

of residential areas, schools, nursing homes, or daycares.

2. *Inhalation exposure.* For the same reasons non-occupational inhalation exposure to AF36 is expected to be minimal to non-existent.

#### V. Cumulative Effects

Another non-aflatoxin-producing strain of *Aspergillus flavus*, NRRL 21882, is undergoing research trials on corn in Texas, but not in the same areas to be treated during this EUP for AF36. Cumulative effects of these strains are not expected to exceed the risk cup for the registered *Aspergillus flavus* strains, AF36 and NRRL 21882. Furthermore, these strains are expected to decrease the presence of aflatoxin-producing colonies of the fungus on treated commodities and, thus, decrease the risks posed by the potent liver carcinogen, aflatoxin.

#### VI. Determination of Safety for U.S. Population, Infants, and Children

Based on the previously evaluated data, it is not necessary to use a safety factor to determine safety to children (see **Federal Register** of July 14, 2003 (68 FR 41535), as cited in Unit III.).

#### VII. Other Considerations

##### A. Endocrine Disruptors

See **Federal Register** of July 14, 2003 (68 FR 41535), as cited in Unit III.

##### B. Analytical Method(s)

See **Federal Register** of July 14, 2003 (68 FR 41535), as cited in Unit III.

##### C. Codex Maximum Residue Level

There is no Codex Maximum Residue Level (MRL) for residues of *Aspergillus flavus* AF36 on corn.

#### VIII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB

approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000) do not apply to this rule. In addition, this rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note).

#### IX. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to

publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 14, 2007.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

■ Therefore, 40 CFR part 180 is amended as follows:

#### PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.1206 is amended by adding paragraph (c) to read as follows:

**§ 180.1206 *Aspergillus flavus* AF36; exemption from the requirement of a tolerance.**

\* \* \* \* \*

(c) *Apergillus flavus* AF36 is temporarily exempt from the requirement of a tolerance on corn when used in accordance with the Experimental Use Permit 71693-EUP-2. This temporary exemption from tolerance will expire December 31, 2011.

[FR Doc. E7-24979 Filed 12-21-07; 8:45 am]

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#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

##### 50 CFR Part 648

[Docket No. 070808450-7714-02]

RIN 0648-AV83

##### Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Regulatory Amendment to Adopt Fishing Gear Standards for the NE Multispecies Regular B Day-At-Sea (DAS) Program and the Eastern U.S./Canada Haddock Special Access Program (SAP)

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

**ACTION:** Final rule.

**SUMMARY:** NMFS amends the regulations governing minimum performance standards of fishing gear proposed for use in both the NE multispecies Regular B DAS Program and the Eastern U.S./Canada Haddock SAP. The New England Fishery Management Council (Council) may request the Administrator, Northeast Region, NMFS (Regional Administrator) approve additional gear types for use in these programs if they meet the standard. The purpose of this rule is to provide greater flexibility to fishermen participating in these programs.

**DATES:** Effective January 25, 2008.

**FOR FURTHER INFORMATION CONTACT:** Douglas Potts, Fishery Management Specialist, (978) 281-9341, FAX (978) 281-9135.

**SUPPLEMENTARY INFORMATION:**

**Background**

On June 21, 2007, the Council approved a motion to recommend that the Regional Administrator approve gear performance standards for additional gear types in the Eastern U.S./Canada Haddock SAP, or additional trawl gear in the Regular B DAS Program.

On October 15, 2007, NMFS published a proposed rule in the *Federal Register* (72 FR 58280) to amend the regulations on procedures and requirements to approve additional gear types for use in these two programs. Public comment was accepted through November 14, 2007, and two comments were received, as summarized below. The NE multispecies DAS effort control system and the history of these two programs were outlined in the proposed rule and are not repeated here.

This final rule also corrects an inadvertent omission by reinserting relevant regulatory text specific to the U.S./Canada Management Area gear requirements that was inadvertently removed through the final rule implementing Framework Adjustment 42 to the Northeast Multispecies Fishery Management Plan. Additional details were provided in the proposed rule and are not repeated here.

