

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 300**

[Docket No. 060215036-6178-02; I.D. 101501A]

RIN 0648-AU30

Pacific Halibut Fisheries; Guideline Harvest Levels for the Guided Recreational Halibut Fishery; Correction

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

ACTION: Final rule; correcting amendment.

SUMMARY: This action corrects the regulatory text of a final rule published August 8, 2003, (FR Doc. 03-20285) that implemented the guideline harvest level (GHL) for the charter sport fishery for Pacific halibut in waters off Alaska. This action is necessary to correct a typographical error in regulations implementing the GHL.

DATES: July 6, 2006.

FOR FURTHER INFORMATION CONTACT: Jason Gasper, NMFS, 907-586-7228 or email at jason.gasper@noaa.gov.

SUPPLEMENTARY INFORMATION: A final rule published August 8, 2003, (68 FR 47256) implemented guideline harvest level (GHL) measures for managing the harvest of Pacific halibut (*Hippoglossus stenolepis*) in the charter sport fishery in International Pacific Halibut Commission (Commission) management Area 2C and Area 3A in and off Alaska. This correcting amendment revises the regulation at 50 CFR 300.65(c)(2) to change the reference to Commission management from Area 3B to Area 3A. Paragraph (c)(2) is set out as paragraph (i)(2) in the August 8, 2003, rule and was redesignated as paragraph (c)(2) on April 1, 2005 (70 FR 16742).

Need for Correction

Current text at § 300.65(c)(2) incorrectly indicates that the GHL will be established for Commission Area 3B. This regulation states that "NMFS will publish a notice in the **Federal Register** on an annual basis establishing the GHL for Area 2C and Area 3B for that Calendar year within 30 days of receiving information from the Commission which establishes the constant exploitation yield for that year." This regulation is not consistent with § 300.65(c)(1), which provides for the annual determination of GHLs for

Area 2C and Area 3A based on the constant exploitation yield (CEY) for halibut in Area 2C and Area 3A. When the Commission establishes the annual CEY, § 300.65(c)(2) provides that NMFS must notify the public of the GHLs by publication of a notice in the **Federal Register**, presumably for Area 2C and Area 3A as prescribed in § 300.65(c)(1) rather than for Area 2C and Area 3B as currently stated in § 300.65(c)(2). The regulation also is not consistent with § 300.65(c)(3) which codifies procedures that NMFS takes if the GHL is exceeded in Area 2C and Area 3A. Therefore, the reference to Area 3B at § 300.65(c)(2) is not consistent with the Commission areas outlined in all other GHL regulations at § 300.65(c). In addition, the GHL was not intended to apply in Area 3B as it was described in the proposed rule (67 FR 3867, January 28, 2002), or in the preamble to the final rule implementing the GHL (68 FR 47256, August 8, 2003). Reference to Area 3B at § 300.65(c)(2) is a typographical mistake. This rule issues a correcting amendment to correct the typographical error at § 300.65(c)(2) to indicate Commission management Area 3A instead of Area 3B.

Classification

Pursuant to 5 U.S.C. 553(b)(3)(B), the Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment on this correcting amendment to the GHL regulations, as such procedures would be unnecessary. Notice and comment is unnecessary because this action makes a minor, non-substantive change correcting a Commission area in § 300.65(c)(2), which is itself a ministerial provision requiring NOAA to publish in the **Federal Register** notice to the public of the GHLs set for Areas 2C and 3A pursuant to § 300.65(c)(1). The rule does not make any substantive change in the rights and obligations of charter sport fishermen managed under the GHL halibut regulations. No aspect of this action is controversial and no change in operating practices in the fishery is required. Because this action makes only the minor, non-substantive changes to § 300.65(c)(2) described above, this rule is not subject to the 30-day delay in effective date requirement of 5 U.S.C. 553(d).

List of Subjects in 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.

Dated: June 29, 2006.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

■ Accordingly, 50 CFR part 300 is corrected by making the following correcting amendment:

PART 300—INTERNATIONAL FISHERIES REGULATIONS**Subpart E—Pacific Halibut Fisheries**

■ 1. The authority citation for 50 CFR part 300, subpart E, continues to read as follows:

Authority: 16 U.S.C. 773-773k.

■ 2. In § 300.65, paragraph (c)(2) is revised to read as follows:

§ 300.65 Catch sharing plan and domestic management measures in waters in and off Alaska.

