

REGULATORY AMENDMENT TO DEFINE AND REQUIRE A PILOT LADDER FOR DOMESTIC FISHING VESSELS

Regulatory Impact Review/ Initial Regulatory Flexibility Analysis

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Abstract: This Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) evaluates the costs and benefits, and impacts on directly regulated small entities of a regulatory amendment to require domestic fishing vessel operators to provide a U.S. Coast Guard approved pilot ladder as a safer means for authorized personnel to board certain domestic fishing vessels in carrying out their duties under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Atlantic Tunas Convention Act and other applicable fisheries laws and treaties. This action is necessary to provide for the safety of personnel boarding domestic fishing vessels, as current standards have proven to be inadequate. The proposed regulations would establish a safer and more enforceable national standard for ladders used by authorized officers for boarding domestic fishing vessels subject to Federal regulation. This analysis addresses the requirements of Presidential Executive Order 12866 and the Regulatory Flexibility Act.

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Executive Summary:

RIR

This Regulatory Impact Review (RIR) evaluates the costs and benefits of a proposed regulatory amendment to require domestic fishing vessel operators to provide a U.S. Coast Guard approved pilot ladder as a safer means for authorized personnel to board domestic fishing vessels in carrying out their duties under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Atlantic Tunas Convention Act and other applicable fisheries laws and treaties. This RIR addresses the requirements of Presidential Executive Order 12866.

The proposed rule would incorporate the U.S. Coast Guard regulations at 46 CFR Subpart 160.003-Pilot Ladder. These regulations describe and specify the construction of a pilot ladder and the process to obtain approval for construction of such a ladder.

Approved boarding ladders come in several approved versions and vary in cost. Typically, vessels would need a 10- or 12-foot (3.0 or 3.7 m) ladder that ranges from \$517-\$620 for a wooden rung ladder, \$1,160-\$1,392 for a synthetic rung ladder. The largest vessels may have to buy a longer ladder at a proportionate increase (approximately \$50-\$60 per foot) in cost. U.S. Coast Guard documentation records estimate that about 6050 documented vessels would be required to have ladders by this action. Total costs of this action would be from between \$3.128 million (\$517 x 6,050 vessels) and \$8.422 million (\$1,392 x 6,050 vessels).

Potential Benefit of the proposed action

This action would provide for the safety of personnel boarding domestic fishing vessels, as current standards have proven to be inadequate. The proposed regulations would establish a safer and more enforceable national standard for ladders used by authorized officers for boarding domestic fishing vessels subject to Federal regulation.

IRFA

An Initial Regulatory Flexibility Analysis (IRFA) evaluating the impacts of this action on directly regulated small entities was prepared in accordance with the provisions of the Regulatory Flexibility Act (RFA).

Small Entities Affected

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

Reporting and Recordkeeping Requirements

This rule has no reporting or recordkeeping requirements.

Duplicating, Overlapping or Conflicting Federal Rules

The action refers to 46 CFR Subpart 163.003. There are no conflicting rules.

Alternatives Considered

As noted in Section 2.3, an IRFA should have “[a] description of any significant alternatives to the proposed rule that accomplish the stated objectives of the proposed action, consistent with applicable statutes, and that would minimize any significant economic impact of the proposed rule on small entities.”

This action considered 5 alternatives including the preferred alternative and the status quo. The proposed alternative (proposed action) is to require the operators of all fishing vessels with a freeboard of over 4 feet (1.25 m) to provide a U.S. Coast Guard approved pilot ladder for boarding parties, observers and other officials required to board the vessel. This defined term would replace the currently required “safe boarding ladder.” That term has been undefined and, as a result, fishing vessel operators have provided ladders that have been both inadequate and unsafe. Approved pilot ladders are available or can be ordered from most marine equipment suppliers. Approved pilot ladders come in several approved versions and vary in cost. Typically, vessels would need a 10- or 12-foot (3.0 or 3.7 m) pilot ladder that ranges from \$517-\$620 for a wooden rung ladder to \$1,160-\$1,392 for a synthetic rung ladder. The largest vessels may have to buy a longer ladder at a proportionate increase (approximately \$50-\$60 per foot) in cost. Total costs of this action would be from between \$3.128 million (\$517 x 6,050 vessels) and \$8.422 million (\$1,392 x 6,050 vessels).