**Comments and Responses**

NMFS received two comments during the comment period for the proposed rule. These comments were submitted by the Council and by the Cape Cod Commercial Hook Fisherman's Association (CCCHFA). The specific issues raised in these two comments are addressed below.

*Comment 1:* The Council noted that the term "stock of concern" is only defined in the regulations as regulated

groundfish stocks that are overfished or subject to overfishing and would not be applicable for non-regulated groundfish species.

*Response:* The proposed rule language specific to "other stocks of concern" was based upon the language in the original Council motion. To avoid any uncertainty about the phrase "other stocks of concern," the regulatory language has been further modified to define such other stocks as other non-groundfish stocks that are overfished or subject to overfishing identified by the Council.

*Comment 2:* The Council commented that the proposed rule was unclear on whether the required reductions in catch were for all regulated groundfish or just stocks of concern. From Council discussions it is clear the intent was to limit the reductions to stocks that are overfished or are experiencing overfishing.

*Response:* The regulatory language has been modified to clarify that reductions are specific to stocks that are overfished or experiencing overfishing.

*Comment 3:* The CCCHFA commented that the NMFS Regional Administrator should have greater flexibility to add or remove gear from these programs based on how that gear is used in the fishery, and not solely on its performance in a controlled research setting.

*Response:* To be consistent with the Council's request for gear standards, and the purpose of allowing certain types of gear in areas where bycatch of groundfish stocks of concern may occur, rigorous experimental comparison is necessary to thoroughly demonstrate that a new proposed gear is comparable to those currently approved. The potential for bycatch, and the impacts of environmental conditions, vessel size, or crew behavior are difficult to properly account for when monitoring the performance of gear in the commercial fishery. However, the performance of gear in the fishery will continue to be monitored and the use of inappropriate modification or misuse of gear to negate the required catch reduction may result in removal of gear from these programs.

*Comment 4:* The CCCHFA stated that allowing the Council to specify which stocks are subject to the standard and which are not would reduce flexibility in these programs.

*Response:* This provision was included in the regulatory text specifically to increase the flexibility for both the Council and the NMFS Regional Administrator. If the regulations specified which stocks had to show reduced catch and which could

sustain increased mortality, it would require a regulatory change to modify the regulations if rebuilt stocks, or stocks in relatively good condition, for example, declined in the future.

*Comment 5:* The CCCHFA expressed concern that experimental results may not translate well into gear performance in the fishery. Gear could be misused and either result in reduced harvest of the intended target species, or increased catch of bycatch species.

*Response:* The proper use of any approved gear is a legitimate concern. To the extent practical, important aspects of approved gear will be specified in the regulations. As noted in the response to Comment 3, the performance of gear in the fishery will continue to be monitored and possession limits, for example, could be adjusted to encourage the proper use of specific gear. If it becomes evident that a gear is not working effectively in the field, it may be removed from these programs.

**Changes From the Proposed Rule**

NMFS has made changes to the proposed rule. In § 648.85, paragraphs (b)(6)(iv)(J)(2)(i) and (ii) have been revised, in response to comment and in order to be consistent with Council intent, by specifying that required catch reductions apply to regulated species stocks of concern and non-groundfish stocks that are overfished or subject to overfishing.

**Classification**

The Administrator, Northeast Region, NMFS, determined that the final rule is necessary for the conservation and management of the NE multispecies fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

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

The Regional Administrator has determined that this final rule is a minor technical addition, correction, or change to a management plan and is therefore categorically excluded from the requirement to prepare an Environmental Impact Statement or equivalent document under the National Environmental Policy Act.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the

proposed rule and is not repeated here. No comments were received regarding this certification or on the economic impacts of the proposed rule. As a result, a regulatory flexibility analysis was not required and none was prepared.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 18, 2007

**Samuel D. Rauch III,**

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

■ For the reasons stated 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.*

■ 2. In § 648.14, paragraphs (a)(132) and (c)(81) are revised to read as follows:

**§ 648.14 Prohibitions.**

(a) \* \* \*

(132) If fishing with trawl gear under a NE multispecies DAS in the Eastern U.S./Canada Area defined in § 648.85(a)(1)(ii), fail to fish with a haddock separator trawl or a flounder trawl net, as specified in § 648.85(a)(3)(iii); unless using other gear as authorized under § 648.85 (b)(6) or (b)(8).

