

**Classification**

Pursuant to section 304 (b)(1)(A) of the MSA, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Atlantic Herring FMP, other provisions of the MSA, and other applicable law, subject to further consideration after public comment.

The National Environmental Policy Act analysis to support this action was completed in Amendment 4 (76 FR 11373, March 2, 2011).

This proposed rule has been determined to be not significant for purposes of Executive Orders 12866. This proposed rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

In 2010, there were catch limit overages in herring management areas 1A and 1B equal to 1,878 mt and 1,639 mt, respectively. In accordance with regulations at § 648.201(a)(3), this action proposes to deduct the 2010 overages from 2012 catch limits. Therefore, in 2012, the sub-ACL for Area 1A would be 24,668 mt (reduced from 26,546 mt) and the sub-ACL for Area 1B would be 2,723 mt (reduced from 4,362 mt).

Amendment 4 analyzed the effects of deducting ACL/sub-ACL overages from the subsequent corresponding ACL/sub-ACL. During a year when the ACL/sub-ACL is exceeded, fishery participants may benefit economically from higher catch. In the subsequent year, when the amount of the overage is deducted from that ACL/sub-ACL and the amount of harvest is lower, fishery participants may experience negative economic impacts. Since deductions are the same magnitude as the overages, there would be no overall change to the amount of fish available for harvest. Therefore, if participants are active in the fishery during the overage year and the deduction year, the total economic impact on participants would be neutral.

In 2010, 101 vessels were issued limited access herring permits and 2,258 were issued open access herring permits. All participants in the herring fishery are small entities as defined by the SBA under the Regulatory Flexibility Act, as none grossed more than \$4 million annually, so there

would be no disproportionate economic impacts on small entities.

Total herring revenue in 2010 equaled approximately \$18.8 million for limited access vessels and \$150,000 for open access vessels. Because most vessels that harvest herring participate in other fisheries, revenue generated by herring catch is only a portion of their income. Herring revenue averaged 20 percent of total fisheries revenue for limited access vessels in 2010 and less than 1 percent of total fisheries revenue for open access vessels in 2010. The reduced sub-ACLs in Areas 1A and 1B are estimated to equal \$1 million in lost revenue in 2012. Absent the sub-ACL reductions in Areas 1A and 1B, the total potential herring revenue in 2012 is estimated to be \$26.4 million. The sub-ACL reductions in Areas 1A and 1B would reduce the total potential herring revenue by 4 percent in 2012. While this action reduces the amount of fish available for harvest, both the fishery-wide and individual-vessel economic effects are anticipated to be minimal because the reduction is relatively minor and herring vessels generate most of their revenue participating in other fisheries.

For all the reasons described above, an initial regulatory flexibility analysis is not required and none has been prepared.

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

Dated: December 19, 2011.

**Samuel D. Rauch III,**

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

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**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 648**

**[Docket No. 110901552-1736-01]**

**RIN 0648-BB34**

**Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Amendment 17**

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

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

**SUMMARY:** NMFS proposes regulations to implement measures in Amendment 17 to the Northeast Multispecies Fishery Management Plan. This action would amend the Northeast Multispecies Fishery Management Plan to explicitly define and facilitate the effective operation of state-operated permit banks. As proposed in Amendment 17, state-operated permit banks would be allocated an annual catch entitlement and specifically authorized to provide their annual catch entitlement and/or days-at-sea to approved groundfish sectors for the purpose of enhancing the fishing opportunities available to sector members. This action also includes a provision that would allow NMFS to issue a days-at-sea credit to a vessel that cancels a fishing trip prior to setting or hauling fishing gear and the vessel, therefore, does not catch or land fish at any time on the trip.

**DATES:** Comments must be received by January 23, 2012.

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS-2011-0186, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal [www.regulations.gov](http://www.regulations.gov). To submit comments via the e-Rulemaking Portal, first click the "submit a comment" icon, then enter NOAA-NMFS-2011-0186 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the "Submit a Comment" icon on the right of that line.

- **Mail:** Submit written comments to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on NE Multispecies Amendment 17."

- **Fax:** (978) 281-9135, Attn: William Whitmore

**Instructions:** Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will 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). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the Amendment 17 document, including an environmental assessment and a regulatory impact review, are available from the Northeast Regional Office of the National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. This document is also accessible via the Internet at <http://www.nero.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** William Whitmore, Fishery Policy Analyst, (978) 281-9182; fax: (978) 281-9135.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The final rule implementing Amendment 13 to the Northeast (NE) Multispecies Fishery Management Plan (FMP) (69 FR 22906; April 27, 2004) specified a process for forming sectors within the NE multispecies fishery, implemented restrictions applicable to all sectors, and authorized the allocation of a total allowable catch (TAC) for specific groundfish species to a sector. As approved in Amendment 13, each sector must prepare a sector operations plan, which must be submitted to NMFS along with signed sector member contracts. Each sector operations plan must contain certain elements, including rules that sector members agree to abide by to avoid exceeding their sector's TAC. An environmental assessment (EA), or other appropriate analysis, must be prepared that analyzes the individual and cumulative impacts of all proposed sector operations. Additionally, the public must be provided an opportunity to comment on the proposed sector operations plans, sector contracts, and EA. Amendment 13 also implemented the first operational sector. A second sector was approved in Framework Adjustment (FW) 42 (71 FR 62156; October 23, 2006).

