

seat is moved from the full forward position, maintain, as closely as possible, the seat cushion reference line angle determined in S10.3.2.3.3, for the final forward position when measuring the pelvic angle as specified in S12.3.2(a)(11). The seat cushion reference line angle position may be achieved through the use of any seat or seat cushion adjustments other than that which primarily moves the seat or seat cushion fore-aft.

\* \* \* \* \*

(9) For vehicles without adjustable seat backs, adjust the lower neck bracket to level the head as much as possible. For vehicles with adjustable seat backs, while holding the thighs in place, rotate the seat back forward until the transverse instrumentation platform of the head is level to within ± 0.5 degree, making sure that the pelvis does not interfere with the seat bight. If the torso contacts the steering wheel, adjust the steering wheel in the following order until there is no contact: telescoping adjustment, lowering adjustment, raising adjustment. If the vehicle has no adjustments or contact with the steering wheel cannot be eliminated by adjustment, position the seat at the next detent where there is no contact with the steering wheel as adjusted in S10.5. If the seat is a power seat, position the seat to avoid contact while assuring that there is a maximum of 5 mm (0.2 in) distance between the steering wheel as adjusted in S10.5 and the point of contact on the dummy. Adjust the lower neck bracket to level the head as much as possible.

\* \* \* \* \*

(b) \* \* \*

(6) If the left foot does not contact the floor pan, place the foot parallel to the floor and place the leg as perpendicular to the thigh as possible. If necessary to avoid contact with the vehicle's brake pedal, clutch pedal, wheel-well, or foot rest, use the three foot position adjustments listed in S12.3.2(b)(6)(i) through (iii). The adjustment options are listed in priority order, with each subsequent option incorporating the previous. In making each adjustment, move the foot the minimum distance necessary to avoid contact. If it is not possible to avoid all prohibited foot contact, priority is given to avoiding brake or clutch pedal contact:

\* \* \* \* \*

S12.3.3 \* \* \*

(a) \* \* \*

(1) With the seat at the mid-height in the full-forward position determined in S10.3.2, use only the control that primarily moves the seat fore and aft to place the seat in the rearmost position,

without adjusting independent height controls. If the seat cushion reference line angle automatically changes as the seat is moved from the full forward position, maintain, as closely as possible, the seat cushion reference line angle determined in S10.3.2.3.3, for the final forward position when measuring the pelvic angle as specified in S12.3.3(a)(11). The seat cushion reference line angle position may be achieved through the use of any seat or seat cushion adjustments other than that which primarily moves the seat or seat cushion fore-aft.

\* \* \* \* \*

(9) For vehicles without adjustable seat backs, adjust the lower neck bracket to level the head as much as possible. For vehicles with adjustable seat backs, while holding the thighs in place, rotate the seat back forward until the transverse instrumentation platform of the head is level to within ± 0.5 degree, making sure that the pelvis does not interfere with the seat bight.

\* \* \* \* \*

(b) \* \* \*

(3) If either foot does not contact the floor pan, place the foot parallel to the floor pan and place the lower leg as perpendicular to the thigh as possible.

\* \* \* \* \*

S12.3.4 \* \* \*

\* \* \* \* \*

(h) For vehicles without adjustable seat backs, adjust the lower neck bracket to level the head as much as possible. For vehicles with adjustable seat backs, while holding the thighs in place, rotate the seat back forward until the transverse instrumentation platform of the head is level to within ± 0.5 degrees, making sure that the pelvis does not interfere with the seat bight.

\* \* \* \* \*

(k) *Passenger foot positioning.*

(1) Place the rear seat passenger's feet flat on the floor pan and beneath the front seat as far as possible without front seat interference.

(2) If either foot does not contact the floor pan, place the foot parallel to the floor and place the leg as perpendicular to the thigh as possible.

\* \* \* \* \*

■ 3. Section 571.301 is amended by revising S6.3(b), to read as follows:

§ 571.301 Standard No. 301; Fuel system integrity.

