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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 200706-0179]

RIN 0648-BI15

**Magnuson-Stevens Fishery Conservation and Management Act Provisions;
Fisheries of the Northeastern United States; Electronic Vessel Trip Reporting**

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

ACTION: Proposed rule; request for comments.

SUMMARY: This action proposes approval of, and regulations to implement, an action to require commercially permitted vessels in both New England and mid-Atlantic regions to submit vessel trip reports electronically within 48 hours of the end of a trip. In addition, this action would require for-hire vessels with permits for species managed by the New England Fishery Management Council to submit vessel trip reports electronically. Document retention requirements would also be removed with this action.

This action is intended to increase data quality and timeliness of vessel trip reports.

DATES: Comments must be received by *[insert date 30 days after date of publication in the FEDERAL REGISTER]*.

ADDRESSES: You may submit comments, identified by NOAA-NMFS-2020-0070, by the following method:

- Electronic Submission: Submit all electronic public comments via the Federal eRulemaking Portal.

1. Go to <http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2020-0070>;
2. Click the “Comment Now!” icon and complete the required fields; and
3. Enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by us. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. We will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). If you are unable to submit your comment through www.regulations.gov, contact Moira Kelly, Senior Fishery Program Specialist, phone: 978-281-9218; e-mail: Moira.Kelly@noaa.gov.

Copies of the Joint Omnibus Electronic Vessel Trip Reporting Framework Adjustment prepared by the Mid-Atlantic and New England Fishery Management Council in support of this action are available from Dr. Christopher Moore, Executive Director, Mid-Atlantic Fishery Management Council, 800 North Street, Suite 201, Dover, DE 19901. The supporting documents are also accessible via the Internet at: <https://www.mafmc.org/actions/commercial-evtr-framework>, <https://www.nefmc.org/library/omnibus-commercial-evtr-framework>, or <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Moira Kelly, Senior Fishery Program Specialist, phone: 978-281-9218; e-mail: *Moira.Kelly@noaa.gov*.

SUPPLEMENTARY INFORMATION:

In April 2019, NOAA's NMFS implemented a requirement for vessels issued a for-hire permit for a Mid-Atlantic Fishery Management Council-managed fishery to submit vessel trip reports electronically (eVTR) within 48 hours of the end of the trip when carrying passengers for hire. Shortly after, the Mid-Atlantic Council initiated an action to require the same of its commercial vessels. Given the substantial overlap in vessel permits across the two Councils, the New England Fishery Management Council agreed to make the action a joint omnibus action for all Fishery Management Plans of both Councils. At their respective December 2019 and January 2020 meetings, the Mid-Atlantic and New England Councils voted to submit the action to NMFS for approval.

Currently, commercial vessels are required to submit vessel trip reports either on paper or electronically following each trip. Several fishery management plans require weekly submission (Atlantic herring; Atlantic Mackerel, Squid, Butterfish; Northeast Multispecies; and Surfclam and Ocean Quahog); others require monthly submission (Atlantic Bluefish; Atlantic Deep-Sea Red Crab; Atlantic Sea Scallop; Summer Flounder, Scup, Black Sea Bass; Monkfish; Northeast Skate Complex; Spiny Dogfish; and Tilefish). With this action, all vessel trip reports would be required to be submitted electronically within 48 hours of the end of a fishing trip.

The Councils considered a variety of reporting timelines, including status quo (monthly or weekly), 24 hours, 72 hours, or weekly reporting. Ultimately, both Councils determined that 48 hours was preferred, as this was consistent with the existing for-hire

eVTR requirements. In addition to the method and submission timeframe changes, the Councils recommend removing document retention requirements that are no longer necessary with electronic reporting.

New England Council For-Hire

Upon implementation of the Councils' proposed action, all federally permitted vessels in the Greater Atlantic Region would be required to submit vessel trip reports electronically, with two exceptions: (1) Federally permitted lobster vessels; and (2) vessels holding only a New England Council-managed for-hire permit. In conjunction with a reporting action by the Atlantic States Marine Fisheries Commission, we are addressing the lobster reporting requirements separately from this action. There are currently fewer than 15 vessels that are only issued a New England for-hire permit. Of those, 10 were active in 2019, and 6 of those submitted vessel trip reports electronically.

