

feasible broadcast technologies that can provide an alternative to the 24-hour ban on indecent broadcasts. One type of technology that might be considered is the use of an FM or TV aural subcarrier, such as Television's "Second Audio Program" channel for the broadcast of indecent material. Use of such a technology, which requires decoder devices to gain access to the programming, could restrict children's access to indecent broadcasts, while at the same time make such broadcasts available to adults. The effectiveness of such a technology as an alternative to a 24-hour ban, depends upon whether it could, in fact, restrict minors' access to indecent material, or whether, for example, decoder devices would become standard features on radio and television receivers making such programming easily accessible to minors.

15. *Availability of Non-Broadcast Alternatives for Indecent Material.* Even if the evidence on children's viewing and listening ultimately supports a total ban on broadcast indecency rather than time channeling or other more limited means of regulation, the Commission must also address whether a 24-hour ban impermissibly infringes upon adults' First Amendment rights by permitting them to hear and view only what is acceptable to children. In view of this concern, the Commission requests comment on whether non-broadcast alternatives, including cable with a lock-box capacity, videocassettes, audiocassettes, records, motion pictures, theatres, and nightclubs, provide adults with sufficient access to visual and audio indecency. Do the costs associated with each alternative reduce its practical availability to adults? Are there differences in the types of alternatives available for video versus audio indecency?

Procedural Matters

16. Because the ACT II court will rely on the record in this proceeding in making its decision, the Commission's goal is to develop as complete a record as possible. Accordingly, the Commission asks parties to address all issues thoroughly and, wherever possible, to support their statements with statistical data. The Commission also requests that parties submitting statistical studies or analysis indicate the factual basis for and methodology of such studies in their submissions. Individual reports, articles, and other data referred to in the Notice are available in the docket of this proceeding in order to enable parties to provide comments on this specific material. Data referred to throughout

this synopsis is presented in the full text of the Notice and in Appendices B and C.

Comment Information

17. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before January 19, 1990, and reply comments on or before February 16, 1990. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

List of Subjects in 47 CFR Part 73

Radio broadcasting, Television broadcasting.

Federal Communications Commission.

Donna E. Searcy,

Secretary.

[FR Doc. 89-29767 Filed 12-21-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[Docket No. 90927-9273]

RIN 0648-AC79

Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this final rule to amend the rule implementing the Fishery Management Plan for the Northeast Multispecies Fishery (FMP). This final rule will implement Amendment 3 (Amendment) to the FMP. It will enable the New England Fishery Management Council (Council), its Multispecies Committee, NMFS, and other management agencies to respond in a timely manner to protect large concentrations of juvenile, sublegal, and spawning fish through a Flexible Area Action System. The intended effect of the rule is to: (1) Enhance age-at-entry controls; (2) eliminate the need for emergency actions; and (3) enable management agencies to respond to requests from the fishing industry for timely action.

EFFECTIVE DATE: December 19, 1989.

ADDRESSES: Copies of the Amendment, Environmental Assessment, Regulatory Impact Review (RIR), and other supporting documents are available upon request from Douglas G. Marshall,

Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (Route 1), Saugus, MA 01906.

FOR FURTHER INFORMATION CONTACT: Jack Terrill, (Resource Policy Analyst), 508-281-9252.

SUPPLEMENTARY INFORMATION: This amendment was prepared by the Council under the provisions of the Magnuson Fishery Conservation and Management Act (Magnuson Act) as amended (16 U.S.C. 1801 *et seq.*). A notice of availability was published on August 30, 1989 (54 FR 35908) and the proposed rule on October 2, 1989 (54 FR 40466).

Amendment 3 establishes a Flexible Area Action System (FAAS) that will provide protection for large concentrations of juvenile, sublegal, or spawning multispecies finfish. The Chairman of the Council's Multispecies Committee would initiate a 26-day administrative process if warranted by reports. The FAAS includes industry involvement and initiation by calling attention to a problem, a formal notice of intended action, verification by the Director, Northeast Region, NMFS (Regional Director), the preparation of an impact analysis for each occurrence, and a requirement for public inspection and comment before any action is taken.

Comments and Responses

Written comments were received from the New England Fishery Management Council and the Conservation Law Foundation of New England, Inc.

Comment: The Council provided comment which requested that implementation of the Amendment be done as soon as possible in order to protect concentrations of sublegal yellowtail flounder occurring in Southern New England waters.

