DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 675

[Docket No. 50834-5034]

Foreign Fishing, Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues a proposed rule to implement Amendment 9 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. The measures contained in this amendment will reduce bycatches of species fully utilized by United States fishermen by closing the area within 20 miles of the Aleutian Islands to foreign trawling; provide NMFS with more timely catch information necessary for adequate inseason management; implement the NMFS habitat conservation policy; and introduce a definition of directed fishing. Each measure is intended to respond to biological, ecological, or socioeconomic problems that have been identified by the fishing industry and the management agencies. Implementation of these measures is necessary for conservation and management of the groundfish resources and for the orderly conduct of the fishery.

DATES: Written comments must be received on or before September 30, 1985.

ADDRESSES: Comments should be addressed to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. Copies of the amendment, the environmental assessment, and the regulatory impact review/initial regulatory flexibility analysis may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99501, 907-274-4563.


SUPPLEMENTARY INFORMATION: The domestic and foreign groundfish fishery in the exclusive economic zone (EEZ) in the Bering Sea and Aleutian Islands area is managed under the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). The FMP was developed by the North Pacific Fishery Management Council (Council) under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act) and implemented January 1, 1982 (46 FR 63289, December 31, 1981).

Prior to 1984, the Council would receive proposals to amend the FMP during any of its scheduled meetings. At its April 1984 meeting, the Council adopted a policy whereby proposals for amendments would be received only once a year. Proposals contained in Amendment 9 were requested by the Council in September 1984 with a deadline set at December 7, 1984. After receiving proposals, the Council instructed its Plan Team to review and rank each proposal. At its February 1985 meeting, the Council reviewed the recommendations of the Plan Team, the Scientific and Statistical Committee, and the Advisory Panel, and selected five proposals for inclusion in Amendment 9. Other proposals were identified for development and consideration for inclusion in a future amendment. The Council directed its Plan Team to analyze the biological, ecological, and socioeconomic impacts of each of the five proposals and alternatives to each, as required by the National Environmental Policy Act of 1969 and other applicable law. The Plan Team then prepared drafts of an environmental assessment and a regulatory impact review/initial regulatory flexibility analysis (RI/RIF/A). The Council reviewed these documents at its March 26–28, 1985 meeting, and then released them for public review, inviting comments from the interested public, fishing associations, and government agencies until May 3, 1985. In response to comments received, the Plan Team revised the draft analyses for consideration by the Council at its May 21–24, 1985 meeting. At that meeting, the Council reviewed the analyses, heard further public comment, and voted to recommend that the Secretary implement its preferred alternatives for three parts of Amendment 9.

A description of and reasons for each part of Amendment 9 follow:

1. Foreign trawling is prohibited within 20 miles of the Aleutian Islands in Area IV. The rapid expansion of U.S. fishing operations in the Bering Sea and Aleutian Islands has led to greatly increased utilization of groundfish species, including full utilization of Pacific ocean perch, sablefish, and Atka mackerel. Despite reduction of foreign directed fishing effort in the area through restricted inseason incidental catches of these fully utilized species continue to be taken, and it is unlikely that such incidental catches could be eliminated through modification of fishing practices. A substantial portion of the foreign catches of fully utilized species has been taken in a narrow zone roughly 20 miles to the north and south of that portion of the Aleutian Islands west of 170°W. longitude in Area IV (see figure 2 of § 611.9).

The proposed elimination of foreign trawling within this 20-mile zone would greatly reduce the incidental catch within that zone of species fully utilized by the U.S. fishing industry. Additional benefits would accrue to the U.S. fishing fleet, including (1) elimination of the potential for gear conflicts with, or grounds preemption by, foreign trawl fleets, and (2) increases in catch rates and operating efficiency resulting from groundfish stocks remaining unfishable by foreign trawlers.

The RIR/IRFA concluded that fishery resources are readily available outside the closure zone and that the impact of the closure on the ability of foreign nations to harvest their groundfish allocations would be insignificant. The only two target species which may not be entirely available for harvest by foreign fleets outside of the proposed closed area are turbot and the “other rockfish” complex. Under the worst-case situation, 8 percent of the total allowable level of foreign fishing (TALFF) for turbot and 33 percent of the TALFF for the “other rockfish” complex could go unharvested. The major impact on the foreign fleet would be the displacement of trawl vessels, which has to a large extent already occurred under voluntary measures adopted in 1984.

