

This small entity compliance guide is authorized by the Assistant Administrator of Fisheries, National Marine Fisheries Service and complies with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996.

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

### List of Subjects

#### 50 CFR Part 300

Administrative practice and procedure, Antarctica, Canada, Exports, Fish, Fisheries, Fishing, Imports, Indians, Labeling, Marine resources, Reporting and recordkeeping requirements, Russian Federation, Transportation, Treaties, Wildlife.

#### 50 CFR Part 600

Administrative practice and procedure, Confidential business information, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

#### 50 CFR Part 697

Administrative practice and procedure, Fisheries, Fishing, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: November 10, 2008.

#### Samuel D. Rauch III,

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

- For the reasons set out in the preamble, 50 CFR parts 300, 600, and 697 are amended as follows.

### CHAPTER III

## PART 300—INTERNATIONAL FISHERIES REGULATIONS

- 1. The authority citation for part 300 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*, 16 U.S.C. 951–961 and 971 *et seq.*, 16 U.S.C. 973–973r, 16 U.S.C. 2431 *et seq.*, 16 U.S.C. 3371–3378, 16 U.S.C. 3636(b), 16 U.S.C. 5501 *et seq.*, and 16 U.S.C. 1801 *et seq.*

- 2. In § 300.5, paragraphs (a)(1) and (2) are added and paragraphs (c)(3) and (4) are revised to read as follows:

#### § 300.5 Facilitation of enforcement.

(a) \* \* \*

(1) For the purposes of this section “freeboard” means the working distance between the top rail of the gunwale of a vessel and the water’s surface. Where cut-outs are provided in the bulwarks for the purpose of boarding personnel, freeboard means the distance between the threshold of the bulwark cut-out and the water’s surface.

(2) For the purposes of this section, “pilot ladder” means a flexible ladder

constructed and approved to meet the U.S. Coast Guard standards for pilot ladders at 46 CFR subpart 163.003 entitled Pilot Ladder.

(c) \* \* \*

(3) Except for fishing vessels with a freeboard of 4 feet (1.25 m) or less, provide, when requested by an authorized officer or CCAMLR inspector, a pilot ladder capable of being used for the purpose of enabling the authorized officer or CCAMLR inspector to embark and disembark the vessel safely. The pilot ladder must be maintained in good condition and kept clean.

(4) When necessary to facilitate the boarding or when requested by an authorized officer or CCAMLR inspector, provide a manrope or safety line, and illumination for the pilot ladder.

### CHAPTER VI

## PART 600—MAGNUSON-STEVENS ACT PROVISIONS

- 3. The authority citation for part 600 continues to read as follows:

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

- 4. In § 600.730, paragraphs (a)(1) and (2) are added after the introductory text and paragraphs (c)(3) and (4) are revised to read as follows:

#### § 600.730 Facilitation of enforcement.

(a) \* \* \*

(1) For the purposes of this section “freeboard” means the working distance between the top rail of the gunwale of a vessel and the water’s surface. Where cut-outs are provided in the bulwarks for the purpose of boarding personnel, freeboard means the distance between the threshold of the bulwark cut-out and the water’s surface.

(2) For the purposes of this section, “pilot ladder” means a flexible ladder constructed and approved to meet the U.S. Coast Guard standards for pilot ladders at 46 CFR subpart 163.003 entitled Pilot Ladder.

(c) \* \* \*

(3) Except for fishing vessels with a freeboard of 4 feet (1.25 m) or less, provide, when requested by an authorized officer or observer personnel, a pilot ladder capable of being used for the purpose of enabling personnel to embark and disembark the vessel safely. The pilot ladder must be maintained in good condition and kept clean.

(4) When necessary to facilitate the boarding or when requested by an authorized officer or observer, provide a manrope or safety line, and illumination for the pilot ladder.

### CHAPTER VI

## PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

- 5. The authority citation for part 697 continues to read as follows:

**Authority:** 16 U.S.C. 1501 *et seq.*

- 6. In § 697.9, paragraph (a) is revised to read as follows:

#### § 697.9 Facilitation of enforcement.

(a) *General.* See § 600.730 of this chapter.

