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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101108560-2413-01]

RIN 0648-BA43

Fisheries of the Exclusive Economic Zone Off Alaska; Revise Maximum Retained Amounts for Groundfish in the Bering Sea and Aleutian Islands

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes a regulatory amendment to increase the maximum retainable amounts (MRAs) of groundfish using arrowtooth flounder (Atheresthes stomias) and Kamchatka flounder (Atheresthes evermanni) as basis species in the Bering Sea and Aleutian Islands management area (BSAI). This action would allow the use of BSAI arrowtooth flounder and Kamchatka flounder as basis species for the retention of species closed to directed fishing and is necessary to improve retention of otherwise marketable groundfish in these BSAI fisheries. This action also includes four regulatory amendments related to harvest management of Kamchatka flounder.

Three amendments are necessary to manage Kamchatka flounder in the same manner as arrowtooth flounder in the BSAI and to aid in the recordkeeping, reporting, and catch accounting of flatfish in the BSAI. The fourth amendment is necessary to provide NMFS the flexibility to

allocate arrowtooth flounder and Kamchatka flounder (and other species in the future) to the Western Alaska Community Development Quota (CDQ) Program in the annual harvest specifications. Through this proposed action, NMFS intends to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area, and other applicable law.

DATES: Comments must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2012-0044, by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal website at http://www.regulations.gov. To submit comments via the e-Rulemaking Portal, first click the "submit a comment" icon, then enter NOAA-NMFS-2012-0044 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the "Submit a Comment" icon on the right of that line.
- Mail: Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.
- Fax: Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to 907-586-7557.

- Hand delivery to the Federal Building: Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Deliver comments to 709 West 9th Street, Room 420A, Juneau, AK.

Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. 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. 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, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Electronic copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action may be obtained from http://www.regulations.gov or from the Alaska Region website at http://alaskafisheries.noaa.gov.

FOR FURTHER INFORMATION CONTACT: Jeff Hartman, 907-586-7442, or Tom Pearson, 907-481-1780.

SUPPLEMENTARY INFORMATION:

Background

NMFS manages the groundfish fisheries in the exclusive economic zone in the BSAI

under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 et seq. Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600 and 679.

Regulations at § 679.20(e) and (f), and Table 11 to 50 CFR part 679 establish MRA percentages for groundfish species and species groups. An MRA is the maximum round weight of a species or species group closed to directed fishing that may be retained onboard a vessel. NMFS established MRAs to allow vessels engaged in fishing for species or species groups open to directed fishing (basis species) to retain a specified amount of species or species group closed to directed fishing. The percent of a species or species group closed to directed fishing retained in relation to the basis species must not exceed the MRAs listed in Table 11 to 50 CFR part 679.

MRA percentages serve as a management tool to slow the harvest rates and reduce the incentive for targeting species closed to directed fishing. MRAs allow for some retention of species closed to directed fishing instead of requiring regulatory discards of these species. MRA percentages reflect a balance between the recognized need to slow harvest rates and minimize the potential for discards, and, in some cases, provide an increased opportunity to harvest available total allowable catch (TAC) through limited retention.

The NOAA Office for Law Enforcement or the United States Coast Guard may review production data to determine if vessels have complied with specified MRAs by comparing the estimated round weight of the retained species closed to directed fishing with the estimated round weight of the retained basis species. The amount of round weight of each retained species

must not exceed the MRA, a specified percent, of the round weight of a basis species. For example, when Pacific cod is open to directed fishing and arrowtooth flounder is closed to directed fishing, a vessel operator may retain a round weight equivalent amount of arrowtooth flounder of up to 35 percent of the round weight equivalent of Pacific cod that is retained onboard the vessel. In this example, all incidental catch of arrowtooth flounder in excess of the 35 percent MRA, from Table 3 to 50 CFR part 679, must be discarded.

To convert processed weight of groundfish to round weight equivalent, NMFS applies product recovery rates (PRRs) from Table 3 to 50 CFR part 679. Using the example above, during a fishing trip, a vessel operator engaged in catching and processing fish at sea during an open Pacific cod directed fishery would convert the processed weights of arrowtooth flounder and Pacific cod to the respective round weight equivalents. The vessel operator and NOAA Office for Law Enforcement can then determine if retained catch of arrowtooth flounder has exceeded the 35 percent MRA limit found in Table 11 to 50 CFR part 679, by dividing the retained incidental catch of arrowtooth flounder by the retained Pacific cod caught during an open directed fishery and converting the proportion to a percentage.

