

10. *Federal Rules that Overlap, Duplicate or Conflict with These Requirements:* None.

11. *Description, Potential Impact and Number of Small Entities Involved:* Any policies or regulations adopted in this proceeding could affect state, local, and nongovernmental regulatory entities, as well as small businesses that install or use devices designed for over-the-air reception of television broadcast signals and multichannel multipoint distribution services.

12. *Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives:* This Notice solicits comments on any suggested alternatives.

### III. Initial Paperwork Reduction Act of 1995 Analysis

13. This NPRM contains either a proposed or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget ("OMB") to take this opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law No. 104-13. Public and agency comments are due at the same time as other comments on the NPRM; OMB comments are due June 17, 1996. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

### IV. Procedural Provisions

14. *Ex parte Rules—Non-Restricted Proceeding.* This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, provided that they are disclosed as provided in Commission's rules. See generally 47 CFR 1.1202, 1.1206.

15. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before May 6, 1996, and reply comments on or before May 21, 1996. To file formally in this proceeding, you must file an original and six copies of all comments, reply

comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original and eleven copies. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, with a copy to Randi Albert of the Cable Services Bureau, 2033 M Street, N.W., Room 700Q, Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C. 20554.

### V. Ordering Clauses

16. It is ordered that, pursuant to Section 207 of the Telecommunications Act of 1996; and Sections 1, 303, of the Communications Act of 1934, as amended, 47 U.S.C. 151, 303(r), Notice is hereby given of proposed implementation of Section 207 of the Telecommunications Act of 1996, in accordance with the proposals, discussions, and statement of issues in this NPRM and Comment is Sought regarding such proposals, discussions, and statements of issues.

17. It is further ordered that the Secretary shall send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Public Law 96-354, 94 Stat. 1164, 5 U.S.C. 601 et seq. (1981).

18. For additional information regarding this proceeding, contact Randi Albert or Jacqueline Spindler, Consumer Protection and Competition Division, Cable Services Bureau (202) 416-0800.

Federal Communications Commission.

William F. Caton,

*Acting Secretary.*

[FR Doc. 96-9491 Filed 4-17-96; 8:45 am]

BILLING CODE 6712-01-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 651

[Docket No. 960216032-6107-02; I.D. 032196D]

RIN 0648-AH70

### Northeast Multispecies Fishery; Amendment 7; Resubmission of Disapproved Measure

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

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

**SUMMARY:** NMFS proposes amending its proposed regulations published on March 5, 1996, to implement Amendment 7 to the Northeast Multispecies Fishery Management Plan (FMP) in order to implement a resubmitted part of the amendment that was initially disapproved on February 14, 1996. The New England Fishery Management Council (Council) has clarified that the proposed measure to increase fishing time would apply to all vessels using large mesh. The intended effect of this measure is to promote conservation by providing an equitably applied incentive to use nets constructed of mesh that are larger than the minimum size.

**DATES:** Comments on this proposed rule must be received by May 15, 1996.

**ADDRESSES:** Comments should be sent to Dr. Andrew A. Rosenberg, Director, Northeast Regional Office, NMFS, 1 Blackburn Drive, Gloucester, MA 01930. Mark on the outside of the envelope "Comments on Large Mesh Individual DAS vessels."

**FOR FURTHER INFORMATION CONTACT:** Susan A. Murphy, Fishery Policy Analyst, 508-281-9252.

**SUPPLEMENTARY INFORMATION:** The Council submitted Amendment 7 to the FMP on February 5, 1996. After a preliminary evaluation, the following three measures in the amendment were disapproved on February 14, 1996: An additional allowance of days at sea for trawl vessels enrolled in the Individual Days-at-Sea (DAS) category that use 8-inch (20.32-cm) mesh; a 300-lb (136.1-kg) possession limit of regulated species for vessels that use 8-inch (20.32-cm) mesh in an exempted fishery; and the establishment of a limited access category for vessels that fished in the Possession Limit Open Access category under Amendment 5. The remainder of

Amendment 7 was published as a proposed rule on March 5, 1996 (61 FR 8540). Pursuant to section 304(b)(3)(A) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), the Council has resubmitted the measure that would allow additional DAS for vessels enrolled in the Large Mesh Individual DAS category as described in this proposed rule. The Council also resubmitted the proposal to allow a 300-lb (136.1-kg) possession limit when fishing in an exempted fishery with 8-inch (20.32-cm) mesh, but this measure has been disapproved again and is not contained in this action. The third disapproved measure has not been resubmitted.

