

catches in the particular category for biological sampling and monitoring of the status of the stock; the catches of the particular category quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made; the projected ability of the vessels fishing under the particular category quota to harvest the additional amount of BFT before the end of the fishing year; the estimated amounts by which quotas for other gear categories of the fishery might be exceeded; effects of the adjustment on BFT rebuilding and overfishing; effects of the adjustment on accomplishing the objectives of the fishery management plan; variations in seasonal distribution, abundance, or migration patterns of BFT; effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the category's quota; and a review of dealer reports, daily landing trends, and the availability of the BFT on the fishing grounds.

NMFS has considered the set of criteria cited above and their applicability to the General category BFT retention limit for the January 2010 General category fishery. For example, under the 2-fish limit that applied in January 2009, January landings were very close to the base subquota of 25.2 mt, later adjusted in the final 2009 specifications to 33 mt. Under the proposed 2010 BFT quota specifications, the adjusted January 2010 January subquota would be 28.6 mt. Based on these considerations, NMFS has determined that the General category retention limit should be adjusted to allow for retention of the anticipated 2010 General category quota, and that the same approach used for January 2009 is warranted. Therefore, NMFS increases the General category retention limit from the default limit to two large medium or giant BFT, measuring 73 inches CFL or greater, per vessel per day/trip, effective January 1, 2010, through January 31, 2010. Regardless of the duration of a fishing trip, the daily retention limit applies upon landing. For example, whether a vessel fishing under the General category limit takes a two-day trip or makes two trips in one day, the daily limit of two fish may not be exceeded upon landing. This General category retention limit is effective in all areas, except for the Gulf of Mexico, and applies to those vessels permitted in the General category as well as to those HMS Charter/Headboat permitted vessels fishing commercially for BFT.

This adjustment is intended to provide a reasonable opportunity to harvest the U.S. quota of BFT without

exceeding it, while maintaining an equitable distribution of fishing opportunities, to help achieve optimum yield in the General category BFT fishery, to collect a broad range of data for stock monitoring purposes, and to be consistent with the objectives of the Consolidated HMS FMP.

#### Monitoring and Reporting

NMFS selected the daily retention limit for January 2010 after examining an array of data as it pertains to the determination criteria. These data included, but were not limited to, current and previous catch and effort rates, quota availability, previous public comments on inseason management measures, stock status, etc. NMFS will continue to monitor the BFT fishery closely through the mandatory dealer landing reports, which NMFS requires to be submitted within 24 hours of a dealer receiving BFT. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional retention limit adjustments are necessary to ensure available quota is not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas.

Closures or subsequent adjustments to the daily retention limits, if any, will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (888) 872-8862 or (978) 281-9260, or access the internet at <http://www.hmspermits.gov>, for updates on quota monitoring and retention limit adjustments.

#### Classification

The Assistant Administrator for NMFS (AA), finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the Consolidated HMS FMP provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Affording prior notice and opportunity for public comment to implement these retention limits is impracticable as it would preclude NMFS from acting promptly to allow harvest of BFT that are available on the fishing grounds. Analysis of available data shows that the General category BFT retention limits may be increased with minimal risks of exceeding the ICCAT-allocated quota.

Delays in increasing these retention limits would adversely affect those

General and Charter/Headboat category vessels that would otherwise have an opportunity to harvest more than the default retention limit of one BFT per day and may exacerbate the problem of low catch rates and quota rollovers. Limited opportunities to harvest the respective quotas may have negative social and economic impacts for U.S. fishermen that depend upon catching the available quota within the time periods designated in the Consolidated HMS FMP. Adjustment of the retention limit needs to be effective January 1, 2010, to minimize any unnecessary disruption in fishing patterns and for the impacted sectors to benefit from the adjustments so as to not preclude fishing opportunities for fishermen who have access to the fishery only during this time period.

Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, and because this action relieves a restriction (*i.e.*, the default General category retention limit is one fish per vessel/trip whereas this action increases that limit and allows retention of additional fish), there is also good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under 50 CFR 635.23(a)(4) and (b)(3) and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: December 18, 2009.

**Alan Risenhoover,**

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

[FR Doc. E9-30843 Filed 12-28-09; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 0909011267-91427-02]

RIN 0648-AY19

#### 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:** Final rule.

**SUMMARY:** NMFS is modifying the fishing vessel permit regulations to include specific terms and conditions for Federal fishing vessel permits obtained through the purchase of fishing vessels using Federal grant awards. The terms and conditions authorize the NMFS Administrator, Northeast Region (Regional Administrator), to suspend, cancel, fail to renew, modify, or otherwise rescind any Federal fishing vessel permit, or the rights thereto, if the terms and conditions of any Federal grant award used to obtain said permit, or an associated memorandum of understanding or agreement, are violated by the grant recipient.