Amendment 16 (74 FR 18262; April 9, 2010) expanded sector management measures and authorized 17 new sectors, for a total of 19 sectors. The amendment defined a sector as "[a] group of persons (three or more persons, none of whom have an ownership interest in the other two persons in the sector) holding limited access vessel permits who have voluntarily entered into a contract and agree to certain fishing restrictions for a specified period of time, and which has been granted a

TAC(s) [*sic*] in order to achieve objectives consistent with applicable FMP goals and objectives." A sector's TAC is referred to as an annual catch entitlement (ACE). Each sector's ACE for a particular stock represents a share of that stock's annual catch limit (ACL) available to commercial NE multispecies vessels, based upon the potential sector contribution (PSC) of permits participating in that sector. Regional Administrator (RA) approval is required for a sector to be authorized to fish and to be allocated an ACE for stocks of regulated NE multispecies during each fishing year. Each sector is responsible for monitoring its catch, reporting catch to NMFS, and ensuring it does not exceed its ACE.

In 2009 and 2010, NOAA provided nearly \$6 million in funding through Federal grants to the states of Maine, New Hampshire, Massachusetts, and Rhode Island for the express purpose of establishing several "permit banks" of NE multispecies fishing vessel permits. The permit banks were developed jointly by the states and NMFS, through memoranda of agreement (MOA), to help promote the effective implementation of catch share programs in New England and to mitigate some of the potential adverse socio-economic impacts to fishing communities and small-scale fishing businesses. The intent of the permit bank program is for states to use the funding to obtain fishing vessel permits and then to provide the fishing opportunities associated with those permits in the form of ACE and/or days-at-sea (DAS) to qualified fishermen.

Currently, state-operated permit banks are not recognized under the provisions of the NE Multispecies FMP, and the only entities allocated and authorized to transfer a sector's ACE to approved sectors are other approved sectors. The only mechanism currently available for a state-operated permit bank to operate (*i.e.*, transfer ACE to fishermen in sectors) is for the state permit bank to either join an existing sector as a member or to form a sector with other permit holders.

Although FW 45 (76 FR 23042; April 25, 2011) authorized five additional sectors, including the Maine Permit Bank Sector, the State of Rhode Island Permit Banking Sector, the State of New Hampshire Permit Bank Sector, and the Commonwealth of Massachusetts Permit Bank Sector. Only the Maine Permit Bank Sector fulfilled the necessary roster requirements and gained approval by the RA for operation during FY 2011 (76 FR 23076; April 25, 2011). Several states have been hesitant to enroll in or form a sector due to sector liability

issues. As a result, the other state-operated permit banks have been unable to utilize any Federal funding to allocate ACE to qualifying sectors.

This action proposes to amend the NE Multispecies FMP to explicitly define and facilitate the effective operation of state-operated permit banks. This action would also amend the regulations implementing the NE Multispecies, Monkfish, and Atlantic Sea Scallop FMPs to include a provision that would allow NMFS to issue a DAS credit to a vessel that canceled a fishing trip prior to setting or hauling fishing gear and the vessel, therefore, did not catch or land fish at any time on the trip.

##### **Proposed Measures**

The following summarizes the measures proposed by the New England Fishery Management Council (Council) in Amendment 17 and contained in this proposed rule. These measures build upon the provisions implemented by previous management actions and are intended to either supplement or replace existing regulations that would otherwise apply to state-operated permit banks. This proposed rule also includes revisions to regulations that are not specifically identified in Amendment 17, but are necessary to clarify existing provisions, as described further below. The proposed regulations implementing measures in Amendment 17 were deemed by the Council to be consistent with the amendment, and necessary to implement such provisions pursuant to section 303(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), through a September 7, 2011, letter from the Council Chairman to the RA.

##### *1. Definition of a State-Operated Permit Bank*

In Amendment 17, NMFS proposes to define a state-operated permit bank as a permit depository established through an agreement between NOAA and one or more states in which Federal grant funds are used by the state(s) to establish a bank of Federal fishing vessel permits so that the fishing access privileges associated with those permits may be allocated by the state(s) to qualifying commercial fishermen and sectors according to criteria to which NOAA and the state(s) have mutually agreed through an MOA. State-operated permit banks would be separate entities from the groundfish sectors. As proposed, state-operated permit banks would no longer be subject to the requirement that three or more persons be included in a sector, which the states claim inhibits the development of their permit banks.

State-operated permit banks shall be deemed to meet the definition above, and therefore qualify to operate as intended in this proposed action, so long as the state-operated permit bank was initially established using a Federal grant award from NOAA for this purpose and the state maintains a valid MOA with NMFS. The MOA between NMFS and each state establishes the parameters that the state must follow in order to receive Federal grant funding that is then applied towards purchasing NE multispecies permitted vessels and transferring the ACE allocated to the permit bank to approved sectors. A state-operated permit bank must have a valid MOA in order to operate.

## *2. Clarification and Streamlining of Administrative Procedures and Requirements for State-Operated Permit Banks*

Under this amendment, state-operated permit banks would be allocated ACE and specifically authorized to provide ACE to approved groundfish sectors and/or DAS for the purpose of enhancing the fishing opportunities available to sector members. State-operated permit banks would be required to comply with the terms and conditions of any applicable Federal grant agreement (*i.e.*, a Federal grant award provided to a state for the purpose of establishing, enhancing, or operating a permit bank), as well as meet the requirements specified in an MOA established with NMFS for administering the permit bank.