MRAs provide an increased opportunity to harvest available total allowable catch (TAC) through limited targeting activity. A vessel operator may have an incentive to target a species closed to directed fishing when the vessel operator determines that the retention of a species closed to directed fishing is less than or equal to the MRA limit specified for that species at § 679.20(e) and (f), and would provide economic benefits notwithstanding costs associated with finding, processing, and retaining the species closed to directed fishing. Prior to 1994, a vessel operator would target low-value basis species for the purpose of retaining up to the MRA limit of

valuable incidental species closed to directed fishing. That led to the waste of some basis species for which there was no viable market. In 1994, NMFS published an emergency interim rule to prohibit the use of arrowtooth flounder as a basis species for the purpose of retaining groundfish closed to directed fishing (59 FR 6222, February 10, 1994). At the time the emergency rule was published, several vessel operators in the Gulf of Alaska (GOA) were deliberately targeting arrowtooth flounder to use as a basis species for the retention of highly valued groundfish species, such as sablefish, which were closed to directed fishing. Because there was no market for arrowtooth flounder, the retained arrowtooth flounder was either discarded or made into fish meal. In 1995, NMFS made this prohibition permanent to prevent vessels from wasting arrowtooth flounder as a basis species (60 FR 40304, August 8, 1995).

Arrowtooth flounder is now a valuable target fishery, and increasing MRAs for species closed to directed fishing when arrowtooth flounder is used as a basis species may result in a decrease in regulatory discards of the incidentally caught groundfish. For example, by 1995, limited markets for arrowtooth flounder had developed in the GOA. In 1997, NMFS increased the MRAs for pollock and Pacific cod from zero to 5 percent when arrowtooth flounder was the basis species. NMFS intended that the increase would reduce regulatory discards and provide for more efficient utilization of pollock and Pacific cod caught in the arrowtooth flounder fishery (62 FR 11109, March 11, 1997). That action reduced both the regulatory discards in the GOA and the number of violation notices issued by the NOAA Office for Law Enforcement for exceeding the MRAs of pollock and Pacific cod in the arrowtooth flounder fishery. On March 27, 2009, NMFS published a final rule in the Federal Register (74 FR 13348) to increase MRAs for groundfish caught in the GOA arrowtooth flounder fishery from zero to 20 percent for deep-

water flatfish, rex sole, flathead sole, shallow-water flatfish, Atka mackerel, and skates; from zero to 5 percent for aggregated rockfish; and from zero to 1 percent for sablefish. These amendments also reduced regulatory discards in the GOA arrowtooth flounder fishery.

As in the GOA, the retention of BSAI arrowtooth flounder fishery has increased as opportunities to market arrowtooth flounder products has expanded. During 2003 to 2010, the TAC for the arrowtooth flounder fishery increased from 12,000 metric tons (mt) in 2003, to 75,000 mt in 2010. Over this same period the total catch of arrowtooth flounder increased from 11,916 mt in 2007 to 30,367 mt in 2009, and the percent of arrowtooth flounder retained for processing increased from 21 percent in 2004, to 81 percent in 2010. Consequently, the Council has recommended additional management measures to better manage and reduce regulatory discards in the BSAI arrowtooth flounder fishery.

MRAs for Groundfish in Arrowtooth Flounder Directed Fishery

The Council recognized that efforts by the non-pelagic trawl fleet to improve retention of groundfish species in the BSAI arrowtooth flounder fishery are constrained by the current zero MRAs for groundfish for the arrowtooth flounder basis species. In October 2010, the Council recommended setting the MRAs for BSAI groundfish using arrowtooth flounder as the basis species at the same MRA percentages as those set for BSAI groundfish using Pacific cod as a basis species with two exceptions (Greenland turbot and the "other species" group). The EA/RIR/IRFA provided information demonstrating that most of the MRAs listed in Table 11 to 50 CFR part 679 for groundfish caught in the Pacific cod directed fishery would represent a conservative guide for managing incidental catch in the arrowtooth flounder fishery. MRAs for groundfish species in the Pacific cod directed fishery are lower than the MRAs for a number of

groundfish species that are commonly caught by the non-pelagic trawl fleet in the arrowtooth and Kamchatka flounder complex fisheries.

The Council recommended that the MRAs for Greenland turbot in the arrowtooth flounder directed fishery be based on the approximate average incidental catch between 2003 and 2009 because average gross earnings per pound of retained arrowtooth flounder increased during that time. The Council recommended that the MRAs for the aggregated "other species" group (skates, sharks, sculpins, and octopus) caught in the arrowtooth flounder fishery also be based on the approximate average incidental catch observed between 2003 and 2009. The Council intends these MRA modifications to allow vessels fishing in the arrowtooth flounder fisheries some retention of incidentally caught Greenland turbot and "other species." At the same time, the proposed action sets these MRA limits for Greenland turbot at levels that minimize impacts on the Greenland turbot directed fisheries and that conserve stocks that comprise the "other species" group.

Council Action on MRAs and Management of Groundfish in Arrowtooth Flounder and Kamchatka Flounder Directed Fisheries

Prior to 2011, arrowtooth flounder and Kamchatka flounder were managed together with a single overfishing level (OFL), acceptable biological catch (ABC), and TAC in the BSAI. Arrowtooth flounder and Kamchatka flounder are caught at the same time in the non-pelagic trawl fishery, and are often difficult to distinguish from each other. Throughout most of the BSAI, however, Kamchatka flounder are less abundant than arrowtooth flounder. As the directed fishery for arrowtooth flounder and market prices for Kamchatka flounder have increased, Kamchatka flounder in the arrowtooth flounder fishery has been caught in

disproportionately greater amounts relative to Kamchatka flounder biomass estimates. In 2010, the Council recommended that separate OFLs, ABCs, and TACs be established for arrowtooth flounder and Kamchatka flounder to protect the stock of Kamchatka flounder (76 FR 11138, March 1, 2011). Additionally, MRAs established for groundfish species closed to directed fishing in the Kamchatka flounder fishery will be the same as those set for the species closed to directed fishing in the arrowtooth flounder fishery. For prohibited species catch (PSC) management purposes and fishing seasons, the Council also recommended, and NMFS proposes, that Kamchatka flounder be managed as a fishery category with arrowtooth flounder, turbot, and sablefish.

