

# Public Testimony Sign-Up Sheet


## Agenda Item ~~D-2(b)~~

D-2(b)  
SKATES

	NAME (PLEASE PRINT)	AFFILIATION
1	LORI SWANSON	GFF
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NOTE to persons providing oral or written testimony to the Council: Section 307(1)(I) of the Magnuson-Stevens Fishery Conservation and Management Act prohibits any person "to knowingly and willfully submit to a Council, the Secretary, or the Governor of a State false information (including, but not limited to, false information regarding the capacity and extent to which a United State fish processor, on an annual basis, will process a portion of the optimum yield of a fishery that will be harvested by fishing vessels of the United States) regarding any matter that the Council, Secretary, or Governor is considering in the course of carrying out this Act.

MEMORANDUM

TO: Council, SSC and AP Members  
FROM: Chris Oliver   
Executive Director  
DATE: May 8, 2009  
SUBJECT: Groundfish Issues

ESTIMATED TIME 4 HOURS All D-2 items
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**ACTION REQUIRED**

- (b) Initial Review of analysis to revise management of BSAI skates

**BACKGROUND**

BSAI skates

Skates, sharks, sculpins, and octopods are included in the Bering Sea/Aleutian Island (BSAI) "other species" quota category. A single overfishing limit (OFL), acceptable biological catch (ABC), and total allowable catch (TAC) is specified annually for the "other species" assemblage despite their very different life histories. The problem in the BSAI groundfish fishery is that the management of the assemblage offers minimal protection to individual species or groups. The potential for the entire TAC, which is set for the assemblage, to be taken as skates under the No Action alternative exists, even though a directed fishery has yet to develop. The policy objective for this proposed action is to prevent overfishing and maintain healthy stocks of skates. The action would require the Council to annually establish an OFL, ABC, and TAC for skates as a group or individual skate species, thereby enhancing the management tools to control their harvest.

A complementary amendment to federal regulations at 50 CFR part 679 would: 1) remove skates from the maximum retainable amounts (MRAs) for the "other species" category and create a new skate MRA category; and 2) list new species code(s) for BSAI skates. The MRA of a species closed to directed fishing is the maximum weight of that species that may be retained onboard a vessel, calculated as a percentage of the weight of the retained catch onboard the vessel of each species open to directed fishing (i.e. the basis species). The new MRA would specify the maximum amount of skates that could be retained while directed fishing for other groundfish species, and the maximum amounts of other groundfish not open for directed fishing that could be retained while directed fishing for skates. Proposed skate MRAs would be set to the same amounts as identified for "other species."

The analysis was mailed to you on May 15, 2009. The executive summary is attached under **Item D-2(b)(1)**. The two alternatives under consideration for revising management of BSAI skates are:

- Alternative 1:** (The No Action Alternative) Skates would continue to be managed as a part of the BSAI "other species" category.

**Alternative 2:** Move skates from the “other species” category to the “target species” category in the BSAI Groundfish FMP and amend federal groundfish regulations at Part 679: 1) set maximum retainable allowances for BSAI skates equal to MRAs for other species in Table 11, and 2) add species codes for BSAI skates in Table 2a.

In 2008, the Council identified that this proposed action was its first priority in revising management of the component groups in the “other species” category while the Council awaited publication of revised guidelines for National Standard 1. The Council (through its Non-Target Species Committee) may wish to review the remaining actions to revise management of squids, sharks, sculpins, octopods, and grenadiers, in light of the revised guidelines which were published in January 2009 and in light of other pressing priorities. More detail on staff requests for policy clarifications are relevant to the BSAI skate analysis listed under **Item D-2(b)(2)**.

## Executive Summary

This Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) provides environmental and socio-economic analyses for two actions in accordance with National Environmental Policy Act (NEPA), Executive Order 12866, and the Regulatory Flexibility Analysis. Amendment 95 to the Fishery Management Plan for the Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) would move the skate assemblage from the “other species” category to the target species category. An associated regulatory amendment to 50 CFR part 679 would revise Federal regulations to be consistent with the amended FMP. Amendment 95 is necessary for the management of the groundfish fisheries and the conservation of marine resources, as required by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act or MSA); a regulatory amendment is a required complementary action if the North Pacific Fishery Management Council (Council) recommends separate management for skates in the Bering Sea and Aleutian Islands Management Area (BSAI).

