

operations (e.g., scheduled cargo, mail under a U.S. Postal Service contract, on-demand passenger, on-demand cargo, or other service such as air ambulance operations, firefighting or seasonal operations) without having to meet the registration requirements of subpart C of this part, except as provided in paragraph (b) of this section.

(b) Should a commuter air carrier cease conducting all scheduled passenger operations and its Commuter Air Carrier Authorization is suspended pursuant to §§ 298.53 and/or 204.7 of this chapter, it may continue to conduct air taxi operations *provided that* the carrier maintains in effect liability insurance coverage as required for such operations by part 205 of this chapter and, within 10 days of the cessation of scheduled passenger operations, registers as an air taxi operator in accordance with subpart C of this part; and *provided further* that the carrier continues to hold authority from the Federal Aviation Administration to conduct such air taxi operations.

#### **§ 298.53 Suspension or revocation of authority.**

A Commuter Air Carrier Authorization may be suspended or revoked if any of the following occur:

(a) The operator fails to maintain insurance coverage as required by part 205 of this chapter for commuter operations;

(b) The scheduled passenger authority under the operator's Air Carrier Certificate is suspended or revoked by the Federal Aviation Administration;

(c) The operator does not commence operations for which it has been found fit, or the operator ceases those operations as provided in § 204.7 of this chapter;

(d) The Department finds that the carrier is not fit, willing, and able to conduct scheduled service or fails to qualify as a citizen of the United States; or

(e) The Department determines that it is otherwise in the public interest to do so.

#### **PART 380—PUBLIC CHARTERS**

16. The authority citation for part 380 continues to read as follows:

**Authority:** 49 U.S.C. 40101, 40102, 40109, 40113, 41101, 41103, 41301, 41504, 41702, 41708, 41712, 46101.

#### **§ 380.2 [Amended]**

17. In § 380.2 in the definition of *Direct air carrier* add the word “, commuter” after “certificated”; remove the words “or commuter air carrier” after “air taxi operator” the first time that term is used; and add

“authorization,” between “certificate” and “permit”.

#### **PART 385—STAFF ASSIGNMENTS AND REVIEW OF ACTION UNDER ASSIGNMENTS**

18. The authority citation for part 385 continues to read as follows:

**Authority:** 49 U.S.C. subtitle I, chapters 401, 411, 413, 415, 417.

#### **§ 385.12 [Amended]**

19. In § 385.12(e), remove the words “and commuter air carriers”.

#### **PART 389—FEES AND CHARGES FOR SPECIAL SERVICES**

20. The authority citation for part 389 continues to read as follows:

**Authority:** Sec. 204, 1002, Pub. L. 85–726, as amended, 72 Stat. 743, 797; 49 U.S.C. 1324, 1502. Act of August 31, 1951, ch. 376, 65 Stat. 268; 31 U.S.C. 483a.

#### **§ 389.25 [Amended]**

21. In § 389.25(a), in the table, under the entry Code 7, remove the words “Scheduled Passenger Commuter Registration” and add, in their place, “Commuter Air Carrier Authorization”.

**Karan K. Bhatia,**

*Assistant Secretary for Aviation and International Affairs.*

[FR Doc. 04–23859 Filed 10–27–04; 8:45 am]

**BILLING CODE 4910–62–M**

#### **DEPARTMENT OF COMMERCE**

##### **National Oceanic and Atmospheric Administration**

##### **50 CFR Part 648**

[Docket No. 041018283-4283-01; I.D. 102204C]

**RIN 0648-AS81**

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

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

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

**SUMMARY:** NMFS proposes to implement the days-at-sea (DAS) allocation procedure contained in the final rule implementing Amendment 13 to the NE Multispecies Fishery Management Plan (FMP) under Magnuson-Stevens Act

interim rule authority. This DAS allocation procedure established a DAS baseline allocation based on historic participation in the NE multispecies DAS fishery. The proposed rule to implement Amendment 13 did not include an explicit provision that would have capped a vessel's annual DAS usage at the vessel's DAS allocation prior to August 1, 2002, the annual DAS allocation for the 2001 fishing year (May 1, 2001 - April 30, 2002). To rectify the omission of the DAS usage cap in the proposed rule, NMFS added language to include the cap in the regulatory text of the final rule implementing Amendment 13 to ensure that the DAS baseline procedure complied with NMFS' understanding of the New England Fishery Management Council's (Council) intent. To address the fact that the public was not provided with the opportunity to comment on the DAS usage cap, NMFS proposes to implement the DAS allocation procedure including the cap, as an interim rule through proposed and final rulemaking so as to provide opportunity for public comment consistent with the Administrative Procedure Act (APA).