State-operated permit banks would be required to report to the Council annually on the performance of the permit bank. Such reports would include, to the extent that the information does not conflict with any regulations regarding the protection of personal and/or proprietary information, all reporting requirements within the MOA. State-operated permit banks would be exempt from many of the sector reporting requirements because state-operated permit banks are prohibited from actively fishing. For example, at-sea monitoring and weekly catch reports would be unnecessary since the permit bank would not actually be fishing and would be unable to exceed its ACE (it cannot transfer out more ACE than it was initially allocated).

State-operated permit banks would not be authorized to acquire additional ACE or DAS for a fishing year through a transfer from a sector or other vessels because the purpose of the state-operated permit banks is to transfer out ACE and DAS to sector fishermen in need of additional allocation, not to

accumulate ACE or DAS. However, if a sector receives a transfer of ACE, or a vessel receives DAS from a state-operated permit bank but wishes to return either the (unused) ACE or DAS to the permit bank, NMFS could, upon written agreement by both parties, void the initial transfer, thereby returning the ACE or DAS to the permit bank. The state permit bank would then be free to redistribute the available ACE or DAS to another sector or vessel. In addition, and subject to the terms and conditions of the states' permit bank MOAs with NMFS, state-operated permit banks would be authorized to transfer ACE, on a stock-by-stock basis, to other state-operated permit banks for the purpose of maximizing the fishing opportunities made available by the permit banks to sector members. For example, the Rhode Island state permit bank could transfer Gulf of Maine cod to the Maine state permit bank in exchange for Southern New England/Mid-Atlantic yellowtail flounder.

If more funds become available to the state-operated permit banks, the use of those additional funds in state-operated permit banks must first be reviewed by the Council for consistency with the goals and objectives of the NE Multispecies FMP prior to the state-operated permit bank using those funds outside of the sector process. A state would not be authorized to acquire a permit that would be used in a state-operated permit bank, or to allocate or transfer any ACE that may be associated with new permits obtained as a result of the additional funds, unless the state either (1) provides the Council the opportunity to review the implications of the expanded permit bank to the goals and objectives of the Northeast Multispecies FMP, or (2) forms or joins an approved groundfish sector.

NMFS is interested in specific public comment on whether state-operated permit banks should be prohibited from using additional funds to acquire permits prior to Council review. NMFS is concerned with the consistency of this measure with other groundfish sector measures, because there is nothing in the current regulations that prohibits any interested party, including a state-operated permit bank, from acquiring a permit. For example, under current regulations, a state could purchase a permit and lease out the DAS without forming a state-operated permit bank or a sector. While Amendment 17 does not contain exact language prohibiting state-operated permit banks from acquiring additional permits with additional funding prior to Council review, the Council argues that

the proposed measure is consistent with the Council's intent.

NMFS is also interested in specific public comment on whether state-operated permit banks should be allowed to carry-over unused ACE and DAS from one fishing year into the next. Sectors may carry-over up to 10 percent of their unused ACE from one fishing year into the next; however, whether state-operated permit banks should be able to carry-over ACE or DAS was not discussed by the Council or contemplated in Amendment 17. In a letter to the RA dated September 7, 2011, deeming the proposed regulations pursuant to section 303(c) of the Magnuson-Stevens Act, the Council claimed that "state-operated permit banks are allowed to make the use of carry-over provisions, subject to the current restrictions on the amount of DAS or ACE that can be carried over." The Council contends that this is the only equitable approach and will facilitate efficient operations of these entities. NMFS is concerned that allowing state-operated permit banks to carry-over unused ACE or DAS could potentially encourage state-operated permit banks to hold ACE or DAS instead of transferring it out to sectors and fishermen to be used.

The regulations proposed in this action would allow state-operated permit banks to carry-over ACE and would prohibit state-operated permit banks from acquiring a permit to be used in a state-operated permit bank with additional funds until the state-operated permit bank provides the Council the opportunity to review the potential implications of purchasing the permit.

## *3. Canceled Trip DAS Credit*

This proposed rule includes a provision, not related to Amendment 17, that would allow NMFS to credit DAS to a vessel that cancels a fishing trip prior to setting or hauling fishing gear and the vessel, therefore, does not catch or land fish at any time on the trip. This provision would apply to all fisheries that operate under a DAS management system, specifically the NE multispecies, monkfish, and Atlantic sea scallop fisheries. Because this DAS credit would only be granted for situations in which no fishing activity occurs, it would not likely have a negative impact on fishing-related mortality in the DAS fisheries. If approved, this measure would be applied retroactively for the 2011 fishing year.

To ensure the enforceability of this provision, vessels seeking a DAS credit would be required to send a notification

to NMFS Office of Law Enforcement (OLE) to coordinate a monitored landing event. Vessels that are required to use a vessel monitoring system (VMS) would be required to send a VMS email to OLE at the earliest opportunity prior to crossing the VMS demarcation line upon return to port. Vessels not required to use a VMS would be required to use the interactive voice response (IVR) line to make the notification. Additionally, both VMS and IVR vessels would also have to submit a written DAS credit form along with the vessel trip report for the canceled trip to NMFS.

