

plastic deformation would preclude the use of a material produced by his company that returns to its original shape (i.e., elastic) very slowly, on the order of approximately 24 hours. In summary, our response to Mr. Toms stated that such slow-rebounding elastomeric materials could be used if the guards equipped with them passed the compliance test procedures.

Our August 4, 1998 response to Mr. Toms explained that the purposes of the standard could be fulfilled using a guard with a slow-rebounding elastomeric material. The requirement that guards absorb energy was intended to ensure that guards were not too rigid during the onset of force in a crash. The requirement that they absorb the energy by plastic deformation was to ensure that the guard did not subsequently return the absorbed energy to the colliding vehicle, because that energy return could increase the risk of death or injury to the occupants. Therefore, any rebound occurring after the crash event, especially slow rebound such as is produced by guards using some slow-acting elastomeric materials, would not, in the real world pose any threat to passenger vehicle occupants. Therefore, for real world safety purposes, the time frame within which a material must retain its deformed shape to be considered "plastic" is the duration of a crash event.

The relevant time period for compliance purposes, however, is longer. Standard No. 223 employs a quasi-static test, not a dynamic test, in testing for compliance with its requirements. We have no way of determining whether a material would rebound within the time frame of the crash. Therefore, if an elastomer reacts in such a way that it passes the test procedure, it will have passed the requirements. Identification of the end of the test is therefore critical in determining whether a material will pass the test. The interpretation defined the end of the test as follows:

A specific event determines when the test ends. The force application/withdrawal portion of the test procedure is over as soon as the guard no longer offers resistance to the force application device. Since S6.6(c) is a list of steps to be performed, it is reasonable to assume that once a certain step is completed, the next step will be commenced. The step of reducing the force proceeds only "until the guard no longer offers resistance." In practical terms, the guard will generally cease to offer resistance when it loses contact with the force application device. NHTSA has no way of determining any small amount of residual force generated by your elastomer after that point. A properly calibrated load cell (a typical load measuring device) should register zero load, and the force deflection

trace should meet the abscissa of the graph upon separation. After that happens, the test itself is completed and all that remains is the computation of the amount of energy absorbed using the area within the force deflection curve.

Therefore, while we generally agree with TTMA that the test should end when the force has been reduced to zero, there is no need to wait for one second to see if the guard re-connects with the test plate. Ending the test immediately when the test plate separates from the guard satisfies TTMA's concern. As explained in the interpretation letter, there is adequate support for that procedure in the existing regulatory text. The current language "[r]educe the force until the guard no longer offers resistance to the force application device" sufficiently describes the completion of the test for purposes of calculating the amount of energy that has been absorbed. We do not believe any change to the text of the standard is necessary to define the end of the test.

IV. Conclusion

For the reasons given above, we conclude that TTMA has not justified the need for further rulemaking on this standard. TTMA has not provided information demonstrating a need for a lower force application rate. It is not practicable or objective for compliance tests to end prematurely based on assumptions that we make about particular guard designs or materials. And, while we agree that the industry needs to understand precisely at what point the energy absorption test ends, the existing regulatory language on this issue has already been clarified through interpretation. We believe it is sufficiently explicit.

In accordance with 49 CFR part 552, this completes the agency's review of the petition. We have concluded that the TTMA has not adequately documented problems with the current procedures. Based on the available information, we believe that there is no reasonable possibility that the actions requested by TTMA would be taken at the conclusion of a rulemaking proceeding and that the problem alleged by TTMA does not warrant the expenditure of agency resources to conduct a rulemaking proceeding. Accordingly, we deny TTMA's petition.

Authority: 49 U.S.C. 30103, 30162; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: September 7, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 990830239-9239-01; I.D. 082499A]

RIN 0648-AM99

Fisheries of the Northeastern United States; Northeast Multispecies and Atlantic Sea Scallop Fisheries; Northeast Multispecies and Atlantic Sea Scallop Fishery Management Plans

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

ACTION: Advance notice of proposed rulemaking; notice of a control date for the purposes of controlling capacity or latent effort in the Northeast multispecies and Atlantic sea scallop fisheries.

SUMMARY: NMFS announces that it is considering, and is seeking public comment on, proposed rulemaking under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to control future access to the Northeast multispecies and Atlantic sea scallop fisheries. This notification is intended, in part, to discourage speculative activation of previously unused effort or capacity while the New England Fishery Management Council (Council) and NMFS are considering whether and how to control capacity and latent effort. The date of publication of this notification, September 10, 1999, shall be known as the "control date", and may be used for establishing eligibility criteria for determining levels of future access to the Northeast multispecies and Atlantic sea scallop fisheries subject to Federal authority.

DATES: Comments must be received by October 12, 1999.

ADDRESSES: Comments should be directed to Patricia Kurkul, Regional Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298.

FOR FURTHER INFORMATION CONTACT:

Susan A. Murphy, Fishery Policy Analyst, 978-281-9252.

SUPPLEMENTARY INFORMATION: The Northeast multispecies fishery is a major fishery on the Atlantic coast that extends from Cape Hatteras north to Maine. There are over 1,650 limited access permits and approximately 1,350 open access permits issued in the commercial fishery. Regulations implemented under the Northeast Multispecies Fishery Management Plan (FMP) impose an extensive system of effort controls to control fishing mortality. In addition to a permit moratorium to limit the number of participants in the fishery, vessels are subject to days-at-sea (DAS) restrictions, minimum fish sizes, closed areas, trip limits, and gear restrictions, among other measures.

The status of the individual regulated multispecies stocks varies for each species. Overall, fishing mortality for all species, except Georges Bank yellowtail flounder, witch flounder, and Southern New England winter flounder, is estimated to be too high to prevent overfishing and begin rebuilding biomass to appropriate levels. As necessary, management measures have been implemented to control fishing mortality and rebuild these stocks.