**DATES:** Comments must be received on or before 5 P.M., local time, November 12, 2004.

**ADDRESSES:** Written comments on the proposed interim rule may be submitted by any of the following methods:

- E-mail: E-mail comments may be submitted to [DASprocedure@noaa.gov](mailto:DASprocedure@noaa.gov). Include in the subject line the following: “Comments on the Proposed Interim Rule for the DAS Allocation Procedure.”
- Federal e-Rulemaking Portal: <http://www.regulations.gov>

- Mail: Comments submitted by mail should be sent to Patricia A. Kurkul, Regional Administrator (RA), Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298. Mark the outside of the envelope “Comments on the Proposed Interim Rule for the DAS Allocation Procedure.”

- Facsimile (fax): Comments submitted by fax should be faxed to (978) 281-9135.

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) for this action, which is contained in the Classification section of this proposed interim rule.

Copies of the Final Supplemental Environmental Impact Statement (FSEIS) and Regulatory Impact Review (RIR) prepared for Amendment 13 and supporting this action are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, The Tannery Mill 2, Newburyport, MA 01950. The FSEIS

and RIR are also accessible via the internet at <http://www.nefmc.org/nemulti/>.

**FOR FURTHER INFORMATION CONTACT:**  
Allison Ferreira, Fishery Policy Analyst,  
(978) 281-9103, fax (978) 281-9135.

**SUPPLEMENTARY INFORMATION:**

**Background**

Amendment 13 to the FMP was developed by the Council to end overfishing and rebuild NE multispecies stocks managed under the authority of the Magnuson-Stevens Act. One of the management strategies used in Amendment 13 to achieve these objectives was to identify and then reduce effective effort. Effective effort is the number of DAS that are actually fished by fishing vessels in contrast to the number of DAS that are allocated. To reduce effective effort, Amendment 13 established a new DAS baseline allocation for individual vessels based on recent participation in the NE multispecies DAS fishery, and then reduced the number of DAS available to achieve a target fishing mortality level. The final rule implementing Amendment 13 became effective on May 1, 2004 (69 FR 22906).

The proposed rule for Amendment 13 (69 FR 4362, January 29, 2004) stated that a vessel's DAS baseline allocation would be determined by the highest number of reported DAS fished during a single qualifying fishing year in which the vessel landed at least 5,000 lb (2,268 kg) of regulated multispecies during the 6-year period from May 1, 1996, through April 30, 2002. The proposed rule did not include an explicit provision, however, that would have capped a vessel's annual DAS usage at the vessel's annual DAS allocation prior to August 1, 2002; that is, the vessel's DAS allocation during the 2001 fishing year. NMFS determined, before publishing the final rule to implement Amendment 13, that it was the intent of the Council to include such a cap on DAS usage, even though the Amendment 13 document did not include explicit language referring to the cap. This determination was based, in part, on the fact that Amendment 13 and its FSEIS analyzed the DAS baseline allocation calculation assuming that a vessel's DAS usage was capped at its DAS allocation for the 2001 fishing year. The FSEIS also assumed the cap would exclude carryover DAS from consideration in the calculation of a vessel's DAS baseline allocation. This analysis was used as the baseline level of DAS from which DAS reductions were calculated in order to limit the total number of Category A DAS to a

level that was likely to meet the Amendment 13 fishing mortality objectives. To implement the final rule without an explicit cap would have been inconsistent with the Council's stated objective of reducing DAS to a level necessary to meet fishing mortality objectives. Therefore, NMFS added explicit regulatory language to include the cap in the final rule implementing Amendment 13 to ensure consistency with the intent of the Council, as NMFS understood that intent.

