



**Billing Code: 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

**[Docket No. 200205-0047]**

**RIN 0648-BJ03**

**Fisheries of the Exclusive Economic Zone Off Alaska; Rockfish Management in the Groundfish Fisheries of the Bering Sea and Aleutian Islands and the Gulf of Alaska**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS revises regulations to implement Amendment 119 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP) and Amendment 107 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP). This final rule requires that the operator of a federally permitted catcher vessel using hook-and-line, pot, or jig gear in the Bering Sea and Aleutian Islands and Gulf of Alaska retain and land all rockfish (*Sebastes* and *Sebastolobus* species) caught while fishing for groundfish or Pacific halibut. This action is necessary to improve identification of rockfish species catch by vessels using electronic monitoring, provide more precise estimates of rockfish catch, reduce waste and incentives to discard rockfish, reduce overall enforcement burden, and promote more consistent management between State and Federal fisheries. This final rule is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and

Management Act, the BSAI FMP, the GOA FMP, and other applicable law.

**DATES:** Effective [*INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER*].

**ADDRESSES:** Electronic copies of Amendment 119 to the BSAI FMP, Amendment 107 to the GOA FMP (collectively Amendments 119/107), the Regulatory Impact Review (RIR; referred to as the Analysis), and the National Environmental Policy Act Categorical Exclusion evaluation document prepared for this action may be obtained from *www.regulations.gov*.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted by mail to NMFS at the above address; and by e-mail to *OIRA\_Submission@omb.eop.gov* or by fax to (202)–395–5806.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton (907) 586-7228.

**SUPPLEMENTARY INFORMATION:**

**Authority for Action**

NMFS manages the groundfish fisheries in the U.S. exclusive economic zone (EEZ) of the Gulf of Alaska (GOA) under the GOA FMP and manages the groundfish fisheries in the EEZ of the Bering Sea and Aleutian Islands (BSAI) under the BSAI FMP. The North Pacific Fishery Management Council (Council) prepared the GOA FMP and BSAI FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* Regulations governing fishing by U.S. vessels in accordance with the FMPs appear at 50 CFR parts 600 and 679.

This final rule implements Amendment 119 to the BSAI FMP and Amendment

107 to the GOA FMP (collectively Amendments 119/107). The Council submitted Amendments 119/107 for review by the Secretary of Commerce, and NMFS published a notice of availability (NOA) for Amendments 119/107 on August 22, 2019 (84 FR 43783). The comment period on the NOA for Amendments 119/107 ended on October 21, 2019. The Secretary of Commerce approved Amendments 119/107 on November 19, 2019 after accounting for information from the public, and determining that Amendments 119/107 are consistent with the FMPs, the Magnuson-Stevens Act, and other applicable law. NMFS published a proposed rule to implement Amendments 119/107 and the regulatory amendments on October 2, 2019 (84 FR 52442). The comment period on the proposed rule ended on November 1, 2019. NMFS received one comment on the proposed Amendments 119/107 and the proposed rule. A summary of this comment and the response by NMFS are provided under the heading “Comments and Responses” below.

In this final rule “rockfish” is defined as any species of the genera *Sebastes* or *Sebastolobus* except *Sebastes ciliates* (dark rockfish) in the BSAI and GOA and *Sebastes melanops* (black rockfish) and *Sebastes mystinus* (blue rockfish) in the GOA (see § 679.2). This final rule also uses the term “prohibited species status” to mean status conferred by a NMFS management action issued under § 679.20(d)(2) that prohibits retention of a species.

The following discussion summarizes rockfish management, the need for this final rule, and the anticipated effects of the final rule. A detailed review of the provisions of Amendments 119/107, the proposed regulations to implement Amendments 119/107, and the rationale for these actions are provided in the Analysis and the preamble to the

proposed rule (84 FR 52442, October 2, 2019).

## **Background**

### *Rockfish Management*

Many rockfish species (*Sebastes* and *Sebastolobus* spp.) are commonly caught incidentally in other fisheries. Except for thornyhead rockfish (*Sebastolobus* spp.), rockfish have a closed swim bladder, which regulates buoyancy. Quick changes in pressure that occur when rockfish are caught and brought to the surface damage internal organs; therefore, rockfish are susceptible to high mortality when brought to the surface from depth. Virtually no rockfish survive when caught without the use of special handling procedures to return the rockfish to depth as soon as possible.

NMFS prohibits directed fishing for most rockfish species at the beginning of the year because the total allowable catch for these species does not support directed fishing. The term “directed fishing” is defined in regulations at § 679.2. When NMFS prohibits directed fishing for a groundfish species, retention of the catch of that species is allowed up to a maximum retainable amount (MRA). The MRA is the proportion or percentage of retained catch of a species prohibited for directed fishing (incidental catch species) to the retained catch of a species open for directed fishing (basis species). Additionally when the total allowable catch for rockfish species or species group is reached, NMFS prohibits retention of that species or species group. As a result, catcher vessels (CVs) using hook-and-line, pot, or jig gear in the BSAI and GOA annually discard a proportion of their incidental catch of rockfish. Because most rockfish do not survive being caught, the discard of rockfish may be considered wasteful, as these fish could otherwise be used for human consumption. A detailed review of rockfish management is provided in Section

2.6 of the Analysis and in the preamble to the proposed rule (84 FR 52442, October 2, 2019).

#### *Need for the Final Rule*

This final rule modifies regulations to require operators of CVs using hook-and-line, pot, or jig gear in groundfish and halibut fisheries of the Federal exclusive economic zone (EEZ) retain and land all rockfish. This requirement is established for multiple reasons, including: 1) improving the identification of rockfish species catch by vessels using electronic monitoring (EM); 2) providing more precise estimates of rockfish catch; 3) reducing waste and incentives to discard rockfish; 4) reducing overall enforcement burden; and 5) promoting more consistent management between State of Alaska (State) and Federal fisheries. Each of these reasons are summarized below. A detailed review of each of these reasons is provided in the Analysis and in the preamble to the proposed rule (84 FR 52442, October 2, 2019).

