

electronic filing system (e.g., ULS) will be forfeited (see §§ 1.934 and 1.1111.)

\* \* \* \* \*

■ 7. In newly re-designated § 1.1114, add and reserve paragraph (b)(1)(ii).

■ 8. In newly re-designated § 1.1115, revise paragraph (a)(1) to read as follows:

§ 1.1115 Return or refund of charges.

(a) \* \* \*

(1) When no fee is required for the application or other filing. (see § 1.1111).

\* \* \* \* \*

■ 9. In newly re-designated § 1.1116, revise the introductory text to read as follows:

§ 1.1116 General exemptions to charges.

No fee established in §§ 1.1102 through 1.1109 of this subpart, unless otherwise qualified herein, shall be required for:

\* \* \* \* \*

■ 10. In newly re-designated § 1.1117, revise paragraph (a) introductory text to read as follows:

§ 1.1117 Adjustments to charges.

(a) The Schedule of Charges established by §§ 1.1102 through 1.1109 of this subpart shall be reviewed by the Commission on October 1, 1999 and every two years thereafter, and adjustments made, if any, will be reflected in the next publication of Schedule of Charges.

\* \* \* \* \*

■ 11. In newly re-designated § 1.1118, revise paragraph (a) introductory text and paragraph (d) to read as follows:

§ 1.1118 Penalty for late or insufficient payments.

(a) Filings subject to fees and accompanied by defective fee submissions will be dismissed under § 1.1111 (d) of this subpart where the defect is discovered by the Commission's staff within 30 calendar days from the receipt of the application or filing by the Commission.

\* \* \* \* \*

(d) Failure to submit fees, following notice to the applicant of failure to submit the required fee, is subject to collection of the fee, including interest thereon, any associated penalties, and the full cost of collection to the Federal government pursuant to the provisions of the Debt Collection Improvement Act of 1996 (DCIA), Public Law 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996), codified at 31 U.S.C. 3711 et seq. See 47 CFR 1.1901 through 1.1952. The debt collection processes described above

may proceed concurrently with any other sanction in this paragraph.

■ 12. In newly re-designed § 1.1119, revise paragraphs (c) introductory text and (e) to read as follows:

§ 1.1119 Petitions and applications for review.

\* \* \* \* \*

(c) Petitions for waivers, deferrals, fee determinations, reconsiderations and applications for review will be acted upon by the Managing Director with the concurrence of the General Counsel. All such filings within the scope of the fee rules shall be filed as a separate pleading and clearly marked to the attention of the Managing Director. Any such request that is not filed as a separate pleading will not be considered by the Commission. Requests for deferral of a fee payment for financial hardship must be accompanied by supporting documentation.

\* \* \* \* \*

(e) Applicants seeking waivers must submit the request for waiver with the application or filing, required fee and FCC Form 159, or a request for deferral. A petition for waiver and/or deferral of payment must be submitted to the Office of the Managing Director as specified in paragraph (c) of this section. Waiver requests that do not include these materials will be dismissed in accordance with § 1.1111 of this subpart. Submitted fees will be returned if a waiver is granted. The Commission will not be responsible for delays in acting upon these requests.

\* \* \* \* \*

■ 13. In newly re-designated § 1.1120, revise paragraph (a) to read as follows:

§ 1.1120 Error claims.

(a) Applicants who wish to challenge a staff determination of an insufficient fee or delinquent debt may do so in writing. A challenge to a determination that a party is delinquent in paying the full application fee must be accompanied by suitable proof that the fee had been paid or waived (or deferred from payment during the period in question), or by the required application payment and any assessment penalty payment (see § 1.1118) of this subpart. Failure to comply with these procedures will result in dismissal of the challenge. These claims should be addressed to the Federal Communications Commission, Attention: Financial Operations, 445 12th St., SW., Washington, DC 20554 or e-mailed to ARINQUIRIES@fcc.gov.

\* \* \* \* \*

■ 14. In newly re-designated § 1.1121, revise paragraph (b) to read as follows:

§ 1.1121 Billing procedures.