CDQ Allocations for Kamchatka Flounder

In the final 2007 and 2008 harvest specifications for groundfish of the BSAI (72 FR 9451, March 2, 2007), NMFS explained that the term ‘‘directed fishery’’ for purposes of section 305(i)(1) of the Magnuson-Stevens Act means a fishery for which sufficient TAC exists to to allow unlimited retentionof that species or species group, and the species or species group is economically valuable enough for the CDQ groups to target them. In the proposed 2011/2012 and 2012/2013 harvest specifications for groundfish of the BSAI (75 FR 76362, December 8, 2010), NMFS requested comment about whether Kamchatka flounder should be considered a directed fishery in the BSAI for purposes of CDQ allocations, and specifically whether the CDQ groups intended to conduct directed fishing for Kamchatka flounder in the future. NMFS received comments from all six of the CDQ groups that they did not intend to conduct directed fishing for Kamchatka flounder in 2011, but that economic conditions may change in the future in a manner that may make it appropriate for NMFS to allocate Kamchatka flounder to the CDQ

Program. Therefore, in the final 2011 and 2012 harvest specifications for groundfish of the BSAI (76 FR 11139, March 1, 2011), NMFS did not allocate a portion of the Kamchatka flounder TAC to the CDQ Program.

Council Review of Draft Regulations to Combine Arrowtooth Flounder and Kamchatka Flounder Management Measures

In June 2011, NMFS provided the Council a review of the proposed regulatory revisions described below for MRAs associated with the arrowtooth flounder and Kamchatka flounder directed fisheries, as well as the management, recordkeeping, reporting, and catch accounting of arrowtooth flounder and Kamchatka flounder. The Council concurred in NMFS' determination that the proposed regulatory provisions to combine many of the management measures for arrowtooth flounder and Kamchatka flounder are necessary for the management of these species. With the exception of establishing separate OFLs, ABC, and TACs, the Council intends that Kamchatka flounder be managed in the same manner as arrowtooth flounder.

Proposed Regulatory Amendments

Revisions to MRA Regulations

This proposed rule would revise Table 11 to 50 CFR part 679 to increase the MRAs for groundfish species and species groups closed to directed fishing using arrowtooth flounder as the basis species from zero percent to 20 percent for pollock, Pacific cod, Atka mackerel, Alaska plaice, yellowfin sole, other flatfish, rock sole, flathead sole, and squid; from zero percent to 7 percent for Greenland turbot; from zero percent to 1 percent for sablefish; from zero percent to 2 percent for shortraker rockfish and rougheye rockfish (combined); from zero percent to 5 percent for aggregated rockfish; zero percent to 7 percent for Greenland turbot; and zero percent to 3

percent for the “other species” group.

Through this proposed action, NMFS would revise Table 11 to 50 CFR part 679 to manage MRAs associated with the arrowtooth flounder and Kamchatka flounder directed fisheries in close coordination. This proposed rule would also revise Table 11 to eliminate language that is no longer relevant because of revisions implemented through prior actions. NMFS proposes to move Kamchatka flounder from “other flatfish” to the arrowtooth flounder category in Table 11 to 50 CFR part 679. NMFS would revise Footnote 2 to Table 11, to include Kamchatka flounder to further clarify that Kamchatka flounder is not included with “other flatfish.” NMFS would revise footnote 4, which defines “other species,” to remove the sentence “Forage fish, as defined at Table 2c to this part are not included in the ‘other species’ category.” This revision would eliminate an unnecessary clarification because capelin, eulachon, and smelt were removed from ‘‘other species’’ category and placed in a forage fish species category in 1998 (63 FR 13009, March 17, 1998). This proposed amendment would eliminate a potential source of confusion for the entities that would be subject to this rule and required to use the revised Table 11 to comply with groundfish MRAs.

NMFS proposes that if either arrowtooth flounder or Kamchatka flounder closes to directed fishing then neither arrowtooth flounder nor Kamchatka flounder could be used as a basis species for the retention of groundfish in the BSAI. This revision is necessary because it is difficult to distinguish between arrowtooth flounder and Kamchatka flounder once the two species are processed. Without distinguishing catch between these two species, the fishing industry would not be able to comply with the application of different MRA percentages for incidental catch of arrowtooth flounder or Kamchatka flounder when only one of these species is

open to directed fishing. In addition, footnote 9 would be added to Table 11 to clarify that when arrowtooth flounder and Kamchatka flounder are closed to directed fishing and caught incidentally in other directed groundfish fisheries, vessel compliance with MRA limits specified for these species would be calculated as the aggregate retained incidental catch of both arrowtooth flounder and Kamchatka flounder.

