

Counsel, RCC-11, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590 (telephone 202-493-6038).

#### SUPPLEMENTARY INFORMATION:

##### Public Participation

FRA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written documents.

We will file in the docket all written comments that we receive, as well as a report summarizing each substantive public contact with FRA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. You may also review the docket using the Internet at the web address in the **ADDRESSES** section.

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it's possible to do so without incurring expense or delay. We may change this proposal in light of the comments that we receive.

If you want FRA to acknowledge receipt of your comments on the proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

##### Background

As stated above, in December 2001, FRA proposed to amend part 219 by making FRFB employees subject to the employee assistance program, random alcohol and drug testing, and pre-employment drug testing requirements. In May 2002, two months after FRA had held a public hearing and closed the comment period, the Canadian Embassy delivered a diplomatic note objecting to the proposed rule, while in July 2002 the Canadian Human Rights Commission issued a long-awaited policy (Policy) on the alcohol and drug testing of workers. In response to these developments, FRA published a notice (67 FR 75996, December 10, 2002)

which asked for comment on the Policy and reopened the comment period until further notice to allow for additional consultations with Canada and Mexico. Since then, FRA has twice had the opportunity to discuss these issues: first, at the annual Transport Canada/FRA meeting in March 2003 and, more recently, at the Land Transportation Standards Subcommittee meeting in May 2003. At the latter meeting FRA also discussed the NPRM with representatives of the Mexican Government; the Mexican representatives indicated that Mexico would be issuing regulations in the near future that would be compatible with FRA's rules.

Based upon the considerations discussed among FRA and the representatives of the Canadian and Mexican governments, as well as other comments to the docket, FRA intends to issue a final rule that would revise the NPRM as outlined below. FRA believes that the final rule will reasonably address the concerns which Canadian and Mexican representatives expressed during the consultation process. FRA will, of course, carefully consider any comments that are filed when issuing the final rule.

1. The proposed rule will be made final, but with significant revisions.

2. FRA will include in the final rule an exclusion permitting foreign-based employees of foreign railroads to enter into the United States to perform train or dispatching service for a distance of up to 10 route miles under the present exceptions (which will have the effect of facilitating interchange with U.S. railroads at the majority of current gateways). FRA will work with Transport Canada to confirm the locations and mileage of existing Canadian gateways.

3. FRA will entertain and consider requests for waiver in other circumstances where consistent with railroad safety and in the public interest. Existing crew assignments will remain subject to the current exceptions until waiver requests can be considered on their merits, provided such requests are filed within 120 days of the publication of the final rule.

4. Obligations of foreign railroads with respect to testing may, at the election of the railroad, be conducted on U.S. soil. Any employee testing positive or refusing a test will be subject to removal from service only with respect to service in the U.S. Canadian and Mexican railroads will otherwise be free to handle such employees under applicable law in their home countries.

5. Even where no exception or waiver applies, FRA will except current

employees from pre-employment drug testing requirements. Only employees entering train or dispatching service in the U.S. after the effective date of the final rule will be required to be pre-employment tested. (This is consistent with FRA's approach to U.S. workers as the pre-employment drug testing program was initiated.) Again, FRA is indifferent to whether specimens are collected in Canada (for Canadian railroads), Mexico (for Mexican railroads), or the U.S., so long as United States Department of Transportation workplace procedures (49 CFR part 40) are observed and records are maintained as required. Canadian and Mexican employers remain free to retain any employee testing positive or refusing a test, although these employees may not be used for service in the U.S.

6. The final rule will also allow FRA's Associate Administrator for Safety to recognize a foreign government's program as compatible to that of FRA. To be so recognized, the foreign government program must include the essential elements of part 219, including pre-employment testing and random testing, and adopt testing procedures, criteria and assays equivalent to those used in part 40. Once granted, program recognition remains valid so long as the program retains these elements and foreign-based railroads comply with the program's requirements.

FRA believes that the approach outlined above is the best compromise that can be fashioned to accommodate the concerns of some commenters while continuing to be responsible for control of alcohol and drug use in railroad operations within U.S. borders.

Issued in Washington, DC on July 22, 2003.

**Allan Rutter,**

*Federal Railroad Administrator.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 600

[I.D. 072103A]

#### Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

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

**ACTION:** Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

**SUMMARY:** NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator), has determined that an application for EFPs contains all of the required information and warrants further consideration. The Regional Administrator is considering the impacts of the activities to be authorized under the EFPs with respect to the Northeast (NE) Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue EFPs. Therefore, NMFS announces that the Regional Administrator proposes to issue EFPs in response to an application submitted by the Groundfish Group Associated Fisheries of Maine (Associated Fisheries of Maine), in collaboration with Manomet Center for Conservation Sciences (Manomet). These EFPs would allow up to four vessels to fish for yellowtail flounder in NE multispecies year-round Closed Area II (CA II) during September and October 2003. The purpose of the study is to conduct supplementary sampling in relation to a currently ongoing experimental fishery for yellowtail flounder in CA II, which was approved by the Regional Administrator on September 10, 2002.