The U.S. Fleet would directly benefit from the elimination of foreign incidental catches within the 20-mile closure zone, which in 1983 represented a potential U.S. harvest estimated at $0.5 million dollars, or a total discounted value over a 5-year period of $2.7 million. In 1984, however, reduced foreign incidental catches, reduced this discounted value to less than $706 thousand for the whole of Area IV.

Two other benefits to the U.S. industry, addressed although not quantified by the RIR/IRFA, are (1) an increase in operating efficiency of U.S. vessels and (2) encouragement of further expansion of domestic fishery efforts in the area. Excluding foreign effort would increase fishing time and operating efficiency of U.S. vessels by decreasing competition and possible gear conflicts. Fish not harvested by foreign trawling operations would remain concentrated, decreasing the amount of unproductive fishing time by U.S. vessels.
2. A reporting system for catch held aboard for 14 days or more is established.

A reporting system is established whereby applicants are required to indicate on their application for a Federal groundfish permit whether their vessels are to be used for (1) harvesting/processing, (2) mothership processing, (3) harvesting only, or (4) support only. If vessel usage fits (1) or (2), vessel operators will be required to check in and out of regulatory areas or districts. Such harvesting/processing vessels and motherships that catch and hold, or receive and hold, groundfish for periods of 14 days or more will be required to submit a weekly catch report to the Regional Director. Vessels that freeze or dry-salt their catches are considered to be in these categories. This requirement directs at those vessels that are expected to remain at sea for periods of time sufficiently long that catch estimates are needed by fishery managers for inseason management decisions.

The objective of this proposal is to ensure that fishery managers receive timely estimates of catch by all domestic vessels so that fishery closure notices can be promptly issued when optimum yields (OYs) are reached. With the rapid recent growth of the domestic fishing fleet, increasing importance is placed on timely reporting of domestic harvests in order to ensure that OYs are not exceeded. Vessels which deliver their catch to shore-based processors land their catch frequently enough to allow timely estimation of total catch under existing regulations. However, vessels which freeze, salt, or otherwise preserve their catch aboard frequently remain at sea for extended periods; these are not currently required to report their catch until the time of landing.

Some 25 catcher/processor vessels could be operating in the Bering Sea and Aleutian Islands Area in 1985. Based on past catcher/processor landing records, the combined hold capacity of these vessels is approximately 13,000 metric tons (mt). Because OYs for some fishing areas are significantly smaller than this, these vessels are capable of harvesting entire OYs or significant portions of them on a single trip. Existing fishing regulations do not require reports of the catch aboard these vessels until landing. In addition, these vessels are not required to notify fishery managers when they begin fishing operations. Since domestic groundfish fishing vessels are not marked for identification by enforcement overflights, the number of catcher/processor vessels actually fishing in a given management area is not known until they land. Without knowledge of effort levels, fishery managers are not able to make projections of catch aboard.

Delayed catch reporting by domestic mothership operations poses similar problems for managers. In these operations, catcher vessels without processing capability deliver their catch, usually by cod-end transfers, to a mothership which processes it. Current regulations at § 675.5 require an Alaska Department of Fish and Game (ADF&G) fish ticket to be filled out each time a catcher vessel lands fish or delivers them to a mothership at sea and also require these fish tickets to be forwarded to ADF&G within 7 days of the date the fish were delivered. To date, domestic mothership operations have all occurred in sheltered waters and at least periodic access to U.S. mail service, so compliance with this requirement has been feasible. However, these mothership operations are expected to occur with greater frequency in the EEZ, where no method of filing the fish tickets with ADF&G is available.

With such large processing capacities and increasing numbers of catcher/processor and mothership vessels, the risks of overharvesting groundfish resources under the current reporting system are high. Because of the delays involved in reporting catches under current regulations, groundfish resources could be significantly overharvested before fishery managers discover that OYs have been exceeded. Since many of the groundfish species concerned are slow growing and long-lived, overharvesting can have considerable impacts on future production.

