

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 980414095-8240-02; I.D. 040798C]

RIN 0648-AJ37

Fisheries of the Northeastern United States; Dealer and Vessel Reporting Requirements

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to amend the dealer reporting requirements for the summer flounder, scup, black sea bass, surf clam, ocean quahog, Northeast (NE) multispecies, Atlantic sea scallop, Atlantic mackerel, squid, and butterfly fisheries and the vessel reporting requirements for the summer flounder and scup fisheries. This rule requires dealers of quota-managed species to report their purchases weekly via an Interactive Voice Response (IVR) system, modifies the submission schedule of written dealer reports, modifies the reporting requirements for certain vessels in the summer flounder or scup fisheries, and clarifies existing reporting requirements. Quota-managed species required to be reported via the IVR system include summer flounder, scup, black sea bass, regulated NE multispecies, Atlantic mackerel, squid, and butterfly. These revisions are necessary to collect more timely and accurate data to enhance immediate and long-term management of the fisheries, maintain the harvesting of these fisheries at sustainable levels, promote compliance with existing regulations, ensure consistency in reporting requirements among fisheries, and clarify existing regulatory text.

DATES: Effective November 1, 1998.

ADDRESSES: Copies of the Regulatory Impact Review supporting this action are available from Jon Rittgers, Acting Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930. Comments regarding the collection-of-information requirements contained in this final rule should be sent to the Acting Regional Administrator and to the Office of Management and Budget (OMB), Washington, D.C. 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Kelley McGrath, (978) 281-9307, or Gregory Power, (978) 281-9304.

SUPPLEMENTARY INFORMATION:**Background**

This rule revises the dealer reporting requirements in the summer flounder, scup, black sea bass, Atlantic mackerel, squid and butterfly, surf clam and ocean quahog, NE multispecies, and Atlantic sea scallop fisheries and revises the vessel reporting requirements in the summer flounder and scup fisheries. Regulations implementing the fishery management plans (FMP) for these species were prepared under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and are found at 50 CFR part 648. Details concerning the development of these revisions were discussed in the preamble to the proposed rule (63 FR 27550, May 19, 1998).

Revisions to the dealer and vessel reporting requirements contained in this rule were developed primarily as a result of the management measures that have been incorporated into several FMPs. For instance, in an effort to achieve the goals of the Magnuson-Stevens Act, certain species are now being managed by quota, annual target total allowable catch (TAC), or domestic annual harvest (DAH) limits. Many species have short seasons or require in-season management measures, such as closures or trip limits, to ensure that the harvest levels established in each FMP are not exceeded. Management measures must be based on the best available information, which includes monitoring the weekly landings of these species through dealer reports.

While dealers are currently required to complete comprehensive written reports accounting for purchases of all species, it is difficult to collect and process the written forms within the timeframe needed for effective management. Therefore, NMFS is requiring dealers to use an IVR system to report their purchases of quota-managed species on a weekly basis. This will allow for better compliance with the quotas, fewer overages, and more accurate predictions of closure dates.

Species managed by quota, TAC, or DAH and subject to IVR reporting include summer flounder, scup, black sea bass, Atlantic mackerel, *Loligo* and *Illex* squid, butterfly and regulated NE multispecies. The IVR system uses a toll-free number that dealers must call within 3 days following the end of the reporting week to report the following information: dealer permit number; dealer code; pounds purchased by

species; reporting week in which purchases were made; and state of landing for each species purchased. If no purchases of any IVR-monitored species were made during the reporting week, the dealer must submit a report so stating through the IVR system.

The Administrator, Northeast Region, NMFS (Regional Administrator) has the authority to defer any species from the weekly IVR reporting requirements if landings are not expected to reach levels that would cause the applicable target exploitation rate specified in the FMP for that species to be exceeded. Deferral determinations will be based on the purchases reported, by species, in the comprehensive written reports submitted by dealers and on other available information. If data subsequently indicate that landing levels have increased to the extent that this determination ceases to be valid, the Regional Administrator will terminate the deferral by publishing a notification in the **Federal Register**. Therefore, it is conceivable that a deferral from IVR reporting requirements and a withdrawal of a given deferral could occur in any fishing year for a given quota-managed species.

Concurrent with the implementation of the IVR system, the submission deadline for written reports is extended from within 3 days following the end of the reporting week, to within 16 days following the end of the reporting week. In addition to providing dealers with the convenience of having more time to complete and submit the written reports, this change will result in more accurate pricing information being collected on the written reports. Such pricing information, often unavailable to dealers within 3 days following the end of the reporting week, becomes available within 16 days following the end of the reporting week. The written reports submitted by dealers will continue to provide the comprehensive data that are necessary for successful long-term management of each fishery. Dealers retain the option of submitting the required information electronically, if authorized in writing to do so by the Regional Administrator.

The reporting period for negative written reports (reports stating that no fish were purchased) is changed from weekly to monthly. If no fish were purchased during the reporting month, dealers are required to report that on the required form, which must be submitted within 16 days following the end of the reporting month.