[FR Doc. E8-27221 Filed 11-14-08; 8:45 am]

BILLING CODE 3510-22-S

### DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

### 50 CFR Parts 600, 622, and 679

[Docket No. 0809101190-81192-01]

RIN 0648-AX26

## General Provisions of the Magnuson-Stevens Fishery Conservation and Management Act; Minor Amendments to Regulations

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues minor amendments to update regulations pertaining to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The updated regulations reflect amendments to the Magnuson-Stevens Act by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA) so that regulations are consistent with the revised statutory text. The effect of this action is to update Magnuson-Stevens Act regulations where only minor changes to revise language or insert new provisions of the amended Magnuson-Stevens Act are needed. Additional actions interpreting and implementing the requirements of the MSRA are being addressed as separate rulemakings.

**DATES:** Effective November 17, 2008.

**FOR FURTHER INFORMATION CONTACT:** William D. Chappell at 301-713-2337.

**SUPPLEMENTARY INFORMATION:** In title 50, parts 600, 622, and 679 contain regulations issued under authority of the Magnuson-Stevens Act. On January 12, 2007, the President signed into law the MSRA (Public Law 109-479), which

amended the Magnuson-Stevens Act and set forth, among other things, general and more specialized provisions pertaining to parts 600, 622, and 679. NMFS makes minor changes to these parts to resolve inconsistencies between the specified regulations and the governing changes presented in the MSRA that have a direct bearing on the regulations. This final rule makes changes following the provisions of the Magnuson-Stevens Act as amended by the MSRA in the order of their presentation in the regulations. The applicable Magnuson-Stevens Act citation is in parentheses.

In § 600.10 the definition of term “limited access system” is added, as this term is used very often in current fishery management plans and regulations (Magnuson-Stevens Act sec. 3(27)).

Section 600.345 is modified to add the MSRA requirement to National Standard 8 — Communities, that fishery conservation and management measures take into account the importance of fishery resources to fishing communities by using economic and social data that is based on the best scientific information available (Magnuson-Stevens Act sec. 301(a)(8)).

Section 600.350 revises National Standard 9 — Bycatch, by reformatting paragraph (c), the definition, and adding an exclusion of “bycatch” scientifically tagged and released highly migratory species fish harvested in a commercial fishery managed by a Council or the Western and Central Pacific Fisheries Convention Implementation Act (Magnuson-Stevens Act sec. 304(g)(2)).

Section 600.516 updates the language and specifies that allocations of the total allowable level of foreign fishing are discretionary and such allocations shall be zero for fisheries that have adequate or excess domestic harvest capacity (Magnuson-Stevens Act sec. 201(d)).

Section 622.2, revises the definition of “Caribbean” to reflect the extended jurisdiction of the Caribbean Fishery Management Council to the U.S. waters surrounding all U.S. territories in the Caribbean Sea (Magnuson-Stevens Act sec. 302(a)(1)(D)). Previously, Council jurisdiction was only over fisheries seaward of the U.S. Virgin Islands and Puerto Rico.

Section 218 of the MSRA amended section 802 of the Consolidated Appropriations Act of 2004 (Public Law 108—199; section 802) to extend the duration of the Central Gulf of Alaska (GOA) Rockfish Program from two to five years. In section 802, Congress required the Secretary in consultation with the North Pacific Fishery Management Council to establish a

management program for Central GOA rockfish and other groundfish fisheries with specific provisions. Section 802 states in part, “...The pilot program will sunset when a GOA groundfish comprehensive rationalization plan is authorized by the Council and implemented by the Secretary, or 2 years from date of implementation, whichever is earlier.”

The North Pacific Fishery Management Council adopted the Central GOA Rockfish Program on June 6, 2005. NMFS approved the amendment to the Gulf of Alaska Groundfish Fishery Management Plan and adopted regulations establishing the Program beginning in 2007 and expiring December 31, 2008. Section 218 of the MSRA has now extended the expiration date to five years after implementation. The GOA groundfish comprehensive rationalization plan is not yet complete.