Management Measures

Four additional regulatory amendments are proposed to provide for the identical MRA, PSC, and harvest management measures for arrowtooth flounder and Kamchatka flounder. These amendments are necessary to facilitate recordkeeping, reporting, and catch accounting of arrowtooth flounder and Kamchatka flounder and would ensure consistent timing of the harvest of these two species.

The first amendment would revise § 679.21(e)(3)(iv)(C) to include Kamchatka flounder in the same trawl fishery category for PSC management as arrowtooth flounder. Currently, Greenland turbot, arrowtooth flounder, and sablefish are in the same trawl fishery category for purposes of applying PSC limits. This revision is necessary because arrowtooth flounder and Kamchatka flounder are harvested in a mixed groundfish fishery and typically encounter similar PSC species.

The second amendment would establish identical seasonal opening dates for arrowtooth flounder and Kamchatka flounder, and is necessary to manage the Kamchatka flounder fishery in the same time period as the arrowtooth flounder fishery. Arrowtooth and Kamchatka flounder have historically been managed together because they are mixed-stock species and are often targeted together. Initiating the fishing season for these two species on different dates would

cause significant management difficulties and therefore NMFS recommends concurrent seasonal management. NMFS would revise the BSAI groundfish seasons at § 679.23(e)(1) to include Kamchatka flounder with arrowtooth flounder and Greenland turbot so that the season for all these species would open on May 1.

The third amendment would revise Table 3 to 50 CFR part 679, which lists the product recovery rates (PRR) for groundfish species and conversion rates for Pacific halibut. These revisions would consolidate the eight flatfish species (including Kamchatka flounder) in Table 3 to 50 CFR part 679 into a single row, and apply identical PRRs to these eight flatfish species. This consolidation of flatfish into one row would simplify Table 3 and is necessary to facilitate recordkeeping, reporting, and MRA determination. Currently, identical PRRs are listed in Table 3 to 50 CFR part 679 for these eight individual species of flatfish, with the exception of yellowfin sole, which is also listed as having a PRR for surimi. NMFS proposes to establish one surimi PRR for all the species within the consolidated flatfish category because the similar morphology of the species within this category is likely to produce a similar proportion of utilized surimi product. NMFS proposes to use the surimi PRR currently listed for yellowfin sole for the consolidated flatfish category. If the consolidated flatfish category was not assigned a PRR for surimi, compliance with MRAs could not be determined for this product form.

The fourth amendment would revise § 679.20(b)(1)(ii) to explain how NMFS will determine whether to allocate a portion of a new TAC category to the CDQ Program in the annual harvest specifications. NMFS implemented the current regulations § 679.20(b)(1)(ii) in the final rule for Amendment 80 to the FMP (72 FR 52668, September 14, 2007). These regulations state that if the groundfish harvest specifications change a TAC category allocated to

a CDQ reserve by combining or splitting a species, species group, or management area, then the same percentage of the TAC apportioned to a CDQ reserve in § 679.20 (b)(1)(ii)(A) through (D) will apply to the new TAC category. However, section 305(i)(1)(B)(ii)(II) of the Magnuson-Stevens Act addresses allocations to the CDQ Program and provides more specific guidance, namely, "the allocation under the (CDQ) program in any directed fishery of the Bering Sea and Aleutian Islands (other than a fishery for halibut, sablefish, pollock, and crab) established after the date of enactment of this subclause shall be a total allocation (directed and nontarget combined) of 10.7 percent."

The creation of a new TAC category for Kamchatka flounder required NMFS, in the final 2011 and 2012 harvest specifications for groundfish of the BSAI (76 FR 11139, March 1, 2011), to determine if Kamchatka flounder was a "directed fishery" for purposes of the CDQ Program. If NMFS determined it was a directed fishery, 10.7 percent of the Kamchatka flounder TAC would be allocated to the CDQ Program. As described in more detail in the final 2011 and 2012 harvest specifications, NMFS determined that Kamchatka flounder was not a "directed fishery" for purposes of the CDQ Program. This proposed rule would amend § 679.20(b)(1)(ii) to explain how this determination will be made in future harvest specifications should new TAC categories be created.

