

would provide for-hire vessels with a greater number of options when marketing summer trips. The reduction in removals under this alternative would be expected to be between 49 percent and 60 percent and, therefore, might be sufficient to end overfishing.

The Council heard public testimony regarding potential recreational seasons for gag at its February 2011 meeting. Participants in the recreational sector asked for either a summer or winter season depending on their geographic location. In general, recreational participants from Texas, southwest Florida, and central Florida favored a winter season, while recreational participants from other areas of the Gulf favored a summer season. In looking for a compromise, the Council recommended the proposed recreational season with no changes to the bag limit or size limit. The proposed recreational season would cover the end of the summer recreational fishing season and run through the beginning of the winter recreational fishing season. In addition, the estimated reductions in removals under the proposed recreational season are between 50 percent and 54 percent, which might be sufficient to end overfishing.

Pursuant to 5 U.S.C. 553(d)(3), NMFS finds that delaying this rule's effective date for 30 days is impracticable and contrary to the public interest, and therefore there is good cause to waive the 30-day delay in effectiveness of this rule.

A delay is impracticable, because it would contribute to overfishing of gag, which is contrary to National Standard 1 of the Magnuson-Stevens Act, which requires NMFS to conserve and manage ocean resources to prevent overfishing while achieving the optimum yield from each fishery. Without this rule, on June 1, 2011 the current gag temporary rule will expire, which would allow the commercial sector to harvest gag using red grouper multi-use allocation and the recreational sector to harvest gag in Federal waters. These harvests could result in further overfishing of gag, contrary to NMFS' statutory obligations. By implementing this rule immediately, red grouper multi-use allocation will be suspended and the recreational sector for gag will be closed to gag harvest until the 2-month gag season, which opens on September 16 and closes on November 15, 2011.

In addition, delaying the effectiveness of this rule for 30-days is contrary to the public interest. This rule replaces the current fishing season for gag with a 2-month recreational fishing season for gag in the fall. Recreational fishing businesses need to be able to plan for

this season, and any delay in implementing this rule will delay their ability to plan for this new season, and risk economically injuring these entities. Moreover, many Gulf reef fish fishermen have already exhausted their gag allocation for the year, and this temporary rule will allow them to catch more gag. Without the increased allocation of gag, gag bycatch in the commercial sector would increase, leading in turn to a higher gag mortality rate, and a further reduction of the gag resource, which would be contrary to the public's interest.

Accordingly, the 30-day delay in effectiveness of the measures contained in this temporary rule is waived.

#### List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: May 27, 2011.

#### Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

### PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

- 1. The authority citation for part 622 continues to read as follows:

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

#### § 622.20 [Amended]

- 2. In § 622.20, paragraph (b)(2)(iv)(A) is suspended.
- 3. In § 622.34, paragraph (v) is added to read as follows:

#### § 622.34 Gulf EEZ seasonal and/or area closures.

\* \* \* \* \*

(v) *Seasonal closure of the recreational sector for gag.* The recreational sector for gag, in or from the Gulf EEZ, is closed from January 1 through September 15 and November 16 through December 31 each year. During the closure, the bag and possession limit for gag in or from the Gulf EEZ is zero.

- 4. In § 622.42, paragraphs (a)(1)(iii)(A)(3) and (a)(1)(iii)(B)(3) are suspended and paragraphs (a)(1)(iii)(A)(4) and (a)(1)(iii)(B)(4) are added to read as follows:

#### § 622.42 Quotas.

- (a) \* \* \*
- (1) \* \* \*
- (iii) \* \* \*
- (A) \* \* \*

(4) For fishing year 2011 and subsequent fishing years—5.16 million lb (2.34 million kg).

(B) \* \* \*

(4) For fishing year 2011 and subsequent fishing years—430,000 lb (195,045 kg).

