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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 15 CFR 902

#### 50 CFR Parts 679 and 680

[Docket No. 180327320-8999-02]

RIN 0648-BH88

### Fisheries of the Exclusive Economic Zone Off Alaska; Prohibit Directed Fishing for American Fisheries Act Program and Crab Rationalization Program Groundfish Sideboard Limits in the BSAI and GOA

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues regulations to modify management of the American Fisheries Act (AFA) Program and Crab Rationalization (CR) Program. This final rule has two actions. The first action modifies regulations for AFA Program and CR Program vessels subject to limits on the catch of specific species (sideboard limits) in the Bering Sea and Aleutian Islands (BSAI) Management Area and Gulf of Alaska (GOA) Management Area. This first action establishes regulations to prohibit directed fishing for specific groundfish species rather than prohibiting directed fishing each year through the BSAI and GOA annual harvest specifications. The second action removes the requirement for the designated representatives of AFA inshore cooperatives to submit a weekly catch report. This rule is intended to reduce administrative burdens associated with managing sideboard limits through annual harvest specifications without changing NMFS's inseason management of sideboard limits. Additionally, this rule reduces reporting burdens for the designated representatives and members of AFA inshore cooperatives. This rule is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Fishery Management Plan for Groundfish of the Bering Sea and

Aleutian Islands Management Area, the Fishery Management Plan for Groundfish of the Gulf of Alaska, the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs, and other applicable laws.

**DATES:** This rule is effective March 11, 2019.

**ADDRESSES:** Electronic copies of the final Regulatory Impact Review (the "Analysis") and the Categorical Exclusion prepared for this action are available from [www.regulations.gov](http://www.regulations.gov) or from the NMFS Alaska Region website at [alaskafisheries.noaa.gov](http://alaskafisheries.noaa.gov). All public comment letters submitted during the comment period may be obtained from [www.regulations.gov](http://www.regulations.gov)/#!docketDetail;D=NOAA-NMFS-2018-0045.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted by mail to NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Ellen Sebastian, Records Officer; in person at NMFS Alaska Region, 709 West 9th Street, Room 420A, Juneau, AK; and to OIRA by email to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or by fax to 202-395-5806.

**FOR FURTHER INFORMATION CONTACT:** Obren Davis, (907) 586-7228.

#### SUPPLEMENTARY INFORMATION:

#### Authority for Action

NMFS manages the groundfish fisheries in the exclusive economic zone of the BSAI and GOA under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP), and the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP), respectively. NMFS manages vessels subject to specific limitations on the catch of specific species or species groups (sideboard limits) under the AFA Program under the BSAI and GOA FMPs, and NMFS manages vessels and License Limitation Program (LLP) licenses subject to sideboard limits under the CR Program under the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (Crab FMP). The North Pacific Fishery Management Council (Council) prepared these FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations implementing

the BSAI and GOA FMPs are located at 50 CFR part 679. Regulations implementing the Crab FMP are located at 50 CFR part 680. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

NMFS published the proposed rule for this action on August 16, 2018 (83 FR 40733), with comments invited through September 17, 2018. NMFS received one comment during the applicable comment period. A summary of this comment and the response by NMFS are provided under the heading "Comments and Responses" below.

A detailed review of the regulations to modify the management of AFA Program and CR Program sideboard limits, as well as the removal of the requirement for AFA inshore cooperatives to submit a weekly catch report, and the rationale for these revisions are provided in the preamble to the proposed rule (83 FR 40733, August 16, 2018) and are briefly summarized in this final rule.

#### Background

This final rule includes two actions. The first action revises §§ 679.64 and 680.22 for sideboard limits that apply to two categories of vessels that operate in the BSAI or GOA: (1) AFA catcher/processors (C/Ps) listed in § 679.4(l)(2)(i) (described as AFA C/Ps in this rule), and AFA catcher vessels (CVs) permitted to harvest Bering Sea pollock as established in § 679.4(l)(3); and (2) vessels and LLP licenses subject to sideboard restrictions in the GOA based on criteria as established in § 680.22(a) under the CR Program. This first action prohibits directed fishing for groundfish species or species groups that are subject to sideboard limits that are not large enough to support directed fishing as that term is defined at § 679.2. In addition, under the first action, this rule removes the regulation at § 679.64(a)(1)(ii)(B) listing a sideboard limit for AFA C/Ps in one management area (Central Aleutian Islands (Central AI)) for one species (Atka mackerel) that is currently subject to a more restrictive harvest limit under existing regulations at § 679.91(c)(2)(ii) and Table 33 to 50 CFR part 679.

The first action under this rule is necessary to streamline and simplify NMFS's management of applicable groundfish sideboard limits. NMFS calculates numerous AFA Program and CR Program sideboard limits as part of

the annual BSAI and GOA harvest specifications process and publishes these limits in the **Federal Register**. Concurrently, NMFS prohibits directed fishing for the majority of the groundfish subject to these sideboard limits because most sideboard limits are too small each year to support directed fishing. The most recent example of the annual BSAI and GOA harvest specifications with the AFA Program and CR Program sideboard limits can be found at 83 FR 8365, February 27, 2018, for the BSAI, and at 83 FR 8768, March 1, 2018, for the GOA. Rather than continue this annual process of calculating all sideboard limits and then closing most of the groundfish species with sideboard limits to directed fishing, the first action of this rule revises regulations to prohibit directed fishing by non-exempt AFA Program and CR Program vessels for those groundfish species and species groups subject to sideboard limits that have not been opened to directed fishing and that are not expected to be opened to directed fishing in the foreseeable future. Also, NMFS will now cease calculating and publishing each year the relevant sideboard limits subject to this final rule and their corresponding directed fishing prohibitions in the BSAI and GOA groundfish harvest specifications.

