

roughly 50 percent greater than the average historical landings for this fishery, and therefore that level of OY is not expected to pose a constraint on the fishery.

The alternatives that would set the OY at 150,000 mt would establish varying levels for the area TACs. One alternative would have established the following TACs: Area 1A, 60,000 mt; Area 1B, 10,000 mt; Area 2, 20,000 mt; and Area 3, 60,000 mt. The only area TAC that would be lower than the 2003 TAC under this option is the Area 2 TAC. The most recent year in which the landings from this area were greater than 20,000 mt (the proposed TAC) was 2000 (27,198 mt). The average landings from 2001 to 2003 were 14,300 mt, with 2003 landings at 16,079 mt. Under current market conditions, the new TAC may become constraining if the fishery in 2005 (and possibly 2006) is similar to that in 2000. If this is the case, then the Area 2 TAC fishery season could end before the end of the year, creating a potential economic constraint on the fishery, especially if vessels were forced to travel farther (increased steaming time) to harvest herring in Area 3. Because of this potential for economic costs, this alternative was rejected.

Another alternative considered would have established the following TACs: Area 1A, 45,000 mt; Area 1B, 10,000 mt; Area 2, 35,000 mt; and Area 3, 60,000 mt. With a 15,000-mt decrease in the combined Area 1 TACs, the economic impact of this alternative could be relatively large on vessels in the fishery that depend on herring in Area 1A, especially if those vessels are not able to move to other areas to obtain fish. Even if vessels could fish in other areas, their operating costs would be increased because of increased steaming time. Because of this potential for economic costs, this alternative was rejected. An Area 2 TAC of 35,000 mt proposed under this alternative would not be constraining given recent landings history.

The final alternative considered would have established the following TACs: Area 1A, 55,000 mt; Area 1B, 5,000 mt; Area 2, 30,000 mt; and Area 3, 60,000 mt. With a 10,000-mt decrease in the combined Area 1 TACs, the impact of this alternative would be very similar to the impact of the prior alternative, although not as severe. Because of this potential for economic costs, this alternative was rejected. An Area 2 TAC of 30,000 mt proposed under this alternative would not be constraining given recent landings history.

**Small Entity Compliance Guide**

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule, or group of related rules, for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide will be sent to all holders of permits issued for the herring fishery. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from the Regional Administrator (see ADDRESSES) and may be found at the following web site: <http://www.nmfs.gov/ro/doc/nero.html>.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 21, 2005.

**Rebecca Lent,**

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

For the reasons set out above, 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 § 648.200, paragraphs (c) and (d) are revised to read as follows:

**§ 648.200 Specifications.**

\* \* \* \* \*

(c) The Atlantic Herring Oversight Committee shall review the recommendations of the PDT and shall consult with the Commission's Herring Section. Based on these recommendations and any public comment received, the Herring Oversight Committee shall recommend to the Council appropriate specifications. The Council shall review these recommendations and, after considering public comment, shall recommend appropriate specifications to NMFS. NMFS shall review the recommendations, consider any comments received from the Commission, and shall publish notification in the **Federal Register** proposing specifications and providing a 30-day public comment period. If the proposed specifications differ from those recommended by the Council, the

reasons for any differences shall be clearly stated and the revised specifications must satisfy the criteria set forth in this section.

(d) NMFS shall make a final determination concerning the specifications for Atlantic herring. Notification of the final specifications and responses to public comments shall be published in the **Federal Register**. If the final specification amounts differ from those recommended by the Council, the reason(s) for the difference(s) must be clearly stated and the revised specifications must be consistent with the criteria set forth in paragraph (b) of this section. The previous year's specifications shall remain effective unless revised through the specification process. NMFS shall issue notification in the **Federal Register** if the previous year's specifications will not be changed.

\* \* \* \* \*

[FR Doc. 05-8464 Filed 4-27-05; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 050216041-5105-02; I.D. 020705C]

RIN 0648-AS87

**Fisheries of the Northeastern United States; Recordkeeping and Reporting Requirements; Regulatory Amendment to Modify Seafood Dealer Reporting Requirements**

**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 electronic reporting and recordkeeping regulations for federally permitted seafood dealers participating in the summer flounder, scup, black sea bass, Atlantic sea scallop, Northeast (NE) multispecies, monkfish, Atlantic mackerel, squid, butterfish, Atlantic surfclam, ocean quahog, Atlantic herring, Atlantic deep-sea red crab, tilefish, Atlantic bluefish, skate, and/or spiny dogfish fisheries in the NE Region. This action reduces the submission schedule for dealer reports from daily to weekly, eliminates duplicate reporting of certain species, and clarifies existing reporting requirements. This action will also

allow vessel operator permits issued by the Southeast Region to satisfy NE vessel operator permitting requirements. The purpose of this action is to reduce the reporting burden on seafood dealers, improve data quality, simplify compliance, and clarify existing requirements.

