

million. Available data for FY 2004 gross sales show that the maximum gross sales for any single commercial fishing vessel was \$1.8 million, and the maximum gross sales for any affected party/charter vessel was \$1.0 million. While an entity may own multiple vessels, available data make it difficult to determine which vessels may be controlled by a single entity. For this reason, each vessel is treated as a single entity for purposes of size determination and impact assessment. This means that all commercial and charter/party fishing entities would fall under the SBA size standard for small entities and, therefore, there is no differential impact between large and small entities.

*Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Final Rule*

This rule contains no collection-of-information requirements subject to the Paperwork Reduction Act.

*Description of Steps the Agency Has Taken to Minimize the Significant Economic Impact on Small Entities Consistent with the Stated Objectives of Applicable Statutes*

Two alternatives were considered regarding the 2006 Fixed Gear Sector Operations Plan and allocation of GB cod TAC: The no-action alternative and the proposed alternative. Under the no-action alternative, all Fixed Gear Sector vessels would remain in the common pool of vessels and be subject to all of the regulations implemented by Amendment 13 and subsequent adjustments to the FMP, and would not be allocated any portion of the GB cod target TAC. The proposed alternative implemented by this action, enables vessels to fish under the restrictions of the Operations Plan summarized above and allocates a portion of the GB cod target TAC to Fixed Gear Sector vessels.

Because cod usually represents a high proportion of total fishing income for gillnet and hookgear vessels, revenues for such vessel owners are very sensitive to changes in cod trip limits. As a result, the reduced number of available DAS and restrictive trip limits implemented by recent management actions such as FW 42 would result in revenue losses for Fixed Gear Sector vessels under the no-action alternative. In contrast, the 2006 Sector Operations Plan includes a number of provisions that would allow Fixed Gear Sector vessels to remain economically viable, minimize vessel expenses, and maximize consistent revenue streams throughout the fishing year compared to the no-action alternative, without compromising conservation objectives of the FMP.

Such provisions include the establishment of a hard TAC for GB cod landed by Fixed Gear Sector vessels, the even distribution of the allocated GB cod TAC throughout the fishing year, the ability to pool available DAS among Fixed Gear Sector vessels, and exemption from the GB Seasonal Closure Area for hook gear vessels. By facilitating the continued supply of groundfish, the preferred alternative allows Fixed Gear Sector vessels to maximize revenues from available fishing opportunities and, therefore, minimizes adverse economic impacts on small entities compared to the no-action alternative.

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

Dated: November 22, 2006.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

[FR Doc. 06-9452 Filed 11-24-06; 2:07 pm]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 060608158-6158-01; I.D. 051806E]

RIN 0648-AU47

#### Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Emergency Rule

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

**ACTION:** Temporary rule; emergency action extended.

**SUMMARY:** This rule continues management measures implemented by a June 16, 2006, emergency interim final rule that were set to expire on December 13, 2006. In the June 16, 2006, emergency action, NMFS implemented an observer service provider program for the Atlantic sea scallop (scallop) fishery including criteria for becoming an approved observer service provider, observer certification criteria, decertification criteria, and observer deployment logistics. Through the emergency rule, NMFS re-activated the industry-funded observer program implemented under the Atlantic Sea Scallop Fishery Management Plan (FMP) through a scallop total allowable catch (TAC) and days-at-sea (DAS) set-aside program that helps vessel owners

defray the cost of carrying observers. Under the emergency action, scallop vessel owners, operators, or vessel managers are required to procure certified fishery observers for specified scallop fishing trips from an approved observer service provider. The emergency rule maintains the existing requirements for scallop vessel owners to pay for observers whether or not scallop TAC or DAS set-aside is available. This extension of the emergency rule ensures that observers can continue to be deployed in the scallop fishery throughout the year.

**DATES:** The amendments in this rule to paragraphs (g), (h), and (i), are effective November 29, 2006, through June 11, 2007. The emergency rule published June 16, 2006 (71 FR 34842), is extended from December 13, 2006, through June 11, 2007.

**ADDRESSES:** Written comments regarding the burden-hour estimate or other aspects of the collection-of-information requirement contained in this rule should be submitted to the Regional Administrator at the address above and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or fax to (202) 395-7285.

