

U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific ocean perch in the Eastern Aleutian District of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 5, 2007.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 5, 2007.

Alan D. Risenhoover,

*Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.*

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060511126-7122-05; I.D. 050306E]

RIN 0648-AT71

Fisheries of the Exclusive Economic Zone Off Alaska; Allocating Gulf of Alaska Fishery Resources

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule for the Central Gulf of Alaska (GOA) rockfish fisheries to revise monitoring and enforcement (M&E) provisions related to catcher/processor vessels harvesting under the opt-out fishery, and to make changes to regulations governing the rockfish fisheries. This action is necessary to clarify procedures and to correct discrepancies in a November 20, 2006, final rule. This final rule is intended to promote the goals and objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP), the Magnuson-

Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and other applicable law.

DATES: Effective on August 10, 2007.

ADDRESSES: Copies of Amendment 68; the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for Amendment 68; and Final Regulatory Flexibility Analysis (FRFA) prepared for Amendment 68 may be obtained from the NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Ellen Sebastian, and on the NMFS Alaska Region website at <http://www.fakr.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Jason Anderson, 907-586-7228, or jason.anderson@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

In January 2004 the U.S. Congress amended section 313(j) of the Magnuson-Stevens Act through the Consolidated Appropriations Act of 2004 (Public Law 108 199, section 802). As amended, the Magnuson-Stevens Act authorizes the Secretary of Commerce to establish a limited access privilege program for the Central GOA rockfish fisheries (Program), developed in coordination with the North Pacific Fishery Management Council (Council). The Council recommended Amendment 68 to the FMP for groundfish in the GOA on June 6, 2005, to make the Program effective.

NMFS published a notice of availability for Amendment 68 on May 15, 2006 (71 FR 27984). On June 7, 2006, NMFS published a proposed rule to implement Amendment 68 and the Program (71 FR 33040). The Secretary approved Amendment 68 on August 11, 2006. NMFS published a final rule to implement Amendment 68 on November 20, 2006 (71 FR 67210).

The Program provides exclusive harvesting and processing privileges for a specific set of rockfish species and associated species harvested incidentally to those rockfish in the Central GOA an area between 147° W. longitude and 159° W. longitude. A detailed overview of the Program is provided in the preamble to the proposed rule (71 FR 33040; June 7, 2006) and is not repeated here. However, a component of the Program allows holders of License Limitation Program (LLP) licenses that are assigned rockfish quota share (QS) for the catcher/processor sector to opt-out of many of the aspects of the Program (opt-out fishery). Participants in the opt-out fishery are subject to harvest limitations,

called sideboard limits, during the month of July. Sideboard limits applicable to participants in the opt-out fishery include measures to limit catch of specific groundfish species to historic levels, and limits on the amount of Pacific halibut bycatch, specifically termed prohibited species catch (PSC). NMFS requires a suite of M&E provisions for participants in the opt-out fishery to ensure they do not exceed their sideboard limits.

Need for Corrections to the November 20, 2006, Final Rule

NMFS seeks to ensure that the November 20, 2006, final rule (71 FR 67210) conforms to the intent of the Program, and to provide clarification regarding the Program's regulatory requirements.

Regulatory Intent Clarification

In the proposed rule to implement Amendment 68 (71 FR 33040; June 7, 2006), NMFS detailed the M&E provisions that would apply to participants in the opt-out fishery. The proposed suite of M&E provisions applicable to the opt-out fishery included requirements that each haul must be weighed separately, all catch must be made available for sampling by a NMFS-certified observer (see proposed regulatory text at § 679.84(c)(1); 71 FR 33096), and that the vessel has no more than one operational line or other conveyance for the mechanized movement of catch between the scale used to weigh total catch and the location where the observer collects species composition samples (see proposed regulatory text at § 679.84(c)(4); 71 FR 33096). The proposed rule would have required that all catcher/processor vessels in the opt-out fishery be subject to these M&E requirements during July. The effect of the full suite of these M&E requirements on the regulated industry and the environment was analyzed in the draft EA/RIR/IRFA prepared for the proposed rule to implement the Program.

