

DEPARTMENT OF TRANSPORTATION**Surface Transportation Board****49 CFR Parts 1135 and 1137**

[STB Ex Parte No. 637]

Removal and Revision of Regulations**AGENCY:** Surface Transportation Board, Transportation.**ACTION:** Final rules.

SUMMARY: The Surface Transportation Board (Board) is revising its regulations concerning rail cost recovery procedures to reflect changes made by the ICC Termination Act of 1995, (ICCTA). The Board is also removing the regulations concerning expeditious procedures for publication of separate rates for distinct services, because the statutory basis for these regulations was eliminated by the ICCTA.

EFFECTIVE DATE: These rules are effective September 27, 2002.

FOR FURTHER INFORMATION CONTACT: John Sado, (202) 565-1661. [Federal Information Relay Service (FIRS) for the hearing impaired: 1-800-877-8339.]

SUPPLEMENTARY INFORMATION: Section 203 of the Staggers Rail Act of 1980, codified at former 49 U.S.C. 10707a (1995), required the Interstate Commerce Commission (ICC) to publish a rail cost adjustment factor (RCAF) on at least a quarterly basis. The RCAF is an index intended to reflect the impact of inflation. Former section 10707a established a mechanism by which rail rates could be changed quickly to reflect changes in rail costs based on the RCAF while largely being insulated from shipper protest.¹ The ICC issued regulations, currently found at 49 CFR part 1135, implementing the statute.

Under the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995) (ICCTA), former section 10707a has been removed, although under new 49 U.S.C. 10708, the Board must still publish an RCAF at least quarterly. The ICCTA eliminated, however, the provisions of former section 10707a that allowed carriers to take increases based on the RCAF with limited rights of shipper challenge. Accordingly, we are revising the regulations in part 1135 to remove references to rate increases based on the RCAF.

¹ In general, under former section 10707a(b), tariff rates that did not exceed a current quarter's maximum RCAF rate level could not be found to be unreasonable. The statute also provided a zone of rate freedom (ZORF) that allowed carriers to take increases above the RCAF index. The ICC could not investigate or suspend ZORF increases, but shippers were allowed to file complaints challenging these increases.

We are also removing section 1137.2, concerning expeditious procedures for publishing separate rates for distinct services. These rules were based on former section 15(18) of the Interstate Commerce Act, enacted in the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act) and subsequently recodified at 49 U.S.C. 10728. Section 10728 was repealed by the ICCTA. At this time, we are not revising the regulations at 49 CFR 1137.1 involving divisions of revenues. This section was also issued in response to the enactment of the 4R Act. We will examine this regulation in a separate proceeding.

Because these changes remove and revise obsolete regulations based on statutory provisions that have been eliminated, we find good cause to dispense with notice and comment. See 5 U.S.C. 553(b)(B).

Copies of the decision may be purchased from Da-2-Da Legal Copy Service by calling 202-293-7776 (assistance for the hearing impaired is available through Federal Information Relay Service (FIRS) at 1-800-877-8339) or visiting Suite 405, 1925 K Street, NW., Washington, DC 20006.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects**49 CFR 1135**

Administrative practice and procedure, Railroads, Reporting and recordkeeping requirements.

49 CFR Part 1137

Administrative practice and procedure, Railroads.

Decided: August 21, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams,
Secretary.

For the reasons set forth in the preamble, part 1135 and 1137, of title 49, chapter X, of the Code of Federal Regulations are amended as follows:

PART 1135—RAIL COST ADJUSTMENT FACTOR

1. The authority citation for part 1135 continues to read as follows:

Authority: 5 U.S.C. 553 and 49 U.S.C. 721 and 10708.

§ 1135.1 [Revised]

2. Revise § 1135.1 to read as follows:

§ 1135.1 Quarterly adjustment.

To enable the Board to publish the rail cost adjustment factor (RCAF) as

required by 49 U.S.C. 10708, the Association of American Railroads (AAR) shall calculate and file with the Board by the fifth day of December, March, June and September of each year its forecast for the next calendar quarter of the all-inclusive index of railroad costs and calculate and file the RCAF unadjusted for changes in railroad productivity as prescribed in *Railroad Cost Recovery Procedures*, 1 I.C.C.2d 207 (1984), and any subsequent amendments thereto. In addition, the AAR shall calculate the productivity-adjusted RCAF as prescribed in *Railroad Cost Recovery Procedures*, 5 I.C.C.2d 434 (1989), and any subsequent amendments thereto. The AAR shall submit workpapers detailing its calculations. The Board will review and verify the AAR submissions and make its RCAF publication by the twentieth day of December, March, June and September of each year.

