

possession limit may be adjusted pursuant to the procedures in § 648.120.

\* \* \* \* \*

9. Section 648.142 is revised to read as follows:

**§ 648.142 Time restrictions.**

Vessels that are not eligible for a moratorium permit under § 648.4 (a)(7) and fishermen subject to the possession limit may not fish for black sea bass from March 1 through May 9. This time period may be adjusted pursuant to the procedures in § 648.140.

10. In § 648.143, the first sentence of paragraph (b) is revised to read as follows:

**§ 648.143 Minimum sizes.**

\* \* \* \* \*

(b) The minimum size for black sea bass is 11 inches (27.94 cm) TL for all vessels that do not qualify for a moratorium permit, and party boats holding a moratorium permit if fishing with passengers for hire or carrying more than five crew members, or charter boats holding a moratorium permit if fishing with more than three crew members. \* \* \*

\* \* \* \* \*

11. In § 648.145, the introductory paragraph is removed, existing paragraphs (a), (b) and (c) are redesignated as paragraphs (b),(c), and (d), and a new paragraph (a) is added to read as follows:

**§ 648.145 Possession limit.**

(a) No person shall possess more than 25 black sea bass in, or harvested from the EEZ unless that person is the owner or operator of a fishing vessel issued a black sea bass moratorium permit, or is issued a black sea bass dealer permit. Persons aboard a commercial vessel that is not eligible for a black sea bass moratorium permit are subject to this possession limit. The owner, operator, and crew of a charter or party boat issued a black sea bass moratorium permit are subject to the possession limit when carrying passengers for hire or when carrying more than five crew members for a party boat, or more than three crew members for a charter boat. This possession limit may be adjusted pursuant to the procedures in § 648.140.

\* \* \* \* \*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 010510121-1121-01; I.D. 012601B]

RIN 0648-AN23

**Fisheries of the Exclusive Economic Zone Off Alaska; Revisions to Definition of Length Overall of a Vessel**

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes to clarify the definition of length overall (LOA) of a vessel. This would provide unambiguous guidance to vessel owners in determining a vessel's LOA for purposes of Federal fisheries management programs and to facilitate NMFS' and the U.S. Coast Guard's (USCG) enforcement of LOA requirements in the exclusive economic zone (EEZ) off Alaska. The action is intended to further the goals and objectives of the Fishery Management Plan (FMP) for Groundfish of the Gulf of Alaska and the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area.

**DATES:** Comments must be received by June 25, 2001.

**ADDRESSES:** Written comments should be sent to Sue Salvesson, Assistant Administrator, Sustainable Fisheries Division, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or delivered to the Federal Building, Fourth Floor, 709 West 9th Street, Juneau, AK, and marked Attn: Lori Gravel. Comments also may be sent via facsimile (fax) to 907-586-7465. Comments submitted by e-mail or the internet will not be accepted. Copies of the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) are available from the same address or by calling the Alaska Region, NMFS, at 907-586-7228.

**FOR FURTHER INFORMATION CONTACT:** Patsy A. Bearden or Jim Hale, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The domestic groundfish fisheries in the EEZ off Alaska are managed by NMFS under the FMPs. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act

(Magnuson-Stevens Act). Regulations governing the Alaska groundfish fisheries appear at 50 CFR parts 600 and 679. This proposed action would clarify the definition of vessel LOA, remove the definitions of stem and stern, and add a definition for bulwarks.

Presently, the definition of LOA requires measurement from the "foremost part of the stem" to the "aftermost part of the stern." As illustrated by Figure 6 of 50 CFR part 679, this definition is intended to be an end-to-end measurement of the vessel and implicitly include the bulwarks of a vessel. For purposes of commercial fishing in the EEZ off Alaska, vessel LOA was first defined by the final rule implementing the observer program (55 FR 4839, February 12, 1990). Figure 6 was added to 50 CFR part 679 by a subsequent interpretive rule and technical amendment (57 FR 43621, September 22, 1992) that intended to clarify that definition. Although NMFS does not explicitly mention the term "bulwarks" in that interpretive rule/technical amendment, the preamble to the rule provides a technical description and interpretation of the term "stem" as "the foremost position of the vessel, a section of timber or cast, forged, or rolled metal to which the sides of a vessel are united at the fore end" (57 FR 43622). The illustration amended to the regulations as Figure 6 clearly depicts the inclusion of bulwarks in LOA measurement. NMFS intended the interpretative language and the illustration of Figure 6 to clarify the definition of LOA to include bulwarks. Moreover, NMFS enforcement policy has always included in any LOA measurement bulwarks that constitute the foremost or aftermost part of a vessel.

NMFS recognizes now that the definition of LOA still requires clarification. Despite the visual representation of bulwarks as part of the LOA in Figure 6, the language of the former interpretative rule is overly technical and the terms "stem" and "stern" remain open to misinterpretation. This action would remove "stem" and "stern" from the definition of LOA, add the term "bulwarks," and thus clarify the original intent of the regulation that LOA measurement be an end-to-end measurement of a vessel.