The second action of this final rule removes the requirement for the designated representatives of AFA inshore cooperatives (described later in this preamble) to submit a weekly catch report described in §§ 679.5(o) and 679.62(b)(3). NMFS is removing this requirement because the information in the weekly catch report is collected by NMFS through other recordkeeping and reporting requirements, and this weekly catch report is no longer necessary for NMFS to manage the AFA inshore pollock allocations.

The following discussion summarizes groundfish sideboard limits, the AFA Program and AFA Program sideboard limits, the CR Program and CR Program sideboard limits, the annual harvest specifications process, and the management of AFA Program and CR Program sideboard limits through that annual harvest specifications process. The discussion also summarizes AFA inshore cooperative reporting requirements.

#### *Groundfish Sideboard Limits*

The Council and NMFS generally establish sideboard limits when implementing Limited Access Privilege Programs (LAPP). The term “limited access privilege” is defined in section 3(26) of the Magnuson-Stevens Act (16

U.S.C. 1802). Sideboard limits are intended to prevent participants who benefit from receiving exclusive harvesting privileges in a LAPP from shifting effort into other fisheries. Sideboard limits establish limits on the annual amount of a specific groundfish total allowable catch (TAC) limit or prohibited species catch (PSC) limit for participants in a given LAPP.

#### *The AFA Program and AFA Program Sideboard Limits*

The Bering Sea pollock fishery is managed under the authority of the AFA (16 U.S.C. 1851 note) and the Magnuson-Stevens Act. The AFA Program is a LAPP that established Bering Sea pollock directed fishing allocations to inshore and offshore components (commonly called the inshore and offshore sectors). The offshore sector includes both C/Ps and motherships, which are processing vessels that take deliveries of fish from CVs. The AFA also determined eligible vessels and processors in the Bering Sea pollock fishery, allowed the formation of cooperatives of CVs in association with specific processors in the inshore sector, established sideboard limits, and imposed special catch weighing and monitoring requirements on AFA C/Ps. The AFA was implemented by Amendment 61 to the BSAI FMP, Amendment 13 to the GOA FMP, Amendment 13 to the Crab FMP, and Amendment 8 to the Fishery Management Plan for the Scallop Fishery off Alaska (67 FR 79692; December 30, 2002). The final rule implementing the AFA (67 FR 79692, December 30, 2002) and Section 2.7.1 of the Analysis describe the AFA Program in detail and the basis for the sideboard limits established under the AFA Program.

The final rule implementing the AFA established several different types of sideboard limits for vessels that are authorized to harvest pollock in the Bering Sea. These sideboard limits were established to protect the interests of fishermen and processors who do not directly benefit from the AFA from those fishermen and processors who received exclusive harvesting and processing privileges under the AFA. Essentially, the AFA Program sideboard limits protect non-AFA fishermen and processors by restricting the ability of AFA pollock fishermen and processors to target non-pollock groundfish species and species groups. Some of these sideboard limits are implemented through directed fishing closures in regulations, such as setting the AFA C/P Atka mackerel harvest limit to zero in the Bering Sea subarea and Eastern AI

(§ 679.64(a)(1)(ii)(A)). Other sideboard limits are implemented through the annual harvest specifications process, which is described later in this preamble.

#### *The CR Program and CR Program Sideboard Limits*

The CR Program is a LAPP that allocates nine BSAI crab species among harvesters, processors, and coastal communities. Participants in the CR Program receive exclusive harvesting and processing privileges for a portion of the annual TAC established for each crab fishery under the CR Program. The final rule implementing the CR Program describes the different elements of the program, including groundfish sideboard limits in the GOA for vessels and LLP licenses that received allocations of exclusive harvesting privileges under the CR Program (70 FR 10174, March 2, 2005). These sideboard limits were developed to protect participants in other non-CR Program groundfish fisheries from increased participation by CR Program vessels in the GOA groundfish fisheries, as discussed in Section 2.7.2 of the Analysis. Essentially, the CR Program sideboard limits protect non-CR Program participants by restricting the ability of CR Program participants to target non-crab fisheries (*i.e.*, GOA groundfish fisheries). CR Program sideboard limits are established by management areas and for a variety of species and species groups and gear types, including pot, hook-and-line, jig, and trawl gear. CR Program sideboard limits are applicable only in the GOA. Section 680.22 establishes groundfish sideboard limits for vessels and LLP licenses with a history of participation in the Bering Sea snow crab (*Chionoecetes opilio*) fishery.

#### *Annual Harvest Specifications Process and the Management of AFA Program and CR Program Sideboard Limits*

NMFS establishes the overfishing level, acceptable biological catch, and TAC for each species or species group through the annual groundfish harvest specifications process. If a species is closed for directed fishing and the TAC has not been reached, NMFS allows vessels to retain incidental catch of species taken in other directed fisheries that are open, up to the maximum retainable amount (MRA) allowed in § 679.20(e). If a species is closed to directed fishing and the TAC for that species is reached, NMFS prohibits retention of that species, and all catch of that species must be discarded. An MRA is calculated as a percentage of the retained amount of a species that is

closed to directed fishing, relative to the retained amount of basis species or species groups open to directed fishing. Amounts that are caught greater than a particular MRA percentage must be discarded.

In the annual harvest specifications, NMFS calculates sideboard limits for the AFA Program and the CR Program fisheries by multiplying a fixed ratio against the annual TAC or portion of the TAC for each BSAI and GOA groundfish species or species group. These ratios are derived based on the specific AFA and CR Program regulations described earlier in this preamble. The annual sideboard limit for most BSAI and GOA groundfish species is an amount that is much smaller than the overall TAC for each species. For the most recent example of the annual groundfish harvest specifications and associated AFA Program and CR Program sideboard limits, see the final 2018 and 2019 harvest specifications for the BSAI and GOA (83 FR 8365, February 27, 2018, and 83 FR 8768, March 1, 2018, respectively).