**DATES:** This final rule is effective May 1, 2005.

**ADDRESSES:** Copies of the Regulatory Amendment, its Regulatory Impact Review (RIR), the Final Regulatory Flexibility Analysis (FRFA), and other supporting materials are available from Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester MA 01930. The regulatory amendment/RIR/FRFA are also accessible via the Internet at <http://www.nero.nmfs.gov>.

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 Patricia A. Kurkul at the above address and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or by fax to (202) 395-7285.

**FOR FURTHER INFORMATION CONTACT:**

Kelley McGrath, Fishery Information Specialist, (978) 281-9307, fax (978) 281-9161 or Erik Braun, Fishery Reporting Specialist, (631) 324-3569, fax (631) 324-3314.

**SUPPLEMENTARY INFORMATION:** This final rule implements measures contained in the Regulatory Amendment to Modify Seafood Dealers Reporting Requirements (Regulatory Amendment) for federally permitted seafood dealers. This action will reduce the reporting frequency for electronic purchase reports from daily to weekly; require only species managed by the NE Region to be reported when purchasing fish from a vessel landing outside the NE Region; and exempt certain inshore species from Federal reporting requirements. Other measures include: eliminating duplicate reporting to NMFS of Atlantic bluefin tuna purchases by federally permitted dealers; removing the option for dealers to submit reports via a phone-line using File Transfer Protocol (FTP); and clarifying several existing dealer reporting requirements. In addition to the dealer reporting changes, this action modifies the requirements for vessel operator permits to allow operator permits issued by the Southeast Region under 50 CFR part 622 to satisfy NE operator permit requirements at 50 CFR 648.5. Details concerning the justification for and development of the regulatory amendment and the implementing regulations were

provided in the preamble to the proposed rule (69 FR 10585, March 4, 2005) and are not repeated here. A copy of the proposed rule was mailed to all federally permitted dealers affected by this action, as well as to the state directors for all states within the NE Region.

Regulations implementing the fishery management plans (FMPs) for the summer flounder, scup, black sea bass, Atlantic sea scallop, NE multispecies, monkfish, Atlantic mackerel, squid, butterfish, Atlantic surfclam, ocean quahog, Atlantic herring, Atlantic deep-sea red crab, tilefish, Atlantic bluefish, skate, and spiny dogfish fisheries are found at 50 CFR part 648. These FMPs were prepared under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). All dealers and vessels issued a Federal permit in one or more of the aforementioned fisheries must comply with the reporting requirements outlined at § 648.7. Lobster dealers issued a Federal lobster permit, but not issued any of the permits with mandatory reporting requirements under this part, are not required to comply with these reporting regulations, although other reporting requirements may apply. NMFS is modifying several components of these reporting regulations to reduce the reporting and administrative burden on seafood dealers and vessel operators, improve data quality, simplify compliance and enforceability of the reporting regulations, and eliminate confusion regarding existing reporting requirements.

**Frequency of Reporting**

This rule requires all seafood dealers permitted under § 648.6 to submit electronic, trip-level reports of all fish purchases and receipts to NMFS on a weekly basis. Consistent with the existing regulations, weekly reports will be due within 3 days of the end of the reporting week, by midnight of the following Tuesday. If no purchases or receipts are made during the entire reporting week, an electronic report so stating is required. Dealers are allowed to submit negative reports for up to 3 months in advance, if they know that no fish will be purchased during that time. Edits to an existing report will be allowed for up to 3 days following the due date of the original report.

**Out-of-region Dealers**

This rule requires dealers making purchases from a vessel landing outside of the NE Region (Maine to North Carolina) to report only their purchases of species managed by the NE Region.

Limiting the species that must be reported by dealers making out-of-region purchases will reduce the burden on those dealers, and still allow for effective monitoring of species for which the NE Region is responsible. It will also lessen duplicate reporting to Federal and state agencies, and improve the quality of the data collected by reducing the potential for double counting of landings.

