

escape panel. Seven meshes of the top and seven meshes of the bottom of the funnel are attached to eight meshes at the top and bottom of the small-mesh section, such eight meshes being located immediately adjacent to the top and bottom centers of the small-mesh section on the side of the funnel's extended side. The extended side of the funnel is sewn at its top and bottom to the top and bottom of the small-mesh section, extending at an angle toward the top and bottom centers of the small-mesh section.

(d) *Semi-Rigid Hoop.* A 24-inch (61.0-cm) diameter hoop constructed of plastic-coated trawl cable, swaged together with a 3/8-inch (9.53-mm) micropress sleeve, is installed 5 meshes behind the trailing edge of the large mesh section. The extension webbing must be laced to the ring around the entire circumference and must be equally distributed on the hoop, that is, 30 meshes must be evenly attached to each quadrant.

(e) *Installation.* The extended funnel BRD is attached 8 inches (20.3 cm) behind the posterior edge of the TED. If it is attached behind a soft TED, a second semi-rigid hoop, as prescribed in paragraph A.3.(d), must be installed in the front section of the BRD extension webbing at the leading edge of the funnel. The codend of the trawl net is attached to the trailing edge of the BRD.

B. *Expanded Mesh.* The expanded mesh BRD is constructed and installed exactly the same as the standard size extended funnel BRD, except that one side of the funnel is not extended to form a lead panel.

#### C. *Fisheye.*

1. *Description.* The fisheye BRD is a cone-shaped rigid frame constructed from aluminum or steel rod of at least 1/4 inch diameter, which is inserted into the codend to form an escape opening. Fisheyes of several different shapes and sizes have been tested in different positions in the codend.

2. *Minimum Construction and Installation Requirements.* The fisheye has a minimum opening dimension of 5 inches (12.7 cm) and a minimum total opening area of 36 square inches (91.4 square cm). The fisheye must be installed in the codend of the trawl to create an opening in the trawl facing in the direction of the mouth of the trawl no further forward than 11 ft (3.4 m) from the codend tie-off rings.

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## 50 CFR Part 678

[I.D. 120696A]

RIN 0648-AH77

### Atlantic Shark Fisheries; Notice of Availability of Amendment 1

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

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

**SUMMARY:** NMFS announces that the Highly Migratory Species Division has submitted Amendment 1 to the Fishery Management Plan for the Sharks of the Atlantic Ocean (FMP) for review, approval, and implementation by NMFS. Written comments are requested from the public. Amendment 1 would implement limited access measures for the Atlantic shark fisheries.

**DATES:** Written comments must be received on or before February 28, 1997.

**ADDRESSES:** Send comments to William Hogarth, Acting Chief, Highly Migratory Species Division (F/SF1), National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Requests for copies of Amendment 1, which includes an environmental assessment and a regulatory impact review, should be sent to Margo Schulze, Fishery Biologist, Highly Migratory Species Division (F/SF1), National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Margo Schulze or John Kelly, 301-713-2347; fax: 301-713-1917.

**SUPPLEMENTARY INFORMATION:** The fishery for Atlantic sharks is managed under the FMP prepared by NMFS under authority of section 304(g) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson Act), as amended, and was implemented on April 26, 1993, through regulations found at 50 CFR part 678.

If approved, Amendment 1 would redefine permits as directed or incidental, develop eligibility criteria for these permits based on historical participation, and specify rules for transferability of permits. NMFS has determined that the Atlantic shark fishery is overcapitalized, with an excessive number of permitted vessels relative to current harvest levels. The objective of this amendment is to take a first and significant step towards reducing fleet capacity to levels more closely aligned with resource production by implementing limited access, substantially reducing latent harvesting capacity, and implementing measures to prevent further overcapitalization.

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

Dated: December 30, 1996.

Gary C. Matlock,

Director, Office of Sustainable Fisheries,  
National Marine Fisheries Service.