The Large Mesh Individual DAS option that would grant additional DAS for vessels fishing for groundfish exclusively with large mesh was proposed by the Council based on its policy to provide incentives for using mesh larger than the minimum size. The original submission of this measure was disapproved, because it appeared to apply only to all trawl vessels and not to all gillnet vessels, which would have created an inequity and would, therefore, have been inconsistent with Magnuson Act National Standard 4.

At its February 27–28, 1996, meeting, the Council clarified its intent and voted to resubmit a measure that proposes that additional DAS under the Large Mesh Individual DAS category apply to both trawl and gillnet vessels, thereby eliminating what was previously identified as an inequity. This rule proposes this measure and provides that an increase in DAS under the Large Mesh Individual DAS category would be equivalent to the Large Mesh Fleet increase in DAS, i.e., an additional 12 percent in year 1 and 36 percent in year 2.

As stated in the proposed rule to implement Amendment 7, this measure raises issues of concern. The first issue of concern is over how NMFS would calculate the number of DAS for any gillnet vessel that may appeal the number of Individual DAS assigned to it by NMFS. Second, as mesh selectivity studies for 7-inch (17.8-cm) and 8-inch (20.2-cm) mesh do not currently exist, it is impossible to know whether and how much the selectivity of this increased mesh would compensate for the additional allocation of DAS. Public comment is sought on both of these concerns.

The Council also resubmitted the disapproved 300-lb (136.1-kg) regulated species possession limit for vessels fishing with 8-inch (20.32-cm) mesh in an exempted fishery, claiming that there would be a conservation

benefit by creating an added incentive to use a mesh larger than the minimum regulated mesh of 6 inches (15.24 cm). This measure was initially disapproved, because it could not be reasonably calculated to promote conservation, and, therefore, would be inconsistent with National Standard 4.

In its resubmission justification, the Council notes that in the event that a fishery is deemed exempt, because it has been determined that the bycatch of regulated species does not exceed the maximum 5-percent standard, a vessel may still catch some groundfish when fishing with 6-inch (15.24-cm) mesh and consequently be forced to discard more and smaller fish than if it were fishing with 8-inch (20.32-cm) mesh. The Council further states that if a fishery is determined to meet the 5 percent criteria with 6-inch (15.24-cm) mesh, providing an incentive to use a larger mesh than that on which the exemption is based would not increase the regulated species bycatch rate above 5 percent. The Council notes that, when fishing with larger mesh, vessels would have a lower regulated species bycatch rate and would be providing for the escapement of a greater proportion of juvenile and undersized groundfish. Therefore, the Council believes that the resubmitted measure would promote conservation and would be consistent with the objectives of the amendment. In resubmitting this measure the Council states that it is their belief that when provided an incentive to retain a 300-lb (136.1-kg) possession limit when fishing in an exempted fishery, vessels would be encouraged to use 8-inch (20.32-cm) mesh, thereby reducing overall groundfish mortality.