**Inshore Species Reporting**

This action exempts several inshore species from dealer reporting requirements. Inshore exempted species include bay scallops; blood arc, razor and soft clams; blood and sand worms; blue, green, hermit, Japanese shore, and spider crabs; blue mussels; oysters; and, quahogs. NMFS will continue to collect landings information from federally permitted seafood dealers for all finfish species, federally managed shellfish, and American lobsters received or purchased by these dealers. In many cases, purchases of the exempt inshore species are being reported to a state management agency as well as to NMFS, resulting in duplicate data. In other cases the state agency supplies NMFS with summary data of these species, thus providing the needed information for analyses. Other states rely on NMFS to collect inshore species landings and provide that state with the data. However, states have responsibility for collection of information for most inshore shellfish fisheries and several states have information collection programs already in place, many of which have more detailed information requirements than the Federal reporting requirements. In addition, NMFS cannot verify the quality and completeness of state data, nor properly monitor and enforce the requirement. As states move toward electronic reporting programs, it is anticipated that one reporting system will meet the data needs of both state and Federal agencies, further reducing the reporting burden on dealers and simplifying compliance with both state and Federal regulations. Until such time, state agencies may require their dealers to report purchases of exempt inshore species through the Federal electronic reporting system, and NMFS will continue to make those data available to the responsible state agency.

**Atlantic Bluefin Tuna**

This action eliminates the requirement for dealers to report purchases of Atlantic bluefin tuna. However, to purchase Atlantic bluefin tuna, dealers must comply with Highly Migratory Species (HMS) requirements under 50 CFR part 635, including the

requirement to submit purchase reports to the HMS division of NMFS. This action does not affect HMS requirements.

#### **File Transfer Protocol (FTP) Option**

To accommodate NOAA policy, outlined in the DOC's "Unclassified System Remote Access Security Policy and Minimum Implementation Standards" document, this rule eliminates phone-line FTP as an acceptable system of file transfer due to security concerns. Dealers may submit reports using a web-based data entry system, through a web-based file upload procedure, or via an approved state-implemented data collection program.

#### **Units of Measure**

This rule clarifies that dealers can report purchases in a variety of units of measure. The revised language will accommodate purchases of species that are landed in units of measure other than pounds or bushels. For instance, scallops may be reported in gallons, and ocean quahogs may be reported in bags. The online data entry system that many dealers use to submit data to NMFS contains these additional units of measure as well.

#### **Cage Tag Numbers**

This rule clarifies that only surfclam and ocean quahog trips harvested under an Individual Transferrable Quota (ITQ) require cage tag numbers to be reported. Purchases of surfclams and ocean quahogs from non-ITQ trips do not require tags, nor do other species purchased by surfclam and ocean quahog dealers.

#### **Price, Disposition and Trip Identifier**

This rule requires dealers to submit price and disposition information within 16 days after the end of the reporting week. Prior to the implementation of electronic reporting in 2004, price information was due within 16 days of the end of the reporting week, which gave dealers the time they needed to collect the information and still provided economic data for analyses within a reasonable time frame. As specified in the existing regulations, effective May 1, 2005, trip identifier information will be due within the same time frame as the initial report.

#### **At-Sea Receivers**

To minimize the potential for duplicate and triplicate reporting of fish transferred at sea, this rule removes the requirement for at-sea receivers to report their at-sea receipts of Atlantic herring, Atlantic mackerel, squid, butterflyfish,

scup, or black sea bass. At-sea purchases of these species must still be reported. This rule also removes summer flounder from the above list of species because summer flounder regulations prohibit that species from being transferred at sea.

#### **Computer Acquisition Requirement**

This rule clarifies that dealers are not required to purchase or obtain their own personal computer to comply with the reporting requirements. Dealers may use any computer that meets the minimum system requirements to submit data. NMFS has established kiosks in several field offices specifically for dealers to use to meet their reporting requirements.

#### **Annual Processed Products Report (APPR)**

This rule clarifies that both dealers and processors must complete and submit the APPR each year. The APPR is a census used to collect employment and economic data for the processing segment of the seafood industry. Certain fisheries, such as surfclam, ocean quahog, and Atlantic herring require processors to be issued a processor permit under this part. Most entities issued a processor permit are also issued a dealer permit, however, there may be some processors issued only a processor permit under this part.

#### **Operator Permits**

To provide a reciprocal agreement with the Southeast Region, this rule allows vessel operator permits issued by the Southeast Region under certain parts to satisfy NE Region vessel operator permitting requirements.

#### **Comments and Responses**

The deadline for receiving comments on the proposed rule (69 FR 10585, March 4, 2005) was March 21, 2005. Prior to the end of the comment period, NMFS received nine comments on the proposed rule. Six comments were from individuals representing or affiliated with seafood dealers. Two comments were from state fishery management agencies (North Carolina and Delaware). One comment was submitted by a member of the general public who appears to have no particular affiliation. Geographically, four comments were submitted by individuals in Massachusetts, and one comment each was submitted by individuals in Maine, Rhode Island, New Jersey, Delaware, and North Carolina. Three commenters expressed overall support for the proposed rule, particularly with regard to reducing the reporting frequency from daily to weekly. Two commenters

were in favor of the proposed rule, but offered specific comments regarding the exempted inshore species. The remaining commenters provided specific comments on one or more of the following issues:

*Comment 1:* One commenter was in favor of reducing the reporting frequency, but suggested that monthly reporting would be more beneficial to dealers.

