

For the Nuclear Regulatory Commission.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 15 CFR Part 902

#### 50 CFR Part 648

[Docket No. 0907281181-0040-03]

RIN 0648-AX93

### Fisheries of the Northeastern United States; Reporting Requirement for Midwater Trawl Vessels Fishing in Closed Area I

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

**ACTION:** Final rule; effectiveness of a collection-of-information requirement.

**SUMMARY:** NMFS announces approval by the Office of Management and Budget (OMB) of a collection-of-information requirement contained in Northeast (NE) Multispecies regulations for midwater trawl herring vessels that fish in groundfish Closed Area I (CA I). The intent of this final rule is to implement these additional reporting requirements.

**DATES:** This rule is effective March 5, 2010. The amendments to 50 CFR 648.14(r)(2)(vii) and 648.80(d)(7)(iii)(B), published in the **Federal Register** on November 2, 2009 (74 FR 56562), will become effective on March 5, 2010.

**ADDRESSES:** Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to the Regional Administrator, NMFS Northeast Region, 55 Great Republic Drive, Gloucester, MA 01930 and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or fax to (202) 395-7285.

**FOR FURTHER INFORMATION CONTACT:** Douglas Potts, Fishery Policy Analyst, (978) 281-9341, fax (978) 281-9135.

**SUPPLEMENTARY INFORMATION:** A final rule implementing modifications to the Gulf of Maine/Georges Bank (GOM/GB) Herring Midwater Trawl Gear Letter of Authorization (LOA) published in the **Federal Register** on November 2, 2009 (74 FR 56562). The measures contained

in the rule were effective upon publication, with the exception of new requirements for vessel operators to complete and submit a CA I Midwater Trawl Released Codend Affidavit. Because OMB approval of the CA I Midwater Trawl Released Codend Affidavit had not been received by the date the final rule was published, NMFS delayed the effective date of the associated reporting requirements. These reporting requirements were detailed in the proposed rule (September 4, 2009; 74 FR 45798), with public comment accepted through September 27, 2009. All comments received on the proposed measures were addressed in the November 2, 2009, final rule and are not repeated here.

On January 4, 2010, OMB approved, without change, the collection-of-information contained in the CA I Midwater Trawl Released Codend Affidavit. Accordingly, effective March 5, 2010, if a vessel issued an All Areas and/or an Areas 2 and 3 Limited Access Herring Permit releases a net in CA I before the fish can be sampled by the observer, the vessel operator must complete and sign a CA I Midwater Trawl Released Codend Affidavit, as specified in §§ 648.14(r)(2)(vii) and 648.80(d)(7)(iii)(B). The CA I Midwater Trawl Released Codend Affidavit form includes details of where, when, and why the net was released as well as a good-faith estimate of both the total weight of fish caught on that tow and the weight of fish released (if the tow had been partially pumped). The completed affidavit form must be submitted to NMFS within 48 hr of the completion of the trip.

Under NOAA Administrative Order 205-11, 7.01, dated December 17, 1990, the Under Secretary of Oceans and Atmosphere has delegated to the Assistant Administrator for Fisheries, NOAA, the authority to sign material for publication in the **Federal Register**.

#### Classification

There is good cause under 5 U.S.C. § 553(b)(B) to waive prior notice and an opportunity for public comment on this action, as notice and comment would be unnecessary and contrary to the public interest. This reporting requirement was detailed in the September 4, 2009, proposed rule, with public comments accepted through September 27, 2009. This reporting requirement was also detailed in the November 2, 2009, final rule, which also explained that implementation of the requirement was delayed pending OMB approval of the form. Therefore, the public has previously been provided with notice of this measure and opportunity to

comment. Providing additional notice and comment would further delay the collection of bycatch discard information. The time required for additional notice and public comment would likely delay the implementation of this reporting requirement past the period in early spring when midwater trawl vessels have historically fished in Closed Area I. If this reporting requirement were not in place by that time, valuable information on bycatch discard would not be collected. The New England Fishery Management Council has expressed an interest in using data collected under this program in the current development of Amendment 5 to the FMP.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

This final rule contains a new collection-of-information requirement subject to the Paperwork Reduction Act (PRA). The new collection-of-information requirement pertaining to the CA I Midwater Trawl Released Codend Affidavit has been approved by OMB under OMB control number 0648-0602. Public reporting burden for these requirements is estimated to average 5 min per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS at the **ADDRESSES** above, and e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to 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 15 CFR Part 902

Reporting and recordkeeping requirements.

Dated: January 28, 2010.