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

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

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

A fifth alternative was to allow fishing vessel owners or operators to make their own ladders according to specifications found at 46 CFR Subpart 163.003. While fishermen could potentially make such ladders

cheaper than buying them, the ladders would not be approved and there would be no assurance that they would actually perform as required. Therefore, this alternative was not adopted.

As noted in Section 2.6, the objective of this action is to establish a safer and more enforceable national standard for ladders used by authorized officers for boarding domestic fishing vessels subject to Federal regulation. By providing a definition for “freeboard” and “pilot ladder” and requiring that operators of fishing vessels provide a pilot ladder for boarding parties and others, NMFS expects domestic fishing boardings to be carried out more safely and efficiently.

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1 Regulatory Impact Review (RIR)

1.1 Introduction

This Regulatory Impact Review (RIR) evaluates the costs and benefits of a proposed regulatory amendment to require domestic fishing vessel operators to provide a U.S. Coast Guard approved pilot ladder as a safer means for authorized personnel to board domestic fishing vessels in carrying out their duties under the Magnuson-Stevens Act, the Atlantic Tunas Convention Act and other applicable fisheries laws and treaties.

This action is necessary to provide for the safety of personnel boarding domestic fishing vessels, as current standards have proven to be inadequate. The purpose of this rule is to establish a safer and more enforceable national standard for ladders used by authorized officers for boarding domestic fishing vessels subject to Federal regulation.

This RIR addresses the requirements of Presidential Executive Order (E. O.) 12866.

1.2 What is a Regulatory Impact Review?

This RIR is required under E.O. 12866 (58 FR 51735, October 4, 1993). The requirements for all regulatory actions specified in E.O. 12866 are summarized in the following statement from the E.O.:

In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nonetheless essential to consider. Further, in choosing among alternative regulatory approaches agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

E.O. 12866 requires that the Office of Management and Budget review proposed regulatory programs that are considered to be “significant.” A “significant regulatory action” is one that is likely to:

- Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, local or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.

1.3 Statutory authority for this action

The National Marine Fisheries Service (NMFS) manages fisheries in the U.S. Exclusive Economic Zone (EEZ, 3 nm to 200 nm) under the Fishery Management Plans (FMPs) prepared by eight Regional Fishery Management Councils under the authority of the Magnuson-Stevens Act. General regulations that also pertain to U.S. fisheries appear at subpart H of 50 CFR part 600. NMFS has determined that federally permitted vessels operating in State waters (0 nm to 3 nm) must comply with Federal fishing regulations. These general regulations apply to regulations implementing the FMPs at 50 CFR Parts 600-699, including the Atlantic Tunas Convention Act. In addition, international fisheries regulations at 50 CFR Part 300 apply to domestic fishing vessels fishing under these laws and treaties. These include the High Seas Fishing Compliance Act of 1995, the Tuna Conventions Act of 1950, the South Pacific Tuna Act of 1988, the North Pacific Halibut Act of 1982, the Pacific Salmon Treaty Act of 1985, the Antarctic Marine Living Resources Convention Act of 1984, the Treaty Between the Government of the United State of America and the Government of the Republic of Columbia Concern the Status of Quita Sueno, Roncador and Serrana, and the 1981 Treaty Between the Government of the United States of America and the Government of Canada on Pacific Coast Albacore tuna Vessels and Port Privileges as amended in 2002.

The Magnuson-Stevens Act authorizes the U.S. Coast Guard, NMFS Enforcement, or other Federal or State agency acting under an enforcement agreement made under the Act to board, search or inspect without a warrant, any fishing vessel subject to the Act. Similar language in other fisheries laws and treaties provides for U.S. Coast Guard and NMFS authority for boardings and inspections of domestic fishing vessels.

1.4 Purpose and need for this action

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

1.5 Description of the alternatives under consideration

This action considered 5 alternatives including the preferred alternative and the status quo.

1. Preferred Alternative: Require all operators of fishing vessels with a freeboard of over 4 feet (1.25 m) to provide a U.S. Coast Guard approved pilot ladder for boarding parties, observers and other officials required to board the vessel.
2. No Action (status quo). No changes to ladder requirements in the regulations.
3. Limit the requirement to provide an approved pilot ladder to Alaskan and Northwestern Atlantic waters where cold water and rough seas are common.
4. Require vessels with a freeboard of 3 feet (0.9 m) or greater to provide an approved pilot ladder.