*Response:* NMFS recognizes that many dealers would prefer to submit reports on a monthly basis, however monthly reporting does not provide fisheries managers with the necessary landings information within the time frame required for effective quota monitoring. Weekly reporting offers a compromise that is less burdensome to dealers than daily, but that still allows NMFS to monitor quotas and implement management measures within a reasonable time frame.

*Comment 2:* One commenter requested that the exemption for certain inshore species be expanded to exempt all non-federally-managed species from Federal reporting requirements.

*Response:* Having a complete picture of the fisheries, including harvests, landings, and economic data for species not managed by the Federal government is necessary for effective scientific and economic analyses and fisheries management. This enables NMFS to meet its obligations under a number of laws. One option NMFS considered was state-by-state exemptions for reporting of non-federally-managed species, contingent upon the state providing NMFS with trip-level landings and economic data for the exempt species within an acceptable time frame. While some states have been able to provide NMFS with landings information at the level of detail and within the time frame required for analyses, other states have not been able to accommodate these data needs. Therefore, to exclude all non-federally-managed species from reporting requirements at this time would likely have a deleterious effect on fisheries management. However, as more states move toward electronic reporting, it is anticipated that one reporting system will meet the data needs of both state and Federal agencies, further reducing the reporting burden on dealers and simplifying compliance with both state and Federal regulations.

*Comment 3:* One commenter suggested that NMFS continue to collect landings of all species, whether federally managed or not, and continue to make those data available to the responsible state management agency.

*Response:* NMFS will continue to collect landings information from federally permitted seafood dealers for all finfish species, federally managed shellfish, and American lobsters received or purchased by these dealers. However, states have responsibility for collection of information for most inshore shellfish fisheries and many states have information collection programs already in place. Further, NMFS cannot verify the quality and completeness of state data, nor properly monitor and enforce the requirement. As states move toward electronic reporting programs, it is anticipated that one reporting system will meet the data needs of both state and Federal agencies, further reducing the reporting burden on dealers and simplifying compliance with both state and Federal regulations. Until such time, states may require their dealers to report purchases of exempt inshore species through the Federal electronic reporting system, and NMFS will continue to make those data available to the responsible state agency.

*Comment 4:* One commenter stated that NMFS should not make it easier on dealers to report, and should impose even more stringent enforcement measures on dealers, as they are profiting from a public resource.

*Response:* It is not the intention nor the duty of NMFS to impose unnecessary regulatory burdens on entities that participate in the fishing industry, but rather to ensure the long term health of the resource through the implementation of effective management measures. The change in reporting frequency from daily to weekly and the exemption of certain species from reporting requirements will make compliance easier for most dealers. However, the information needed to implement appropriate management strategies will continue to be collected at the same level of detail, and within a time frame that allows for effective management.

*Comment 5:* Two commenters did not feel the proposed changes would reduce the reporting burden on dealers.

*Response:* The change to weekly reporting will make it easier for most dealers to comply with the reporting requirements. The time frame for submissions will be more flexible under weekly reporting, enabling dealers to complete and submit their reports in one session of data entry or file upload at the end of the week, or in several sessions spread over the course of the week. The exemption of certain species from reporting requirements will benefit some dealers more than others, depending on the primary species

purchased and the location of their particular business.

*Comment 6:* Two commenters questioned the time frame in which dealer reports are currently processed and collated by NMFS.

*Response:* NMFS currently compiles landings data for quota managed species on a weekly basis. This information is published in the weekly quota reports and is available on the NMFS web site at <http://www.nero.nmfs.gov>.

*Comment 7:* One commenter suggested returning to paper-based reporting and submitting those reports via a facsimile machine.

*Response:* This rule does not consider returning to a paper based reporting system because it is more cumbersome, costly, and time consuming to administer, and cannot provide the information needed in a timely manner. NMFS will continue to look for ways to allow dealers to use new technologies, as they develop, to satisfy Federal reporting requirements through the least burdensome mechanism.

*Comment 8:* Two commenters suggested that the burden of providing a trip identifier should be on the fisherman rather than the dealer, and that vessel operators should be aware of the trip identifier and logbook requirements.

