

and the time it went into effect, thereby rendering the action obsolete and ineffective. Nevertheless, NMFS recognizes the need for fishermen to have time to either modify or remove (if not in compliance with the required restrictions) their gear from a DAM zone once one is approved. Thus, NMFS makes this action effective 2 days after the date of publication of this document in the **Federal Register**. NMFS will also endeavor to provide notice of this action to fishermen through other means upon issuance of the rule by the AA, thereby providing approximately 3 additional days of notice while the Office of the **Federal Register** processes the document for publication.

NMFS determined that the regulations establishing the DAM program and actions such as this one taken pursuant to those regulations are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Following state review of the regulations creating the DAM program, no state disagreed with NMFS' conclusion that the DAM program is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program for that state.

The DAM program under which NMFS is taking this action contains policies with federalism implications warranting preparation of a federalism assessment under Executive Order 13132. Accordingly, in October 2001 and March 2003, the Assistant Secretary for Intergovernmental and Legislative Affairs, Department of Commerce, provided notice of the DAM program and its amendments to the appropriate elected officials in states to be affected by actions taken pursuant to the DAM program. Federalism issues raised by state officials were addressed in the final rules implementing the DAM program. A copy of the federalism Summary Impact Statement for the final rules is available upon request (**ADDRESSES**).

The rule implementing the DAM program has been determined to be not significant under Executive Order 12866.

**Authority:** 16 U.S.C. 1361 *et seq.* and 50 CFR 229.32(g)(3).

Dated: November 10, 2008.

**Samuel D. Rauch III,**

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

[FR Doc. E8-27218 Filed 11-12-08; 4:15 pm]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 300, 600 and 697

[Docket No. 070717337-81411-03]

RIN 0648-AV78

#### General Provisions for Domestic Fisheries; Specifications for Boarding Ladders

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

**ACTION:** Final rule.

**SUMMARY:** NMFS publishes regulations to require operators of domestic fishing vessel with a freeboard of four feet or over to provide a U.S. Coast Guard-approved pilot ladder as a safe and enforceable means for authorized personnel to board 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. These final regulations establish a safer and more enforceable national standard for ladders used by authorized officers for boarding domestic fishing vessels subject to Federal regulation.

**DATES:** Effective January 1, 2009.

**ADDRESSES:** NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which incorporates the IRFA and this final rule, and is contained in the Classification section of this final rule. Copies of the Initial Regulatory Flexibility Analysis/Regulatory Impact Review (IRFA/RIR) may be obtained from: Alan Risenhoover, Director, Office of Sustainable Fisheries, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** William D. Chappell, 301-713-2337.

**SUPPLEMENTARY INFORMATION:** A proposed rule for this action was

published on December 11, 2007 (72 FR 70286), with public comment accepted though January 10, 2008. Several requests were made to extend the comment period, and NMFS responded by re-opening the proposed rule for public comment from January 25, 2008 to February 25, 2008 (73 FR 4514). A detailed description of the statutory and regulatory authority for, and need for this rule is contained in the preamble of the proposed rule and is not repeated here.

Current regulations at § 600.730(c)(3) require the operator of a fishing vessel to "provide a safe ladder" to be used for boarding purposes. This requirement has been in existence at least since general provisions for domestic fisheries were consolidated (53 FR 24644, June 29, 1988). While some commenters expressed surprise at the existence of this requirement, they generally agreed that some sort of ladder is needed for boarding larger vessels. Comments focused on the definition of a safe ladder, when the ladder is needed, and who provides (and pays for) the ladder.

Twenty years of experience have shown that the current generic definition is inadequate for both safety and enforcement purposes. Because standards to define a "safe ladder" did not exist, some fishing vessel operators provided inadequate ladders, which put boarding personnel at risk. Where the ladder is clearly inadequate, the boarding party must either provide a boarding ladder or abort the boarding. This lack of a quick and safe means of boarding slows down boardings and creates additional interruptions of fishing operations. These final regulations provide a common definition for a ladder proven to be safer than other types.

The final rule requires the use of a pilot ladder on all fishing vessels with a freeboard of 4 ft (1.25 m) and defines the term "freeboard" for this rule. Because the definition of freeboard is now defined as the distance between the top rail of the gunwale and the water's surface, some vessels that did not need to provide a ladder before will have to provide a ladder under this rule.