5. Require a pilot ladder as in the preferred alternative, but allow fishing vessel owners or operators to make their own ladders or buy ladders not made but made according to specifications found at 46 CFR Subpart 163.003.

There are no other identifiable alternatives that would accomplish this objective.

1.6 Background information

The U.S. Coast Guard, in a letter dated April 10, 2007, requested that NMFS “make a regulatory change to establish clear and unambiguous definitions of a commercial fishing vessel’s freeboard and what constitutes a “safe” boarding ladder.” An enclosed letter from the Seventeenth Coast Guard District in Alaska notes, “The current regulation at 50 CFR 600.730 (c) requires a vessel to provide a safe boarding ladder for the boarding team to gain vessels access, but fails to define a “safe” boarding ladder. The absence of a clear and unambiguous standard of a safe boarding ladder has endangered the U.S. Coast Guard boarding teams, especially those teams operating in the harsh Bering Sea. A regulatory change would promote fishing vessel boarding safety and facilitate regulatory enforcement.”

The U.S. Coast Guard voiced particular concerns about boardings in Alaska waters, due to extreme weather conditions, ice formation on vessels, and frigid year-round water temperatures that elevate the risk of boardings. In one year off Alaska, three documented instances of boarding officers falling in the water were directly attributable to unavailable or inadequate boarding ladders.

The concern for an adequate boarding ladder and safe boarding situation exists throughout the EEZ. Poor weather and difficult boarding conditions are not limited to Alaskan waters. The Northwest Atlantic weather conditions in winter can be as dangerous as those in the Bering Sea. The entire Pacific Coast routinely has cold waters that cause a very quick onset of hypothermia. The Pacific Coast also has a very bad winter storm season. Boardings along the Atlantic seaboard are often complicated by cross seas where sets of waves cross each other and create irregular wave patterns and unpredictable vessel motions. While the water off the southern states and in the Gulf of Mexico is relatively warm, short, choppy seas and quickly building storms can make boardings difficult. Hawaiian and western Pacific waters experience large swells and choppy seas due to currents between islands, the trade winds, and storms.

1.7 Analysis of the Alternatives

In considering the U.S. Coast Guard’s request, NMFS and the U.S. Coast Guard considered 5 alternatives including the preferred alternative and the status quo. There will be no additional costs to the U.S. government for any of these alternatives. The requirements of the regulations will be enforced in the course of normal boarding and enforcement operations.

The proposed alternative (proposed action) is to require all fishing vessel operators to provide a U.S. Coast Guard approved pilot ladder for boarding parties, observers and other officials required to board the vessel. This defined term would be in place of the currently required “safe boarding ladder.” That term has been undefined and, as a result, fishing vessel operators have provided ladders that have been both inadequate and unsafe. The U.S. Coast Guard has had regulations defining a pilot ladder, its construction, and approval process since 1981 at 46 CFR 1603.003. This type of ladder is required for merchant vessels for embarking and debarking pilots or other persons when away from the dock. Pilot ladders may be purchased from most marine equipment suppliers.

Approved pilot ladders come in several approved versions and vary in cost. Typically, vessels would need a 10- or 12-foot (3.0 or 3.7 m) ladder that ranges from \$517-\$620 for wooden to \$1,160-\$1,392 for synthetic rung ladders respectively. The largest vessels may have to buy a longer ladder at a proportionate increase (approximately \$50-\$60 per foot) in cost.

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

NMFS made a general assumption that the number of vessels under 65 feet (20 m) in length that would have a freeboard of over 4 feet (1.25 m) would be offset by the number of vessels of 65 feet (20 m) or over that already have an approved pilot ladder. With that assumption, the total cost to the public of this rule would vary from a low of \$3,127,850 (6,050 X \$517) to a high of \$8,421,600 (6,050 x \$1,392).

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

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

A fourth alternative would be to require vessels with a freeboard of 3 feet (0.9 m) to provide an approved pilot ladder. Some reports from U.S. Coast Guard boarding parties indicate that ladders would facilitate boarding operations in those cases. NMFS considers that there would be a marginal benefit in safety in making this requirement more stringent. In almost all cases, boarding parties could climb over the rail of a vessel 4 feet high from a small boat without the assistance of a ladder. Further, it would be difficult to estimate the number of vessels that would have to obtain ladders in this situation, but it could be large. Therefore, this alternative was rejected.

