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G. Removal of Rescission Provision

In view of the events following the 2003 HOS rule—a legal challenge resulting in an adverse decision by the DC Circuit, which Congress temporarily suspended to allow time for further Agency action, culminating in a new rule—FMCSA thought it appropriate to highlight that the pre-2003 rule had been entirely superseded. It did so by promulgating § 395.0 in the 2005 rule, which provided that "[a]ny regulations on hours of service of drivers in effect before April 28, 2003, which were amended or replaced by the final rule adopted on April 28, 2003 [69 FR 22456] are rescinded and not in effect." As there is no longer a question that the pre-2003 rule is superseded, and further absent any amendment of specific provisions of the Code of Federal Regulations, the provision may not be consistent with the **Federal Register** Act. FMCSA is therefore removing § 395.0.

List of Subjects

49 CFR Part 385

Administrative practice and procedure, Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 395

Highway safety, Motor carriers, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, FMCSA adopts as final the interim final rule published at 72 FR 71247,

December 17, 2007, with the following change:

PART 395—HOURS OF SERVICE OF DRIVERS

■ 1. The authority citation for part 395 continues to read as follows:

Authority: 49 U.S.C. 504, 14122, 31133, 31136, 31502; Sec. 229, Pub. L. 106–159, 113 Stat. 1748; Sec. 113, Pub. L. 103–311, 108 Stat. 1673, 1676; and 49 CFR 1.73.

§ 395.0 [Removed]

■ 2. Remove § 395.0.

Issued on: November 13, 2008.

David H. Hugel,

Deputy Administrator.

[FR Doc. E8–27437 Filed 11–18–08; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106671–8010–02]

RIN 0648–XL83

Fisheries of the Exclusive Economic Zone Off Alaska; Trawl Gear in the Gulf of Alaska

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

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for groundfish by vessels using trawl gear in the Gulf of Alaska (GOA), effective 1200 hrs, Alaska local time, November 16, 2008. This action is necessary to fully use the 2008 Pacific halibut prohibited species catch (PSC) limit specified for vessels using trawl gear in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), November 16, 2008, through 2400 hrs, A.l.t., December 31, 2008. Comments must be received at the following address no later than 4:30 p.m., A.l.t., December 1, 2008.

ADDRESSES: Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by "RIN 0648–XL83," by any one of the following methods:

• Electronic Submissions: Submit all electronic public comments via the

Federal eRulemaking Portal website at <http://www.regulations.gov>.

• Mail: P. O. Box 21668, Juneau, AK 99802.

• Fax: (907) 586–7557.

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

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

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

FOR FURTHER INFORMATION CONTACT:

Steve Whitney, 907–586–7269.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson–Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2008 Pacific halibut PSC limit specified for vessels using trawl gear in the GOA is 2,000 metric tons (mt) as established by the 2008 and 2009 harvest specifications for groundfish of the GOA (73 FR 10562, February 27, 2008).

NMFS prohibited directed fishing for groundfish by vessels using trawl gear in the GOA under § 679.21(d)(7)(i) on November 6, 2008 (73 FR 66561, November 10, 2008). On November 13, 135 mt of Pacific halibut PSC limit was reallocated from Rockfish Pilot Program cooperative quota to the apportionment for trawl gear under § 679.21(d)(5)(iii)(B). As of November 13, 2008, NMFS has determined that approximately 119 mt remain in the 2008 Pacific halibut PSC limit for vessels using trawl gear in the GOA. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully use the 2008 Pacific halibut PSC limit specified for vessels using trawl gear in the GOA,

NMFS is terminating the previous closure and is opening directed fishing for groundfish by vessels using trawl gear in the GOA. Other closures remain in full force and effect.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of the groundfish fishery by vessels using trawl gear in the GOA. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet and processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of November 13, 2008.

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

Without this inseason adjustment, NMFS could not allow the fishery for groundfish by vessels using trawl gear in the GOA to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until December 1, 2008.

This action is required by § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: November 14, 2008.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. E8-27480 Filed 11-14-08; 4:15 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213032-7032-01]

RIN 0648-XL84

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Halibut in the Gulf of Alaska

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

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of halibut prohibited species catch (PSC) from rockfish cooperatives in the Central Gulf of Alaska (GOA) Rockfish Pilot Program to vessels using trawl gear in the GOA. This action is necessary to provide the opportunity to vessels using trawl gear to harvest available GOA groundfish total allowable catch (TAC) under existing PSC limits.

DATES: Effective November 14, 2008, until 2400 hours, A.l.t., December 31, 2008.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907-586-7269.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2008 allocation of halibut PSC to vessels using trawl gear in the GOA is 2,000 metric tons (mt) as established by the 2008 and 2009 final harvest specifications for groundfish in the GOA (73 FR 10562, February 27, 2008). Under § 679.81(c)(1), 171 mt of halibut PSC is allocated to catcher processor and catcher vessel rockfish cooperatives in the Central GOA. The website at <http://www.alaskafisheries.noaa.gov/sustainablefisheries/goarat/08rppallocations.xls> lists this amount. The remaining 1,829 mt is allocated to

vessels using trawl gear not in a rockfish cooperative.

As of November 13, 2008, the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that rockfish cooperatives in the Central GOA have not used 135 mt of the allocation under § 679.21(d)(5)(iii)(B). Therefore, NMFS is reallocating 135 mt of halibut PSC from rockfish cooperatives in the Central GOA to the last seasonal apportionment for vessels using trawl gear in the GOA.

Therefore, the harvest specifications for halibut PSC are revised as follows: 36 mt to rockfish cooperatives in the Central GOA and 1,829 mt to vessels using trawl gear.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of projected unused amounts of halibut PSC in the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of November 13, 2008.

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

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: November 14, 2008.

Emily H. Menashes,

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