

**§ 14.637 [Amended]**

■ 3. Amend § 14.637, paragraph (b), by removing “under § 14.636” and adding, in its place, “or the agency of original jurisdiction under § 14.636”.

[FR Doc. 2015-32687 Filed 12-28-15; 8:45 am]

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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 200**

[Docket No. 150227193-5999-02]

RIN 0648-BE92

**Establish a Single Small Business Size Standard for Commercial Fishing Businesses**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to establish a small business size standard of \$11 million in annual gross receipts for all businesses in the commercial fishing industry (NAICS 11411), for Regulatory Flexibility Act (RFA) compliance purposes only. For the purposes of this final rule, a “commercial fishing business” is a business primarily engaged in commercial fishing, the “commercial fishing industry” is composed of all such businesses, and the \$11 million standard only applies to this industry. This standard does not apply to businesses primarily engaged in seafood processing (NAICS 311170), seafood wholesale activities (NAICS 424460), or any other activity within the seafood industry. The \$11 million standard will be used in RFA analyses in place of the U.S. Small Business Administration’s (SBA) current standards of \$20.5 million, \$5.5 million, and \$7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors of the U.S. commercial fishing industry, respectively. Establishing a single size standard of \$11 million for the commercial fishing industry will simplify the RFA analyses done in support of NMFS’ rules, better meet the RFA’s intent by more accurately representing expected disproportionate effects of NMFS’ rules between small and large commercial fishing businesses, create a standard that more accurately reflects the size distribution of all businesses in the commercial

fishing industry, and allow NMFS to determine when changes to the standard are necessary and appropriate.

**DATES:** This final rule is effective July 1, 2016.

**ADDRESSES:** Copies of the Regulatory Impact Review (RIR), proposed rule and associated comments are available via the Federal eRulemaking Portal: <http://www.regulations.gov>, docket NOAA-NMFS-2015-0061.

**FOR FURTHER INFORMATION CONTACT:** Mike Travis, Industry Economist, at (727) 209-5982, or email: [mike.travis@noaa.gov](mailto:mike.travis@noaa.gov).

**SUPPLEMENTARY INFORMATION:****Background**

For the purposes of this final rule, a “commercial fishing business” is a business primarily engaged in commercial fishing and the “commercial fishing industry” (NAICS 11411) is composed of all such businesses. Prior to 2013, SBA had established a single small business size standard for all businesses in the commercial fishing industry. Since 2005, this standard had been \$4 million in annual gross receipts (revenues). Effective July 22, 2013, SBA established significantly different and higher size standards for the three separate sectors of the industry (78 FR 37398, June 20, 2013): \$19 million for commercial finfish fishing businesses (NAICS 114111), \$5.0 million for commercial shellfish fishing businesses (NAICS 114112), and \$7.0 million for other commercial marine fishing businesses (NAICS 114119). These standards were subsequently adjusted for inflation to \$20.5 million, \$5.5 million, and \$7.5 million, respectively, via an interim final rule, effective July 14, 2014 (79 FR 33647, June 12, 2014). The Small Business Jobs Act of 2010 requires SBA to review all size standards every five years to account for changes in industry structure and market conditions. SBA is also required to assess the impact of inflation on its monetary-based size standards at least once every five years (13 CFR 121.102). However, as reflected by the timing of the two recent rulemakings adjusting the size standards, SBA is not required to conduct the reviews for these two purposes simultaneously. Thus, these size standards are likely to change on a regular basis.

Under the RFA, an agency must prepare an initial and final regulatory flexibility analysis (IRFA/FRFA) for each proposed and final rule, respectively, unless it certifies that a rule will not have a significant economic impact on a substantial

number of small entities. Agencies generally rely on the SBA size standards to identify small entities for RFA purposes. For NMFS, rulemaking activities that have been impacted by changes to the size standards for defining “small” businesses include, but are not limited to, regulatory actions and analyses undertaken pursuant to the Magnuson-Stevens Act (MSA), Endangered Species Act (ESA), Marine Mammal Protection Act (MMPA), and National Environmental Policy Act (NEPA). Between 2012 and 2014, NMFS published an average of 285 final rules per year, more than 40 percent of which required an RFA analysis, and a majority of those directly regulated commercial fishing businesses. Thus, NMFS’ costs of complying with the RFA are significant even when the small business size standards are stable, and those costs increase substantially when the standards are changing on a recurring basis.