* * * * *

(c) * * *

(2) NMFS will publish a notice in the **Federal Register** on an annual basis establishing the GHL for Area 2C and Area 3A for that Calendar year within 30 days of receiving information from the Commission which establishes the constant exploitation yield for that year.

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DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 680**

[Docket No. 060404093-6177-02; I.D. 033106A]

RIN 0648-AU24

Fisheries of the Exclusive Economic Zone Off Alaska; Allocating Bering Sea and Aleutian Islands King and Tanner Crab Fishery Resources

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule implementing changes to the regulations for the Crab Rationalization Program. This action is necessary to correct two discrepancies in the scope of the sideboard protections for Gulf of Alaska (GOA) groundfish fisheries provided in a previous rulemaking. Specifically, this

action would remove the sideboard restrictions from vessels that did not generate Bering Sea snow crab (*Chionoecetes opilio*) quota share and would apply the sideboards to federally permitted vessels operating in the State of Alaska (State) parallel fisheries. This action is intended to promote the goals and objectives of the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP), the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and other applicable law.

DATES: Effective on August 7, 2006.

ADDRESSES: Copies of the regulatory impact review/initial regulatory flexibility analysis (RIR/IRFA) and Final Regulatory Flexibility Analysis (FRFA) prepared for this action, and copies of the Bering Sea and Aleutian Islands Crab Fisheries Final Environmental Impact Statement (EIS) prepared for the Crab Rationalization Program may be obtained from the NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Ellen Walsh, Records Officer, and from the NMFS Alaska Region website at <http://www.fakr.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Gretchen Harrington, 907-586-7228 or gretchen.harrington@noaa.gov.

SUPPLEMENTARY INFORMATION: In January 2004, the U.S. Congress amended section 313(j) of the Magnuson-Stevens Act through the Consolidated Appropriations Act of 2004 (Public Law 108-199, section 801). As amended, section 313(j)(1) requires the Secretary of Commerce to approve and implement by regulation the Crab Rationalization Program (Program), as it was approved by the North Pacific Fishery Management Council (Council). In June 2004, the Council consolidated its actions on the Program into Amendment 18 to the FMP. Additionally, in June 2004, the Council developed Amendment 19 to the FMP, which represents minor changes necessary to implement the Program. NMFS published a final rule to implement Amendments 18 and 19 on March 2, 2005 (70 FR 10174).

NMFS published the proposed rule for the sideboard restriction regulatory change in the **Federal Register** on April 24, 2006 (71 FR 20966), with a public comment period through May 9, 2006. NMFS received no public comments on the proposed rule.

This final rule corrects two aspects of the sideboard provisions in the regulations implementing the Program. One change removes the sideboard limits from vessels that did not generate Bering Sea snow crab quota share under

the Program. The second change clarifies that the sideboard protections apply to federally permitted vessels that fish in the State parallel groundfish fisheries. These changes are necessary to implement the Program's sideboard provisions. A description of this action is provided in the preamble to the proposed rule and is briefly summarized here.

State parallel fisheries occur in State waters but are opened at the same time as Federal fisheries in Federal waters. State parallel fishery harvests are considered part of the Federal total allowable catch (TAC) and federally permitted vessels move between State and Federal waters during the concurrent parallel and Federal fisheries. The State opens the parallel fisheries through emergency order by adopting the groundfish seasons, bycatch limits, and allowable gear types that apply in the adjacent Federal fisheries.

Sideboard limits restrict the ability of vessels whose histories resulted in Bering Sea snow crab quota share, or fishing under License Limitation Program (LLP) licenses derived from those vessels, to participate in GOA groundfish fisheries. The purpose of the sideboard limits is to prevent vessels that traditionally participated in the Bering Sea snow crab fishery from using the flexibility of the Program to increase their participation in the GOA groundfish fisheries, and primarily the GOA Pacific cod fishery. Historically, the Bering Sea snow crab fishery and GOA groundfish fisheries operated concurrently from January through March, meaning that a crab vessel owner had to decide whether to fish for Bering Sea snow crab or GOA groundfish but could not participate fully in both fisheries. With crab rationalization, vessel owners have the flexibility to fish for snow crab during a greatly extended season, or to lease their crab individual fishing quota (IFQ) and not fish at all. This increased flexibility for crab fishermen could lead to increases in fishing effort in GOA groundfish fisheries, especially the Pacific cod fishery, and could negatively affect the other participants in those fisheries.

