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DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 600**

[Docket No. 041029298-5343-06; I.D. 091505E]

RIN 0648-AS38

Magnuson-Stevens Act Provisions; Fishing Capacity Reduction Program; Pacific Coast Groundfish Fishery; California, Washington, and Oregon Fisheries for Coastal Dungeness Crab and Pink Shrimp; Industry Fee Collection System for Fishing Capacity Reduction Loan

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

ACTION: Final rule.

SUMMARY: NMFS publishes this final rule to clarify that the fee regulations for the Pacific Coast groundfish fishing capacity reduction program do not apply to any shrimp landed under Washington State fishing licenses for Puget Sound shrimp. The fee regulations remain otherwise unchanged. The purpose of this final rule is to clarify that the fee rules do not apply to the Puget Sound licenses.

DATES: This final rule is effective January 3, 2006.

FOR FURTHER INFORMATION CONTACT: Michael L. Grable, Financial Services Division, NMFS headquarters, at 301-713-2390.

SUPPLEMENTARY INFORMATION:**Electronic Access**

This **Federal Register** document is also accessible via the Internet at the Office of the **Federal Register**'s website at <http://www.access.gpo.gov/su-docs/aces/aces140.html>.

Background

Section 312(b)-(e) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a(b) through (e)) (Magnuson-Stevens Act) generally authorizes fishing capacity reduction programs. In particular, Magnuson-Stevens Act section 312(d) authorizes industry fee systems for repaying fishing capacity reduction loans which finance program costs.

Section 212 of Division B, Title II, of Public Law 108-7 (section 212) specifically authorizes the Pacific Coast groundfish fishing capacity reduction program. Pursuant to section 212, NMFS implemented the groundfish program by a July 18, 2003, **Federal Register** notice (68 FR 42613). On July 13, 2005, NMFS published this program's fee regulations as a final rule (70 FR 40225) which is codified under subpart M at § 600.1102.

The fee regulations require the payment and collection of fees as percentages of the ex-vessel value of certain fish landed in both a "reduction fishery" and in certain "fee-share fisheries". One of the fee-share fisheries is the Washington State fishery for pink shrimp.

Section 212 defines a "fee-share fishery" as "a fishery, other than the reduction fishery, whose members are eligible to vote in a referendum for an industry fee system . . ." Section 212 also provides that "persons who have been issued . . . Washington . . . Pink shrimp permits shall be eligible to vote in the referendum . . ." Consequently, under section 212, the fee-share fishery involving Washington pink shrimp is the fishery for pink shrimp conducted by person whom Washington has issued a "pink shrimp permit."

At the time the proposed and final rules were published, NMFS was aware of only one "pink shrimp" fishery. NMFS became aware after publication of both the groundfish program notice and the program's subsequent fee regulations of the existence of two additional Washington State licenses involving pink shrimp other than the "pink shrimp" licenses themselves.

These additional Washington State licenses are the "Puget Sound Shrimp Pots" licenses and "Puget Sound Shrimp Trawl" licenses. Although both these Puget Sound shrimp licenses involve some pink shrimp harvests in Puget Sound, both involve the harvest of other types of shrimp as well. The Washington "pink shrimp" permits issued for Puget Sound were not intended to be included in the Washington fee-share fishery involving pink shrimp.

The fee regulations, consequently, did not specifically exclude from fee payment and collection pink shrimp caught under the two Puget Sound shrimp licenses. The holders of the Puget Sound shrimp licenses did not vote in the groundfish program's fee referendum and NMFS did not include the ex-vessel value of pink shrimp landed under the Puget Sound licenses in the required section 212 formula both for referendum vote weighting and for establishing the reduction loan sub-

amounts for whose repayment the reduction fishery and each of the fee-share fisheries were responsible.

The Puget Sound shrimp fisheries are not a fee-share fishery and section 212 does not authorize the payment and collection of fees on any shrimp, including pink shrimp, harvested under the Puget Sound shrimp licenses. Nevertheless, the fee regulations do not clearly exclude pink shrimp harvested under the Puget Sound shrimp licenses because NMFS was unaware of these licenses' existence until after adopting a final fee rule.

Fee collection and payment began on September 8, 2005, and this final rule is necessary to clarify that the fee-share fishery involving Washington pink shrimp includes only that portion of the Washington pink shrimp which is harvested by persons to whom Washington issued ocean pink shrimp licenses.

On November 29, 2005, NMFS published a **Federal Register** document (70 FR 71449) proposing to exclude from the fee any pink shrimp caught under the inshore licenses.

Summary of Comments and Responses

NMFS did not receive any comments to the proposed rule. Consequently, this action adopts the proposed regulations without revision.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this final rule is consistent with the Magnuson-Stevens Act and other applicable laws.

Pursuant to 5 U.S.C. 553(d)(1), the 30-day delay in effectiveness is inapplicable because this rule relieves a restriction. This rule revises the regulations to expressly exclude the holders of the Puget Sound pink shrimp licenses from the groundfish program's fee collection system. These license holders are specifically excluded from regulations that require payment and collection of fees for the Pacific Coast groundfish fishing capacity reduction program. Upon implementation of this rule, these license holders would no longer be required to pay fees for shrimp landed in Puget Sound. Because this rule relieves these license holders from payment of these fees, the 30-day delay in effectiveness is inapplicable and this rule is effective upon publication.

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

The Chief Counsel for Regulation at the Department of Commerce certified to the Chief Counsel for Advocacy of the

Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities as that term is defined in the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The factual basis for this certification is found in the proposed rule and is not repeated here. No comments were received on the economic impact of this rule or the certification. As a result, a final regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 600

Fisheries, Fishing capacity reduction, Fishing permits, Fishing vessels.

Dated: December 28, 2005.

James W. Balsiger,
Acting Deputy Assistant Administrator for Regulatory programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 600 is amended as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

■ 1. The authority citation for part 600 continues to read as follows:

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

Subpart M Specific Fishery or Program Fishing Capacity Reduction Regulations

■ 2. In § 600.1102, the definition of “Fee-share fishery” in paragraph (b) is revised, and paragraphs (d)(2)(vi) and (i)(1)(vi) are revised to read as follows:

§ 600.1102 Pacific Coast groundfish fee.

* * * * *

(b) * * *

Fee-share fishery means each of the fisheries for coastal Dungeness crab and pink shrimp in each of the States of California and Oregon and the fishery for coastal Dungeness crab and ocean pink shrimp in the State of Washington.

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(d) * * *

(2) * * *

(vi) Washington ocean pink shrimp fee-share fishery, \$259,400.

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(i) * * *

(1) * * *

(vi) All fee collections from the Washington ocean pink shrimp fee-share fishery shall be accounted for in a Washington ocean shrimp fee-share fishery subaccount, and

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