\* \* \* \* \*

(b) In these cases, the appropriate fee will be determined by the Commission and the filer will be billed for that fee. The bill will set forth the amount to be paid, the date on which payment is due, and the address to which the payment should be submitted. See also § 1.1113 of this subpart.

[FR Doc. E9-1137 Filed 1-16-09; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 080721859-81514-02]

RIN 0648-AX01

Fisheries of the Exclusive Economic Zone Off Alaska, Groundfish of the Gulf of Alaska

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

ACTION: Final rule.

SUMMARY: NMFS issues a regulatory amendment to exempt fishermen using dinglebar fishing gear in federal waters of the Gulf of Alaska from the requirement to carry a vessel monitoring system (VMS). This action is necessary because the risk of damage posed to protected corals in the Gulf of Alaska by the dinglebar gear fishery is minor and insufficient to justify the costs of VMS. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Fishery Management Plan for Groundfish of the Gulf of Alaska, and other applicable law.

DATES: Effective February 20, 2009.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) and the Initial Regulatory Flexibility Analysis (IRFA) prepared for this action may be obtained from the Alaska Region website at http://

alaskafisheries.noaa.gov. Printed copies can be obtained from the Alaska Region NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Ellen Sebastian.

FOR FURTHER INFORMATION CONTACT: Ben Muse, 907-586-7234.

SUPPLEMENTARY INFORMATION: Groundfish fisheries in the Gulf of

Alaska (GOA) are managed under the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations implementing the FMP appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The FMP designates essential fish habitat and habitat areas of particular concern (HAPCs) in the Gulf of Alaska. HAPCs are areas within essential fish habitat that are of particular ecological importance to the long-term sustainability of managed species, are of a rare type, or are especially susceptible to degradation or development. The Council may designate specific sites as HAPCs and may develop management measures to protect habitat features within them. In order to protect HAPCs, certain habitat protection areas and habitat conservation zones have been designated. A habitat protection area is an area of special, rare habitat features where fishing activities that may adversely affect the habitat are restricted.

Two HAPCs are designated in the Fairweather Grounds and one HAPC is designated near Cape Ommaney in the Gulf of Alaska. Within these HAPCs, five Coral Habitat Protection Areas were identified where high concentrations of sensitive corals occur. Fishing is restricted only in the Coral Habitat Protection Areas, not the entire HAPC. The Coral Habitat Protection Areas cover a total area of 13.5 square nautical miles and were established to protect sensitive and slow-growing corals (*Primnoa* species) that provide a rare and important habitat type for rockfish and other species.

Management measures restrict fishing activity within the five GOA Coral Habitat Protection Areas. Anchoring and the use of bottom contact gear by any federally permitted fishing vessel in these five areas are prohibited. Anchoring and fishing with bottom contact gear adversely affect coral habitat by breaking and injuring the coral and disturbing the substrates to which corals attach. Colonies of *Primnoa* species are easily damaged or dislodged from the seafloor if contacted by fishing gear and recovery after disturbance is likely to take decades. NOAA Fisheries Office for Law Enforcement uses vessel monitoring systems (VMS) to enforce the anchoring and fishing with bottom contact gear prohibitions in the Coral Habitat Protection Areas.

Bottom contact fishing gear includes nonpelagic trawl, dredge, dinglebar, pot, and hook-and-line gear. Nonpelagic trawl, dredge, and dinglebar gear are considered mobile bottom contact fishing gear. Dinglebar gear is similar to salmon troll gear with the addition of a heavy metal bar that keeps the hooks close to the seafloor. Of the types of mobile bottom contact fishing gear, only dinglebar gear is used off the coast of Southeast Alaska in the State of Alaska-managed fishery for lingcod.

Although lingcod is not managed under the FMP, if a vessel catches and retains any groundfish managed under the FMP in the exclusive economic zone off Alaska, it also is considered to be fishing for groundfish, and therefore must carry a Federal Fishing Permit. Certain species of rockfish are required to be retained under the FMP. Rockfish are common bycatch in the state-managed dinglebar fishery for lingcod, and therefore these vessels are subject to the requirements of the FMP and must carry a Federal Fishing Permit. All federally permitted vessels with mobile bottom contact gear onboard are subject to VMS requirements (50 CFR 679.7(a)(22)). Consequently, vessels fishing for lingcod with dinglebar gear also must carry a transmitting VMS onboard.