### Purpose and Need

The policy objective for this action is to prevent overfishing and maintain healthy stocks of skates. Skates currently are included in the “other species” quota category with sharks, sculpins, and octopuses. A single overfishing limit (OFL), acceptable biological catch (ABC), and total allowable catch (TAC) is specified annually for the “other species” category as a whole. The observed problem in the BSAI groundfish fishery is the potential development of a target fishery on skate species that are managed under a single TAC for four very different groups of groundfish species. The susceptibility of skates to fishing pressure has been well documented. Management of skates as part of the other species category offers minimal protection to individual species or groups. Designating skates as a target species in the FMP will require the Council to annually establish an OFL, ABC, and TAC for skates as a group or individual skate species, thereby providing enhanced means to control the harvest of skates in the BSAI. The establishment of a separate target category for specifications and a separate MRA for the skate complex will allow better control over the harvest of skates. While no target fishery has yet developed for skates in the BSAI, without the proposed FMP amendment, the potential exists for the entire other species TAC to be taken as skates.

A complementary amendment to federal regulations at 50 CFR part 679 would revise the list of species included in the “other species” category, remove skates from the calculation of MRAs of “other species”, and specify the MRAs for skates as a separate category. A new species code for BSAI skates. The MRA of a species closed to directed fishing is the maximum weight of that species that may be retained onboard a vessel, calculated as a percentage of the weight of the retained catch onboard the vessel of each species open to directed fishing (the basis species). The new MRAs would specify the maximum amount of skates that could be retained while directed fishing for other groundfish species and the maximum amounts of other groundfish not open for directed fishing that could be retained while directed fishing for skates.

Both the FMP amendment and the regulatory amendment are necessary to allow the Council and the Secretary of Commerce to implement more responsive, precautionary management of skates. A similar action to remove skates from the other species category in the Gulf of Alaska was approved in 2005.

### Environmental Assessment

An EA was prepared to address the statutory requirements of NEPA. The purpose of the EA is to predict whether the impacts to the human environment resulting from implementation of Amendment 95 and the regulatory amendment will be “significant,” as that term is defined under NEPA. If the predicted impacts from the proposed alternative are found not to be significant, no further analysis is necessary to comply with the requirements of NEPA.

Two alternatives are considered for revising management of BSAI skates in this EA.

**Alternative 1.** (The No Action Alternative) Skates would continue to be managed as a part of the BSAI “other species” category.

**Alternative 2.** Move skates from the “other species” category to the “target species” category in the BSAI Groundfish FMP and revise Part 679 of federal groundfish regulations to list 1) maximum retainable amounts for BSAI skates equal to MRAs for other species in Table 11 and 2) species code(s) for BSAI skates in Table 2a.

The EA evaluated alternatives with respect to the following classes of effects:

- target species
- other species
- non-specified species
- forage fish species
- prohibited species
- marine mammals
- seabirds
- marine benthic habitat and essential fish habitat
- the ecosystem
- social and economic consequences

The environmental and socio-economic impacts of Amendment 95 and the regulatory amendment are discussed in the EA. NEPA significance is determined by considering the context in which the action will occur and the intensity of the action. The context in which the action will occur includes the specific resources, ecosystem, and the human environment affected. The intensity of the action includes the type of impact (beneficial versus adverse) and the duration of impact.

The purpose of the proposed action is to give managers more control over skate harvests in the BSAI to prevent overfishing of skates. This action may lead to limits of the gross revenues from foregone harvest of skates in the future in the short run, but as a result of protecting the biomass, may lead to greater gross revenues from a sustainable fishery. Given the uncertainties about future skate TAC setting, and with respect to industry’s valuation of the trade off between potential short run restrictions and long run sustainability, the significance of socio-economic impacts is difficult to quantify but is discussed qualitatively in Section 1.5.

The proposed action is limited in scope and likely will not affect all environmental components of the BSAI. The effects discussion is limited to groundfish target species impacts (including skates, other species, and Pacific cod), Pacific halibut, and social and economic impacts. Alternative 2, which provides more protection to the skate stock biomass, has been given an insignificant designation for effects on skate species. No additional groundfish bycatch (e.g., Pacific cod or Pacific halibut) is expected to be taken as no target skate fishery is expected to develop as a result of this proposed action. Should a target fishery develop in the future, the effects of increased harvest of other species, Pacific cod, and Pacific halibut is expected to have insignificant effects because of harvest (target and incidental) limits already in effect for them.

Under the no action alternative NMFS does not have the ability to adequately protect BSAI skates. This is particularly problematic since there is great uncertainty about the biology and population dynamics of skates. Skate species have low fecundity and low growth rates, which would lead to slow recoveries if stocks were fished down. While revenues from the fishery would be higher in the short run while the biomass was being driven down, they would be lower in the longer run as a reduced biomass would support a smaller skate fishery. Also, fishing costs might be higher, due to lower catch per unit of effort, if the biomass was fished down. A key tradeoff occurs between the cost of possible constraints on the directed fisheries that catch skates incidentally in the short run and the long-run benefits from protection of the stock, with possibly larger harvests and higher revenues in the long run.