**DATES:** Comments on this action must be received at the appropriate address or fax number (see **ADDRESSES**) on or before August 12, 2003.

**ADDRESSES:** Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, NE Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Yellowtail EFP Proposal." Comments may also be sent via fax to (978) 281-9135. Comments will not be accepted if submitted via e-mail or the Internet.

Copies of the Draft Environmental Assessment (EA) are available from the NE Regional Office at the same address.

**FOR FURTHER INFORMATION CONTACT:** Allison Ferreira, Fishery Policy Analyst, phone: 978-281-9103, fax: 978-281-9135, email: [allison.ferreira@noaa.gov](mailto:allison.ferreira@noaa.gov)

**SUPPLEMENTARY INFORMATION:**

**Background**

On September 10, 2002, in response to an EFP application submitted by Manomet and the Associated Fisheries of Maine, the Regional Administrator approved the issuance of 17 EFPs (12 vessels plus five alternate vessels) to conduct an experimental fishery for

yellowtail flounder in CA II. The purpose of this experimental fishery is to collect observer-based data to determine whether seasonal access to portions of CA II for the purpose of harvesting Georges Bank (GB) yellowtail flounder is possible without significant bycatch and discard of other regulated NE multispecies, particularly cod and haddock. This information could then be used by the New England Fishery Management Council (Council) and NMFS to determine the feasibility of establishing a seasonal access program that would allow the harvest of GB yellowtail flounder in portions of CA II.

The study period proposed for the initial experimental fishery was July through December 2002. However, because the applicants were required to prepare an EA to assess the impacts of the proposed experimental fishery on the environment, the issuance of EFPs was delayed until September 2002. In order to accommodate the proposed study period, NMFS authorized the July and August 2002 portion of the study to take place during July and August 2003. Due to a change in the proposed study period, Manomet and the Associated Fisheries of Maine submitted an application for six EFPs (four vessels plus two alternate vessels) on June 20, 2003, to conduct additional sampling during September and October 2003. The objective of this additional sampling is to compare the survey data collected in September and October 2002 to the data collected in September and October 2003, in order to assess the similarity of data between the two calendar years. In addition, harsh weather conditions during October 2002 resulted in incomplete sampling of the survey area. Therefore, additional sampling of the survey area is being requested for October 2003.

The proposed supplemental experimental fishery would utilize up to four commercial vessels to complete four trips of 5 days in duration, for a total of 20 days-at-sea (DAS). Two trips would take place concurrently during September 2003, and two concurrent trips would take place during October 2003. The participating vessels would be exempt from NE multispecies DAS requirements, but would be prohibited from fishing in areas outside CA II during an experimental fishing trip.

The proposed supplemental experimental fishery would occur in the same area and follow the same scientific protocols established for the previously approved yellowtail experimental fishery in CA II (previously approved study). Therefore, the study would occur in the area south of 41°30' N. lat. within CA II, participating vessels

would use standard otter trawl gear having a 6.5-inch (16.5-cm) square mesh codend, and participating vessels would follow a pre-determined sampling design. In addition, the proposed supplemental experimental fishery would have 100-percent observer coverage provided by Manomet staff.

Participating vessels would be bound by the same permit conditions as the previously approved study. Bycatch of cod and haddock would be limited to 2,000 lb (907 kg) and 3,000 lb (1,361 kg) per DAS, respectively, and all fish landed would be required to meet minimum size requirements. In addition, due to concerns over skate bycatch, the applicants have agreed to identify and record all skates caught, by species, and return all skates caught to the sea immediately in order to minimize mortality. No skates would be retained for landing or sale.

The previously approved study is constrained to a yellowtail flounder total allowable catch (TAC) of 220 mt. This overall TAC would also apply to the proposed supplemental experimental fishery. According to the applicants and the preliminary data they have provided, only 17.1 mt of yellowtail flounder was harvested during the first 4 months of the previously approved study. Furthermore, the EFPs would contain a provision that the Regional Administrator has the authority to terminate the experimental fishery if the yellowtail flounder TAC of 220 mt is exceeded, or if excessive bycatch of cod, haddock and other species of concern (including, but not limited to, skates) occurs during any given trip.

A draft EA has been prepared that analyzes the impacts of the proposed experimental fishery on the human environment. This draft EA concludes that the proposed activities to be conducted under the requested EFPs are consistent with the goals and objectives of the FMP, would not be detrimental to the well-being of any stocks of fish harvested, and would have no significant environmental impacts. The draft EA also concludes that the proposed experimental fishery would not be detrimental to Essential Fish Habitat, marine mammals, or protected species.

EFPs would be issued to up to six vessels (four vessels plus two alternate vessels), exempting them from the DAS requirements and CA II restrictions of the FMP. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the

opportunity to comment on applications  
for proposed EFPs.

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

Dated: July 22, 2003.

**Bruce C. Morehead,**

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

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