*Response:* This rule makes no changes to the trip identifier requirement. However, any vessel owner issued a permit requiring completion of a vessel logbook has been sent information regarding vessel logbook completion as well as the trip identifier requirement, and should be aware of their reporting responsibilities. It is the responsibility of the dealer to ensure that a trip identifier is available, if required for that trip, prior to purchasing or receiving fish. It is the responsibility of the vessel operator to provide the trip identifier to the dealer upon sale of their fish.

#### **Changes from the Proposed Rule**

There are no changes from the proposed rule.

#### **Classification**

The Assistant Administrator (AA) for Fisheries, NOAA, finds good cause pursuant to 5 U.S.C 553(d)(3) to make this rule effective immediately, thereby waiving the 30-day delayed effective date required by 5 U.S.C. 553. The principal purpose of this action is to reduce the reporting and administrative burden on seafood dealers. This rule will reduce the reporting burden on federally permitted dealers by: reducing the reporting frequency for electronic purchase reports from daily to weekly;

requiring only species managed by the Northeast Region to be reported when purchasing fish from a vessel landing outside the Northeast Region; minimizing reporting of certain inshore species not managed by NMFS; eliminating confusion over some existing regulatory requirements; and, eliminating duplicate reporting of Atlantic bluefin tuna purchases by federally permitted dealers. This action will also reduce the administrative burden on vessel operators by allowing operator permits issued by the Southeast Region under 50 CFR part 622 to satisfy Northeast Regional operator permit requirements.

The AA waives the 30-day delay in effectiveness of this rule in order to implement this rule by May 1, 2005, the start of the fishing year. The original electronic dealer reporting rule was effective on May 1, 2004. It represented such a deviation from the historical paper reporting system, that NMFS allowed industry members several months to come into compliance. It also delayed the daily reporting system for small dealers until May 1, 2005. During this transition period to compliance, NMFS encountered a number of unanticipated technical problems in the development and implementation of the computer program for the reporting system. In addition, once NMFS began receiving daily reports from large dealers, it became apparent that the new system was causing much confusion and unforeseen problems among dealers due to the transition from using regional species codes to using national species codes. Specifically, the new system was not able to provide the flexibility that dealers, particularly those purchasing illex and loligo squid, needed to accurately report the amounts of species landed. In order to allow effective monitoring of quota managed fisheries, NMFS concluded that a weekly reporting requirement for all dealers would satisfy quota monitoring needs for most species, for most of the year, and that the current level of staffing could manage efficiently the number of data transmissions generated by a weekly reporting requirement.

If the delayed effective period is not waived, a number of small dealers will be forced to hire at least an additional employee to meet the daily electronic reporting requirement. The average cost to hire a temporary employee for six weeks, at a wage rate of \$18.88 per hour, is \$4,531 per dealer. Assuming half of the 267 small dealers opt to do that, the total cost to industry, including a recruitment fee of \$300 each, would be approximately \$683,000. Larger dealers may have to modify their office

procedures to ensure that the required reports are submitted daily to NMFS. This will cause a certain level of economic disruption during the period prior to the implementation of the measures in this rule. Dealers who do not comply with the daily reporting requirements may face civil monetary penalties of up to \$130,000 for an offense under the Magnuson-Stevens Act. Failure by dealers to report their fisheries transactions will have a negative impact on the quality and completeness of the data upon which fisheries analyses and management decision are based.

Further, May 1st is the start of the fishing year for most species, therefore, implementation of these requirements by that date ensures that consistent reporting requirements are in effect throughout the entire fishing year, resulting in better fisheries data. Some dealers may temporarily drop their dealer permit to avoid daily reporting, resulting in the loss of income during what is typically a very busy period for dealers. Based on 2003 and 2004 ex-vessel revenues reported by small dealers, the loss of revenue resulting from a dealer dropping their permit(s) for six weeks to avoid the daily reporting requirement would average approximately \$16,500 per dealer. Assuming that ten percent, or 26, of the small dealers opt to temporarily drop their permits, the total cost to those dealers would be approximately \$230,000. These estimates do not include the potential impacts to the vessels that would no longer be allowed to sell their catches to those dealers, nor the long term impacts to a dealer if a vessel is forced to go elsewhere temporarily to sell their product and then does not return to the original dealer once their dealer permit(s) is reissued. The implementation of the daily electronic reporting requirement for such a short period of time (i.e., during the delayed effectiveness period) will cause confusion and a lack of confidence in the stability of the administrative process among many dealers. In addition, the lack of a waiver will cause those fishermen in possession of an operator permit issued by the Southeast Region to have to apply for a NE Regional operator's permit if they intend to fish for species regulated under 50 CFR part 648 before the end of the delayed effectiveness period.

