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Author

The author of this document is the staff of the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: November 27, 2007.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 300, 600 and 697

[Docket No. 070717337-7338-01]

RIN 0648-AV78

General Provisions for Domestic Fisheries; Specifications for Boarding Ladders

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

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS proposes regulations to require domestic fishing vessel operators to provide a U.S. Coast Guard-approved pilot ladder as a safer and more enforceable means for authorized personnel to board certain domestic fishing vessels in carrying out their duties under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Atlantic Tunas Convention Act, and other applicable fisheries laws and treaties. This action is necessary to provide for the safety of personnel boarding domestic fishing vessels, as current standards have proven to be inadequate. The proposed regulations would establish a safer and more enforceable national standard for ladders used by authorized officers for boarding domestic fishing vessels subject to Federal regulation.

DATES: Comments must be received at the following address by January 10, 2008.

ADDRESSES: You may submit comments, identified by “RIN 0648-AV78,” by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.

- Fax: 301-713-1175, Attn: William D. Chappell.

- Mail: Alan Risenhoover, Director, Office of Sustainable Fisheries, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Please mark the outside of the envelope “Comments on Boarding Ladder Rule.”

Instructions: 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 (for example, name, address, etc.) 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 PDF file formats only.

Copies of the Initial Regulatory Flexibility Analysis/Regulatory Impact Review (IRFA/RIR) may be obtained from the same address.

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

SUPPLEMENTARY INFORMATION:

The Magnuson-Stevens Act established U.S. jurisdiction over the fishery resources in the exclusive economic zone (EEZ). NMFS is responsible for implementation of the Magnuson-Stevens Act and the Fishery Management Plans (FMPs) prepared by eight Regional Fishery Management Councils (Councils) and for the FMP governing Atlantic Highly Migratory Species. While each Council prepares FMPs for those fishery resources within the Council’s area of authority that require conservation, NMFS implements certain requirements common to all fisheries, such as facilitation of enforcement. Associated regulations are codified at 50 CFR parts 600 through 697.

These general regulations to facilitate enforcement also apply to U.S. fishing vessels fishing under the requirements of other fisheries laws and treaties. For example, they apply to fishing activities subject to the Atlantic Coastal Fisheries Cooperative Management Act regulations at 50 CFR part 697. In addition, there are several international fisheries regimes in which U.S. fishing

vessels participate, such as the Atlantic fisheries under conservation and management measures adopted by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and implemented domestically by the Atlantic Tunas Convention Act and regulations at 50 CFR part 635. U.S. fishing vessels are regulated on the high seas and under other international fishing regimes, including the High Seas Fishing Compliance Act of 1995, the Tuna Conventions Act of 1950, the South Pacific Tuna Act of 1988, the North Pacific Halibut Act of 1982, the Pacific Salmon Treaty Act of 1985, the Antarctic Marine Living Resources Convention Act of 1984, and a number of international treaties, including the 1972 Treaty Between the Government of the United States of America and the Government of the Republic of Columbia Concerning the Status of Quita Sueno, Roncador and Serrana, and the 1981 Treaty Between the Government of the United States of America and the Government of Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges as amended in 2002.

Current regulations at § 600.730(c)(3) require a fishing vessel to “provide a safe ladder” to be used for boarding purposes by authorized personnel including authorized officers (e.g., Coast Guard personnel, and Enforcement Agents), observers, and scientists enforcing regulations and documenting fishing effort at sea. However, a “safe boarding ladder” is not defined in regulations for domestic fishing vessels. This has led to fishing vessel operators providing a variety of ladders for boarding.

Safety is compromised when authorized personnel use ladders that are inadequate. Within the last few years, several boarding officers fell into the water when the ladders provided for boarding failed or when they were inadequate to allow the boarding officer to maintain a grip on the ladder. This is a highly dangerous situation. Colliding with the fishing vessel, the small boat delivering the boarding party, and even the ladder itself can injure or kill a falling person or one in the water. In addition, especially in Alaskan and Northwestern Atlantic waters, cold water temperature can cause shock and the quick onset of hypothermia, which quickly becomes life threatening. Although boarding parties wear flotation gear, the threat of drowning through unconsciousness or entanglement in a ladder or other gear from the vessel are concerns.

Some vessels have provided ladders wholly unsuited to boarding a vessel at sea, such as swimming pool ladders,

aluminum step ladders, rigid wooden ladders, or metal rungs welded to the side of the vessel. While U.S. Coast Guard boarding parties can sometimes provide their own ladder, the process of rigging the ladder to the fishing vessel is slow and the ladder is bulky and hazardous to carry on board a small boat. In addition, observers transferring from one fishing vessel to another at sea cannot take a boarding ladder with them.

NMFS proposes to require the use of a pilot ladder on all fishing vessels with a freeboard of 4 ft (1.25 m) or greater in order to provide an easily identifiable and obtainable ladder to provide safe means for personnel to embark and disembark vessels at sea.

In addition to defining and requiring the use of a pilot ladder, this proposed rule would define the term "freeboard" with regard to this rule. This change would clarify the requirements of existing and proposed regulations. In some cases the term freeboard has been interpreted as the height of the lowest deck open to the weather (weather deck) from the water's surface. In other cases it has been considered as the height of the gunwale (railing around the weather deck bulwarks) from the water's surface. The difference between these two measurements can be from a few inches to over 6 feet (1.8 m). In order to make the regulations more useful and consistent, NMFS proposes to define freeboard as the working distance between the top rail of the gunwale of a vessel to the water's surface. Because some vessels have openings in the bulwarks specifically for embarking and debarking personnel, NMFS proposes that, where cut-outs are provided in the bulwarks for the sole purpose of personnel boarding, freeboard means the distance between the top of the lowest portion of the structure to the water's surface.