**FOR FURTHER INFORMATION CONTACT:** Peter W. Christopher, Fishery Policy Analyst, 978-281-9288; fax 978-281-9135.

**SUPPLEMENTARY INFORMATION:** On June 16, 2006, an emergency rule implemented an observer service provider certification program that enabled NOAA Fisheries Service to reactivate the Scallop FMP's observer set-aside program. The emergency rule was necessary to resolve an issue with the observer program that rendered the Scallop FMP's observer set-aside program inoperable. Further, the Northeast Fisheries Science Center's (NEFSC's) FY 2006 level of funding for the observer program provided for only minimal coverage in the scallop fishery, and that is not expected to change in FY 2007. Additional background relative to the need for the action is included in the June 16, 2006, emergency rule, and is not repeated here.

The emergency rule established a program that allows observer service providers to be certified by NOAA Fisheries Service to deploy observers on scallop vessels. Certified observer service providers are required to meet specified criteria in order to remain certified under the emergency rule. In addition, vessel owners are required to procure observers from an approved observer service provider and must pay for the observer. To help defray the

costs of the observer, vessel owners are provided either additional scallop catch allowances when fishing in the Scallop Access Areas or additional fishing Days-at-Sea (DAS) when fishing in open areas. The Area Access Program specifies a portion of the total projected scallop catch from each area as a set-aside to cover the observer costs, and vessels that carry observers are authorized to land additional scallops on such trips. These additional scallops are deducted from the access area set-aside for observers. An additional set-aside of DAS operates similarly to cover the observer costs for vessels fishing in open areas. Once the set-asides are exhausted, vessel owners are no longer allocated any set asides to offset the costs of observer coverage, but they are still required to pay for the cost of observers, as specified in the scallop regulations at § 648.53(h)(1) and 648.60(d)(2).

The initial June 16, 2006, emergency rule expires on December 13, 2006, and is extended through June 11, 2007, by this action. Although there is less urgency for placing observers on scallop vessels in December through April, a lapse in coverage could compromise NOAA Fisheries Service's ability to gather complete fishing year data on the scallop fishery. In addition, turtles begin to move into the Mid-Atlantic in the spring, and observer coverage in the early spring months of April and May could help document potential interactions. Finally, a very high amount of scallop fishing effort is expected to occur in the Elephant Trunk Access Area (ETAA), a Mid-Atlantic Scallop Access Area, which will open to scallop fishing on January 1, 2007. Observer coverage in that area upon opening will help document fishing activity, scallop catch, and bycatch.

The justification for the extension of the emergency rule remains consistent with the Policy Guidelines for the Use of Emergency Rules (August 21, 1997, 62 FR 44422) because the continued NEFSC funding situation presents previously unforeseen circumstances that also present serious management problems to the fishery. The NEFSC does not expect that funding for the observer program will increase for 2007. Continued observer coverage in the scallop fishery is critical to document fishing activity, bycatch, and interactions with sea turtles throughout the fishing year.

This emergency action re-activates the industry-funded scallop observer program. Scallop vessels are required to procure observer coverage from a NMFS-approved observer service provider and to pay for the observer

coverage. This emergency rule establishes criteria for being approved by NMFS as an observer service provider for the scallop fishery. Entities interested in being included on the list of NMFS-approved observer service providers are required to submit an application with the information specified in the regulatory text of this rule. Upon receipt of an application, NMFS shall provide all potential observer service providers with an estimated number of observer sea days for this fishing year under this program. Additionally, a planned schedule of observer deployments shall be posted on this NOAA website <http://www.nefsc.noaa.gov/femad/fjsb/>. NMFS will notify candidate observer service providers of their approval or disapproval within 15 days of NMFS's receipt of the application. This emergency rule specifies observer service provider requirements, as well as observer requirements and responsibilities to become certified as an observer for the scallop fishery.

The scallop observer set-aside will provide scallop vessel owners with compensation for observer coverage up to a specified limit, as specified in the regulations for the scallop fishery. Once the set-aside is exhausted, vessel owners will no longer be compensated for coverage but will still have to pay for the cost of observers, as specified at §§ 648.53(h)(1) and 648.60(d)(2).

#### **Comments and Responses to the June 16, 2006, Emergency Interim Final Rule**

*Comment 1:* An environmental organization commented that NMFS must have tight control over the observer providers under the emergency action in order to ensure that appropriate quality control and accountability is built into the observer service provider program. The commenter suggests that NMFS must establish a contractual agreement with the provider.