#### Comments on the Proposed Rule

NMFS received one letter of comment from Washington Department of Fish and Wildlife (WDFW) and three letters of comment from the United States Coast Guard (USCG), plus 56 comments from members of the public with thirty-two unique comments.

*Comment 1:* NMFS received twenty-six comments that the USCG or NMFS provide a boarding ladder when

required to safely conduct an at-sea boarding.

*Response:* The fishing vessels affected by this rule are already required by 50 CFR 600.730(c)(3) to provide a safe boarding ladder; this rule defines "safe boarding ladder" more clearly.

Additionally, since all sizes and classes of fishing vessels are subject to at-sea boardings, the USCG would need to maintain and store multiple ladders of various sizes to enable boarding of the range of fishing vessel sizes, which is not feasible due to space limitations aboard USCG vessels. The small boats the USCG uses for boarding also have insufficient room to carry both a ladder and a boarding team. Finally, transferring the ladder from a Coast Guard small boat to a fishing vessel with the crew securing an unfamiliar ladder represents a higher risk activity than the fishing vessel providing its own customized ladder, undermining the purpose of this rule to provide for safer boardings.

*Comment 2:* NMFS received twenty two comments that the boarding ladder required by this rule was too costly.

*Response:* While NMFS understands that the ladder is a costly investment, it is less than the cost involved with the potential serious injury or death that can result from a fall during a boarding. NMFS research found that USCG-approved ladders can be custom made for \$64 per foot for wood and \$148 per foot for synthetic ladders. Further, use of the ladder is not limited to boardings or observer transfers. It can be used for vessel maintenance, retrieving gear from the water, and boarding a life raft, as well as in a man overboard situation.

*Comment 3:* NMFS received seventeen comments that the fishing vessels required by this rule to carry a ladder had insufficient storage space aboard.

*Response:* Many fishing vessels affected by this rule are already required to carry a safe boarding ladder. The ladder specified in this rule was designed to be stored aboard vessels. Additionally, the rule only applies to larger fishing vessels which typically have sufficient storage space.

*Comment 4:* NMFS received twelve comments that small fishing vessels should be exempted from this requirement.

*Response:* Fishing vessels with less than four feet of freeboard, which tend to be small fishing vessels, are exempt from this rule.

*Comment 5:* NMFS received seven comments that vessels that have been boarded in the past without incident or inconvenience should not be required to carry unnecessary equipment.

*Response:* Every boarding at sea is unique, with variance in environmental conditions, boarding team composition, and boarding platforms. The fact that no accident occurred in previous boardings is not an indicator that there will be no accident during the next boarding if a safety hazard exists. Even though boarding accidents are relatively rare, the risk to boarding party personnel dictates that boarding ladder safety must be improved.

*Comment 6:* NMFS received six comments that the definition of "freeboard" is unclear.

*Response:* NMFS has changed the definition in the final rule. The term freeboard, as it applies to this rule, is measured at the time the vessel is boarded, and is a physical measurement of the vessel at the lowest point of sufficient width to accommodate a boarding. The measurement cannot be pre-determined at the dock or the marine architects' office, because loading conditions (i.e., fuel state and catch onboard) and weather are constantly changing. It remains the fishing vessel operator's responsibility to provide a pilot ladder when conditions exist that require one.

*Comment 7:* NMFS received five comments that this rule has a potential for decreasing safety at sea.

*Response:* The USCG-approved ladders required by this rule are designed to safely transfer people at sea and meet international safety standards. Numerous USCG boarding officers were consulted in the development of this rule, all of whom agreed that the use of USCG approved pilot ladders will increase the safety of at-sea boardings.

*Comment 8:* NMFS received four comments concurring with the rule.

*Response:* NMFS acknowledges these comments.

*Comment 9:* NMFS received four comments that the number of vessels affected by this rule is not accurate.

*Response:* While the number of vessels affected by this rule is an estimate, NMFS considers the data used to be reasonable and the best available. Since the US government does not track the freeboard of fishing vessels, a length of 65 feet was a proxy used to determine an estimated number of affected vessels, based on best professional judgment by NMFS and the USCG. Data provided by the USCG indicated that there are 5,520 federally-documented fishing vessels over 65 feet and an estimated 530 state numbered fishing vessels over 65 feet, yielding an estimated 6050 fishing vessels that will be affected by this rule.

*Comment 10:* NMFS received four comments that homemade ladders should be acceptable.

*Response:* This rule requires a ladder that is designed for at-sea operations and can be considered safe without a detailed inspection. The USCG equipment approval process is available to anyone wishing to construct their own ladder.