Response: Due to the large concentrations of sublegal yellowtail flounder presently occurring in Southern New England and in light of the emergency action taken last year, the Under Secretary for Oceans and Atmosphere, NOAA (Under Secretary), has determined that it is in the best interest of the resource and the public to waive the Administrative Procedure Act delayed effectiveness period for this Amendment.

Comment: The Conservation Law Foundation submitted comments that strongly supported implementation of the amendment. It also suggested three specific changes to the rule in order to make the FAAS more responsive by accelerating the schedule when possible.

Response: One of these comments would have denied the public an adequate opportunity to review the reports required by § 653.26(c)(1) and (d). The other two comments are incorporated into the final regulations and explained by the changes below.

Changes From the Proposed Rule

In response to comments received the following changes are made from the proposed rule.

In § 651.26(b) the sentence "Day 1 is designated when the notice is published in the Federal Register." is changed to "Day 1 is designated when the notice is filed with the Office of the Federal Register."

In § 651.26(e) the phrase "On Day 21" is changed to "By Day 21" and § 651.26(b)(4) is similarly changed.

Classification

The Regional Director determined that this Amendment is necessary for the conservation and management of the Northeast multispecies fishery and that it is consistent with the Magnuson Act and other applicable law.

The Council prepared an environmental assessment (EA) for Amendment 3. Based on this EA, the Assistant Administrator for Fisheries, NOAA, found that there will be no significant impact on the environment as a result of this rule. You may obtain a copy of the assessment and finding of no significant impact from the Council (see ADDRESSES).

The Under Secretary for Oceans and Atmosphere, NOAA, has determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination was based on the regulatory impact review which demonstrates positive long-term economic benefits to the fishery under these management measures.

The present high concentrations of juvenile or sublegal yellowtail flounder in the Southern New England/Mid-Atlantic Region will result in high discards with associated high mortality. For this reason, the Under Secretary has found that there is good cause to implement this rule immediately and waive the delayed effectiveness period under section 553(d) of the Administrative Procedure Act.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis was not prepared. The final rule establishes an administrative procedure for prescribing

management measures to protect concentrations of juvenile, sublegal, and spawning multispecies finfish and does not initially impose specific management measures. Any management measure subsequently adopted under this procedure will be analyzed for its impact on small entities.

This rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

The Council determined that this rule will be implemented in a manner that is consistent, to the maximum extent practicable, with the approved coastal zone management programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, and North Carolina. This determination has been submitted for review by the responsible state agencies under Section 307 of the Coastal Zone Management Act. All states with the exception of Virginia and Maryland have agreed with the Council's determination. Virginia and Maryland did not comment within the statutory time period, and therefore, consistency is automatically implied.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 651

Fishing, Fisheries, Vessel permits and fees.

Dated: December 18, 1989.

James E. Douglas, Jr.,
Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 651 is amended as follows:

PART 651—NORTHEAST MULTISPECIES FISHERY

1. The authority citation for 50 CFR part 651 continues to read as follows:

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

2. Section 651.2 is amended by adding the following definitions in alphabetical order to read as follows:

§ 651.2 Definitions.

* * * * *

Chairman means the Chairman of the Multispecies Finfish Committee of the Council.

* * * * *

Committee means the Multispecies Finfish Committee of the Council.

Council means the New England Fishery Management Council.

* * * * *

3. 50 CFR part 651 is amended by adding a new § 651.26 to read as follows:

§ 651.26 Flexible Area Action System.

(a) The Chairman of the Committee, upon learning of the presence of discard problems associated with large concentrations of juvenile, sublegal, or spawning multispecies finfish, will determine if the situation warrants further investigation and possible action. In making this determination, the Chairman will consider the amount of discard of regulated species, the species targeted, the number and types of vessels operating in the area, the location and size of the area, and the resource condition of the impacted species. If he determines it is necessary, the Chairman will request the Regional Director to initiate a fact finding investigation to verify the situation.

(b) The Chairman will request the Regional Director to publish a notice in the Federal Register. The request must include a complete draft of the notice. The Secretary must file the notice within one business day following receipt of the complete request. Day 1 is designated when the notice is filed with the Office of the Federal Register. The notice will inform the public of:

(1) The problem that is occurring and the need for action;

(2) The Regional Director's initiation of fact finding and verification of the problem;

(3) The date (Day 15) the Regional Director's fact finding report, responding to the Chairman's request, will be available for public review;

(4) The date (Day 21) by which a Committee meeting/public hearing will be held and on which the comment period will close;

(5) The potential extent of the area to be affected (defined by common name, latitude/longitude coordinates and/or LORAN coordinates);

(6) The species affected;

(7) The types of gear used;

(8) Other fisheries potentially impacted;

(9) Predominant ports to be impacted;

(10) The expected duration of action;

(11) The types of action which may be taken, limited to the various management measures currently implemented by the FMP;

(12) The Council's initiation of analysis of the impacts; and

(13) The date (Day 15) the Council's impact analysis will be available for public review; and

(14) A request for written comments.