Consistent with §§ 679.64 and 680.22, NMFS manages the AFA Program and CR Program sideboard limits by establishing directed fishing closures for a species or species group subject to a sideboard limit. These closures could happen during the fishing year if a particular sideboard limit is reached. Alternatively, NMFS may issue a directed fishing closure in the harvest specifications prior to the fishing year, if the sideboard limit is not sufficient to support directed fishing for a species or species group. NMFS has prohibited directed fishing for the majority of AFA CV and C/P sideboard limits since the initial implementation of the AFA Program in 2000 (65 FR 4520, January 28, 2000). NMFS also has prohibited directed fishing for the majority of CR Program sideboard limits in the GOA since CR Program was implemented in 2006. Directed fishing prohibitions have been issued because the sideboard limits for most species were insufficient to provide for both directed fishing of a species and incidental catch of that same species in other target fisheries.

#### *AFA Inshore Cooperative Weekly Catch Report Requirements*

NMFS also is removing the requirement for the designated representatives of AFA inshore cooperatives to submit a weekly catch report described in §§ 679.5(o) and 679.62(b)(3) because this report is no longer necessary to manage the AFA inshore pollock allocations. NMFS obtains the necessary information required on the AFA inshore

cooperative weekly report through other reporting requirements at § 679.5(e). Removing this reporting requirement will reduce costs for the public to prepare and submit the weekly reports and for NMFS to review and process those weekly reports.

#### **Final Rule**

##### *Action 1: Establishing Sideboard Limits in Regulation*

Under action 1, NMFS will no longer publish AFA Program and CR Program sideboard limits for specific species or species groups in the **Federal Register** as part of the annual groundfish harvest specifications, but instead will specify in regulation those species with sideboard limits that are subject to a directed fishing closure. Specification in regulation of these directed fishing closures will streamline and simplify NMFS's management of the applicable groundfish sideboard limits. NMFS will no longer need to calculate the applicable sideboards limits, prepare the necessary tables, and publish those sideboard limits and their corresponding directed fishing prohibitions each year in the BSAI and GOA groundfish harvest specifications. This will reduce staff time and annual costs to prepare and publish the BSAI and GOA groundfish harvest specifications.

This final rule will not modify the ability of sideboard-limited vessels to retain incidental catch of species closed to directed fishing while targeting other species. Vessels are allowed to retain incidental catch of species up to the MRA if the TAC of that species has not been reached. Once TAC is reached, NMFS prohibits retention of that species. The regulations governing incidental catch and MRAs apply when a species is closed to directed fishing, whether closed to directed fishing through the annual BSAI and GOA harvest specifications or through a specific regulation. Accordingly, under this final rule, sideboard-limited vessels will remain subject to the same regulations governing the incidental catch of species or species groups with sideboard limits that are closed to directed fishing, and this rule will not change NMFS's inseason management of sideboard limits. Moreover, the approach that continues directed fishing closures for sideboard limits for AFA and CR Program vessels will still protect non-AFA and non-CR Program participants in other fisheries, in accordance with the original intent of creating sideboard limits (see Section 2.7.1 and 2.7.2 of the Analysis).

In both the BSAI and GOA, many of the sideboard limits are not large enough to support directed fishing by AFA CVs and C/Ps and crab vessels. It is highly unlikely that the TACs of any of the sideboard species will increase significantly enough in the foreseeable future to result in a large enough sideboard limit to allow directed fishing of that sideboard limit by AFA vessels and crab vessels. Therefore, NMFS has determined it will be more efficient to close those sideboard limits to directed fishing in regulation, rather than continuing to specify those sideboard limits and close them to directed fishing every year through the annual harvest specifications.

Accordingly, under action 1, this final rule implements the Council's recommendation (Option 1 to Alternative 2, the preferred alternative) to:

- prohibit directed fishing in regulation for most AFA Program groundfish sideboard limits by adding Tables 54, 55, and 56 to 50 CFR part 679 to list the AFA Program sideboard species prohibited to directed fishing;
- prohibit directed fishing in regulation (§ 680.22(e)) for the majority of CR Program groundfish sideboard limits, with the exception of Pacific cod pot gear CV apportionments in the Western and Central Regulatory Areas;
- remove § 679.64(a)(1)(ii)(B), which lists the annual Central AI Atka mackerel sideboard limit for AFA C/Ps; and
- make other minor regulatory amendments necessary to establish directed fishing closures for specific species and species groups in regulation.

This final rule revises § 679.20(d) by adding a new paragraph to prohibit directed fishing for the sideboard-limited groundfish species and species groups listed in Tables 54, 55, and 56 to 50 CFR part 679. Existing regulations associated with establishing directed fishing sideboard limits are retained, as they are needed for those species or species groups that will continue to have sideboard limits established through the annual harvest specifications. In addition, § 679.64(a)(3) is revised to add a paragraph describing that Table 54 to 50 CFR part 679 contains the BSAI species or species groups with sideboard limits prohibited for directed fishing by AFA C/Ps. Similarly, § 679.64(b)(5) is revised to add a paragraph that describes Tables 55 and 56 to 50 CFR part 679. These two tables list the sideboard-limited species or species groups prohibited for directed fishing by AFA CVs in the BSAI and GOA, respectively.