*Response:* NMFS recognizes the need to establish necessary and tight controls over the observer service providers. However, the execution of a contractual agreement between NMFS and the observer provider was determined to be inconsistent, at this time, with augmentation of appropriations law and policy. However, NMFS believes that the requirements that are imposed on observer providers in order for them to remain certified allow NMFS to maintain sufficient quality and accountability of the observer providers. If the restrictive requirements are not met, the observer service provider risks decertification.

*Comment 2:* An environmental organization commented that only one observer service provider should be approved in order to avoid inefficiencies and management challenges that could result from having multiple observer providers.

*Response:* To ensure fair and equitable opportunities to the public, in the absence of contracting authority for this type of service, NMFS determined that it could not limit the participation to one observer provider.

*Comment 3:* An environmental organization commented that NMFS needs to make sure that it uses a method for obtaining money from the commercial fishing industry that does not lead to overfishing, increased interaction with sea turtles, or equity issues among fishermen.

*Response:* It is not clear how the exchange of funds to pay for observers would influence overfishing, interactions with sea turtles, or equity issues. None of the funds exchanged under the program are handled by NMFS. The vessel's owner, or vessel manager pays the observer provider directly, based on a fee and payment mechanism established by the observer service provider. NMFS uses a random sampling design to assign observers to a vessel on a trip by trip and vessel by vessel basis. The random observer deployment ensures that bias is not built into observer coverage and helps provide equity across the fleet. Further, an observer would be restricted from deploying on the same vessel on a frequent basis in order to avoid sampling bias.

*Comment 4:* An industry representative commented that NMFS must ensure that adequate and careful observer protocols must be followed under the emergency rule to ensure that the observers provide accurate information on yellowtail flounder bycatch in the access areas, in particular to avoid premature closure of the access areas. The representative urged NMFS to consider and address methodological issues promptly and to work with the industry to resolve potential problems with inadequate observer coverage or inaccurate information.

*Response:* NMFS acknowledges these concerns and notes that the emergency rule requires observer providers to employ observers that are fully trained by the Northeast Fisheries Observer Program (NEFOP) and that follow observer protocols established by the NEFOP.

*Comment 5:* An industry representative commented that its organization hoped to be able to work with NMFS and the observer providers

to work out practical issues that may arise from the program, such as billing logistics and affordability concerns related to catch rates and available set-aside.

*Response:* NMFS welcomes industry input on issues such as available set-aside and allocated compensation amounts. NMFS notes that in setting the scallop compensation amount, it must balance available set-aside with the cost of the observer and the amount of compensation that will enable a high number of trips to be observed and compensated. If the compensation amounts are set too high, the set-aside will run out sooner than if they are set lower. As a result, vessels would be required to carry observers and would not be compensated after the set-aside is exhausted. If the compensation is set too low, many scallop trips may not be able to recover enough funds to offset the observer costs. With respect to payment logistics, how vessels arrange payment for observers with the observer providers is between the vessel owner, vessel manager, or settlement house, and the observer provider. NMFS does not have any financial relationship with the observer provider for the purpose of deploying observers on scallop vessels and cannot therefore determine the mechanism for the exchange of funds.

#### Changes from June 16, 2006, Emergency Interim Final Rule

NMFS determined that some of the section references within the June 16, 2006, emergency were incorrect. Corrections to the following references have been made in this extension:

In § 648.11, paragraph (g)(1), a reference to paragraph (g)(2) of that section is changed to (g)(3) of that section, and a reference to paragraph (g)(5) of that section is changed to (g)(4)(ii) of that section.

In § 648.11, paragraph (h)(3)(vi), a reference to paragraph (h)(2) of that section is revised to paragraph (h)(5) of that section.

In § 648.11, paragraph (h)(7)(ii), a reference to paragraph (h)(3) of that section is revised to paragraph (h)(6) of that section.

In § 648.11, paragraph (i)(5), a reference to paragraph (i)(3) of that section is revised to paragraphs (i)(1) through (3) of that section.