(c) From Day 1 through Day 14 the following activities will take place:

(1) The Regional Director shall prepare a fact finding report which will examine available information from the following sources (in order of priority):

(i) Sea sampling from the NMFS Domestic Sea Sampling Program or from State agency sources;

(ii) Port sampling from the NMFS Statistics Investigation; or

(iii) Any other source of information. After examining the facts, the Regional Director will provide a technical analysis to determine the magnitude of discard of juvenile and sublegal multispecies finfish and the presence and amount of spawning outside of any area/season restriction. If possible, he will provide technical analyses describing the nature of the impacts on the stock managed under the FMP. The report will specify what type of activities will be required to monitor the area/fishery in question if subsequent action is taken under this section. The report shall also include a statement of NMFS's capabilities for administering, monitoring, and enforcing any of the proposed options.

(2) The Council will prepare an economic impact analysis of the potential management options under consideration.

(d) By Day 15, copies of the reports prepared by the Regional Director and the Council will be made available for public review from the Council at Suntaug Office Park, 5 Broadway (Route 1), Saugus, MA 01906.

(e) By Day 21, provided that it is six days after release of the fact finding report required by paragraphs (c) (1) and (d) of this section, the Committee will hold a meeting/public hearing at which time it will review the Regional Director's fact finding report and the Council's impact analysis. Public comment on the reports, alternatives, and potential impacts will be requested

for the Committee's consideration. Upon review of all available sources of information, the Committee will determine what course of action is warranted by the facts and make its recommendation to the Regional Director. The Committee's recommendation will be limited to:

(1) Mesh size restrictions, catch limits, closure of an area to all or certain types of gear or vessels, or other measures less restrictive than the closure but already contained within and implemented by the FMP;

(2) Between three weeks and six months in duration; and

(3) Discrete geographical areas, taking into consideration such factors as manageability of the area, readily identifiable boundaries (natural or otherwise), accessibility of the area, and the area's suitability for monitoring and enforcement activities.

If the Committee recommends that action is not warranted, and the Regional Director concurs, notice will be published in the Federal Register stating that no action will be taken and specifying the rationale behind the Committee's decision.

(f) By Day 23 the Regional Director shall: (a) Accept the Committee's recommended management action; or (b) reject the Committee's recommendation. If the Regional Director accepts the Committee's recommendation, the action will be implemented through notice in the Federal Register to be filed by Day 26. If the Regional Director rejects the Committee's recommendation, the Regional Director must write to the Committee and explain that the recommended action has been determined not to be consistent with the record established by the fact finding report, impact analysis, and comments received at the public hearing.

(g) By Day 26, notice will be sent to all vessel owners holding Federal Fisheries Permits for Northeast Multispecies Finfish. The Regional Director will also use other appropriate media, including but not limited to mailings to the news media, fishing industry associations and radio broadcasts, to disseminate information on the action to be implemented.

(h) Once implemented, the Regional Director will monitor the affected area to determine if the action is still warranted. If the Regional Director determines that the circumstances under which the action was taken, based on the Regional Director's report, the Council's report and the public comments, are no longer in existence, he will terminate the action by notice in the Federal Register and through other appropriate media.

(i) Actions taken under this section will ordinarily become effective upon the date of filing with the Federal Register. The Regional Director may determine that facts warrant a delayed effective date.

(j) If the date specified above for completion of an action falls on a Saturday, Sunday, or Federal holiday, it shall be performed by the first day which is not a Saturday, Sunday, or Federal holiday. Failure to complete any action by the specified date shall not vitiate the authority of the Regional Director to implement an accepted recommendation of the Committee; provided, that no meeting/public hearing under paragraph (e) of this section may be held prior to the sixth day after the day by which all reports required by paragraphs (c) (1) and (d) of this section have been made available for public review.

[FR Doc. 89-29741 Filed 12-19-89; 8:55 am]

BILLING CODE 3510-22-M