Dealers are currently required to report the Federal permit number of the vessel from which fish are purchased or landed. However, because many of the

species purchased by dealers are not subject to Federal management and are caught by vessels that hold no Federal permits, dealers may report either the Federal permit number or the hull number (USCG documentation number or state registration number, as appropriate) of the vessels from which fish are purchased or landed.

The existing reporting form, NOAA Form 88-30, specifies market categories for several species. This rule clarifies to dealers that species must be reported by market category, when applicable.

NMFS is adding language to allow for the collection of biological data (fish lengths) and of samples (scales and otoliths for aging) that are necessary to characterize the composition of the landed catch. While most dealers have historically and voluntarily allowed access to their premises for the collection of these vital data, NMFS is revising the regulations to make it explicit that federally permitted dealers are required to grant such access.

Existing regulations require shellfish processors to notify the Regional Administrator whether the plant processing capacities change by more than 10 percent during any year. NMFS is specifying that the processor must notify the Regional Administrator in writing within 10 days after this change.

Reporting requirements for any party or charter vessel issued a Federal summer flounder or scup permit, other than a moratorium permit, are revised to require these vessels to submit reports for each trip, regardless of the species fished for or retained. Currently, vessels in this category are required to submit an accurate daily fishing log report only for those trips landing summer flounder or scup, respectively. This change will make the requirements for party/charter vessels in the summer flounder and scup fisheries consistent with those in the black sea bass, NE multispecies, and Atlantic mackerel, squid, and butterfly fisheries and allow for the collection of more comprehensive data.

Comments and Responses

No comments were received during the public comment period for the proposed rule, which closed on June 18, 1998.

Classification

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

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant

economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a 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.

This final rule contains collection-of-information requirements subject to the PRA, and clarifies or makes minor modifications to requirements previously approved under OMB control number 0648-0229 (2 minutes per response), OMB control number 0648-0212 (5 minutes per response), OMB control no. 0648-0018 (6 minutes per response), and OMB control no. 0648-0235 (5 minutes per response). The requirement to use an IVR system for weekly dealer reporting has been approved by OMB under OMB control no. 0648-0229 and is estimated to take 4 minutes per response.

The estimated response time includes the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding any of these burden estimates or any other aspect of the collection of information to NMFS and to OMB (see ADDRESSES).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 25, 1998.

Andrew A. Rosenberg,

Acting Assistant Administrator, for Fisheries, 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. Section 648.2 is amended by adding definitions for "Dealer code", "IVR system", and "Quota-managed species" in alphabetical order to read as follows:

§ 648.2 Definitions.

* * * * *

Dealer code means a confidential five-digit number assigned to each dealer required to submit purchases using the

IVR system for the purpose of maintaining the integrity of the data reported through the IVR system.

* * * * *

IVR system means the Interactive Voice Response dealer reporting system established by the Regional Administrator for the purpose of monitoring dealer purchases.

* * * * *

Quota-managed species means any species of finfish managed under this part by an annual or seasonal quota, by annual target or actual TAC, or by DAH limits.

* * * * *

3. In § 648.7 paragraph (a)(2) is redesignated as paragraph (a)(3), new paragraphs (a)(2) and (g) are added, paragraph (b)(1)(iii) is removed, the heading and the first sentence of paragraph (a)(1) introductory text, and paragraphs (a)(1)(i), (a)(3)(i), (a)(3)(ii), (b)(1)(i) and (f)(1) are revised to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

(a) *Dealers*—(1) *Detailed weekly report.* Federally permitted dealers must submit to the Regional Administrator or to the official designee a detailed weekly report, within the time periods specified in paragraph (f) of this section, on forms supplied by or approved by the Regional Administrator and a report of all fish purchases, except surf clam and ocean quahog dealers or processors who are required to report only surf clam and ocean quahog purchases. * * *

(i) Summer flounder, scup, black sea bass, Atlantic sea scallop, NE multispecies, Atlantic mackerel, squid and butterfly dealers must provide: Dealer name and mailing address; dealer permit number; name and permit number or name and hull number (USCG documentation number or state registration number, whichever is applicable) of vessels from which fish are landed or received; trip identifier for a trip from which fish are landed or received; dates of purchases; pounds by species (by market category, if applicable); price per pound by species (by market category, if applicable) or total value by species (by market category, if applicable); port landed; and any other information deemed necessary by the Regional Administrator. All report forms must be signed by the dealer or other authorized individual. If no fish are purchased during a reporting week, no written report is required to be submitted. If no fish are purchased during an entire reporting month, a

report so stating on the required form must be submitted.