Vessel monitoring systems allow NMFS to enforce regulations over a large area. VMS requirements went into effect June 28, 2006 (71 FR 36694), for all vessels fishing in the GOA and using mobile bottom contact fishing gear. Vessels participating in the dinglebar fishery for lingcod in federal waters of Southeast Alaska first used VMS units in 2007.

Information about the GOA dinglebar fishery for lingcod is available from two sources: VMS data from 2007, and logbook data submitted to the Alaska Department of Fish and Game. Logbook data are self-reported by fishermen and estimate the area, average depth, and other characteristics of the fishing operation. These reports are subjective and are not routinely cross-checked with VMS or other data.

Logbook data indicate that fishing depths may have limited overlap with the depths where sensitive corals occur. In general, *Primnoa* species in the HAPCs are found deeper than 70 fathoms. Most of the area within the Coral Habitat Protection Areas is deeper than 80 fathoms (86.1 to 100 percent across the five areas). Ninety-six percent of the logbook reports from 1998–2002 indicate fishing at average depths of less than 80 fathoms, and 80 percent at depths less than 50 fathoms, whereas only four percent reported

fishing at an average depth deeper than 80 fathoms. Between 2003 and 2007, all fishing was reported at depths averaging less than 80 fathoms, and only two percent of the observations fished between 70 and 80 fathoms. During this same period, 93 percent of the logbook reports indicated fishing at depths shallower than 50 fathoms. These data suggest that fishing in recent years has occurred at shallower depths. On the assumption that the reported depths are averages, some fishing took place at depths greater than these reported values. Precise fishing depth data are unavailable.

VMS units were required for the first time in this fishery in 2007. Landings records and VMS data indicate that only eight vessels participated in the dinglebar fishery for lingcod in federal waters off Southeast Alaska in 2007 and participation in the fishery has been declining over the past 10 years. All these vessels carried VMS units as a requirement for participation in the fishery. The VMS data show that in 2007 fishery participants did not fish in the GOA Coral Habitat Protection Areas and very little fishing activity occurred in the Cape Ommaney area.

NMFS also correlated VMS data with information about bottom substrates in the HAPCs. This analysis revealed that the dinglebar fishery for lingcod targets a different substrate type (folded sandstone) than the substrates that typically support *Primnoa* species corals (bedrock and boulders). Small pinnacles in the areas of high coral concentrations are also a likely deterrent to fishing in those areas with dinglebar gear.

In June 2008, the Council adopted its preferred alternative to exempt fishermen using dinglebar gear from the VMS requirement. After reviewing the analysis, the Council concluded that any risk of illegal fishing and damage to corals in the restricted areas of the Cape Ommaney and Fairweather Grounds HAPCs were insufficient to justify monitoring by VMS, given the cost imposed on lingcod fishermen, the small scale of the fishery (in terms of number of participants, duration, size of vessels, and revenues generated), and the limited spatial overlap of the fishery with restricted areas of the HAPCs.

The total cost for acquisition and installation of a VMS unit is estimated at \$2,068 per vessel. The Pacific States Marine Fish Commission reimburses a portion of the initial cost to the vessel owner. Although this offsets a large part of the vessel owner's costs, the reimbursement is still a social cost. Annual maintenance and operation costs are estimated at \$630. A full

discussion of the costs of VMS is provided in the RIR for this action (see **ADDRESSES**). The Council reiterated its previous decision that the need for VMS monitoring should be evaluated on a case-by-case basis for individual fisheries. Consequently, the VMS exemption in this action applies specifically to dinglebar gear with respect to the five Coral Habitat Protection Areas currently identified in the GOA. Should the Council identify new GOA HAPCs in the future, the need for VMS monitoring for all gear types will be examined with respect to those areas. This action will not exempt vessels using dinglebar gear for other fisheries from VMS requirements. Likewise, this action will not exempt vessels fishing for lingcod with other gear types from the VMS requirement.