The Council considered the importance to NMFS of receiving timely catch information on which to make its inseason management decisions and the importance to the fishing industry of obtaining reasonably accurate projections of upcoming fishery closures. The Council then adopted a three-part proposal for the collection of additional information from catcher/processing vessels and motherships. The first part requires the operators of catcher/processors and motherships to so indicate on their applications for Federal fishing permits, showing their capability and intent to preserve their catch at sea. The second part requires them to notify the Regional Director of the date, hour, and position, 24 hours before starting and upon stopping fishing in a fishing area. This requirement enables NMFS to check compliance with fishery openings and closures and weekly catch report requirements, and to verify fishing effort by area. The third part requires each operator of a catcher/processor or mothership to provide the Regional Director a weekly written report of the amounts of groundfish caught or received by species or species group in metric tons by area when holding groundfish at sea for more than 14 days after catching or receiving them.

A definition of "directed fishing" is also proposed. The purpose of this definition is to establish a rebuttable presumption that when any species, stock, or other aggregation of fish comprises 20 percent or more of the catch, take, or harvest that results from any fishing over any period of time, such fishing was directed fishing for such fish during that period.

In addition, NMFS has proposed some minor changes in the information required from applicants for a Federal permit to fish for groundfish in the Bering Sea and Aleutian Islands area, which will allow enforcement officials to better identify groundfish fishing vessels at sea and improve NMFS' enforcement of the groundfish fishery regulations.

These requirements will allow NMFS to make informed and well-reasoned inseason management decisions to adjust fishing areas and seasons and to apportion surplus groundfish among the user groups. This is a conservation measure that is intended to control the harvest by species or species group and prevent overfishing, thereby conveying a long-term benefit to the U.S. fishing industry.

3. The NMFS habitat conservation policy is implemented.

This part of Amendment 9 modifies and adds sections to the FMP to address the habitat requirements of individual species in the Bering Sea and Aleutian Islands Area groundfish fishery. The amendment describes the diverse types of habitat within the area, delineates the life stages of the groundfish species, identifies potential sources of habitat degradation and the potential risk to the groundfish fishery, and describes existing programs applicable to the area that are designed to protect, maintain, or restore the habitat of living marine resources. The amendment responds to NMFS' Habitat Conservation Policy (48 FR 53142, November 25, 1983), which advocates consideration of habitat concerns in developing or amending FMPs and strengthening NMFS' partnerships with States and the Councils on habitat issues.

The habitat policy is not implemented by a codified regulation. It serves as a...
framework within which to develop regulations specific to habitat conservation objectives. One such regulation was adopted by the Council and is proposed along with regulations implementing the other two parts of Amendment 9. It requires vessel operators to retrieve their own fishing gear and to make a reasonable attempt to retrieve any abandoned or discarded fishing gear that they may encounter.

Classification

This proposed rule is published under section 304(a)(1)(C)(ii) of the Magnuson Act, as amended by Pub. L. 97-453, which requires the Secretary of Commerce (Secretary) to publish regulations proposed by a Council within 30 days of receipt of the amendment and regulations. At this time the Secretary has not determined that the amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data and comments received during the comment period. The Council prepared an environmental assessment for this amendment and concluded that there will be no significant impact on the environment as a result of this rule. A copy of the environmental assessment may be obtained from the Council at the address above.

The Administrator of NOAA determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the RIR/IRFA prepared by the Council. A copy of the RIR/IRFA may be obtained from the Council at the address listed above.

This rule, if approved, will have a significant beneficial economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601-612. This determination is also based on the RIR/IRFA. A summary of the RIR/IRFA follows.

Prohibiting foreign trawling within 20 miles of the Aleutian Islands will convey an annual benefit to the U.S. fishing industry in terms of conservation of groundfish stocks off Alaska. This benefit is estimated to be $2.3 million, which is the value of groundfish that otherwise might be lost due to overfishing if timely catch reports are not available.