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## 50 CFR Part 679

[Docket No. 96122063-6363-01; I.D. 120296B]

RIN 0648-AI65

### Fisheries of the Exclusive Economic Zone off Alaska; Maximum Retainable Bycatch Percentages

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes a regulatory amendment to reduce maximum retainable bycatch percentages for sablefish in the Gulf of Alaska (GOA) groundfish trawl fisheries and to allow the use of GOA arrowtooth flounder as a basis species for the retention of bycatch amounts of pollock and Pacific cod when either of these two species is closed to directed fishing. This action is necessary to slow the harvest rate of GOA sablefish and to provide for fuller utilization of pollock and Pacific cod incidentally taken in the arrowtooth flounder fishery. This action is intended to further the objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP).

**DATES:** Comments must be received at the following address by February 5, 1997.

**ADDRESSES:** Comments may be sent to Ronald J. Berg, Chief, Fisheries Management 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.

**FOR FURTHER INFORMATION CONTACT:** Susan J. Salvesson, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** Fishing for groundfish by U.S. vessels in the exclusive economic zone of the GOA 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 subpart H of 50 CFR part 600 and 50 CFR part 679.

Regulations at § 679.20(e) establish maximum retainable bycatch (MRB) percentages for groundfish species or species groups. These MRB percentages establish the amount of a species that is

closed to directed fishing that may be retained on board a vessel, relative to amounts of other retained species open to directed fishing. MRB percentages serve as a management tool to slow down the rate of harvest of a bycatch species and to reduce the incentive for fishing vessel operators to target on the species. Nonetheless, vessel operators may top off their retained catch of these species up to the MRB amount. MRB percentages do not necessarily reflect a natural incidental catch rate but rather reflect a balance between the recognized need to slow harvest rates, minimize the potential for undesirable discard, and, in some cases, provide an increased opportunity to harvest available total allowable catch (TAC) through limited topping off activity.

Topping off is a recognized and generally accepted activity associated with bycatch species. The incentive for fishermen to engage in this activity is directly related to the value of, and available market for, the bycatch species relative to the associated operational costs of fishing first for and retaining one species and subsequently topping off that retained catch with a bycatch species up to, and including, the allowable MRB percentage.

Current regulations prohibit the use of arrowtooth flounder as a basis species for the retention of other groundfish species closed to directed fishing. This prohibition was implemented by NMFS in 1994 to respond to industry and Council concern that directed fishing for arrowtooth flounder for the purpose of topping off with other, higher-valued species could result in unacceptably high halibut bycatch rates. Little or no market existed for arrowtooth flounder, which subsequently was discarded or rendered into meal, but the halibut bycatch amounts associated with the arrowtooth flounder fishery were credited against the overall halibut bycatch limits available to other fisheries. Directed fishing for arrowtooth flounder could increase the rates at which halibut bycatch limits or allowances are reached, thus further limiting the ability of the groundfish fleet to harvest available TAC amounts before halibut bycatch restrictions close the fisheries.

At the Council's December 1995 meeting, industry representatives and individual members of the Council requested that NMFS initiate several changes to existing MRB percentages. This request was in response to specific concerns about topping off activity and to testimony that a limited fishery for GOA arrowtooth flounder exists and that this species should be allowed as a basis species for the retention of pollock

and Pacific cod. Industry representatives and NMFS in-season managers also recommended that a reduction of the GOA sablefish MRB percentage be considered to respond to fishery management issues that became evident as a result of topping off activities in the 1996 trawl fisheries. At its September 1996 meeting, the Council adopted its preferred alternative to reduce the MRB percentages for GOA sablefish relative to deep water species from 15 percent to 7 percent and to allow the use of GOA arrowtooth flounder as a basis species for the retention of pollock and Pacific cod. An MRB of 5 percent of each these species relative to arrowtooth flounder is proposed. The Council requested staff to explore other changes to MRB percentages for GOA rockfish species that may be considered at a future date. Specific rationale for each of the proposed changes follows.