NMFS and the Regional Fishery Management Councils (Councils) have encountered significant difficulties implementing and adjusting to the new standards because: (1) The change was from a single size standard for all commercial fishing businesses to three very different standards, (2) many commercial fishing businesses participate in both finfish and shellfish fishing activities, making it unclear which standard to apply in the RFA analyses, and (3) a number of rules simultaneously implement regulations under fishery management plans for both finfish and shellfish species (for *e.g.*, 76 FR 82044, December 29, 2011; 76 FR 82414, December 30, 2011; 77 FR 15916, March 26, 2012; and 80 FR 41472, July 15, 2015), again making it unclear which standard to apply in the RFA analyses.

Furthermore, one of the RFA’s primary purposes is to determine if proposed regulations are expected to have disproportionate economic impacts on small businesses relative to large businesses and, if so, to consider alternatives that would minimize any significant adverse economic impacts on small businesses. Under SBA’s current standards for commercial fishing businesses, practically all commercial fishing businesses, and particularly commercial finfish fishing businesses, would likely be determined to be small. Thus, in their RFA analyses, NMFS and the Councils would not be able to discern, consider, or address any disproportionate economic impacts that various regulatory alternatives might have on businesses NMFS and the Councils think are “small” in the commercial fishing industry. Such an

outcome effectively precludes NMFS from fulfilling one of the RFA's primary purposes and thus is not desirable.

Section 601(3) of the RFA provides that an agency, after consultation with SBA's Office of Advocacy (Advocacy) and after an opportunity for public comment, may establish one or more definitions of "small business" which are appropriate to the activities of the agency and publish such definition(s) in the **Federal Register**. Further, 13 CFR 121.903(c) provides that where the agency head is developing a size standard for the sole purpose of performing a Regulatory Flexibility Analysis pursuant to section 601(3) of the Regulatory Flexibility Act, the department or agency may, after consultation with the SBA Office of Advocacy, establish a size standard different from SBA's which is more appropriate for such analysis.

SBA has expressed support for the idea of creating a single size standard in instances where industries are closely related, as is the case for the finfish and shellfish sectors of the commercial fishing industry. In the preamble to its proposed rule to change the size standard for businesses in manufacturing industries (79 FR 54146, Sept. 10, 2014), SBA stated: "To simplify size standards and for other reasons, SBA may propose a common size standard for closely related industries. Although the size standard analysis may support a separate size standard for each industry, SBA believes that establishing different size standards for closely related industries may not always be appropriate. For example, in cases where many of the same businesses operate in the same multiple industries, a common size standard for those industries might better reflect the Federal marketplace. This might also make size standards among related industries more consistent than separate size standards for each of those industries." (79 FR 54146, 54150, Sept. 10, 2014).

NMFS has determined that the data used by SBA to develop the new standards are incomplete and, as a result, not representative of all commercial fishing businesses. Specifically, the data used by Size Standards only account for commercial fishing businesses that have employees (*i.e.*, employer firms), and thus do not include commercial fishing businesses that do not have employees (*i.e.*, non-employer firms). Non-employer commercial fishing businesses typically pay their self-employed crew a percentage of the gross or net revenue on each commercial fishing trip rather than a standard wage or salary, and thus

self-employed crew are not considered employees. Commercial fishing businesses with employees represent only about 3 percent of all commercial fishing businesses, while the other 97 percent are non-employer firms.

Further, according to SBA, annual gross revenues for finfish and shellfish commercial fishing businesses with employees average \$1.6 and \$0.6 million, respectively. Conversely, NMFS determined the annual gross revenues for commercial fishing businesses without employees are only about \$44,000 on average. Thus, NMFS concluded that the exclusion of commercial fishing businesses without employees is primarily responsible for the magnitude of the size standard increases, particularly for finfish fishing businesses, and the standards would have been very different if SBA had used data for all commercial fishing businesses. Because the size standards apply to all commercial fishing businesses, not just those with employees, when used to analyze the economic impacts of management actions on directly regulated entities under the RFA, NMFS thinks it is more appropriate to have size standards for RFA purposes that are based on all commercial fishing businesses.