3. The authority citation for Part 1137 continues to read as follows:

Authority: 49 U.S.C. 721, 10705.

§ 1137.2 [Removed]

4. § 1137.2 is removed.

[FR Doc. 02-21767 Filed 8-27-02; 8:45 am]

BILLING CODE 4915-00-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Parts 600 and 660**

[Docket No. 011231309-2090-03; I.D. 062702C]

Magnuson-Stevens Act Provisions; Fisheries off the West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Groundfish Fishery Management Measures; Correction

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

ACTION: Correction to trip limit adjustments in the Pacific Coast groundfish fishery.

SUMMARY: This document contains corrections to the trip limit adjustments published on July 5, 2002, for the Pacific Coast groundfish fishery, and to the limited entry trawl trip limit table for Pacific Ocean perch, widow rockfish, yellowtail rockfish, and whiting.

DATES: Effective 0001 hours local time August 28, 2002, through the effective

date of the 2003 specifications and management measures, unless modified, superceded, or rescinded through a publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Jamie Goen (NMFS, Northwest Region), 206-526-6140.

SUPPLEMENTARY INFORMATION:

The specifications and management measures for the current fishing year (January 1—December 31, 2002) were initially published in the **Federal Register** as an emergency rule for January 1 - February 28, 2002 (67 FR 1540, January 11, 2002), as a proposed rule for all of 2002 (67 FR 1555, January 11, 2002), and as a final rule effective March 1, 2002 (67 FR 10490, March 7, 2002). The final rule was subsequently amended at 67 FR 15338, April 1, 2002; at 67 FR 18117, April 15, 2002; at 67 FR 30604, May 7, 2002; at 67 FR 40870, June 14, 2002; at 67 FR 44778, July 5, 2002; at 67 FR 48571, July 25, 2002; and at 67 FR 50835, August 6, 2002.

Trip limit adjustments published on July 5, 2002, contained technical errors

and errors in the limited entry trawl trip limit table that require correction. The limited entry trawl trip limit table is corrected to close Pacific Ocean perch north of 40°10' N. latitude (lat.) on September 1, 2002, as scheduled for all trawl fisheries north of 40°10' N. lat. The whiting footnote for the "per trip" limit inside 100 fathoms in the Eureka area is also corrected to reflect the trawl closure north of 40°10' N. lat. on September 1, 2002. At its June 17-21, 2002, meeting, the Pacific Fishery Management Council decided to close trawl fisheries north of 40°10' N. lat. to protect several overfished species, including darkblotched rockfish. In addition, mid-water trawl limits for widow rockfish and yellowtail rockfish north of 40°10' N. lat. are corrected to close on September 1, 2002. (Widow and yellowtail rockfish commonly co-occur with Pacific whiting). As a result, the mid-water trawl trip limits for widow and yellowtail rockfish were put in place to accommodate interception of these species by vessels fishing for

whiting during the whiting primary season. Therefore, the widow and yellowtail rockfish mid-water trawl fisheries were essentially closed when the whiting primary season ended on July 17, 2002 (67 FR 47470, July 19, 2002). This document corrects the errors and re-publishes the limited entry trawl trip limit table.

Corrections

In the rule FR Doc. 02-16811, in the issue of Friday, July 5, 2002 (67 FR 444778) make the following corrections:

1. On page 44781, in column 2, under NMFS Actions, the amendatory paragraph No. 1. is corrected to read as follows:

"1. On page 10511, in column 1, in section IV. under A. General Definitions and Provisions, paragraph 6(d) is revised to read as follows:"

2. On pages 44782—44783, Table 3 is corrected to read as follows:

BILLING CODE 3510-22-S

Table 3. Trip Limits^{1/} and Gear Requirements^{2/} for Limited Entry Trawl Gear

Other Limits and Requirements Apply -- Read Sections IV. A. and B. NMFS Actions before using this table

