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• Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record and will be generally posted to <http://www.regulations.gov> without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

Copies of Amendment 79 and the Environmental Assessment (EA) prepared for this action are available from the NMFS Alaska Region at the address above or from the Alaska Region website at <http://www.fakr.noaa.gov/>.

**FOR FURTHER INFORMATION CONTACT:** Tom Pearson, 907-481-1780.

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit any fishery management plan amendment to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce. The Magnuson-Stevens Act also requires that NMFS, upon receiving a proposed amendment, immediately publish a notice in the **Federal Register** that the amendment is available for public review and comment. This action constitutes such notice for Amendment 79 to the FMP. NMFS will consider public comments received during the comment period in determining whether to approve this FMP amendment.

In 2006, NMFS implemented Amendment 69 to the FMP that allowed the North Pacific Fishery Management Council (Council) to set the TAC for the "other species" category at or below 5 percent of the combined TACs for the GOA target species, which accommodated incidental catch in directed groundfish fisheries. This was an interim step to provide greater protection for the constituent species of the "other species" category until additional data allowed for adequate stock assessment. Under this system, the FMP did not authorize the specification of OFLs and ABCs for the "other species" category.

In April 2008, the Council unanimously recommended

Amendment 79 to the FMP. The purpose of Amendment 79 is to provide a sound biological basis for the setting of the "other species" TAC and to provide for an annual review of the stock status of the "other species" category to further reduce the risk of overfishing the species in the "other species" category. Amendment 79 would authorize aggregate OFL and ABC levels for the "other species" category in the GOA as part of the annual groundfish harvest specifications process. The revised process would allow the Council to incorporate the best and most recent scientific and socio-economic information and public testimony in its recommendation for an annual "other species" TAC. The proposed amendment is intended to comply with the Magnuson-Stevens Act, particularly National Standard 1 and Section 303(a), and other applicable laws.

Public comments are being solicited on proposed Amendment 79 through July 28, 2008. All comments received by the close of the business on the last day of the comment period on the amendment will be considered in the approval/disapproval decision. Comments received after that date will not be considered.

Dated: May 22, 2008.

**Samuel D. Rauch III,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 070816465-8648-03]

RIN 0648-AW28

#### Fisheries of the Exclusive Economic Zone Off Alaska; Recordkeeping and Reporting

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to exempt groundfish catcher/processors and motherships equipped with an operational vessel monitoring system (VMS) transmitter from check-in/check-out requirements. This action does not

repeal the requirement for submission of a check-in/check-out report by catcher/processors and motherships. This action would reduce the paperwork submissions required from catcher/processors and motherships and change the definitions for "active" period for motherships and trawl, hook-and-line, and pot gear catcher/processors. This action would reduce administrative costs for both the fishing industry and NMFS.

**DATES:** Comments must be received by June 30, 2008.

**ADDRESSES:** You may submit comments, identified by 0648BAW28, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>;
- Mail: Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802; Attn: Ellen Sebastian, Records Officer;
- Hand delivery: 709 West 9th Street, Room 420A, Juneau, AK; or
- Fax: 907B586B7557, Attention: Sue Salvesson.

All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments.

Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

Copies of the National Environmental Policy Act Categorical Exclusion (CE), the Regulatory Impact Review, and the Regulatory Flexibility Act certification prepared for this action may be obtained from the NMFS Alaska Region, P.O. Box 21668, Juneau, Alaska 99802, Attn: Ellen Sebastian, and on the NMFS Alaska Region website at <http://www.alaskafisheries.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Patsy A, Bearden, 907-586-7228.