Need for Regulatory Changes

This action makes two changes to the regulations governing sideboard provisions for the GOA groundfish fisheries at 50 CFR 680.22. The first change removes the sideboard restrictions from vessels whose histories did not generate Bering Sea snow crab quota share. The second change clarifies that the sideboard restrictions apply to

federally permitted vessels that fish in the State parallel groundfish fisheries.

The Council intended the sideboards to apply to vessels that qualify for Bering Sea snow crab quota share under the Program. The proposed rule for the Program included regulatory language to this effect (69 FR 63200, October 29, 2004). However, this language was changed in the final rule to apply the sideboards to vessels that had snow crab landings during the qualifying period. This change has the unintended consequence of applying the sideboards to vessels that did not qualify for quota share. This final rule changes the regulatory language to reflect the original language in the Program's proposed rule. NMFS received no public comments on this aspect of the Program's proposed rule.

The existing regulations restrict participation in Federal fisheries but not in the adjacent State waters fisheries. This omission in the regulations would allow vessels whose history generated quota share to increase their participation in the groundfish fisheries. This final rule changes the regulations to clarify that the GOA groundfish sideboard directed fishing closures apply to federally permitted vessels while fishing in the State parallel fisheries.

NMFS finds it necessary to apply the sideboard limits to federally permitted vessels fishing in State parallel fisheries in order to implement the FMP. Without this regulatory change, vessels that traditionally participated in the Bering Sea snow crab fishery could use the flexibility of the Program to increase their participation in the GOA groundfish fisheries, and primarily the GOA Pacific cod fishery, because they could circumvent the directed fishing closures by fishing in State waters. NMFS has notified the public that it will implement the sideboard limits in the State parallel fisheries in the preamble to the proposed and final rules for the Program and in the notice of availability for Amendments 18 and 19.

Changes from the Proposed Rule

One non-substantive change was made from the proposed rule to the final rule. In § 680.22(f), the phrase "that are required to have" was changed to "with" because the term "required" implied that a Federal Fisheries Permit or LLP license was required in State waters. The term "with" clarifies that Federal regulations apply to vessels operating under Federal permits.

Classification

NMFS has determined that the final rule is consistent with the FMP, the

Magnuson-Stevens Act, and other applicable laws.

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

NMFS prepared a final regulatory flexibility analysis (FRFA) as required by section 604(a) of the Regulatory Flexibility Act (RFA). The FRFA describes the economic impact this rule will have on small entities. A description of the action, why it is being considered, and the legal basis for it are included at the beginning of this section in the preamble and in the SUMMARY section of the preamble. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

Issues Raised by Public Comments on the IRFA

NMFS received no public comments on the IRFA.

Need for and Objectives of this Action

This action is necessary to correct two aspects of the sideboard provisions in the regulations implementing the Program that were inadvertently misstated at 50 CFR 680.22.

Number and Description of Small Entities Directly Regulated by the Rule

One hundred and ninety five entities are subject to the sideboard regulations and fish in the GOA groundfish fisheries. A fishing operation is considered to be a small entity for RFA purposes if its total annual gross receipts, from all sources, is less than \$4 million. The 2004 gross revenue data from the State fishticket database is readily available and includes revenue from all fishing operations in Alaska and adjacent EEZ waters. Based on these data, as many as 189 of the 195 entities may be considered small.

Description of Significant Alternatives and a Description of Steps Taken to Minimize the Significant Economic Impacts on Small Entities

No significant alternatives to the proposed rule exist that accomplish the stated objectives, are consistent with applicable statutes, and would minimize the economic impact of the proposed rule on small entities. A no action alternative was considered, but was rejected because it did not meet the objectives of the Program's sideboard provisions. No significant adverse effects are shown for this action.

The Council created the sideboards with the expressed purpose of restricting the owners of vessels acquiring snow crab quota share from using the resulting increased

operational flexibility to expand their participation in the already fully subscribed GOA groundfish fisheries. The proposed regulatory changes are necessary owing to the introduction of two inconsistencies that exist between the Program provisions and the language in the implementing regulations. These corrections will implement the sideboards as intended by the Council.

Sideboards on Vessels Without Quota Share

Six small entities, as defined for RFA purposes, would be directly regulated by the removal of the sideboard provisions from vessels that did not generate snow crab quota shares. These entities are currently, although inadvertently, subject to the economic burden of the sideboard restrictions, despite not having qualified for snow crab quota shares. The proposed action would lift this uncompensated burden from these six small entities by removing their sideboard restrictions.