Regarding the Central AI Atka mackerel sideboard limit for AFA C/Ps, this final rule removes

§ 679.64(a)(1)(ii)(B). That regulation specifies the AFA C/Ps Central AI Atka mackerel sideboard limit of 11.5 percent of the annual Central AI TAC, which is based on the sideboard limit set forth in section 211(b)(2)(C)(i) of the AFA. However, since the implementation of the Amendment 80 Program in 2008, the percentage of the initial TAC for the sector in which AFA C/Ps are authorized to participate (the BSAI trawl limited access sector) is only 10 percent. Therefore, the maximum amount of the Central AI Atka mackerel TAC available to AFA C/Ps under regulations implementing Amendment 80 (10 percent) is less than the sideboard limit established for AFA C/Ps when the AFA Program was implemented in 2000 (11.5 percent). Since the BSAI trawl limited access sector allocation is less than the sideboard limit, the sideboard limit no longer constrains AFA C/Ps. This revision to remove the regulation that specifies the sideboard limit for Central AI Atka mackerel for AFA C/Ps is consistent with Section 211 of the AFA. Section 211(a) of the AFA allows the Council to recommend, and NMFS to approve, conservation and management measures necessary to protect other fisheries from the adverse impacts caused by the AFA. The current allocation of Atka mackerel available to AFA C/Ps (10 percent of the TAC) is effectively a conservation and management measure that protects participants in other non-AFA fisheries by limiting the amount of Atka mackerel that AFA C/Ps can potentially harvest to less than 11.5 percent of the TAC available to AFA C/Ps under the existing sideboard limit established under section 211(b)(2)(C)(i) of the AFA. Under this final rule, NMFS will no longer specify the AFA C/P sideboard limit for Central AI Atka mackerel; however, that fishery will remain open to directed fishing, and AFA C/Ps as part of the BSAI trawl limited access sector will remain constrained under existing regulations to harvesting up to 10 percent of the allocation to the BSAI trawl limited access sector (§ 679.91(c)(2)(ii) and Table 33 to 50 CFR part 679).

For the CR Program sideboard limits, this final rule revises § 680.22(e) to describe the prohibition for directed fishing for most sideboard-limited GOA groundfish species by non-AFA crab vessels in the GOA. This revision would note that the directed fishing prohibition does not apply to Pacific cod apportioned to CVs using pot gear in the Western and Central Regulatory Areas.

#### *Action 2: Removal of the AFA Inshore Cooperative Catch Report From Regulation*

In addition to the Council's recommendation for revising the management of AFA Program and CR Program sideboard limits, NMFS is removing the requirements for the AFA inshore cooperative weekly catch report described in §§ 679.5(o) and 679.62(b)(3). This report is no longer necessary to manage the AFA inshore pollock allocations. NMFS has direct and immediate access to observer and landings data to track catch by the cooperatives and does not need the information submitted by the cooperatives to monitor the Bering Sea pollock fisheries. Eliminating this weekly reporting requirement will reduce the burden on the designated representatives of AFA inshore cooperatives to prepare and submit these reports to NMFS weekly, will reduce costs to the members of the AFA inshore cooperatives to pay for the preparation and submission of these weekly reports, and will reduce the time and costs that NMFS incurs in processing and reviewing the weekly reports.

#### **Comments and Responses**

*Comment 1:* NMFS received one comment addressing issues outside of the scope of this action. The commenter does not support modifying any regulations, and advocated that wildlife and oceans should be left alone.

*Response:* This comment is beyond the scope of this regulatory action. This final rule primarily is intended to increase the administrative efficiency associated with managing AFA Program and CR Program groundfish sideboard limits in the BSAI and GOA. This final rule does not change the general management measures that govern the federal groundfish fisheries of these two management areas and does not change the specific measures that govern the management of the sideboard limits under the AFA Program and CR Program.

#### **Changes From the Proposed Rule**

This final rule will change the regulatory text by which NMFS is prohibiting directed fishing for CR Program groundfish sideboard limits. NMFS originally proposed adding Table 11 to 50 CFR part 680 to list the GOA groundfish species and species groups for which directed fishing for sideboard limits by non-AFA crab vessels is prohibited, which would have included almost all of the GOA groundfish sideboard limits for non-AFA crab

vessels. In this final rule, NMFS will instead specify the directed fishing closures in § 680.22(e)(1)(iii), which will state that directed fishing for groundfish species by non-AFA crab vessels subject to sideboard restrictions is prohibited for all GOA groundfish species, with the exception of Pacific cod apportioned to CVs using pot gear in the Western and Central Regulatory Areas. NMFS believes that this is a simpler approach than initially proposed, as it eliminates the need to add a complex table to regulations. The CR Program sideboard limits for Pacific cod apportioned to CVs using pot gear in the Western and Central GOA are historically the only sideboard limits open to directed fishing. These apportionments have typically been large enough to support directed fishing for Pacific cod by CVs using pot gear. However, if future annual apportionments are not large enough to support directed fishing, NMFS still has the authority under § 679.20(d) to prohibit directed fishing for Pacific cod by CVs using pot gear in the Western and Central Regulatory Areas.

In addition, this final rule revises Tables 54, 55, and 56 to 50 CFR part 679 to clarify that the directed fishing prohibition for “rougheye rockfish” actually applies to two distinct rockfish species: rougheye rockfish (*Sebastes aleutianus*) and blackspotted rockfish (*Sebastes melanostictus*). The complete species group (blackspotted rockfish and rougheye rockfish) was inadvertently omitted from these three tables during the regulatory drafting process. The BSAI and the GOA harvest specifications specify annual TACs for these two species as a combined species group. Sideboard limits also are established for the species group, not just rougheye rockfish, and accordingly this final rule establishes regulations that prohibit directed fishing in the GOA and BSAI for these two rockfish species as a combined species group.