**DATES:** This final rule is effective on January 28, 2010.

**ADDRESSES:** Copies of the Regulatory Impact Review (RIR) are available upon request from Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930.

**FOR FURTHER INFORMATION CONTACT:** Michael Pentony, Senior Fishery Policy Analyst, phone (978) 281-9283.

**SUPPLEMENTARY INFORMATION:**

**Background**

This final rule implements changes to the Northeast (NE) fisheries regulations at 50 CFR part 648 to authorize the Regional Administrator to suspend, cancel, fail to renew, modify, or otherwise rescind any Federal fishing vessel permit, including the rights thereto, held by a person, corporation, non-profit organization, or government entity if the terms and conditions of any Federal grant award used to obtain said permit, or an associated memorandum of understanding or agreement, are violated by the grant recipient. The intent of this action is to establish an effective regulatory mechanism through which NOAA will be able to enforce the terms and conditions of any Federal grant award used to obtain Federal fishing vessel permits in the NE Region.

As several fisheries in the NE Region begin to transition to catch-share management strategies, various fishing organizations, conservations groups, and states are exploring alternatives to the traditional vessel-permit ownership model. An alternative model known as "permit banking" is developing in the Northeast, whereby an organization obtains a suite of permits in a particular fishery, with the option to lease out the fishing rights associated with those permits.

Permit banks hold promise for addressing two important issues related to the development and implementation of effective catch-share management

programs: First, permit banks could be used to ease the transition to catch-share management by expanding the pool of catch shares available for use; and, second, permit banks could be used to demonstrate that small fishing operations and small communities can be successful participants in catch-share management programs. Depending on the structure of the permit bank, and the criteria used for participation, permit banks could be very effective at protecting the fishing interests of small communities and small-scale fishing operations by mitigating some of the consolidation of fishing rights that often follows implementation of catch-share programs.

Interest in developing permit banking programs is expanding in the NE and, because of NOAA's policy position promoting catch-share management, the NMFS NE Regional Office has proposed a pilot program designed to guide the development and expansion of permit banks in order to facilitate the implementation of effective catch-share programs. In the spending plan for a recent Congressional authorization for New England fisheries assistance, NOAA proposed to award a \$1-million grant to develop this pilot permit banking program in Maine. Since then, NMFS has been working in partnership with Maine's Department of Marine Resources on a program that would allow the State to use the grant award to purchase fishing vessels with associated permits. The fishing rights associated with the permits would then serve as the basis for a permit bank to be operated by the State, in partnership with NMFS, to facilitate the transition to catch-share management by leasing additional fishing opportunities to qualified vessel owners in small ports. The State of Maine is very interested in developing such a partnership and establishing a permit bank. If the pilot program proves successful, NOAA may consider expanding the program throughout other parts of the NE Region.

Absent this regulatory change, NOAA would not be able to retain sufficient control and oversight of the resulting permit banking program to ensure its success. Under current grant management rules and fishing vessel permit regulations, once a grant award is made to an organization, and the award is used to obtain fishing vessel permits, NOAA risks losing control over the implementation and operation of the resulting permit bank. Even if the grant includes special award conditions specifying the criteria to be used in operation of the permit bank, NOAA would have limited mechanisms to enforce those criteria once an

organization obtains the permits. In order to protect NOAA's and the public's interests in the successful development, implementation, and operation of such a program, this regulatory change is necessary to provide NOAA with an appropriate oversight mechanism.

This action amends the NMFS NE Region regulations regarding fishing vessel permits to include specific terms and conditions that will apply to Federal fishing vessel permits obtained through the purchase of fishing vessels using Federal grant awards. The terms and conditions authorize the Regional Administrator to suspend, cancel, fail to renew, modify, or otherwise rescind any Federal fishing vessel permit, including the rights thereto, held by a person, corporation, non-profit organization, or government entity if the terms and conditions of any Federal grant award used to obtain said permit, or an associated memorandum of understanding or agreement, are violated by the grant recipient.

In addition, this final rule responds to three issues raised in the comments received on the proposed rule for this action. First, NMFS's intent is for this action to apply only to Federal grants issued by NOAA for the express purpose of purchasing fishing vessels, obtaining fishing vessel permits, and/or establishing or expanding a permit bank, and this action would not apply to permits obtained through grants of a more general nature or those awarded by other Federal agencies. Second, the new regulation implemented by this final rule is intended to provide an oversight mechanism for vessel permit-related grants that supplements but does not replace, supersede, or contravene existing enforcement provisions and procedures established under Department of Commerce regulations at 15 CFR parts 14 and 24. Third, it is NMFS's intent that any such controls applied to a permit bank as authorized by this action would be imposed either at the time of an application for a permit lease transaction or at the time of permit renewal, and it is not NMFS's intent for such permit sanctions to affect the intended recipients of the permit lease transactions.