Specifically, NMFS proposes to revise regulations at § 679.20(b)(1)(ii)(D) and remove regulations at § 679.20(b)(1)(ii)(E) that govern CDQ allocations for TAC categories that are established when one species or species group is split from an existing species or species group to form a new TAC category. Paragraph (D)(2) would be added to § 679.20(b)(1)(ii) to state that, for all other groundfish species not specifically listed in § 679.20(b)(1)(ii)(A) through

(D)(1), an amount equal to 10.7 percent of the BSAI TAC would be apportioned to a CDQ reserve if NMFS, after consultation with the Council, determines in the annual harvest specifications that a directed fishery in the BSAI exists for this species under section 305(i)(1)(B)(i) of the Magnuson-Stevens Act. The species specifically allocated to the CDQ Program in 50 CFR part 679 are pollock, sablefish, the "Amendment 80" species (Aleutian Islands Pacific ocean perch, Pacific cod, Atka mackerel, yellowfin sole, rock sole, and flathead sole), Bering Sea Greenland turbot, and arrowtooth flounder. In making a determination that a directed fishery exists in the BSAI, the Council and NMFS would consider whether sufficient TAC exists to open a directed fishery for that species in the BSAI and if the CDQ groups are likely to conduct directed fishing for that species. The 10.7 percent amount for Kamchatka flounder under § 679.20(b)(1)(ii)(D)(2) is the same as the 10.7 percent amount for arrowtooth flounder under § 679.20(b)(1)(ii)(D)(1), consistent with the Council's intent for similar management of the two species.

Classification

Pursuant to section 304 (b)(1)(A) and 305 (d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMP, 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 purposes of Executive Order 12866.

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed

rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the SUMMARY section of the preamble. A summary of the analysis follows. A copy of this analysis is available from NMFS (see ADDRESSES).

Using earnings from all Alaska fisheries in 2009, there are 254 catcher vessels directly regulated by this action that had gross earnings less than $4.0 million, thus categorizing them as small entities based on the threshold that the Small Business Administration uses to define small fishing entities. For catcher/processors, 18 vessels had gross earnings less than $4 million, categorizing them as small entities. The preferred alternative also affects the six CDQ groups because it would revise regulations governing how allocations are made to the CDQ Program of TAC categories established by splitting existing quota categories, as has occurred with arrowtooth flounder and Kamchatka flounder. Due to their status as non-profit corporations, the CDQ groups are also considered to be small entities under the RFA.

The Council evaluated three alternatives and three suboptions to increase the MRAs of groundfish in the arrowtooth flounder fishery in the BSAI. Alternative 1, the status quo or no action alternative, would leave the MRAs for groundfish in the BSAI arrowtooth flounder fishery unchanged from current levels, and would continue to require fishermen to discard otherwise marketable groundfish.

Alternative 2 would set the MRAs for groundfish using arrowtooth flounder as a basis species at the same MRA levels for groundfish using Pacific cod as a basis species, with two suboptions to modify the Greenland turbot MRA at 15 percent or 7 percent, and one suboption to modify the “other species” group MRA to 3 percent.

Alternative 3 would set the MRAs for groundfish using arrowtooth flounder as a basis species at the same MRA levels for groundfish using flathead sole as a basis species. The Council also considered a suboption to Alternative 3 to set the MRA for Greenland turbot using arrowtooth flounder as a basis species to 15 percent.

To provide the opportunity to the arrowtooth flounder trawl fishing industry to reduce discards by allowing increased retention of groundfish, the Council recommended Alternative 2 as the preferred alternative, with suboptions 2.2 and 2.3 for Greenland turbot and the "other species" group. Alternative 2, combined with suboptions 2.2, and 2.3, would increase MRAs of groundfish closed to directed fishing for arrowtooth flounder as the basis species from zero percent to 20 percent for pollock, Pacific cod, Atka mackerel, Alaska plaice, yellowfin sole, other flatfish, rock sole, flathead sole, and squid; from zero percent to 7 percent for Greenland turbot; from zero percent to 1 percent for sablefish; from zero percent to 2 percent for shortraker and rougheye rockfish (combined); from zero percent to 5 percent for aggregated rockfish; and from zero percent to 3 percent for the "other species" group (consisting of skates, sharks, sculpins, and octopus in the aggregate). The Council recommended that the MRAs for Greenland turbot and aggregated "other species" be based on the approximate average incidental catch observed in the arrowtooth flounder fishery between 2003 and 2009. For Greenland turbot, an MRA of 7 percent would allow for increased retention of Greenland turbot for arrowtooth flounder as the basis species, when Greenland turbot is closed to directed fishing. Suboption 2.2 also would provide a more conservative MRA for Greenland turbot than suboption 2.1. Suboption 2.1, an MRA of 15 percent, would allow increased retention of Greenland turbot for arrowtooth flounder as the basis species. Constraining the MRA for Greenland turbot to 7

percent instead of 15 percent may reduce the amount of incidentally caught Greenland turbot in the Amendment 80 sector directed fishery for arrowtooth flounder, allowing for a greater amount of Greenland turbot to be available for small entities in the longline fishery. The longline fishery relies on access to the Greenland turbot directed fishery. Suboption 2.3 would conserve the stocks that comprise the "other species" group while allowing for some retained catch of these species in the arrowtooth flounder fishery when the species that comprise the "other species" group are closed to directed fishing.

Alternative 3 would increase the MRAs of groundfish closed to directed fishing for arrowtooth flounder as the basis species from zero percent to 20 percent for pollock, Pacific cod, Atka mackerel, squid, and for the "other species" group (skates, sharks, sculpins, and octopus in the aggregate); from zero percent to 35 percent for Alaska plaice, yellowfin sole, other flatfish, flathead sole, and Greenland turbot; from zero percent to 15 percent for sablefish and aggregated rockfish; and from zero percent to 7 percent for shortraker and rougheye rockfish (combined).