Although it is possible that in some exempted fisheries discards may be reduced when fishing with 8-inch (20.32-cm) mesh as opposed to the current regulated mesh size, NMFS has disapproved this resubmitted measure for the same reason that it was initially disapproved, i.e., because it conflicts with the Council's proposed exempted fishery measure. The clear intent of the exemption program is to prevent any vessel, when not fishing under the DAS effort control program, from fishing in a fishery that has a bycatch of regulated species comprising 5 percent or more of its total catch. The Council originally arrived at the 5 percent standard as a realistic measure to use in order to allow some fishing to continue when a vessel is not directing effort on groundfish. Just as the 500-lb (226.8-kg) possession limit under Amendment 5 provided an incentive for vessels to target groundfish when fishing outside of a DAS, it is believed that the 300-lb

(136.1-kg) possession limit may do the same and would, therefore, counteract the conservation effect of the bycatch protection measure. Further, because the Council's proposal would allow a vessel to stow nets of mesh less than 8 inches (20.32 cm) on board its vessel when fishing in an exempted fishery, an enforcement concern is raised that some vessels would use net liners to harvest a groundfish bycatch. In addition, it would allow participants in certain exempted fisheries an advantage that participants in other exempted fisheries do not have, without any clear conservation benefit. For these reasons, this measure cannot be reasonably calculated to promote conservation and is, therefore, inconsistent with National Standard 4.

In discussing this issue at its February Council meeting, it appears that the Council's recommendation for the 300-lb (136.1-kg) measure may be to allow a reasonable bycatch of regulated species in the monkfish fishery. This fishery is essentially unregulated, although the Council is moving forward with a plan amendment to add monkfish as a species regulated by the FMP. Depending upon which types of controls are placed on this fishery, the regulated species bycatch provision may be more appropriately considered in the development of monkfish conservation measures.

NMFS notes that portions of the regulatory text proposed at 61 FR 8540 on March 5, 1996, would be amended by this proposed rule.

#### Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act, as amended, requires NMFS to publish implementing regulations proposed by a Council within 15 days of the receipt of an amendment and proposed regulations. At this time, NMFS has not determined whether the amendment this rule would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. NMFS, in making that determination, will take into account the information, views and comments received during the comment period.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The proposed measure contained in this rule is not modified from that included in the Council's initial Amendment 7 submission. As such, the final supplemental environmental impact statement (FSEIS), regulatory impact review (RIR), and the initial regulatory flexibility analysis (IRFA) on Amendment 7 considered this measure.

A separate regulatory flexibility analysis was not prepared for this action. Copies of the FSEIS/RIR/IRFA for Amendment 7 can be obtained by contacting Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906-1097.

A formal section 7 consultation under the Endangered Species Act was conducted for Amendment 7 to the FMP. A biological opinion was prepared by a formal section 7 consultation for Amendment 7 and it was determined that fishing activities conducted under the amendment and its implementing regulations may affect but are not likely to jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of critical habitat. This action does not change that conclusion.

#### List of Subjects in 50 CFR Part 651

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 12, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Part 651 is proposed to be amended as follows:

#### PART 651—NORTHEAST MULTISPECIES FISHERY

1. The authority citation for part 651 continues to read as follows:

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

2. In § 651.20, the proposed rule published at 61 FR 8540 on March 5, 1996, is proposed to be amended by revising paragraphs (a)(2)(ii), (c)(2)(ii), and (d)(2)(ii) to read as follows:

#### § 651.20 Regulated mesh areas and restrictions on gear and methods of fishing.

\* \* \* \* \*

(a) \* \* \*

(2) \* \* \*

(ii) *Large Mesh vessels.* When fishing in the GOM/GB regulated mesh area, the minimum mesh size for any sink gillnet on a vessel, or used by a vessel, fishing under a DAS in the Large Mesh DAS programs specified in § 651.22(b)(6) and (7) shall be 7-inch (17.78-cm) diamond mesh throughout the entire net. The minimum mesh size for any trawl net on a vessel, or used by a vessel, fishing

under a DAS in the Large Mesh DAS programs shall be 8-inch (20.32-cm) diamond mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq. ft (0.81 m<sup>2</sup>)), or to vessels that have not been issued a Federal multispecies permit under § 651.4 and that are fishing exclusively in state waters.