In response to public comment received on the proposed rule, NMFS modified the M&E provisions that apply to the opt-out fishery. The modifications were detailed in the preamble to the final rule. Specifically, NMFS noted these changes in the Summary of Changes section to the preamble (71 FR 67213) and in its response to comment 90 (71 FR 67229). NMFS also analyzed the effect of the revised M&E provisions for the opt-out fishery in the final EA/RIR and FRFA prepared for the Program final rule (see **ADDRESSES**). The preamble to the final rule clearly indicated that NMFS intended to

maintain the requirement for hauls to be weighed separately, and intended to require only one operational line.

The final regulatory text applicable to the opt-out fishery omitted some of the M&E requirements for catcher/processor vessels in the opt-out fishery that were detailed in the preamble to the final rule. Specifically, the regulations at § 679.84(d) failed to include the requirements to prevent mixing of hauls and maintain only one operational line before the point where the observer samples catch. These two requirements are essential for accurately attributing species composition to a specific haul and, in particular, to provide onboard observers the ability to properly attribute halibut PSC to a specific haul. Assigning halibut PSC to a specific haul is necessary to generate halibut PSC usage rates for specific fishery targets. Mixing of hauls and using more than one operational line undermine NMFS' ability to determine accurate halibut PSC usage for specific fisheries and create the potential for improper halibut PSC accounting. Because the distribution of organisms by size and species often differs among hauls, an aggregation of hauls (i.e., mixing two or more hauls) could create errors in the calculation of total groundfish catch. For example, if a vessel were to mix hauls from two different areas or depths, species catch composition and size could be significantly different between these hauls, and a composite sample may not represent each individual haul. Any errors would be exacerbated as the composite sample is expanded to represent the total weight of the mixed hauls. Similarly, the use of more than one operational line could lead to improperly sampled catch because catch could be diverted or otherwise conveyed in a manner that would limit adequate sampling.

Improper accounting of halibut PSC increases the risk that NMFS' catch accounting system may underestimate the amount of halibut PSC in the opt-out fishery, which undermines the conservation goals of this program. Because halibut PSC sideboard limits are likely to be small relative to harvest rates, timely and accurate accounting is essential to properly constrain fishing operations and ensure adequate conservation of the halibut resource.

Additionally, halibut PSC sideboard limits are allocated to specific participants within the catcher/processor sector (i.e., halibut PSC sideboard limits are established for each catcher/processor rockfish cooperative, and a combined halibut PSC limit is established for the combined catcher/processor rockfish limited access and

opt-out fisheries). Failure to properly account for halibut PSC in a timely fashion with the best available data could increase the possibility that the opt-out fishery exceeds its halibut PSC sideboard limit. This could adversely constrain other fishery participants with halibut PSC limits (e.g., participants in catcher/processor cooperatives).

Finally, certain catcher/processor operators that may choose to participate in the opt-out fishery may have an incentive to use techniques to intentionally bias halibut PSC rates if mixing of hauls and the use of more than one operational line is permitted. Recent enforcement actions document intentional presorting of catch to bias observed catch rates of halibut PSC to maximize groundfish catch relative to constraining PSC or other groundfish catch. However, NMFS expects that opportunities to bias observer samples in the opt-out fishery will be reduced with the changes established under this rule.

This action revises the regulatory text to include requirements to prevent the mixing of hauls and maintain only one operational line before the point where the observer samples catch. This action is necessary to be consistent with the intent of the final rule and provide the affected public with accurate information regarding these requirements.

Additional Changes

Regulations at § 679.80(f)(3)(iii)(F) include a grammatical error. This paragraph is revised to correct the phrase, "are the sum of all catch history" to read, "is the sum of all catch history."

Regulations at § 679.82(d)(5)(iii) describe sideboard limits applicable to catcher vessels for the Program. This paragraph includes an erroneous cross-reference to "§ 679.65(b)(1)(i)(B)." This cross-reference is corrected to read "§ 679.64(b)(2)(ii)."