line	Species/groups	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
**NOTE FOR NORTH OF 40°10' N. LAT: AS OF JULY 1, 2002, ALL TRAWLING WITH LARGE FOOTROPE GEAR IS PROHIBITED ^{6/} .							
**NOTE FOR SOUTH OF 40°10' N. LAT: AS OF JULY 1, 2002, ALL TRAWLING FOR GROUND FISH IS CLOSED EXCEPT FOR DTS COMPLEX, SLOPE ROCKFISH SPECIES, AND SPECIFIED FLATFISH AND GRENADIER TAKEN INCIDENTALLY IN THOSE FISHERIES.							
1	Minor slope rockfish	1,800 lb/ 2 months				CLOSED ^{7/}	
2	North						
3	South						
4	40°10' - 36° N. lat.	50,000 lb/ 2 months		5,000 lb/ 2 months		1,800 lb / 2 months	
5	South of 36° N. lat.	50,000 lb/ 2 months				15,000 lb/ 2 months	
6	Splitnose - South						
7	40°10' - 36° N. lat.	25,000 lb/ 2 months		5,000 lb/ 2 months		1,800 lb / 2 months	
8	South of 36° N. lat.	25,000 lb/ 2 months				15,000 lb/ 2 months	
9	Pacific ocean perch - North ^{6/}	2,000 lb/ month		4,000 lb/ month		4,000 lb/ 2 months	
10	Chilipepper - South ^{6/}						
11	mid-water trawl	25,000 lb/ 2 months				CLOSED ^{7/}	
12	small footrope trawl	7,500 lb/ 2 months		4,000 lb/ 2 months			
13	large footrope trawl	500 lb/ trip, not to exceed small footrope cumulative 2-month limits at any time during the year					
14	DTS complex - North						
15	Sablefish	6,000 lb/ 2 months		3,500 lb/ 2 months		3,000 lb/ 2 months	
16	Longspine thornyhead	10,000 lb/ 2 months		6,000 lb/ 2 months		1,500 lb/ 2 months	
17	Shortspine thornyhead	2,600 lb/ 2 months		2,000 lb/ 2 months		1,500 lb/ 2 months	
18	Dover sole	30,000 lb/ 2 months	28,000 lb/ 2 months	14,000 lb/ 2 months		CLOSED ^{7/}	
19	DTS complex - South						
20	Sablefish ^{9/}	4,500 lb/ 2 months					
21	Longspine thornyhead	10,000 lb/ 2 months					
22	Shortspine thornyhead	2,600 lb/ 2 months					
23	Dover sole	22,000 lb/ 2 months					
24	Flatfish - North						
25	All other flatfish ^{3/}	LARGE FOOTROPE: 1,000 lb/trip, not to exceed small footrope cumulative monthly limits, includes arrowtooth flounder.		LARGE FOOTROPE: 1,000 lb/trip, not to exceed small footrope cumulative monthly limits. Retention of petrale and rex sole prohibited if large footrope gear is onboard.	SMALL FOOTROPE REQUIRED: 40,000 lb/ month, no more than 15,000 of which may be petrale sole	CLOSED ^{7/}	
		SMALL FOOTROPE: 15,000 lb/ month 35,000 lb/ month		SMALL FOOTROPE: 30,000 lb/ month, no more than 10,000 of which may be petrale sole		CLOSED ^{7/}	
		Not limited, large footrope allowed					
26	Petrale sole			SMALL FOOTROPE REQUIRED: 7,500 lb/ trip, no more than 30,000 lb/ month; large footrope prohibited		CLOSED ^{7/}	
27	Rex sole						
28	Arrowtooth flounder	LARGE FOOTROPE: included in "all other flatfish" limit.		SMALL FOOTROPE REQUIRED: 7,500 lb/ trip, no more than 30,000 lb/ month; large footrope prohibited		CLOSED ^{7/}	
		SMALL FOOTROPE: 30,000 lb/ trip					
29	Flatfish - South						
30	All other flatfish ^{3/}	LARGE FOOTROPE: 1,000 lb/trip, not to exceed small footrope cumulative monthly limits, includes arrowtooth flounder.		LARGE FOOTROPE: 1,000 lb/trip, not to exceed small footrope cumulative monthly limits. Retention of petrale and rex sole prohibited if large footrope gear is onboard.	CLOSED ^{7/} With the exception of 1,000 lb/ trip of rex sole, petrale sole, English sole, and arrowtooth flounder combined when landed with DTS complex. The amount of per trip flatfish landings must not exceed the amount of DTS landed. Landings can be made with small or large footrope gear.		
		SMALL FOOTROPE: 70,000 lb/ month, no more than 40,000 lb of which may be species other than Pacific sanddabs.		SMALL FOOTROPE: 70,000 lb/ month, no more than 40,000 lb of which may be species other than Pacific sanddabs. Of the species other than Pacific sanddabs, no more than 15,000 lb may be petrale sole.			
		Not limited, large footrope allowed					
31	Petrale sole			SMALL FOOTROPE REQUIRED: 7,500 lb/ trip, no more than 30,000 lb/ month; large footrope prohibited			
32	Rex sole						
33	Arrowtooth flounder	LARGE FOOTROPE: included in "all other flatfish" limit.		SMALL FOOTROPE REQUIRED: 7,500 lb/ trip, no more than 30,000 lb/ month; large footrope prohibited			
		SMALL FOOTROPE: 30,000 lb/ trip					
35	Whiting ^{4/}	20,000 lb/ trip		Primary Season		CLOSED ^{7/}	

