

Flexibility Act (RFA). See 5 U.S.C. 604. The RFA (see 5 U.S.C. 601 *et seq.*) has been amended by the Contract With America Advancement Act of 1996, Pub. L. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). We received no petitions for reconsideration of that FRFA. In this present Public Notice, the Commission promulgates no additional final rules, and our action does not affect the previous analysis. If commenters believe that the proposals discussed in this Public Notice require additional RFA analysis, they should include a discussion of these issues in their comments.

Deadlines and Instructions for Filing Proposals and Comments. Interested parties may file additional proposals regarding the Commission's methodology for determining universal service support for rural and non-rural carriers on or before April 27, 1998. Interested parties may file comments in support of or opposition to the proposals on or before May 15, 1998. Reply comments are due on or before May 29, 1998. All filings should refer to CC Docket Nos. 96-45 and 97-160, and DA 98-715. One original and five copies of all filings must be sent to Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554. Parties must also send copies to the individuals listed on the attached Service List and to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20554.

List of Subjects in 47 CFR Part 54

Universal service.

Federal Communications Commission.

James D. Schlichting,

Deputy Bureau Chief, Common Carrier Bureau.

Attachment

The Honorable Susan Ness, Chair, Commissioner, Federal Communications Commission, 1919 M Street, N.W., Room 832, Washington, DC 20554

The Honorable Harold Furchtgott-Roth, Commissioner, Federal Communications Commission, 1919 M Street, N.W., Room 802, Washington, DC 20554

The Honorable Gloria Tristani, Commissioner, Federal Communications Commission, 1919 M Street, N.W., Room 826, Washington, DC 20554

The Honorable Julia Johnson, State Chair, Chairman, Florida Public Service Commission, 2540 Shumard Oak Blvd., Gerald Gunter Building Tallahassee, FL 32399-0850

The Honorable David Baker, Commissioner, Georgia Public Service Commission, 244

Washington Street, S.W., Atlanta, GA 30334-5701

The Honorable Laska Schoenfelder, Commissioner, South Dakota Public Utilities Commission, State Capitol, 500 East Capitol Street, Pierre, SD 57501-5070

The Honorable Patrick H. Wood, III, Chairman, Texas Public Utility Commission, 1701 North Congress Ave., Austin, TX 78701

Martha S. Hogerty, Missouri Office of Public Council, 301 West High Street, Suite 250, Truman Building, Jefferson City, MO 65102

Charles Bolle, South Dakota Public Utilities Commission, State Capitol, 500 East Capitol Street, Pierre, SD 57501-5070

Deonne Bruning, Nebraska Public Service Commission, 300 The Atrium, 1200 N Street, P.O. Box 94927, Lincoln, NE 68509-4927

James Casserly, Federal Communications Commission, Commissioner Ness's Office, 1919 M Street, N.W., Room 832, Washington, DC 20554

Rowland Curry, Texas Public Utility Commission, 1701 North Congress Avenue, P.O. Box 13326, Austin, TX 78701

Ann Dean, Maryland Public Service Commission, 16th Floor, 6 Saint Paul Street, Baltimore, MD 21202-6806

Bridget Duff, State Staff Chair, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0866

Irene Flannery, Federal Staff Chair, Federal Communications Commission, Accounting and Audits Division, Universal Service Branch, 2100 M Street, N.W., Room 8922, Washington, DC 20554

Paul Gallant, Federal Communications Commission, Commissioner Tristani's Office 1919 M Street, N.W., Room 826, Washington, DC 20554

Lori Kenyon, Alaska Public Utilities Commission, 1016 West Sixth Avenue, Suite 400, Anchorage, AK 99501

Mark Long, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0866

Sandra Makeeff, Iowa Utilities Board, Lucas State Office Building, Des Moines, IA 50319

Kevin Martin, Federal Communications Commission, Commissioner, Furchtgott-Roth's Office, 1919 M Street, N.W., Room 802, Washington, DC 20554

Philip F. McClelland, Pennsylvania Office of Consumer Advocate, 1425 Strawberry Square, Harrisburg, PA 17120

Barry Payne, Indiana Office of the Consumer Counsel, 100 North Senate Avenue, Room N501, Indianapolis, IN 46204-2208

James Bradford Ramsey, National Association of Regulatory Utility Commissioners, 1100 Pennsylvania Ave., N.W., P.O. Box 684, Washington, DC 20044-0684

Brian Roberts, California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, CA 94102

Tiane Sommer, Georgia Public Service Commission, 244 Washington Street, S.W., Atlanta, GA 30334-5701

Sheryl Todd (plus 8 copies), Federal Communications Commission, Accounting and Audits Division, Universal Service

Branch, 2100 M Street, N.W., Room 8611, Washington, DC 20554

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 980414096-8096-01; I.D. 032698A]

RIN 0648-AJ99

Fisheries of the Exclusive Economic Zone Off Alaska; Gear Allocation of Shortraker and Rougheye Rockfish in the Aleutian Islands Subarea

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 53 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). Amendment 53 would allocate shortraker rockfish and rougheye rockfish (SR/RE) in the Aleutian Islands subarea (AI) between vessels using trawl gear and vessels using non-trawl gear. This action is necessary to prevent the incidental catch of SR/RE in trawl fisheries from closing non-trawl fisheries and is intended to further the objectives of the FMP.

