



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 210219-0028]

RIN 0648-BK18

Fisheries of the Exclusive Economic Zone Off Alaska; Removing the Processing Restriction on Incidentally Caught Squids and Sculpins in the Gulf of Alaska and the Bering Sea and Aleutian Islands Groundfish Fisheries

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to remove the regulatory restriction that limits processing of squids and sculpins to fishmeal only. This proposed rule is necessary to allow the processing and sale of squids and sculpins as products other than fishmeal and thereby to help prevent waste of the incidental catch of these ecosystem component species. This proposed rule is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Fishery Management Plans (FMP) for Groundfish of the Gulf of Alaska (GOA) and Bering Sea and Aleutian Islands Management Area (BSAI) (Groundfish FMPs), and other applicable laws.

DATES: Submit comments on or before [*INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER*].

ADDRESSES: You may submit comments on this document, identified by FDMS Docket Number NOAA–NMFS–2020-0160, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#/docketDetail;D=NOAA-NMFS-2020-0160, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Records Office. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (*e.g.*, name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Electronic copies of the draft Regulatory Impact Review (referred to as the “Analysis”) and the draft Categorical Exclusion prepared for this proposed rule may be obtained from www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Megan Mackey, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Authority for Action

NMFS manages the groundfish fisheries in the exclusive economic zone (EEZ) of the BSAI and GOA under the Groundfish FMPs. The North Pacific Fishery Management Council (Council) prepared the Groundfish FMPs under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the Groundfish FMPs appear at 50 CFR parts 600 and 679.

All relevant comments submitted on this proposed rule and received by the end of the comment period (See **DATES**) will be considered by NMFS and addressed in the response to comments in the final rule.

Background

Squids and sculpins are defined in the ecosystem component (EC) category of the Groundfish FMPs. Directed fishing for EC species is prohibited. Incidental catch of squid species is retained in some groundfish fisheries and often utilized to prevent waste. Typically, sculpins are not retained but can be in some circumstances.

The Council's 2017 and 2019 actions to reclassify squids and sculpins, respectively, into the EC category of the Groundfish FMPs were based on the best available scientific information and were consistent with the National Standard guidelines. The Federal rulemakings to implement the Council's actions prohibited the use or sale of incidentally caught squids and sculpins unless processed into fishmeal, in accordance with the regulations governing other EC species (85 FR 41427, July 10, 2020 (sculpin); 83 FR 31460, July 6, 2018 (squid)). The purpose of this action is to provide flexibility for the use of incidentally caught squids and sculpins, thereby reducing the waste of these EC species, and to align the regulations with the long-standing use of incidentally caught squid species as bait.

The following sections of this preamble provide:

- A brief history of the restriction on processing and sale of squids and sculpins,
- The expected effects of and need for this action, and
- A description of the regulatory change proposed in this action.

Brief History of the Restriction on Processing and Sale of Squids and Sculpins

EC species are stocks that a fishery management council (council) or the

Secretary of Commerce (Secretary) has determined do not require conservation and management, but desire to list in an FMP in order to achieve ecosystem management objectives (50 CFR 600.305(c)(5) & (d)(13) and 50 CFR 600.310(d)(1)). Retention and personal use of some EC species in the Groundfish FMPs (forage fish, grenadiers, squids, and sculpins) is allowed up to the applicable maximum retainable amount (MRA), which is the proportion or percentage of retained catch of a species closed for directed fishing (incidental catch species) to the retained catch of a species open for directed fishing (basis species) (50 CFR 679.20(e) & (i)). Current Federal regulations at 50 CFR 679.20(i)(4) & (5) prohibit the processing, barter, trade, and sale of EC species in Alaska (forage fish, grenadiers, squids, and sculpins) unless they are processed as fishmeal.

Amendment 96 to the BSAI FMP and Amendment 87 to the GOA FMP (Amendments 96/87) (75 FR 61639, October 6, 2010) established the EC category and designated prohibited species (defined in Table 2b to 50 CFR part 679, to include salmon, steelhead trout, crab, halibut, and herring) and forage fish (defined in Table 2c to 50 CFR part 679 and § 679.20(i)) as EC species in both the Groundfish FMPs.

When Amendments 96/87 were recommended by the Council in 2010, the Council's stated intention was that prohibited species and forage fish would be in the new EC category. Because the retention, processing, and sale of prohibited species and forage fish was not permitted before their placement in the EC category, those restrictions remained in place and unchanged under Amendments 96/87. The Council did not indicate whether it intended that species added to the EC category at a later date would be subject to those same restrictions.

When the Council took action to recommend reclassifying squids in the EC category in 2017, harvesters and processors expected that incidentally caught squids in the groundfish fisheries could be processed and sold as bait, consistent with long-

standing and common practice. Similarly, when the Council recommended reclassifying sculpins in the EC category in 2019, there was some interest in exploring food fish markets for incidentally caught sculpins, which have rarely been retained or processed. However, once squids and sculpins were reclassified in the EC category, existing Federal regulations at 50 CFR 679.20(i) applied to all EC species and prohibited the processing, barter, trade, and sale of squids and sculpins as anything other than fishmeal.

In October 2019, the Council initiated an analysis to reconsider the processing and sale restrictions on squids and sculpins in the EC category. No other species in the EC category were considered in this analysis. As a result, processing and sale restrictions will remain in place for prohibited species, forage fish, and grenadiers under this action.