**Comments and Responses**

Nine individual comment letters were received on the proposed rule.

*Comment 1:* One commenter objected to the suggestion that a potential pilot permit bank with the State of Maine may be limited to qualified vessels in small ports, and took issue with statements in the preamble to the

proposed rule regarding potential benefits of permit banks.

*Response:* NMFS understands that some stakeholders may object to some of the terms and conditions that may be placed on Federal grant awards used to obtain fishing vessel permits for the purpose of establishing one or more permit banks. However, nothing in this action imposes or constrains any future actions with respect to the specific terms and conditions that may be imposed on a state, or other party, regarding a Federal grant award that may be used to establish a permit bank. This action is wholly constrained to establishing an effective oversight mechanism such that NOAA, should it at some future time provide a Federal grant award to a state, or other party, for the purpose of obtaining one or more fishing vessels and the associated Federal permits, as a means to retain some level of oversight and control over how the fishing rights associated with the permits are used, beyond the duration of the Federal grant award. Regarding the perceived implications of permit banks for the affected public, NMFS considers permit banks as one potential tool to ease the transition to catch-share management programs and as a potential way to preserve fishing opportunities for small fishing operations and/or small fishing communities so that they can participate effectively in catch-share management programs. However, NMFS acknowledges that permit banks are not proven to achieve these goals in all cases. This is why the preamble to the proposed rule referred to a potential permit bank with the State of Maine as a pilot program. NMFS intends to utilize this opportunity, should a grant be awarded to the State of Maine for this purpose, to study the implications of establishing such a permit bank and would utilize the results of the pilot program to inform decisions on potential future expansion of the permit bank concept.

*Comment 2:* A commenter opposed the authority proposed in the rule because it would deny the permit bank the opportunity to be heard on the issues by an Administrative Law Judge, and because the fishermen who leased the fishing rights associated with the permits in question may suffer economic hardship if the permits are rescinded.

*Response:* Existing Department of Commerce regulations at 15 CFR parts 14 and 24 establish the overarching procedures and requirements for Federal grants to institutions of higher education, hospitals, other non-profits, commercial organization, and state and

local governments, and also stipulate procedures to enforce the terms and conditions of such grants. Regulations at 15 CFR 14.62(a) and 15 CFR 24.43(a) provide as “remedies for noncompliance,” that the awarding agency may take actions that include temporarily withholding cash payments, suspending or terminating the current award, withholding future awards, or taking “other remedies that may be legally available.” By this rule, NMFS is establishing an additional remedy to be available for the enforcement of a Federal grant intended to be used for a permit bank. Regarding the comment that the rule would “deny the permit bank the opportunity to be heard on the issues,” existing regulations at 15 CFR 14.62(b) and 24.43(b) provide such an opportunity for a hearing or appeal, as follows “In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled . . .” Nothing in this rule preempts or replaces these existing regulations. Also, as clarified above, NMFS does not intend for any enforcement action taken pursuant to this rule to adversely affect fishermen who leased the fishing rights associated with the subject permits. NMFS intends that any such enforcement action would be taken either at the time of an application for a permit lease transaction, at the time of permit renewal, or prior to the start of a fishing year.

*Comment 3:* A number of commenters indicated general support for the intent of the proposed rule and for permit banks in general, but raised several relevant questions regarding how this rule would be implemented. The commenters questioned: (1) The definition of what qualified as a Federal grant for the purposes of this rule; (2) who is responsible for determining when a violation of a grant agreement has occurred and what specific enforcement action the violation would merit; and (3) whether there would be a formal appeals or arbitration process established for cases when the parties disagree as to whether a violation has occurred.

*Response:* In response to the first question raised by the commenters, NMFS clarifies in this final rule that the intent is for this action to apply only to Federal grants issued by NOAA for the express purpose of purchasing fishing vessels, obtaining fishing vessel permits, and/or establishing or expanding a permit bank, and this action would not apply to permits obtained through