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

Included in this final rule is the Final Regulatory Flexibility Analysis (FRFA) prepared pursuant to 5 U.S.C. 604(a).

The FRFA incorporates the IRFA and a summary of the analyses completed in support of this action. There were no public comments on the economic impacts of the proposed rule. A copy of the FRFA is available from the Regional Administrator (see **ADDRESSES**).

### **Final Regulatory Flexibility Analysis**

#### *Statement of Objective and Need*

A description of why this action is being considered, and the objective of and legal basis for this action, is contained in the preamble to the proposed rule and is not repeated here.

#### *Summary of Significant Issues Raised in Public Comments*

NMFS received 9 comments on the proposed rule (69 FR 10585, March 4, 2005) prior to the close of the comment period. Of these, there were no comments on the economic impacts of the rule. Therefore, no changes were made to this action as a result of the comments received. For a complete description of the comments received on the proposed rule, refer to the above section titled "Comments and Responses."

#### *Description and Estimate of Number of Small Entities to Which the Rule Will Apply*

This action affects seafood dealers and processors issued a Federal permit for one or more of several species. Dealers are firms who purchase or receive fish from vessels for a commercial purpose, other than solely for transport on land, and then sell that product directly to restaurants, other dealers or processors, or consumers without substantially altering the product. Processors are firms that purchase raw product and produce another product form, which is then sold or transferred to markets, restaurant, or consumers. The majority of dealers and processors affected by this action are issued permits for several species.

For the purposes of RFA, all dealers affected by this final rule are considered small businesses; therefore, there are no disproportionate impacts between large and small entities, as defined in the RFA. Based on 2003 data, approximately 576 dealers and processors hold one or more of the permits requiring compliance with this rule.

#### *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

The projected reporting, recordkeeping, and other compliance requirements to which the final rule

applies were identified in the preamble to the proposed rule (69 FR 10585, March 4, 2005) and in the IRFA, and remain the same. A description of the projected reporting, recordkeeping, and other compliance requirements is provided in the IRFA and the IRFA summary contained in the classification section of the proposed rule and is not repeated here. No professional skills are necessary for preparation of the reports or records specified above.

#### *Overall, Duplicate, or Conflict with other Federal rules*

This rule does not duplicate, overlap, or conflict with any relevant Federal rules.

#### *Steps Taken to Minimize Economic Impacts on Small Entities*

This final rule modifies the reporting requirements for seafood dealers participating in the summer flounder, scup, black sea bass, Atlantic sea scallop, NE multispecies, monkfish, Atlantic mackerel, squid, butterfish, Atlantic surfclam, ocean quahog, Atlantic herring, Atlantic deep-sea red crab, tilefish, Atlantic bluefish, skate, and/or spiny dogfish fisheries, and also makes a minor change to vessel operator permit requirements. These changes are designed to reduce the administrative burden on dealers and vessel operators, and to clarify existing regulations, thus it is anticipated that any economic impacts resulting from this action will be beneficial. The potential economic impacts of these measures are described in detail in the IRFA and the IRFA summary contained in the Classification section of the proposed rule (69 FR 10585, March 4, 2005).

In addition to the action being taken in this final rule and a No Action alternative, NMFS considered additional options for each of the three major facets of this rule: Reporting frequency, out-of-region purchases, and inshore species reporting. For reporting frequency, NMFS considered two additional options. The first option redefined the dealer categories based on purchases of quota managed species only, rather than total purchases as is currently the case. Under this option Small Dealers would continue to report weekly and Large Dealers would continue to report daily. The second option considered for reporting frequency required weekly reporting for all dealers, with an option for NMFS to implement daily reporting if landings of a species reached levels requiring daily reporting for effective quota monitoring. Both of these options would reduce the reporting frequency, and thus the cost of compliance, for most dealers. While the

dealers still required to report daily under the first option would not see a cost savings, the cost would not increase for any dealers under that option compared to the No Action alternative. Under the second option, all dealers would see a cost benefit unless and until daily reporting was implemented, at which time the cost of compliance may temporarily increase for some dealers, to the same level as under the current regulations. The selected alternative is the most beneficial to dealers in that it will reduce the cost of compliance for all dealers throughout the year, while still allowing NMFS to effectively monitor quotas.