At the outset of this action (June 2019), the New England Council moved to include its own for-hire vessels in the framework. However, after consulting with the Mid-Atlantic Council, the New England Council agreed to move forward with just the commercial reporting changes. At its April 2020 meeting, after completing the relevant analyses and determining how few vessels would remain without an eVTR requirement, the New England Council requested that NMFS use the Magnuson-Stevens Fishery Conservation and Management Act authority at section 305(d) to extend the eVTR requirement to New England Council for-hire vessels through the same rulemaking to implement the commercial eVTR framework.

Including for-hire vessels with permits for New England Council-managed species in the action would streamline this rulemaking and regulatory text, improve our

outreach efforts, and reduce the administrative burden of maintaining two reporting systems. Further, as noted above, the majority of vessels that would be impacted are already using electronic reporting voluntarily.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the National Marine Fisheries Service (NMFS) Assistant Administrator has made a preliminary determination that this proposed rule is consistent with the Joint Omnibus Electronic Vessel Trip Reporting Framework Adjustment, other provisions of the Magnuson-Stevens Act, and other applicable law. In addition, under the authority granted in section 305(d), NMFS is proposing to extend the requirements of this action to vessels issued for-hire permits for New England Council fisheries.

This proposed rule has been determined to be not significant for purposes of Executive Order (E.O.) 12866. This proposed rule is expected to be an E.O. 13771 deregulatory action.

This proposed rule does not contain policies with Federalism or takings implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual determination for this determination is as follows.

This is an administrative action that would change the method of submission and reporting frequency of vessel trip reports. Currently, commercial vessels are required to submit vessel trip reports either on paper or electronically following each trip. Several

fishery management plans require weekly submission (Atlantic herring; Atlantic Mackerel, Squid, Butterfish; Northeast Multispecies; and, Surfclam and Ocean Quahog); others require monthly submission (Atlantic Bluefish; Atlantic Deep-Sea Red Crab; Atlantic Sea Scallop; Summer Flounder, Scup, Black Sea Bass; Monkfish; Northeast Skate Complex; Spiny Dogfish; and, Tilefish). With this action, vessel trip reports would be required to be submitted electronically, within 48 hours of the end of a fishing trip.

The Regulatory Flexibility Act (RFA) requires Federal agencies to consider disproportionality and profitability to determine the significance of regulatory impacts. For RFA purposes only, NMFS established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts less than not in excess of \$11 million for all its affiliated operations worldwide. The determination of whether the entity is large or small is based on the average annual revenue for the most recent 3 years for which data are available (from 2016 through 2018).

The measures proposed in this action apply to the vessels that hold commercial Federal permits for species managed by the New England or Mid-Atlantic Council. There were 3,832 affiliates that reported revenue from commercial landings in 2016, 2017, and/or 2018. Based on combined receipts in 2018, 3,820 of these commercial entities were classified as small businesses and 12 were classified as large businesses. When considering affiliates that reported revenues from commercial fishing activities, the

3-year average (2016-2018) annual combined gross receipts from all commercial fishing activity was \$1.1 billion for all combined affiliates classified as small businesses and \$229,738,842 for all combined affiliates classified as large businesses. The Small Business Administration threshold for a small business is \$8 million for for-hire entities and \$11 million for commercial fishing entities. There are an additional 15 for-hire vessels not considered in the Councils' original analysis. The majority of these 15 vessels are issued only a Northeast multispecies for-hire permit (one vessel also holds a lobster permit). Seven of the 15 vessels submitted vessel trip reports in 2019, ranging from 6 to nearly 70 trips, with an average of 22 trips. Charters (private trips for up to 6 people) typically cost around \$1,000 for groundfish trips, while a party boat can carry around 70 people and typically charge approximately \$70 per customer. As a result, gross revenue from these vessels' trips likely averaged between \$20,000 and \$100,000 in 2019, ranging from \$6,000 to upwards of \$330,000, well below the \$8 million small business threshold for for-hire fishing entities.

Complying with the proposed eVTR submission requirements can be accomplished for no cost using several of the available eVTR applications with a smartphone, personal computer, or tablet and internet connection/cellular data. The ubiquitous nature of smartphones, computers, and internet availability in private homes and businesses, as well as free access to Wi-Fi in most public libraries and other locations, provides a free to minimal cost means for permit holders to access eVTRs. Therefore, there is little to no direct negative economic impact to permit holders. Although this low-cost option is available, captains may voluntarily choose a different

reporting mechanism, additional services, or upgraded hardware options that would increase their costs to varying degrees.