Maritime regulations of other Federal agencies such as the USCG often use similar terminology to define LOA. However, the terms "foremost part of the stem" and "aftermost part of the stern" may or may not implicitly include bulwarks in the definition of overall vessel LOA. Federal regulators

define LOA differently for different purposes. For instance, USCG regulations at 46 CFR 69.203 use LOA to categorize vessels by buoyant hull volume, which cannot include structures such as bulwarks that are open to the weather and thus constitute no part of a vessel's buoyant hull envelope. These two different uses of the terms "foremost part of the stem" and "aftermost part of the stern" create the potential for confusion and inconsistent application of the LOA measurement by the regulated public.

For purposes of managing fisheries, vessel LOA provides NMFS with one criterion by which to categorize and manage the diverse capacities and capabilities of fishing vessels operating in Federal waters off Alaska. Distinguishing vessels by LOA categories allows NMFS to assign harvesting privileges in ways that ensure that fishing fleets remain relatively diversified between larger and smaller vessels and prevent over-consolidation of fishing privileges among any one sector of the fisheries, as well as to manage the growth of harvest capacity in a fishery and protect the historical character of a fishery and its dependent communities.

LOA categories also allow NMFS to assess the relative ability of fishermen to afford the cost of certain regulatory requirements, such as those requiring observer coverage.

Moreover, NMFS enforcement officers and USCG personnel charged with monitoring the fisheries for compliance with regulations require a practical definition of LOA that will facilitate the measurement of LOA. Despite the difficulty of measuring LOA during fishing operations, enforcement officers do take such measurements at dockside or at sea to ensure a vessel's compliance with regulatory requirements, such as observer coverage requirements. Bulwarks are a clearly visible part of a vessel's size; as such, including them in LOA measurement would make a vessel's length easier to ascertain from dockside or while the vessel is at sea.

For these reasons, NMFS proposes to revise the definition of LOA to explicitly include bulwarks, remove the

definitions of "stem" and "stern," and add a definition of "bulwark" to the definitions in 50 CFR 679.2. This action would not require a vessel owner to change the recorded LOAs of a vessel already registered with NMFS, provided the vessel's LOA accurately reflects the vessel's end-to-end measurement as shown in Figure 6 of 50 CFR part 679. This figure accurately depicts the end-points of LOA measurement. This action would prevent future misinterpretation of the regulatory definition of LOA.

**Classification**

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

NMFS prepared an IRFA that analyzes the potential impact of this proposed action on small entities for purposes of the Regulatory Flexibility Act. While this action is intended simply to clarify the existing definition of LOA and thus prevent any misunderstanding or equivocation by vessel owners in determining a vessel's LOA. Some of the 1,613 vessels currently operating in the EEZ off Alaska under Federal Fisheries Permits may find their registered LOAs to be inconsistent with the regulatory definition of LOA. Vessels failing to have correct LOA measurements may incur costs associated with remeasuring their LOA. Unfortunately, at this time, NMFS has insufficient data to assess the actual number of such vessels affected in this manner, but it believes most LOAs are accurate.

However, vessels that are near observer coverage thresholds, (125 ft or 60 ft, as applicable) may incur considerable cost if it is determined that their LOA is incorrect and that they should actually be subject to a higher level of observer coverage.

Approximately 38 vessels with recorded LOA measurements of 124, 123, and 122 ft may be subject to more stringent observer requirements if their LOAs are actually 125 ft or greater. Approximately 156 vessels with LOA measurements of 57, 58, and 59 ft may be subject to more stringent observer requirements if their LOAs are actually 60 ft or greater. Such vessels could incur costs of \$300/day for an observer.

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

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: May 21, 2001.

**William T. Hogarth,**

*Deputy Asst. Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set forth 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 50 CFR part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; title II of Division C, Pub. L. 105-277; Sec. 3027, Pub. L. 106-31, 113 Stat. 57; 16 U.S.C. 1540 (f).

2. In § 679.2, the definition for "bulwark" is added in alphabetical order, the definition for "length overall of a vessel" is revised; and the definitions for "stem" and "stern" are removed as follows:

\* \* \* \* \*

**§ 679.2 Definitions.**

\* \* \* \* \*

*Bulwark* means a section of a vessel's side, continued above the main deck as a protection against heavy weather.

\* \* \* \* \*

*Length overall (LOA) of a vessel* means the centerline longitudinal distance, rounded to the nearest foot, measured between:

(1) The outside foremost part of the vessel visible above the waterline, including bulwarks, but excluding bowsprits and similar fittings or attachments, and

(2) The outside aftermost part of the vessel visible above the waterline, including bulwarks, but excluding rudders, outboard motor brackets, and similar fittings or attachments (see Figure 6 to this part; see also maximum LOA, original qualifying LOA, and reconstruction).

\* \* \* \* \*

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