This final rule could improve the identification of rockfish species by vessels using EM. EM studies focused on the accuracy of species identification have shown that in most cases it is possible to identify fish to the species or species group required for management. However, some rockfish species are difficult to identify and continue to be challenging for EM to identify. These rockfish species include shortraker rockfish (*Sebastes borealis*), rougheye rockfish (*Sebastes aleutianus*), blackspotted rockfish (*Sebastes melanostictus*), and various other rockfish species that are less commonly caught. This final rule could improve the identification of rockfish species by requiring all catch to be retained and landed where it could be verified, thereby reducing potential errors in EM identification of catch composition.

This final rule could provide more precise estimates of rockfish catch. Most rockfish species have specialized habitat needs, which means they are more sparsely distributed than most other groundfish species. As a result, at-sea discard rates can be variable, which results in less precise estimates of total rockfish removals (see Section 2.7.1.3 of the Analysis). Requiring full retention of all rockfish caught by CVs using hook-and-line, pot, or jig gear would allow the total catch of rockfish to be sorted, weighed, and reported via eLandings instead of extrapolated from at-sea discard rates. Therefore, this final rule would likely result in much better information on the incidental catch of rockfish by CVs using hook-and-line, pot, or jig gear.

This final rule could reduce waste and incentives to discard. Since the majority of rockfish do not survive being caught, discards of rockfish increases waste. Many factors affect why a vessel operator discards rockfish. The most common reason for discards, inferred by available data, is regulatory discard, which occurs when an MRA is exceeded during a fishing trip or if a rockfish species is on prohibited species status (see Section 2.7.1.4 of the Analysis). Removing the MRA regulations and requirements to discard when a rockfish species is on prohibited species status associated with rockfish caught by CVs using hook-and-line, pot, or jig gear and, instead, requiring full retention could reduce waste.

This final rule could reduce overall enforcement burden. This final rule would no longer require CVs using hook-and-line, pot, or jig gear to comply with MRA regulations for rockfish. This would likely reduce the number of enforcement cases associated with rockfish MRA violations, and therefore, allow the NMFS Office of Law Enforcement (NMFS OLE) to pursue other priorities. Overall, this final rule simplifies current

regulations and promotes more consistency in the regulations. This alone is likely to increase compliance and reduce enforcement burden (see Section 2.7.2.11 of the Analysis).

This final rule could promote more consistent management between State and Federal fisheries. Rockfish retention requirements for CVs using hook-and-line, pot, or jig gear differ between fisheries in Federal waters and State waters. Vessel operators that fish in both Federal waters and State waters are subject to two different sets of regulations concerning management of rockfish incidental catch. Sections 2.6.4 and 2.7.2.5 of the Analysis illustrate the complexity of rockfish retention requirements. The State already has full retention requirements for all rockfish in some areas, which include parts of the Eastern GOA, Prince William Sound, and Cook Inlet. This final rule would establish Federal regulations that are very similar, although not identical, to existing State regulations on management of rockfish incidental catch in these management areas. Federal and State management inconsistencies may be eliminated if the State mirrors Federal full retention requirements in all areas.

### **Summary of Amendments 119/107**

This final rule will require full retention of all rockfish caught by CVs using hook-and-line, pot, or jig gear targeting groundfish and halibut in the GOA and BSAI. The rationale for requiring full retention is provided in the preamble to the proposed rule (84 FR 52442, October 2, 2019), and is summarized in the previous section of this preamble.

### **Elements of This Final Rule**

This section describes the changes to current regulations. This final rule

implements two management measures that revise the regulations at 50 CFR part 679: 1) requiring full retention and landing of rockfish by CVs using hook-and-line, pot, or jig gear; and 2) limiting the amount of rockfish that can enter commerce.

*Measure 1: Require retention of rockfish*

This final rule revises regulations to require retention and delivery of all rockfish caught by CVs using hook-and-line, pot, and jig gear in the BSAI and GOA.

Additionally, this final rule requires full retention of rockfish by CVs using hook-and-line, pot, or jig gear, even if the rockfish species is prohibited for directed fishing or on prohibited species status (as defined in § 679.20(d)(2)). When on prohibited species status, all retained rockfish would be prohibited from entering commerce, except as fish meal.

*Measure 2: Limit amount of rockfish that can enter commerce*

This final rule also establishes a means to limit the amount of rockfish caught as incidental catch that can enter commerce through barter, sale, or trade through the implementation of a maximum commerce allowance (MCA). The Council determined, and NMFS agrees, that an MCA of 15 percent balances the need to incentivize vessel operators to retain all rockfish without encouraging increased rates of rockfish incidental catch under the full retention requirement. The 15 percent MCA for rockfish will be applied as a percentage of the total retained groundfish and halibut landed during each delivery to limit the amount of rockfish allowed to enter commerce. Section 2.7.2.4 of the Analysis and the preamble to the proposed rule (84 FR 52442, October 2, 2019) provides further explanation as to why the Council recommended and NMFS is implementing an overall MCA of 15 percent.

Yelloweye rockfish has a value that is two to three times more than other rockfish species. Due to concerns that vessel operators could change their fishing behavior to target yelloweye rockfish up to the 15 percent MCA, this final rule establishes a separate limit for yelloweye rockfish of 5 percent MCA in all areas, except the Southeast Outside District of the GOA (SEO) defined in Figure 3 of part 679. This limit would be established within the 15 percent overall MCA for all rockfish species. This more restrictive MCA for yelloweye rockfish, within the overall 15 percent MCA for all other rockfish, is intended to limit the incentive for vessel operators to target yelloweye rockfish. Section 2.7.2.4.1 of the Analysis and the preamble to the proposed rule (84 FR 52442, October 2, 2019) discuss the rationale for the yelloweye rockfish MCA in detail.