A fifth alternative was to require a pilot ladder but allow fishing vessel owners or operators the option of making or buying ladders made according to specifications found at 46 CFR Subpart 163.003 but not approved. Fishermen could potentially make such ladders cheaper than buying them, provided materials were inexpensive and they had the time to expend making the ladder. However, there would be no way to approve the construction of the ladders before using them, providing assurance that they would actually

perform as required. This situation would result in a situation similar to the status quo. Therefore, this alternative was not adopted.

2 Initial Regulatory Flexibility Analysis (IRFA)

2.1 Introduction

This IRFA evaluates the impacts on directly regulated small entities of a proposed regulatory amendment to require domestic fishing vessel operators to provide a U.S. Coast Guard approved pilot ladder as a safer means for authorized personnel to board domestic fishing vessels in carrying out their duties under the Magnuson-Stevens Act, the Atlantic Tunas Convention Act and other applicable fisheries laws and treaties. The purpose of this rule is to establish a safer and more enforceable national standard for ladders used by authorized officers for boarding domestic fishing vessels subject to Federal regulation.

2.2 What is the Regulatory Flexibility Act?

The Regulatory Flexibility Act (RFA), first enacted in 1980, was designed to place the burden on the government to review all regulations to ensure that, while accomplishing their intended purposes, they do not unduly inhibit the ability of small entities to compete. The RFA recognizes that the size of a business, unit of government, or nonprofit organization frequently has a bearing on its ability to comply with a Federal regulation. Major goals of the RFA are (1) to increase agency awareness and understanding of the impact of their regulations on small business, (2) to require that agencies communicate and explain their findings to the public, and (3) to encourage agencies to use flexibility and to provide regulatory relief to small entities. The RFA emphasizes predicting impacts on small entities as a group distinct from other entities and on the consideration of alternatives that may minimize the impacts while still achieving the stated objective of the action.

On March 29, 1996, President Clinton signed the Small Business Regulatory Enforcement Fairness Act. Among other things, the new law amended the RFA to allow judicial review of an agency's compliance with the RFA. The 1996 amendments also updated the requirements for a final regulatory flexibility analysis, including a description of the steps an agency must take to minimize the significant economic impact on small entities. Finally, the 1996 amendments expanded the authority of the Chief Counsel for Advocacy of the Small Business Administration (SBA) to file *amicus* briefs in court proceedings involving an agency's violation of the RFA.

In determining the scope, or universe, of the entities to be considered in an IRFA, NMFS generally includes only those entities, both large and small, that can reasonably be expected to be directly regulated by the proposed action. If the effects of the rule fall primarily on a distinct segment, or portion thereof, of the industry (e.g., user group, gear type, geographic area), that segment would be considered the universe for the purpose of this analysis. NMFS interprets the intent of the RFA to address negative economic impacts, not beneficial impacts, and thus such a focus exists in analyses that are designed to address RFA compliance.

Data on cost structure, affiliation, and operational procedures and strategies in the fishing sectors subject to the proposed regulatory action are insufficient, at present, to permit preparation of a "factual basis"

upon which to certify that the preferred alternative does not have the potential to result in “significant adverse impacts on a substantial number of small entities” (as those terms are defined under RFA). Because, based on all available information, it is not possible to certify this outcome, should the proposed action be adopted, a formal IRFA focusing on the complete range of available alternatives (including the designated “preferred” alternatives) has been prepared and is included in this package for review by the Secretary or Commerce.

2.3 IRFA Requirements

Under 5 U.S.C. Section 603(b) of the RFA, each IRFA is required to contain:

- A description of the reasons why action by the agency is being considered;
- A succinct statement of the objectives of and legal basis for the proposed rule;
- A description and, where feasible, an estimate of the number of small entities to which the proposed rule will apply (including a profile of the industry divided into industry segments, if appropriate);
- A description of the projected reporting, recordkeeping and other compliance requirements of the proposed 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;
- An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap or conflict with the proposed rule;
- A description of any significant alternatives to the proposed rule that accomplish the stated objectives of the proposed action, consistent with applicable statutes, and that would minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives, such as:
 1. The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
 2. The clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;
 3. The use of performance rather than design standards;
 4. An exemption from coverage of the rule, or any part thereof, for such small entities.