The following information would be required to be submitted on the written DAS credit request form: Owner/corporation name; vessel name; permit number; U.S. Coast Guard documentation number or state registration number; vessel operator name; trip departure and landing date; date and time VMS email was sent or IVR backup line was called; and reason for canceling the trip. Forms would be required to be submitted within 30 days from the day the vessel returned to port on the canceled trip.

For DAS credits that are requested near the end of the fishing year, if approved, the credited DAS would apply to the year in which the canceled trip occurred. Credited DAS that remain unused at the end of the fishing year or are not credited until the following fishing year could be carried over into the next fishing year, provided they do not to exceed the maximum number of DAS allowed to be carried over for the fishery being credited.

This rule requires NMFS receive approval to modify currently approved information collections. Because of the Paperwork Reduction Act (PRA) requirements to which this provision is subject, it is likely that Amendment 17, if approved, would be implemented before the PRA requirements would be approved by the Office of Management and Budget (OMB). If so, in the interim, to allow the industry to utilize this provision, NMFS would accept and, if warranted, approve DAS credit requests for the current fishing year without requiring the reporting requirements specified under this provision.

#### Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has made a preliminary determination that this proposed rule is consistent with the NE Multispecies, Monkfish, and Atlantic Sea Scallop FMPs, Amendment 17, other provisions of the Magnuson-Stevens Act, and other applicable law,

subject to further consideration after public comment. Pursuant to the procedures established to implement section 6 of E.O. 12866, the Office of Management and Budget has determined that this proposed rule is not significant.

Amendment 17 would amend the NE Multispecies FMP to formally define, and facilitate the effective operation of, NOAA-sponsored, state-operated permit banks. The purpose of this amendment is to: (1) Define a NOAA-sponsored, state-operated permit bank and distinguish this type of entity from that of a groundfish sector; and (2) clarify and streamline the administrative procedures and requirements to which NOAA-sponsored, state-operated permit banks must comply in order to operate outside of the sector process (*i.e.*, be allocated ACE and provide ACE and/or DAS to approved groundfish sectors). This rule also proposes to implement a provision that is unrelated to Amendment 17, allowing NMFS to credit DAS to a vessel that cancels a fishing trip prior to setting or hauling fishing gear and the vessel, therefore, does not catch or land fish at any time on the trip.

A notice of availability (NOA) for Amendment 17 was published on in the **Federal Register** on December 12, 2011 (76 FR 77200). Public comments are being solicited on the amendment through the end of the comment period on January 23, 2012.

Public comments on the proposed rule must be received by the end of the comment period on the amendment, as published in the NOA, to be considered in the decision to approve or disapprove the amendment. All comments received by the end of the comment period on the amendment, whether specifically directed to the amendment or the proposed rule, will be considered in the approval/disapproval decision. Comments received after that date will not be considered in the approval/disapproval decision on the amendment, but may be considered in the development of the final rule. To be considered, comments must be received by close of business on the last day of the comment period; that does not mean postmarked or otherwise transmitted by that date.

Pursuant to section 605 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–12, the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that, as proposed, Amendment 17 would not have a significant economic impact on a substantial number of small entities;

therefore, an Initial Regulatory Flexibility Analysis (IRFA) has not been prepared. The factual basis for this determination is explained below.

If implemented, this rule would authorize state-operated fishery permit banks to obtain and distribute DAS and ACE to vessels and sectors, and also allow NMFS to credit DAS to vessels that cancel fishing trips prior to setting or hauling fishing gear. This rule would directly impact the state fishery management agencies subject to the administrative procedures for operating permit banks and vessels with DAS credits.

The state-operated permit bank provisions have no direct impacts on any small fishing entities or businesses. There are currently four state agencies that would be directly affected by this action: The State of Maine Department of Marine Resources; the State of New Hampshire Fish and Game Department; the Commonwealth of Massachusetts Department of Marine Fisheries; and the State of Rhode Island Department of Environmental Management. Should NOAA provide additional funding to other Northeast region states for the same purpose (establishing and operating permit banks for the Northeast multispecies fishery), the number of entities directly affected by this action could expand to as many as 12 (all coastal states from North Carolina through Maine that are represented on either the Mid-Atlantic or New England Fishery Management Councils). However, none of these state agencies would be considered “small entities” for the purpose of the RFA, which limits consideration of government jurisdictions to those with fewer than 50,000 residents.

The DAS credit provision will affect a maximum of 1,908 small entities that have DAS allocations. The rule’s impact, however, is expected to be positive for all such entities. This new provision is not a restriction, but rather provides a mechanism for small entities to regain lost DAS due to circumstances beyond their control. It would allow vessels that cancel a fishing trip before engaging in fishing activity to regain their DAS for that trip, providing another opportunity to profit from the DAS that would have otherwise been lost. However, due to the limited nature of this provision, and because this behavior is not reflective of normal fishing operations, the positive economic gain, if any, from this provision is expected to be minimal.

The RFA also requires Federal agencies to consider disproportionality and profitability to determine the significance of regulatory impacts. If

either criterion is met for a substantial number of small entities, then the action should not be certified. The criterion is not met because there are no small entities disproportionately affected relative to large entities. Further, no reductions in profit are expected for any small entities, so the profitability criterion is not met. Also, state government agencies operating on grant funding directly affected by this action, may not “profit” from the operation of the permit banks. Any revenue generated by the state through the operation of the permit bank (*e.g.*, through an auction bid, cost-recovery fee, landings tax, *etc.*) is considered “program income” under Department of Commerce regulations (15 CFR 24.25) and may only be used by the state to offset costs incurred in the administration and operation of the permit bank program, or must be returned to NOAA to defray the amount of the initial grant award. No assumptions are necessary to conduct the analyses in support of this conclusion.