The selection of the appropriate MCA percentage has some trade-offs. Low MCA percentages prioritize the avoidance of rockfish while fishing but increase the number of trips that may have retained rockfish that cannot be sold. This could affect a vessel operator's compliance with full rockfish retention. Higher MCA percentages could result in more retention compliance. However, higher MCA percentages could also result in increased rockfish catch as vessel operators could seek areas with higher rockfish incidental catch, or change fishing behavior to engage in top-off fishing. "Top-off fishing" occurs when a vessel operator deliberately targets a valuable species that is closed to directed fishing in an attempt to reach the full MRA of that species.

The Council and NMFS considered a range of MCA percentages, and this final rule sets an MCA of 15 percent (including a 5 percent MCA for yelloweye rockfish, as described above). This percentage balances the concern that an MCA that is too restrictive could increase effects on vessels and processors and create incentives to

discard rockfish, with the concern that a less restrictive MCA could incentivize vessel operators to engage in top-off fishing for rockfish species and increase rockfish incidental catch. Section 2.7.2.4 of the Analysis demonstrates that a 15 percent MCA would allow vessel operators to sell all rockfish caught for 84 to 89 percent of the trips that were analyzed. The 15 percent MCA should limit financial incentives for vessel operators to catch more rockfish (Section 2.7.2.4 of the Analysis). For the remaining 11 to 16 percent of the trips that were analyzed, vessel operators would be able to sell most rockfish that were caught. Amounts in excess of the MCA would not be allowed to enter commerce, except as fish meal.

Fish meal is considered a processed fish product that enters commerce. The Council recommended allowing rockfish in excess of the selected MCA to be processed into fish meal to address concerns raised by processors in communities such as Kodiak, Alaska. Vessel operators delivering fish to Kodiak and similar Alaska communities have limited options for discarding fish delivered to a processor that cannot process retained rockfish or other species for human consumption. Allowing rockfish in excess of the MCA to be processed into fish meal is unlikely to provide any financial incentives to target rockfish, due to the low value of fish meal. Section 2.7.2.2 of the Analysis discusses the impacts of allowing rockfish to be processed into fish meal in more detail.

This final rule requires full retention of rockfish even if NMFS places a rockfish species on prohibited species status, which would prevent any retention of incidental catch under current regulations. When NMFS places a rockfish species on prohibited species status, the MCA for that rockfish species would be zero percent. This is discussed in detail in Section 2.7.2.6 of the Analysis. NMFS's OLE expressed concern that there

could be compliance issues if the Council did not recommend full retention when a rockfish species is on prohibited species status, as varying obligations to retain rockfish could generate confusion and create potential loopholes that would affect the ability to enforce the management measures implemented by this rule. Generally, prohibiting retention removes financial incentives for vessel operators to continue to harvest a species. Under this action, when a rockfish species is placed on prohibited species status NMFS will set the MCA to zero percent to remove financial incentives to harvest more rockfish than the true incidental catch. Setting the MCA to zero percent for rockfish species on prohibited species status may also result in CVs using hook-and-line, pot, or jig gear avoiding areas that have high incidental catch rates of those species.

Amounts of rockfish that are retained in excess of the MCA could not be sold. However, this surplus rockfish could be used by vessel crew, donated, processed into fish meal, or discarded by processing plant personnel. The Council and NMFS anticipate that most rockfish landed are likely to be processed; however, the decision to purchase, process, or discard rockfish is at the discretion of each individual processor. The Council and NMFS anticipate that most rockfish caught in excess of the MCA will be used in some way through personal use or charitable donations, thereby reducing waste and increasing the use of incidentally caught rockfish. Providing options such as retaining rockfish for personal use or donating it to charitable organizations would give vessel operators who dislike discarding dead fish an incentive to comply with the regulations associated with full retention of rockfish.

During the February 2019 Council meeting, public comments identified a concern about the potential for increased retention of yelloweye rockfish (*Sebastes ruberrimus*)

due to its relatively high value compared to other rockfish species. As noted above, yelloweye rockfish has a value that is two to three times greater than other rockfish species. As a result, vessel operators could potentially change their fishing behavior to target yelloweye rockfish up to the 15 percent MCA. Section 2.7.2.4.1 of the Analysis provides additional detail on yelloweye rockfish value and retention rates. Due to these concerns, this final rule establishes a separate limit for yelloweye rockfish of 5 percent MCA in all areas, except the SEO defined in Figure 3 of part 679. This limit would be established within the 15 percent overall MCA for all rockfish species. This more restrictive MCA for yelloweye rockfish, within the overall 15 percent MCA, is intended to limit the incentive for vessel operators to target yelloweye rockfish. To aid the reader in understanding this provision, we provide the following example of how an MCA would be calculated and applied:

A vessel operator retains all rockfish during an individual fishing quota (IFQ) halibut trip and delivers 1,000 pounds of halibut and 200 pounds of various rockfish species, of which 50 pounds is yelloweye rockfish. The MCA for rockfish is 150 pounds ( $1,000 * 0.15$ ). The MCA for yelloweye rockfish is 50 pounds ( $1,000 * 0.05$ ). The vessel operator could sell all yelloweye rockfish and 100 pounds of other rockfish species. Fifty pounds of rockfish could not enter commerce but could be donated, used by vessel crew, or processed into fish meal.