Sideboards in the State Parallel Groundfish Fisheries

As promulgated, the current regulatory language may allow federally permitted vessels to circumvent the Program's sideboards by fishing only in the State parallel groundfish fisheries in the GOA. Since the start of the 2006 A season Pacific cod fishery (the first GOA groundfish opening following implementation of the current Program provisions), no vessels prohibited by these sideboard provisions from fishing for Pacific cod have fished in the State parallel fisheries. The fact that no vessels currently are exploiting this loophole in the regulations is testament to the clear intent that the sideboards apply to the State parallel fisheries, and the plain language understanding of the term "GOA." This action proposes to correct the sideboard provisions of the Program's implementing regulations, by applying them to federally permitted vessels fishing in State parallel groundfish fisheries. Therefore, the preferred action has no economic effects beyond those considered in the EIS prepared for the Program (see **ADDRESSES**).

Sideboard restrictions prevent adverse spillover effects in other fisheries from an influx of effort from the rationalized crab fisheries. The Crab Rationalization Program, because it issued quota share to vessel owners and provided them the ability to form cooperatives, provides these directly regulated entities substantial economic benefits, as discussed in the EIS prepared for the Program (see **ADDRESSES**). As discussed

in that analysis, the sideboard limits prevent these participants from using these benefits to increase their effort in the GOA groundfish fisheries. The sideboard restrictions provide the sideboarded vessels the ability to maintain their historic harvest levels in GOA groundfish fisheries, and therefore, do not make the sideboarded vessels worse-off economically. Vessels with minimal harvests in the snow crab fisheries and substantial harvests in the Pacific cod fishery would be exempt from the sideboard restrictions, since these vessels have little dependence on the crab fisheries. In addition, vessels with less than a minimum historic harvest from GOA groundfish fisheries are not permitted to participate in GOA groundfish fisheries.

The proposed action does not likely have the potential to impose disproportionate impacts on small entities, relative to large entities. The regulatory change applying the sideboard constraints to State waters during the parallel fisheries would provide all qualifying vessels, large and small, a level playing field upon which to operate, as had been the intention of the Council from the outset. Because this change merely rescinds an unintentional and unexploited regulatory loophole, the only possible effect is to codify the commonly held understanding among the fishing industry of the sideboard rule.

This rule does not have the potential to significantly reduce profits for small entities. The absence of cost data precludes quantitative estimation of potential impacts on profitability, although these would be expected to be minimal, because no vessels chose to exploit this loophole in the 2006 A season (the first groundfish fishery after sideboard implementation).

This regulation does not impose new recordkeeping and reporting requirements on any directly regulated small entities.

Small Entity Compliance Guide

NMFS has posted a small entity compliance guide on the Internet at <http://www.fakr.noaa.gov/sustainablefisheries/crab/rat/progfaq.htm> to satisfy the Small Business Regulatory Enforcement Fairness Act of 1996, which requires a plain language guide to assist small entities in complying with this rule. Contact NMFS to request a hard copy of the guide (see **ADDRESSES**).

List of Subjects in 50 CFR Part 680

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: June 29, 2006.

William T. Hogarth,

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

■ For the reasons set out in the preamble, NMFS amends 50 CFR part 680 as follows:

**PART 680—SHELLFISH FISHERIES OF
THE EXCLUSIVE ECONOMIC ZONE
OFF ALASKA**

■ 1. The authority citation for part 680 continues to read as follows:

Authority: 16 U.S.C. 1862.

■ 2. In § 680.22, paragraph (a)(1)(i) is revised and paragraph (f) is added to read as follows:

§ 680.22 Sideboard protections for GOA groundfish fisheries.

* * * * *

(a) * * *

(1) * * *

(i) Any non-AFA vessel that made a legal landing of Bering Sea snow crab (*C. opilio*) between January 1, 1996, and December 31, 2000, that generated any amount of Bering Sea snow crab (*C. opilio*) fishery QS; and

* * * * *

(f) *Sideboard protections in the State of Alaska parallel groundfish fisheries.* Vessels subject to the sideboard restrictions under paragraph (a) of this section, with a Federal Fisheries Permit or LLP license, shall be subject to the regulations of this section while participating in any groundfish fishery in State waters adjacent to the GOA opened by the State of Alaska and for which the State of Alaska adopts a Federal fishing season.

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