



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 120613165-2167-01]

RIN 0648-BC23

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish of the Gulf of Alaska; Amendment 88; Correction

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

ACTION: Final rule; correcting amendment.

SUMMARY: This action corrects the final rule published on December 27, 2011, that implemented Amendment 88 to the Fishery Management Plan for Groundfish of the Gulf of Alaska. This correction clarifies that participants in the entry level trawl fishery may qualify for quota share (QS) under the Central Gulf of Alaska (GOA) Rockfish Program only in proportion to the number of years that a person made rockfish legal landings to an entry level processor in 2007, 2008, or 2009. This clarification is administrative in nature and does not change the distribution of rockfish QS to entry level trawl participants.

DATES: Effective [insert date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Gwen Herrewig, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

The rockfish fisheries are conducted in Federal waters near Kodiak, AK, by trawl and longline vessels. NMFS published the Central GOA Rockfish Program (Rockfish Program) final rule in the Federal Register on December 27, 2011 (76 FR 81248). The Rockfish Program allocates harvest privileges to holders of License Limitation Program (LLP) groundfish licenses with a history of Central GOA rockfish legal landings either in 2000 through 2006, or in the entry level trawl fishery in 2007, 2008, or 2009. The Rockfish Program assigns QS to LLP licenses for rockfish primary and secondary species based on legal landings associated with a specific LLP license. Rockfish primary species are northern rockfish, Pacific ocean perch, and pelagic shelf rockfish. Rockfish secondary species are Pacific cod, roughey rockfish, shortraker rockfish, sablefish, and thornyhead rockfish.

The entry level trawl fishery that occurred under the Central GOA Rockfish Pilot Program in 2007, 2008, and 2009 was limited to (1) those vessels that did not make landings in the Central GOA rockfish fishery from 1996 through 2002, and (2) those processors that did not meet a minimum amount of annual primary rockfish processing in the Central GOA rockfish fishery from 1996 through 2000. Additional detail on the entry level trawl fishery can be found in the preamble to the final rule that implemented the entry level trawl fishery and is not repeated here (71 FR 67210; November 20, 2006).

Need for Correction

This action addresses potential confusion created by an inconsistency in the preamble to the Rockfish Program final rule. NMFS made contradictory statements in the preamble in response to public comment 14, in which the commenter asserted that the proposed regulations did not follow the North Pacific Fishery Management Council's (Council's) intent that a participant in the entry level trawl fishery may qualify for QS under the Rockfish Program only

in proportion to the number of years that person made a delivery to an entry level processor in 2007, 2008, or 2009. The commenter asked NMFS to add the language “to an entry level processor” to the regulations.

In response to the comment, NMFS stated it would not make a regulatory change, but then used an example that included that change. Specifically, NMFS stated that current regulations implemented by the Rockfish Program final rule captured Council intent by stating that qualification for QS is based on rockfish legal landings generated by an entry level trawl participant. NMFS determined that adding the phrase “to an entry level processor” would be redundant because the definition of “rockfish legal landings” already encompassed deliveries made to an entry level processor. This is because entry level trawl participants were required to deliver all harvested fish in the entry level fishery to an entry level processor in order to generate rockfish legal landings. However, later in the preamble to the proposed rule, in a section describing the proposed regulatory text at § 679.80(e)(3)(i), NMFS included the phrase “to an entry level processor” as requested by the commenter, even though NMFS previously stated that phrase was unnecessary.

After additional review, NMFS agrees with the commenter that the regulations would be clearer if they included the phrase “to an entry level processor,” which clarify the requirement that qualification for QS is based on rockfish legal landings made to an entry level processor in 2007, 2008, or 2009.

Therefore, NMFS clarifies regulations for the Rockfish Program in text at § 679.80(e)(1)(ii) describing the distribution of rockfish QS to entry level trawl applicants, and in the calculation procedure at § 679.80(e)(3)(i) that assigns one Rockfish Landing Unit to an LLP license for each year a rockfish legal landing of any rockfish primary species was made during

the season dates for the entry level trawl fishery in 2007, 2008, or 2009. This correction clarifies that qualification for QS in the entry level trawl fishery is based on rockfish legal landings made to an entry level processor.

This clarification is administrative in nature and does not change the distribution of QS under the Rockfish Program. NMFS issued Rockfish Program QS in February 2012 consistent with current regulations and these corrections.

Classification

The Acting 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 unnecessary. This action makes no substantive changes to the rule, nor does it modify any rights or responsibilities of the regulated community. This action clarifies that qualification for QS in the entry level trawl fishery is based on rockfish legal landings made to an entry level processor, but does not change the distribution of QS under the Rockfish Program or change operating practices in the fisheries. The corrections described in this rule are being implemented to avoid confusion for participants in the fisheries.

For the reasons set forth above, 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). The corrections described in this rule are being made effective upon publication to address the inconsistency in the final rule preamble for the public.

It has been determined that this rule is not significant for purposes of Executive Order 12866.

NMFS is correcting this error and is not making substantive changes to the document in rule FR Docket No. 110314196–1725–02 published on December 27, 2011.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: June 21, 2012.

Paul N. Doremus,
Deputy Assistant Administrator
for Operations,
National Marine Fisheries Service.

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

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.; Pub. L. 108–447.

2. Section 679.80 is corrected by revising paragraphs (e)(1)(ii) and (e)(3)(i) to read as follows:

§ 679.80 Allocation and transfer of rockfish QS.

* * * * *

(e) * * *

(1) * * *

(ii) The number of years during which a person made a rockfish legal landing to an entry level processor under the authority of an LLP license in the entry level trawl fishery during 2007, 2008, or 2009 as established in paragraph (e)(3) of this section.

* * * * *

(3) * * *

(i) Assign one Rockfish Landing Unit to an LLP license for each year a rockfish legal landing of any rockfish primary species was made to an entry level processor under the authority of an LLP license during the season dates for the entry level trawl fishery in 2007, 2008, or 2009 as established in Table 28b to this part. This yields the Rockfish Landing Units. For purposes of this calculation, the Regional Administrator will not assign any Rockfish Landing Units to an LLP license that is assigned rockfish QS under the provisions in paragraph (e)(2) of this section.

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