

(3) HCFA approves, in writing to the carrier, the making of an advance payment by the carrier.

(d) *When advance payments are not made.* Advance payments are not made to any supplier that meets any of the following conditions:

(1) Is delinquent in repaying a Medicare overpayment.

(2) Has been advised of being under active medical review or program integrity investigation.

(3) Has not submitted any claims.

(4) Has not accepted claims' assignments within the most recent 180-day period preceding the system malfunction.

(e) *Requirements for suppliers.* (1) Except as provided for in paragraph (g)(1) of this section, a supplier must request, in writing to the carrier, an advance payment for Part B services it furnished.

(2) A supplier must accept an advance payment as a conditional payment subject to adjustment, recoupment, or both, based on an eventual determination of the actual amount due on the claim and subject to the provisions of this section.

(f) *Requirements for carriers.* (1) A carrier must notify a supplier as soon as it is determined that payment will not be made in a timely manner, and an advance payment option is to be offered to the supplier.

(i) A carrier must calculate an advance payment for a particular claim at no more than 80 percent of the anticipated payment for that claim based upon the historical assigned claims payment data for claims paid the supplier.

(ii) "Historical data" are defined as a representative 90-day assigned claims payment trend within the most recent 180-day experience before the system malfunction.

(iii) Based on this amount and the number of claims pending for the supplier, the carrier must determine and issue advance payments.

(iv) If historical data are not available or if backlogged claims cannot be identified, the carrier must determine and issue advance payments based on some other methodology approved by HCFA.

(v) Advance payments can be made no more frequently than once every 2 weeks to a supplier.

(2) Generally, a supplier will not receive advance payments for more assigned claims than were paid, on a daily average, for the 90-day period before the system malfunction.

(3) A carrier must recover an advance payment by applying it against the amount due on the claim on which the

advance was made. If the advance payment exceeds the Medicare payment amount, the carrier must apply the unadjusted balance of the advance payment against future Medicare payments due the supplier.

(4) In accordance with HCFA instructions, a carrier must maintain a financial system of data in accordance with the Statement of Federal Financial Accounting Standards for tracking each advance payment and its recoupment.

(g) *Requirements for HCFA.* (1) In accordance with the provisions of this section, HCFA may determine that circumstances warrant the issuance of advance payments to all affected suppliers furnishing Part B services. HCFA may waive the requirement in paragraph (e)(1) of this section as part of that determination.

(2) If adjusting Medicare payments fails to recover an advance payment, HCFA may authorize the use of any other recoupment method available (for example, lump sum repayment or an extended repayment schedule) including, upon written notice from the carrier to the supplier, converting any unpaid balances of advance payments to overpayments. Overpayments are recovered in accordance with part 401, subpart F of this chapter concerning claims collection and compromise and part 405, subpart C of this chapter concerning recovery of overpayments.

(h) *Prompt payment interest.* An advance payment is a "payment" under section 1842(c)(2)(C) of the Act for purposes of meeting the time limit for the payment of clean claims, to the extent of the advance payment.

(i) *Notice, review, and appeal rights.*

(1) The decision to advance payments and the determination of the amount of any advance payment are committed to HCFA's discretion and are not subject to review or appeal.

(2) The carrier must notify the supplier receiving an advance payment about the amounts advanced and recouped and how any Medicare payment amounts have been adjusted.

(3) The supplier may request an administrative review from the carrier if it believes the carrier's reconciliation of the amounts advanced and recouped is incorrectly computed. If a review is requested, the carrier must provide a written explanation of the adjustments.

(4) The review and explanation described in paragraph (i)(3) of this section is separate from a supplier's right to appeal the amount and computation of benefits paid on the claim, as provided at part 405, subpart H of this chapter. The carrier's reconciliation of amounts advanced and recouped is not an initial determination

as defined at § 405.803 of this chapter, and any written explanation of a reconciliation is not subject to further administrative review.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance and No. 93.774 Supplementary Medical Insurance Program)

Dated: August 30, 1996.

Bruce C. Vladeck,  
*Administrator, Health Care Financing Administration.*

[FR Doc. 96-23958 Filed 9-18-96; 8:45 am]

BILLING CODE 4120-01-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 960216032-6246-07; I.D. 082096H]

RIN 0648-AH70

#### Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Exception to Permit Requirements

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

**ACTION:** Final rule with request for comments.

**SUMMARY:** NMFS issues this final rule to modify the regulations implementing the Northeast Multispecies Fishery Management Plan. This rule allows vessels fishing exclusively with pot gear, which are not otherwise allowed to possess multispecies finfish, to possess multispecies frames as bait, provided that a receipt for purchase of that specific bait is on board the vessel. The intended effect is to allow the current practice of using multispecies frames as bait in the pot gear fishery to continue.