*Comment 11:* NMFS received four comments that a "one size fits all" approach to boarding ladders is inappropriate.

*Response:* NMFS believes that this rule employs a sufficiently flexible approach while improving the safety of boarding for authorized officers and other persons. Vessels with less than 4 feet of freeboard do not need a ladder and ladders can be customized to fit a particular vessel's freeboard.

*Comment 12:* NMFS received two comments that built-in steps should be accepted.

*Response:* Built in steps can be a hazard to the small boat used to transfer boarding teams onto the fishing vessels. As both vessels rise and fall with the waves, the small boat rubs against the steps which can tear a rubber sponson, gouge a fiberglass boat, and in rough seas even cause the small boat to capsize. Additionally, the standard adopted eliminates any question by the fishermen or enforcement as to what constitutes a safe boarding ladder.

*Comment 13:* NMFS received two comments that the minimum freeboard height to require a boarding ladder should be greater than four feet.

*Response:* NMFS concluded that four feet was appropriate because a five foot tall boarding officer (USCG minimum height requirement) of average upper body strength wearing a dry suit, uniform and over 35 pounds of weapons, tools and gear may find a higher freeboard height difficult to climb without the assistance of a ladder.

*Comment 14:* NMFS received two comments requesting an extension of the public comment period.

*Response:* NMFS accommodated this request by reopening the comment period for an additional 30 days.

*Comment 15:* NMFS received two comments that the rule should not apply to charter or recreational vessels.

*Response:* Federal fisheries regulations apply to charter and recreational vessels as well as commercial vessels, and at-sea boardings are conducted on all three categories of vessel.

*Comment 16:* NMFS received two comments questioning whether sufficient ladders were available.

*Response:* NMFS research revealed numerous ship supply stores that can provide custom built ladders.

*Comment 17:* NMFS received two comments requesting phase in provisions.

*Response:* NMFS will provide lead time for vessel owners and operators to obtain pilot ladders prior to the effective date of these regulations.

*Comment 18:* NMFS received two comments that the rule is not necessary.

*Response:* The safety of boarding teams is a priority for NMFS and the USCG. This rule provides a clear definition for a "safe ladder". Previously allowed unsafe ladders caused boarding personnel to fall in the water, a life-threatening situation.

*Comment 19:* NMFS received one comment that most boardings of small trollers occur over the stern where a ladder physically can't be rigged due to space considerations.

*Response:* The term freeboard, as it applies to this rule, is a physical measurement of the vessel at the lowest point of sufficient width to accommodate a boarding. Provided that the stern of a troller is a safe boarding location, is of sufficient width to accommodate a boarding, and the freeboard is four feet (1.25 m) or less, a boarding ladder would not be required.

*Comment 20:* NMFS received one comment that boarding teams should wait for safer conditions.

*Response:* NMFS and the USCG conduct risk assessments prior to boarding a vessel; weather conditions are an integral part of this assessment. In some areas, waiting for calm conditions would preclude most at-sea boardings and result in decreased effectiveness of fishery regulations.

*Comment 21:* NMFS received one comment that the ladder should be called a boarding ladder not a pilot ladder.

*Response:* The name "pilot ladder" is retained as it refers to a specifically constructed ladder. The ladder required by this rule is a USCG approved pilot ladder that will be used for at-sea boardings. The USCG approval regulations, 46 CFR subpart 163.003, contain standards for a pilot ladder.

*Comment 22:* NMFS received one comment asking if a thirty foot vessel would require the same ladder as a ninety foot vessel.

*Response:* This requirement is not based on vessel length, but rather on freeboard. Therefore, vessels with similar freeboard will need a ladder of a similar length. Pilot ladders are available in custom sizes built to fit various freeboard heights.

*Comment 23:* NMFS received one comment asking how this rule rebuilds fisheries.

*Response:* This rule facilitates at-sea enforcement, which is one component of effective fishery management.

*Comment 24:* NMFS received one comment that this requirement may be subject to safety inspections under the USCG Commercial Fishing Vessel Safety program.

*Response:* Federal fisheries regulations and fishing vessel safety regulations are two distinct federal programs. The ladders required by this final rule will be subject to inspection under NMFS federal fisheries regulations, not USCG Commercial Fishing Vessel Safety regulations.

*Comment 25:* NMFS received one comment requesting to limit the requirement to vessels over sixty-five feet (20 m) in length.