The validity of the DAS usage cap provision in the final rule implementing Amendment 13 has been called into question by certain members of the fishing industry because NMFS added the cap language to the regulatory text at the final rule stage, without giving the public an opportunity to comment on the new regulatory language, and because there was no explicit language in Amendment 13 referring to a cap on DAS usage. To address any concerns that the DAS usage cap provision may have been promulgated without a full opportunity for public comment and to avoid any possibility of the cap being invalidated in mid-fishing year, this action proposes to establish the DAS baseline allocation procedure that had been included in the final rule implementing Amendment 13 to the FMP as an interim rule under the authority of section 305(c) of the Magnuson-Stevens Act. Section 305(c) of the Magnuson-Stevens Act provides that the Secretary of Commerce may implement an interim rule on a temporary basis to reduce overfishing. If the cap were removed through the above mentioned legal challenge, then the total number of allocated DAS would increase, as more fully discussed in the IRFA discussion below, by 8.9 percent over the current allocation, thereby significantly increasing the possibility of overfishing. To avoid this increased possibility of overfishing, this interim rule is necessary and justified under the Magnuson-Stevens Act. Moreover, it provides the public an opportunity to comment on the inclusion of the cap.

This interim rule would establish a definition of the DAS baseline allocation identical to the Amendment 13 final rule. Therefore, no change in the regulatory language would be required to implement the final interim rule.

This proposed interim rule, if adopted, would ensure that the DAS usage cap is in place for the entire 2004 fishing year (May 1, 2004 - April 31, 2005), leaving the existing 2004 DAS allocations unchanged. In the meantime, the Council is developing a framework adjustment action (Framework 40-B to

the FMP) that would implement, on a permanent basis, its current intent concerning the inclusion of the DAS usage cap in the DAS baseline allocation procedure. It is anticipated that, if approved, Framework 40-B will become effective May 1, 2005.

**Classification**

NMFS determined that the proposed interim rule is consistent with the FMP and preliminarily determined that the rule is consistent with the Magnuson-Stevens Act and other applicable laws.

The proposed action would implement the DAS allocation procedure adopted in the final rule implementing Amendment 13, but not explicitly recommended in that amendment. The impacts of this DAS allocation procedure were thoroughly analyzed in the FSEIS prepared for Amendment 13. Specifically, the biological impacts were analyzed in sections 5.2.5.6, 5.2.6.1, and 5.2.8.4, the economic impacts were analyzed in section 5.4.9.4.5, the social impacts were analyzed in section 5.6.2.2.1.1, and the cumulative impacts were analyzed in section 5.7.7.2 of the FSEIS. A notice of availability for the FSEIS prepared for Amendment 13 was published in the Federal Register on February 6, 2004 (69 FR 5856), with a 30-day cooling off period. NMFS decided to partially approve Amendment 13 on March 18, 2004, and, in the record of decision (ROD) signed on March 18, 2004, concluded that all practicable means to avoid, minimize, or compensate for environmental harm resulting from the measures contained in the amendment had been adopted. This action would not change the DAS allocation procedure implemented in the final rule for Amendment 13 and analyzed in Amendment 13 FSEIS, but establish it through the proposed rulemaking process in order to afford the public an opportunity to comment on the procedure. Therefore, because this action does not change the determinations made in the FSEIS for Amendment 13 and in the corresponding ROD, further environmental review under the National Environmental Policy Act is not necessary.

Pursuant to the procedures established to implement section 6.0 of Executive Order 12866, the Office of Management and Budget has determined that this proposed interim rule is not significant.

NMFS prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act, that describes the economic impact this proposed rule, if adopted, would have on small entities.

A description of the action, why it is being considered and the legal basis for the action are contained in the preamble to this proposed interim rule. This proposed interim rule does not duplicate, overlap, or conflict with any relevant Federal rules. The universe of small entities to which this rule would apply is contained in the IRFA of the proposed rule implementing Amendment 13 and is not repeated here. This rule would not impose any additional reporting, recordkeeping or other compliance requirements that are not already in existence as a result of the final rule implementing Amendment 13.

As mentioned above, this proposed interim rule is being promulgated under the authority of section 305(c) of the Magnuson-Stevens Act. The proposed rule to implement Amendment 13 omitted the DAS usage cap from the DAS baseline procedures, but NMFS added regulatory language to the Amendment 13 final rule to implement such a cap. This action would establish the DAS baseline allocation procedure contained in the Amendment 13 final rule consistent with the rulemaking procedures set forth under the APA.

