

the information for management purposes may be made. In such instances, it is unclear what then constitutes the best available information for management use.

Framework 2 states that, when clear consensus recommendations are made by any of the acceptable peer review groups, the information is considered the best available and may be utilized by the Council in the management process for spiny dogfish. Similarly, when the consensus results of a peer review are to reject proposed changes to the stock assessment methods or the stock status determination criteria, Framework 2 states that the previous information on record would still continue to constitute the best available information and should be used in the management process.

When peer review recommendations do not result in consensus, are unclear, or do not make recommendations on how the information is to be used in the management process, Framework 2 states that the Councils engage their SSCs or a subset of their SSCs with appropriate stock assessment expertise, to review the information provided by the peer review group. The SSCs would then seek to clarify the information and provide advice to the Councils to either modify, change, or retain the existing stock status determination definitions as the best available information for use in the development of specifications and management measures.

#### Comments and Responses

No comments specific to Framework 2 were received during the public comment period. NMFS received three comments under the Framework 2 proposed rule, but all were actually regarding the spiny dogfish 2009 specifications and management measures proposed rule (74 FR 11706, March 19, 2009), which was open for public comment at the same time. NMFS responded to those comments in the final rule for the spiny dogfish 2009 specifications and management measures (74 FR 20230, May 1, 2009).

#### Classification

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this rule is consistent with the Spiny Dogfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the

Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: June 18, 2009.

**Samuel D. Rauch III**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 0810141351-9087-02]

RIN 0648-XP97

#### Fisheries of the Exclusive Economic Zone Off Alaska; Greenland Turbot, Arrowtooth Flounder, and Sablefish by Vessels Participating in the Amendment 80 Limited Access Fishery in Bering Sea and Aleutian Islands Management Area

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is closing directed fishing for Greenland turbot, arrowtooth flounder, and sablefish by vessels participating in the Amendment 80 limited access fishery in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2009 halibut bycatch allowance specified for the trawl Greenland turbot, arrowtooth flounder, and sablefish fishery category by vessels participating in the Amendment 80 limited access fishery in the BSAI.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), June 19, 2009, through 2400 hrs, A.l.t., December 31, 2009.

**FOR FURTHER INFORMATION CONTACT:** Steve Whitney, 907-586-7269.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the

Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2009 halibut bycatch allowance specified for the trawl Greenland turbot, arrowtooth flounder, and sablefish fishery category by vessels participating in the Amendment 80 limited access fishery in the BSAI is 5 metric tons as established by the final 2009 and 2010 harvest specifications for groundfish in the BSAI (74 FR 7359, February 17, 2009).

In accordance with § 679.21(e)(3)(vi)(B) and § 679.21(e)(7)(v), the Administrator, Alaska Region, NMFS, has determined that the 2009 halibut bycatch allowance specified for the trawl Greenland turbot, arrowtooth flounder, and sablefish fishery category by vessels participating in the Amendment 80 limited access fishery in the BSAI has been caught. Consequently, NMFS is closing directed fishing for Greenland turbot, arrowtooth flounder, and sablefish by vessels participating in the Amendment 80 limited access fishery in the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

#### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for Greenland turbot, arrowtooth flounder, and sablefish by vessels participating in the Amendment 80 limited access fishery in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of June 18, 2009.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon

the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: June 19, 2009

**Kristen C. Koch,**

*Acting Director, Office of Sustainable*

*Fisheries, National Marine Fisheries Service.*

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