2.4 What is a Small Entity?

The RFA recognizes and defines three kinds of small entities: (1) small businesses, (2) small non-profit organizations, and (3) and small government jurisdictions.

Small businesses. Section 601(3) of the RFA defines a “small business” as having the same meaning as “small business concern” which is defined under Section 3 of the Small Business Act. “Small business”

or “small business concern” includes any firm that is independently owned and operated and not dominant in its field of operation. The SBA has further defined a “small business concern” as one “organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor. A small business concern may be in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative, except that where the firm is a joint venture there can be no more than 49 percent participation by foreign business entities in the joint venture.”

The SBA has established size criteria for all major industry sectors in the US including fish harvesting and fish processing businesses. A business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual receipts not in excess of \$4.0 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. A business involved in both the harvesting and processing of seafood products is a small business if it meets the \$4.0 million criterion for fish harvesting operations. Finally a wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide.

The SBA has established “principles of affiliation” to determine whether a business concern is “independently owned and operated.” In general, business concerns are affiliates of each other when one concern controls or has the power to control the other or a third party controls or has the power to control both. The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. Individuals or firms that have identical or substantially identical business or economic interests, such as family members, persons with common investments, or firms that are economically dependent through contractual or other relationships, are treated as one party with such interests aggregated when measuring the size of the concern in question. The SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern’s size. However, business concerns owned and controlled by Indian Tribes, Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601), Native Hawaiian Organizations, or Community Development Corporations authorized by 42 U.S.C. 9805 are not considered affiliates of such entities, or with other concerns owned by these entities solely because of their common ownership.

Affiliation may be based on stock ownership when (1) A person is an affiliate of a concern if the person owns or controls, or has the power to control 50% or more of its voting stock, or a block of stock which affords control because it is large compared to other outstanding blocks of stock, or (2) If two or more persons each owns, controls or has the power to control less than 50% of the voting stock of a concern, with minority holdings that are equal or approximately equal in size, but the aggregate of these minority holdings is large as compared with any other stock holding, each such person is presumed to be an affiliate of the concern.

Affiliation may be based on common management or joint venture arrangements. Affiliation arises where one or more officers, directors or general partners control the board of directors and/or the management of another concern. Parties to a joint venture also may be affiliates. A contractor and subcontractor are treated as joint venturers if the ostensible subcontractor will perform primary and vital requirements of a contract or if the prime contractor is unusually reliant upon the ostensible subcontractor. All requirements

of the contract are considered in reviewing such relationship, including contract management, technical responsibilities, and the percentage of subcontracted work.

Small organizations. The RFA defines “small organizations” as any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

Small governmental jurisdictions. The RFA defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of fewer than 50,000.

2.5 Reason for Considering the Proposed Action

The purpose of this rule is to establish a safer and more enforceable national standard for ladders used by authorized officers for boarding domestic fishing vessels subject to Federal regulation. The U.S. Coast Guard has requested a change to the current rule to provide for the safety of personnel boarding domestic fishing vessels, as current standards have proven to be inadequate. There have been several recent boarding accidents resulting in persons falling into the water that have been directly attributed to failure to have an adequate boarding ladder available. The rule would require domestic fishing vessel operators to provide a U.S. Coast Guard approved pilot ladder as a safer means for authorized personnel to board domestic fishing vessels in carrying out their duties under the Magnuson-Stevens Act, the Atlantic Tunas Convention Act and other applicable fisheries laws and treaties.

2.6 Objectives of and legal basis for the proposed action

The objective of this action is to establish a safer and more enforceable national standard for ladders used by authorized officers for boarding domestic fishing vessels subject to Federal regulation. By providing a definition for “freeboard” and “pilot ladder” and requiring that operators of fishing vessels provide these ladders for boarding parties and others, NMFS expects domestic fishing boardings to be carried out more safely and efficiently.