**Samuel D. Rauch III,**

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

■ For the reasons set out in the preamble, 15 CFR part 902 is amended as follows:

# **PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS**

■ 1. The authority citation for part 902 continues to read as follows:

**Authority:** 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, the table in paragraph (b) under 50 CFR is amended by revising the existing entries for §§ 648.14 and 648.80 to read as follows:

## **§ 902.1 OMB control number assigned pursuant to the Paperwork Reduction Act.**

* * * *				
(b) * * *				
CFR part or section where the information collection requirement is located	Current OMB control number (All numbers begin with 0648—)			
* * *	* * *	* * *	* * *	* * *
50 CFR				
* * *	* * *	* * *	* * *	* * *
648.14	-0202, -0212, -0469, -0489, -0501, -0502, and -0602			
* * *	* * *	* * *	* * *	* * *
648.80	-0202, -0422, -0489, -0521, and -0602			
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## **DEPARTMENT OF LABOR**

### **Office of Workers' Compensation Programs**

#### **20 CFR Part 10**

RIN 1215-AB66

### **Claims for Compensation; Death Gratuity Under the Federal Employees' Compensation Act**

**AGENCY:** Office of Workers' Compensation Programs, Labor.

**ACTION:** Final rule.

**SUMMARY:** On August 18, 2009, the Department of Labor (DOL) published an interim final rule in order to administer the death gratuity created by section 1105 of the National Defense Authorization Act for Fiscal Year 2008, Public Law 110-181. Section 1105 provides a death gratuity payment to eligible survivors of federal employees and non-appropriated fund instrumentality employees (NAFI employees) who die of injuries incurred in connection with service with an

Armed Force in a contingency operation.

Section 1105 amended the Federal Employees' Compensation Act (FECA) to add a new section, designated as section 8102a. The Secretary of Labor has the authority to administer and to decide all questions arising under FECA. 5 U.S.C. 8145. FECA authorizes the Secretary to prescribe rules and regulations necessary for the administration and enforcement of the Act. 5 U.S.C. 8149. The Secretary has delegated the authority provided by 5 U.S.C. 8145 and 8149 to the Director of the Office of Workers' Compensation Programs (OWCP), who is responsible for the administration and implementation of FECA. 20 CFR 1.1. Thus OWCP will administer the adjudication of claims and the payment of the death gratuity under new section 8102a.

At the same time the DOL published the interim final rule, it also invited written comments and advice from interested parties regarding possible changes to those regulations. This document amends the interim final rule based on the single comment received by the DOL.

**DATES:** *Effective Date:* This final rule is effective on April 5, 2010. *Applicability dates:* This final rule will apply to all claims filed on or after April 5, 2010. This rule will also apply to any claims that are pending on April 5, 2010.

#### **FOR FURTHER INFORMATION CONTACT:**

Shelby Hallmark, Director, Office of Workers' Compensation Programs, U.S. Department of Labor, Room S-3524, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone: 202-693-0031 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The Department of Labor's (DOL) interim final rule governing the administration of the death gratuity created by section 1105 of the National Defense Authorization Act for Fiscal Year 2008, Public Law 110-181, by the DOL was published in the **Federal Register** on August 18, 2009 (74 FR 41617). The rule took effect immediately and included a 60-day period for comment. During the comment period, DOL received one timely comment from an individual. This comment addressed the issue of timeliness for retroactive claims under § 10.912, as well as some comments regarding what forms should be used under §§ 10.903 and 10.911. The DOL's section-by-section analysis of the timely comment it received is set forth below.

#### **I. Comments on the Interim Final Rule**

The section numbers used in the headings of the following analysis are

those that were used in the interim final rule.

#### *Sections 10.903 and 10.911*

The commenter suggested that the interim final rule and forms be amended to indicate that, for retroactive claims under 5 U.S.C. 8102a, claimants would not need to submit the new forms CA-41 and CA-42 as other forms applied during the period prior to enactment of the death gratuity benefit on January 28, 2008 and that those forms be amended accordingly. The commenter also suggested that, in the alternative, the regulations could be amended at §§ 10.903 and 10.911 to reference that forms CA-5 and CA-6, which are used for death benefit claims under the FECA, could be used to file for the new death gratuity benefit. This comment, however, misconstrues the relationship between death benefits under the FECA and the new death gratuity benefit. Specifically, the death gratuity is a new benefit that did not exist prior to January 28, 2008, which involves different burdens of proof, different information, and potentially different beneficiaries than a claim for death benefits under the FECA. The new information sought in the new forms is required so that the DOL may make a proper determination as to eligibility under the new death gratuity benefit. Therefore, the suggested changes to §§ 10.903 and 10.911 have not been made.

#### *Section 10.912*

The commenter also suggested that § 10.912 be modified to indicate that a retroactive claim for the new death gratuity benefit is timely if a death benefit claim is filed for the same death within the three-year time limit for filing a FECA claim. The DOL notes that the regulation specifically covers such a situation, in that it states that a claim for the new death gratuity benefit is timely if it is filed within the time limits specified by the FECA pursuant to 5 U.S.C. 8122. That section of the FECA states that a claim for benefits is timely if it is filed within three years of the date of injury or death. That section further states that a claim for disability that is timely filed will be a timely filing for a death benefit based on the same injury. It is the position of the DOL that this section covers the circumstances noted by the commenter, and that the timely filing of a claim for death benefits under the FECA is a timely filing for a retroactive death gratuity benefit. Furthermore, the DOL notes that section 8122 of the FECA also states that a claim is also timely if an immediate supervisor had knowledge of an injury