DATES: Comments must be received at the following address by June 12, 1998.

ADDRESSES: Comments may be sent to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of the Environmental Assessment/Regulatory Impact Review prepared for this action may be obtained from the same address or by calling the Alaska Region, NMFS, at 907-586-7228.

FOR FURTHER INFORMATION CONTACT: Alan Kinsolving, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Management Background and Need for Action

Fishing for groundfish by U.S. vessels in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) is managed by NMFS according to the FMP. The FMP

was prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 600 and 679.

The Council has submitted Amendment 53 for Secretarial review and a Notice of Availability of the FMP amendment was published at 63 FR 16223 (April 2, 1998) with comments on the FMP amendment invited through June 1, 1998. All written comments received by June 1, 1998, whether specifically directed to the FMP amendment, the proposed rule, or both, will be considered in the approval/disapproval decision on the FMP amendment.

SR/RE are commercially valuable species. However, amounts available to the commercial fisheries are limited by a relatively small total allowable catch (TAC) amount that is fully needed to support incidental catch or bycatch needs in other groundfish fisheries. As a result, the directed fishery for SR/RE typically is closed at the beginning of the fishing year. Bycatch of SR/RE is highest in the Pacific ocean perch (POP) and Atka mackerel trawl fisheries, but SR/RE also are taken in non-trawl fisheries. Of the total observed SR/RE bycatch from 1995 and 1996, 20.5 percent and 10.1 percent, respectively, were taken in non-trawl fisheries.

In 1997, inseason management of groundfish fisheries in the AI was frustrated by the relatively high bycatch of SR/RE in the POP and Atka mackerel trawl fisheries (781 mt and 161 mt, respectively). This resulted in a total catch that exceeded the acceptable biological catch for SR/RE. Estimates of SR/RE bycatch through mid-1997 indicated that the overfishing level would be reached if fisheries that took these species in the AI were not closed. As a result, NMFS prohibited the retention of Atka mackerel, Pacific cod, and rockfish by vessels using trawl gear and retention of Pacific cod and Greenland turbot by vessels using hook-and-line gear. Had it been necessary, NMFS was prepared to close the Individual Fishing Quota fishery for sablefish to prevent overfishing of SR/RE. Thus, although overfishing concerns stemmed primarily from the bycatch of SR/RE in the POP and Atka mackerel trawl fisheries, non-trawl fisheries that also take incidental amounts of these rockfish were closed, or threatened with closure, to prevent overfishing of SR/RE. These overfishing closures disrupted fishing plans and resulted in a loss of

economic opportunity for the trawl and non-trawl fishing industry.

Concerns about the overall management of the SR/RE TAC, as well as trawl and non-trawl industry frustration about actual or potential fishery closures resulting from overfishing concerns, prompted the Council to take several actions at its June and September 1997 meetings. First, the Council recommended that separate maximum retainable bycatch (MRB) percentages be established for SR/RE that would minimize the impact that "topping off" behavior may have on the rate at which the SR/RE TAC is reached. "Topping off" occurs when vessel operators alter fishing operations to catch more SR/RE than they otherwise would so that their retained catch of these species may be maximized under MRB constraints. To minimize this practice, the Council voted to establish a separate MRB percentage for SR/RE of 7 percent relative to certain deepwater species (primarily POP) and 2 percent relative to all other species except arrowtooth flounder, which cannot be used as a species against which SR/RE may be retained. A final rule that implemented the Council's recommended MRB percentages was published in the **Federal Register** on March 31, 1998 (63 FR 15334), effective on April 30, 1998.

In spite of the proposed MRB percentages, overall bycatch amounts of SR/RE still could pose concern because the TAC amounts annually specified for SR/RE are small in comparison to the high volume POP and Atka mackerel trawl fisheries. Consequently, representatives of the trawl and non-trawl industries recommended that the Council adopt an FMP amendment to allocate SR/RE between gear groups. At its February 1998 meeting, the Council approved Amendment 53 to the FMP. After subtraction of reserves, this amendment would allocate 30 percent of the remaining SR/RE TAC to non-trawl gear and 70 percent of the remaining SR/RE TAC to trawl gear.

The industry-recommended allocation of SR/RE TAC between trawl and non-trawl vessels is intended to provide an allocation to the non-trawl fleet in excess of actual relative harvest in recent years. This measure should provide these operations adequate opportunity to fully harvest their allocations of Pacific cod and sablefish. Trawl industry representatives endorsed this split, recognizing that trawl bycatch rates will likely decrease as a result of the proposed reduction in the MRB percentages for SR/RE. A gear allocation based solely on historical catch between gear groups would not adequately

account for the fact that non-trawl fisheries have been preempted in the past by closures resulting from trawl bycatch of SR/RE; nor would it conform with an industry negotiated settlement on what an equitable allocation should be. Finally, a gear-specific allocation of SR/RE would allow more effective management of SR/RE in both fisheries and minimize the potential for over harvest of the SR/RE TAC.