**DATES:** This rule is effective September 13, 1996. Comments must be received on or before October 15, 1996.

**ADDRESSES:** Comments on the rule should be sent to Dr. Andrew A. Rosenberg, Regional Director, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930, Attention: Susan A. Murphy.

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

**SUPPLEMENTARY INFORMATION:** Amendment 7 to the FMP, effective on July 1, 1996 (61 FR 27710, May 31, 1996), implemented comprehensive

measures to rebuild the important multispecies stock complex. Among the measures implemented was a measure eliminating the open access possession limit permit category. Possession of such a permit allowed vessels to retain up to 500 lb (226.8 kg) of regulated multispecies per trip. Under this new measure, vessels fishing for, retaining, or possessing regulated multispecies must either possess a limited access multispecies permit and be fishing under a days-at-sea, or possess an open access permit endorsed for appropriate gear type (i.e., handline, rod and reel, or scallop dredge).

An unintended consequence of this provision is its prohibition on the use of multispecies "frames," also known as "racks," as bait in the pot fishery. A multispecies frame or rack is the remains of a multispecies finfish after it has been filleted. Because many pot vessel fishers have traditionally utilized multispecies frames as bait in their fish traps, the elimination of the possession limit permit category prevents many vessels from continuing this practice. The New England Fishery Management Council (Council) did not immediately recognize the need for an exception to this provision and recently indicated that it was never its intent to prohibit pot fishers, that are not otherwise allowed to possess multispecies finfish, from possessing multispecies frames as bait. The Council stated that its main purpose in eliminating the possession limit permit category was to reduce fishing mortality by reducing the catch of regulated multispecies. The Council further stated that prohibiting the possession of multispecies frames does not contribute to this objective because multispecies frames are the remains of finfish that have already been caught, and that to prohibit their possession by pot fishers would reduce the economic value of the landings at a time when the fishing industry needs to capitalize on landings to the largest extent possible.

Modifications to the regulations made by this rule are intended to allow pot fishers, who are not otherwise allowed

to possess multispecies finfish, to possess multispecies frames for the purpose of using them as bait, provided that a receipt for purchase of that specific bait is on board the vessel.

#### Classification

Because prohibiting the possession of multispecies frames for use as bait in pot gear does not contribute to the goal of reducing fishing mortality by reducing the catch of regulated multispecies and needlessly reduces the economic value of multispecies landings at a time when the fishing industry needs to capitalize on the value of such landings to the largest extent possible, the delay associated with providing prior notice and opportunity for comment would be contrary to the public interest. Accordingly, the Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment, pursuant to the authority set forth at 5 U.S.C. 553(b)(B). Because this rule relieves a restriction under 5 U.S.C. 553(d)(1), it may be made immediately effective. Comments on the final rule are invited and must be received on or before October 15, 1996, (see ADDRESSES). The Regional Director will review all comments received and, if the comments warrant, will take further rulemaking action.

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

#### List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 13, 1996.  
Rolland A. Schmitten,  
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. In § 648.2, the definition for "Multispecies frames" is added in alphabetical order to read as follows:

#### § 648.2 Definitions.

\* \* \* \* \*

*Multispecies frames*, also known as multispecies racks, means the remains of the multispecies finfish after it has been filleted or processed, not including the fillet.

\* \* \* \* \*

3. In § 648.4, paragraph (a)(1) introductory text is revised to read as follows:

#### § 648.4 Vessel permits.

(a) \* \* \*

(1) *NE multispecies vessels*. Any vessel of the United States, including a charter or party boat, must have been issued and have on board a valid multispecies permit to fish for, possess or land multispecies finfish in or from the EEZ. Multispecies frames used as, or to be used as, bait on a vessel fishing exclusively with pot gear are deemed not to be multispecies finfish for purposes of this part provided that there is a receipt for the purchase of those frames on board the vessel.

\* \* \* \* \*

4. In § 648.83, paragraph (b)(3) is added to read as follows:

#### § 648.83 Minimum fish sizes.

\* \* \* \* \*

(b) \* \* \*

(3) Vessels fishing exclusively with pot gear may possess multispecies frames used, or to be used, as bait that measure less than the minimum fish size, if there is a receipt for purchase of those frames on board the vessel.

\* \* \* \* \*

[FR Doc. 96-23971 Filed 9-13-96; 4:09 pm]

BILLING CODE 3510-22-F