grants of a more general nature or those awarded by other Federal agencies. Regarding who is responsible for determining whether a violation of a grant agreement has occurred, Department of Commerce regulations at 15 CFR 14.61, 14.62, 24.43, and 24.44 establish that the Grants Officer may terminate grant awards, or take appropriate enforcement actions. Upon closeout of the grant award, if the operation of a permit bank program continues under the terms of a memorandum of understanding or agreement between NMFS and the grant recipient, this authority shall transition to the Regional Administrator for the remaining effective period of the subject memorandum of understanding or agreement. Regarding the determination of the specific enforcement action would be taken if a violation is determined to have occurred, NMFS intends that this would depend on the scope and severity of the violation in question. NMFS intends first to attempt to resolve any concerns with the operation of a NOAA-funded permit bank informally between the program contact representatives for the respective parties. Failing this, concerns may be raised to the level of the respective signatories of the memorandum of understanding or agreement for resolution. If resolution cannot be achieved at this level, the Grants Officer or Regional Administrator will reserve the right to take appropriate enforcement action, as authorized by 15 CFR 14.62 and 24.43, and this action. Regarding the potential for an appeals or arbitration process in the event the parties disagree as to whether a violation has occurred, the Department of Commerce regulations at 15 CFR 14.62(b) and 14.43(b) provide for the grantee to have an opportunity for a hearing, appeal, or other administrative proceeding. Nothing in this action is intended to replace, supersede, or contravene existing Department of Commerce regulations on administration of Federal grants.

*Comment 4:* A comment letter on behalf of the State of Maine indicated general support for the proposed rule, but also raised a concern about the potential terms of the proposed grant to the State of Maine to establish a permit bank.

*Response:* The details of any terms and conditions applicable to a proposed grant to the State of Maine will be developed and finalized in a separate and future action, and are not relevant to this rule.

*Comment 5:* A comment letter on behalf of the New England Fishery Management Council requested that the

final rule make clear that all vessel permits obtained using Federal grant awards be used in a manner consistent with all fishery management plan provisions governing those permits, and that the permits should not be subject to additional constraints without Council consideration.

*Response:* NMFS intends for any fishing operations conducted by a vessel using access rights (e.g., DAS, ACE) associated with a Federal permit obtained using a Federal grant award to be consistent with applicable fishery management plan provisions and to fully comply with all applicable fishing regulations. However, NMFS reserves the right to establish more restrictive criteria for the operations of any permit banks established using Federal grant awards.

*Comment 6:* A commenter opposed the use of Federal funds to establish permit banks.

*Response:* While NMFS acknowledges that some stakeholders may have concerns regarding the use of Federal funds to establish permit banks, this action does not, in itself, create or authorize the use of Federal funds in this manner. This action is wholly constrained to establishing an effective enforcement mechanism such that NOAA, should it at some future time provide a Federal grant award to a state, or other party, for the purpose of obtaining one or more fishing vessels, and the associated Federal permits, retains some level of oversight and control over how the fishing rights associated with the permits are used, beyond the duration of the Federal grant award.

#### Classification

Pursuant to section 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator determined that this final rule is consistent with the Fishery Management Plans (FMPs) of the NE Region, other provisions of the Magnuson-Stevens Act, and other applicable law, and is necessary to discharge the general responsibility to carry out said FMPs.

This final 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 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. 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 22, 2009.

**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.*

■ 2. In § 648.4, add paragraph (n) to read as follows:

##### § 648.4 Vessel permits.

\* \* \* \* \*

(n) *Federal grant awards.* The Regional Administrator may suspend, cancel, fail to renew, modify, or otherwise rescind any Federal fishing vessel permit, issued pursuant to this section, including the rights thereto, held by a person, corporation, non-profit organization, or government entity if the terms and conditions of any Federal grant award used to obtain said permit, or an associated memorandum of understanding or agreement, are violated by the grant recipient.

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#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

##### 50 CFR Part 679

[Docket No. 0910091344-9056-02]

RIN 0648-XT52

##### Fisheries of the Exclusive Economic Zone Off Alaska; Inseason Adjustment to the 2010 Gulf of Alaska Pollock and Pacific Cod Total Allowable Catch Amounts

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

**ACTION:** Temporary rule; inseason adjustment; request for comments.

**SUMMARY:** NMFS is adjusting the 2010 total allowable catch (TAC) amounts for

the Gulf of Alaska (GOA) pollock and Pacific cod fisheries. This action is necessary because NMFS has determined these TACs are incorrectly specified, and will ensure the GOA pollock and Pacific cod TACs are the appropriate amounts based on the best available scientific information for pollock and Pacific cod in the GOA. This action is consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP).

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), December 29, 2009, until the effective date of the final 2010 and 2011 harvest specifications for GOA groundfish, unless otherwise modified or superseded through publication of a notification in the **Federal Register**.

Comments must be received at the following address no later than 4:30 p.m., A.l.t., January 13, 2010.

**ADDRESSES:** Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by RIN 0648-XT52, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.
- Mail: P.O. Box 21668, Juneau, AK 99802.
- Fax: (907) 586-7557.
- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record. No comments will be posted to <http://www.regulations.gov> for public viewing until after the comment period has closed. Comments will generally be posted 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:** Obren Davis, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the FMP prepared by the North Pacific Fishery Management