

merit, they were not sufficiently developed and analyzed in a manner that would allow for implementation on January 1, 2003. Therefore, the Council adopted a preferred alternative for Amendment 75 to the FMP to delay implementing the 100-percent retention requirements for rock sole and yellowfin sole until June 1, 2004. The intent of this action was to provide the Council and industry with additional time to develop alternative regulatory proposals to reduce discard amounts.

The Council submitted Amendment 75 for review by the Secretary of Commerce and a Notice of Availability of the FMP amendment was published in the **Federal Register** on February 28, 2003 (68 FR 9630). Comments on this proposed Amendment were invited through April 29, 2003. The proposed rule was published on March 28, 2003 (68 FR 15144), and was followed by a notice of additional supplementary information on April 18, 2003 (68 FR 19182), to summarize additional information on the Initial Regulatory Flexibility Analysis (IRFA). Comments on the proposed rule and supplementary information were invited through May 12, 2003. NMFS received 4 letters by the end of the comment periods on the proposed amendment and its implementing rule, all requesting an indefinite delay or removal of the flatfish IR/IU requirement for the BSAI groundfish fisheries. These comments are summarized and responded to in the Response to Comments section, below.

A summary of the analysis on Amendment 75, including the Council's preferred alternative, was provided in the proposed rule (68 FR 15144, March 28, 2003) and the Notice of Availability of Supplemental Information (68 FR 19182 April 18, 2003). On May 29, 2003, the Secretary of Commerce partially approved the Council's preferred alternative for Amendment 75. In doing so, the Secretary continued the IR/IU program for pollock and Pacific cod, but delayed indefinitely the flatfish IR/IU program by removing reference to this program from the FMP. Full approval of the Council's preferred alternative would have been inconsistent with the Administrative Procedure Act, which requires that the administrative record for an action include an explanation of the rational connection between the analysis and decision. The administrative record for Amendment 75 shows that if flatfish IR/IU regulations were to be implemented after the 18-month delay date of June 2004, they would result in significant adverse economic impacts on some participants in the groundfish fisheries.

However, the record for this action does not show how overall benefits outweigh the costs. Approval of Amendment 75 also would have resulted in significant adverse economic impacts that are inconsistent with the problem statement for Amendment 75, National Standard 7 and National Standard 9. Thus, partial approval of Amendment 75 was necessary to provide sufficient opportunity for the Council to either develop a record for Amendment 75 or develop other options for refining the IR/IU program, without the immediate imposition of full retention of IR/IU flatfish species in the BSAI.

Elements of the Final Rule

This final rule would remove regulatory requirements for retention and utilization of rock sole and yellowfin sole in the BSAI. No other regulatory actions are contained in this final rule.

Changes from the Proposed Rule to the Final Rule

This final rule differs from the proposed rule in that it does not include a delay in the implementation of the IR/IU retention and utilization requirements for rock sole and yellowfin sole in the BSAI. Instead, regulatory provisions for flatfish IR/IU are removed. This change is necessary to conform regulations to the partial approval of Amendment 75.

Response to Comments

The proposed rule to implement Amendment 75 was published on March 28, 2003 (68 FR 15144), with comments invited through May 12, 2003. NMFS received 4 comment letters on the proposed rule, all of which address the adverse economic implications of the BSAI flatfish IR/IU program.

Comment: NMFS should rescind the flatfish IR/IU program in the BSAI, or put it on indefinite hold, because a delay until June 2004 will not provide sufficient time to implement alternative strategies to reduce discards of these species. Furthermore, significant progress already has been made voluntarily to reduce discards since 1997. The non-American Fisheries Act trawl catcher processor fleet alone has reduced yellowfin sole and rock sole discards by over 40 percent during the past 5 years.

Response: As explained above, the Secretary has determined that the proposed delay of the flatfish IR/IU program was inconsistent with the Administrative Procedure Act and National Standards 7 and 9. Thus, the existing provisions for flatfish IR/IU in

the BSAI were removed from the FMP and its implementing regulations.

Classification

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

The Council prepared an initial regulatory flexibility analysis (IRFA) that described the economic impact of the proposed rule, if adopted, would have on small entities. A summary of the IRFA was included in the Notice of Availability of Supplementary Information (68 FR 19182, April 18, 2003). The IRFA identified small and large entities that could be affected by the proposed rule and associated alternatives in the analysis. In Alternative 1 (the status quo) the imposition of a 100 percent IR/IU flatfish retention standard for rock sole and yellowfin sole in the BSAI would decrease revenues of small vessels while having little impact on larger vessels. This reduction in revenues could cause some of the smaller sized head and gut trawl catcher/processor vessels to exit fisheries in which these species are caught. Alternative 2, which would have allowed some discards of flatfish species, was anticipated to have some economic and operational impacts on small entities, but also was deemed to be impossible to enforce. Alternative 3 would have delayed imposition of IR/IU flatfish rules for up to 3 years, with the expectation that some form of fishing cooperative system would ease the economic burden of IR/IU flatfish rules in the BSAI. Alternative 4 would have exempted selected fisheries from IR/IU flatfish regulations based upon historical flatfish discard rates, but this would not mitigate the immediate burden on small head and gut catcher/processor vessels. The Council's preferred alternative was a modification of Alternative 3 that proposed a delay of IR/IU flatfish regulations for 18 months to temporarily ease the economic burden of flatfish IR/IU but ultimately would impose the full economic burden, unless other mitigating regulatory actions were to be implemented before the date that IR/IU flatfish rules would be implemented. No comments were submitted in response to the IRFA.

NMFS prepared a final regulatory flexibility analysis (FRFA) for the partial approval of Amendment 75 that contains the items specified in 5 U.S.C. 604(a). The FRFA consists of the IRFA, the comments and responses to the proposed rule, and the analyses completed in support of this action. A copy of the IRFA is available from the Council (see **ADDRESSES**). The preamble