\* \* \* \* \*

(c) \* \* \*

(81) If fishing with trawl gear in the Regular B DAS Program specified in § 648.85(b)(6), fail to use a haddock separator trawl as described under § 648.85(a)(3)(iii)(A); or other gear as authorized under § 648.85(b)(6)(iv)(J).

\* \* \* \* \*

■ 3. In § 648.85, paragraph (a)(3)(iii) introductory text is added, and

paragraphs (b)(6)(iv)(J)(2) and (b)(8)(v)(E)(2) are revised to read as follows:

**§ 648.85 Special management programs.**

(a) \* \* \*

(3) \* \* \*

(iii) *Gear requirements.* NE

multispecies vessels fishing with trawl gear in the Eastern U.S./Canada Area defined in paragraph (a)(1)(ii) of this section, unless otherwise provided in paragraphs (b)(6) and (b)(8) of this section, must fish with a haddock separator trawl or a flounder trawl net, as described in paragraphs (a)(3)(iii)(A) and (B) of this section (both nets may be onboard the fishing vessel simultaneously). Gear other than the haddock separator trawl or the flounder trawl net as described in paragraph (a)(3)(iii) of this section, or gear authorized under paragraphs (b)(6) and (b)(8) of this section, may be on board the vessel during a trip to the Eastern U.S./Canada Area, provided the gear is stowed according to the regulations at § 648.23(b). The description of the haddock separator trawl and flounder trawl net in this paragraph (a)(3)(iii) may be further specified by the Regional Administrator through publication of such specifications in the **Federal Register**, consistent with the requirements of the Administrative Procedure Act.

\* \* \* \* \*

(b) \* \* \*

(6) \* \* \*

(iv) \* \* \*

(J) \* \* \*

(2) *Approval of additional gear.* At the request of the Council or the Council's Executive Committee, the Regional Administrator may authorize additional gear for use in the Regular B DAS Program, through notice consistent with the Administrative Procedure Act. The proposed gear must satisfy standards specified in paragraph (b)(6)(iv)(J)(2)(i) or (ii) of this section in a completed

experiment that has been reviewed according to the standards established by the Council's research policy before the gear can be considered and approved by the Regional Administrator. Comparisons of the criteria specified in this paragraph (b)(6)(iv)(J)(2) will be made to an appropriately selected control gear.

(i) The gear must show a statistically significant reduction in catch of at least 50 percent (by weight, on a trip-by-trip basis) of each regulated species stock of concern, unless otherwise allowed in this paragraph (b)(6)(iv)(J)(2)(i), or other non-groundfish stocks that are overfished or subject to overfishing identified by the Council. This requirement does not apply to regulated species identified by the Council as not being subject to gear performance standards; or

(ii) The catch of each regulated species stock of concern, unless otherwise allowed in this paragraph (b)(6)(iv)(J)(2)(ii), or other non-groundfish stocks that are overfished or subject to overfishing identified by the Council, must be less than 5 percent of the total catch of regulated groundfish (by weight, on a trip-by-trip basis). This requirement does not apply to regulated species identified by the Council as not being subject to gear performance standards.

\* \* \* \* \*

(8) \* \* \*

(v) \* \* \*

(E) \* \* \*

(2) *Approval of additional gear.* The Regional Administrator may authorize additional gear for use in the Eastern U.S./Canada Haddock SAP in accordance with the standards and requirements specified at § 648.85(b)(6)(iv)(J)(2).

\* \* \* \* \*

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