#### Classification

Because this rule merely extends the emergency action already in place, for which public comment was accepted and considered, NOAA finds it is impracticable and contrary to the public interest to provide any additional notice and opportunity for public comment

under 5 U.S.C. 553(b)(B) prior to publishing the emergency rule. Waiving prior notice and comment allows the observer service provider certification program to remain in place, thereby allowing the NOAA Fisheries Service observer program to provide uninterrupted observer coverage to the scallop fishery, which avoids any gaps in collecting data about this fishery. Continued observer coverage in the scallop fishery is critical to accurately and consistently document fishing activity, bycatch, and interactions with sea turtles throughout the fishing year. For these reasons, the need to extend these measures to assure that there is no lapse in observer coverage in the scallop fishery, also constitutes good cause under authority contained in 5 U.S.C. 553(d)(3), to waive the 30-day delayed effective date, and implement the emergency action upon publication.

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

This emergency rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior notice and opportunity for public comment.

This rule contains new collection-of-information requirements approved under emergency Paperwork Reduction Act by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). These new requirements apply to entities interested in becoming NMFS-approved observer service providers and to those observer service providers approved by NMFS and providing observer services to the scallop fishery. Public reporting burden for these collections of information are estimated to average as follows:

1. Application for approval of observer service provider, OMB control number 0648-0546 (10 hr per response);
2. Applicant response to denial of application for approval of observer service provider, OMB control number 0648-0546 (10 hr per response);
3. Observer service provider request for observer training OMB # 0648-0546 (30 min per response);
4. Observer deployment report, OMB control number 0648-0546 (10 min per response);
5. Observer availability report, OMB control number 0648-0546 (10 min per response);
6. Safety refusal report, OMB control number 0648-0546 (30 min per response);
7. Submission of raw observer data, OMB control number 0648-0546 (5 min per response);
8. Observer debriefing, OMB control number 0648-0546 (2 hr per response);

9. Biological samples, OMB control number 0648-0546 (5 min per response);

10. Rebuttal of pending removal from list of approved observer service providers, OMB control number 0648-0546 (8 hr per response);

11. Vessel request to observer service provider for procurement of a certified observer, OMB control number 0648-0546 (25 min per response); and

12. Vessel request for waiver of observer coverage requirement, OMB control number 0648-0546 (5 min per response).

These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Public comment is sought regarding whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS and to OMB (see ADDRESSES).

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

#### List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: November 22, 2006.

**Samuel D. Rauch III,**

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

■ For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

#### PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

#### § 648.11 [Amended]

■ 2. Section 648.11 is amended as follows:

A. In paragraph (g)(1), remove “paragraph (g)(2)” the last time it appears and add “paragraph (g)(3)”, and remove “paragraphs (g)(3) and (5) of this section” and add “paragraphs (g)(3) and (g)(4)(ii) of this section.”

B. In paragraph (h)(3)(vi), remove “paragraph (h)(2) of this section” and add “paragraph (h)(5) of this section.”

C. In paragraph (h)(7)(ii), remove “paragraph (h)(3) of this section;” and add “paragraph (h)(6) of this section;”

D. In paragraph (i)(5), remove “paragraph (i)(3) of this section,” and add “paragraphs (i)(1) through (3) of this section.”

[FR Doc. E6-20248 Filed 11-28-06; 8:45 am]

BILLING CODE 3510-22-S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 051014263-6028-03; I.D. 112106B]

#### Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Specifications and Management Measures; Inseason Adjustments

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

**ACTION:** Inseason adjustments to groundfish management measures; request for comments.

**SUMMARY:** NMFS announces changes to management measures in the commercial and recreational Pacific Coast groundfish fisheries. These actions, which are authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP), are intended to allow fisheries to access more abundant groundfish stocks while protecting overfished and depleted stocks.

**DATES:** Effective 0001 hours (local time) December 1, 2006. Comments on this rule will be accepted through December 29, 2006.

**ADDRESSES:** You may submit comments, identified by I.D. 112106B, by any of the following methods:

- E-mail:

*GroundfishInseason11.nwr@noaa.gov*. Include I.D. 112106B in the subject line of the message.

• Federal eRulemaking Portal: *www.regulations.gov*. Follow the instructions for submitting comments.

• Mail: D. Robert Lohn, Administrator, Northwest Region, NMFS, Attn:

Gretchen Arentzen, 7600 Sand Point Way NE, Seattle, WA 98115-0070.

• Fax: 206-526-6736, Attn: Gretchen Arentzen.

#### FOR FURTHER INFORMATION CONTACT:

Gretchen Arentzen (Northwest Region, NMFS), phone: 206-526-6140; fax: 206-526-6736; or e-mail:

*gretchen.arentzen@noaa.gov*.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access

This **Federal Register** document is available on the Government Printing Office's website at: *www.gpoaccess.gov/fr/index.html*.

