

**FOR FURTHER INFORMATION CONTACT:** Carl Weber, (202) 358-1784, e-mail: [carl.c.weber@nasa.gov](mailto:carl.c.weber@nasa.gov).

**SUPPLEMENTARY INFORMATION:**

**A. Background**

Since July 13, 2000, the NASA FAR Supplement has required the Major Breach of Safety or Security clause (1852.223-75) in new solicitations and contracts with an estimated value over \$500,000. The clause declares the Government's right to terminate for default in the event of a major breach of safety or security. However, contracts for commercial items procured under FAR Part 12, and certain contracts for educational or nonprofit institutions do not provide the Government the right to "termination for default". Rather, these contracts include a termination for cause or termination for convenience clause only.

NASA Procurement Information Circular (PIC 02-11) issued June 24, 2002, suggested an alternate to the clause which deleted references to termination for default, and provided a class deviation to use the alternate under certain circumstances.

This proposed rule would add Alternate I to the Major Breach of Safety or Security clause at 1852.223-75, eliminating the need for PIC 02-01 and the class deviation. Use of the clause with its Alternate in contracts for commercial items procured under FAR Part 12, and contracts for research and development work with educational or nonprofit institutions on a nonprofit or no-fee basis would then be consistent with FAR termination clauses prescribed for use in such contracts.

This proposed rule is not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**B. Regulatory Flexibility Act**

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities with the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, since it clarifies agency regulations so they are employed consistently with FAR termination provisions.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes do not impose any new recordkeeping or information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

**List of Subjects in 48 CFR Parts 1823 and 1852**

Government procurement.

**Tom Luedtke,**

*Assistant Administrator for Procurement.*

Accordingly, 48 CFR parts 1823 and 1852 are proposed to be amended as follows:

**PART 1823—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE**

1. The authority citation for 48 CFR parts 1823 and 1852 continues to read as follows:

**Authority:** 42 U.S.C. 2473(c)(1).

2. Amend section 1823.7001 by revising paragraph (d) to read as follows:

**1823.7001 NASA solicitation provisions and contract clauses.**

\* \* \* \* \*

(d)(1) The contracting officer shall insert the clause at 1852.223-75, Major Breach of Safety or Security, in all solicitations and contracts with estimated values of \$500,000 or more, unless waived at a level above the contracting officer with the concurrence of the project manager and the installation official(s) responsible for matters of security, export control, safety, and occupational health.

(2) Insert the clause with its Alternate I if—

(i) The solicitation or contract is with an educational or other nonprofit institution and contains the termination clause at FAR 52.249; or

(ii) The solicitation or contract is for commercial items and contains the termination provisions found in FAR 52.212-4

(3) For contracts with estimated values below \$500,000, use of the clause is optional.

\* \* \* \* \*

**PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

3. Amend section 1852.223-75 by adding Alternate I to read as follows:

**1852.223-75 Major Breach of Safety or Security.**

\* \* \* \* \*

**ALTERNATE I**

(XX/XX)

As prescribed in 1823.7001(d)(ii), substitute the following paragraphs (a) and (b) for paragraphs (a) and (b) of the basic clause:

(a) Safety is the freedom from those conditions that can cause death, injury, occupational illness, damage to or loss of equipment or property, or damage to the environment. Safety is essential to NASA and is a material part of this contract. NASA's safety priority is to protect:

(1) The public; (2) astronauts and pilots; (3) the NASA workforce (including contractor employees working on NASA contracts); and (4) high-value equipment and property. A major breach of safety may constitute a breach of contract that entitles the Government to exercise any of its rights and remedies applicable to material parts of this contract, including termination. A major breach of safety must be related directly to the work on the contract. A major breach of safety is an act or omission of the Contractor that consists of an accident, incident, or exposure resulting in a fatality or mission failure; or in damage to equipment or property equal to or greater than \$1 million; or in any "willful" or "repeat" violation cited by the Occupational Safety and Health Administration (OSHA) or by a state agency operating under an OSHA approved plan.