#### Allow the Use of GOA Arrowtooth Flounder as a Basis Species

At the Council's December 1995 meeting, testimony was presented that markets now exist for arrowtooth flounder and that this species should be allowed as a basis species for purposes of retaining pollock and Pacific cod when these two species are closed to directed fishing. An MRB percentage of 5 percent was proposed for pollock and Pacific cod relative to arrowtooth flounder.

NMFS catch data show that bycatch of these two species in the arrowtooth flounder fishery since 1994 ranged between 6 and 15 percent, higher than the proposed MRB percentage. As a result, some discard of GOA pollock and Pacific cod may still occur. Nonetheless, opportunity for unacceptably high levels of topping off activity would be limited to address halibut bycatch concerns.

#### Reduce the MRB Percentage for GOA Sablefish

The current MRB percentage for GOA sablefish is 15 percent relative to deep water flatfish, flathead sole, rex sole, and rockfish and 1 percent relative to all other species. Sablefish typically is a bycatch species for the GOA trawl fisheries and trawl vessels maximize allowable retention of sablefish through topping off activity. In 1996, in-season monitoring and management of trawl fisheries was frustrated by unanticipated high harvest rates of Pacific ocean perch (POP) for purposes of topping off with sablefish, as well as unprecedented high harvest rates of sablefish through topping off activity. As a result of these higher than

anticipated harvest rates, TACs for sablefish and POP were exceeded, these species were put on prohibited species status within 2 weeks of the July 1 opening of the trawl rockfish fishery, and these species were mandatorily discarded for the remainder of the year. NMFS proposes that the MRB percentage for GOA sablefish relative to all rockfish species or species groups and deep water flatfish be reduced from 15 percent to 7 percent. This change would reduce the harvest rate of GOA sablefish as well as that for POP and potentially other rockfish species during topping-off activity. The Council concurred in this recommendation at its September 1996 meeting.

The proposed reduction in the sablefish MRBs reflects NMFS catch data for the bycatch of sablefish in the deep water flatfish and rockfish fisheries since 1994. The bycatch of sablefish in the flathead sole and rex sole fisheries ranged between 1–4 percent since 1994, lower than the proposed 7 percent MRB. The proposed reduction in the sablefish MRB is not anticipated to result in additional discard of trawl-caught sablefish. However, it would slow down the harvest rates of sablefish. It would also slow the harvest rate of groundfish that are open to directed fishing and that serve as a basis for the retention of sablefish. A reduced harvest rate would facilitate NMFS's ability to monitor the fishery and initiate fishery closures before TAC amounts are reached, thus delaying the attainment of TAC and the required discard of fish under prohibited species status.

#### Classification

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 economic impact on a substantial number of small entities as follows:

The proposed regulatory amendment would reduce the maximum retainable bycatch (MRB) percentages for sablefish in the Gulf of Alaska (GOA) groundfish trawl fisheries and allow the use of GOA arrowtooth flounder as a basis species for the retention of bycatch amounts of pollock and Pacific cod when either of these two species is closed to directed fishing. This action is necessary to slow the harvest rates of GOA sablefish and to provide for fuller utilization of pollock and Pacific cod incidentally taken in the arrowtooth flounder fishery.

The proposed action primarily would affect GOA trawl operations. In 1995, a total of 185 catcher vessels using trawl gear harvested GOA groundfish. NMFS considers

catcher vessels to be small entities for purposes of analyses required under the Regulatory Flexibility Act. The proposed change to the GOA sablefish MRB would affect only trawl operations because the retention of sablefish by nontrawl vessels is governed by regulations implementing the sablefish individual fishing quota program. In 1995, four of the eight catcher vessels participating in the GOA rockfish fisheries retained sablefish as bycatch. The proposed reduction of the sablefish MRB percentages likely would not result in decreased annual revenues to these catcher vessels that exceed 5 percent because vessels still would have the opportunity to harvest available sablefish TACs through "topping off" activity, albeit at a reduced rate or over a longer period of time. Topping off is the term applied to catching and retaining non-target species in order to increase the base used for computing the percentage of bycatch of sablefish (or other valuable species) that can be retained. Operational costs of doing so could increase as a result, but likely not to the extent of posing a significant economic impact.