### **Regulatory Impact Review**

A Regulatory Impact Review was performed to address the requirements of Presidential Executive Order 12866 (EO 12866) for changes to federal regulations. EO 12866 requires a cost-benefit analysis for certain federal actions. Under the no action alternative NMFS does not have the ability to adequately limit the retention of BSAI skates. The RIR addresses how to manage bycatch of BSAI skates in other directed

commercial groundfish fisheries. NMFS may not have the ability to adequately limit the bycatch removals of skates in other commercial fisheries under the no action alternative.

Two alternatives are considered for revising management of BSAI skates in this RIR.

**Alternative 1.** (The No Action Alternative) Skates would continue to be managed as a part of the BSAI "other species" category.

**Alternative 2.** Revise Part 679 of federal groundfish regulations to list 1) maximum retainable amounts for BSAI skates equal to MRAs for other species in Table 11 and 2) species code(s) for BSAI skates in Table 2a..

### **Initial Regulatory Flexibility Analysis**

The Initial Regulatory Flexibility Analysis (IRFA) was performed to address the statutory requirements of the Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Fairness Act of 1996. These acts require an analysis of the potential adverse economic impacts on directly regulated small entities of regulatory actions subject to the notice and comment provisions of the Administrative Procedure Act. The IRFA examined the impacts of the proposed alternatives on small entities within fisheries sectors defined by the harvest of species groups whose TACs might be affected by setting specifications and MRAs for skates. These impacts might affect an estimated 212 small entities in the BSAI. The IRFA did not identify adverse impacts on any small entities. The action does not impose new recordkeeping or reporting requirements on small entities. The analysis did not reveal any federal rules that duplicate, overlap, or conflict with the proposed action.

**Request for Clarifications** The analysts request Council consideration of a number of nested policy issues relevant to the analysis to revise management of BSAI skates. Clarifications could streamline future analyses for the remaining groups in the BSAI and GOA other species assemblages which are scheduled for action in 2009 and 2010.

1. Section 1.5 addresses the unintended consequence of allowing increased retention of bycatch species under a separate MRA for BSAI skates under Alternative 2; the analysts used the creation of the GOA skate MRA as a precedent for including such an action in this analysis. Increased retention of squids, sharks, octopods, sculpins, and grenadiers could result from creation of separate MRAs for these groups in both the BSAI and GOA<sup>1</sup> under future analyses initiated by the Council in 2008. Because of the potential increased retention of skates under the proposed action, the Council could identify the MRA issue as a rejected alternative during initial review or not select it as part of its preferred alternative at final action.

Further, the Council could:

- o develop an overarching policy regarding the creation of new MRAs that would result in streamlining future analyses (i.e., staff would not prepare MRA analyses).
  - o remove the separate MRAs for BSAI squids and GOA skates by considering whether to list:
    - 1) BSAI squids under the aggregated other species MRA in the BSAI/GOA squid analysis scheduled for review in October 2009; and
    - 2) GOA skates under the aggregated other species MRA in this BSAI skate analysis; or
- 3) take no action on BSAI squid and GOA skate MRAs because the Council deems their management to be appropriate (e.g., the BSAI squid MRA has been in place for many years and the GOA skate MRA was created because a target fishery was expected to develop but deem that new MRAs for bycatch species are not appropriate.

- \* 2. If the Council decides in favor of the status quo for new MRAs, then proposed regulatory changes would be streamlined to the listing of new species codes in federal regulations in each future analysis or the Council could initiate one regulatory amendment to add all necessary species codes for BSAI skates, GOA squids, BSAI and GOA sharks, BSAI and GOA octopods, BSAI and GOA sculpins, and BSAI and GOA grenadiers. This regulatory amendment could proceed as a “housekeeping” change and not come back for Council action but proceed directly to Secretarial review. Species codes are in federal regulations to enhance record keeping and reporting. New species codes could number up to 100 if this approach is expanded to *all* the other species groups, although many minor species could be excluded, which could reduce the number of new codes to around 40 (which species codes to include would be the subject of the RIR).
3. *At most* streamlining could result in the development of five EAs to revise management of other species (which requires a Notice of Availability, a 60-day comment period, response to comments, and a Notice of Approval but does not require proposed and final regulations) and one RIR to add species codes to federal regulations. It may be possible to certify the species code changes under the Regulatory Flexibility Act.

In summary, the Council could select from among the following policy approaches for these analyses:

1. Skate TAC FMP amendment, skate MRA change, skate species codes (same approach for all groups)
2. Skate TAC FMP amendment, skate species codes (same approach for all groups)
3. Skate TAC FMP amendment (same approach for all groups); and all other species codes (with FMP amendment or separate analysis)

<sup>1</sup> Separate MRAs for BSAI squids and GOA skates are listed in federal regulations.