This rule amends regulations at 50 CFR 679.80(a)(2) to be consistent with the statutory requirements of section 218 of the MSRA that the Central GOA Rockfish Program be extended from December 31, 2008 (i.e., two years after implementation by the Secretary), to December 31, 2011 (i.e., five years after implementation by the Secretary).

### Classification

The Office of Management and Budget has determined that this final rule is not significant for purposes of Executive Order 12866.

Through this action, NMFS seeks to ensure that the regulations implementing the Magnuson-Stevens Act conform to the statutory requirements. Pursuant to 5 U.S.C. 553(b)(B), the NOAA Assistant Administrator for Fisheries finds good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment are unnecessary for the following reasons. First, the actions taken in this final rule are non-discretionary. As noted previously in the preamble, these actions either change current regulations to conform to the statute or add definitions that exist in the statute to the regulations. Since these changes are non-discretionary, notice and comment on them would not allow the agency to make any changes to them, making notice and comment unnecessary. Second, the regulations as they exist present out-of-date information, due to the MSRA amendments. This situation causes confusion to the public as they try to reconcile the requirements of the Magnuson-Stevens Act with those of the regulations. Bringing the regulations in line with the overriding requirements of

the statute is consistent with the public interest. Further, because the rule is only administrative in nature, is non-discretionary, and imposes no new substantive requirements or restrictions on the public, the Assistant Administrator for Fisheries, NOAA, under 5 U.S.C. 553(d)(3), finds inapplicable the requirement to delay its effective date for 30 days.

### List of Subjects

#### 50 CFR Part 600

Administrative practice and procedure, Confidential business information, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

#### 50 CFR Part 622

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

#### 50 CFR Part 679

Alaska, Fisheries.

Dated: November 10, 2008.

#### Samuel D. Rauch III

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

- For the reasons discussed in the preamble, NMFS amends 50 CFR parts 600, 622, and 679 as follows:

### Chapter VI

## PART 600—MAGNUSON-STEVENS ACT PROVISIONS

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

**Authority:** 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

- 2. In § 600.10, the definition of “Limited access system” is added in alphabetical order to read as follows:

### § 600.10 Definitions.

*Limited access system* means a system that limits participation in a fishery to those satisfying certain eligibility criteria or requirements contained in a fishery management plan or associated regulation.

- 3. In § 600.345, paragraph (a) introductory text is revised to read as follows:

### § 600.345 National Standard 8—Communities.

(a) *Standard 8.* Conservation and management measures shall, consistent with the conservation requirements of the Magnuson-Stevens Act (including the prevention of overfishing and rebuilding of overfished stocks), take

into account the importance of fishery resources to fishing communities by utilizing economic and social data that are based upon the best scientific information available in order to:

- 4. In § 600.350, paragraph (c) is revised to read as follows:

#### **§ 600.350 National Standard 9—Bycatch.**

(c) *Definition—Bycatch.* The term “bycatch” means fish that are harvested in a fishery, but that are not sold or kept for personal use.

(1) *Inclusions.* Bycatch includes the discard of whole fish at sea or elsewhere, including economic discards and regulatory discards, and fishing mortality due to an encounter with fishing gear that does not result in capture of fish (i.e., unobserved fishing mortality).

(2) *Exclusions.* Bycatch excludes the following:

(i) Fish that legally are retained in a fishery and kept for personal, tribal, or cultural use, or that enter commerce through sale, barter, or trade.

(ii) Fish released alive under a recreational catch-and-release fishery management program. A catch-and-release fishery management program is one in which the retention of a particular species is prohibited. In such a program, those fish released alive would not be considered bycatch.

(iii) Fish harvested in a commercial fishery managed by the Secretary under Magnuson-Stevens Act sec. 304(g) or the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971d) or highly migratory species harvested in a commercial fishery managed by a Council under the Magnuson-Stevens Act or the Western and Central Pacific Fisheries Convention Implementation Act, that are not regulatory discards and that are tagged and released alive under a scientific tagging and release program established by the Secretary.