#### **OMB Revisions to PRA References in 15 CFR 902.1(b)**

Section 3507(c)(B)(i) of the Paperwork Reduction Act (PRA) requires that agencies inventory and display a current control number assigned by the Director of the Office of Management and Budget (OMB) for each agency information collection requirement. Section 902.1(b) identifies the location of NOAA regulations for which OMB approval numbers have been issued. Because this final rule removes a regulation (§ 679.5(o)) with a data element in an approved collection-of-information, 15 CFR 902.1(b) is revised to remove this reference to this regulation.

## Classification

The Administrator, Alaska Region, NMFS has determined that this final rule is necessary to modify the management of AFA Program and CR Program groundfish sideboard limits, and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

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

## Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. The preambles to the proposed rule and this final rule serve as the small entity compliance guide. This action does not require any additional compliance from small entities that is not described in the preambles. Copies of the proposed rule and this final rule are available from the NMFS website at <http://alaskafisheries.noaa.gov>.

## Regulatory Impact Review

A Regulatory Impact Review was prepared to assess the costs and benefits of available regulatory alternatives. A copy of this final analysis is available from NMFS (see **ADDRESSES**). The Council recommended the regulatory revisions in this final rule based on those measures that maximized net benefits to the Nation. Specific aspects of the economic analysis related to the impact of this final rule on small entities are discussed below in the Final Regulatory Flexibility Analysis section.

## Final Regulatory Flexibility Analysis (FRFA)

This FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, if any, and NMFS's responses to those comments, and a summary of the analyses completed to support this action.

Section 604 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 604) requires that, when an agency promulgates a final rule under 5 U.S.C. 553, after being required by that section or any other law to publish a general

notice of proposed rulemaking, the agency shall prepare a FRFA. Section 604 describes the required contents of a FRFA: (1) A statement of the need for and objectives of the rule; (2) a statement of the significant issues raised by the public comments in response to the IRFA, a statement of the assessment of the agency of such issues, and a statement of any changes made to the proposed rule as a result of such comments; (3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments; (4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available; (5) a description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and (6) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in this final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

A description of this final rule and the need for and objectives of the rule are contained in the preamble to this final rule and the preamble to the proposed rule (83 FR 40733, August 16, 2018), and are not repeated here.

Public and Chief Counsel for Advocacy Comments on the IRFA

NMFS published the proposed rule on August 16, 2018 (83 FR 40733). An IRFA was prepared and included in the Classification section of the preamble to the proposed rule. The comment period for the proposed rule closed on September 17, 2018. NMFS received one letter of public comment on the proposed rule. NMFS received no comments specifically on the IRFA or on the economic impacts of the rule more generally. The Chief Counsel for Advocacy of the SBA did not file any comments on the proposed rule.

## Number and Description of Small Entities Regulated by This Final Rule

This final rule directly regulates those vessel operators that are restricted by AFA Program and CR Program groundfish sideboard limits in the BSAI and GOA, and AFA inshore cooperatives that are required to submit an AFA inshore cooperative weekly report. All persons required to submit an AFA inshore cooperative weekly report are also subject to sideboard limits under the AFA Program, with the exception of CVs exempt from AFA Program sideboard limits. Therefore, the number of directly regulated entities under this final rule is equal to the number of vessel operators restricted by AFA Program and CR Program groundfish sideboard limits in the BSAI and GOA.

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual gross receipts not in excess of \$11 million for all its affiliated operations worldwide.

There are 93 active AFA CVs that are restricted by sideboard limits in the BSAI and GOA, 17 active C/Ps that are restricted by sideboard limits in the BSAI, and 95 active CR Program CVs that are restricted by sideboard limits in the GOA. These vessels are members of an AFA cooperative for Bering Sea pollock or a Bering Sea Crab Cooperative and are therefore considered to be large entities via their cooperative affiliation. Other than these vessels, there are 18 vessels that are restricted by sideboard limits in the BSAI and GOA and that are not members of an AFA or crab cooperative. These 18 vessels may be considered small entities under the RFA because they likely have combined annual gross receipts not in excess of \$11.0 million.

## Recordkeeping, Reporting, and other Compliance Requirements

This final rule removes a recordkeeping and reporting requirement for the submittal of AFA inshore cooperative weekly catch reports. Such reports are no longer necessary to assist NMFS with managing the AFA inshore pollock fisheries, as the information in such reports has been superseded by more contemporary, electronic data reporting.

The proposal to remove these requirements is anticipated to reduce the cost to the public by approximately \$8,475 per year, and is anticipated to reduce costs to NMFS by approximately \$5,400 per year.

#### Description of Significant Alternatives Considered to the Final Action That Minimize Adverse Impacts on Small Entities

No significant alternatives were identified that will accomplish the stated objectives for streamlining the management of AFA and CR Program sideboard limits by prohibiting directed fishing in regulation for certain species sideboard limits, that are consistent with applicable statutes, and that will reduce costs to potentially affected small entities more than this final rule. The Council and NMFS considered two alternatives for action 1 of this rule. Alternative 1 is the no action alternative. This alternative would have continued the annual establishment in the harvest specifications of the sideboard limits for all the species and species groups subject to sideboard limits under the AFA Program and CR Program and would have retained the regulation listing the sideboard limit for Central AI Atka mackerel for AFA C/Ps. These sideboard species have insufficient sideboard limits to support directed fishing, are fully allocated to other catch share programs, or for a variety of other reasons are closed to directed fishing. Under Alternative 1, NMFS would continue to prohibit directed fishing for these sideboard limited fisheries through the annual harvest specifications, except for the Central AI Atka mackerel sideboard limit for AFA C/Ps, which remains open for directed fishing.

