

Dated: October 26, 2006.

Alan D. Risenhoover,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

RIN 0648-AU80

[Docket No.061016268-6268-01; I.D. 100506E]

Fisheries of the Northeastern United States; Regulatory Amendment to Modify Recordkeeping and Reporting and Observer Requirements

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

ACTION: Proposed rule; request for comments.

SUMMARY: Upon a request received by the New England Fishery Management Council (Council), NMFS proposes measures to modify the existing reporting and recordkeeping requirements for federally permitted seafood dealers/processors, and the observer requirements for participating hagfish vessels. The Council has determined that the modifications are necessary to gather additional information on the unique aspects of the hagfish fishery and its interaction with other federally managed fisheries. The information collected from fishery participants (dealers/processors and vessels) would help the Council to determine the need for, and potentially develop, a hagfish Fishery Management Plan (FMP).

DATES: Written comments must be received no later than 5 p.m. eastern standard time, on December 1, 2006.

ADDRESSES: You may submit comments by any of the following methods:

- E-mail: HagfishIC@noaa.gov.

Include in the subject line the following identifier: "Comments on Hagfish Information Collection Program."

- Federal e-Rulemaking portal: <http://www.regulations.gov>.

- Mail: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope: "Comments on Hagfish Information Collection Program."

- Fax: (978) 281-9135.

Copies of the Regulatory Impact Review (RIR) and other supporting documents are available from Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to the Northeast Regional Office at the above address and by email to

David_Rostker@omb.eop.gov, or by fax to (202) 395 7285.

FOR FURTHER INFORMATION CONTACT:

Bonnie Van Pelt, Fishery Policy Analyst, (978) 281-9244.

SUPPLEMENTARY INFORMATION:

Background

A request for an information collection on hagfish under the provisions of section 402(a) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) was received by the Council on October 3, 2006. The request is based on the need to improve upon the quality and quantity of information available on the hagfish resource and its fishery operations to enable the Council to determine the potential need to develop future management measures for hagfish under an FMP. Without this information collection on hagfish, future management measures may not capture accurately the geographic and seasonal aspects of the fishery, which reflect overseas demand, and ensure that the resource may be sustained in future years. This collection of information (with changes, as appropriate) may be extended through the development and implementation of a Hagfish FMP. NMFS has made a preliminary determination that the Council's need for a collection of information program on hagfish is valid and justified, and is proposing to implement this request through the publication of this rule as required by section 402(a) of the Magnuson-Stevens Act. The Atlantic hagfish (*Myxine glutinosa*) fishery in New England (hagfish fishery) was developed in the early 1990s, with the first reported landings of around 1 million lb (454 mt) in 1993. Korean buyers quickly recognized that a fishery in the New England area could provide the high-quality hagfish skins used in making leather, as well as hagfish meat for human consumption. Reported hagfish landings quadrupled during the first 4 years of the fishery (1993-1996), exceeding the highest reported landings in other North American hagfish

fisheries (including British Columbia, Oregon, Washington, California, and Nova Scotia) by 1994.

Today the hagfish fishery relies on revenues from the export of whole frozen hagfish product overseas, primarily to South Korea, for meat consumption. The hagfish fishery prosecuted off the coast of Gloucester, MA, has changed from an inshore fishery comprised of small vessels to an offshore fishery that consists of large vessels. According to reports from a workshop that was held to identify the challenges in collecting information on this fishery, the reason for this change in the way the fishery is being conducted is that the fishery has experienced localized depletion in nearshore waters, necessitating movement of fishing effort to areas not historically fished for hagfish.

Dealer/Processor Permitting and Reporting Requirements

To meet the Council's request for information, this proposed rule would require all seafood dealers who intend to purchase hagfish caught in or from the Exclusive Economic Zone (EEZ) to be permitted under § 648.6, and to submit, on a weekly basis, an electronic dealer report containing the required trip-level information for each purchase of hagfish made from fishing vessels as per the regulations at § 648.7. Hagfish dealers would be required to obtain an initial dealer permit upon implementation of the hagfish information collection requirements and to renew the permit annually thereafter. Reports furnished by permitted dealers would help determine the level of discards and discard mortality of hagfish culled at sea in response to rejection by the dealer in port. In addition, the collection of purchase reports would help to verify landings reported in Vessel Trip Reports (VTRs) for those vessels that have VTR requirements, and for those that do not, the dealers would be required to report vessel identifiers. It is unlikely that additional dealers would join the fishery because the fishery is driven by a narrowly focused export market (South Korea only), which is currently in equilibrium with supply. However, this permitting and reporting requirement would also enable the identification of any new vessel and/or dealer entrants into the fishery.