\* \* \* \* \*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 101203602-0602-1]

RIN 0648-BA29

#### Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish Retention Standard; Emergency Rule Extension

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

**ACTION:** Temporary rule; emergency action extension.

**SUMMARY:** NMFS is exempting, through this emergency rule extension, trawl catcher/processor vessels (C/Ps) that are not specified in regulation as American Fisheries Act (AFA) vessels, and Amendment 80 cooperatives from the groundfish retention standard (GRS) program in the Bering Sea and Aleutian Islands management area. The GRS was implemented to increase the retention and utilization of groundfish caught by the non-AFA trawl C/Ps and to respond to bycatch reduction goals described in National Standard 9. NMFS recently discovered that the regulatory methodology used to calculate compliance with and to enforce the GRS percentages established for 2010 and 2011 effectively require the sector to meet a GRS well above that considered by the North Pacific Fishery Management Council or that implemented by NMFS. As a result, the retention requirements are expected to impose significantly higher costs due to the increased level of retention and to generate an unanticipated level of noncompliance in the Amendment 80 fleet. Further, monitoring and enforcement of the GRS have proven far more complex, challenging, and potentially costly than anticipated by NMFS. This emergency rule extension is necessary to exempt non-AFA trawl C/Ps and Amendment 80 cooperatives from the minimum retention

requirements of the GRS program for the remainder of the 2011 fishing season. 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 Bering Sea and Aleutian Islands Management Area, and other applicable law.

**DATES:** Effective from June 13, 2011, through December 17, 2011.

**ADDRESSES:** Electronic copies of the Regulatory Impact Review (RIR) and the Categorical Exclusion prepared for this action may be obtained from <http://www.regulations.gov> or from the Alaska Region Web site at <http://alaskafisheries.noaa.gov>. The Environmental Assessment, RIR, and Final Regulatory Flexibility Analysis for Amendment 79 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) and the Environmental Assessment, RIR, and Final Regulatory Flexibility Analysis for Amendment 80 to the FMP are available from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Seanbob Kelly, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) provides authority for rulemaking to address an emergency. Under that section, a Regional Fishery Management Council may recommend emergency rulemaking, if it finds an emergency exists. At its June 2010 meeting, the North Pacific Fishery Management Council (Council) voted 10 to 1 to request that NMFS promulgate an emergency rule to exempt non-AFA trawl C/Ps and Amendment 80 cooperatives from the 2010 and 2011 GRS in the Bering Sea and Aleutian Islands management area (BSAI).

On December 15, 2010, NMFS published an emergency action to exempt the non-AFA trawl C/Ps and Amendment 80 cooperatives from regulations implementing the GRS program at 50 CFR 679.27(j)(1) through (4), through June 13, 2011 (75 FR 78172). NMFS invited public comments until January 14, 2011. NMFS received four public comments from two unique persons during the public comment period for the emergency rule exempting non-AFA trawl C/Ps and Amendment 80 cooperatives from the minimum GRS established under Amendment 79. The comments are summarized and responded to below; however, this emergency rule extension

makes no changes to the exemptions contained in the initial emergency action.

This extension of the emergency rule exempting non-AFA trawl C/Ps and Amendment 80 cooperatives from regulations establishing the GRS minimum retention standards continues to remove all regulatory incentive for the Amendment 80 sector to meet or exceed retention standards for 2011. However, non-AFA trawl C/Ps and Amendment 80 cooperatives are still required to meet all applicable record keeping, monitoring, and permitting regulations, including but not limited to 50 CFR 679.93(c) and 679.7(g), which ensure proper catch accounting under the Amendment 80 quota-based catch share management program. The preamble to the emergency rule (75 FR 78172, December 15, 2010) provides additional background information.

Section 305(c)(3)(B) of the Magnuson-Stevens Act authorizes NMFS to extend the emergency action for up to 186 days beyond the June 13, 2011, expiration of the initial emergency action, provided the public has had an opportunity to comment on the emergency action and, in the case of a Council recommendation, the Council has recommended NMFS implement a regulatory amendment to address the emergency on a permanent basis.

The initial emergency rule exempted vessels from a portion of the 2011 fishing year and thereby precluded the calculation of compliance with the annual GRS; however, an extension is necessary to relieve these vessels from the requirement to retain groundfish at 85 percent or higher for 2011. This extension is necessary because any lapse in an exemption from the minimum retention regulations would require all non-AFA trawl C/Ps and Amendment 80 cooperatives to retain groundfish at the 85 percent minimum retention standard for 2011. With this emergency rule extension, owners and operators of vessels in the non-AFA trawl C/Ps and Amendment 80 cooperatives are exempt from 679.27(j)(1) through (4) through December 17, 2011.