\* \* \* \* \*

S6.3 \* \* \*

\* \* \* \* \*

(b) *Vehicles manufactured on or after September 1, 2004.* When the vehicle is impacted laterally on either side by a

moving deformable barrier at 53 ± 1.0 km/h with the appropriate 49 CFR part 572 test dummies specified in 571.214 at positions required for testing by S7.1.1, S7.2.1, or S7.2.2 of Standard 214, under the applicable conditions of S7 of this standard, fuel spillage shall not exceed the limits of S5.5 of this standard.

\* \* \* \* \*

■ 4. Section 571.305 is amended by revising S6.3 and S7.5, to read as follows:

§ 571.305 Standard No. 305; Electric-powered vehicles: electrolyte spillage and electrical shock protection.

\* \* \* \* \*

S6.3 *Side moving deformable barrier impact.* The vehicle must meet the requirements of S5.1, S5.2 and S5.3 when it is impacted from the side by a barrier that conforms to part 587 of this chapter that is moving at any speed up to and including 54 km/h, with the appropriate 49 CFR part 572 test dummies specified in 571.214 of this chapter.

\* \* \* \* \*

S7.5 *Side moving deformable barrier impact test conditions.* In addition to the conditions of S7.1 and S7.2, the conditions of S8.9, S8.10, and S8.11 of 571.214 of this chapter apply to the conduct of the side moving deformable barrier impact test specified in S6.3.

\* \* \* \* \*

Issued: March 9, 2010.

David L. Strickland,

Administrator.

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BILLING CODE 4910-59-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0907221160-91412-02]

RIN 0648-AY01

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Monkfish Fishery

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to amend the Monkfish Fishery

Management Plan (FMP) to allow projects funded through the Monkfish Research Set-Aside (RSA) Program to carryover unused monkfish RSA days-at-sea (DAS) into the following fishing year. This final rule also makes minor technical changes to the monkfish regulations. The changes are purely technical amendments to ensure consistency with the operations of the Monkfish RSA Program and to clarify the intent of the regulations implementing this program.

**DATES:** This rule is effective April 14, 2010.

**ADDRESSES:** This document and other supporting material are available online at <http://www.regulations.gov> or [www.nero.nmfs.gov](http://www.nero.nmfs.gov).

**FOR FURTHER INFORMATION CONTACT:** Anna Macan, Fishery Management Specialist, phone (978) 281-9165, or by e-mail at [Anna.Macan@noaa.gov](mailto:Anna.Macan@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

This final rule implements measures to the FMP to allow unused monkfish RSA DAS to carryover into the following fishing year. A proposed rule for this action was published on October 26, 2009 (74 FR 54945), with public comments accepted through November 25, 2009. The details on the development of this action, including the alternatives considered by NMFS, were contained in the preamble of the proposed rule and are not repeated here.

During the development of the Monkfish RSA Program through Amendment 2 to the FMP, NMFS implemented a regulation under its administrative authority, at section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to prohibit the carryover of unused monkfish RSA DAS (§ 648.92(c)(1)(v)). NMFS took this action due to the status of the stock at the time; at the time Amendment 2 was being implemented, monkfish were considered overfished in both management areas, with little sign of rebuilding. Since the stock is now considered to be rebuilt, the restriction on carrying over RSA DAS is no longer necessary.

This regulatory amendment allows for the rollover of all unused monkfish RSA DAS. Allowing Monkfish RSA DAS to carryover into the following fishing year will provide researchers the flexibility they need to complete projects funded through the Monkfish RSA Program. If carryover DAS are discontinued in the commercial fishery, NMFS will reconsider whether rollover of RSA DAS

should be allowed under the Monkfish RSA Program.

**Comments and Responses**

Two comments were received, both in support of the proposed measure to allow the rollover of all unused RSA DAS, which NMFS is implementing through this final rule.

*Comment 1:* One commenter supported the action because, in past years, attempts to utilize RSA DAS to conduct key research were constrained by the available number of RSA DAS and issues related to time and revenue recovery. The commenter stated that this action will provide for more flexible implementation of the RSA Program and will hopefully promote interest in industry-sponsored research.