Dealer/Processor Reports

All federally permitted seafood dealers subject to this proposed rule would be required to complete all sections of the Annual Processed Products Report (§ 648.7). The report

could be used by the Council in developing an FMP, to estimate processing capacity, and to forecast and subsequently measure the potential economic impact of fishery management regulations on fish and shellfish supplies. Employment data collected through the report could also be used to analyze the seasonality of the fishery.

Observer Requirement

Under the hagfish information collection program, any vessel owner/operator that fishes for, catches, or lands hagfish, or intends to fish for, catch, or land hagfish in or from the EEZ would be required to carry an observer when requested by the Regional Administrator (RA) in accordance with § 648.11. Consistent with current observer regulations, hagfish vessel owners/operators would be required to call to arrange deployment of NMFS-approved observers on their vessels and to ensure adequate space for the observer aboard their vessels, once requested to carry an observer by the RA. Observer coverage, however, is funded by NMFS. (at no cost to them), once requested to carry an observer by the RA. These requests would be made for the purpose of monitoring fishing activities, collecting biological data, and complying with the information collection program requirements. Observers are particularly important because of the high discard rates that have been reported to occur in the hagfish fishery at sea due to rejection of hagfish at the docks and because the proportion of the catch that is rejected by the dealer and later discarded at sea is not currently measured.

The hagfish observer coverage objectives will focus on the collection of basic fleet information and observations of fishing behavior, including, but not limited to, the distribution of fishing effort, number of hauls per trip, area/depth fished, trip length, soak time, discard rates of hagfish or other species, gear type/configuration, and gear deployment methodology. Understanding and quantifying the likelihood of marine mammal and sea turtle entanglements that may occur in hagfish gear in the areas fished is also an important observer program objective. There have been two large whale entanglements documented in the hagfish fishery: one in 1997 involving entanglement of a finback whale, and one in 2002 involving a humpback whale. In addition, the configuration of hagfish gear is similar enough to lobster gear that it is believed to pose the same or similar entanglement threat to large whales.

NMFS looked at two alternatives to the proposed action; i.e., the no action alternative and an alternative that requires that only dealer permits/reporting be implemented (Alternative 2). Alternative 2 would include the requirement for dealers to obtain Federal dealer permits to purchase hagfish and to report their hagfish purchases, but it would not include the requirement for observer coverage on board participating vessels. The hagfish fishery is included in the Category II listing for Mixed Pot/Trap Fisheries as per the 2005 List of Fisheries under the Marine Mammal Protection Act. This alternative was not selected because of the importance of observer coverage for the hagfish fishery. Observer coverage could help NMFS gather information on the high discard rates that have been reported in the hagfish fishery because of rejection of hagfish at the docks due to size or quality, and because the proportion of catch that is rejected by the dealer and later discarded at sea is not currently measured. Observer coverage would also be important because the hagfish fishery is included in the Category II listing for Mixed Pot/Trap Fisheries as per the 2006 List of Fisheries under the Marine Mammal Protection Act. Category II fisheries are those commercial fisheries determined by the Assistant Administrator to have occasional incidental mortality and serious injury of marine mammals. Therefore, understanding and quantifying the likelihood of marine mammal and sea turtle entanglements that may occur in hagfish gear in the areas fished is a necessary and integral part of the hagfish collection of information program.

Under the no action alternative, the Council would not have the basic fishery information they need to develop an FMP for this fishery. Increased knowledge of this fishery may also help managers and scientists understand the factors that have contributed to this species' localized depletion. Localized depletion if left to continue could lead to increased economic impacts, as well as overall depletion of the species. Therefore, the no action alternative would not achieve the objectives of the collection of information program and was not considered a viable alternative.

Classification

E.O. 12866

This proposed rule is not significant under Executive Order 12866. NMFS prepared an RIR that describes the impact this proposed rule, if adopted,

would have on hagfish fishery participants.

Certification Under § 605 of the Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The basis and purpose of this proposed rule is described in the preamble to this document and is not repeated here. It is estimated that five vessels and two dealers, all of which are considered to be small businesses under the relevant Small Business Administration definition of a small entity (North American Industry Classification System AICS code 114111, finfish fishing, with annual receipts not in excess of \$4.0 million), would be impacted by this proposed rule. Since all hagfish vessels are considered small entities, there would be no disproportionate economic impact between small and large vessels resulting from this proposed rulemaking. In addition, there would be no disproportionate economic impacts among vessels resulting from different vessel length, gear type, or location of homeport, because the proposed action applies to all participants in the hagfish fishery.