*Response:* The ladder requirement is based on freeboard height, not vessel length. Some vessels less than sixty-five feet in length have a freeboard greater than four feet (1.25 m) and would be required to provide a boarding ladder. Conversely, some vessels longer than 65 feet (20 m) have a freeboard of less than four feet (1.25 m).

*Comment 26:* NMFS received two comments that the rule should be voluntary.

*Response:* This rule is mandatory. As noted in the proposed rule and elsewhere in this final rule, the flexible requirement that fishing vessel operators provide boarding parties a "safe boarding ladder" did not result in a satisfactory level of compliance and safety.

*Comment 27:* NMFS received one comment that the rule should apply in all areas of the U.S. Exclusive Economic Zone (EEZ).

*Response:* The rule applies to domestic fishing vessels in all areas of the U.S. EEZ and anywhere U.S. fishing vessels are boarded for the purposes of enforcing applicable fisheries laws. Similar regulations apply to foreign fishing vessels in the EEZ. See 50 CFR 600.504(d), Boarding.

*Comment 28:* NMFS received one comment that the rule should apply in the Pacific Northwest and one comment that it should not.

*Response:* As stated in the response to Comment 27, the rule applies in the entire U.S. EEZ and anywhere domestic fishing vessels are boarded for the purposes of enforcing applicable fisheries laws. Hazardous boarding conditions exist in the Pacific Northwest as they do in other areas of the EEZ.

*Comment 29:* NMFS received one comment that all fish should be retained with no discards.

*Response:* This comment is outside the scope of this rule.

*Comment 30:* NMFS received one comment that the use of Billy Pugh Personnel Transfer Devices should be authorized.

*Response:* While the Billy Pugh Personnel Transfer Device is a safe means of transporting personnel between vessels, the cost, training, and inapplicability to small vessels make this a less preferred option. Additionally, a major difference between a transfer device and a ladder is that when climbing on a ladder a boarding team is in control of whether or not they go up or down the ladder, dependent on the situation. If a personnel transfer device was authorized, the boarding team would then be putting themselves within the control of the individual raising or lowering the transfer device. NMFS concluded that it is more appropriate for a ladder to be used so that USCG personnel maintain control over their boarding of the vessel.

*Comment 31:* NMFS received one comment asking if the rule applied to USCG inspected vessels.

*Response:* This rule will apply to both inspected and uninspected domestic fishing vessels with a freeboard of greater than four feet (1.25 m) and fishing in federal waters or with a federal permit.

*Comment 32:* NMFS received one comment that there are safer options available beyond requiring a boarding ladder.

*Response:* Other methods of management and enforcement may require fewer at-sea boardings, but no method of management has completely removed the need for at-sea boardings. NMFS and the U.S. Coast Guard consider the use of boarding ladders an integral part of at-sea boardings. As discussed in the preamble to the proposed rule and set forth below, NMFS considered five options in developing new boarding ladder requirements with this final rule as the preferred option.

#### **Changes from the Proposed Rule**

In order to clarify what is meant by freeboard in a bulwarks cut-out, the definition of freeboard has been revised to explain that freeboard means the distance between the threshold of the bulwark cut-out and the water's surface. Because the definitions of pilot ladder are only applicable to the regulations regarding boarding, they have been moved to that section in the international and the Magnuson-Stevens Act regulations. This also makes them more accessible to the user.

## Classification

Pursuant to section 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the Magnuson-Stevens Act and other applicable law.

NMFS prepared a final regulatory flexibility analysis (FRFA), which incorporates the IRFA and this final rule, and describes the economic impact that this action may have on small entities. A copy of IRFA is available from NMFS (see **ADDRESSES**).

### *Statement of Objective and Need*

A description of the objective of and need for this rule is contained in the preamble of this final rule.

### *Summary of Significant Issues Raised in Public Comments*

NMFS received twenty-two comments that the boarding ladder required by this rule was too costly. NMFS understands that the ladder is a costly investment and conducted market research to determine current costs of such a ladder. This research found that USCG-approved ladders can be custom made for \$64 per foot for wood and \$148 per foot for synthetic ladders (from \$640-\$1,480 for a 10-foot ladder). By requiring a specifically constructed ladder, the vessel owner and operator can reduce the liability caused by their requirement to provide a safe boarding ladder. This makes the purchase cost of a pilot ladder less than the potential cost involved if serious injury or death results from a fall during a boarding. Further, use of the ladder is not limited to boardings or observer transfers. It can be used for vessel maintenance, retrieving gear from the water, and boarding a life raft, as well as in a man overboard situation.