Table 3. (CONTINUED) Trip Limits^{1/} and Gear Requirements^{2/} for Limited Entry Trawl Gear

Other Limits and Requirements Apply – Read Sections IV. A. and B. NMFS Actions before using this table

line	Species/groups	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
**NOTE FOR NORTH OF 40°10' N. LAT: AS OF JULY 1, 2002, ALL TRAWLING WITH LARGE FOOTROPE GEAR IS PROHIBITED ^{5/} .							
**NOTE FOR SOUTH OF 40°10' N. LAT: AS OF JULY 1, 2002, ALL TRAWLING FOR GROUND FISH IS CLOSED EXCEPT FOR DTS COMPLEX, SLOPE ROCKFISH SPECIES, AND SPECIFIED FLATFISH AND GRENADIER TAKEN INCIDENTALLY IN THOSE FISHERIES.							
37	Minor shelf rockfish						
38	North	300 lb/ month		1,000 lb/ month, no more than 300 lb of which may be yelloweye rockfish			CLOSED ^{7/}
39	South	500 lb/ month		1,000 lb/ month, no more than 300 lb of which may be yelloweye rockfish			CLOSED ^{7/}
40	Canary rockfish						
	North	200 lb/ 2 months		600 lb/ 2months	600 lb/ 2 months		CLOSED ^{7/}
	South				CLOSED ^{7/}		
	Widow rockfish						
41	North						
42	mid-water trawl	CLOSED ^{7/}		During primary whiting season, in trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative widow limit of 1,500 lb/ month			CLOSED ^{7/}
43	small footrope trawl			1,000 lb/ month			CLOSED ^{7/}
	South						
	mid-water trawl	CLOSED ^{7/}		During primary whiting season, in trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative widow limit of 1,500 lb/ month			CLOSED ^{7/}
	small footrope trawl			1,000 lb/ month			CLOSED ^{7/}
44	Yellowtail - North ^{6/}						
45	mid-water trawl	CLOSED ^{7/}		During primary whiting season, in trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative yellowtail limit of 2,000 lb/ month			CLOSED ^{7/}
46	small footrope trawl	In landings without flatfish, 1,000 lb/ month. As flatfish bycatch, per trip limit is the sum of 33% (by weight) of all flatfish except arrowtooth flounder, plus 10% (by weight) of arrowtooth flounder. Combined with and without flatfish, not to exceed 30,000 lb/ 2 months.					CLOSED ^{7/}
47	Bocaccio - South ^{6/}	600 lb/ 2 months		1,000 lb/ 2 months			CLOSED ^{7/}
48	Cowcod						CLOSED ^{7/}
49	Minor nearshore rockfish						
50	North			300 lb/ month			CLOSED ^{7/}
51	South			300 lb/ month			CLOSED ^{7/}
	Lingcod ^{9/}						
	North	800 lb/ 2 months		1,000 lb/ 2 months			CLOSED ^{7/}
	South			1,000 lb/ 2 months			CLOSED ^{7/}
52	Other Fish ^{10/}		Not limited		Grenadier retention permitted		CLOSED ^{7/}

1/ Trip limits apply coastwide unless otherwise specified. "North" means 40°10' N. lat. to the U.S.-Canada border. "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

2/ Gear requirements and prohibitions are explained above. See IV.A.(14).

3/ "Other" flatfish means all flatfish at 50 CFR 660.302 except those in this Table 3 with species specific management measures, including trip limits.

4/ The whiting "per trip" limit in the Eureka area inside 100 fm is 10,000 lb/trip from January 1 - August 31, 2002.

From September 1 - December 31, 2002, the whiting fishery is closed.

5/ Small footrope trawl means a bottom trawl net with a footrope no larger than 8 inches (20 cm) in diameter. In areas where trawl gear is restricted, only one type of trawl gear is allowed on board at any one time. See above.

6/ Yellowtail rockfish in the south and bocaccio and chilipepper rockfishes in the north are included in the trip limits for minor shelf rockfish in the appropriate area. POP in the south and splinose rockfish in the north are included in the trip limits for minor slope rockfish in the appropriate area.

7/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV.A.(7).

8/ The minimum size limit for lingcod is 24 inches (61 cm) total length.

