

most recent, relevant data only became available as of March 19, 2009.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: April 8, 2009.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 080721859-9592-03]

RIN 0648-AX01

Fisheries of the Exclusive Economic Zone Off Alaska, Groundfish of the Gulf of Alaska; Correction

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

ACTION: Final rule; correction.

SUMMARY: NMFS is correcting the preamble to a final rule published in the *Federal Register* on January 21, 2009 (74 FR 3446). The final rule implemented a regulatory amendment to exempt fishermen using dinglebar fishing gear in federal waters of the Gulf of Alaska from the requirement to carry a vessel monitoring system (VMS). This correction is necessary to summarize and respond to public comments received on the proposed rule. No changes to the requirements of the final rule result from this correction.

DATES: Effective April 14, 2009.

FOR FURTHER INFORMATION CONTACT: Ben Muse, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Groundfish fisheries in the Gulf of Alaska (GOA) are managed under the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens

Act). Regulations implementing the FMP appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

On January 21, 2009, NMFS published a final rule that exempts vessels in the Gulf of Alaska with dinglebar gear onboard from vessel monitoring system (VMS) requirements (74 FR 3446). Previously, dinglebar fishermen participating in the State of Alaska-managed fishery for in the Gulf of Alaska were required to carry VMS to facilitate enforcement of regulations that prohibit fishing in habitat areas of particular concern (HAPC), specifically Coral Habitat Protection Areas in the Fairweather Grounds and near Cape Ommaney in the Gulf of Alaska. VMS data from the eight vessels that participated in the fishery in 2007 show that fishery participants did not fish in the Gulf of Alaska Coral Habitat Protection Areas; fishing occurred at shallower depths than where the sensitive corals occur; and the bottom types preferred by sensitive coral species are avoided by dinglebar fishermen. NMFS has determined that the risk of damage posed by dinglebar vessels to sensitive corals protected within habitat areas of particular concern is minor, and insufficient to justify the costs of VMS.

The preamble to the final rule incorrectly stated that no comments were received on the proposed rule for this action, which was published on October 3, 2008 (73 FR 57585). In fact, 5 letters of comment were received by NMFS during the comment period that ended November 3, 2008. Three of the letters endorsed the exemption, two opposed it, and one (of those that opposed) addressed an opinion of the federal government that was not relevant to the proposed action and is not responded to below. After consideration of these comments, NMFS has made no change to the final rule published January 21, 2009 (74 FR 3446). Information on the purpose and justification for the VMS exemption is presented in the proposed and final rules.

Correction

In the final rule for this action (74 FR 3446), published on January 21, 2009, make the following correction. On page 3448, in the first column, correct the third paragraph to read:

“Response to comments

A proposed rule for this action was published October 3, 2008 (73 FR 57585), and the comment period ended November 3, 2008. Five letters of comment were received by NMFS

during the comment period. Three of the letters endorsed the exemption, two opposed it, and one (of the ones that opposed) addressed an opinion of the federal government that was not relevant to the proposed action and is not responded to below. After consideration of these comments, NMFS has made no changes to the final rule. The following is a summary of the comments received and NMFS's response.

Comment 1: The risk of damage posed to protected corals in the Gulf of Alaska by the dinglebar fishery is minor and insufficient to justify the costs of VMS. We don't believe that granting this exemption will harm or provide less protection for the HAPC areas. The analysis also revealed that the dinglebar fishery for targets a different substrate type (folded sandstone) than the substrates that typically support *Primnoa* species corals (bedrock and boulders). It is appropriate to exempt dinglebar fishermen targeting from VMS requirements, as VMS represents an unnecessary burden to a small fleet.

Response: NMFS agrees that the risk of damage to *Primnoa* corals does not justify the cost imposed on the small scale operations in this fishery. NMFS' reasoning is discussed in the response to Comment 2, below. The analysis supporting the final rule did not make specific statements about the types of substrate supporting *Primnoa* corals, but did point out that the fishing grounds dinglebar fishermen chose to fish have a different type of substrate than that found in the protected areas.

Comment 2: The potential for damage to the *Primnoa* corals is too great to justify relaxing the VMS requirement for vessels using dinglebar gear. Dinglebar gear is by definition bottom contact gear and is very capable of damaging the corals in the GOA Coral Habitat Protection Areas. While 2007 VMS data shows fishermen operating close to and not within the GOA Coral Habitat Protection Areas, the obvious reason for this is that VMS is doing its job of keeping bottom contact fishermen out of the areas. However, are common in the areas. A marine biologist providing testimony to the Council indicated this. This creates an incentive for dinglebar operations to enter these areas. Minor damage is too much damage.

Response: NMFS does not believe this action creates a significant risk of damage to *Primnoa* corals in the protected areas. The decision was not only based on the observation that vessels didn't enter these areas in 2007; the analysis supporting the final rule acknowledged that the VMS could be creating a deterrent. Agency approval of

the VMS exemption was based on a cumulative consideration of several factors. The analysis indicated that there appeared to be limited overlap between the depths at which dinglebar fishing took place, and the depths present in the protected areas; the analysis indicated that, on the basis of VMS data in 2007, dinglebar fishermen tended to target different bottom habitats than those present in the protected areas; and the analysis indicated that there had historically been very little dinglebar activity in the Alaska Department of Fish and Game statistical area containing the Cape Ommaney protected area.

Comment 3: The analysis supporting this action fails to address the question of the presence of in the designated areas. are common in those areas, as a marine biologist has attested. Do not approve this exemption until the

analysis has first been revised to include this critical data and the Council has been given the opportunity to reconsider its decision based on the revised analysis.

Response: For the reasons discussed in the response to Comment 2, NMFS does not believe that the presence of lingcod would present a significant risk of damage to the corals in this area.

Comment 4: Any program that expands VMS requirements must include reimbursement to the individual fisherman for the cost of the VMS unit including installation and operating costs.

Response: This final rule does not expand VMS requirements.

Comment 5: The commenter was unable to use the website to submit comments, and had to submit a comment by email instead. A website that does not work is no use.

Response: NMFS does not know the reason why the commenter was unable to use the website. The web site, "Regulations.gov" is a Federal government web site serving many agencies. Currently the website is operating successfully, and NMFS has received thousands of letters of comment through it. A person experiencing problems with Regulations.gov should contact Regulations.gov directly. NMFS notes that the commenter was able to submit a comment via email."

Dated: April 8, 2009.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

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