Because the eVTR submission requirements can be accomplished at low/no cost, no adverse impacts are expected from the proposed measures, and in the long-term, electronic reporting is expected to reduce reporting burden as we will be able to consolidate requirements into the eVTR platforms.

Therefore, this action is not expected to have a significant economic effect on a substantial number of small entities. Under the proposed action, small entities would not be placed at a competitive disadvantage relative to large entities, and the regulations would not reduce the profits for any small entities relative to taking no action. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping, and reporting requirements.

Dated: July 7, 2020.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 648 is proposed to be 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. Amend § 648.7 by:
 - a. Revising paragraphs (b)(1), (c), (d), and (f)(2); and
 - b. Removing and reserving paragraph (e)(2).

The revisions read as follows:

§ 648.7 Recordkeeping and reporting requirements.

(b) * * *

(1) *Fishing Vessel Trip Reports.* The owner or operator of any vessel issued a valid permit or eligible to renew a limited access permit under this part must maintain on board the vessel, and submit, an accurate fishing log report for each fishing trip, regardless of species fished for or taken, by electronic means. This report must be entered into and submitted through a software application approved by NMFS. The reporting requirements specified in this paragraph (b)(1)(i) for an owner or operator of a vessel fishing for, possessing, or landing Atlantic chub mackerel are effective through December 31, 2020.

(i) With the exception of those vessel owners or operators fishing under a surfclam or ocean quahog permit, at least the following information as applicable and any other information required by the Regional Administrator must be provided: Vessel name; USCG documentation number (or state registration number, if undocumented); permit number; date/time sailed; date/time landed; trip type; number of crew; number of anglers (if a charter or party boat); gear fished; quantity and size of gear; mesh/ring size; chart area fished; average depth; latitude/longitude; total hauls per area fished; average tow time duration; hail weight, in pounds (or count of individual fish, if a party or charter

vessel), by species, of all species, or parts of species, such as monkfish livers, landed or discarded; and, in the case of skate discards, “small” (i.e., less than 23 inches (58.42 cm), total length) or “large” (i.e., 23 inches (58.42 cm) or greater, total length) skates; dealer permit number; dealer name; date sold, port and state landed; and vessel operator's name, signature, and operator's permit number (if applicable).

(ii) The owner or operator of any vessel conducting any surfclam and ocean quahog fishing operations must provide at least the following information and any other information required by the Regional Administrator: Name and permit number of the vessel, total amount in bushels of each species taken, date(s) caught, time at sea, duration of fishing time, locality fished, crew size, crew share by percentage, landing port, date sold, price per bushel, buyer, tag numbers from cages used, quantity of surfclams and ocean quahogs discarded, and allocation permit number.

* * * * *

(c) *When to fill out a vessel trip report.* Vessel trip reports required by paragraph (b)(1)(i) of this section must be filled out with all required information, except for information not yet ascertainable, prior to entering port. Information that may be considered unascertainable prior to entering port includes dealer name, dealer permit number, and date sold. Vessel trip reports must be completed as soon as the information becomes available. Vessel trip reports required by paragraph (b)(1)(ii) of this section must be filled out before landing any surfclams or ocean quahogs.

(d) *Inspection.* Upon the request of an authorized officer or an employee of NMFS designated by the Regional Administrator to make such inspections, all persons required to submit reports under this part must make immediately available for inspection

reports, and all records upon which those reports are or will be based, that are required to be submitted or kept under this part.

* * * * *

(f) * * *

(2) *Fishing vessel trip reports.* For any vessel issued a valid permit or eligible to renew a limited access permit under this part, fishing vessel trip reports, required by paragraph (b)(1) of this section, must be submitted within 48 hours at the conclusion of a trip.

(i) For the purposes of this paragraph (f)(2), the date when fish are offloaded from a commercial vessel will establish the conclusion of a commercial trip.

(ii) For the purposes of this paragraph (f)(2), the date a charter/party vessel enters port will establish the conclusion of a for-hire trip.

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