9/ The minimum size requirement for sablefish is 22 inches (56 cm) total length and. No more than 500 lb of undersized sablefish may be landed per trip.

10/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

3. On page 44786, in column 1, the paragraph (designation "(i)(a)" is corrected to read as "(2)(a)".

4. On page 44786, in column 1, the amendatory paragraph No. 6 is corrected to read as follows:

"6. On page 10521, in column 3, in Section IV., under D. Recreational Fishery, paragraph (1)(a)(ii) is revised and on page 10522, in columns 1 and 2, under D. Recreational Fishery, paragraph (1)(a)(iii) is revised and paragraph (1)(b)(ii) is revised to read as follows:"

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

Dated: August 22, 2002.

Virginia M. Fay,

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

[FR Doc. 02-21813 Filed 8-27-02; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000331092-0315-02; I.D. 030100F]

RIN 0648-AQ36

Fisheries of the Exclusive Economic Zone off Alaska; License Limitation Program for the Scallop Fishery; Correction

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

ACTION: Final rule; correcting amendment.

SUMMARY: This action corrects part of the definition of "eligible applicant" in a final rule published December 14, 2000, to implement the License Limitation Program (LLP) for the Scallop Fishery. This action is necessary to correct paragraph (3) of the definition "eligible applicant" because it is inconsistent with regulations governing the LLP application requirements and the original intent of the LLP.

DATES: Effective August 27, 2002.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907-586-7008, or Patsy.Bearden@noaa.gov.

SUPPLEMENTARY INFORMATION: This action corrects paragraph (3) of the definition of "eligible applicant" for a crab species license. This paragraph is designed to implement part of the LLP for the crab fisheries in the Bering Sea and Aleutian Islands. A final rule to implement the initial crab LLP was published on October 1, 1998 (63 FR 52642). As published in this rule, paragraph (3) incorrectly included the word "and" between "1993" and "1994" in the "eligible applicant" definition. This error incorrectly made the conditions for a certain crab species license more restrictive than intended by the North Pacific Fishery Management Council and NMFS and inconsistent with crab species license criteria specified at § 679.4(k)(5)(ii)(G). NMFS corrected this error on September 12, 2000 (65 FR 54971) (LLP Correction).

Subsequently, NMFS issued a final rule on December 14, 2000 (65 FR 78110) (Scallop Final Rule) to implement Amendment 4 to the Fishery Management Plan for the Scallop Fishery off Alaska, which created an LLP for the scallop fishery. The scallop final rule added clarifying subheadings to the numbered paragraphs within the definition of "eligible applicant" and in the process, repeated the regulatory text of each paragraph. The regulatory text repeated for paragraph (3), however, was the original incorrect text published on October 1, 1998, for the crab LLP. This mistake likely occurred because, with respect to paragraph (3), the scallop final rule relied on the text of the proposed rule for the scallop LLP which was published on April 21, 2000 (65 FR 21385), before the text was corrected nearly five months later on September 12, 2000. Therefore, this action re-corrects paragraph (3) to read as originally intended and corrected to read on September 12, 2000.

Classification

The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment under authority set forth in 5 U.S.C. 553(b)(B). The rationale for this finding is that prior notice and comment are unnecessary under the Administrative Procedure Act because the correction of this paragraph will

have no substantive effect on the regulated public. Prior notice and comment would be contrary to the public interest because it would prolong the inaccurate paragraph that currently exists in the regulations and that had been previously corrected in the September 12, 2000, notice.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: August 19, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons explained in the preamble, 50 CFR part 679 is corrected by making the following correcting amendment:

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.*; 3631 *et seq.*; Title II of Division C, Pub. L. 105-277; Sec 3027, Pub. L. 106-31; 113 Stat. 57; 16 U.S.C. 1540(f); and Sec. 209, Pub. L. 106-554.

2. In § 679.2, paragraph (3) under the definition for "eligible applicant" is revised to read as follows:

§ 679.2 Definitions.

* * * * *

*Eligible applicant** * *

* * * * *

(3) For a crab species license, who was an individual who held a State of Alaska permit for the Norton Sound king crab summer fishery at the time he or she made at least one harvest of red or blue king crab in the relevant area during the period specified in § 679.4(k)(5)(ii)(G), or a corporation that owned or leased a vessel on June 17, 1995, that made at least one harvest of red or blue king crab in the relevant area during the period in § 679.4(k)(5)(ii)(G), and that was operated by an individual who was an employee or a temporary contractor; or

* * * * *

[FR Doc. 02-21808 Filed 8-27-02; 8:45 am]

BILLING CODE 3510-22-S