5	20	2	20
Flathead sole	20	20	20	35	35	35	35	na	35	15	15	20	2	20
Greenland turbot	20	20	20	35	20	20	20	20	na	15	15	20	2	20
Sablefish	20	20	20	35	20	20	20	20	35	na	15	20	2	20
Other rockfish	20	20	20	35	20	20	20	20	35	15	15	20	2	20
Other red rockfish-BS	20	20	20	35	20	20	20	20	35	15	15	20	2	20
Pacific Ocean perch	20	20	20	35	20	20	20	20	35	15	15	20	2	20
Sharpchin/ Northern-AI	20	20	20	35	20	20	20	20	35	15	15	20	2	20
Shortraker/ Rougheye-AI	20	20	20	35	20	20	20	20	35	15	15	20	2	20
Squid	20	20	20	35	20	20	20	20	1	1	5	³ na	2	20
Other species	20	20	20	35	20	20	20	20	1	1	5	20	2	³ na
Aggregated amount non-groundfish species	20	20	20	35	20	20	20	20	1	1	5	20	2	20

¹ For definition of species, see Table 1 of the Bering Sea and Aleutian Islands groundfish specifications.² Aggregated rockfish of the genera *Sebastes* and *Sebastolobus*.³ Forage fish are defined at § 679.20(i)(1).⁴ na = not applicable.

[FR Doc. 97-32473 Filed 12-11-97; 8:45 am]

BILLING CODE 3510-22-P