At its February 2011 meeting, the Council recommended a preferred alternative to permanently address the emergency that would remove the GRS program and instead require annual reporting of retention rates. The emergency rule extension would provide relief for the non-AFA trawl C/Ps and Amendment 80 cooperatives in 2011 while the Council and NMFS prepare regulatory amendment documents for review by the Secretary of Commerce.

## Public Comment

NMFS received four comments from two unique persons on the emergency rule exempting non-AFA trawl C/Ps and Amendment 80 cooperatives from the GRS for 2010 and 2011. Both commenters generally support NMFS emergency action. The comments are summarized and responded to as follows:

*Comment 1:* Both commenters support NMFS' emergency action and encourage NMFS to extend the emergency rule while an alternative program is developed by the Council. These letters described the economic burden of the GRS on the industry and they noted the inability to fully monitor and enforce the minimum standards as justification to extend the emergency rule.

*Response:* NMFS notes the support for emergency action and its extension. This rule may be extended for a period of not more than 186 days as described under section 305(c)(3)(B) of the Magnuson-Stevens Act; therefore, this emergency action would not exempt vessels from the GRS in the 2012 fishing year. At its February 2011 meeting, the Council took final action on a regulatory amendment to remove provisions of the GRS program and instead establish new reporting requirements for the non-AFA trawl C/Ps and Amendment 80 cooperatives. Based on experience with similar actions, NMFS expects this regulatory amendment to be effective by the start of the 2012 fishing year.

*Comment 2:* NMFS should have included the various monitoring requirements at § 679.27(j)(5) through (7) in the emergency rule exempting § 679.27(j)(1) through (j)(4). Several of these regulations could impose unnecessary and unneeded burden on the fleet. NMFS should correct these oversights by extending the emergency exemption to include all of § 679.27(j).

*Response:* NMFS disagrees. The Council recommended and NMFS concurred with taking emergency action to exempt non-AFA trawl C/Ps and Amendment 80 cooperatives from the minimum retention requirements. Emergency action was necessary because (1) the regulatory methodology used to calculate compliance with the annual GRS differs from the methodology the Council used to set the minimum retention standard and (2) the high enforcement and prosecution costs associated with the GRS.

To meet the objectives of this action, NMFS exempted non-AFA trawl C/Ps and Amendment 80 cooperatives from the GRS compliance calculations and the minimum retention schedule found

at § 679.27(j)(1) through (4). NMFS did not include the remaining paragraphs in this section because these regulations directly regulate the monitoring, recordkeeping, offloading, and reception of catch from other vessels and do not directly relate to the establishment of or calculations associated with the minimum retention standards under the GRS program. Removing these monitoring and enforcement requirements may affect the non-AFA trawl C/Ps and Amendment 80 cooperatives in ways not considered or intended by the Council at the time they recommended the emergency action.

*Comment 3:* The monitoring requirements at § 679.27(j)(5) were ordered vacated by the U.S. Court of Appeals for the District of Columbia Circuit in December 18, 2007. Please clarify whether these regulation are still effective.

*Response:* On December 18, 2007, the U.S. Court of Appeals for the District of Columbia Circuit issued a decision invalidating three monitoring and enforcement requirements associated with the Bering Sea and Aleutian Islands Groundfish Retention Standard Program that would have been effective on January 20, 2008 (No. 06cv00835; *Fishing Company of Alaska, Inc., v. Gutierrez, et al.*). In accordance with the court's ruling, NMFS issued information bulletins (08-4) and (08-7), which announced that the regulation at 50 CFR 679.7(m)(5) is invalid and void, and would not be enforced by NMFS. NMFS also announced that the phrase, "at a single location" contained in the first sentence of 50 CFR 679.27(j)(5)(ii), and that the last sentence of 50 CFR 679.27(j)(5)(iii) are invalid and void, and will not be enforced by NMFS. Other regulations pertaining to the BSAI GRS were unaffected by the court's decision and have been in effect since January 20, 2008.