Under Alternative 3, the Council recognized a greater potential for development of fisheries that could increase harvests of species and adversely impact the ability of NMFS to effectively manage several groundfish species within the TAC, and therefore did not recommend this alternative. In general, the development of a fishery is dependent upon a number of factors, including, but not limited to, the price of the MRA species, whether a market exists, accessibility of the species, storage availability, and processing capacity. In addition, the potential for a vessel to harvest a specific species varies across vessels. A vessel operator has more discretion to harvest specific groundfish species if the operator has the ability to limit incidental catch or the ability to discard low-valued fish, while targeting arrowtooth flounder.

Alternatives 2 and 3 would be beneficial to the affected small entities by providing an opportunity to retain additional, economically valuable groundfish species when arrowtooth flounder is a basis species. Under Alternative 2, the benefits to small entities would be slightly lower than under Alternative 3. However, Alternative 2 with suboptions 2.2 and 2.3 (the preferred alternative), that sets the MRA for Greenland turbot at 7 percent and the MRA for the species that comprise the "other species" group at 3 percent, reduces unintended impacts to the Greenland turbot directed fishery more effectively and provides greater protection for the species which comprise the "other species" group than does Alternative 3. Allowing a greater amount of Greenland turbot retained catch under Alternative 3 may result in earlier closure of the Greenland turbot directed fishery, as compared with Alternative 2 with suboption 2.2. No negative impacts on small entities are associated with either Alternative 2 or 3.

Should the preferred alternative be implemented, the four additional amendments to the regulations proposed by NMFS are necessary . The purposes of these proposed amendments are: to provide management measures for Kamchatka flounder that are identical to those for arrowtooth flounder; to prevent the Kamchatka flounder fishery from having negative impacts on the arrowtooth flounder and Greenland turbot directed fisheries; to facilitate recordkeeping, reporting, and catch accounting of Kamchatka flounder as well as other flatfish species and species groups; and to provide the Council and NMFS greater flexibility in the annual harvest specifications process to allocate TAC (for such species as Kamchatka flounder) to the CDQ Program in the future. These proposed revised regulatory amendments are included in this proposed rule as they address the Council's intent to manage Kamchatka flounder with separate harvest specifications with the same management measures that apply to arrowtooth flounder

because of the close association of these two species in the groundfish fisheries.

No negative impacts on small entities are associated with these proposed regulatory amendments. Participants in the Amendment 80 sector are the primary entities that would be affected by this proposed action since only Amendment 80 sector operators have developed markets for arrowtooth flounder and Kamchatka flounder and have expressed interest in retaining these two groundfish species. These two species have become sufficiently important to some vessels in this sector so NMFS does not anticipate the catch rates and amounts of arrowtooth flounder and Kamchatka flounder would change under the preferred alternative to amend the MRAs for groundfish caught in the target fisheries. Thus, NMFS has no expectation that fishing location or intensity will be altered by the small increases in MRAs for incidental catch of groundfish in the directed fisheries of these two species. The primary effect of this action would be to reduce the amount of discarded groundfish catch. Small entities are unlikely to be disadvantaged by the opportunity to retain valuable incidental catch that would otherwise be discarded and made unavailable to sell as a marketable product.

This proposed rule contains no additional collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act.

The analysis did not reveal any Federal rules that duplicate, overlap, or conflict with the proposed action.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries.

Dated: September 11, 2012.

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Alan D. Risenhoover, Director, Office of Sustainable Fisheries,

performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679-FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority**:** 16 U.S.C. 773 et seq.; 1801 et seq.; 3631 et seq.; Pub. L. 108-447.

2. In § 679.20, remove paragraph (b)(1)(ii)(E) and revise paragraph (b)(1)(ii)(D) to read as follows:

§ 679.20 General limitations.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(D) CDQ reserves for other groundfish species. (1) An amount equal to 10.7 percent of the BSAI TACs for Bering Sea Greenland turbot and arrowtooth flounder, and 7.5 percent of the trawl gear allocation of sablefish in the BS and AI is apportioned from the nonspecified reserve established under paragraph (b)(1)(i) of this section to a CDQ reserve for each of these species by management area, subarea, or district.

(2) For all other groundfish species not specifically listed in paragraphs (b)(1)(ii)(A) through (D)(1) of this section, an amount equal to 10.7 percent of the BSAI TAC will be apportioned to a CDQ reserve if NMFS, after consultation with the Council, determines in the annual harvest specifications process under paragraph (c) of this section that a directed fishery in the BSAI exists for this species under section 305(i)(1)(B)(i) of the Magnuson-Stevens Act. In making this determination, the Council and NMFS shall consider whether sufficient TAC exists to open a directed fishery for that species in the BSAI and if the CDQ groups are likely to conduct a directed fishery for that species.