**SUPPLEMENTARY INFORMATION:**

#### Background

NMFS manages the U.S. groundfish fisheries of the exclusive economic zone (EEZ) off Alaska under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area and the Fishery Management Plan for Groundfish of the

Gulf of Alaska (FMPs). The North Pacific Fishery Management Council prepared the FMPs pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* (Magnuson-Stevens Act). Regulations implementing the FMPs appear at 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

Check-in/check-out reports notify NMFS that a fish processor will participate or cease participation in a groundfish fishery. According to regulations at § 679.5(h), catcher/processor and mothership operators and shoreside processor and stationary floating processor managers must submit check-in/check-out reports. This action would exempt operators of catcher/processors and motherships equipped with an operational VMS transmitter from submitting a check-in/check-out report to NMFS. Specifically, this action would revise the text at § 679.5(h) to state that a catcher/processor or mothership that is not carrying onboard a transmitting VMS transmitter that meets the requirements of § 679.28(f) must submit check-in/check-out reports.

The check-in/check-out report also tells NMFS where fishing will occur (if a catcher/processor) or groundfish will be received (if a mothership). The check-in/check-out information was originally used by NMFS inseason managers to monitor the fishing capacity and effort. The information also was used by the United States Coast Guard (USCG) to monitor vessel location. The USCG will still receive this information through VMS or the Interagency Electronic Reporting System (IERS).

Catcher/processors and motherships must submit a check-in/check-out report when the harvester changes gear type; when a vessel changes operation from catcher/processor to mothership or vice versa; when a fishing year (calendar year) changes; and when fish production is interrupted.

The information previously collected only through check-in/check-out reports may be obtained through VMS and the IERS. The USCG receives and has access to VMS and IERS data.

Over the past ten years, NMFS has added VMS use in many fishery management programs to monitor vessel location. VMS transmitters combine global positioning systems and satellite communications to automatically provide precise location reports to NMFS several times each hour. NMFS requires VMS transmissions when operating in: any reporting area off

Alaska while any fishery requiring VMS, for which the vessel has a species and gear endorsement on its Federal Fisheries Permit is open; the Aleutian Islands subarea; the Gulf of Alaska and mobile bottom contact gear is onboard; and the Rockfish Pilot Program.

IERS and its data entry component, eLandings, are scheduled for implementation for all groundfish fisheries in the Gulf of Alaska and Bering Sea and Aleutian Islands Management Area in 2008 (see proposed rule 72 FR 35748, June 29, 2007). Through eLandings, fisheries participants provide daily information on vessel location (although, with less precision than the VMS), vessel gear use, the management program under which fishing is taking place, the gear used by the harvesting vessel, landings information, discard and donation information, and production information.

The same information that the check-in/check-out system collects would be collected by these other systems. Moreover, VMS and IERS data will be more precise and will require less data processing by NMFS because electronic data is entered on standard forms and automatically entered into the NMFS database.

In NMFS' current recordkeeping and reporting regulations, motherships and trawl, longline, and pot gear catcher/processors must record the occurrence of active and inactive periods. Active periods include times when the vessel is "checked-in" per the check-in report. The definition of an active period currently means Awhen checked-in or processing@ for a mothership and catcher/processor. Because this action would eliminate the requirement for a check-in/check-out report for certain of the motherships and catcher/processors, the corresponding definition of an active period must change. For a catcher/processor using longline or pot gear, the definition for "active" status would be revised at § 679.5(a)(7)(i)(D)(1) to describe that "active" status starts when all or part of the longline or pot gear is in the water. For a catcher/processor using trawl gear, the definition for "active" status would be amended at § 679.5(a)(7)(i)(D)(2) to describe that "active" status starts when all or part of the trawl net is in the water. Further, for a mothership, the definition for "active" status would be revised at § 679.5(a)(7)(i)(C) to describe that an "active" status is when a mothership is receiving or processing groundfish and begins when the first groundfish is received.

NMFS considered extending the check-in/check-out report exemption to

shoreside processors and stationary floating processors, but concluded that the report provides valuable information not submitted elsewhere. Shoreside and stationary floating processor check-in/check-out reports provide information on the facilities' fish and fish product inventories as they exist at the facility on the report submission date. This inventory information is useful for onboard audits by NOAA Fisheries Office for Law Enforcement (OLE) and USCG.