Incorporation of the NMFS habitat policy into the FMP will highlight the Council's concerns, not only for the fishery resources under management, but also for the marine environment and the quality of the habitat in which these resources live. The policy would also give the Council authority to consider and recommend implementation of regulations designed to protect the integrity of the marine habitat. This rule contains a collection of information requirement subject to the Paperwork Reduction Act (PRA). A request to collect this information has been submitted to the Office of Management and Budget for review under section 3504(h) of the PRA.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of Alaska. This determination has been submitted, for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

List of Subjects

50 CFR Part 611
Fish, Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Part 675
Fisheries, Reporting and recordkeeping requirements.

Carmen J. Blondin,
Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR Parts 611 and 675 are proposed to be amended as follows:

PART 611—FOREIGN FISHING

1. The authority citation for Part 611 continues to read as follows:
   Authority: 16 U.S.C. 1801 et seq., unless otherwise noted.
2. In § 611.93, paragraphs (c)(2)(i) and (c)(2)(ii)(D) are removed; paragraph (c)(2)(ii) is redesignated as paragraph (c)(2); paragraphs (c)(2)(ii)(A), (ii)(B), (ii)(C), and (ii)(E) are redesignated as paragraphs (c)(2)(i), (ii), (iii), and (iv) respectively; within new paragraph (c)(2)(v), subparagraphs (1), (1), and (iii) and (2)(i), (ii), and (iii) are redesignated as subparagraphs (A), (1) and (2)(B), (1), (2), and (3) respectively; and a new paragraph (c)(2)(iv) is added, to read as follows:

§ 611.93 Bering Sea and Aleutian Islands groundfish fishery.
   *
   (1) * * *
   (c)(2) Trawling * * *
   (iv) At all times within the FCZ in the area bounded by straight lines connecting the following coordinates in the order listed:

53°30' N-170°00' W
53°30' N-172°00' W
53°00' N-172°00' W
52°30' N-176°00' W
52°30' N-177°00' E
53°00' N-177°00' E
53°30' N-175°00' E
53°30' N-170°00' E
52°00' N-168°26' E
52°00' N-175°00' E
51°00' N-175°00' E
51°00' N-180°
50°30' N-180°
50°30' N-178°30' W
47°55' N-178°30' W
45°45' N-172°00' W
52°00' N-172°00' W
52°00' N-170°00' W
53°30' N-170°00' W

PART 675—GROUNDFISH FISHERY OF THE BERING SEA AND ALEUTIANS ISLANDS AREA

3. The authority citation for Part 675 continues to read as follows:
   Authority: 16 U.S.C. 1801 et seq.
4. In the table of contents, a new section is added in proper order to read as follows:

Sec. 675.25 Disposal of fishing gear and other articles.

5. In § 675.2, the following definition is added in proper alphabetical order to read as follows:

§ 675.2 Definitions.
   * * *
   Directed fishing, with respect to any species, stock or other aggregation of fish, means fishing that is intended or can reasonably be expected to result in the catching, taking, or harvesting of any significant quantity of such fish. It will be a rebuttable presumption that, when any species, stock or other aggregation of fish comprises 20 percent or more of the catch, take, or harvest that results from any fishing over any period of time.

HeinOnline -- 50 Fed. Reg. 33082 1985
such fishing was directed fishing for such fish during that period.

6. In § 675.4, paragraphs (b) and (d), are revised to read as follows:

§ 675.4 Permits.

(b) Application. The vessel permit required under paragraph (a) of this section may be obtained by submitting to the Regional Director a written application containing the following information:

(1) The vessel owner's name, mailing address, and telephone number;
(2) The name of the vessel;
(3) The vessel's U.S. Coast Guard documentation number or State registration number;
(4) The home port of the vessel;
(5) The type of fishing gear to be used;
(6) The length and net tonnage of the vessel;
(7) The hull color of the vessel;
(8) The names of all operators and/or lessees of the vessel;
(9) Whether the purpose of the vessel is harvesting/processing, mothership/processing, harvesting only, or support only; and
(10) The signature of the applicant.

(d) Notification of change. (1) Except as provided in paragraph (d)(2) of this section, any person who has applied for and received a permit under this section must give written notification of any change in the information provided under paragraph (b) of this section to the Regional Director within 30 days of the date of that change.

(2) A permit issued under this section will authorize either harvesting or support operations, but not both. The notification to the Regional Director under paragraph (d)(1) of this section of a change in the type of operations in which that vessel is to engage must be completed before that vessel begins the new type of operation.