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(ii) *Large Mesh vessels.* When fishing in the SNE regulated mesh area, the minimum mesh size for any sink gillnet on a vessel, or used by a vessel, fishing under a DAS in the Large Mesh DAS programs specified in § 651.22(b)(6) and (7) shall be 7-inch (17.78-cm) diamond mesh throughout the entire net. The minimum mesh size for any trawl net on a vessel, or used by a vessel, fishing under a DAS in the Large Mesh DAS programs shall be 8-inch (20.32-cm) diamond mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 x 3 ft (0.9 x 0.9 m), (9 ft<sup>2</sup> (0.81 m<sup>2</sup>)), or to vessels that have not been issued a Federal multispecies permit under § 651.4 and that are fishing exclusively in state waters.

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(ii) *Large Mesh vessels.* When fishing in the MA regulated mesh area, the minimum mesh size for any sink gillnet on a vessel, or used by a vessel, fishing under a DAS in the Large Mesh DAS programs specified in § 651.22(b)(6) and (7) shall be 7-inch (17.78-cm) diamond mesh throughout the entire net. The minimum mesh size for any trawl net on a vessel, or used by a vessel, fishing under a DAS in the Large Mesh DAS programs shall be 8-inch (20.32-cm) diamond mesh throughout the net. This restriction does not apply to nets or pieces of nets smaller than 3 x 3 ft (0.9 x 0.9 m), (9 ft<sup>2</sup> (0.81 m<sup>2</sup>)), or to vessels that have not been issued a Federal multispecies permit under § 651.4 and that are fishing exclusively in state waters.

\* \* \* \* \*

3. In § 651.22, the proposed rule published at 61 FR 8540 on March 5, 1996, is proposed to be amended by

revising paragraph (b)(6) and adding paragraph (b)(7) to read as follows:

#### § 651.22 Effort control program for limited access vessels.

\* \* \* \* \*

(b) \* \* \*

(6) *Large Mesh Individual DAS Category—*(i) *DAS allocation.* Vessels fishing under the Large Mesh Individual DAS category shall be allocated a DAS increase that is equivalent to 12 percent in year 1 and 36 percent in year 2 beyond the DAS allocations specified in paragraph (b)(1)(i) of this section. To be eligible to fish under the Large Mesh Individual DAS permit category a vessel, while fishing under the DAS program, must fish with gillnet gear with a minimum mesh net of 7-inch (17.78-cm) diamond or trawl gear with a minimum mesh size of 8-inch (20.32-cm) diamond, for the entire fishing year, as described under § 651.20(a)(2)(ii), (c)(2)(ii), and (d)(2)(ii).

(ii) *Initial assignment.* No vessel shall be initially assigned to the Large Mesh Individual DAS category. Any vessel that is initially assigned to the Individual DAS, Fleet DAS, or Small Vessel permit category may request and be granted a change in category into this category as specified in § 651.4(f)(3).

(7) *Large Mesh Fleet DAS Category—*(i) *DAS allocation.* Vessels fishing under the Large Mesh Fleet DAS category shall be allocated 155 DAS for the 1996 fishing year, and 120 DAS for the 1997 fishing year and beyond. To be eligible to fish under the Large Mesh Fleet DAS permit category a vessel, while fishing under the DAS program, must fish with gillnet gear with a minimum mesh net of 7-inch (17.78-cm) diamond or trawl gear with a minimum mesh size of 8-inch (20.32-cm) diamond, for the entire fishing year, as described under § 651.20(a)(2)(ii), (c)(2)(ii), and (d)(2)(ii).

(ii) *Initial assignment.* No vessel shall be initially assigned to the Large Mesh Fleet DAS category. Any vessel that is initially assigned to the Individual DAS, Fleet DAS, or Small Vessel permit category may request and be granted a change in category into this category as specified in § 651.4(f)(3).

\* \* \* \* \*

[FR Doc. 96-9593 Filed 4-15-96; 4:42 pm]

BILLING CODE 3510-22-F