- 5. In § 600.516, paragraph (a) is revised to read as follows:

#### **§ 600.516 Total allowable level of foreign fishing (TALFF).**

(a) The TALFF, if any, with respect to any fishery subject to the exclusive fishery management authority of the United States, is that portion of the OY of such fishery, which cannot or will not be harvested by vessels of the United States. Allocations of TALFF are discretionary, except that the total allowable level shall be zero for fisheries determined by the Secretary to have adequate or excess domestic harvest capacity.

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

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

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

- 7. In § 622.2, the definition of “Caribbean” is revised to read as follows:

### **§ 622.2 Definitions and acronyms.**

*Caribbean* means the Caribbean Sea and Atlantic Ocean seaward of Puerto Rico, the U.S. Virgin Islands, and possessions of the United States in the Caribbean Sea.

## **PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA**

- 8. The authority citation for 50 CFR part 679 is revised to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*; 16 U.S.C. 1540(f); 16 U.S.C. 1801 *et seq.*; 16 U.S.C. 3631 *et seq.*; Pub. L. 105–277; Pub. L. 106–31; Pub. L. 106–554; Pub. L. 108–199; Pub. L. 108–447; Pub. L. 109–241; Pub. L. 109–479.

- 9. In § 679.80, paragraph (a)(2) is revised to read as follows:

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

(a) \* \* \*

(2) *Duration.* The Rockfish Program authorized under this part expires on December 31, 2011.

[FR Doc. E8–27227 Filed 11–14–08; 8:45 am]

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## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 648**

**[Docket No. 061228342–7068–02]**

**RIN 0648–XL69**

### **Fisheries of the Northeastern United States; Atlantic Herring Fishery; Total Allowable Catch Harvested for Management Area 1A**

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

**ACTION:** Closure of Atlantic herring fishery for Management Area 1A.

**SUMMARY:** NMFS announces that, effective 0001 hours, November 14, 2008, federally permitted vessels may not fish for, catch, possess, transfer, or land more than 2,000 lb (907.2 kg) of Atlantic herring in or from Management

Area 1A (Area 1A) per trip or calendar day until January 1, 2009, when the 2009 TAC becomes available, except for transiting purposes as described in this notice. This action is based on the determination that 95 percent of the Atlantic herring total allowable catch (TAC) allocated to Area 1A for 2008 is projected to be harvested. Regulations governing the Atlantic herring fishery require publication of this notification to advise vessel and dealer permit holders that no TAC is available for the directed fishery for Atlantic herring harvested from Area 1A.

**DATES:** Effective 0001 hrs local time, November 14, 2008, for the remainder of the fishing year.

#### **FOR FURTHER INFORMATION CONTACT:**

Christopher Biegel, Fishery Management Specialist, at (978) 281–9112.

#### **SUPPLEMENTARY INFORMATION:**

Regulations governing the Atlantic herring fishery are found at 50 CFR part 648. The regulations require annual specification of optimum yield, domestic and foreign fishing, domestic and joint venture processing, and management area TACs. The 2008 TAC allocated to Area 1A (72 FR 17807, April 10, 2007) is 45,000 mt (99,908,017 lb).

The regulations at § 648.202 require the Administrator, Northeast Region, NMFS (Regional Administrator) to monitor the Atlantic herring fishery in each of the four management areas designated in the Fishery Management Plan for the Atlantic Herring Fishery and, based upon dealer reports, state data, and other available information, to determine when the harvest of Atlantic herring is projected to reach 95 percent of the TAC allocated. When such a determination is made, NMFS is required to publish notification in the **Federal Register** of this determination. Effective upon a specific date, NMFS must notify vessel and dealer permit holders that vessels are prohibited from fishing for, catching, possessing, transferring, or landing more than 2,000 lb (907.2 kg) of herring per trip or calendar day in or from the specified management area for the remainder of the closure period. Transiting of Area 1A with more than 2,000 lb of herring on board is allowed under the conditions specified below.

The Regional Administrator has determined, based upon dealer reports and other available information, that 95 percent of the total Atlantic herring TAC allocated to Area 1A for the 2008 fishing year is projected to be harvested. Therefore, effective 0001 hrs local time, November 14, 2008, federally permitted