*Response:* NMFS agrees, and is implementing the measures in this final rule.

*Comment 2:* The second comment acknowledged general support for this action.

*Response:* NMFS is implementing the measures in this final rule.

**Changes from the Proposed Rule**

This final rule makes additional technical amendments to the monkfish research regulatory text at § 648.92(c). The minor changes clarify the intent of the regulations and ensure consistency with the operations of the Monkfish RSA Program.

In § 648.92(c)(1)(i), language stating that NMFS will publish a Request for Proposals (RFP) in the **Federal Register** at least 3 months prior to the start of the upcoming fishing year has been removed. This will allow NMFS to publish an RFP in accordance with NOAA Grants Office procedures. The text “from industry” at the end of that paragraph has also been removed to clarify that proposals are solicited from an inclusive range of applicants (e.g., research institutions) and are not limited to fishing industry members only.

Section § 648.92(c)(1)(ii) has been revised to reflect that the review panel will include subject matter experts, as opposed to technical experts.

Section § 648.92(c)(1)(ii)(B) has been revised to reflect that NMFS and the NOAA Grants Office will consider each panels recommendations, and that NOAA will provide the final approval of projects, which is the current procedure.

The last sentence in § 648.92(c)(1)(ii)(B) has been removed because this action will allow monkfish RSA DAS to carry into the following fishing year, making this sentence no longer relevant.

**Classification**

The Administrator for the Northeast Region, NMFS, determined that the FMP amendment is necessary for the conservation and management of the monkfish fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

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

In accordance with 5 U.S.C. 553(b)(B), the Assistant Administrator finds that advance notice and public comment on the portion of this rule that implements the technical changes to the regulations implementing the Monkfish RSA Program is not necessary. These technical changes are not substantive. They merely revise the regulations to clarify their intent and to be consistent with current procedures of the Monkfish RSA Program, and are consistent with the FMP.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this final rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The factual basis for this certification appeared in the preamble of the proposed rule. No comments were received regarding the economic impact of this action. As a result, a regulatory flexibility analysis was not required and none was prepared.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 9, 2010.

**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 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 § 648.92, paragraphs (c)(1)(i), (c)(1)(ii), (c)(1)(ii)(B), (c)(1)(iii), and (c)(1)(v) are revised to read as follows:

**§ 648.92 Effort-control program for monkfish limited access vessels.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(i) NMFS shall publish a Request for Proposals (RFP) in the **Federal Register**

consistent with procedures and requirements established by the NOAA Grants Office to solicit proposals for the upcoming fishing year that are based on research priorities identified by the Councils.

(ii) NMFS shall convene a review panel that may include members of the Councils' Monkfish Oversight Committee, the Council's Research Steering Committee, and other subject matter experts, to review proposals submitted in response to the RFP.

\* \* \* \* \*

(B) NMFS and the NOAA Grants Office shall consider each panel member's recommendation, and NOAA shall provide final approval of the projects, and notify applicants of the grant award through written notification

to the project proponent. The Regional Administrator may exempt selected vessel(s) from regulations specified in each of the respective FMPs through the exempted fishing permit (EFP) process specified under § 600.745(b)(2).

(iii) The grant awards approved under the RFPs shall be for the upcoming fishing year. Proposals to fund research that would start prior to the fishing year are not eligible for consideration. Multi-year grant awards may be approved under an RFP for an upcoming fishing year, so long as the research DAS available under subsequent RFPs are adjusted to account for the approval of multi-year awards.

\* \* \* \* \*

(v) If the Regional Administrator determines that the annual allocation of

research DAS will not be used in its entirety once all of the grant awards have been approved, the Regional Administrator shall reallocate the unallocated research DAS as exempted DAS to be authorized as described in paragraph (c)(2) of this section, and provide notice of the reallocation of DAS in the **Federal Register**. Any allocated research DAS that are not used during the fishing year for which they are granted may be carried over into the next fishing year. Any unallocated research DAS may not be carried over into the next fishing year.

\* \* \* \* \*

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