This action also would provide enhanced opportunity for revenues to the extent that participants in the arrowtooth flounder fishery retain bycatch amounts of pollock and Pacific cod up to the proposed MRB percentage of 5 percent. In 1995, 39 trawl catcher vessels retained GOA arrowtooth flounder. The additional revenue to these vessels that could result from the proposed action likely would not reflect a 5 percent increase in overall annual revenue. Landings of arrowtooth flounder in 1995 totaled only about 1 percent of the total amount of groundfish landed by catcher vessels. If catcher vessel operators chose to retain any bycatch of pollock and Pacific cod up to the proposed MRB percentage, the associated landings would be 5 percent or less of the arrowtooth landings, or about 0.1 percent of the total groundfish catch.

As a result, a regulatory flexibility analysis was not prepared.

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

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

Fisheries, Reporting and recordkeeping requirements.

Dated: December 27, 1996.

Nancy Foster,

*Deputy 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.*

2. In part 679, Table 10 is revised to read as follows:

TABLE 10 TO PART 679.—CURRENT GULF OF ALASKA RETAINABLE PERCENTAGES

	Bycatch Species <sup>1</sup>											
	Pol-lock	Pacific cod	Deep flat-fish	Rex sole	Flat-head sole	Shallow flat-fish	Arrow-tooth	Sable-fish	Aggregated rock-fish <sup>2</sup>	DSR SEEO <sup>4</sup>	Atka mackerel	Other species
Basis Species:												
Pollock .....	<sup>3</sup> na	20	20	20	20	20	35	1	5	10	20	20
Pacific cod .....	20	<sup>3</sup> na	20	20	20	20	35	1	5	10	20	20
Deep flatfish .....	20	20	<sup>3</sup> na	20	20	20	35	7	15	1	20	20
Rex sole .....	20	20	20	<sup>3</sup> na	20	20	35	7	15	1	20	20
Flathead sole .....	20	20	20	20	<sup>3</sup> na	20	35	7	15	1	20	20
Shallow flatfish .....	20	20	20	20	20	<sup>3</sup> na	35	1	5	10	20	20
Arrowtooth .....	5	5	0	0	0	0	<sup>3</sup> na	0	0	0	0	0
Sablefish .....	20	20	20	20	20	20	35	<sup>3</sup> na	15	1	20	20
Pacific Ocean perch .....	20	20	20	20	20	20	35	7	15	1	20	20
Shortraker/rougheye .....	20	20	20	20	20	20	35	7	15	1	20	20
Other rockfish .....	20	20	20	20	20	20	35	7	15	1	20	20
Northern rockfish .....	20	20	20	20	20	20	35	7	15	1	20	20
Pelagic rockfish .....	20	20	20	20	20	20	35	7	15	1	20	20
DSR—SEEO .....	20	20	20	20	20	20	35	7	15	<sup>3</sup> na	20	20
Thornyhead .....	20	20	20	20	20	20	35	7	15	1	20	20
Atka mackerel .....	20	20	20	20	20	20	35	1	5	10	<sup>3</sup> na	20
Other species .....	20	20	20	20	20	20	35	1	5	10	20	<sup>3</sup> na
Aggregated amount non-groundfish species .....	20	20	20	20	20	20	35	1	5	10	20	20

<sup>1</sup> For definition of species, see Table 1 of the Gulf of Alaska groundfish specifications

<sup>2</sup> 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.

<sup>3</sup> na=not applicable.

<sup>4</sup> SEEO=Southeast Outside District.