### *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 usually have a freeboard (defined as the working distance between the top rail of the gunwale to the water's surface) of greater than 4 ft (1.25 m). While some vessels 65 ft (20.0 m) or greater in length may have a freeboard of 4 ft (1.25 m) or less, NMFS assumed for purposes of this analysis that all of these vessels, as well as an unknown number of smaller vessels, would be required to carry a pilot ladder if this proposed rule were implemented. According to U.S. Coast Guard vessel documentation records, 6,050 documented fishing vessels are 65 ft (20 m) long or longer and could be

affected by this requirement. Because some vessels already 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 approximately 11 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.

### *Steps Taken to Minimize the Significant Economic Impacts on Small Entities*

This action considered 5 alternatives including the preferred alternative and the status quo. The preferred 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 alternative was chosen because it clarified the height at which a boarding party member could safely board a fishing vessel, it provided for owners/operators of fishing vessels with an easily obtainable and affordable ladder recognized internationally as being of safe construction.

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

A third alternative considered would limit this requirement to Alaskan and Northwestern Atlantic waters where cold water and rough seas are common. The limitation would reduce the cost to fishermen, but would not reduce the hazard to boarding parties in the areas that are not subject to the requirements, since boardings are conducted in rough seas 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 areas of the EEZ that are not subject to the requirements.

A fourth alternative would require vessels with a freeboard of 3 feet (0.9 m) or more to provide a ladder. Some reports from U.S. Coast Guard boarding parties indicate that ladders would facilitate boarding operations in those cases. NMFS rejected this alternative

because of increased costs to the fishermen and the marginal benefit in safety.

A fifth alternative would allow fishing vessel owners or operators to make their own ladders according to specifications found at 46 CFR subpart 163.003, without going through the procedures for CG approval. While fishermen could potentially make such ladders more cheaply 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.

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 FRFA, 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 small entity compliance guide for this rule follows: Small Entity Compliance Guide Applicability: Owners and operators of United States fishing vessels fishing under U.S. laws in U.S. waters and on the high seas. Requirements: If your vessel has a freeboard of greater than four feet (1.25 m), described as the working distance between the top rail of the gunwale of a vessel and the water's surface, your vessel must provide a Coast Guard-approved pilot ladder for the use of enforcement personnel boarding your vessel. If your vessel has cut-outs in the bulwarks for the purpose of personnel boarding, the freeboard is the distance between the threshold of the bulwark cut-out and the water's surface.

Description of a pilot ladder: A pilot ladder, sometimes called a Jacob's ladder, is a flexible ladder constructed and approved to meet the U.S. Coast Guard standards for pilot ladders at 46 CFR subpart 163.003 entitled Pilot Ladder. Pilot ladders may be purchased through many marine equipment suppliers in a variety of lengths and materials. NMFS research has determined that the cost of a pilot ladder made of natural materials is about \$64.00 per foot, and a ladder made of synthetic materials is about \$148 per foot. The total cost of a ladder would therefore likely range from \$640 to \$1,480 for a 10-foot ladder.

Deployment: Specific boarding regulations for the Magnuson-Stevens Act are found at 50 CFR 600.730(c). Boarding regulations published under other Federal fisheries laws are identical. These regulations require that when necessary to facilitate a boarding or at the request of an authorized officer or observer, you must provide your pilot ladder for their use. You must also provide a manrope or safety line, illuminate the ladder, and take any other actions necessary to facilitate the boarding and ensure the safety of the authorized officer and boarding party.

This small entity compliance guide is authorized by the Assistant Administrator of Fisheries, National Marine Fisheries Service and complies with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996.

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

### List of Subjects

#### 50 CFR Part 300

Administrative practice and procedure, Antarctica, Canada, Exports, Fish, Fisheries, Fishing, Imports, Indians, Labeling, Marine resources, Reporting and recordkeeping requirements, Russian Federation, Transportation, Treaties, Wildlife.

#### 50 CFR Part 600

Administrative practice and procedure, Confidential business information, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

#### 50 CFR Part 697

Administrative practice and procedure, Fisheries, Fishing, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: November 10, 2008.

#### Samuel D. Rauch III,

Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

- For the reasons set out in the preamble, 50 CFR parts 300, 600, and 697 are amended as follows.

