

necessary to complete research projects funded through the Monkfish RSA Program. In recent years, researchers have stated that factors such as regulatory changes, increased fuel costs, and delayed grant approval, have greatly impacted their ability to use all of the monkfish RSA DAS within the fishing year for which they were granted. For example, in fishing year 2007 (the second year of the program), 367 monkfish RSA DAS were allocated, but 296 DAS were used, leaving 71 monkfish RSA DAS unused. However, in fishing year 2008, the number of unused monkfish RSA DAS doubled to 153 out of a total of 500 monkfish RSA DAS allocated.

This action is administrative in nature and will not have any economic impacts on small entities. This action would allow researchers issued grants under the Monkfish RSA Program the ability to fulfill those grant obligations by providing them the opportunity to complete their research projects if, for unforeseen circumstances, they are unable to utilize all of their monkfish RSA DAS during the fishing year for which those DAS were granted. Therefore, because this action makes only a minor administrative change to the Monkfish RSA Program to ensure that this program functions as intended, it will not have any economic effect on small entities.

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 20, 2009.

**James W. Balsiger,**

*Acting Assistant Administrator For Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be 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 § 648.92, paragraph (c)(1)(v) is revised to read as follows:

#### § 648.92 Effort-control program for monkfish limited access vessels.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(v) If the Regional Administrator determines that the annual allocation of research DAS will not be used in its entirety once all of the grant awards have been approved, the Regional Administrator shall reallocate the unallocated research DAS as exempted DAS to be authorized as described in paragraph (c)(2) of this section, and provide notice of the reallocation of DAS in the **Federal Register**. Any allocated research DAS that are not used

during the fishing year for which they are granted may be carried over into the next fishing year. Any unallocated research DAS may not be carried over into the next fishing year.

\* \* \* \* \*

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#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 0907241164-91187-01]

RIN 0648-AY09

#### Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** This proposed regulatory amendment would authorize the NMFS Northeast Regional Administrator (RA), or the RA's designee, to issue a Letter of Authorization (LOA) to eligible researchers on board federally permitted fishing vessels that plan to temporarily possess fish in a manner not compliant with applicable fishing regulations, for the purpose of collecting scientific data on catch. Currently, federally permitted fishing vessels that carry research personnel during commercial fishing trips for the purpose of collecting catch data before discarding fish that otherwise could not be retained are required to obtain an exempted fishing permit (EFP) in order to conduct their sampling work, which is administratively burdensome and has resulted in the delay and lost opportunity to conduct important fishery research.

**DATES:** Written comments must be received on or before November 25, 2009.

**ADDRESSES:** You may submit comments, identified by 0648-AY09, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>.
- Mail: Paper, disk, or CD-ROM comments should be sent to Regional Administrator, National Marine Fisheries Service, 55 Great Republic

Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on the Proposed Rule to Modify Northeast Region Experimental Fishing Regulations."

• Fax: (978) 281-9135; attention Ryan Silva.

**Instructions:** All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All personal identifying information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

#### FOR FURTHER INFORMATION CONTACT:

Ryan Silva, Cooperative Research Liaison, phone (978) 281-9326, fax (978) 281-9135.

**SUPPLEMENTARY INFORMATION:** This proposed rule would revise portions of the Northeast Region experimental fishing regulations by authorizing the RA, or the RA's designee, to issue an LOA to eligible researchers on board federally permitted fishing vessels that temporarily possess fish species that otherwise could not be retained under the applicable fishing regulations, for the purpose of collecting scientific data on catch. The proposed changes would be enacted under the authority given to the Secretary of Commerce to promulgate regulations to fully carry out the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Northeast Region fishing regulations found at 50 CFR part 648 implement management measures for fisheries operating under 15 fishery management plans (FMPs). These regulations include minimum fish sizes, fish possession limits, and various spatial and temporal fish possession restrictions such as quota and area closures. Federally permitted fishing vessels that carry research personnel during commercial fishing trips for the purpose of collecting catch data before discarding restricted fish are currently required to obtain an EFP in order to conduct their sampling work. An EFP is required primarily because the vessel would be in possession of fish species that otherwise could not be retained, albeit temporarily, in a manner inconsistent

with normal commercial fishing operations. For example, if a vessel were to be intercepted by an enforcement agent and the vessel was in possession of fish that otherwise could not be retained, but had been retained for data collection purposes and had not yet been processed and discarded, the vessel would be in violation of fishing regulations. Although all such fish are discarded once the data have been collected, there would be a period of time when the vessel was in possession of fish that could not legally be retained. In all other respects, the vessels are operating in compliance with commercial fishing regulations.

The requirement to obtain an EFP prior to conducting these types of sampling activities on commercial fishing vessels has raised several issues and concerns within the scientific community, the Regional Fishery Management Councils, and among NMFS Regional Office (RO) and Science Center staff. Due to the time necessary to request and obtain an EFP, these temporary possession EFPs can inhibit the ability of fishery researchers to opportunistically accompany commercial fishing vessels for the purpose of data collection. This has resulted in the delay and lost opportunity to conduct important fishery research, which negatively affects cooperative research efforts and increases the cost of data collection. In addition, the administrative burden on NMFS from processing and overseeing these routine EFPs is substantial.