In conjunction with its recent review of size standards, SBA developed a "Size Standards Methodology" for establishing, reviewing, and modifying size standards, where necessary. SBA included it as a supporting document (at [www.regulations.gov](http://www.regulations.gov)) of the September 11, 2012, proposed rule (77 FR 55755) to change the size standards for the three sectors of the commercial fishing industry. Application of this new methodology resulted in the significantly different size standards for the three separate sectors of the industry. NMFS referenced this document in developing the size standard in this final rule. Consistent with that methodology, SBA used the following industry factors to establish the current size standards for NAICS Sector 11 (Agriculture, Forestry, Fishing, and Hunting): Average firm size, as measured by simple average receipts and weighted average receipts; average assets size; the four-firm concentration ratio (*i.e.*, the percentage of receipts accounted for by the four largest firms in the industry); and the Gini coefficient, which measures the degree of inequality in the distribution of firms by receipts size class under SBA's approach.

SBA's primary source of industry data used in the rule to establish the new size standards for the three sectors of the commercial fishing industry was a

special tabulation of the 2007 County Business Patterns data from the U.S. Bureau of Census (Census Bureau). This special tabulation provided SBA with data on the number of employer firms, number of establishments, number of employees, annual payroll, and annual receipts of companies by U.S. industry (6-digit NAICS code). These data were arrayed by various classes of firms' size based on the overall number of employees and gross receipts of the entire enterprise (all establishments and affiliated firms) from all industries. These data allowed SBA to estimate average firm size, the four-firm concentration ratio, and the Gini coefficient.

SBA provided these data upon request to NMFS. NMFS subsequently requested and received from the Census Bureau comparable data for non-employer businesses. NMFS aggregated data to the industry level (*i.e.*, NAICS 11411) for employer and non-employer businesses and then combined these data. Although data confidentiality was not an issue with the non-employer data, prior to aggregation NMFS had to estimate total gross receipts in certain receipts classes for employer firms where the Census Bureau determined the data were confidential and thus could not be released. The combined data provide a complete accounting of the distribution of businesses and receipts by receipt size class category for all commercial fishing businesses. NMFS used these data to generate estimates of certain industry factors needed to establish a single size standard for the commercial fishing businesses, consistent with SBA's methodology to the extent practicable.

Specifically, NMFS used the data it received from SBA and the Census Bureau to generate estimates of simple average receipts, weighted average receipts, and the Gini coefficient. For simple average receipts, each firm's share of the industry's total receipts is weighted equally, whereas the shares of larger firms receive larger weights in estimating weighted average receipts. Weighted average receipts and the Gini coefficient were estimated using the equations provided in SBA's Size Standards Methodology document. NMFS generated the following estimates for the commercial fishing industry: \$77,178 for simple average receipts, \$12,322,365 for weighted average receipts, and 0.755 for the Gini coefficient. Based on the information in Table 2 of SBA's proposed rule to change the size standards for the finfish, shellfish, and other marine fishing sectors of the commercial fishing industry (77 FR 55755), these estimates

support size standards of \$5 million, \$5 million, and \$19 million, respectively.

SBA also considers the average assets size of firms to be an important factor in establishing a size standard. NMFS does not possess and was not able to procure assets size data for non-employer businesses. SBA has such data for employer firms in the finfish and shellfish sectors, though not for employer firms in the other marine fishing sector because of the very small number of firms in that sector. The number of firms in the other marine fishing sector is very small because it includes firms primarily involved in the harvest of corals, sponges, reef associated plants (e.g., algae), and aquarium trade species, whose allowable harvest levels are very small. However, SBA had to purchase the assets size data for employer firms in the finfish and shellfish sectors from a private source and thus could not share the data with NMFS due to their proprietary nature. Therefore, NMFS created an estimate based on data that SBA published in its proposed rule, using the following approach.

According to SBA's proposed rule, the average assets sizes for the finfish and shellfish commercial fishing sectors are \$1.4 million and \$0.4 million, respectively. Finfish fishing firms and shellfish fishing firms represent approximately 54 percent and 46 percent, respectively, of the 2,039 employer firms in those two sectors combined. Based on these percentages, the weighted average assets size of the combined finfish and shellfish commercial fishing sectors is approximately \$0.94 million. Based on Table 2 in SBA's proposed rule, this estimate supports a \$7 million size standard.

SBA does not consider the average receipts of the four largest firms to be an important factor in establishing a size standard for industries where the four-firm concentration ratio is below 40 percent (i.e., receipts of the 4 largest firms account for less than 40 percent of the total receipts). According to the data SBA provided to NMFS, the four largest firms in the commercial fishing industry are commercial finfish fishing businesses. Within the finfish sector, these firms only account for 29 percent of total receipts. Therefore, within the larger commercial fishing industry as a whole, the percentage of receipts they account for must be less than 29 percent. Because the four largest firms account for less than 40 percent of the total receipts for the commercial fishing industry, consistent with SBA's methodology, NMFS did not use the four-firm concentration ratio in

establishing a single size standard for the commercial fishing industry.