The Atlantic sea scallop fishery is a major commercial fishery that targets sea scallops from Cape Hatteras north to Maine. Regulations implemented under the Atlantic Sea Scallop FMP control fishing mortality through a variety of management measures, including a limit on the number of permits, DAS limitations, gear and crew restrictions, and closed areas. The fishery is presently prosecuted by about 250 vessels, although 365 permits have been issued.

According to the 29th Regional Stock Assessment Workshop, the U.S. Georges Bank stock of sea scallops is not overfished, but its biomass is below the B_{MSY} level (long-term biomass of the stock that will produce maximum sustainable yield on a continuing basis). The Mid-Atlantic stock is at or near the biomass threshold used to determine whether the stock is overfished. While both stocks are below B_{MSY} , the condition of both stocks has improved in recent years.

Many of the measures implemented over the last 5 years, in both the multispecies and sea scallop fisheries, reduced fishing opportunities and revenues for commercial fishers. These measures are working, as many of the stocks are gradually rebuilding to target levels. However, the Council is

concerned because there is an excessive amount of unused harvesting capacity or effort that could jeopardize the continued rebuilding of the stocks. This unused capacity or effort is often referred to as latent effort. As fish stock sizes increase, it is more likely that industry would activate latent effort. If latent effort is activated too quickly, achievement of the objectives of the two FMPs to rebuild stocks could be hampered. This would require the Council and NMFS to impose even more restrictive management measures in order to meet the rebuilding requirements of the Magnuson-Stevens Act.

A review of the activity of multispecies limited access vessels indicates the potential magnitude of this problem. While the level of fishing mortality on most species in the multispecies complex was higher than the levels targeted by the management measures in the 1998 fishing year, about one-third (over 550) of the authorized limited access vessels did not fish for multispecies. On average, those permitted vessels that did fish for multispecies used only half their available DAS. Similarly, in the scallop fishery, 133 permits (51 full-time, 33 part-time, and 49 occasional) did not fish for scallops in 1998. Those permitted vessels (about 250) that did fish for scallops used about 84 percent of their available DAS.

The Council is examining the activity of these permits in detail to determine whether there is a justified concern over unused harvesting capacity. Some of the questions the Council must consider include:

1. What is the definition of latent effort?
2. Are permit holders who have not participated in the multispecies or scallop fisheries participating in another fishery?
3. Are these vessels likely to increase their effort in the multispecies or scallop fisheries or enter these fisheries?
4. Are these permits issued to vessels that can have a significant impact on fishing mortality?
5. Will these permitted vessels enter the fishery faster than rebuilt stocks can support the additional effort?
6. If these permitted vessels are likely to enter the fisheries and if having entered, they adversely impact the fishery, what can be done to mitigate or reverse these impacts?
7. How will limited access permit holders who have stopped fishing on multispecies or scallops or who have reduced their effort on these species (for any reason) be treated by the Council?

8. What will happen to vessels that hold a Confirmation of Permit History?

The Council and NMFS recognize the controversy of limiting access to current permit holders. The Council and public discussion of alternatives to control capacity or latent effort in the absence of a control date may lead members of the fishing industry to reach premature conclusions on how, or whether the Council will choose to address these issues. Permit holders who have unused capacity or effort may believe that they are at risk of losing their opportunity to participate in the multispecies or scallop fisheries in the future if they do not immediately enter the fisheries. A rapid increase in effort may increase fishing mortality and could jeopardize the rebuilding of multispecies and scallop stocks. It would also complicate a reasoned discussion of the available alternatives because the Council would have to act quickly in response to the effort increase. Publication of a control date is intended to discourage speculative activation of previously unused effort or capacity in the Northeast multispecies and Atlantic sea scallop fisheries while potential management regimes to control capacity or latent effort are discussed and possibly developed and implemented. The control date communicates to permit holders that performance or fishing effort after the date of publication may not be treated the same as performance or effort that was expended prior to the control date. Although vessel owners are notified that participation in these fisheries after the control date will not assure them future access to the Northeast multispecies and Atlantic sea scallop fisheries on the grounds of previous participation, additional and/or other qualifying criteria may also be applied. The Council could choose different and variably weighted methods to qualify fishers, based on the type and length of participation in the fishery.

This notification establishes September 10, 1999, as the control date for potential use in determining historical or traditional participation in the Northeast multispecies and Atlantic sea scallop fisheries. Consideration of a control date does not commit the Council or NMFS to any particular management regime or criteria for participation in these fisheries. The Council and NMFS may choose a different control date or may choose a management program that does not make use of such a date. This notification does not prevent any other control date for determining levels of future effort in these fisheries or another method of controlling access and/or

latent effort from being proposed and implemented. Fishers are not guaranteed future participation in the fishery, regardless of their entry date or intensity of participation in these fisheries before or after the control date. Participants who enter, or additional effort expended in, the Northeast multispecies or Atlantic sea scallop fisheries on or after the control date may be treated differently than those with a history in these fisheries prior to the control date. The Council and NMFS may choose to give variably weighted

consideration to fishers active in the fishery before and after the control date. The Council and NMFS may also choose to take no further action to control entry or access to the fishery, in which case the control date may be rescinded. Any action by the Council or NMFS will be taken pursuant to the requirements for FMP development established under the Magnuson-Stevens Act.

The public is also advised by this action that interested participants should locate and preserve records that substantiate and verify their

participation in the Northeast multispecies and Atlantic sea scallop fisheries in Federal waters. This control date notification has been determined to be not significant under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 2, 1999.

Andrew A. Rosenberg,

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

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