* * * * *

3. In § 679.21, revise paragraph (e)(3)(iv)(C) to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(e) * * *

(3) * * *

(iv) * * *

(C) Greenland turbot/arrowtooth flounder/Kamchatka flounder/sablefish fishery. Fishing with trawl gear during any weekly reporting period that results in a retained aggregate amount of Greenland turbot, arrowtooth flounder, Kamchatka flounder, and sablefish that is greater than the retained amount of any other fishery category defined under this paragraph (e)(3)(iv).

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4. In § 679.23, revise paragraph (e)(1) to read as follows:

§ 679.23 Seasons.

* * * * *

(e) * * *

(1) Directed fishing for arrowtooth flounder, Kamchatka flounder, and Greenland turbot. Directed fishing for arrowtooth flounder, Kamchatka flounder, and Greenland turbot in the BSAI is authorized from 1200 hours, A.l.t., May 1 through 2400 hours, A.l.t., December 31, subject to the other provisions of this part.

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5. Revise Table 3 to 50 CFR part 679 to read as follows:

Table 3 to Part 679--Product Recovery Rates for groundfish species and conversion rates for Pacific halibut

Species Code	FMP Species	Product Code											
		1, 41, 86,92, 93, 95 Whole Fish	3 Bled	4 Gutted Head On	5 Gutted Head Off	6 H&G with Roe	7 H&G West Cut	8 H&G East Cut	10 H&G w/o Tail	11 Kirimi	12 Salted & Split	13 Wings	14 Roe
110	Pacific Cod	1.00	0.98	0.85	---	0.63	0.57	0.47	0.44	---	0.45	---	0.05
	Flatfish other than Pacific Halibut	1.00	0.98	0.90	---	0.80	0.72	0.65	0.62	0.48	---	---	0.08
143	Thornyhead Rockfish	1.00	0.98	0.88	---	0.55	0.60	0.50	---	---	---	---	---
160	Sculpins	1.00	0.98	0.87	---	---	0.50	0.40	---	---	---	---	---
193	Atka Mackerel	1.00	0.98	0.87	---	0.67	0.64	0.61	---	---	---	---	---
270	Pollock	1.00	0.98	0.80	---	0.70	0.65	0.56	0.50	0.25	---	---	0.07
510	Smelts	1.00	0.98	0.82	---	---	0.71	---	---	---	---	---	---
511	Eulachon	1.00	0.98	0.82	---	---	0.71	---	---	---	---	---	---
516	Capelin	1.00	0.98	0.89	---	---	0.78	---	---	---	---	---	---
---	Sharks	1.00	0.98	0.83	---	---	0.72	---	---	---	---	---	---
---	Skates	1.00	0.98	0.90	---	---	---	0.32	---	---	---	0.32	---
710	Sablefish	1.00	0.98	0.89	---	---	0.68	0.63	0.50	---	---	---	---
870	Octopus	1.00	0.98	0.81	---	---	---	---	---	---	---	---	---
875	Squid	1.00	0.98	0.69	---	---	---	---	---	---	---	---	---
---	Rockfish	1.00	0.98	0.88	---	---	0.60	0.50	---	---	---	---	---
200	PACIFIC HALIBUT Conversion rates to Net Weight	---	---	0.90	1.0	---	---	---	---	---	---	---	---

Table 3 to Part 679--Product Recovery Rates for groundfish species and conversion rates for Pacific halibut (continued)

Species Code	FMP Species	Product Code											
		15 Pectoral Girdle	16 Heads	17 Cheeks	18 Chins	19 Belly	20 Fillets with Skin & Ribs	21 Fillets with Skin No Ribs	22 Fillets with Ribs No Skin	23 Fillets Skinless Boneless	24 Fillets Deep Skin	30 Surimi	31 Mince
110	Pacific Cod	0.05	---	0.05	---	0.01	0.45	0.35	0.25	0.25	---	0.15	0.5
	Flatfish other than Pacific Halibut	---	---	---	---	---	0.32	0.27	0.27	0.22	---	0.18	---
143	Thornyhead Rockfish	---	0.20	0.05	0.05	0.05	0.40	0.30	0.35	0.25	---	---	---
160	Sculpins	---	---	---	---	---	---	---	---	---	---	---	---
193	Atka Mackerel	---	---	---	---	---	---	---	---	---	---	0.15	---
270	Pollock	---	0.15	---	---	---	0.35	0.30	0.30	0.21	0.16	0.16[1] 0.17[2]	0.22
510	Smelts	---	---	---	---	---	---	0.38	---	---	---	---	---
511	Eulachon	---	---	---	---	---	---	---	---	---	---	---	---
516	Capelin	---	---	---	---	---	---	---	---	---	---	---	---
---	Sharks	---	---	---	---	---	---	0.30	0.30	0.25	---	---	---
---	Skates	---	---	---	---	---	---	---	---	---	---	---	---
710	Sablefish	---	---	0.05	---	---	0.35	0.30	0.30	0.25	---	---	---
870	Octopus	---	---	---	---	---	---	---	---	---	---	---	---
875	Squid	---	---	---	---	---	---	---	---	---	---	---	---
---	Rockfish	---	0.15	0.05	0.05	0.10	0.40	0.30	0.33	0.25	---	---	---
200	PACIFIC HALIBUT Conversion rates to Net Weight	---	—	—	---	---	---	---	---	---	---	---	---