To assist in resolving inconsistencies in management between State and Federal fisheries in the SEO, the Council recommended that current full retention requirements for demersal shelf rockfish (DSR) in the SEO remain unchanged. In the SEO (one of seven areas in the GOA), vessel operators would be required to retain all rockfish;

however, the MCA would be different in the SEO from other areas of the GOA. The MCA for DSR species in the SEO would be limited to 10 percent of the aggregate round weight of retained IFQ halibut and groundfish, excluding sablefish, and one percent of the aggregate round weight of retained sablefish. This is necessary to avoid inconsistency in management between Federal and State fisheries as discussed in Sections 2.6.5 and 2.6.6 of the Analysis.

#### *Regulatory Changes Made by the Final Rule*

The following provides a brief summary of the regulatory changes implemented through this final rule. This final rule will—

- Revise § 679.5(c)(3)(iv)(A)(3) to clarify that CVs using hook-and-line, pot, or jig gear are not required to record MRAs for rockfish because MRAs do not apply in full retention requirements.
- Add § 679.7(a)(5) to prohibit discard of rockfish from CVs using hook-and-line, pot, or jig gear.
- Revise § 679.7(f)(8) to clarify that rockfish are not required to be discarded.
- Revise § 679.20(d)(1)(iii)(B) to clarify that rockfish are not required to be discarded when rockfish are closed to directed fishing.
- Revise § 679.20(d)(2) to clarify that rockfish are still required to be retained by CVs using hook-and-line, pot, or jig gear, even if a species is on prohibited species status.
- Revise § 679.20(j) to include the full retention requirement, description of the MCA, and requirements for disposal of rockfish in excess of the MCA.

- Revise Table 10 and Table 11 to 50 CFR part 679 by adding a footnote to the rockfish column referencing § 679.20(j).

### **Comments and Responses**

NMFS received one comment letter on the proposed rule. NMFS summarizes and responds to this comment below.

*Comment 1:* This rule will increase the burden on enforcement and gut protections for rockfish.

*Response:* NMFS disagrees. Section 2.7.2.11 of the Analysis identifies several benefits that could reduce the burden on enforcement. This final rule simplifies current regulations and promotes more consistency in the regulations. This alone is likely to increase compliance and reduce enforcement burden.

Full retention with a limit on the amount that can enter commerce has been in place for DSR in the SEO of the GOA since 2005. This final rule expands those requirements to all areas and for all species of rockfish caught by CVs using hook-and-line, pot and jig gear. NMFS OLE's experience enforcing these regulations was analyzed, and the analysis determined that the enforcement burden is less under full retention with an MCA limit, as compared with the MRA regulations currently in place.

This final rule will not affect the status of a rockfish stock in the BSAI or GOA. The acceptable biological catch and TAC for rockfish species will continue to be established through the annual harvest specifications process. This final rule will not change the processes by which NMFS manages the catch of a rockfish species to stay within its TAC, and is not expected to increase the overall catch and mortality of rockfish relative to current management practices.

## **Changes from Proposed to Final Rule**

NMFS has made a minor change to the regulatory text at § 679.20(j)(2) to clarify that, unless a rockfish species is on prohibited species status, the MCA of 15 percent will apply throughout the BSAI and GOA apart from the SEO. This change is intended only to emphasize that the MCA provisions at § 679.20(j)(2) except as described in either § 679.20(j)(3), which applies to the SEO, or § 679.20(j)(4), which applies when a rockfish species is on prohibited species status. This minor change is consistent with the description in the preamble to the proposed rule, which stated that full retention requirements in the SEO area will remain the same to ensure consistency between State and Federal management.

In addition, NMFS made a minor change to the regulatory text at § 679.7(a)(5)(i) and § 679.20(j)(1) to clarify that this final rule applies to catcher vessels fishing for groundfish or IFQ or CDQ halibut using hook-and-line, jig, or pot gear in either the BSAI or GOA, as opposed to vessels fishing in both the BSAI and GOA.

## **Classification**

Pursuant to Sections 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with Amendments 119/107, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration of comments received during the public comment period.

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

This final rule is not an Executive Order 13771 regulatory action because this action is

not significant under Executive Order 12866.

*Regulatory Impact Review (RIR)*

An RIR (Analysis) was prepared to assess all costs and benefits of available regulatory alternatives. A copy of this Analysis is available from NMFS (see **ADDRESSES**). NMFS is recommending Amendments 119/107 and the regulatory revisions in this final rule based on those measures that maximized net benefits to the Nation. Specific aspects of the economic analysis are discussed below in the Final Regulatory Flexibility Analysis section.

*Small Entity Compliance Guide*

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. The preambles to the proposed rule and this final rule include a detailed description of the actions necessary to comply with this rule. As part of this rulemaking process, NMFS included on its website a summary of compliance requirements that serves as the small entity compliance guide: <https://www.fisheries.noaa.gov/action/amendment-119-fmp-groundfish-bering-sea-and-aleutian-islands-and-amendment-107-fmp>. This rule does not require any additional compliance from small entities that is not described in the preambles. Copies of this final rule are available from NMFS at the following website:

<https://www.fisheries.noaa.gov/region/alaska>.

*Final Regulatory Flexibility Analysis (FRFA)*

This final regulatory flexibility analysis (FRFA) incorporates the Initial Regulatory Flexibility Analysis (IRFA), and, as included in the preambles to the proposed rule and this final rule, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS's responses to those comments, and a summary of the analyses completed to support the final rule.

Section 604 of the Regulatory Flexibility Act (RFA) requires that, when an agency promulgates a final rule under section 553 of Title 5 of the U.S. Code (5 U.S.C. 553), after being required by that section or any other law to publish a general notice of proposed rulemaking, the agency shall prepare a FRFA (5 U.S.C. 604). Section 604 describes the required contents of a FRFA: 1) a statement of the need for and objectives of the rule; 2) a statement of the significant issues raised by the public comments in response to the IRFA, a statement of the assessment of the agency of such issues, and a statement of any changes made to the proposed rule as a result of such comments; 3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments; 4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available; 5) a description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and 6) a description of the steps the agency has taken to minimize the significant

economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in this final rule, and why each one of the other significant alternatives to the action considered by the agency that affect the impact on small entities was rejected.

