

Dated: May 9, 2008.

**Kenneth Stansell,**

*Acting Director, U.S. Fish and Wildlife Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

RIN 0648-AR72

#### 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:** Notice of availability of a proposed amendment to a fishery management plan; request for comments.

**SUMMARY:** The North Pacific Fishery Management Council (Council) has submitted Amendment 72 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) to NMFS for review. If approved, Amendment 72 would revise the FMP to state that the Council will annually review information on the discard of shallow-water flatfish in Gulf of Alaska (GOA) groundfish fisheries. After review of this annual information, the Council may recommend revisions to retention and utilization requirements if the discard rate for shallow-water flatfish falls above or below a specified threshold. This action is necessary to support the Council's initiatives to monitor and reduce bycatch in the GOA groundfish fisheries. The intended effect of this action is to conserve and manage the groundfish resource in the GOA in accordance with the Magnuson-Stevens Fishery Conservation and Management Act.

**DATES:** Comments on Amendment 72 must be received on or before July 28, 2008.

**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-AR72", by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the

Federal eRulemaking Portal website at <http://www.regulations.gov>.

- Mail: P. O. Box 21668, Juneau, AK 99802.

- Fax: (907) 586-7557.

- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All personal identifying information (e.g., 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. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

**FOR FURTHER INFORMATION CONTACT:** Jeff Hartman, 907-586-7442.

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit any fishery management plan or fishery management plan amendment that it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce. The Council has submitted Amendment 72 to NMFS for review. If approved, Amendment 72 would revise the FMP to state that the Council will annually review the discards of shallow-water flatfish in GOA groundfish fisheries. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP amendment, publish a notice in the **Federal Register** to notify the public that the FMP amendment is available for review and comment. This notice of availability for Amendment 72 satisfies this requirement.

The Secretary of Commerce approved Amendment 49 to the FMP in 1997 (62 FR 65379) to improve the retention and utilization (IR/IU) of shallow-water flatfish. The Council recommended IR/IU measures for this species group after determining that the percentage of shallow-water flatfish catch that was discarded was greater than the percentage of most other GOA groundfish species catch that was discarded. However, implementation of IR/IU measures for shallow-water flatfish in the GOA was delayed by Amendment 49 until January 1, 2003, to provide vessels additional time to make

vessel or plant modifications to meet IR/IU requirements.

Groundfish species included in the GOA shallow-water flatfish group primarily include flathead sole, rock sole, yellowfin sole, butter sole, starry flounder, English sole, sand sole, and Alaska plaice. Regulations at 50 CFR 679.27(c)(2) establish the IR/IU requirements for shallow-water flatfish implemented under Amendment 49. When shallow-water flatfish are open to directed fishing, a catcher vessel must retain all fish of that species brought onboard the vessel, and a catcher/processor must make and retain a primary product from all fish of that species brought onboard the vessel. When shallow-water flatfish are closed to directed fishing, a catcher vessel must retain all shallow-water flatfish up to the maximum retainable amount (MRA), and a catcher/processor must make and retain a primary product from all fish of that species brought onboard the vessel up to the point that the round-weight equivalent of primary products onboard equals the MRA for that species. These shallow-water flatfish IR/IU requirements currently apply to all vessels with Federal fishing permits participating in any GOA groundfish fishery, regardless of the gear type used.

In 2003, after implementation of Amendment 49 provisions for shallow-water flatfish IR/IU, the Council again reviewed discard data on shallow-water flatfish in each GOA target fishery. This review revealed that discards of shallow-water flatfish between 1995 and 2001 were less than 5 percent in all GOA groundfish target fisheries with the exception of the Western GOA flathead sole, Western GOA offshore Pacific cod, and Central GOA shallow-water flatfish fisheries. Because three target fisheries exceeded shallow-water flatfish discards of 5 percent in some years but did not exceed average shallow-water flatfish discards of 20 percent, the Council expressed interest in tracking fisheries that exceeded a 5 percent discard threshold for shallow-water flatfish. Since implementation of shallow-water flatfish IR/IU in 2003, shallow-water flatfish discards have not exceeded 5 percent of the total groundfish catch in any GOA groundfish fishery. The highest shallow-water flatfish discard rates in these years have been in the trawl fisheries for Pacific cod in the Western GOA (2.9 percent in 2003 and 2.1 percent in 2006) and shallow-water flatfish fisheries in the Central GOA (2.4 percent in 2004 and 2.9 percent in 2005).

While many groundfish vessels are able to meet a long-term goal of reducing shallow-water flatfish discards

by consistently remaining under a 5 percent discard rate, members of the GOA fishing industry reported to the Council that complete elimination of shallow-water flatfish discards is costly if some vessels do not have viable markets for small retained amounts of these species. Furthermore, the sorting and retention of small amounts of shallow-water flatfish species can involve high handling costs onboard vessels.

In recommending Amendment 72, the Council considered National Standard 9 of the Magnuson-Stevens Act, which requires that conservation and management measures minimize bycatch (discards) to the extent practicable. The Council recognized the benefits of continuing shallow-water flatfish IR/IU at 50 CFR 679.27(c)(2), and the groundfish retention that accrues from those regulations. However, the Council also recognized the benefits that would accrue from annually monitoring shallow water flatfish discards and evaluating whether IR/IU regulations continue to minimize discards and maximize catch utilization in the GOA groundfish fisheries to the extent practicable. The Council believed that this combination of regulations and annual review would provide an incentive for vessels in the GOA to maintain a high standard of retention for shallow-water flatfish.

Amendment 72 would add the following text to the FMP: "The Council

will annually review the discards of shallow-water flatfish in all GOA fisheries. The Council may recommend that NMFS initiate rulemaking to add or remove a fishery from shallow-water flatfish improved retention/improved utilization requirements if the three-year rolling average discard rate of shallow-water flatfish in any fishery falls above or below 5 percent."

Under Amendment 72, NMFS would provide an annual report to the Council that would estimate the discard of shallow-water flatfish as a percentage of total groundfish catch by area and target fishery. This report would identify shallow-water flatfish discard rates that exceed 5 percent of total groundfish catch in a target fishery annually and over a three-year period. Based on that information, the Council could recommend a regulatory amendment to revise shallow-water flatfish IR/IU requirements.

This FMP amendment does not require any new regulations or revisions to existing regulations. Shallow-water flatfish would continue to be one of three GOA IR/IU species categories in 50 CFR part 679, along with pollock and Pacific cod. Any future revisions to shallow-water flatfish IR/IU regulations would be contingent on the Council establishing the need to modify these requirements, initiating an analysis, and proposing a regulatory amendment that could be approved by the Secretary of Commerce. Any subsequent

recommendation by the Council to consider changing IR/IU requirements for shallow-water flatfish would need to clearly define the group of vessels that would be exempted from shallow-water flatfish IR/IU requirements, recognizing that IR/IU requirements are more effectively enforced if the vessels subject to these requirements can be clearly identified by vessel or gear characteristics. Enforcement of IR/IU requirements that differ by target fishery are more difficult to enforce because vessels may participate in multiple target fisheries at a time or switch between target fisheries.

Public comments are being solicited on Amendment 72. Comments received by the closing date will be considered in the approval/disapproval decision on the amendment. To be considered, written comments must be received by NMFS, not just postmarked or otherwise transmitted, by the close of business on the last day of the comment period.

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

Dated: May 22, 2008.

**Samuel D. Rauch III**

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

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