For out-of-region dealer reporting, NMFS considered two other options for determining what constitutes an out-of-region dealer or trip. In the first option, the primary business address of the dealer determined whether the dealer was out-of-region or not. In the second option, the determination was based on the point of purchase for the trip. In addition, NMFS considered two other options for relieving dealers of inshore species reporting requirements. One option considered employing dealer-by-dealer reporting exemptions for any non-federally-managed species, if requested by the state agency for that dealer. The second option allowed for a state agency to request that NMFS relieve all dealers in their state from reporting species to NMFS that are also reported to the state agency, regardless of the management agency. For both out-of-region purchases and inshore species reporting, the differences in cost savings among the various options and the selected action are negligible because it is likely that the number of dealers affected under each option is very similar. However, both the options and the selected actions would result in a time and cost savings compared to the current regulations, due to the reduction in reporting requirements. Given the similar decrease in compliance costs to industry, NMFS selected the options that are the most practical for the agency to manage and enforce.

For all other changes included in this final rule, only the action being taken and the No Action alternative were considered. Of these changes, only the elimination of Atlantic bluefin tuna reporting under 50 CFR part 648, removing the option for dealer to submit reports via FTP, and alleviating at-sea receivers from reporting requirements may have an economic effect on dealers. The elimination of Atlantic bluefin tuna reporting requirements for dealers issued a permit under 50 CFR part 648 will result in a slight time saving for dealers issued an Atlantic bluefin tuna

permit since they will no longer have to report their Atlantic bluefin tuna purchases under two sets of regulations. Removing the option to submit reports via a phone line FTP will require all dealers to have Internet access that could, theoretically, result in a small cost increase to certain dealers. However, since no dealers are currently using the FTP option, no dealers will actually be affected by this change. Eliminating the requirement for at-sea receivers to submit purchase reports may save a very small number of entities from reporting under 50 CFR part 648.

The remaining changes are primarily clarifications or administrative changes that will not result in any economic impacts on the affected entities. These changes include allowing various units of measure to be reported; requiring the trip identifier and disposition to be reported within 16 days of the end of the reporting week; clarifying which trips require cage tag numbers to be reported; clarifying that dealers do not have to purchase their own computer to comply with these reporting requirements; and allowing operator permits issued by the Southeast Region to satisfy operator permit requirements under 50 CFR part 648. Detailed descriptions of each of the changes are provided in the associated RIR/IRFA document (see **ADDRESSES**).

#### *Small Entity Compliance Guide*

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare an FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of related rules. As part of the rulemaking process, a small entity compliance guide will be sent to all holders of NE Federal dealer permits. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from NMFS (see **ADDRESSES**) and at the following web site: <http://www.nmfs.gov/ro/doc/nero.html>.

#### **Collection-of-Information Requirements**

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under OMB Control Number 0648-0229. Public reporting burden for electronic dealer purchase reports is estimated to average 4 minutes per response,

including the time required 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 aspects of this data collection, including suggestion for reducing the burden, to NMFS (see **ADDRESSES**) and to OMB by e-mail [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or by fax 202-395-7285.

Notwithstanding any other provision of law, no person is required to respond to, and no person shall 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: April 22, 2005.

**Rebecca Lent,**

*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 § 648.2, the definitions for "Dealer-large" and "Dealer-small" are removed, and a new definition for "Inshore exempted species" is added in alphabetical order as follows:

#### **§ 648.2 Definitions.**

\* \* \* \* \*

*Inshore exempted species* means the following species:

Bay scallop - *Aequipecten irradians*.  
 Blood arc clam - *Anadara ovalis*.  
 Blood worm - *Glycera dibranchiata*.  
 Blue crab - *Callinectes similis* and *Callinectes sapidus*.  
 Blue mussel - *Mytilus edulis*.  
 Green crab - *Carcinus maenas*.  
 Hermit crab - *Clibanarius vittatus*, *Pagurus pollicaris* and *Pagurus longicarpus*.  
 Japanese shore crab - *Hemigrapsus sanguineus*.  
 Oyster - *Crassostrea virginica* and *Ostrea edulis*.  
 Quahog - *Mercenaria mercenaria*.  
 Razor clam - *Ensis directus*.  
 Sand worm - *Nereis virens*.  
 Soft clam - *Mya arenaria*.  
 Spider crab - *Libinia emarginata*.

\* \* \* \* \*

■ 3. In § 648.5, paragraph (a) is revised to read as follows:

§ 648.5 Operator permits.

(a) General. Any operator of a vessel fishing for or possessing: Atlantic sea scallops in excess of 40 lb (18.1 kg); NE multispecies, spiny dogfish, monkfish, Atlantic herring, Atlantic surfclam, ocean quahog, Atlantic mackerel, squid, butterfish, scup, black sea bass, or Atlantic bluefish, harvested in or from the EEZ; tilefish harvested in or from the EEZ portion of the Tilefish Management Unit; skates harvested in or from the EEZ portion of the Skate Management Unit; or Atlantic deep-sea red crab harvested in or from the EEZ portion of the Red Crab Management Unit, issued a permit, including carrier and processing permits, for these species under this part, must have been issued under this section, and carry on board, a valid operator permit. An operator's permit issued pursuant to part 622 or part 697 of this chapter satisfies the permitting requirement of this section. This requirement does not apply to operators of recreational vessels.