A description of this final rule and the need for and objectives of this rule are contained in the preambles to this final rule and the proposed rule (84 FR 52442, October 2, 2019) and are not repeated here.

*Public and Chief Counsel for Advocacy Comments on the IRFA*

An IRFA was prepared and included in the Classification section of the preamble to the proposed rule. The Chief Counsel for Advocacy of the SBA did not file any comments on the proposed rule (84 FR 52442, October 2, 2019). NMFS received no comments specifically on the IRFA.

*Number and Description of Small Entities Regulated by this Final Rule*

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide.

*Number and Description of Small Entities Directly Regulated by this Final Action*

The thresholds applied to determine if an entity or group of entities are “small” under the RFA depend on the industry classification for the entity or entities. NMFS

estimates that 169 CVs were active using hook-and-line, pot, or jig gear in the BSAI, and 949 CVs were active using hook-and-line, pot, or jig gear in the GOA. Of these CVs, 136 in the BSAI and 932 in the GOA are considered small entities. Therefore, NMFS estimates a total of 1,068 small entities could be directly regulated by this final rule.

*Description of Significant Alternatives that Minimize Adverse Impacts on Small Entities*

Several aspects of this rule directly regulate small entities. Small entities would be required to comply with the requirements to retain rockfish. A full retention requirement for CVs using hook-and-line, pot, or jig gear could have operational implications for vessel operators. Since a CV using hook-and-line, pot, or jig gear would be required to retain all incidental catch of rockfish, this could reduce the CV's hold space, thereby displacing more valuable target species. Because this action would allow most of a CV's rockfish catch to enter commerce, the cost of requiring retention is estimated to be largely offset by the value of the rockfish. Therefore, the costs are expected to be minimal.

Section 2.7.2 of the Analysis describes the expected effects of requiring rockfish retention. The Council and NMFS determined that the benefits of the revised regulations outweigh the costs of these additional requirements on the existing fleet. This final rule would meet the objectives of the action while minimizing adverse impacts on fishery participants.

This final rule requires full retention of all rockfish species by CVs using hook-and-line, pot, or jig gear in the BSAI and GOA. The management measures include full retention of rockfish even if the species is on prohibited species status, but in that situation retained rockfish would be prohibited from entering commerce (i.e., prohibited from being sold). Most of the analysis of expected effects focuses on hook-and-line gear,

due to the amount of rockfish incidental catch encountered by hook-and-line gear compared to pot and jig gears. Section 2.7.2.1 of the Analysis indicates that the impact of requiring CVs using pot or jig gear to retain and land all rockfish catch would likely be minimal in relation to CVs using hook-and-line gear.

There are no significant alternatives to this final rule that would accomplish the objectives of requiring full retention of all rockfish species by CVs using hook-and-line, pot, or jig gear in the BSAI and GOA.

#### *Recordkeeping, Reporting, and Other Compliance Requirements*

This final rule contains no new recordkeeping or recording requirements. Landed fish must be reported under existing Federal and State regulations. A more detailed explanation of current recordkeeping and reporting requirements for CVs using hook-and-line, pot, or jig gear can be found at § 679.5. Therefore, this final rule meets the objectives of the action without changing the reporting burden for fishery participants.

#### *Federal Rules that May Duplicate, Overlapping, or Conflict with this Final Action*

No duplication, overlap, or conflict between this final action and existing Federal rules has been identified.

#### *Collection-of-Information Requirements*

This action does not contain a collection-of-information requirement.

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

Alaska, Fisheries, Reporting and recordkeeping requirements

Dated: February 5, 2020.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 679 is 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.*; 3631 *et seq.*; Pub. L. 108–447;

Pub. L. 111-281.

2. In § 679.5, revise paragraph (c)(3)(iv)(A)(3) to read as follows:

**§ 679.5 Recordkeeping and reporting (R&R).**

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(iv) \* \* \*

(A) \* \* \*

(3) *Retain and record discard quantities over the MRA.* When a CV is fishing in an IFQ fishery and the fishery for Pacific cod is closed to directed fishing but not in PSC status in that reporting area as described in § 679.20, the operator must retain and record up to and including the maximum retainable amount (MRA) for Pacific cod as defined in

Tables 10 or 11 to this part. Quantities over this amount must be discarded and recorded as discard in the logbook.

\* \* \* \* \*

3. In § 679.7, add paragraph (a)(5), and remove and reserve paragraphs (f)(8)(i)(A) and (f)(8)(ii)(A) to read as follows:

**§ 679.7 Prohibitions.**

\* \* \* \* \*

(a) \* \* \*

(5) *Rockfish by catcher vessels using hook-and-line, jig, or pot gear.*

(i) For any person, to discard rockfish from a catcher vessel required to have a Federal fisheries permit that is fishing for groundfish or IFQ or CDQ halibut using hook-and-line, jig, or pot gear in the BSAI or GOA until that fish has been landed.

(ii) Exceed the maximum commerce allowance amount established under §679.20(j).

\* \* \* \* \*

(f) \* \* \*

(8) \* \* \*

(i) \* \* \*

(A) [Reserved]

\* \* \* \* \*

(ii) \* \* \*

(A) [Reserved]

\* \* \* \* \*

4. In § 679.20, revise paragraphs (d)(1)(iii)(B), (d)(2), and (j) to read as follows:

**§ 679.20 General limitations.**

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(iii) \* \* \*

(B) *Retention of incidental species.* Except as described in § 679.20(e)(3)(iii) and § 679.20(j), if directed fishing for a target species or species group is prohibited, a vessel may not retain that incidental species in an amount that exceeds the maximum retainable amount, as calculated under paragraphs (e) and (f) of this section, at any time during a fishing trip.