Background information and documents are available at the Pacific Fishery Management Council's (Pacific Council's) website at: *www.pcouncil.org*.

##### Background

The Pacific Coast Groundfish FMP and its implementing regulations at Title 50 in the Code of Federal Regulations (CFR), part 660, subpart G, regulate fishing for over 80 species of groundfish off the coasts of Washington, Oregon, and California. Groundfish specifications and management measures are developed by the Pacific Council, and are implemented by NMFS. The specifications and management measures for 2005-2006 were codified in the CFR (50 CFR part 660, subpart G). They were published in the **Federal Register** as a proposed rule on September 21, 2004 (69 FR 56550), and as a final rule on December 23, 2004 (69 FR 77012). The final rule was subsequently amended on March 18, 2005 (70 FR 13118); March 30, 2005 (70 FR 16145); April 19, 2005 (70 FR 20304); May 3, 2005 (70 FR 22808); May 4, 2005 (70 FR 23040); May 5, 2005 (70 FR 23804); May 16, 2005 (70 FR 25789); May 19, 2005 (70 FR 28852); July 5, 2005 (70 FR 38596); August 22, 2005 (70 FR 48897); August 31, 2005 (70 FR 51682); October 5, 2005 (70 FR 58066); October 20, 2005 (70 FR 61063); October 24, 2005 (70 FR 61393); November 1, 2005 (70 FR 65861); and December 5, 2005 (70 FR 723850). Longer-term changes to the 2006 specifications and management measures were published in the **Federal Register** as a proposed rule on December 19, 2005 (70 FR 75115) and as a final rule on February 17, 2006 (71 FR 8489). The final rule was subsequently amended on March 27, 2006 (71 FR 10545), April 11, 2006 (71 FR 18227), April 26, 2006 (71 FR 24601), May 11, 2006 (71 FR 27408), May 22, 2006 (71 FR 29257), June 1, 2006 (71 FR 31104), July 3, 2006 (71 FR 37839), August 7, 2006 (71 FR 44590), August 22, 2006 (71 FR 48824), October

2, (71 FR 57889), October 3, 2006 (71 FR 58289), October 10, 2006 (71 FR 59505), and November 16, 2006 (71 FR 66693).

The changes to current groundfish management measures implemented by this action were recommended by the Pacific Council, in consultation with Pacific Coast Treaty Indian Tribes and the States of Washington, Oregon, and California, at its November 12-17, 2006, meeting in Del Mar, CA. At that meeting, the Pacific Council recommended: (1) requesting industry to take voluntary action to reduce petrale sole catches if catch rates appear too high in December; (2) decreasing the limited entry fixed gear and open access daily-trip-limit (DTL) fishery for sablefish south of 36° N. lat. beginning December 1; and (3) prohibiting retention of cabezon in the recreational fishery in federal waters off Oregon.

##### Limited Entry Trawl Petrale Sole Fishery

The 2006 estimated total catch of petrale sole is approaching its 2006 ABC/OY. The best available information as of November 11, 2006 estimates petrale sole catch to be 2,174 mt out of an ABC/OY of 2,762, meaning that there are approximately 588 mt remaining for the November-December fishing period (Period 6). There is little recent data to inform catch projections for Period 6 since the Period 6 petrale fishery has largely been closed in the last several years. Based on 2006 fishery information, however, NMFS believes that ongoing fisheries will not exceed the ABC/OY for several reasons: (1) anecdotal information indicates that petrale sole have not yet migrated to open petrale fishing areas; (2) winter weather is expected to remain poor in the near future, which should dampen fishing effort; (3) the Dungeness crab fishery is expected to open in December along much of the coast and many trawl vessels are expected to switch their focus to that more lucrative fishery when it opens; and (4) the Period 6 trawl fishery has a cumulative petrale sole limit in place for 2006 to control catch levels; when petrale sole was available in prior Period 6 fishing periods, there were not limits for this species. In spite of these issues, it is important to consider that: overfishing on petrale sole occurred last year; the fleet is capable of catching in excess of 1,000 mt of petrale sole during a single period (as it did in the winter of 2005); and there is little data to inform this year's Period 6 projections.

The Pacific Council considered several options available to control the catch of this species through the end of the year in the event that catch rates