According to SBA's methodology, all factors should be weighted equally. Therefore, NMFS averaged the standards supported by the simple average receipts (\$5 million), weighted average receipts (\$5 million), Gini coefficient (\$19 million), and average assets size (\$7 million) estimates, which results in a size standard of \$9 million. However, SBA only allowed for eight size standards in its final rule (79 FR 54146, September 10, 2014): \$5 million, \$7 million, \$10 million, \$14 million, \$19 million, \$25.5 million, \$30 million, and \$35.5 million. When the estimated size standard is not equivalent to one of these eight standards, SBA rounds up to the next highest size standard. For NMFS' estimated \$9 million size standard, the next highest size standard would be \$10 million. If the average assets size factor is not included, because it is based on aggregated employer data only rather than a combination of employer and non-employer data, the average of the other 3 factors is \$9.67 million. Thus, the next highest size standard would still be \$10 million.

NMFS is aware the Census Bureau has recently released the 2012 County Business Patterns data for employer firms. However, 2012 data for non-employer firms has not yet been released. As previously discussed, NMFS does not think it is prudent to establish a size standard based only on employer data because 97 percent of the commercial fishing businesses are non-employers. Further, even if the 2012 non-employer data is released and NMFS generates new estimates of the various industry factors, NMFS would still not be able to determine what standards are implied by the new estimates until SBA generates an updated version of Table 2 in its proposed rule to change the size standards for the finfish, shellfish, and other marine fishing sectors of the commercial fishing industry (77 FR 55755) using 2012 rather than 2007 data.

As previously stated, SBA recently implemented a final rule to adjust all of its receipts based size standards for inflation using the chain-type price index for the U.S. Gross Domestic Product (GDP price index) (79 FR 33647, June 12, 2014). According to that final rule, for all industries with a non-inflation-adjusted size standard of \$10 million, the new inflation-adjusted size standard is \$11 million.

Thus, this final rule establishes a small business size standard of \$11 million for all businesses in the

commercial fishing industry (NAICS 11411) for RFA compliance purposes only. The \$11 million standard only applies to the commercial fishing industry and thus does not apply to businesses primarily engaged in seafood processing (NAICS 311170), seafood wholesale activities (NAICS 424460), or any other activity within the seafood industry. This single size standard for commercial fishing businesses would be used in all RFA analyses conducted in support of NMFS' regulatory actions. Establishing this single size standard would simplify the RFA analyses done in support of NMFS' rules, better meet the RFA's intent by more accurately representing expected disproportionate effects of NMFS' rules between small and large commercial fishing businesses, create a standard that more accurately reflects the size distribution of all businesses in the commercial fishing industry, and allow NMFS to determine when changes to the standard are necessary and appropriate.

NMFS and the Councils have numerous regulatory actions at various stages of the rulemaking process at any point in time, and thus RFA analyses at various stages in development. As a result, NMFS has chosen to delay the effective date of this rule until July 1, 2016, to allow sufficient time for the Councils and NMFS to transition to the \$11 million size standard. The delayed effective date will allow regulatory actions that are relatively far along in the rulemaking process and which used SBA's current standards for commercial fishing businesses in their RFA analyses to be in compliance and thus proceed on their current timeline. However, RFA analyses conducted in association with all proposed and final rules published after July 1, 2016, should use the \$11 million size standard for commercial fishing businesses.

Consistent with SBA's review requirements under the Small Business Jobs Act of 2010 and 13 CFR 121.102, NMFS will review this standard at least once every 5 years to determine if a change is warranted. A change may be warranted because of changes in industry structure, market conditions, inflation, or other relevant factors. The reviews for these potential reasons will be conducted simultaneously in order to minimize the frequency of changes to the standard and additional rulemakings.

On September 18, 2015, NMFS published a proposed rule to establish a single small business size standard of \$11 million in annual gross receipts for the commercial fishing industry, for RFA compliance purposes only, and

requested public comments (80 FR 56432).