#### Proposed Changes to 50 CFR 679.5

To accommodate the changes in "active" period catcher/processor definitions, NMFS would revise paragraphs (a)(7)(i)(C) and (a)(7)(i)(D). NMFS would also reorganize the regulations at (h) to accommodate the changes in check-in/check-out report requirements. Introductory paragraph (h)(1) would be revised by removing outdated text that describes submittal methods. NMFS no longer accepts check-in/check-out reports by Telex, modem, or satellite. Rather, NMFS accepts fax and e-mail submittals for these reports.

A new paragraph (h)(2) would be created to list exceptions to the requirement at paragraph (h)(1) to submit a check-in report. A new paragraph (h)(2)(i) would be added to describe the exception due to carrying onboard a transmitting VMS transmitter that meets the requirements of § 679.28(f). Paragraph (h)(1)(iii) would be redesignated as (h)(2)(ii) to describe exceptions due to fishing in two adjacent reporting areas. Redesignated paragraph (h)(2)(ii)(B) would be amended to change a cross-reference to new paragraph (h)(2)(ii). Paragraphs (h)(2) and (h)(3) would be redesignated as (h)(3) and (h)(4), respectively, to describe transit through reporting areas and required information on a check-in/check-out report.

#### Classification

Pursuant to section 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMPs, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined 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 Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

### Factual Basis For Certification

#### Description and Estimate of the Number of Small Entities to Which the Rule Applies

Eleven small-entity groundfish catcher/processors (CPs), and no small-entity motherships, will be directly regulated by this action. NMFS currently uses a \$4 million gross revenue threshold to determine whether a CP is a small entity for purposes of the Regulatory Flexibility Act (RFA). Alaska Fisheries Science Center data on gross revenues from all fishing sources, supplied in August 2007, indicate that in 2006, 11 groundfish CPs were small entities under this criterion. The most recent data available are from 2006. The count of small entities may be overestimated because it considers each vessel independently. Some entities own multiple fishing vessels, and there are often affiliations between entities. NMFS currently uses an employment standard of 500 employees to evaluate for RFA purposes the size of motherships that are not also used as CPs. The three motherships that are not also used as CPs operating off of Alaska are believed to be large for RFA purposes, because they are owned by entities with more than 500 employees.

#### Estimate of Economic Impact on Small Entities by Entity Size and Industry

NMFS does not expect this action to have a significant economic impact on small entities. The action does not impose a requirement on vessels to acquire a VMS transmitter, and it does not require a vessel with a VMS transmitter to take advantage of the exemption. It is likely that no operation would take advantage of this exemption if it would incur a net cost to do so.

Some small entities may reduce their paperwork burden and costs by small amounts under this action. The analysis contained in the Regulatory Impact Review (RIR) estimates potential savings of about \$740 per vessel, per year. Since the 11 small CPs average \$2.4 million in gross revenues from all sources, these savings (3/100 of a percent) are not considered significant. Thus, the proposed regulatory change has a potential to yield some small benefit, but no discernable cost to small entities.

#### Criteria Used to Evaluate Whether the Rule Would Impose ASignificant Economic Impacts@

The two criteria recommended to determine significant economic impact of the action are disproportionality and profitability. The proposed action would not place a substantial number of small entities at a disadvantage, relative

to large entities. This action would create opportunities for some small entities to reduce their costs slightly and, thus, slightly increase their profitability. The benefit is probably proportionally greater for small entities than for large ones, but still small overall benefit.

#### Criteria Used to Evaluate Whether the Rule Would Impose Impacts on AA Substantial Number of Small Entities@

NMFS guidelines for economic review of regulatory actions explain that the term Asubstantial number@ has no specific statutory definition and the criterion does not lend itself to objective standards applicable across all regulatory actions. Rather, Asubstantial number@ depends upon the context of the action, the problem to be addressed, and the structure of the regulated industry. The Small Business Administration casts Asubstantial@ within the context of Amore than just a few@ or de minimis (Atoo few to care about@) criteria. In this instance 11 out of 85 CPs are estimated to be small entities. This appears to be a substantial number within the meaning of these guidelines.