7. In § 675.5, a new paragraph (a)(3) is added to read as follows:

§ 675.5 Reporting requirements.

(a) * * *
(3) Catcher/Processor and Mothership/Processor Vessels. The operator of any fishing vessel regulated under this part who retains any part of its catch of groundfish on board that vessel for a period of more than 14 days from the time it is caught or who receives groundfish at sea from a fishing vessel regulated under this part must, in addition to the requirements of paragraphs (a)(1) and (a)(2) of this section, meet the following requirements:

(i) Twenty-four hours before starting and upon stopping fishing or receiving groundfish in any area, the operator of that vessel must notify the Regional Director of the date and hour in GMT of beginning fishing or receiving groundfish in the new area, and the position of the new activity. The notice must be sent to the Regional Director within 48 hours of shifting.

(ii) When shifting operations to a new area, the operator of that vessel must notify the Regional Director of the date and hour in GMT of beginning fishing or receiving groundfish in the new area, and the position of the new activity. The notice must be sent to the Regional Director within 48 hours of shifting.

(iii) The notices required in paragraphs (a)(3)(i) and (ii) should be sent by private or commercial communications facilities to the U.S. Coast Guard at Juneau, Alaska, who will relay them to the Regional Director. Only if adequate private or commercial communications facilities have not been successfully contacted may the required notices be delivered via the closest Coast Guard communications station.

(iv) After the first catch or receipt of groundfish at sea by that vessel during that period and continuing until that vessel's entire catch or cargo of fish has been off-loaded, the operator of that vessel must submit a weekly catch or receipt report for each weekly period, Sunday through Saturday, GMT, or for each portion of such a period, during which groundfish were caught or received at sea. Catch or receipt reports must be sent to the Regional Director within one week of the end of the reporting period through such means as the Regional Director will prescribe upon issuing that vessel's permit under § 675.4 of this part. These reports must contain the following information:

(A) Name and radio call sign of vessel;

(B) Federal permit number for the Bering Sea and Aleutian Islands groundfish fisheries;

(C) Month and days fished or during which fish were received at sea;

(D) The estimated round weight of all fish caught or received at sea by that vessel during the reporting period by species or species group, rounded to the nearest one-tenth of a metric ton (0.1 mt), when either retained, discarded, or off-loaded;

(E) The area in which each species or species group was caught and;

(F) If any species or species groups were caught in more than one area during a reporting period, the estimated round weight of each, to the nearest 0.1 mt, by area.

A new § 5075.25 is added to read as follows:

§ 675.25 Disposal of fishing gear and other articles.

(a) Intentionally discarded or abandoned gear. No fishing vessel may intentionally discard or abandon fishing gear, net fragments, or other articles which may interfere with fishing activities or cause damage to fishery resources and other marine animals. Exceptions to this rule will be allowed in cases of emergencies involving the safety of the ship and/or crew or when officially authorized to do so.

(b) Encountered abandoned or discarded gear. If abandoned or discarded fishing gear, net fragments, or any other article described in paragraph (a) of this section is encountered, or in the event of accidental or emergency placing of such article into the FCZ, the operator of the vessel must make a reasonable attempt to recover the article or immediately report the incident to the Regional Director giving the

(1) Name of the reporting person and his vessel;

(2) Nature of the article;

(3) Location of the article; and

(4) Time and date of the incident.

[FR Doc. 85-19656 Filed 8-14-85; 9:57 am]
BILLING CODE 3510-22-M

50 CFR Part 650
[ Docket No. 50835-5035]
Atlantic Sea Scallop Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues a proposed rule to implement management measures prescribed in the proposed Amendment 1 (Amendment) to the Fishery Management Plan for the Atlantic Sea Scallop Fishery (FMP). This action (1) establishes a four-ounce standard for Atlantic sea scallops, which becomes the minimum that the ten smallest sea scallops in a one-pint sample must weigh to achieve the maximum average meat count on an annual basis; (2) extends the enforcement of this standard beyond the point of first transaction in the United States; and (3) eliminates the adjustable meal count/shell height standard. The new measure is intended to improve the conservation