\* \* \* \* \*

(2) *Groundfish as prohibited species closure.* When the Regional Administrator determines that the TAC of any target species specified under paragraph (c) of this section, or the share of any TAC assigned to any type of gear, has been or will be achieved prior to the end of a year, NMFS will publish notification in the **Federal Register** requiring that target species be treated in the same manner as a prohibited species, as described under § 679.21(a), for the remainder of the year, except rockfish species caught by catcher vessels using hook-and-line, pot, or jig gear as described in § 679.20(j)

\* \* \* \* \*

(j) *Full retention of rockfish by catcher vessels using hook-and-line, pot, or jig*

*gear— (1) Retention and landing requirements.* The operator of a catcher vessel that is required to have a Federal fisheries permit using hook-and-line, pot, or jig gear, must retain and land all rockfish that is caught while fishing for groundfish or IFQ or CDQ halibut in the BSAI or GOA.

*(2) Maximum commerce allowance (MCA) for rockfish in the BSAI and GOA.*

Except as described in §§ 679.20(j)(3) and (4), when rockfish is closed to directed fishing, the operator of a catcher vessel that is required to have a Federal fisheries permit under § 679.4(b), or the manager of a shoreside processor that is required to have a Federal processor permit under § 679.4(f), must dispose of rockfish retained and landed in accordance with paragraph (j)(1) of this section as follows:

(i) A person may sell, barter, or trade a round weight equivalent amount of rockfish that is less than or equal to 15 percent of the aggregate round weight equivalent of IFQ halibut and groundfish species, other than rockfish, that are landed during the same fishing trip.

(ii) A person may sell, barter, or trade a round weight equivalent amount of yelloweye rockfish that is less than or equal to 5 percent of the aggregate round weight equivalent of IFQ halibut and groundfish species, other than rockfish, that are landed during the same fishing trip. The aggregate amount of all rockfish species sold, bartered, or traded cannot exceed the MCA established under paragraph (j)(2)(i) of this section.

(iii) Amounts of rockfish retained by catcher vessels under paragraphs (j)(2)(i) and (ii) of this section that are in excess of the limits specified in paragraphs (j)(2)(i) and (ii) of this section may be put to any use, including but not limited to personal consumption or donation, but must not enter commerce through sale, barter, or trade

except as fish meal.

(3) *MCA of DSR in Southeast Outside District of the GOA (SEO) when closed to directed fishing.* When DSR is closed to directed fishing in the SEO, the operator of a catcher vessel that is required to have a Federal fisheries permit under § 679.4(b), or the manager of a shoreside processor that is required to have a Federal processor permit under § 679.4(f), must dispose of DSR retained and landed in accordance with paragraph (j)(1) of this section as follows:

(i) A person may sell, barter, or trade a round weight equivalent amount of DSR that is less than or equal to 10 percent of the aggregate round weight equivalent of IFQ halibut and groundfish species, other than sablefish, that are landed during the same fishing trip. The aggregate amount of all rockfish species sold, bartered, or traded cannot exceed the MCA established under paragraph (j)(2)(i) of this section.

(ii) A person may sell, barter, or trade a round weight equivalent amount of DSR that is less than or equal to 1 percent of the aggregate round weight equivalent of IFQ sablefish that are landed during the same fishing trip. The aggregate amount of all rockfish species sold, bartered, or traded cannot exceed the MCA established under paragraph (j)(2)(i) of this section.

(iii) Amounts of DSR retained by catcher vessels under paragraph (j)(1) of this section that are in excess of the limits specified in paragraphs (j)(3)(i) and (ii) of this section may be put to any use, including but not limited to personal consumption or donation, but must not enter commerce through sale, barter, or trade except as fish meal.

(4) *MCA for rockfish when on prohibited species status.* When a rockfish species is placed on prohibited species status under § 679.20(d)(2), the MCA is set to 0 percent

and no amount of that rockfish species may enter commerce through sale, barter, or trade except as fish meal. The operator of a catcher vessel that is required to have a Federal fisheries permit under § 679.4(b), or the manager of a shoreside processor that is required to have a Federal processor permit under § 679.4(f), may put rockfish retained and landed in excess of the MCA specified in this paragraph to any use, including but not limited to personal consumption or donation, but such rockfish must not enter commerce through sale, barter, or trade except as fish meal.