Table 3 to Part 679--Product Recovery Rates for groundfish species and conversion rates for Pacific halibut (continued)

Species Code	FMP Species	Product Code							
		32 Meal	33 Oil	34 Milt	35 Stomachs	36 Mantles	37 Butterfly Backbone Removed	88, 89 Infested or Decomposed Fish	98, 99 Discards
110	Pacific Cod	0.17	---	---	---	---	0.43	0.00	1.00
	Flatfish other than Pacific Halibut	0.17	---	---	---	---	---	0.00	1.00
143	Thornyhead Rockfish	0.17	---	---	---	---	---	0.00	1.00
160	Sculpins	0.17	---	---	---	---	---	0.00	1.00
193	Atka Mackerel	0.17	---	---	---	---	---	0.00	1.00
270	Pollock	0.17	---	---	---	---	0.43	0.00	1.00
510	Smelts	0.17	---	---	---	---	---	0.00	1.00
511	Eulachon	0.17	---	---	---	---	---	0.00	1.00
516	Capelin	0.17	---	---	---	---	---	0.00	1.00
---	Sharks	0.17	---	---	---	---	---	0.00	1.00
---	Skates	0.17	---	---	---	---	---	0.00	1.00
710	Sablefish	0.17	---	---	---	---	---	0.00	1.00
870	Octopus	0.17	---	---	---	0.85	---	0.00	1.00
875	Squid	0.17	---	---	---	0.75	---	0.00	1.00
---	Rockfish	---	---	---	---	---	---	0.00	1.00
200	PACIFIC HALIBUT Conversion rates to Net Weight	---	---	---	---	---	---	0.00	0.75

[1]Standard pollock surimi rate during January through June
[2]Standard pollock surimi rate during July through December.

Notes: To obtain round weight of groundfish, divide the product weight of groundfish by the table PRR.
To obtain IFQ net weight of Pacific halibut, multiply the product weight of halibut by the table conversion rate.
To obtain round weight from net weight of Pacific halibut, divide net weight by 0.75 or multiply by 1.33333.

6. Revise Table 11 to 50 CFR 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	Arrow-Tooth[9]	Yellow fin sole	Other flatfish[2]	Rock sole	Flathead sole	Green-land turbot	Sable-fish[1]	Short-raker/ rougheye	Aggregated rockfish[6]
110	Pacific cod	20	na[5]	20	20	35	20	20	20	20	1	1	2	5
121	Arrowtooth[9]	20	20	20	20	na	20	20	20	20	7	1	2	5
122	Flathead sole	20	20	20	35	35	35	35	35	na	35	15	7	15
123	Rock sole	20	20	20	35	35	35	35	na	35	1	1	2	15
127	Yellowfin sole	20	20	20	35	35	na	35	35	35	1	1	2	5
133	Alaska Plaice	20	20	20	na	35	35	35	35	35	1	1	2	5
134	Greenland turbot	20	20	20	20	35	20	20	20	20	na	15	7	15
136	Northern	20	20	20	20	35	20	20	20	20	35	15	7	15
141	Pacific Ocean perch	20	20	20	20	35	20	20	20	20	35	15	7	15
152/ 151	Shortraker/ Rougheye	20	20	20	20	35	20	20	20	20	35	15	na	5
193	Atka mackerel	20	20	na	20	35	20	20	20	20	1	1	2	5
270	Pollock	na	20	20	20	35	20	20	20	20	1	1	2	5
710	Sablefish[1]	20	20	20	20	35	20	20	20	20	35	na	7	15
875	Squid	20	20	20	20	35	20	20	20	20	1	1	2	5
Other flatfish[2]		20	20	20	35	35	35	na	35	35	1	1	2	5
Other rockfish[3]		20	20	20	20	35	20	20	20	20	35	15	7	15
Other species[4]		20	20	20	20	35	20	20	20	20	1	1	2	5
Aggregated amount non-groundfish species[8]		20	20	20	20	35	20	20	20	20	1	1	2	5

[1] Sablefish: for fixed gear restrictions, see § 679.7(f)(3)(ii) and (f)(11).

[2] 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.

[3] Other rockfish includes all "rockfish" as defined at § 679.2, except for Pacific ocean perch; and northern, shortraker, and rougheye rockfish.

[4] The other species group includes sculpins, sharks, skates, and octopus.

[5] na = not applicable

[6] Aggregated rockfish includes all "rockfish" as defined at § 679.2**,** except shortraker and rougheye rockfish.

[7] Forage fish are defined at Table 2c to this part.

[8] 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.

[9] The arrowtooth group includes arrowtooth flounder and Kamchatka flounder in the aggregate as basis species and as incidental catch species. Should either arrowtooth flounder or Kamchatka flounder close to directed fishing then neither arrowtooth flounder nor Kamchatka flounder may be used as a basis species for the purpose of retaining incidental catch of groundfish.

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