As a result of the above analysis, an IRFA is not required and none has been prepared.

This proposed rule contains collection-of-information requirements subject to review and approval by OMB under the PRA. These requirements have been submitted to OMB for approval under the 0648–0202 and 0648–1212 families of forms. Under the proposed action, vessel owners would be required to provide NMFS with an initial notification as well as the submission of a DAS credit request form. The public burden for requesting a DAS credit is estimated to average 15 minutes per application, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Based upon permit type, a maximum of 1,908 permits holders could possibly apply for a DAS credit. With an average response time of 15 minutes, the total burden for applying for a DAS credit is 478 hours. This analysis was conducted assuming each permitted vessel requests one DAS credit per fishing year. Of the 1,908 permit holders, 845 are VMS vessels and the remaining 1,063 are assumed to be either IVR vessels or inactive vessels. Although the notification method depends upon the vessels reporting requirements, the associated time burdens will be similar.

Public comment is sought regarding: Whether this proposed 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 the Regional Administrator (see **ADDRESSES**), and email to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@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

Fish, Fisheries, Reporting and recordkeeping requirements.

Dated: December 16, 2011.

**Samuel D. Rauch III,**

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

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 648 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 Section 648.2, revise the definition for “Annual catch entitlement (ACE)” and add a new definition for “state-operated permit bank” in alphabetical order to read as follows:

#### **§ 648.2 Definitions**

*Annual catch entitlement (ACE)*, with respect to the NE multispecies fishery, means the share of the annual catch limit (ACL) for each NE multispecies stock that is allocated to an individual sector or state-operated permit bank based upon the cumulative fishing history attached to each permit participating in that sector or held by a state-operated permit bank in a given year. This share may be adjusted due to penalties for exceeding the sector’s ACE for a particular stock in earlier years, or due to other violations of the FMP, including the yearly sector operations plan. When a sector’s or state-operated permit bank’s share of a NE

multispecies stock, as determined by the fishing histories of vessels participating in that sector or permits held by a state-operated permit bank, is multiplied by the available catch, the result is the amount of ACE (live weight in pounds) that can be harvested (landings and discards) by participants in that sector or transferred by a state-operated permit bank, during a particular fishing year.

*State-operated permit bank* means a depository established and operated by a state through an agreement between NMFS and a state in which Federal grant funds have been used by the state to obtain Federal fishing vessel permits so that the fishing access privileges associated with those permits may be allocated to qualified persons and that meets the requirement of § 648.87(e).

3. In § 648.53, revise paragraph (f) to read as follows:

**§ 648.53 Acceptable biological catch (ABC), annual catch limits (ACL), annual catch targets (ACT), DAS allocations, and individual fishing quotas (IFQ).**

(f) *DAS credits*—(1) *Good Samaritan credit*. A limited access vessel operating under the DAS program and that spend time at sea assisting in a USCG search and rescue operation or assisting the USCG in towing a disabled vessel, and that can document the occurrence through the USCG, will not accrue DAS for the time documented.

(2) *Canceled trip DAS credit*. A limited access vessel operating under the DAS program and that ends a fishing trip prior to setting and/or hauling fishing gear for any reason may request a cancelled trip DAS credit for the trip based on the following conditions and requirements:

(i) There is no fish onboard the vessel and no fishing operations on the vessel were initiated, including setting and/or hauling fishing gear;

(ii) The owner or operator of the vessel fishing under a DAS program and required to use a VMS as specified under § 648.10(b) makes an initial trip cancellation notification from sea, at the time the trip was canceled, or at the earliest opportunity prior to crossing the demarcation line as defined at § 648.10(a). These reports are in the form of an email to NMFS Office of Law Enforcement and include at least the following information: Operator name; vessel name; vessel permit number; port where vessel will return; date trip started; estimated date/time of return to port; and a statement by the operator that no fish were onboard and no fishing activity occurred;

(iii) The owner or operator of the vessel operating under the DAS program required to use the IVR call in as specified under § 648.10(h) makes an initial trip cancellation notification to NMFS by calling the IVR back at the time the trip was canceled, or at the earliest opportunity prior to returning to port. This request must include at least the following information: Operator name; vessel name; vessel permit number; port where vessel will return; date trip started; estimated date/time of return to port; and a statement from the operator that no fish were onboard and no fishing activity occurred; and

(iv) The owner or operator of the vessel requesting a canceled trip DAS credit, in addition to the requirements in paragraphs (f)(2)(ii) and (iii) of this section, submits a written DAS credit request form to NMFS within 30 days of the vessel's return to port from the canceled trip. This application must include at least the following information: Date and time when the vessel canceled the fishing trip; date and time of trip departure and landing; operator name; owner/corporation name; permit number; hull identification number; vessel name; date and time notification requirements specified under paragraphs (f)(2)(ii) and (iii) of this section were made; reason for canceling the trip; and owner/operator signature and date; and

(v) The vessel trip report for the canceled trip as required under § 648.7(b) is submitted along with the DAS credit request form; and

(vi) For DAS credits that are requested near the end of the fishing year as defined at § 648.2, and approved by the Regional Administrator, the credited DAS apply to the fishing year in which the canceled trip occurred. Credited DAS that remain unused at the end of the fishing year or that are not credited until the following fishing year may be carried over into the next fishing year, not to exceed the maximum number of carryover DAS as specified under paragraph (d) of this section.