(b) Security is the condition of safeguarding against espionage, sabotage, crime (including computer crime), or attack. A major breach of security may constitute a breach of contract that entitles the Government to exercise any of its rights and remedies applicable to material parts of this contract, including termination. A major breach of security may occur on or off Government installations, but must be related directly to the work on the contract. A major breach of security is an act or omission by the Contractor that results in compromise of classified information, illegal technology transfer, workplace violence resulting in criminal conviction, sabotage, compromise or denial of information technology services, equipment or property damage from vandalism greater than \$250,000, or theft greater than \$250,000.

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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 648**

[I.D. 060105B]

**Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Amendment 10 Atlantic Mackerel Limited Access Program and Control Date**

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

**ACTION:** Proposed rule; advance notice of proposed rulemaking (ANPR); reaffirmation of a control date; notice of intent to develop a limited access program; request for comments.

**SUMMARY:** NMFS announces that it is considering, and is seeking public comment on, proposed rulemaking to control future access to the Atlantic mackerel fishery if a management regime is developed and implemented under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to limit the number of participants in this fishery in Amendment 10 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan (FMP). This announcement alerts interested parties of potential eligibility criteria for future access so as to discourage speculative entry into the fishery while the Mid-Atlantic Fishery Management Council (Council) considers how access to the Atlantic mackerel fishery should be controlled. NMFS also reaffirms, on behalf of the Council, the most recent control date of July 5, 2002, for this fishery, which may be used for establishing eligibility criteria for determining levels of future access to the Atlantic mackerel fishery; informs the public that the Council is developing such a program in Amendment 10 to the FMP as expeditiously as possible; and notifies the public of several measures that are under consideration by the Council for inclusion in Amendment 10.

**DATES:** Written comments must be received on or before 5 p.m., local time, July 11, 2005.

**ADDRESSES:** Comments may be submitted as follows:

- Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on

Atlantic Mackerel Reaffirmation of Control Date."

- Comments may be sent via facsimile (fax) to: (978) 281-9135.
- Comments may be submitted by e-mail. The mailbox address for providing e-mail comments is *MackContDate.gov*. Include in the subject line of the e-mail comment the following document identifier: "Comments-Atlantic Mackerel Amendment 10."• Comments may also be submitted electronically through the Federal e-Rulemaking portal: <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Eric Jay Dolin, Fishery Policy Analyst, 978-281-9259; fax 978-281-9135. email: [eric.dolin@noaa.gov](mailto:eric.dolin@noaa.gov).

**SUPPLEMENTARY INFORMATION:** Atlantic mackerel (*Scomber scombrus*) is a migratory species that supports important recreational and commercial fisheries along the Atlantic coast of the United States and Canada. The Council has considered the possibility of limiting entry to the Atlantic mackerel fishery for more than a decade. An initial notification establishing a control date of August 13, 1992, for all of the fisheries included in the FMP (i.e., Atlantic mackerel, *Loligo* and *Illex* squids, and Atlantic butterfish) was published on August 13, 1992 (57 FR 36384). That document announced that, as of that date, no vessel would be guaranteed entry into a limited access fishery under the FMP, if the Council chose to implement such a program. The 1992 control date was rescinded for the Atlantic mackerel fishery on September 27, 1994 (59 FR 49235), because the Council and NMFS concluded that information regarding biomass levels, fishing levels, fishing effort, and catch indicated that the Atlantic mackerel fishery would not require limited access management in the foreseeable future. Rescission of the 1992 control date also was intended to remove a disincentive to fish for what was then considered an underutilized resource (Atlantic mackerel).

In Amendment 5 to the FMP, the Council proposed a provision to require the Secretary of Commerce (Secretary) to publish a control date for the Atlantic mackerel fishery when commercial landings reached 50 percent of its allowable biological catch. NMFS did not include that provision in the proposed rule for Amendment 5 (60 FR 65618, December 20, 1995), because the proposed measure was not appropriate to implement by regulation, but rather was an expression of the Council's intent.

In May 1997, the Council requested that NMFS publish an ANPR

reestablishing a control date for the Atlantic mackerel fishery. The Council intended the control date to discourage speculative entry of new vessels into the Atlantic mackerel fishery while the Council considered development of a management program to control the rate of capitalization. As a result, NMFS published an ANPR (62 FR 48047, September 12, 1997) that established a control date of September 12, 1997. Although the Council intended to develop a controlled access program for the Atlantic mackerel fishery through an amendment to the FMP soon after establishing the 1997 control date, subsequent FMP amendments focused on other issues, such as implementation of Sustainable Fisheries Act requirements.

