

**DEPARTMENT OF STATE****48 CFR Part 601****[Public Notice: 7480]****RIN 1400-AB98****Department of State Acquisition Regulation; Foreign Nationals and Third Country Nationals****AGENCY:** State Department.**ACTION:** Final rule.

**SUMMARY:** This final rule makes one administrative change to the Department of State Acquisition Regulation (DOSAR). It revises the DOSAR to allow the appointment of selected non-U.S. citizen locally employed staff, i.e., Foreign Nationals and Third Country Nationals, as contracting officers for acquisitions at \$25,000 and below. This change will permit streamlined procurement processes at applicable Department of State overseas posts.

**DATES:** *Effective Date:* This rule is effective June 24, 2011.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:** The Department published a proposed rule, Public Notice 5684 at 72 FR 4475, January 31, 2007, with a request for comments to expand contracting authority at applicable overseas posts (Embassies and Consulates) to selected non-U.S. citizen locally employed staff (LES) for acquisitions at \$25,000 and below. Because the current DOSAR language indicates that all contracting officers must be U.S. citizens, a change to the regulation is required. By way of background, the Department conducted a pilot program at 15 overseas posts in the following locations: Bridgetown, Barbados; Brussels, Belgium; Ljubljana, Slovenia; Melbourne, Australia; Munich, Germany; Nicosia, Cyprus; Oslo, Norway; Paris, France; Seoul, Korea; Singapore; Tallinn, Estonia; The Hague, Netherlands; Tokyo, Japan; Valletta, Malta; and Vienna, Austria. To ensure adequate rule of law, each of the locations involved in the pilot program had a score of at least 5.0 on the Transparency International Corruption Perceptions Index, available at the following Web site: <http://www.transparency.org/>. This successful pilot program resulted in streamlined procurement processes and increased

management flexibility in awarding acquisitions at \$25,000 and below. As a result of this successful pilot program, the Department wants to adopt the proposed rule as final. As specified in the proposed rule, appropriate enhanced management controls, including review of LES transactions by a U.S. Citizen contracting officer, will be imposed. For example, these controls will incorporate the following mandatory requirements:

- Available only at posts with a score of at least 5.0 on the Transparency International Corruption Perceptions Index;
- Available only to selected LES staff with a minimum of five years of Department of State experience, unquestioned integrity, and one week of specified simplified acquisition training;
- Review of LES transactions on a monthly basis by a U.S. citizen contracting officer; and
- Periodic evaluation of LES delegated procurement by the Office of the Procurement Executive.

This DOSAR change is administrative in nature and is intended to provide management flexibility to Department of State overseas posts. The proposed rule was discussed in detail in Public Notice 5684. No public comments were received. The Department is now promulgating a final rule with no changes from the proposed rule.

**Regulatory Findings***Administrative Procedure Act*

The Department of State does not consider this rule to be a “significant regulatory action” under Executive Order 12866, section 3(f), Regulatory Planning and Review. In addition, the Department is exempt from Executive Order 12866 except to the extent that it is promulgating regulations in conjunction with a domestic agency that are significant regulatory actions. The Department has nevertheless reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order.

*Regulatory Flexibility Act*

The Department of State, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

*Unfunded Mandates Act of 1995*

This rule will not result in the expenditure by State, local, and tribal

governments, in the aggregate, or by the private sector, of \$100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Act of 1995.

*Small Business Regulatory Enforcement Fairness Act of 1996*

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign based companies in domestic and import markets.

*Executive Order 13563 and Executive Order 12866*

The Department of State does not consider this rule to be a “significant regulatory action” under Executive Order 12866, section 3(f), Regulatory Planning and Review, as amended by Executive Order 13563. In addition, the Department is exempt from Executive Order 12866 except to the extent that it is promulgating regulations in conjunction with a domestic agency that are significant regulatory actions. The Department has nevertheless reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order.

*Executive Order 13132*

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

*Paperwork Reduction Act*

The Paperwork Reduction Act does not apply because the rule does not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Part 601**

Government procurement.

Accordingly, for reasons set forth in the preamble, title 48, chapter 6 of the Code of Federal Regulations is amended as follows:

#### Subchapter A—General

### PART 601—DEPARTMENT OF STATE ACQUISITION REGULATION SYSTEM

■ 1. The authority citation for 48 CFR part 601 continues to read as follows:

**Authority:** 40 U.S.C. 486(c); 22 U.S.C. 2658.

■ 2. Section 601.603–3 is amended by revising paragraph (c) to read as set forth below:

#### 601.603–3 Appointment.

\* \* \* \* \*

(c) *Non-Federal employees.* Only United States Government employees shall be appointed as contracting officers. For acquisitions at \$25,000 and below only, this includes locally employed staff (*i.e.*, Foreign Service Nationals and Third Country nationals). Personal services contractors are not eligible for appointment as DOS contracting officers.