Regulations at § 679.82(d)(8)(ii)(B) include a misspelled word. This paragraph is revised to correct the phrase, "percent fo the GOA" to read, "percent of the GOA."

Regulations at § 679.83(a)(1)(i) describe rockfish allocations for the Program's entry level fishery. This paragraph includes an erroneous cross-reference to "§ 679.81(ab)(2)." This cross-reference is corrected to read "§ 679.81(a)(2)."

The proposed rule to revise Central GOA rockfish fisheries M&E provisions related to catcher/processor vessels harvesting under the opt-out fishery and to correct regulations governing the rockfish fisheries was published in the

Federal Register on April 16, 2007 (72 FR 18943), and the public review and comment period closed on April 30, 2007. NMFS received one letter on the proposed rule that contained two separate comments. The following summarizes and responds to these comments, which are summarized and responded to below. This final rule has not been changed from the April 16, 2006, proposed rule.

Response to Comments

Comment 1: All quotas should be reduced by 50 percent this year, and 10 percent each subsequent year.

Response: This final rule implements revisions to Central GOA rockfish fisheries M&E provisions related to catcher/processor vessels harvesting under the opt-out fishery. These revisions do not have any relationship to the establishment of harvest specifications or the assignment of quotas or allocations in the North Pacific groundfish fisheries, so this comment is outside the scope of this rulemaking.

Comment 2: Because trawl gear is environmentally destructive by nature, NMFS should ban all trawlers from this area.

Response: This final rule implements revisions to M&E provisions in a management program that was previously implemented. The Program was approved by the Secretary after undergoing rulemaking and that action was supported by an EA/RIR/IRFA. The EA/RIR/IRFA specifically analyzed the effects of fishing in the GOA, and NMFS determined that the Program would not result in any significant impacts to the human environment.

Classification

The Administrator, Alaska Region, NMFS, determined that this rule is necessary for the conservation and management of the groundfish fisheries off Alaska and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

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

An IRFA was prepared for the Program proposed rule, and described in the Classification section of the preamble to the proposed rule for this action. The public comment period ended on April 30, 2007. No comments were received on the IRFA or on the economic effects of the rule.

NMFS prepared a FRFA for regulations implementing the Program. The FRFA incorporates the IRFA and a summary of the analyses completed to

support the action. A copy of this analysis is available from NMFS (see **ADDRESSES**). A summary of the analysis follows.

Need for and Objective of the Rule

The FRFA prepared for the Program describes in detail the objectives, need, and legal basis for the action, and discusses both small and non-small regulated entities to adequately characterize the fishery participants. Section 802 of the Consolidated Appropriations Act of 2004 and the Magnuson-Stevens Act provide the legal basis for the Program, namely to achieve the objective of reducing excessive fishing capacity and ending the race for fish under the current management strategy for commercial fishing vessels operating in the Central GOA rockfish fisheries. This action revises the regulatory text to include requirements to prevent the mixing of hauls and maintain only one operational line before the point where the observer samples catch. This action is necessary to be consistent with the intent of the Program and provide the affected public with accurate information regarding these requirements.

Significant Alternatives and Steps to Minimize the Economic Impacts on Small Entities

The Council considered an extensive and elaborate series of alternatives, options, and suboptions as it designed and evaluated the potential for rationalization of the Central GOA rockfish fisheries, including the "no action" alternative. Three alternatives for catcher vessels were considered: Status Quo/No Action (Alternative 1); rockfish cooperative management with a limited license program for processors (Alternative 2); and rockfish cooperative management with linkages between rockfish cooperatives and processors (Alternative 3). Three alternatives for catcher/processors also were considered: Status Quo/No Action (Alternative 1); rockfish cooperative management (Alternative 2); and a sector allocation (Alternative 3). Alternative 3 for catcher vessels and Alternative 2 for catcher/processors were combined to form the Council's preferred alternative the rockfish cooperative alternative. The alternatives were analyzed relative to the status quo. Because the regulatory effect for opt-out sideboard fisheries will not occur until July 1, 2007, the status quo has not changed. Therefore, the effects of these alternatives described in the Program IRFA have not changed relative to this action. These alternatives constitute the suite of "significant alternatives" for

purposes of the Regulatory Flexibility Act (RFA).