Although the regulatory text at § 679.27(j)(5)(i) through (iii) has not been modified to reflect the specific portions vacated by the U.S. Court of Appeals, NMFS notified Amendment 80 vessel owners and operators of the scope of the court's ruling in a letter dated January 7, 2008. NMFS clarifies that the remaining text of § 679.27(j)(5) remains applicable to the non-AFA trawl C/Ps and Amendment 80 cooperatives. For the purposes of complying with the regulatory change, vessel owners are advised to see the actual text in the Code of Federal Regulations at <http://www.gpoaccess.gov/cfr/index.html>.

*Comment 4:* Regulations at § 679.27(j)(5) through (7) are redundant with regulations established for

monitoring Amendment 80 program and are not effective. One commenter also suggested removing § 679.27(j)(7) from regulations in any proposed action to remove the GRS program.

*Response:* NMFS acknowledges that many objectives for establishing monitoring and enforcement regulations under Amendment 80 were similar to those under Amendment 79; however, regulations at § 679.27(j)(5) through (7) were not intended to be affected by this action; see response to Comment 2 of this preamble.

Furthermore, NMFS disagrees that the regulations implementing Amendment 80 are redundant with those at § 679.27(j)(5) through (7). The regulations implementing Amendment 80 established a rights-based quota management program that expanded the GRS program to include all non-AFA trawl C/Ps regardless of size and Amendment 80 cooperatives. The Council recommended and NMFS implemented enhanced monitoring and enforcement regulations because of the increased incentive for the non-AFA trawl C/Ps and Amendment 80 cooperatives to engage in presorting or "high grading" of catch prior to weighing under the quota-based catch share management plan. Although the regulations implementing Amendment 80 did not remove any of the monitoring and enforcement regulations established under the GRS program, the regulations implementing Amendment 80 provided additional measures to sufficiently minimize the under-reporting or misreporting of catch under that program.

#### Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this emergency rule extension is consistent with the national standards and other provisions of the Magnuson-Stevens Act and other applicable laws. NMFS has the authority to extend the emergency action for up to 186 days beyond the June 13, 2011, expiration of the initial emergency action, as authorized under section 305(c)(3)(B) of the Magnuson-Stevens Act.

The Assistant Administrator for Fisheries, NOAA, finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be impracticable and contrary to the public interest. In the initial emergency rule published on December 15, 2010 (75 FR 78172), NMFS requested public comment and received two unique letters containing four substantive public comments.

This action extends without change, the exemptions contained in the initial emergency action. If the initial emergency action were allowed to lapse, regulations at 50 CFR 679.27(j)(1) through (4) would require all non-AFA trawl C/Ps and Amendment 80 cooperatives to retain groundfish at the 85 percent minimum retention standard for 2011 and each following year. As described in the initial emergency action, exempting a vessel from a portion of the year precludes the calculation of annual compliance with the GRS. This lack of regulatory clarity could cause economic harm to fishery participants required to meet an unenforceable retention standard much higher than the Council recommended. Extending the exemptions of the emergency rule without additional notice and opportunity for public comment will ensure the 2011 groundfish fishery continues uninterrupted and will prevent unnecessary adverse economic impacts. Therefore, for the reasons outlined above, the Assistant Administrator finds it is unnecessary and contrary to the public interest to provide any additional notice and opportunity for public comment under 5 U.S.C. 553(b)(B) prior to publishing the emergency rule extension.

Because this rule relieves a restriction by exempting vessel owners and operators from the GRS minimum retention standards, it is not subject to the 30-day delayed effectiveness provision of the APA pursuant to 5 U.S.C. 553(d)(1).

This emergency rule extension has been determined to be not significant for purposes of Executive Order 12866. The regulatory impact review prepared for this action is available from NMFS (see **ADDRESSES**).

No duplication, overlap, or conflict between this action and existing Federal rules has been identified.

This emergency rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is not subject to the requirement to provide prior notice and opportunity for public comment pursuant to 5 U.S.C. 553 or any other law.

**Authority:** 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108-447.

Dated: May 26, 2011.

**Samuel D. Rauch III,**

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

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