In 2002, the Council became aware that domestic processing capacity for Atlantic mackerel could increase rapidly in the near future based on testimony from members of the harvesting and processing sectors of the industry indicating that there was significant interest in expansion of domestic shore-side processing for Atlantic mackerel. Because the Council was concerned about rapid expansion of harvesting capacity in the fishery, possible overcapitalization, and the fact that nearly 5 years had passed since the 1997 control date was established, the Council requested, in April 2002, that a new control date for the Atlantic mackerel fishery be established. As a result, NMFS published an ANPR on July 5, 2002 (67 FR 44792), which established that date as the new control date for the Atlantic mackerel fishery. The ANPR was again intended to discourage speculative entry into the fishery while potential management regimes to control access into the fishery were discussed and possibly developed by the Council, and to help the Council distinguish established participants from speculative entrants to the fishery, should such a program be developed. The ANPR noted that the control date did not commit the Council to develop any particular management regime or to use any specific criteria for determining entry to the fishery. However, it did inform the public that the Council might undertake rulemaking in the future to implement a limited access program and that interested participants in the Atlantic mackerel fishery should locate and preserve records that could be used to substantiate and verify their participation in the Atlantic mackerel fishery.

On March 4, 2005 (70 FR 10605), the Council published a notice of intent to prepare a Supplemental Environmental

Impact Statement to consider impacts of alternatives for limiting access to the Atlantic mackerel fishery. The Council subsequently conducted scoping meetings on development of a limited access program for Atlantic mackerel which the Council planned to include in Amendment 9 to the FMP. However, because the Council has decided to complete and submit for review by the Secretary of Commerce several other measures in Amendment 9 that are farther along in their development than the mackerel limited access program, the Council voted on May 4, 2005, to complete Amendment 9 without a limited access program for the Atlantic mackerel fishery, and to pursue the Atlantic mackerel limited access program through Amendment 10 to the FMP, which it will develop as expeditiously as possible, and concurrently with its completion of Amendment 9.

Because of concerns that the Atlantic mackerel fishery is at, or very near, the harvesting capacity that can be sustained by the long-term potential yield of the Atlantic mackerel resource, and because the development of a limited access program is typically complex and takes substantial time to complete, the Council also voted on May 4, 2005, to request that NMFS publish an ANPR to reaffirm the most

recent control date for this fishery, i.e., July 5, 2002, and to notify the public of its development of a limited access program in Amendment 10. Further, the Council requested that the public be notified that it is considering the following measures in Amendment 10: Qualification dates for the Atlantic mackerel fishery between 1983 and 2005; tiered levels of entry to the fishery; and, limitations on the size and/or allowable levels of participation of U.S. at-sea domestic processing in the fishery. Other measures may be considered; announcement of these measures is for informational purposes only and does not commit the Council to these or any other specific measures. In order to be approved and implemented, any measures proposed by the Council in Amendment 10 must be found consistent with the requirements of the Magnuson-Stevens Act and other applicable law. The public will have the opportunity to comment on the measures and alternatives being considered by the Council through public meetings and public comment periods required by the National Environmental Policy Act and the Magnuson-Stevens Act, and as provided by the Administrative Procedure Act.

This reaffirmation of the July 5, 2002, control date is intended to strongly

discourage speculative entry into the fishery while limited access measures are developed and considered by the Council. The control date may be used by the Council to distinguish established participants from speculative entrants to the fishery. Although vessels that have entered, or that will enter the fishery after the control date are not ensured future access to the Atlantic mackerel fishery on the grounds of previous participation, additional and/or other qualifying criteria may also be applied. Consideration of a control date does not commit the Council or NMFS to develop any particular management system or criteria for participation in this fishery. The Council may choose a different control date, or may choose a management program that does not make use of such a date. This notification also reminds the public that interested participants should locate and preserve records that substantiate and verify their participation in the Atlantic mackerel fishery in Federal waters.

Dated: June 3, 2005.

**Alan D. Risenhoover,**

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

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