#### Description of and Basis for Assumptions Used

Gross revenue estimates for individual CP operations were prepared by the Alaska Fisheries Science Center in August 2007. Mothership size determinations were based on anecdotal information about mothership ownership structure, affiliations, and resultant employee numbers. The economic analysis contained in the RIR further describes the potential size, distribution, and magnitude of the economic impacts that this action may have on small entities. Based upon that analysis, NMFS finds that the proposed action will not have a significant economic impact on the small entities participating in these fisheries. As a result, an initial regulatory flexibility analysis is not required, and none has been prepared.

#### Collection-of-Information Requirements

This proposed rule contains a collection-of-information requirement that is subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) and which has been approved by OMB under Control Number 0648-0213. Public reporting burden for the check-in/check-out report is estimated to average seven minutes per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the

data needed, and completing and reviewing the collection-of-information. The removal of the requirement for check-in and check-out reports by catcher/processors and motherships will result in an estimated annual savings of 248 burden hours per year, \$6,200 in personnel costs, and \$3,928 in miscellaneous costs.

Public comment is sought regarding whether this proposed collection-of-information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection-of-information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection-of-information to NMFS Alaska Region at the ADDRESSES above, and e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or fax to 202-395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the PRA, unless that collection-of-information displays a currently valid OMB Control Number.

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

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: May 22, 2008.

**Samuel D. Rauch III**,  
Deputy Assistant Administrator For  
Regulatory Programs, National Marine  
Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 679 as follows:

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

1. The authority citation for part 679 continues to read as follows:

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

2. In § 679.5:

a. Paragraphs (h)(2) and (h)(3) are redesignated to read (h)(3) and (h)(4), respectively.

b. Paragraph (h)(2) heading and paragraph (h)(2)(i) are added.

c. Paragraph (h)(1)(iii) is redesignated as (h)(2)(ii).

d. Paragraphs (a)(7)(i)(C), (a)(7)(i)(D), and (h)(1) introductory text, and the

heading for newly redesignated (h)(2)(ii) are revised.  
 The additions are revisions read as follows:

**§ 679.5 Recordkeeping and reporting (R&R).**  
 (a) \* \* \*  
 (7) \* \* \*

If participant is . . .	And fishing activity is . . .	An active period is . . .	An inactive period is . . .
(C) MS	Receipt, discard, or processing of groundfish	When receiving or processing groundfish.	When not active
(D) C/P	Harvest, discard, or processing groundfish	A longline or pot gear catcher/processor is active when processing or when all or part of the longline or pot gear is in the water.	When not active
		A trawl gear catcher/processor is active when processing groundfish or when all or part of the trawl net is in the water.	When not active
	* * *	* *	

\* \* \* \* \*  
 (h) \* \* \*  
 (1) *Requirement.* Except as noted in paragraph (h)(2) of this section, the operator of a catcher/processor or mothership and the manager of a shoreside processor or stationary floating processor must submit to NMFS a check-in report (BEGIN message) prior to becoming active and a check-out

report (CEASE message) for every check-in report submitted. The check-in report and check-out report may be submitted by fax to 907-586-7131, or by e-mail to [erreports.alaskafisheries@noaa.gov](mailto:erreports.alaskafisheries@noaa.gov).  
 \* \* \* \* \*  
 (2) *Exceptions*—(i) *VMS onboard.* The operator of a catcher/processor or mothership is not required to submit to NMFS a check-in report or check-out

report if the vessel is carrying onboard a transmitting VMS that meets the requirements of § 679.28(f).

(ii) *Two adjacent reporting areas.* \* \* \*