NMFS has determined that this proposed rule would not have a significant economic impact on a substantial number of small business entities because: (1) most dealers are already subject to the requirements of electronic reporting, so the additional electronic reporting requirements will not impose significant additional burden on them, and all dealers would likely find electronic reporting economically beneficial to them, as the information entered into the system can be used for multiple business purposes; (2) for those dealers not already subject to the requirements for electronic dealer reporting, such reporting represents a minute portion of the firms' overall cost of doing business (or less than 1 percent of average annual revenues at an estimated average annual startup cost per dealer of \$116, for the first year, and \$652, per dealer, thereafter for yearly operating costs) due to the small size of this fishery compared to other Northeast fisheries (approximately 5 participating vessels); and (3) the direct and indirect costs to dealers/processors and vessels associated with completing the Annual Processed Products Report and

complying with the observer requirements are minimal (less than \$50 annually), due to the fact that processor reports are mailed with postage-paid envelopes and observer coverage is funded at 100 percent by NMFS (vessel owners are responsible for calling to arrange for observers and to ensure adequate space for observers on their vessels). Based on the above analysis, this proposed rule is not expected to have a significant impact on a substantial number of vessels or dealers. As a result, an initial regulatory flexibility analysis was not required for this action and none was prepared.

Collection-of-Information Requirements under the Paperwork Reduction Act

This proposed rule contains four collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval. The public's reporting burden for the collection-of-information requirements includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information requirements.

The new and revised reporting requirements and the estimated time for a response are as follows: 2 minutes to request an observer; 4 minutes for a dealer purchase report; 15 minutes and 5 minutes for initial dealer permit application/renewal application, respectively; and 30 minutes for the Annual Processed Products Report.

Public comment is sought regarding: whether the 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 NMFS and to OMB (see **ADDRESSES**).

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

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 26, 2006.

Samuel D. Rauch III,

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 § 648.2, a new definition for Atlantic hagfish is added, in alphabetical order, to read as follows:

§ 648.2 Definitions.

* * * * *

Atlantic hagfish means *Myxine glutinosa*.

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3. In § 648.6, paragraph (a)(1) is revised to read as follows:

§ 648.6 Dealer/processor permits.

(a) * * * (1) All dealers of NE multispecies, monkfish, skates, Atlantic herring, Atlantic sea scallop, Atlantic deep-sea red crab, spiny dogfish, summer flounder, Atlantic surf clam, ocean quahog, Atlantic mackerel, squid, butterfish, scup, bluefish, tilefish, and black sea bass; Atlantic surf clam and ocean quahog processors; Atlantic hagfish dealers and/or processors, and Atlantic herring processors or dealers, as described in § 648.2; must have been issued under this section, and have in their possession, a valid permit or permits for these species.

* * * * *

4. In § 648.7, paragraph (a)(3)(iv) is added to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

(a) * * *

(3) * * *

(iv) Atlantic hagfish processors must complete and submit all sections of the Annual Processed Products Report.

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5. In § 648.11, paragraph (a) is revised to read as follows:

§ 648.11 At-sea sea sampler/observer coverage.

(a) The Regional Administrator may request any vessel holding a permit for Atlantic sea scallops, NE multispecies, monkfish, skates, Atlantic mackerel, squid, butterfish, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring,

tilefish, or Atlantic deep-sea red crab; or a moratorium permit for summer flounder; to carry a NMFS-approved sea sampler/observer. Also, any vessel or vessel owner/operator that fishes for, catches or lands hagfish, or intends to fish for, catch, or land hagfish in or from the exclusive economic zone must carry a NMFS-approved sea sampler/observer when requested by the RA in accordance with the requirements of this section.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 061024277-6277-01; I.D. 101206C]

RIN 0648-AU94

Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Advance Notice of Proposed Rulemaking to Establish a Control Date

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

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: NMFS and the Pacific Fishery Management Council (Council) are beginning to develop a groundfish fishery management plan (FMP) amendment and management measures to reduce harvest capacity in the open access portion of the Pacific Coast groundfish fishery in Federal waters off Washington, Oregon, and California. This document announces a control date for the open access portion of September 13, 2006, and is intended to discourage new entrants into this fishery and increased fishing effort based on economic speculation while the Council determines whether and how access should be controlled. The announcement is intended to promote awareness of potential eligibility criteria for future access to the open access portion of the Pacific Coast groundfish fishery. Vessels entering the fisheries after September 13, 2006, may be subject to restrictions different from those that apply to vessels in the fishery prior to September 13, 2006. If catch history is used as a basis for future participation or allocation, it is likely