The National Marine Fisheries Service (NMFS) manages fisheries in the U.S. Exclusive Economic Zone (EEZ) under the Fishery Management Plans (FMPs) prepared by eight Regional Fishery Management Councils under the authority of the Magnuson-Stevens Act. General regulations that also pertain to U.S. fisheries appear at subpart H of 50 CFR part 600. NMFS has determined that federally permitted vessels operating in State waters (0 nm to 3 nm) must comply with Federal fishing regulations. These general regulations apply to regulations implementing the FMPs at 50 CFR Parts 600-699, including the Atlantic Tunas Convention Act. In addition, international fisheries regulations at 50 CFR Part 300 apply to domestic fishing vessels fishing under these laws and treaties. These include the High Seas Fishing Compliance Act of 1995, the Tuna Conventions Act of 1950, the South Pacific Tuna Act of 1988, the North Pacific Halibut Act of 1982, the Pacific Salmon Treaty Act of 1985, the Antarctic Marine Living Resources Convention Act of 1984, the Treaty Between the Government of the United State of America and the Government of the Republic of Columbia Concern the Status of Quita Sueno, Roncador and Serrana, and the 1981 Treaty Between the

Government of the United States of America and the Government of Canada on Pacific Coast Albacore tuna Vessels and Port Privileges as amended in 2002.

2.7 Number and description of directly regulated small entities

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

2.8 Recordkeeping and reporting requirements

This rule has no reporting or recordkeeping requirements.

2.9 Federal rules that may duplicate, overlap, or conflict with proposed action

This analysis did not reveal any Federal rules that duplicate, overlap, or conflict with the proposed action. The action would incorporate 46 CFR Subpart 163.003.

2.10 Comparison of preferred and other alternatives

In considering the U.S. Coast Guard's request, NMFS and the U.S. Coast Guard considered 5 alternatives including the preferred alternative and the status quo.

The proposed alternative (proposed action) is to require all fishing vessel operators provide a U.S. Coast Guard approved pilot ladder for boarding parties, observers and other officials required to board the vessel. This defined term would be in place of the currently required "safe boarding ladder." That term has been undefined and, as a result, fishing vessel operators have provided ladders that have been both inadequate and unsafe. The U.S. Coast Guard has had regulations defining a pilot ladder, its construction, and approval process since 1981 at 46 CFR Subpart 1603.003. This type of ladder is required for merchant vessels for embarking and debarking pilots or other persons when away from the dock. Pilot ladders may be purchased from most marine equipment suppliers. Because some vessels have openings in the bulwarks specifically for embarking and debarking personnel, NMFS proposes that, where cut-outs are provided in the bulwarks for the sole purpose of personnel boarding, freeboard means the distance between the top of the lowest portion of the structure to the water's surface.

Approved pilot ladders come in several approved versions and vary in cost. Typically, vessels would need a 10- or 12-foot (3.0 or 3.7 m) ladder that ranges from \$517-\$620 for wooden to \$1,160-\$1,392 for synthetic rung ladders respectively. The largest vessels may have to buy a longer ladder at a proportionate increase (approximately \$50-\$60 per foot) in cost.

NMFS made a general assumption that the number of vessels under 65 feet (20 m) in length that would have a freeboard of over 4 feet (1.25 m) would be offset by the number of vessels of 65 feet (20 m) or over that already have an approved pilot ladder. With that assumption, the total cost to the public of this rule would vary from a low of \$3,127,850 (6,050 X \$517) to a high of \$8,421,600 (6,050 x \$1,392).

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

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

A fourth alternative would be to require vessels with a freeboard of 3 feet (0.9 m) to provide an approved pilot ladder. Some reports from U.S. Coast Guard boarding parties indicate that ladders would facilitate boarding operations in those cases. NMFS considers that there would be a marginal benefit in safety in making this requirement more stringent. In almost all cases, boarding parties could climb over the rail of a vessel 4 feet high from a small boat without the assistance of a ladder. Further, it would be difficult to estimate the number of vessels that would have to obtain ladders in this situation, but it could be large. Therefore, this alternative was rejected.

A fifth alternative was to require a pilot ladder but allow fishing vessel owners or operators the option of making or buying ladders made according to specifications found at 46 CFR Subpart 163.003 but not approved. Fishermen could potentially make such ladders cheaper than buying them, provided materials were inexpensive and they had the time to expend making the ladder. However, there would be no way to approve the construction of the ladders before using them, providing assurance that they would actually perform as required. This situation would result in a situation similar to the status quo. Therefore, this alternative was not adopted

References

USCG (2007). Letter to Dr. William T. Hogarth from Captain S. D. Genovese, USCG, Chief, Office of Law Enforcement, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. 20593-0001, April 10, 2007.

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