Two alternatives were considered for purposes of the initial regulatory flexibility analysis: (1) the groundfish fishery without a DAS usage cap for the 2004 fishing year; and (2) a DAS usage cap as analyzed in Amendment 13. The analysis suggests that the lack of a DAS usage cap would increase the number of Category A DAS by 8.9 percent (approximately 3,900 A DAS) over the original allocation of A DAS under Amendment 13. The allocation of A DAS would therefore rise to approximately 47,689 days from the present level of 43,773 days. This increase in A DAS would benefit 390 vessels with an average increase of 10.8 A DAS (ranging from 0.02 to 52.69 A DAS) per vessel. Amendment 13 analyzed the average daily returns by vessel category and concluded that average daily returns while fishing on a DAS would range from \$1,139 to \$2,683 depending on the vessel category. Assuming that additional A DAS were re-allocated to the fishery, individual vessels may realize these net returns. However, net returns may not be uniform within each vessel category because of the variation in number of A DAS that would be expected to return to the fishery (i.e., 0.02 to 52.69 A DAS). Individual vessels would also need to consider other variables in combination with their allocated A DAS to determine the likelihood of exact changes in vessel profitability. The preferred alternative as analyzed within Amendment 13

assumes the DAS usage cap is in place and the NE multispecies fishery is operating based on the DAS allocation procedure specified in the final rule for Amendment 13. In this case, the establishment of a DAS usage cap, as set forth in the final rule, would neither affect the costs of current fishing operations for individual vessels, nor would it impose any additional compliance costs on NE groundfish vessels. DAS allocations to individual vessels would remain unchanged, giving each vessel the same opportunity to earn revenues as they exist in the present fishery. In addition, there would be no change to individual vessel profitability resulting from the maintenance of the present DAS schedule. Furthermore, the NE multispecies fleet has been operating under a DAS usage cap for the past two years as a result of a series of interim and emergency actions taken by NMFS resulting from the *Conservation Law Foundation v. Evans* litigation (67 FR 50292, August 1, 2002; 68 FR 2919, January 22, 2003; and 68 FR 38234, June 27, 2003). Individual vessels have received reduced DAS allocations based on this cap and have already experienced economic impacts that would be similar to those resulting from the existence of the DAS usage cap for the 2004 fishing season.

Implementing the preferred alternative (i.e., capping the DAS baseline at a vessel's 2001 allocation) is critical in order to be consistent with the intent of the Council's goal of fishing capacity reduction. Allowing vessels to have a baseline DAS allocation that exceeds the level of recent historic allocation is counter to the stated goal of Amendment 13's alternatives to control capacity. The non-preferred alternative would also have the potential of slowing rebuilding efforts and would lead to additional DAS reductions in future years, thus resulting in greater adverse economic impacts. Finally, operating the fishery without a DAS usage cap and inserting the extra effort back into the fishery would not be consistent with Amendment 13 and the goals and objectives the Magnuson-Stevens Act and its national standards.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 22, 2004

**Rebecca Lent,**

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

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be 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 § 648.82, paragraph (c)(1) introductory text is republished to read as follows:

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

\* \* \* \* \*

(c) *Used DAS baseline*—(1) *Calculation of used DAS baseline.* For all valid limited access NE multispecies DAS vessels, vessels issued a valid small vessel category permit, and NE multispecies Confirmation of Permit Histories, beginning with the 2004 fishing year, a vessel's used DAS baseline shall be based on the fishing history associated with its permit and shall be determined by the highest number of reported DAS fished during a single qualifying fishing year, as specified in paragraphs (c)(1)(i) through (iv) of this section, during the 6-year period from May 1, 1996, through April 30, 2002, not to exceed the vessel's annual allocation prior to August 1, 2002. A qualifying year is one in which a vessel landed 5,000 lb (2,268 kg) or more of regulated multispecies, based upon landings reported through dealer reports (based on live weights of landings submitted to NMFS prior to April 30, 2003). If a vessel that was originally issued a limited access NE multispecies permit was lawfully replaced in accordance with the replacement restrictions specified in §648.4(a), then the used DAS baseline shall be defined based upon the DAS used by the original vessel and by subsequent vessel(s) associated with the permit during the qualification period specified in this paragraph (c)(1). The used DAS baseline shall be used to calculate the number and category of DAS that are allocated for use in a given fishing year, as specified in paragraph (d) of this section.

\* \* \* \* \*

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