\* \* \* \* \*

4. In § 648.82, revise paragraph (f) and reserve paragraph (m) to read as follows:

**§ 648.82 Effort-control program for NE multispecies limited access vessels.**

\* \* \* \* \*

(f) *DAS credits*—(1) *Good Samaritan credit*. A limited access vessel fishing under the DAS program and that spends time at sea assisting in a USCG search and rescue operation or assisting the USCG in towing a disabled vessel, and that can document the occurrence through the USCG, shall not accrue DAS for the time documented.

(2) *Canceled trip DAS credit*. A limited access vessel operating under the DAS program and that ends a fishing trip prior to setting and/or hauling fishing gear for any reason may request a canceled trip DAS credit for the trip based on the following conditions and requirements:

(i) There is no fish onboard the vessel and no fishing operations on the vessel were initiated, including setting and/or hauling fishing gear;

(ii) The owner or operator of the vessel fishing under a DAS program and required to use a VMS as specified under § 648.10(b) makes an initial trip cancellation notification from sea, at the time the trip was canceled, or at the earliest opportunity prior to crossing the demarcation line as defined at § 648.10(a). These reports are in the form of an email to NMFS Office of Law Enforcement and include at least the following information: Operator name; vessel name; vessel permit number; port where vessel will return; date trip started; estimated date/time of return to port; and a statement from the operator must that no fish were onboard and no fishing activity occurred; and

(iii) The owner or operator of the vessel operating under the DAS program required to use the IVR call in as specified under § 648.10(h) makes an initial trip cancellation notification to NMFS by calling the IVR back at the time the trip was canceled, or at the earliest opportunity prior to returning to port. This request must include at least the following information: Operator name; vessel name; vessel permit number; port where vessel will return; date trip started; estimated date/time of return to port; and a statement from the operator that no fish were onboard and no fishing activity occurred; and

(iv) The owner or operator of the vessel requesting a canceled trip DAS credit, in addition to the requirements in paragraphs (f)(2)(ii) and (iii) of this section, submits a written DAS credit request form to NMFS within 30 days of the vessel's return to port from the canceled trip. This application must include at least the following information: Date and time when the vessel canceled the fishing trip; date and time of trip departure and landing; operator name; owner/corporation name; permit number; hull identification number; vessel name; date and time notification requirements specified under paragraphs (f)(2)(ii) and (iii) of this section were made; reason for canceling the trip; and owner/operator signature and date; and

(v) The vessel trip report for the canceled trip as required under

§ 648.7(b) is submitted along with the DAS credit request form; and

(vi) For DAS credits that are requested near the end of the fishing year as defined at § 648.2, and approved by the Regional Administrator, the credited DAS apply to the fishing year in which the canceled trip occurred. Credited DAS that remain unused at the end of the fishing year or are not credited until the following fishing year and may be carried over into the next fishing year, not to exceed the maximum number of carryover DAS as specified under paragraph (a)(1) of this section.

(3) *DAS credit for standing by entangled whales*. A limited access vessel fishing under the DAS program that reports and stands by an entangled whale may request a DAS credit for the time spent standing by the whale. The following conditions and requirements must be met to receive this credit:

(i) At the time the vessel begins standing by the entangled whale, the vessel operator must notify the USCG and the Center for Coastal Studies, or another organization authorized by the Regional Administrator, of the location of the entangled whale and that the vessel is going to stand by the entangled whale until the arrival of an authorized response team;

(ii) Only one vessel at a time may receive credit for standing by an entangled whale. A vessel standing by an entangled whale may transfer its stand-by status to another vessel while waiting for an authorized response team to arrive, provided it notifies the USCG and the Center for Coastal Studies, or another organization authorized by the Regional Administrator, of the transfer. The vessel to which stand-by status is transferred must also notify the USCG and the Center for Coastal Studies or another organization authorized by the Regional Administrator of this transfer and comply with the conditions and restrictions of this part;

(iii) The stand-by vessel must be available to answer questions on the condition of the animal, possible species identification, severity of entanglement, *etc.*, and take photographs of the whale, if possible, regardless of the species of whale or whether the whale is alive or dead, during its stand-by status and after terminating its stand-by status. The stand-by vessel must remain on scene until the USCG or an authorized response team arrives, or the vessel is informed that an authorized response team will not arrive. If the vessel receives notice that a response team is not available, the vessel may discontinue standing-by the entangled

whale and continue fishing operations; and

(iv) To receive credit for standing by an entangled whale, a vessel must submit a written request to the Regional Administrator. This request must include at least the following information: Date and time when the vessel began its stand-by status; date of first communication with the USCG; and date and time when the vessel terminated its stand-by status. DAS credit shall not be granted for the time a vessel fishes when standing by an entangled whale. Upon a review of the request, NMFS shall consider granting the DAS credit based on information available at the time of the request, regardless of whether an authorized response team arrives on scene or a rescue is attempted. NMFS shall notify the permit holder of any DAS adjustment that is made or explain the reasons why an adjustment will not be made.