### Comments and Responses

NMFS received five public comment letters in response to the proposed rule. These letters were mostly from businesses which participate in commercial fishing activities but are primarily engaged in seafood processing or organizations representing such businesses. No change has been made to the proposed size standard or regulations as a result of these comments.

*Comment 1:* The proposed size standard of \$11 million in annual gross receipts should not be applied to businesses primarily engaged in seafood processing (NAICS 311170).

*Response:* NMFS agrees with this comment, as it is not NMFS' intent that the proposed size standard be applied to such businesses. Per the commenters' requests, NMFS has clarified the size standard established by this rule only applies to businesses primarily engaged in commercial fishing (NAICS 11411) and thus does not apply to businesses primarily engaged in seafood processing (NAICS 311170), seafood wholesale activities (NAICS 424460), or any other activity within the seafood industry.

*Comment 2:* The proposed size standard of \$11 million in annual gross receipts should not be applied to any businesses that engage in both commercial fishing and seafood processing activities.

*Response:* NMFS does not agree with this comment. Consistent with statements by other commenters, the determination of which NAICS code and thus which standard will be applied to each business for RFA analysis purposes is an empirical question that cannot be known until an analysis is conducted for a particular NMFS rulemaking. If a business is determined to be primarily engaged in commercial fishing when an RFA analysis is conducted for a NMFS rulemaking, the \$11 million size standard will apply.

*Comment 3:* NMFS' rule should include a broader discussion of all size standards and how they are applied.

*Response:* NMFS does not agree with this comment as the background information provided is adequate and appropriate for the scope of this rule. As the commenter acknowledges, SBA has established small business size standards for all industries with a NAICS code. NMFS' rulemakings directly regulate businesses in only a small percentage of the industries for which SBA establishes size standards. Information regarding SBA's size standards can be found in the recent

rules SBA has published and which are referenced in this rule as well as on SBA's Web site. With respect to how size standards are applied in practice, that is also beyond the scope of this rule, both with respect to how size standards are applied in general and how NMFS typically applies them in the RFA analyses for its rulemakings. NMFS does not know and thus cannot address how all of SBA's size standards are applied in practice by other agencies. Further, this rule only establishes NMFS' small business size standard for the commercial fishing industry for RFA purposes; it does not change how NMFS determines the industry in which a business is primarily engaged and thus how NMFS applies size standards in its RFA analyses.

*Comment 4:* NMFS should not consider individual members of a fishery cooperative to be affiliated under SBA's principles of affiliation and thereby treated as a single entity in NMFS' RFA analyses.

*Response:* This comment is beyond the scope of this rule. This rule will not change how NMFS applies SBA's principles of affiliation to businesses directly regulated by NMFS' rulemakings.

*Comment 5:* NMFS did not provide sufficient opportunity for public comment on the proposed size standard or adequately inform or involve the Fishery Management Councils or the fishing industry in the rulemaking process and thus violated the Administrative Procedure Act (APA).

*Response:* NMFS does not agree with this comment. Consistent with the requirements of the APA, NMFS properly published the proposed rule in the **Federal Register** and provided the public, including the Fishery Management Councils, entities involved in commercial fisheries, and any other interested parties, with the appropriate 30 days to provide comments. Thus, NMFS has met the APA's requirements. Further, as stated in the preamble to the proposed rule, the Fishery Management Councils do not support SBA's disparate size standards for the three sectors of the commercial fishing industry, but rather, support having a single size standard. NMFS' single size standard was determined using SBA's methodology for establishing size standards, to the extent practicable given available data.

*Comment 6:* NMFS did not adequately consult Advocacy when proposing, for RFA purposes only, the \$11 million size standard for the commercial fishing industry.

*Response:* NMFS does not agree with this comment. As explained in the proposed rule, NMFS and the Department of Commerce General Counsel's Office had preliminary discussions with Advocacy. Advocacy was supportive of NMFS publishing for notice and comment an alternative size standard pursuant to RFA section 601(3) and 13 CFR 121.903(c) in order to establish its own size standard for the commercial fishing industry for purposes of RFA analyses only. Thereafter, NMFS formally consulted Advocacy on the \$11 million size standard and the proposed rule prior to its publication. Advocacy provided comments on the proposed rule and NMFS addressed those comments prior to its publication. NMFS also formally consulted Advocacy on this final rule prior to its publication. Advocacy provided comments on a draft of this rule and NMFS addressed those comments prior to its publication. Thus, NMFS has adequately consulted with Advocacy, consistent with RFA section 601(3) and 13 CFR 121.903(c).