This action exempts vessels that use dinglebar gear from the VMS requirements at §§ 679.7(a)(22) and 679.28(f)(6)(iii) by revising the text in these paragraphs to specify that the VMS requirement only applies to two types of mobile bottom contact gear, non-pelagic trawl gear and dredge gear, not dinglebar gear. This change would not remove dinglebar gear from the definition of mobile bottom contact gear.

A proposed rule for this action was published October 3, 2008 (73 FR 57585), and the comment period ended November 3, 2008. No comments were received. No changes were made to the final rule from the proposed rule.

#### Classification

Pursuant to sections 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

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

NMFS prepared a FRFA as required by section 604 of the Regulatory Flexibility Act. The FRFA describes the economic impact this final rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A summary of the analysis follows.

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) to accompany the proposed rule. The proposed rule described the IRFA. Copies of the IRFA and the FRFA are available from NMFS (see **ADDRESSES**).

No comments were received on the IRFA or the economic effects of the proposed rule.

The objective of this action is to prevent damage to corals from the use of dinglebar gear while ensuring that regulations are applied without imposing undue costs on the fishermen using dinglebar gear. Evidence suggests that the dinglebar fishery for lingcod does not overlap with areas where sensitive coral species occur, so the VMS requirements are an unnecessary burden to a small fleet. This action would directly regulate all vessels with Federal Fishing Permits carrying dinglebar gear in the exclusive economic zone off Alaska. All such vessels are considered "small entities" for purposes of the RFA. NMFS has identified eight to twelve small entities that would be affected by this proposed rule. All of the directly regulated individuals would be expected to benefit from this action relative to the status quo alternative because they would not be required to purchase and maintain VMS units in order to participate in the lingcod fishery.

NMFS has not identified a significant alternative to the proposed action that would meet the objectives of the action and would have a smaller adverse impact on directly regulated small entities. The objectives of the action were to avoid damage to protected habitat without imposing undue burdens on fishermen using dinglebar gear. The proposed rule completely relieves the financial burden of the VMS. No other significant alternative would have a smaller impact on directly regulated small entities. The Council considered an alternative that would have had the effect of lifting the restriction on fishing by dinglebar vessels within the protected habitat as well as the VMS requirement. However, the Council rejected this alternative without further analysis because its intent was not to lift restrictions on fishing by a specific gear type that might impact bottom habitat, but to lift an enforcement measure if that measure imposed costs disproportionate to its efficacy.

There are no new reporting, recordkeeping, or other compliance requirements associated with this rule. No federal rules that duplicate, overlap, or conflict with the action were identified in the analysis.

#### Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency

shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules.

The preamble to this final rule serves as the small entity compliance guide. This action does not require any additional compliance from small entities that is not described in the preamble. Copies of this final rule are available from NMFS (see **ADDRESSES**).

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

Alaska, Fisheries.

Dated: January 13, 2009.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

■ For the reasons set out 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.*; and 3631 *et seq.*; Pub. L. 108-447.

■ 2. In § 679.7, paragraph (a)(22) is revised to read as follows:

#### § 679.7 Prohibitions.

\* \* \* \* \*

(a) \* \* \*

(22) *VMS for non-pelagic trawl and dredge gear vessels in the GOA.* Operate a federally permitted vessel in the GOA with non-pelagic trawl or dredge gear onboard without an operable VMS and without complying with the requirements at § 679.28.

\* \* \* \* \*

■ 3. In § 679.28, paragraph (f)(6)(iii) is revised to read as follows:

#### § 679.28 Equipment and operational requirements.

\* \* \* \* \*

(f) \* \* \*

(6) \* \* \*

(iii) You operate a vessel required to be federally permitted with non-pelagic trawl or dredge gear onboard in reporting areas located in the GOA or operate a federally permitted vessel with non-pelagic trawl or dredge gear onboard in adjacent State waters; or

\* \* \* \* \*

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