Alternative 2, along with Option 1 (the preferred alternative), provides the greatest economic benefits. The primary economic benefit of this final rule is to reduce NMFS's administrative burden of managing most AFA Program and CR Program sideboards through the annual harvest specifications process. Implementation of Alternative 2 through this final rule will streamline the preparation of the BSAI and GOA annual harvest specifications, simplify NMFS's annual programming changes to the groundfish catch accounting system, and reduce the future costs of publishing the annual harvest specifications in the **Federal Register** each year. The economic effects on fishery participants that are affected by this action primarily are neutral. The removal of the AFA inshore cooperative weekly catch report requirement should,

however, provide a modest economic benefit for AFA inshore cooperatives.

#### Collection-of-Information Requirements

This final rule addresses a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648-0401 (AFA Reports). This rule does not add any new information collection requirements, but removes the regulatory requirement for the AFA inshore cooperative weekly catch report. The public reporting burden for the AFA inshore cooperative weekly catch reports is estimated to average 45 minutes per response, which includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments on this or any other aspect of this collection of information, including suggestions for reducing the burden, to NMFS Alaska Region (see **ADDRESSES**) and to OIRA by email to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or by fax to (202) 395-5806.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to 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. All currently approved NOAA collections of information may be viewed at [https://www.cio.noaa.gov/services\\_programs/prasubs.html](https://www.cio.noaa.gov/services_programs/prasubs.html).

#### List of Subjects

##### 15 CFR Part 902

Reporting and recordkeeping requirements.

##### 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

##### 50 CFR Part 680

Alaska, Reporting and recordkeeping requirements.

Dated: February 5, 2019.

**Samuel D. Rauch III,**

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

For the reasons set out in the preamble, NMFS amends 15 CFR part 902 and 50 CFR parts 679 and 680 as follows:

#### Title 15—Commerce and Foreign Trade

#### PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows:

**Authority:** 44 U.S.C. 3501 *et seq.*

##### § 902.1 [Amended]

■ 2. In § 902.1, in the table in paragraph (b), under the entry “50 CFR,” remove the entry for “679.5(o).”

#### Title 50—Wildlife and Fisheries

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

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

**Authority:** 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108-447; Pub. L. 111-281.

##### § 679.5 [Amended]

■ 4. In § 679.5, remove and reserve paragraph (o).

■ 5. In § 679.20, add paragraph (d)(1)(iv)(D) to read as follows:

##### § 679.20 General limitations.

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(iv) \* \* \*

(D) Species or species groups for which directed fishing for sideboard limits by AFA vessels is prohibited are listed in Tables 54, 55, and 56 to this part.

\* \* \* \* \*

##### § 679.62 [Amended]

■ 6. In § 679.62, remove paragraph (b)(3).

■ 7. In § 679.64,

■ a. Revise paragraph (a)(1)(ii)(A);

■ b. Remove paragraph (a)(1)(ii)(B);

■ c. Redesignate paragraph (a)(1)(ii)(C) as paragraph (a)(1)(ii)(B); and

■ d. Revise paragraphs (a)(3) and (b)(5) to read as follows:

##### § 679.64 Harvesting sideboard limits in other fisheries.

(a) \* \* \*

(1) \* \* \*

(ii) \* \* \*

(A) Bering Sea subarea and Eastern Aleutian Islands, zero; and

\* \* \* \* \*

(3) *How will AFA catcher/processor sideboard limits be managed?* (i) The Regional Administrator will manage groundfish harvest limits and PSC

bycatch limits for AFA catcher/processors through directed fishing closures in fisheries established under paragraph (a)(1) of this section in accordance with the procedures set out in §§ 679.20(d)(1)(iv) and 679.21(b)(4)(iii).

(ii) Directed fishing for the BSAI groundfish that have sideboard limits

listed in Table 54 of this part is prohibited.

\* \* \* \* \*

(b) \* \* \*

(5) *How will catcher vessel sideboard limits be managed?* (i) The Regional Administrator will manage groundfish harvest limits and PSC bycatch limits for AFA catcher vessels using directed fishing closures according to the

procedures set out at §§ 679.20(d)(1)(iv) and 679.21(d)(7) and (e)(3)(v).

(ii) Directed fishing for the BSAI groundfish that have sideboard limits listed in Table 55 of this part and the GOA groundfish that have sideboard limits listed in Table 56 of this part is prohibited.

\* \* \* \* \*

■ 8. Add Table 54 to part 679 to read as follows:

**TABLE 54—BSAI SPECIES AND SPECIES GROUPS FOR WHICH DIRECTED FISHING FOR SIDEBOARD LIMITS BY LISTED AFA CATCHER/PROCESSORS AND CATCHER/PROCESSORS DESIGNATED ON LISTED AFA CATCHER/PROCESSOR PERMITS IS PROHIBITED**

| Species or species group                 | Management area or subarea           |
|------------------------------------------|--------------------------------------|
| Sablefish, trawl gear .....              | Bering Sea (BS) subarea of the BSAI. |
| Atka mackerel .....                      | Aleutian Islands (AI).               |
| Rock sole .....                          | BS/Eastern Aleutian District.        |
| Greenland turbot .....                   | Western Aleutian District.           |
| Arrowtooth flounder .....                | BSAI.                                |
| Kamchatka flounder .....                 | Bering Sea subarea of the BSAI.      |
| Flathead sole .....                      | AI.                                  |
| Alaska plaice .....                      | BSAI.                                |
| Other flatfish .....                     | BSAI.                                |
| Pacific ocean perch .....                | BSAI.                                |
| Northern rockfish .....                  | Bering Sea subarea of the BSAI.      |
| Shortraker rockfish .....                | Eastern Aleutian District.           |
| Blackspotted and Rougheye rockfish ..... | Central Aleutian District.           |
| Other rockfish .....                     | Western Aleutian District.           |
| Skates .....                             | BSAI.                                |
| Sculpins .....                           | BSAI.                                |
| Sharks .....                             | BSAI.                                |
| Octopuses .....                          | BSAI.                                |