The Expected Effects of and Need for this Action

This action would continue to manage squids and sculpins as EC species in the Groundfish FMPs. Directed fishing of squids and sculpins would continue to be prohibited, and retention of squids and sculpins up to the MRA of 20 percent would continue to be permitted. Recordkeeping and reporting requirements would be maintained. The only proposed change to current regulations would be to remove the processing restrictions limiting processing and sale of squids and sculpins to fishmeal, and include new regulations on allowable fish products for squids and sculpins. Specifically, the proposed regulations would provide that retained catch of squids and sculpins not exceeding the MRA may be sold to a processor or processed into any product form, including (but not limited to) fishmeal, bait, and whole fish/food fish, for sale, barter, or trade. All other regulations pertaining to EC species would remain in place.

This proposed action would allow squid species to be processed as whole bait and be available to local fixed gear fisheries, which may reduce costs for those vessels. While

there has never been a significant market for sculpin products, this action would allow for the exploration of potential markets for incidentally caught sculpins up to the MRA.

The potential social impacts of the alternatives on the fishing community are primarily economic in nature. Processing squid species into bait provides some revenue to shore-based processors (see Table 4-5 of the Analysis) and may reduce costs to local fleets, which currently purchase more expensive, imported bait. The potential economic impacts are limited, the potential benefits would be marginal, and no impacts were identified that would create adverse economic impacts on any fishing community or cause any other adverse social impacts.

The Council determined, and NMFS agrees, that this proposed action would provide groundfish harvesters and processors with additional flexibility to conduct their business in an efficient manner by providing them with more options for the processing and sale of incidentally caught squids and sculpins up to the MRA, and would help reduce waste of these incidentally caught species.

Proposed Rule

This proposed rule would remove the regulatory restriction that limits processing of incidentally caught squids and sculpins to fishmeal only, and would allow retained catch of squids and sculpins not exceeding the MRA to be sold to a processor or to be processed into any product form. This proposed rule is necessary to allow the processing and sale of squids and sculpins as products other than fishmeal and to help prevent waste of the incidental catch of these species. To make that change, this proposed rule would revise language in 50 CFR § 679.20(i).

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Groundfish FMPs, other provisions of the Magnuson-Stevens Act, and other applicable

law, subject to further consideration after public comment.

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

Certification under the Regulatory Flexibility Act

The Chief Counsel for 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.

This proposed rule would remove the regulatory restriction that limits processing of squids and sculpins to fishmeal only. The purpose of this action is to allow processing and sale of squids and sculpin products to provide enhanced economic opportunity and to prevent waste of the incidental catch of these species in the BSAI and GOA groundfish fisheries.

Entities that would be directly regulated by this proposed rule include the owners and operators of catcher vessels (CVs), catcher/processor vessels (C/Ps), and motherships in the groundfish fisheries of the BSAI and GOA, and eligible shore-based processing facilities. These are the participants currently regulated by the prohibition at 50 CFR § 679.20(i).

In 2018, there were 182 CVs and 3 C/Ps in the BSAI, 756 CVs and 3 C/Ps in the GOA, and three motherships that met the definition of small entities. There also may be one or more shore-based processors that could be considered small entities because the processing company and its affiliates, worldwide, may employ fewer than 750 people. However, total employment numbers of processing companies and their affiliates, worldwide, are not available to make that small entity threshold determination. Based on the scope of this action, impacts to small, directly regulated entities are expected to be neutral or beneficial if the entities decide to use the flexibility this rule affords to process

squids and sculpins into product forms in addition to fishmeal.

As described above, this action does not place any new regulatory burden on groundfish fishery participants. Instead, it allows increased flexibility for the processing and sale of squids and sculpins. For all of the reasons described above, this proposed action is not expected to have a significant economic impact on a substantial number of the small entities directly regulated by this proposed action. As a result, an initial regulatory flexibility analysis is not required, and none has been prepared.

Regulatory Impact Review

A Regulatory Impact Review was prepared to assess the costs and benefits of available regulatory alternatives. The Council recommended and NMFS proposes these regulations based on those measures that maximize net benefits to the Nation. A copy of this analysis is available from NMFS (see **ADDRESSES**).

Paperwork Reduction Act

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements

Dated: February 22, 2021.

Samuel D. Rauch, III

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

For reasons set out in the preamble, NMFS proposes to amend 50 CFR part 679 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 § 679.20, revise paragraph (i) to read as follows:

§ 679.20 General limitations.

* * * * *

(i) *Forage fish, grenadiers, squids, and sculpins* — (1) *Definition*. See Table 2c to this part.

(2) *Applicability*. The provisions of this paragraph (i) apply to all vessels fishing for groundfish in the BSAI or GOA, and to all vessels processing groundfish harvested in the BSAI or GOA.

(3) *Closure to directed fishing*. Directed fishing for forage fish, grenadiers, squids, and sculpins is prohibited at all times in the BSAI and GOA.

(4) *Limits on sale, barter, trade, and processing of forage fish and grenadiers*. The sale, barter, trade, or processing of forage fish and grenadiers is prohibited, except as provided in paragraph (i)(5) of this section.

(5) *Allowable fishmeal production of forage fish and grenadiers*. Retained catch of forage fish or grenadiers not exceeding the maximum retainable amount may be processed into fishmeal for sale, barter, or trade.

(6) *Allowable fish products for squids and sculpins*. Retained catch of squids and sculpins not exceeding the maximum retainable amount may be sold to a processor or processed into any product form, including (but not limited to) fishmeal, bait, and whole fish/food fish, for sale, barter, or trade.

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