\* \* \* \* \*

Dated: May 19, 2011.

**Corey M. Rindner,**

*Procurement Executive, Bureau of Administration, Department of State.*

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### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 090225241–1233–03]

**RIN 0648–AX70**

#### Fisheries of the Northeastern United States; Monkfish; Amendment 5

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

**ACTION:** Final rule.

**SUMMARY:** This final rule implements measures that were approved in Amendment 5 to the Monkfish Fishery Management Plan (FMP). The New England and Mid-Atlantic Fishery Management Councils (Councils) developed Amendment 5 to bring the FMP into compliance with the annual catch limit (ACL) and accountability measure (AM) requirements of the Magnuson-Stevens Fishery

Conservation and Management Act (Magnuson-Stevens Act). This rule establishes the mechanisms for specifying ACLs and AMs and sets the annual catch target (ACT) and associated measures for days-at-sea (DAS) and trip limits for the Southern Fishery Management Area (SFMA). NMFS disapproved the proposed ACT, and associated measures, for the Northern Fishery Management Area (NFMA) on the grounds that they are not consistent with the most recent scientific advice. This final rule implements three additional Amendment 5 management measures to promote efficiency and reduce waste, brings the biological and management reference points in the Monkfish FMP into compliance with recently revised National Standard 1 (NS1) Guidelines, and makes one correction to the monkfish weight conversion factors.

**DATES:** Effective May 25, 2011.

**ADDRESSES:** An environmental assessment (EA) prepared for Amendment 5 at the time of its submission by the Councils describes the proposed action and other considered alternatives, and provides a thorough analysis of the impacts of the proposed measures and alternatives. NMFS prepared an Addendum to the Amendment 5 EA for the purpose of analyzing the potential impacts of the amendment on Atlantic sturgeon. Copies of Amendment 5, including the EA and the Initial Regulatory Flexibility Analysis (IRFA), are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council (NEFMC), 50 Water Street, Newburyport, MA 01950. Copies of the Addendum to Amendment 5 are available from Patricia A. Kurkul, Regional Administrator, NMFS, 55 Great Republic Drive, Gloucester, MA 01930. These documents are also available online at <http://www.nefmc.org>.

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 Northeast Regional Office of NMFS at 55 Great Republic Drive, Gloucester, MA 01930, and by e-mail to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov), or fax to (202) 395–7285.

**FOR FURTHER INFORMATION CONTACT:** Allison McHale, Fishery Policy Analyst, (978) 281–9103; fax: (978) 281–9135.

#### SUPPLEMENTARY INFORMATION:

##### Background

This final rule implements approved measures in Amendment 5, which was partially approved by NMFS on behalf

of the Secretary of Commerce (Secretary) on April 28, 2011. A proposed rule to implement the measures in Amendment 5 published in the **Federal Register** on March 3, 2011 (76 FR 11737), with public comment accepted through April 4, 2011. Details concerning the development of Amendment 5 were contained in the preamble of the proposed rule and are not repeated here.

A recent assessment of the monkfish resource was conducted during the first half of 2010 by the 50th Stock Assessment Review Committee (SARC 50). The full assessment report was released in August 2010 and can be found at <http://www.nefsc.noaa.gov/publications/crd/crd1017/>. The SARC 50 assessment concluded that both stocks are above their respective current biomass thresholds, and above the new biomass thresholds recommended by the assessment, indicating that both stocks are not overfished. Furthermore, the current estimated fishing mortality rate for each stock is below its respective fishing mortality threshold. Thus, overfishing is not occurring on either stock.

The 2010 assessment panel expressed serious concerns regarding the high levels of scientific uncertainty in the assessment results. The Monkfish Assessment Summary Report for 2010 states, “The assessment results continue to be uncertain due to cumulative effects of under-reported landings, unknown discards during the 1980s, uncertainty in survey indices, and incomplete understanding of key biological parameters such as age and growth, longevity, natural mortality and stock structure contributing to retrospective patterns primarily in the northern management area.” Unlike the Data Poor Working Group (DPWG) assessment conducted in 2007 (see Monkfish Assessment Summary Report at <http://www.nefsc.noaa.gov/nefsc/publications/crd/crd0713/>), the 2010 assessment utilized projections to evaluate stock trends based on anticipated fishing levels. However, these projections are also considered highly uncertain because they are based on the outputs of the assessment model. Despite this uncertainty, the projections indicated that the NFMA is more vulnerable to overfishing or becoming overfished during 2011–2016 if total catches approach the acceptable biological catch (ABC) value of 17,485 mt in Amendment 5 that was based on the results of the DPWG assessment. Conversely, the SFMA was found to be less vulnerable based upon the ABC value of 13,326 mt in Amendment 5.