\* \* \* \* \*

5. In § 648.87, add paragraph (e) to read as follows:

**§ 648.87 Sector allocation.**

\* \* \* \* \*

(e) *State-operated permit bank.* A state-operated permit bank must meet and is subject to the following requirements and conditions:

(1) The state-operated permit bank must be initially established using a Federal grant award from NOAA through a valid Memorandum of Agreement (MOA) with NMFS and the state must maintain and comply with such MOA. The MOA must contain and the state must comply with at least the following requirements and conditions:

(i) The state may not associate a state-operated permit bank permit with a vessel engaged in any fishing or other on-the-water activities;

(ii) The state must establish the minimum eligibility criteria to determine whether a sector and its associated vessels are qualified to receive either ACE or DAS from the state-operated permit bank;

(iii) The state must identify a program contact person for the state agency administering the state-operated permit bank;

(iv) The state must provide to NMFS a list of all permits held by the state under the aegis of the state-operated permit bank, and declare which permits will be used in the coming fishing year for exclusively DAS leasing to common pool vessels and which permits are to be used exclusively for transferring ACE to sectors (including the leasing of DAS to sector vessels for the purpose of

complying with the requirements of other FMPs); and

(v) The state must prepare and submit an annual performance report to NMFS, and that said performance report must include, at a minimum, the following elements:

(A) A comprehensive listing of all permits held by the state-operated permit bank, identifying whether a permit was used for ACE transfers to sectors (including DAS leases to the sector members) or DAS leases to common pool vessels, the total amount of ACE, by stock, and DAS available to the state-operated permit bank for transfers and leases to sectors and common-pool vessels;

(B) A comprehensive listing of all sectors to which ACE was transferred from the state-operated permit bank, including the amount, by stock, of ACE transferred to each sector, including a list of all vessels that harvested the ACE transferred to the sector and the amounts harvested;

(C) A comprehensive listing of all sector vessels to which DAS were leased from the state-operated permit bank, including the number of DAS leased to each sector vessel; and

(D) A comprehensive listing of all common pool vessels to which DAS were leased from the state-operated permit bank, including the number of DAS leased to each common pool vessel.

(2) *Eligibility.* If a state is issued a permit that meets sector eligibility requirements, as defined in paragraph (a)(3) of this section, such permit may be held by a state-operated permit bank.

(3) *Allocation and utilization of ACE—(i) Allocation of ACE.* The amount of ACE allocated to a state-operated permit bank shall be derived from the permits appropriately declared by the state to be “ACE permits,” pursuant to paragraph (e)(1)(i)(v) of this section, for the fishing year and allocated on a stock-by-stock basis pursuant to paragraph (b)(1)(i) of this section.

(ii) *Acquiring ACE.* Except as provided in this paragraph, a state-operated permit bank may not acquire ACE for a fishing year through a transfer from a sector. If ACE is transferred to a sector from a state-operated permit bank, NMFS may authorize the return of the unused portion of such ACE (up to the total originally transferred) to the state-operated permit bank upon written agreement by both parties. The state-operated permit bank may then redistribute the available ACE to another qualifying sector during that fishing year.

(iii) *Transferring ACE.* Subject to the terms and conditions of the state-operated permit bank’s MOAs with NMFS, as well as ACE transfer restrictions described in paragraph (b)(1)(viii) of this section, a state-operated permit bank may transfer ACE, on a stock-by-stock basis, to other state-operated permit banks.

(4) *Allocation and utilization of days-at-sea—(i) Allocation of DAS.* The number of DAS available for a state-operated permit bank to provide to sector or common pool vessels shall be the accumulated NE Multispecies Category A DAS assigned to the fishing vessel permits held by the state and appropriately declared by the state pursuant to paragraph (e)(1)(i)(v) of this section to be either “ACE permits” or “common pool permits” for that fishing year, consistent with the terms of the state’s permit bank MOA.

(ii) *Acquiring DAS.* A state-operated permit bank may not acquire DAS through a lease from a vessel permit (including permits held by other state-operated permit banks), as described in § 684.82(k). If a vessel leases DAS from a state-operated permit bank, NMFS may authorize the return of the unused portion of such DAS to the state-operated permit bank upon written agreement by both parties, provided none of the DAS had been used. The state-operated permit bank may then redistribute the available DAS to another vessel during the same fishing year.

(5) *Annual report.* A state-operated permit bank shall report to the Council annually on the performance of the state-operated permit bank. Such reports shall include at a minimum and to the extent that the information does not conflict with any regulations regarding the protection of personal and/or proprietary information, all elements listed in paragraph (e)(1)(v) of this section.

(6) *Use of additional funds.* If additional funds from any source become available to a state-operated permit bank, the state-operated permit bank may not acquire a permit that will be used in a state operated permit bank, or allocate or transfer any ACE that may be associated with new permit, with such additional funds, until the state-operated permit bank provides the Council the opportunity to review the implications of the expanded state-operated permit bank to the goals and objectives of the NE Multispecies FMP.

(7) *Violation of the terms and conditions applicable to a state-operated permit bank.* If a state or state-operated permit bank violates or fails to comply with any of the requirements

and conditions specified in this section or in the MOA referenced in paragraph (e)(1) of this section, the state or state-operated permit bank is subject to the actions and penalties specified in § 648.4(n) or the MOA.