5. Revise Table 10 to part 679 to read as follows:

**Table 10 to Part 679—Gulf of Alaska Retainable Percentages**

BASIS SPECIES		INCIDENTAL CATCH SPECIES (for DSR caught on catcher vessels in the SEO, see § 679.20 (j) <sup>6</sup> )																
Code	Species	Pollock	Pacific cod	DW Flat <sup>(2)</sup>	Rex sole	Flathead sole	SW Flat <sup>(3)</sup>	Arrow-tooth	Sablefish	Aggregated rockfish <sup>(7)</sup>	SR/RE ERA <sup>(1)</sup>	DSR SEO (C/Ps only) <sup>(5)</sup>	Atka mackerel	Aggregated forage fish <sup>(9)</sup>	Skates <sup>(10)</sup>	Other species <sup>(6)</sup>	Grenadiers <sup>(12)</sup>	Squids
110	Pacific cod	20	n/a <sup>(9)</sup>	20	20	20	20	35	1	5	<sup>(1)</sup>	10	20	2	5	20	8	20
121	Arrowtooth	5	5	20	20	20	20	n/a	1	5	0	0	20	2	5	20	8	20
122	Flathead sole	20	20	20	20	n/a	20	35	7	15	7	1	20	2	5	20	8	20
125	Rex sole	20	20	20	n/a	20	20	35	7	15	7	1	20	2	5	20	8	20
136	Northern rockfish	20	20	20	20	20	20	35	7	15	7	1	20	2	5	20	8	20
141	Pacific ocean perch	20	20	20	20	20	20	35	7	15	7	1	20	2	5	20	8	20
143	Thornyhead	20	20	20	20	20	20	35	7	15	7	1	20	2	5	20	8	20
152/ 151	Shortraker/ rougheye <sup>(1)</sup>	20	20	20	20	20	20	35	7	15	n/a	1	20	2	5	20	8	20
193	Atka mackerel	20	20	20	20	20	20	35	1	5	<sup>(1)</sup>	10	n/a	2	5	20	8	20
270	Pollock	n/a	20	20	20	20	20	35	1	5	<sup>(1)</sup>	10	20	2	5	20	8	20
710	Sablefish	20	20	20	20	20	20	35	n/a	15	7	1	20	2	5	20	8	20
	Flatfish, deep-water <sup>(2)</sup>	20	20	n/a	20	20	20	35	7	15	7	1	20	2	5	20	8	20
	Flatfish, shallow-water <sup>(3)</sup>	20	20	20	20	20	n/a	35	1	5	<sup>(1)</sup>	10	20	2	5	20	8	20
	Rockfish, other <sup>(4)</sup>	20	20	20	20	20	20	35	7	15	7	1	20	2	5	20	8	20
172	Dusky rockfish	20	20	20	20	20	20	35	7	15	7	1	20	2	5	20	8	20
	Rockfish, DSR-SEO <sup>(5)</sup>	20	20	20	20	20	20	35	7	15	7	n/a	20	2	5	20	8	20
	Skates <sup>(10)</sup>	20	20	20	20	20	20	35	1	5	<sup>(1)</sup>	10	20	2	n/a	20	8	20
	Other species <sup>(6)</sup>	20	20	20	20	20	20	35	1	5	<sup>(1)</sup>	10	20	2	5	n/a	8	20
	Aggregated amount of non-groundfish species <sup>(11)</sup>	20	20	20	20	20	20	35	1	5	<sup>(1)</sup>	10	20	2	5	20	8	20

Notes to Table 10 to Part 679

1	Shortraker/rougheye rockfish			
	SR/RE	<i>Sebastes borealis</i> (shortraker) (152)		
		<i>S. aleutianus</i> (rougheye) (151)		
	SR/RE ERA	Shortraker/rougheye rockfish in the Eastern Regulatory Area (ERA).		
Where an MRA is not indicated, use the MRA for SR/RE included under Aggregated Rockfish				
Catcher vessels using hook-and-line, pot, or jig gear are required to retain all rockfish. See § 679.20(j).				
2	Deep-water flatfish	Dover sole (124), Greenland turbot (134), Kamchatka flounder (117), and deep-sea sole		
3	Shallow-water flatfish	Flatfish not including deep-water flatfish, flathead sole (122), rex sole (125), or arrowtooth flounder (121)		
4	Other rockfish	Western Regulatory Area	means other rockfish and demersal shelf rockfish	
		Central Regulatory Area		
		West Yakutat District		
		Southeast Outside District	means other rockfish	
	Other rockfish			
		<i>S. aurora</i> (aurora) (185)	<i>S. variegates</i> (harlequin)(176)	<i>S. brevispinis</i> (silvergrey)(157)
		<i>S. melanostomus</i> (blackgill)(177)	<i>S. wilsoni</i> (pygmy)(179)	<i>S. diploproa</i> (splitnose)(182)
		<i>S. paucispinis</i> (bocaccio)(137)	<i>S. babcocki</i> (redbanded)(153)	<i>S. saxicola</i> (stripetail)(183)
		<i>S. goodei</i> (chilipepper)(178)	<i>S. proriger</i> (redstripe)(158)	<i>S. miniatus</i> (vermilion)(184)
		<i>S. crameri</i> (darkblotch)(159)	<i>S. zacentrus</i> (sharpchin)(166)	<i>S. reedi</i> (yellowmouth)(175)
	<i>S. elongatus</i> (greenstriped)(135)	<i>S. jordani</i> (shortbelly)(181)		
	<i>S. entomelas</i> (widow)(156)	<i>S. flavidus</i> (yellowtail)(155)		
In the Eastern Regulatory Area only, Other rockfish also includes <i>S. polyspinis</i> (northern)(136)				
5	Demersal shelf rockfish (DSR)	<i>S. pinniger</i> (canary)(146)	<i>S. maliger</i> (quillback)(147)	<i>S. ruberrimus</i> (yelloweye)(145)
		<i>S. nebulosus</i> (china)(149)	<i>S. helvomaculatus</i> (rosethorn)(150)	
		<i>S. caurinus</i> (copper)(138)	<i>S. nigrocinctus</i> (tiger)(148)	
	DSR-SEO = Demersal shelf rockfish in the Southeast Outside District (SEO). Catcher vessels in the SEO have full retention of DSR (see § 679.20(j)).			
6	Other species	Sculpins (160)	Octopuses (870)	Sharks (689)
7	Aggregated rockfish	Aggregated rockfish (see § 679.2) means any species of the genera <i>Sebastes</i> or <i>Sebastolobus</i> except <i>Sebastes ciliates</i> (dark rockfish), <i>Sebastes melanops</i> (black rockfish), and <i>Sebastes mystinus</i> (blue rockfish), except in:		
		Southeast Outside District	where DSR is a separate species group for those species marked with an MRA	