After an extensive public process spanning several years, NMFS concluded that the Program best accomplishes the stated objectives articulated in the problem statement and applicable statutes, and minimizes to the extent practicable adverse economic impacts on the universe of directly regulated small entities.

Estimate of the Number and Description of Small Entities Affected by Final Rule

The FRFA prepared for the Program contains a description and estimate of the number of small entities to which the proposed rule would apply. The FRFA estimates that as many as 15 catcher/processor vessels are eligible to receive QS under the Program. The FRFA estimates that approximately 171 trawl vessels and 900 non-trawl vessels could participate in the entry level fishery. The number of vessels that would choose to participate in the entry level fishery component of the Program is not known; therefore, there is no estimate of the number of entities in the entry level fishery that are directly regulated under this Program.

In addition, six entities that process rockfish are estimated to be eligible rockfish processors and would be regulated under this Program. None of these eligible rockfish processors are estimated to be small entities based on the number of persons employed by these processors. Additionally, some of these eligible rockfish processors are estimated to be involved in both the harvesting and processing of seafood products and exceed the \$4.0 million in revenues as a fish harvesting operation. Some processors that are not eligible rockfish processors may choose to compete for landings from the entry level fishery and would be regulated by this Program. Some of these processors may be small entities. The extent of participation by small entities in the processing segment of the entry level fishery cannot be predicted.

Of the estimated 63 entities owning vessels eligible for fishing under the Program (other than the entry-level fishery), 45 are estimated to be small entities because they generated \$4.0 million or less in gross revenue based on participation in 1996 through 2002. All 15 of the entities owning eligible catcher/processor vessels are non-small entities as defined by the RFA. No catcher vessel individually exceeds the small entity threshold of \$4.0 million in gross revenues. At least three catcher vessels are believed to be owned by entities whose operations exceed the small entity threshold, leaving an

estimated 45 small catcher vessel entities that are directly regulated by this action. The ability to estimate the number of small entities that operate catcher vessels regulated by this action is limited due to incomplete information concerning vessel ownership.

It is likely that a substantial portion of the catcher vessel participants in the entry level fishery will be small entities. Based on data from NOAA Fisheries, there are approximately 171 LLP licenses that would be qualified to fish in the Central GOA entry level trawl fishery, and 900 LLP licenses that would qualify to fish in the entry level fixed gear fishery. As mentioned earlier, it is not possible to determine how many persons may hold these LLP licenses and may choose to participate in the entry level fishery at the time of application. However, the number of persons holding LLP licenses is likely to be less than the total number of LLP licenses that may be used to participate in the entry level fishery because a person may hold more than one LLP license at a time.

Entities that do not qualify for the Program either left the fishery, currently fish under interim LLP licenses, or do not hold an LLP license. Moreover, the vessels the FRFA considers "non-qualified" would not be allowed to continue fishing under the current LLP. The impacts to the small entities that would be prohibited from fishing by the LLP were analyzed in the RIR/IRFA and FRFA prepared for the LLP. Therefore, the non-qualified vessels are not considered impacted by the proposed rule and are not discussed in this FRFA.

The RIR prepared for the Program indicated that the community of Kodiak, Alaska, could be directly impacted by the Program. All of the eligible rockfish processors are located in Kodiak. The specific impacts on Kodiak cannot be determined until NMFS issues QS and eligible rockfish harvesters begin fishing under the Program. Other supporting businesses may also be indirectly affected by this action if it leads to fewer vessels participating in the fishery. These impacts are analyzed in the RIR prepared for the Program (see **ADDRESSES**).

Projected Reporting, Recordkeeping and other Compliance Requirements

Implementation of the Program changed the overall reporting structure and recordkeeping requirements of the participants in the Central GOA rockfish fisheries. All participants are required to provide additional reporting. Each harvester is required to track harvests to avoid exceeding his or her allocation.