To mitigate these concerns, this proposed rule would authorize the RA, or the RA's designee, to issue an LOA to eligible researchers on board federally permitted fishing vessels that temporarily possess fish species that could otherwise not be retained under applicable fishing regulations for the purpose of collecting scientific data on catch (temporary possession LOA). Temporary possession LOAs would allow researchers and NMFS to forego the full EFP process, which includes the solicitation of public comment and consultation under applicable laws such as the Endangered Species Act (ESA) and the National Environmental Policy Act (NEPA), for each project requesting authorization to collect at-sea catch data. The RA would determine whether the applicant and participating vessels meet the eligibility criteria prior to issuing or denying a temporary possession LOA application. The time to complete the review process would be greatly reduced, which would facilitate important fishery research and reduce lost data collection opportunities, foster collaborative

relationships between the fishing industry and the fishery research community, and reduce the cost of at-sea catch data collection. In addition, this would greatly reduce the administrative burden on NMFS that results from processing these routine EFPs.

NMFS would maintain discretion over the vessels and researchers that are issued temporary exemption LOAs. To ensure effective oversight, eligible vessels would need to meet the requirements described below, and EFP oversight policies would apply to all vessels issued a temporary possession LOA. Any additional exemptions beyond temporary possession would need to be obtained through the standard EFP process.

Only personnel from the following bodies would be eligible for a temporary possession LOA: Foreign government agency; U.S. Government agency; U.S. state or territorial agency; university (or other educational institution accredited by a recognized national or international accreditation body); international treaty organization; or scientific institution.

To obtain a temporary possession LOA, an eligible applicant would be required to submit a complete application, similar to an EFP application, which would contain the following information: The date of the application; the applicant's name, mailing address, and telephone number; a statement of the purposes and goals for which the LOA is needed; the name(s) and affiliation of the fishery research technicians that will be collecting the data; a statement demonstrating the qualifications of the research technician that will be collecting the data; the species (target and incidental) expected to be harvested under the LOA; the disposition of all regulated species harvested under the LOA; the approximate time(s) and place(s) fishing would take place; the type, size, and amount of gear to be used; and the signature of the applicant. In addition, for each vessel to be covered by the LOA, as soon as the information is available and before operations begin, the applicant would be required to supply the vessel operator name, the vessel's Federal fishing permit number, and the vessel registration or documentation number.

#### Classification

Pursuant to section 305(d) of the Magnuson-Stevens Act, the Assistant Administrator for Fisheries, NOAA, has determined that this proposed rule is consistent with the Fishery Management Plans (FMPs) of the Northeast Region, other provisions of the Magnuson-

Stevens Act, and other applicable law, subject to further consideration after public comment.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows:

The cooperative research community, which includes principal investigators, research technicians, and commercial fishermen, would be the primary group affected by this rule. It is estimated that approximately 50 individuals would be affected by this rule. It is unlikely that this rule will have any effect on any other entity or business. No regulated entities would incur any additional costs as a result of this rule as these individuals are already required under 50 CFR 600.745 to apply for an EFP. This action would simplify and streamline the process to obtain the necessary documentation.

As a result, an initial regulatory flexibility analysis is not required, and none has been prepared.

This proposed rule contains collection-of-information requirements that have already been reviewed and approved by the Office of Management and Budget (OMB) under OMB control number 0648-0309 ("Scientific Research, Exempted Fishing, and Exempted Activity Submissions"). Send comments on these or any other aspects of the collection of information to the Northeast Regional Office at the **ADDRESSES** above, and by e-mail to David\_Rostker@omb.eop.gov or fax to (202) 395-7285.

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, Reporting and recordkeeping requirements.

Dated: October 20, 2009.

**John Oliver,**

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

For the reasons stated in the preamble, 50 CFR part 648 is proposed to be 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 § 648.12, paragraph (d) is added to read as follows:

**§ 648.12 Experimental fishing.**

\* \* \* \* \*

(d) *Temporary possession letter of authorization (LOA):* The Regional Administrator (RA), or the RA's designee, may issue an LOA to eligible researchers on board federally permitted fishing vessels on which species of fish that otherwise could not be legally retained would be possessed temporarily for the purpose of collecting catch data. Under this authorization, such species of fish could be retained temporarily for scientific purposes, but shall be discarded as soon as practicable following data collection.

(1) *Eligible activities.* An LOA may be issued by the RA, or the RA's designee, to temporarily exempt a vessel, on

which a qualified fishery research technician is collecting catch data, from the following types of fishery regulations: Minimum fish size restrictions; fish possession limits; species quota closures; prohibited fish species, not including species protected under the Endangered Species Act; and gear-specific fish possession restrictions.

(2) *Eligibility criteria.* Only personnel from the following bodies are eligible for a temporary possession LOA: Foreign government agency; U.S. Government agency; U.S. state or territorial agency; university (or other educational institution accredited by a recognized national or international accreditation body); international treaty organization; or scientific institution.

(3) *Application requirements.* To obtain a temporary possession LOA, an eligible applicant, as defined under paragraph (d)(2) of this section, would be required to submit a complete application, which would contain the following information: The date of the application; the applicant's name,

mailing address, and telephone number; a statement of the purposes and goals for which the LOA is needed; the name(s) and affiliation of the fishery research technicians that will be collecting the data; a statement demonstrating the qualifications of the research technician that will be collecting the data; the species (target and incidental) expected to be harvested under the LOA; the disposition of all regulated species harvested under the LOA; the approximate time(s) and place(s) fishing would take place; the type, size, and amount of gear to be used; and the signature of the applicant. In addition, for each vessel to be covered by the LOA, as soon as the information is available and before operations begin, the applicant would be required to supply to NMFS the vessel operator name, the vessel's Federal fishing permit number, and the vessel registration or documentation number.

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