6. In § 648.90, revise paragraph (a)(2)(iii) to read as follows:

**§ 648.90 NE multispecies assessment, framework procedures and specifications, and flexible area action system.**

\* \* \* \* \*

(a) \* \* \*

(2) \* \* \*

(iii) Based on this review, the PDT shall recommend ACLs and develop options necessary to achieve the FMP goals and objectives, which may include a preferred option. The PDT must demonstrate through analyses and documentation that the options they develop are expected to meet the FMP goals and objectives. The PDT may review the performance of different user groups or fleet sectors in developing options. The range of options developed by the PDT may include any of the management measures in the FMP, including, but not limited to: ACLs, which must be based on the projected fishing mortality levels required to meet the goals and objectives outlined in the FMP for the 12 regulated species and ocean pout if able to be determined; identifying and distributing ACLs and other sub-components of the ACLs among various segments of the fishery; AMs; DAS changes; possession limits; gear restrictions; closed areas; permitting restrictions; minimum fish sizes; recreational fishing measures; describing and identifying EFH; fishing gear management measures to protect EFH; designating habitat areas of particular concern within EFH; and changing the Northeast Region SBRM, including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports, and/or industry-funded observers or observer set-aside programs. In addition, the following conditions and measures may be adjusted through future framework adjustments: Revisions to DAS measures, including DAS allocations (such as the distribution of DAS among the four categories of DAS), future uses for Category C DAS, and DAS baselines, adjustments for steaming time, *etc.*; modifications to capacity measures, such as changes to the DAS transfer or DAS leasing measures; calculation of area-specific ACLs, area management boundaries, and adoption of area-specific management measures; sector allocation requirements and specifications, including the

establishment of a new sector, the disapproval of an existing sector, the allowable percent of ACL available to a sector through a sector allocation, and the calculation of PSCs; sector administration provisions, including at-sea and dockside monitoring measures; sector reporting requirements; state-operated permit bank administrative provisions; measures to implement the U.S./Canada Resource Sharing Understanding, including any specified TACs (hard or target); changes to administrative measures; additional uses for Regular B DAS; reporting requirements; the GOM Inshore Conservation and Management Stewardship Plan; adjustments to the Handgear A or B permits; gear requirements to improve selectivity, reduce bycatch, and/or reduce impacts of the fishery on EFH; SAP modifications; revisions to the ABC control rule and status determination criteria, including, but not limited to, changes in the target fishing mortality rates, minimum biomass thresholds, numerical estimates of parameter values, and the use of a proxy for biomass may be made either through a biennial adjustment or framework adjustment; and any other measures currently included in the FMP.

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7. In § 648.92, revise paragraph (b)(4) to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(4) *DAS credits*—(i) *Good Samaritan credit*. A limited access vessels fishing under the DAS program and that spends time at sea assisting in a USCG search and rescue operation or assisting the USCG in towing a disabled vessel, and that can document the occurrence through the USCG, will not accrue DAS for the time documented

(ii) *Canceled trip DAS credit*. A limited access vessel operating under the DAS program and that ends a fishing trip prior to setting and/or hauling fishing gear for any reason may request a cancelled trip DAS credit for the trip based on the following conditions and requirements.

(A) There is no fish onboard the vessel and no fishing operations on the vessel were initiated, including setting and/or hauling fishing gear;

(B) The owner or operator of the vessel fishing under a DAS program and required to use a VMS as specified under § 648.10(b) makes an initial trip cancellation notification from sea, at the time the trip was canceled, or at the earliest opportunity prior to crossing the

demarcation line as defined at § 648.10(a). These reports are in the form of an email to NMFS Office of Law Enforcement and include at least the following information: Operator name; vessel name; vessel permit number; port where vessel will return; date trip started; estimated date/time of return to port; and a statement from the operator must that no fish were onboard and no fishing activity occurred; and

(C) The owner or operator of the vessel operating under the DAS program required to use the IVR call in as specified under § 648.10(h) makes an initial trip cancellation notification to NMFS by calling the IVR back at the time the trip was canceled, or at the earliest opportunity prior to returning to port. This request must include at least the following information: Operator name; vessel name; vessel permit number; port where vessel will return; date trip started; estimated date/time of return to port; and a statement from the operator that no fish were onboard and no fishing activity occurred; and

(D) The owner or operator of the vessel requesting a canceled trip DAS credit, in addition to the requirements in paragraphs (b)(4)(ii)(B) and (C) of this section, submits a written DAS credit request form to NMFS within 30 days of the vessel's return to port from the canceled trip. This application must include at least the following information: Date and time when the vessel canceled the fishing trip; date and time of trip departure and landing; operator name; owner/corporation name; permit number; hull identification number; vessel name; date and time notification requirements specified under paragraphs (b)(4)(ii)(B) and (C) of this section were made; reason for canceling the trip; and owner/operator signature and date; and

(E) The vessel trip report for the canceled trip as required under § 648.7(b) is submitted along with the DAS credit request form; and

(F) For DAS credits that are requested near the end of the fishing year as defined at § 648.2, and approved by the Regional Administrator, the credited DAS apply to the fishing year in which the canceled trip occurred. Credited DAS that remain unused at the end of the fishing year or are not credited until the following fishing year and may be carried over into the next fishing year, not to exceed the maximum number of carryover DAS as specified under paragraph (a)(1) of this section.

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