Classification

At this time, NMFS has not determined that the FMP amendment this rule would implement is 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.

NMFS prepared a regulatory impact review that describes the impact this proposed rule, if adopted, would have on small entities. The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant impact on a substantial number of small entities as follows:

The Small Business Administration has defined all fish-harvesting or hatchery businesses that are independently owned and operated, not dominant in their field of operation, with annual receipts not in excess of \$3,000,000 as small businesses. Additionally, seafood processors with 500 employees or fewer, wholesale industry members with 100 employees or fewer, not-for-profit enterprises, and government jurisdictions with a population of 50,000 or less are considered small entities. NMFS has determined that a "substantial number" of small entities would generally be 20 percent of the total universe of small entities affected by the regulation. A regulation would have a "significant economic impact" on these small entities if it reduced annual gross revenues by more than 5 percent, increased total costs of production by more than 5 percent, resulted in compliance costs for small entities that are at least 10 percent higher than compliance costs as a percent of sales for large entities, or would be likely to cause approximately 2 percent of the affected small businesses to go out of business. NMFS assumes that catcher vessels participating in the Alaska groundfish fisheries are "small entities" for purposes of the Regulatory Flexibility Act.

In 1996, 213 vessels participated in the Aleutian Islands (AI) groundfish fisheries all of which could be affected by this rule. Of these, 140 vessels (66 percent) were catcher vessels and would be considered the universe of impacted small entities by NMFS. One hundred percent of these small entities

could be affected by this rule. Thus, this rule affects a substantial number of small entities.

There is no directed fishery for SR/RE. These species are taken as bycatch in other BSAI fisheries, including Pacific ocean perch, Atka mackerel, Pacific cod, sablefish, and Greenland turbot. When the SR/RE total allowable catch is taken, the other fisheries that take SR/RE are closed. Trawl vessels generally take more SR/RE than non-trawl fisheries. To prevent trawl fisheries from closing non-trawl fisheries, the proposed rule would allocate 30 percent of SR/RE bycatch to non-trawl vessels.

During 1995 and 1996, non-trawl vessels were responsible for 22 percent and 18 percent respectively of the bycatch of SR/RE. Thus, the proposed allocation is in excess of the actual amount of bycatch in the non-trawl sector and represents a shift of approximately 10 percent from the trawl to the non-trawl sector. During 1996, 93 non-trawl catcher vessels fished in the AI subarea. During 1997, small entities that participated in Aleutian Island non-trawl fisheries landed an estimated \$1,618,506 worth of sablefish, rockfish, Greenland turbot and Pacific cod. These vessels would be positively impacted by this rule, because it would be less likely that non-trawl fisheries would be shut down due to SR/RE bycatch concerns.

During 1996, 47 trawl catcher vessels fished in the AI. These vessels could be negatively impacted by the proposed rule to the extent that SR/RE bycatch concerns result in shortened trawl seasons. However, only those fisheries in which SR/RE bycatch is high, primarily Atka mackerel and Pacific ocean perch, would risk early closure. Both of these fisheries are primarily undertaken by catcher/processor vessels (large entities). Between 1992 and 1996, only two catcher vessels (1.4 percent of the affected small

entities) participated in the Pacific ocean perch trawl fishery and no catcher boats participated in the Atka mackerel trawl fishery. Both of these vessels would be able to switch to other fisheries in the event that the Pacific ocean perch fishery were shut down due to SR/RE bycatch concerns. NMFS data indicate that these two vessels landed only small amounts of Pacific ocean perch.

The proposed amendment would reduce the amount of SR/RE available to the trawl sector by approximately 10 percent. To the extent that small entities participating in trawl fisheries actually retain SR/RE, this reduction would cause a negative impact. In 1996, small entities retained only 3,300 pounds of SR/RE. Less than 600 pounds was landed by small entities participating in trawl fisheries. The remaining 2,700 pounds was landed by small entities participating in non-trawl fisheries. If the amount landed by trawl catcher vessels were reduced by 10 percent, a loss of 60 pounds, or \$66, could potentially result.

Thus, NMFS is able to conclude that substantially fewer than 20 percent of the affected small entities would experience any negative impact at all, and that in no case would this rule result in a significant impact on a substantial number of small entities.

As a result, a regulatory flexibility analysis was not prepared. A copy of the analysis is available from NMFS (See ADDRESSES).

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

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: April 21, 1998.

Rolland A. Schmitten,

*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 part 679 continues to read as follows:

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

2. In § 679.20, paragraph (a)(9) is redesignated as paragraph (a)(10), and a new paragraph (a)(9) is added to read as follows:

§ 679.20 General limitations.

* * * * *

(a) * * *

(9) *BSAI shortraker rockfish and rougheye rockfish.* After subtraction of reserves, the TAC of Shortraker rockfish and rougheye rockfish specified for the Aleutian Islands subarea will be allocated 30 percent to vessels using non-trawl gear and 70 percent to vessels using trawl gear.

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