		Eastern Regulatory Area	where SR/RE is a separate species group for those species marked with an MRA
		Catcher vessels using hook-and-line, pot, or jig gear are required to retain all rockfish. See § 679.20(j).	
8	n/a	Not applicable	
9	Aggregated forage fish (all species of the following taxa)	Bristlemouths, lightfishes, and anglemouths (family <i>Gonostomatidae</i> )	
		209	
		Capelin smelt (family <i>Osmeridae</i> )	
		516	
		Deep-sea smelts (family <i>Bathylagidae</i> )	
		773	
		Eulachon smelt (family <i>Osmeridae</i> )	
		511	
		Gunnels (family <i>Pholidae</i> )	
		207	
		Krill (order <i>Euphausiacea</i> )	
800			
Laternfishes (family <i>Myctophidae</i> )			
772			
Pacific Sand fish (family <i>Trichodontidae</i> )			
206			
Pacific Sand lance (family <i>Ammodytidae</i> )			
774			
Pricklebacks, war-bonnets, eelblennys, cockscombs and shannys (family <i>Stichaeidae</i> )			
208			
Surf smelt (family <i>Osmeridae</i> )			
515			
10	Skates Species and Groups	Alaska ( <i>Bathyraja. Parmifera</i> )	
		703	
		Aleutian ( <i>B. aleutica</i> )	
		704	
		Whiteblotched ( <i>Raja binoculata</i> )	
		705	
Big Skates ( <i>Raja binoculata</i> )			
702			
Longnose Skates ( <i>R. rhina</i> )			
701			
Other Skates ( <i>Rathyraja</i> and <i>Raja</i> spp.)			
700			
11	Aggregated non-groundfish	All legally retained species of fish and shellfish, including IFQ halibut, that are not listed as FMP groundfish in Tables 2a and 2c to this part.	
12	Grenadiers	Giant grenadiers ( <i>Albatrossia pectoralis</i> )	
		214	
		Other grenadiers (all grenadiers that are not Giant grenadiers)	
		213	

6. Revise Table 11 to part 679 to read as follows:

**Table 11 to Part 679—BSAI Retainable Percentages**

BASIS SPECIES		INCIDENTAL CATCH SPECIES																	
Code	Species	Pollock	Pacific cod	Atka mackerel	Alaska plaice	Arrowtooth	Kamchatka	Yellow fin sole	Other flatfish <sup>2</sup>	Rock sole	Flat head sole	Greenland turbot	Sablefish <sup>1</sup>	Short-raker/rougheye <sup>9</sup>	Aggregated rockfish <sup>6</sup>	Squids <sup>7</sup>	Aggregated forage fish <sup>7</sup>	Other species <sup>4</sup>	Grenadiers <sup>(7)</sup>
110	Pacific cod	20	na <sup>5</sup>	20	20	35	35	20	20	20	20	1	1	2	5	20	2	20	8
121	Arrowtooth	20	20	20	20	na	20	20	20	20	20	7	1	2	5	20	2	3	8
117	Kamchatka	20	20	20	20	20	na	20	20	20	20	7	1	2	5	20	2	3	8
122	Flathead sole	20	20	20	35	35	35	35	35	35	na	35	15	7	15	20	2	20	8
123	Rock sole	20	20	20	35	35	35	35	35	na	35	1	1	2	15	20	2	20	8
127	Yellowfin sole	20	20	20	35	35	35	na	35	35	35	1	1	2	5	20	2	20	8
133	Alaska Plaice	20	20	20	na	35	35	35	35	35	35	1	1	2	5	20	2	20	8
134	Greenland turbot	20	20	20	20	35	35	20	20	20	20	na	15	7	15	20	2	20	8
136	Northern	20	20	20	20	35	35	20	20	20	20	35	15	7	15	20	2	20	8
141	Pacific Ocean perch	20	20	20	20	35	35	20	20	20	20	35	15	7	15	20	2	20	8
152 / 151	Shorthead / Rougheye	20	20	20	20	35	35	20	20	20	20	35	15	na	5	20	2	20	8
193	Atka mackerel	20	20	na	20	35	35	20	20	20	20	1	1	2	5	20	2	20	8
270	Pollock	na	20	20	20	35	35	20	20	20	20	1	1	2	5	20	2	20	8
710	Sablefish <sup>1</sup>	20	20	20	20	35	35	20	20	20	20	35	na	7	15	20	2	20	8
	Other flatfish <sup>2</sup>	20	20	20	35	35	35	35	na	35	35	1	1	2	5	20	2	20	8
	Other rockfish <sup>3</sup>	20	20	20	20	35	35	20	20	20	20	35	15	7	15	20	2	20	8
	Other species <sup>4</sup>	20	20	20	20	35	35	20	20	20	20	1	1	2	5	20	2	na	8

Aggregated amount non-groundfish species <sup>8</sup>	20	20	20	20	35	35	20	20	20	20	1	1	2	5	20	2	20	8
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<sup>1</sup> **Sablefish:** for fixed gear restrictions, see § 679.7(f)(3)(ii) and (f)(11).

<sup>2</sup> **Other flatfish** includes all flatfish species, except for Pacific halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, Alaska plaice, arrowtooth flounder and Kamchatka flounder.

<sup>3</sup> **Other rockfish** includes all “rockfish” as defined at § 679.2, except for Pacific ocean perch; and northern, shortraker, and roughey rockfish.

<sup>4</sup> The **Other species** includes sculpins, sharks, skates, and octopuses.

<sup>5</sup> **na** = not applicable

<sup>6</sup> **Aggregated rockfish** includes all “rockfish” as defined at § 679.2, except shortraker and roughey rockfish. Catcher vessels using hook-and-line, pot, or jig gear are required to retain all rockfish. See § 679.20(j).

<sup>7</sup> **Forage fish, grenadiers, and squids** are all defined at Table 2c to this part.

<sup>8</sup> All legally retained species of fish and shellfish, including CDQ halibut and IFQ halibut that are not listed as FMP groundfish in Tables 2a and 2c to this part.

<sup>9</sup> Catcher vessels using hook-and-line, pot, or jig gear are required to retain all rockfish. See § 679.20(j).

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