\* \* \* \* \*

■ 4. In § 648.7, paragraph (f)(1)(ii) is removed and reserved, paragraphs (a)(1)(i), (a)(2), (a)(3) introductory text, (a)(3)(i), (f)(1)(i), (f)(1)(iv), (f)(1)(v), and (f)(3) are revised, and paragraph (a)(1)(ii) is added to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

(a) \* \* \*

(1) \* \* \*

(i) Required information. All dealers issued a dealer permit under this part must provide: Dealer name; dealer permit number; name and permit number or name and hull number (USCG documentation number or state registration number, whichever is applicable) of vessel(s) from which fish are purchased or received; trip identifier for each trip from which fish are purchased or received from a commercial fishing vessel permitted under this part; date(s) of purchases and receipts; units of measure and amount by species (by market category, if applicable); price per unit by species (by market category, if applicable) or total value by species (by market category, if applicable); port landed; cage tag numbers for surfclams and ocean

quahogs, if applicable; disposition of the seafood product; and any other information deemed necessary by the Regional Administrator. If no fish are purchased or received during a reporting week, a report so stating must be submitted.

(ii) Exceptions. The following exceptions apply to reporting requirements for dealers permitted under this part:

(A) Inshore Exempted Species, as defined in § 648.2, are not required to be reported under this part;

(B) When purchasing or receiving fish from a vessel landing in a port located outside of the Northeast Region (Maine, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Delaware, Virginia and North Carolina), only purchases or receipts of species managed by the Northeast Region under this part, and American lobster, managed under part 697 of this chapter, must be reported. Other reporting requirements may apply to those species not managed by the Northeast Region, which are not affected by this provision; and

(C) Dealers issued a permit for Atlantic bluefin tuna under part 635 of this chapter are not required to report their purchases or receipts of Atlantic bluefin tuna under this part. Other reporting requirements, as specified in § 635.5 of this chapter, apply to the receipt of Atlantic bluefin tuna.

(iii) \* \* \*

(2) System requirements. All persons required to submit reports under paragraph (a)(1) of this section are required to have the capability to transmit data via the Internet. To ensure compatibility with the reporting system and database, dealers are required to utilize a personal computer, in working condition, that meets the minimum specifications identified by NMFS. The affected public will be notified of the minimum specifications via a letter to all Federal dealer permit holders.

(3) Annual report. All persons issued a permit under this part are required to submit the following information on an annual basis, on forms supplied by the Regional Administrator:

(i) All dealers and processors issued a permit under this part must complete all sections of the Annual Processed Products Report for all species that were processed during the previous year.

Reports must be submitted to the address supplied by the Regional Administrator.

\* \* \* \* \*

(f) Submitting reports—(1) Dealer or processor reports. (i) Detailed reports required by paragraph (a)(1)(i) of this section must be received by midnight of the first Tuesday following the end of the reporting week. If no fish are purchased or received during a reporting week, the report so stating required under paragraph (a)(1)(i) of this section must be received by midnight of the first Tuesday following the end of the reporting week.

(ii) [Reserved]

(iii) \* \* \*

(iv) Through April 30, 2005, to accommodate the potential lag in availability of some required data, the trip identifier, price and disposition information required under paragraph (a)(1) may be submitted after the detailed weekly report, but must be received within 16 days of the end of the reporting week or the end of the calendar month, whichever is later. Dealers will be able to access and update previously submitted trip identifier, price, and disposition data.

(v) Effective May 1, 2005, the trip identifier required under paragraph (a)(1) of this section must be submitted with the detailed report, as required under paragraphs (f)(1)(i) of this section. Price and disposition information may be submitted after the initial detailed report, but must be received within 16 days of the end of the reporting week.

(vi) \* \* \*

(2) \* \* \*

(3) At-sea purchasers and processors. With the exception of the owner or operator of an Atlantic herring carrier vessel, the owner or operator of an at-sea purchaser or processor that purchases or processes any Atlantic herring, Atlantic mackerel, squid, butterfish, scup, or black sea bass at sea for landing at any port of the United States must submit information identical to that required by paragraph (a)(1) of this section and provide those reports to the Regional Administrator or designee by the same mechanism and on the same frequency basis.

\* \* \* \* \*