■ 9. Add Table 55 to part 679 to read as follows:

**TABLE 55—BSAI SPECIES AND SPECIES GROUPS FOR WHICH DIRECTED FISHING FOR SIDEBOARD LIMITS BY NON-EXEMPT AFA CATCHER VESSELS IS PROHIBITED**

| Species or species group    | Management area or subarea           | Gear type                             |
|-----------------------------|--------------------------------------|---------------------------------------|
| Pacific cod .....           | BSAI .....                           | Jig.                                  |
|                             |                                      | Hook-and-line catcher vessel ≥ 60 ft. |
|                             |                                      | Hook-and-line catcher vessel ≤ 60 ft. |
|                             |                                      | Pot.                                  |
| Sablefish, trawl gear ..... | Bering Sea subarea of the BSAI ..... | All.                                  |
| Atka mackerel .....         | AI .....                             | All.                                  |
| Rock sole .....             | BSAI .....                           | All.                                  |
| Greenland turbot .....      | BSAI .....                           | All.                                  |
| Arrowtooth flounder .....   | BS .....                             | All.                                  |
| Kamchatka flounder .....    | AI .....                             | All.                                  |
| Alaska plaice .....         | BSAI .....                           | All.                                  |
| Other flatfish .....        | BSAI .....                           | All.                                  |
| Flathead sole .....         | BSAI .....                           | All.                                  |
| Pacific ocean perch .....   | BS .....                             | All.                                  |
|                             | Eastern Aleutian District .....      | All.                                  |
|                             | Central Aleutian District .....      | All.                                  |
|                             | Western Aleutian District .....      | All.                                  |

TABLE 55—BSAI SPECIES AND SPECIES GROUPS FOR WHICH DIRECTED FISHING FOR SIDEBOARD LIMITS BY NON-EXEMPT AFA CATCHER VESSELS IS PROHIBITED—Continued

| Species or species group                 | Management area or subarea                                | Gear type |
|------------------------------------------|-----------------------------------------------------------|-----------|
| Northern rockfish .....                  | BSAI .....                                                | All.      |
| Shortraker rockfish .....                | BSAI .....                                                | All.      |
| Blackspotted and Rougheye rockfish ..... | Bering Sea subarea of the BSAI/Eastern Aleutian District. | All.      |
|                                          | Central Aleutian District/Western Aleutian District.      | All.      |
| Other rockfish .....                     | Bering Sea subarea of the BSAI .....                      | All.      |
|                                          | AI .....                                                  | All.      |
| Skates .....                             | BSAI .....                                                | All.      |
| Sculpins .....                           | BSAI .....                                                | All.      |
| Sharks .....                             | BSAI .....                                                | All.      |
| Octopuses .....                          | BSAI .....                                                | All.      |

■ 10. Add Table 56 to part 679 to read as follows:

TABLE 56—GOA SPECIES AND SPECIES GROUPS FOR WHICH DIRECTED FISHING FOR SIDEBOARD LIMITS BY NON-EXEMPT AFA CATCHER VESSELS IS PROHIBITED

| Species or species group                 | Management or regulatory area and processing component (if applicable) |
|------------------------------------------|------------------------------------------------------------------------|
| Pacific cod .....                        | Eastern GOA, inshore component.                                        |
| Sablefish .....                          | Eastern GOA, offshore component.                                       |
|                                          | Western GOA.                                                           |
|                                          | Central GOA.                                                           |
| Shallow-water flatfish .....             | Eastern GOA.                                                           |
| Deep-water flatfish .....                | Western GOA.                                                           |
| Rex sole .....                           | Western GOA.                                                           |
|                                          | Eastern GOA.                                                           |
| Arrowtooth flounder .....                | Western GOA.                                                           |
|                                          | Eastern GOA.                                                           |
| Flathead sole .....                      | Western GOA.                                                           |
|                                          | Eastern GOA.                                                           |
| Pacific ocean perch .....                | Western GOA.                                                           |
| Northern rockfish .....                  | Western GOA.                                                           |
| Shortraker rockfish .....                | Western GOA.                                                           |
|                                          | Central GOA.                                                           |
|                                          | Eastern GOA.                                                           |
| Dusky rockfish .....                     | Western GOA.                                                           |
|                                          | Central GOA.                                                           |
|                                          | Eastern GOA.                                                           |
| Rougheye and blackspotted rockfish ..... | Western GOA.                                                           |
|                                          | Central GOA.                                                           |
|                                          | Eastern GOA.                                                           |
| Demersal shelf rockfish .....            | Southeast Outside District.                                            |
| Thornyhead rockfish .....                | Western GOA.                                                           |
|                                          | Central GOA.                                                           |
|                                          | Eastern GOA.                                                           |
| Other rockfish .....                     | Central GOA.                                                           |
|                                          | Eastern GOA.                                                           |
| Atka mackerel .....                      | GOA.                                                                   |
| Big skate .....                          | Western GOA.                                                           |
|                                          | Central GOA.                                                           |
|                                          | Eastern GOA.                                                           |
| Longnose skate .....                     | Western GOA.                                                           |
|                                          | Central GOA.                                                           |
|                                          | Eastern GOA.                                                           |
| Other skates .....                       | GOA.                                                                   |
| Sculpins .....                           | GOA.                                                                   |
| Sharks .....                             | GOA.                                                                   |
| Octopuses .....                          | GOA.                                                                   |



## PART 680—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

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

**Authority:** 16 U.S.C. 1862; Pub. L. 109–241; Pub. L. 109–479.

■ 12. In § 680.22, revise paragraph (e)(1)(i) and add paragraph (e)(1)(iii) to read as follows:

### § 680.22 Sideboard protections for GOA groundfish fisheries.

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(i) Except as provided in paragraphs (e)(1)(ii) and (iii) of this section, annual sideboard harvest limits for each groundfish species, except fixed-gear sablefish, will be established by multiplying the sideboard ratios calculated under paragraph (d) of this section by the proposed and final TACs in each area for which a TAC is specified. If a TAC is further apportioned by season, the sideboard harvest limit also will be apportioned by season in the same ratio as the overall TAC. The resulting harvest limits expressed in metric tons will be published in the annual GOA groundfish harvest specification notices.