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 Magnuson-Stevens Act and other applicable law, subject to further consideration after public comment.

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained 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**).

Small Entities Affected

In determining the number of vessels that might be affected by this rule, NMFS and the Coast Guard first determined that vessels 65 ft (20.0 m) or greater in length have a freeboard (defined as the working distance between the top rail of the gunwale to the water's surface) of 4 ft (1.25 m) or greater. While some vessels 65 ft (20.0 m) or greater in length may have a freeboard of less than 4 ft (1.25 m), NMFS assumed for purposes of this analysis that all of these vessels, as well as an unknown number of smaller vessels, would be required to carry a pilot ladder if this proposed rule were implemented. According to U.S. Coast Guard vessel documentation records, 6,050 documented fishing vessels are 65 ft (20 m) long or longer and could be affected by this requirement. Because some vessels already have ladders that would meet the new requirements, it is unlikely that all of the identified fishing vessels would need to purchase a ladder. Except for some large catcher-processor vessels, mostly engaged in the Alaska fisheries, these vessels are all considered small entities for the purpose of this rule.

Reporting and Recordkeeping Requirements

This rule has no reporting or recordkeeping requirements.

Duplicating, Overlapping or Conflicting Federal Rules

This rule refers to 46 CFR subpart 163.003, which provides standards and approval and production tests for pilot ladders that would be required by this proposed rule. There are no conflicting rules.

Alternatives Considered

This action considered 5 alternatives including the preferred alternative and the status quo. The proposed alternative (proposed action) is to require the operators of all fishing vessels with a freeboard of over 4 feet (1.25 m) to provide a U.S. Coast Guard-approved pilot ladder for boarding parties, observers and other officials required to board the vessel. The term "pilot ladder" would replace the currently required "safe boarding ladder." That term has been undefined and, as a result, fishing vessel operators have provided ladders that have been both inadequate and unsafe. Approved boarding ladders come in several

approved versions and vary in cost. Typically, vessels would need a 10- or 12-foot (3.0 or 3.7 m) ladder that costs approximately \$517-\$620 for a wooden rung ladder, and \$1,160-\$1,392 for a synthetic rung ladder. The largest vessels may have to buy a longer ladder at a proportionate increase (approximately \$50-\$60 per foot) in cost. NMFS estimates the total cost to fishing vessel owners of this rule to be from \$3,127,850 (\$517 x 6,050 vessels) to \$8,421,600 (\$1,392 x 6,050 vessels).

The second alternative is the status quo, or no change to the regulations. The status quo does not meet the objectives of the action. This alternative would not increase costs to fishermen; however, neither would it provide any increased safety to persons attempting to board fishing vessels at sea. The regulations would continue to be ambiguous and vessel operators may continue to provide unsafe ladders, resulting in delayed boardings and accidents, some of which could be serious or fatal.

A third alternative considered would limit this requirement to Alaskan and Northwestern Atlantic waters where cold water and rough seas are common. This alternative does not meet the objectives of the action. The limitation would reduce the cost to fishermen, but would not reduce the hazard to boarding parties in the areas that are not subject to the requirements, since boardings are conducted in rough seas off all coasts and during all periods of the year. Therefore, limiting the extent of this requirement would compromise the safety of boarding parties in any areas of the EEZ that are not subject to the requirements.

A fourth alternative would require vessels with a freeboard of 3 feet (0.9 m) or more to provide a ladder. Some reports from U.S. Coast Guard boarding parties indicate that ladders would facilitate boarding operations in those cases. NMFS rejected this alternative because of the marginal benefit in safety and the relative difficulty in determining the number of vessels that would have to obtain ladders.

A fifth alternative would allow fishing vessel owners or operators to make their own ladders according to specifications found at 46 CFR subpart 163.003, without going through the procedures for CG approval. While fishermen could potentially make such ladders cheaper than buying them, the ladders would not be approved and there would be no assurance that they would actually perform as required. Therefore, this alternative was not adopted.

This proposed 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: December 4, 2007.

John Oliver

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 300, 600, and 697 are proposed to be 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 § 300.2, add definitions for “freeboard” and “pilot ladder” in alphabetical order to read as follows:

§ 300.2 Definitions.

* * * * *

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 personnel boarding, freeboard means the distance between the top of the lowest portion of the cut-out and the water’s surface.

* * * * *

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.

* * * * *

3. In § 300.5, paragraphs (c)(3) and (4) are revised to read as follows:

§ 300.5 Facilitation of enforcement.

* * * * *

(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.

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CHAPTER VI

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

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

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

5. In § 600.10, add definitions for “freeboard” and “pilot ladder” in alphabetical order to read as follows:

§ 600.10 Definitions.

* * * * *

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 personnel boarding, freeboard means the distance between the top of the lowest portion of the cut-out and the water’s surface.

* * * * *

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.

* * * * *

6. In § 600.730, paragraphs (c)(3) and (4) are revised to read as follows:

§ 600.730 Facilitation of enforcement.

* * * * *

(c) * * *

(3) Except for fishing vessels with a freeboard of 4 feet (1.25 m) or less, provide, when requested by 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.

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PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

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

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

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

§ 697.9 Facilitation of enforcement.

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

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