As in other North Pacific rationalized fisheries, processors must provide catch recording data to managers to monitor harvest of allocations. Processors are required to record deliveries and processing activities to aid in the Program administration. The specifics of changes to reporting and recordkeeping requirements can be found in the preamble to the Program proposed rule (71 FR 33040; June 2, 2006). These reporting and recordkeeping requirements affect entities subject to Program requirements. However, this final rule does not revise those requirements described in the final rule implementing the Program, and does not impose additional reporting and recordkeeping requirements.

Federal Rules Which may Duplicate, Overlap or Conflict with the Proposed Rule.

No Federal rules that may duplicate, overlap, or conflict with this proposed action have been identified.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: July 5, 2007.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For reasons stated in the preamble, NMFS amends 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.*; and Pub. L. 108–199, 118 stat.110.

■ 2. In § 679.80, revise paragraph (f)(3)(iii)(F) to read as follows:

§ 679.80 Initial allocation of rockfish QS.
* * * * *

(f) * * *
(3) * * *
(iii) * * *
(F) Determine the percentage of legal rockfish landings from the official Rockfish Program record in the qualifying years used to calculate the rockfish QS assigned to the catcher/processor sector and multiply the rockfish QS units calculated in paragraph (f)(3)(iii)(E) of this section by this percentage. This yields the rockfish QS units to be assigned to the catcher/processor sector for that LLP license and species. For each primary rockfish species, the total amount of rockfish QS units assigned to the catcher/processor sector is the sum of all catch history allocation units assigned to all eligible rockfish harvesters in the catcher/processor sector.
* * * * *

■ 3. In § 679.82, revise paragraphs (d)(5)(iii) and (d)(8)(ii)(B) to read as follows:

§ 679.82 Rockfish Program use caps and sideboard limits.

* * * * *
(d) * * *
(5) * * *
(iii) Any AFA vessel that is not exempt from GOA groundfish sideboards under the AFA as specified under § 679.64(b)(2)(ii) is exempt from the sideboard limits in this paragraph (d).
* * * * *

(8) * * *
(ii) * * *
(B) The aggregate halibut PSC used in the shallow-water complex from July 1 through July 31 in each year from 1996 through 2002 by LLP licenses assigned to that rockfish cooperative that are subject to directed fishing closures under this paragraph (d), divided by 0.54 percent of the GOA annual halibut mortality limit.
* * * * *

■ 4. In § 679.83, revise paragraph (a)(1)(i) to read as follows:

§ 679.83 Rockfish Program entry level fishery.

(a) * * *
(1) * * *
(i) *Trawl catcher vessels.* Trawl catcher vessels participating in the rockfish entry level fishery may collectively harvest, prior to September 1, an amount not greater than 50 percent of the total allocation to the rockfish entry level fishery as calculated under § 679.81(a)(2). Allocations to trawl catcher vessels shall be made first from the allocation of Pacific ocean perch available to the rockfish entry level fishery. If the amount of Pacific ocean perch available for allocation is less than the total allocation allowable for trawl catcher vessels in the rockfish entry level fishery, then northern rockfish and pelagic shelf rockfish shall be allocated to trawl catcher vessels.
* * * * *

■ 5. In § 679.84, revise paragraph (d) to read as follows:

§ 679.84 Rockfish Program recordkeeping, permits, monitoring, and catch accounting.

* * * * *
(d) Catch monitoring requirements for catcher/processors assigned to the opt-out fishery. At all times any catcher/processor vessel assigned to the opt-out fishery has groundfish onboard that vessel that were harvested subject to a sideboard limit as described under § 679.82(d) through (h), as applicable, the vessel owner or operator must ensure catch from an individual haul is not mixed with catch from another haul prior to sampling by a NMFS-certified observer, that all catch be made available for sampling by a NMFS-certified observer, and that the requirements in paragraphs (c)(3), (4), (5), (8), and (9) of this section are met.
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