### CHAPTER III

#### PART 300—INTERNATIONAL FISHERIES REGULATIONS

- 1. The authority citation for part 300 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*, 16 U.S.C. 951–961 and 971 *et seq.*, 16 U.S.C. 973–973r, 16 U.S.C. 2431 *et seq.*, 16 U.S.C. 3371–3378, 16 U.S.C. 3636(b), 16 U.S.C. 5501 *et seq.*, and 16 U.S.C. 1801 *et seq.*

- 2. In § 300.5, paragraphs (a)(1) and (2) are added and paragraphs (c)(3) and (4) are revised to read as follows:

#### § 300.5 Facilitation of enforcement.

(a) \* \* \*

(1) For the purposes of this section “freeboard” means the working distance between the top rail of the gunwale of a vessel and the water’s surface. Where cut-outs are provided in the bulwarks for the purpose of boarding personnel, freeboard means the distance between the threshold of the bulwark cut-out and the water’s surface.

(2) For the purposes of this section, “pilot ladder” means a flexible ladder

constructed and approved to meet the U.S. Coast Guard standards for pilot ladders at 46 CFR subpart 163.003 entitled Pilot Ladder.

(c) \* \* \*

(3) Except for fishing vessels with a freeboard of 4 feet (1.25 m) or less, provide, when requested by an authorized officer or CCAMLR inspector, a pilot ladder capable of being used for the purpose of enabling the authorized officer or CCAMLR inspector to embark and disembark the vessel safely. The pilot ladder must be maintained in good condition and kept clean.

(4) When necessary to facilitate the boarding or when requested by an authorized officer or CCAMLR inspector, provide a manrope or safety line, and illumination for the pilot ladder.

### CHAPTER VI

#### PART 600—MAGNUSON-STEVENS ACT PROVISIONS

- 3. The authority citation for part 600 continues to read as follows:

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

- 4. In § 600.730, paragraphs (a)(1) and (2) are added after the introductory text and paragraphs (c)(3) and (4) are revised to read as follows:

#### § 600.730 Facilitation of enforcement.

(a) \* \* \*

(1) For the purposes of this section “freeboard” means the working distance between the top rail of the gunwale of a vessel and the water’s surface. Where cut-outs are provided in the bulwarks for the purpose of boarding personnel, freeboard means the distance between the threshold of the bulwark cut-out and the water’s surface.

(2) For the purposes of this section, “pilot ladder” means a flexible ladder constructed and approved to meet the U.S. Coast Guard standards for pilot ladders at 46 CFR subpart 163.003 entitled Pilot Ladder.

(c) \* \* \*

(3) Except for fishing vessels with a freeboard of 4 feet (1.25 m) or less, provide, when requested by an authorized officer or observer personnel, a pilot ladder capable of being used for the purpose of enabling personnel to embark and disembark the vessel safely. The pilot ladder must be maintained in good condition and kept clean.

(4) When necessary to facilitate the boarding or when requested by an authorized officer or observer, provide a manrope or safety line, and illumination for the pilot ladder.

### CHAPTER VI

#### PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

- 5. The authority citation for part 697 continues to read as follows:

**Authority:** 16 U.S.C. 1501 *et seq.*

- 6. In § 697.9, paragraph (a) is revised to read as follows:

#### § 697.9 Facilitation of enforcement.

(a) *General.* See § 600.730 of this chapter.

[FR Doc. E8–27221 Filed 11–14–08; 8:45 am]

BILLING CODE 3510–22–S

### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 600, 622, and 679

[Docket No. 0809101190–81192–01]

RIN 0648–AX26

#### General Provisions of the Magnuson-Stevens Fishery Conservation and Management Act; Minor Amendments to Regulations

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues minor amendments to update regulations pertaining to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The updated regulations reflect amendments to the Magnuson-Stevens Act by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA) so that regulations are consistent with the revised statutory text. The effect of this action is to update Magnuson-Stevens Act regulations where only minor changes to revise language or insert new provisions of the amended Magnuson-Stevens Act are needed. Additional actions interpreting and implementing the requirements of the MSRA are being addressed as separate rulemakings.

**DATES:** Effective November 17, 2008.

**FOR FURTHER INFORMATION CONTACT:** William D. Chappell at 301–713–2337.

**SUPPLEMENTARY INFORMATION:** In title 50, parts 600, 622, and 679 contain regulations issued under authority of the Magnuson-Stevens Act. On January 12, 2007, the President signed into law the MSRA (Public Law 109–479), which