\* \* \* \* \*

(iii) NMFS will not establish an annual sideboard harvest limit for groundfish species, other than Pacific cod apportioned to catcher vessels using pot gear in the Western and Central Regulatory Areas. Directed fishing for groundfish species, other than Pacific cod apportioned to catcher vessels using pot gear in the Western and Central Regulatory Areas, is prohibited.

\* \* \* \* \*

[FR Doc. 2019–01665 Filed 2–7–19; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### Federal Highway Administration

### 23 CFR Parts 1270 and 1275

[Docket No. NHTSA–2016–0099]

RIN 2127–AL45

### Transfer and Sanction Programs

**AGENCY:** National Highway Traffic Safety Administration (NHTSA) and Federal Highway Administration (FHWA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** This final rule responds to comments received on the interim final rule published September 30, 2016, and makes minor clarifications to the Federal implementing regulations for the Section 154 (Open Container) and Section 164 (Repeat Intoxicated Driver) programs.

**DATES:** This final rule is effective on March 11, 2019.

**ADDRESSES:** For access to the docket to read comments received, go to <http://www.regulations.gov> and search for docket number NHTSA–2016–0099.

#### FOR FURTHER INFORMATION CONTACT:

**NHTSA:** For program issues: Barbara Sauers, Director, Office of Grants Management and Operations, Telephone number: (202) 366–0144, Email: [Barbara.Sauers@dot.gov](mailto:Barbara.Sauers@dot.gov). For legal issues: Russell Krupen, Attorney Advisor, Office of the Chief Counsel, Telephone number: (202) 366–1834, Email: [Russell.Krupen@dot.gov](mailto:Russell.Krupen@dot.gov); Facsimile: (202) 366–3820.

**FHWA:** For program issues: Dana Gigliotti, Team Leader, Safety Programs Implementation Team, Office of Safety Programs, Telephone number: (202) 366–1290, Email: [Dana.Gigliotti@dot.gov](mailto:Dana.Gigliotti@dot.gov). For legal issues: Dawn Horan, Attorney Advisor, Office of the Chief Counsel, Telephone number: (202) 366–9615, Email: [Dawn.M.Horan@dot.gov](mailto:Dawn.M.Horan@dot.gov).

#### SUPPLEMENTARY INFORMATION:

#### I. Introduction

The Fixing America's Surface Transportation Act (FAST Act), Public Law 114–94, amended 23 U.S.C. 154 (Section 154) and 23 U.S.C. 164 (Section 164), which address the serious national problems of impaired driving by encouraging States to meet minimum standards for their open container laws and repeat intoxicated driver laws. Under Section 154, to avoid the transfer of funds, a State must enact and enforce an open container law “that prohibits the possession of any open alcoholic beverage container, or the consumption of any alcoholic beverage, in the passenger area of any motor vehicle (including possession or consumption by the driver of the vehicle) located on a public highway, or the right-of-way of a public highway, in the State.” 23 U.S.C. 154(b)(1). Under Section 164, to avoid the transfer of funds, a State must enact and enforce a repeat intoxicated driver law that establishes, at minimum, certain specified penalties for second and subsequent convictions of driving while intoxicated or driving under the influence. 23 U.S.C. 164(a)(5). All 50 States, the District of Columbia, and

Puerto Rico are considered to be “States” for the purposes of these programs.

The National Highway Traffic Safety Administration (NHTSA) and the Federal Highway Administration (FHWA) (“the agencies”) jointly issued an interim final rule (IFR), with immediate effectiveness, on September 30, 2016, (81 FR 67158) to ensure that States received instructions that were important to the compliance determinations made on October 1, 2016, when the changes in the FAST Act became effective. The IFR amended the Federal implementing regulations for Section 154 at 23 CFR part 1270 and Section 164 at 23 CFR part 1275 to reflect the changed requirements from the Federal legislation. At the same time, the agencies updated the regulations to improve clarity, codify longstanding interpretation of the statutes and implementing regulations, and streamline procedures for States. The agencies sought public comment to inform the promulgation of a final rule. This action addresses the comments received and makes minor changes to the Federal implementing regulations.

#### II. Summary of the Interim Final Rule

The IFR implemented the new compliance provisions of the FAST Act and also updated the rules to incorporate prior statutory changes from the Moving Ahead for Progress in the 21st Century Act (MAP–21), Public Law 112–141 (enacted July 6, 2012), and the SAFETEA–LU Technical Corrections Act of 2008, Public Law 110–244 (enacted June 6, 2008). The preamble to the IFR also provided additional information regarding the programs, and the agencies encourage States to review it in conjunction with this preamble and the final implementing regulations.

Some of the revisions in the IFR to the Section 154 and Section 164 implementing regulations in 23 CFR parts 1270 and 1275 were made simply to allow States to better understand the programs and attain and maintain compliance. These revisions did not substantively amend the compliance requirements of the programs. Such revisions included amending or adding definitions, clarifying and broadening permitted exceptions in the Section 154 program, and making technical corrections as necessary.

Because the FAST Act significantly amended the compliance criteria for the Section 164 program, the IFR also made conforming revisions to the Section 164 implementing regulations in 23 CFR part 1275. The IFR implemented the revised one-year license sanction requirement, allowing States three