* * * * *

(2) *Weekly IVR system reports.* (i) Federally permitted dealers purchasing quota-managed species not deferred from coverage by the Regional Administrator pursuant to paragraph (a)(2)(ii) of this section must submit, within the time period specified in paragraph (f) of this section, the following information, and any other information required by the Regional Administrator, to the Regional Administrator or to an official designee, via the IVR system established by the Regional Administrator: Dealer permit number; dealer code; pounds purchased, by species; reporting week in which species were purchased; and state of landing for each species purchased. If no purchases of quota-managed species not deferred from coverage by the Regional Administrator pursuant to paragraph (a)(2)(ii) of this section were made during the week, a report so stating must be submitted through the IVR system in accordance with paragraph (f) of this section.

(ii) The Regional Administrator may defer any quota-managed species from the IVR system reporting requirements if landings are not expected to reach levels that would cause the applicable target exploitation rate corresponding to a given domestic annual harvest limit, target or actual TAC, or annual or seasonal quota specified for that species to be exceeded. The Regional Administrator shall base any such determination on the purchases reported, by species, in the comprehensive written reports submitted by dealers and other available information. If the Regional Administrator determines that any quota-managed species should be deferred from the weekly IVR system reporting requirements, the Regional Administrator shall publish notification so stating in the **Federal Register**. If data indicate that landing levels have increased to an extent that this determination ceases to be valid, the Regional Administrator shall terminate the deferral by publishing notification in the **Federal Register**.

(3) * * *

(i) Summer flounder, scup, black sea bass, Atlantic sea scallop, NE multispecies, Atlantic mackerel, squid, and butterfish dealers must complete the "Employment Data" section of the Annual Processed Products Report;

completion of the other sections of that form is voluntary. Reports must be submitted to the address supplied by the Regional Administrator.

(ii) Surf clam and ocean quahog processors and dealers must provide the average number of processing plant employees during each month of the year just ended; average number of employees engaged in production of processed surf clam and ocean quahog products, by species, during each month of the year just ended; plant capacity to process surf clam and ocean quahog shellstock, or to process surf clam and ocean quahog meats into finished products, by species; an estimate, for the next year, of such processing capacities; and total payroll for surf clam and ocean quahog processing, by month. If the plant processing capacities required to be reported in this paragraph (a)(3)(ii) change more than 10 percent during any year, the processor shall notify the Regional Administrator in writing within 10 days after the change.

(b) *Vessel owners—(1) Fishing Vessel Trip Reports—(i) Owners of vessels issued a summer flounder, scup, black sea bass, Atlantic sea scallop, NE multispecies, or Atlantic mackerel, squid, and butterfish permits.* The owner or operator of any vessel issued a permit for summer flounder, scup, black sea bass, Atlantic sea scallops, NE multispecies, Atlantic mackerel, squid or butterfish must maintain on board the vessel, and submit, an accurate daily fishing log report for all fishing trips, regardless of species fished for or taken, on forms supplied by or approved by the Regional Administrator. If authorized in writing by the Regional Administrator, vessel owners or operators may submit reports electronically, for example by using a VTS or other system. At least the following information, and any other information required by the Regional Administrator, must be provided: Vessel name; USCG documentation number (or state registration number, if undocumented); permit number; date/time sailed; date/time landed; trip type; number of crew; number of anglers (if a party or charter boat); gear fished; quantity and size of gear; mesh/ring size; chart area fished; average depth; latitude/longitude (or loran station and bearings); total hauls per area fished; average tow time duration; pounds (or count, if a party or charter vessel), by species, of all species landed or discarded; dealer permit number; dealer

name; date sold, port and state landed; and vessel operator's name, signature, and operator permit number (if applicable).

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(f) *Submitting reports—(1) Dealer or processor reports.* (i) Detailed weekly trip reports, required by paragraph (a)(1) of this section, must be postmarked or received within 16 days after the end of each reporting week. If no fish are purchased during a reporting month, the report so stating required under paragraph (a)(1)(i) of this section must be postmarked or received within 16 days after the end of the reporting month.

(ii) Weekly IVR system reports required in paragraph (a)(2) of this section must be submitted via the IVR system by midnight, Eastern time, each Tuesday for the previous reporting week.

(iii) Annual reports for a calendar year must be postmarked or received by February 10 of the following year. Contact the Regional Administrator (see Table 1 to § 600.502) for the address of NMFS Statistics.

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(g) *Additional data and sampling.* Federally permitted dealers must allow access to their premises and make available to an official designee of the Regional Administrator any fish purchased from vessels for the collection of biological data. Such data include, but are not limited to, length measurements of fish and the collection of age structures such as otoliths or scales.

4. In § 648.14 paragraph (a)(8) is revised to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(8) Assault, resist, oppose, impede, harass, intimidate, or interfere with or bar by command, impediment, threat, or coercion any NMFS-approved observer or sea sampler aboard a vessel conducting his or her duties aboard a vessel, or any authorized officer conducting any search, inspection, investigation, or seizure in connection with enforcement of this part, or any official designee of the Regional Administrator conducting his or her duties, including those duties authorized in § 648.7(g).

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