### Classification

Pursuant to section 601(3) of the RFA, the NMFS Assistant Administrator has determined that this final rule is consistent with the RFA and other applicable law.

This final rule has been determined by the Office of Management and Budget to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the SBA during the proposed rule stage that this action, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is repeated below.

The purposes of the rule are to establish a single small business size standard of \$11 million in annual gross receipts for the commercial fishing industry (NAICS 11411), for RFA compliance purposes only, and a requirement for NMFS to assess at least once every 5 years whether this size standard should be changed. The objectives of the rule are to simplify the RFA analyses done in support of NMFS' rules, better meet the RFA's intent by more accurately representing expected disproportionate effects of NMFS' rules between small and large businesses, create a standard that more accurately reflects the size distribution of all businesses in the commercial fishing industry, and allow NMFS to determine when changes to the standard are

necessary and appropriate. The RFA and 13 CFR 121.903(c) serve as the legal basis for the rule.

The actions in this rule are administrative in nature and thus would only potentially generate indirect economic effects on commercial fishing businesses. Specifically, the \$11 million size standard would only affect how NMFS and the Councils determine whether commercial fishing businesses directly regulated by future regulatory actions are small or large, whether and to what extent those actions have disproportionate economic impacts on those two classes of businesses, and when it is appropriate for NMFS to change the standard in the future. This rule would not impose any new requirements on commercial fishing businesses. Therefore, no small entities would be directly regulated by this rule. This rule would not be expected to affect the behavior or operations of commercial fishing businesses. As such, this rule is not expected to generate any direct economic effects on commercial fishing businesses.

Based on the information above, a reduction in profits for a substantial number of small entities is not expected. The Chief Counsel for Regulation of the Department of Commerce hereby certifies that the rule will not have a significant economic impact on a substantial number of small entities. Because this rule, if implemented, is not expected to have a significant economic impact on a substantial number of small entities and no comments were received on this certification, a final regulatory flexibility analysis is not required and none was prepared.

No duplicative, overlapping, or conflicting Federal rules have been identified. This rule would not establish any new reporting or record-keeping requirements.

#### List of Subjects in 50 CFR Part 200

Commercial fishing, Small businesses.

Dated: December 18, 2015.

**Eileen Sobeck,**

*Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

For the reasons set out in the preamble, under the authority of 5 U.S.C. 601 *et seq.*, NMFS amends 50 CFR chapter II as follows:

#### **PARTS 200 THROUGH 215— [REMOVED]**

- 1. Remove reserved parts 200 through 215 from subchapter C.
- 2. Add subchapter A, consisting of part 200, to read as follows:

#### **SUBCHAPTER A—GENERAL PROVISIONS**

#### **PART 200—SMALL BUSINESS SIZE STANDARDS ESTABLISHED BY NMFS FOR REGULATORY FLEXIBILITY ACT COMPLIANCE PURPOSES ONLY**

Sec.

200.1 Purpose and scope.

200.2 Small business size standards and frequency of review.

**Authority:** 5 U.S.C. 601 *et seq.*

#### **§ 200.1 Purpose and scope.**

(a) This part sets forth the National Marine Fisheries Service (NMFS) small business size standards for NMFS to use in conducting Regulatory Flexibility Act (RFA) analyses for NMFS actions subject to the RFA. This part also sets

forth the timeframe for NMFS to review its small business size standards.

(b) NMFS has established the alternative size standards in this part, for RFA compliance purposes only, in order to simplify the RFA analyses done in support of NMFS' rules, better meet the RFA's intent by more accurately representing expected disproportionate effects of NMFS' rules between small and large businesses, create a standard that more accurately reflects the size distribution of all businesses in the industry, and allow NMFS to determine when changes to the standard are necessary and appropriate.

#### **§ 200.2 Small business size standards and frequency of review.**

(a) NMFS' small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing is \$11 million in annual gross receipts. This standard applies to all businesses classified under North American Industry Classification System (NAICS) code 11411 for commercial fishing, including all businesses classified as commercial finfish fishing (NAICS 114111), commercial shellfish fishing (NAICS 114112), and other commercial marine fishing (NAICS 114119) businesses.

(b) NMFS will review each of the small business size standards in paragraph (a) of this section at least once every 5 years to determine if a change is warranted. A change may be warranted because of changes in industry structure, market conditions, inflation, or other relevant factors.

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