

\*5 for DTV channel \*53 at Birmingham, Alabama. See 65 FR 51278, August 23, 2000.

With its action, this proceeding is terminated.

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Media Bureau, (202) 418-1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 00-136, adopted April 8, 2002, and released April 15, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Division, Media Bureau.*

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BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 02-770; MM Docket No. 01-36; RM-10047]

**Radio Broadcasting Services; Jamestown, Alfred and Canaseraga, NY; and Du Bois, PA**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; dismissal.

**SUMMARY:** At the request of Vox Allegany, LLC, the Commission dismisses the petition for rule making proposing the substitution of Channel 270B1 for Channel 270A at Jamestown, and the modification of Station WHUG(FM)'s license accordingly. To accommodate the upgrade, petitioner also proposed (a) the substitution of Channel 246A for Channel 270A at Alfred New York, and the modification of Station WZKZ(FM)'s license accordingly; (b) the substitution of Channel 270A for vacant Channel 246A at Canaseraga, New York; and (c) the modification of the reference coordinates of Station WMOU-FM, Channel 271B, Du Bois, Pennsylvania. See 66 FR 11130, February 22, 2001. A showing of continuing interest is

required before a channel will be allotted. It is the Commission's policy to refrain from making an allotment to a community absent an expression of interest. Therefore, we will grant the joint request to dismiss the instant proposal.

**FOR FURTHER INFORMATION CONTACT:** Sharon P. McDonald, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 01-36, adopted March 27, 2002, and released April 5, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY-A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20054.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Office of Broadcast License Policy, Media Bureau.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 600

[I.D. 030102C]

### Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

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

**ACTION:** Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

**SUMMARY:** NMFS has made a preliminary determination that an application to issue EFPs to three gillnet vessels, submitted by the North Carolina Division of Marine Fisheries (NCDMF), contains all the information required by the regulations governing exempted experimental fishing under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and warrants further consideration. NMFS has also made a preliminary

determination that the activities authorized under these EFPs would be consistent with the goals and objectives of the Monkfish Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue EFPs. Therefore, NMFS announces that it intends to issue EFPs that would allow up to three gillnet vessels to conduct fishing operations otherwise restricted by the regulations governing fisheries of the northeastern United States (i.e., to land monkfish in excess of amounts authorized under a monkfish incidental catch permit, Category E).

Regulations under the Magnuson-Stevens Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

**DATES:** Comments on this notification must be received at the appropriate address or fax number (see **ADDRESSES**) on or before April 30, 2002.

**ADDRESSES:** Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelop "Comments on Monkfish EFP Proposal." Comments may also be sent via facsimile to (978) 281-9135. Comments will not be accepted if submitted via e-mail or the Internet.

**FOR FURTHER INFORMATION CONTACT:** Allison Ferreira, Fishery Policy Analyst, 978-281-9103.

**SUPPLEMENTARY INFORMATION:** NCDMF submitted an industry cooperative proposal on January 22, 2002, to conduct an experimental blackfin monkfish (*Lophius gastrophysus*) fishery in the area extending from Avon, NC, to Chincoteague, VA, from 3 to 30 nautical miles seaward of the coast. The study would take place from May 1 to June 30, 2002. The purpose of this study is to collect biological and environmental data to identify the blackfin monkfish component of the commercial monkfish fishery, and to identify the abundance, distribution, and migration patterns of monkfish off the coasts of North Carolina and Virginia. The data to be collected would include, but would not be limited to: catch identified by species, including target species and bycatch; water depth, sea-surface temperature, catch location, gillnet mesh size, net length and net soak times. In addition, the experimenters would report observed gear interactions with marine mammals, sea turtles, and marine birds to NMFS. The primary objective of the study is to collect temporal and spatial data to

determine whether blackfin monkfish is a significant component of the monkfish resource off the coasts of North Carolina and Virginia and should be protected under the FMP. The information obtained from this study could also be utilized to better manage the monkfish resource at the southern end of its range.

The FMP contains only one species in the management unit, the American monkfish or goosefish (*Lophius Americanus*), although the fisheries literature identifies two other species, blackfin monkfish and reticulated goosefish (*Lophiodes reticulatus*) that may be found in the western central Atlantic. Over the past several years, NCDMF and local fishermen have collected several specimens that have been identified as blackfin monkfish. The proportion of the harvest that is blackfin monkfish is unknown. Dockside identification of this species, which is difficult, is complicated by the common practice of processing at sea and the landing of monkfish tails only, which the FMP allows. If the study indicates that blackfin monkfish comprise a significant portion of the monkfish fishery off North Carolina and Virginia, this species should be considered for inclusion in the management unit of the FMP in order to prevent an unregulated fishery for this species from developing.

The proposed exempted experimental fishery would be a continuation of an exempted experimental fishery conducted during May and June 2001. Three vessels, out of a total of five authorized vessels, fished during the 2001 experimental fishery—two from North Carolina and one from Virginia. These three vessels were authorized to fish up to 960 total hours (40 days multiplied by 24 hours per day) each, and were limited to a combined total allowable catch (TAC) of 100,000 lb (45,359 kg) of whole monkfish (blackfin monkfish (*Lophius gastrophysus*) and American monkfish (*Lophius americanus*)) during the permit period. While participating in the experimental fishery, each vessel was required to fish with 8-inch (20.3-cm) diamond mesh or larger; could land no more than 996 lb (452 kg) of whole monkfish per 24-hour period; could temporarily possess for purposes of data collection monkfish less than the minimum size of 17 inches (43.2 cm) total length (TL); and were restricted to landing only at the ports of Hatteras, North Carolina; Wanchese, North Carolina; or Chincoteague, Virginia in order to best monitor experimental activities. In addition, participants were required to report all interactions with marine mammals, sea turtles, or marine birds to NMFS.

A total of 50,491 lb (22,902 kg) of whole monkfish were landed during the 2001 experimental fishery, averaging 935 lb (424 kg) of monkfish per 24-hour period. No blackfin monkfish were collected by participating vessels during the course of the experiment. However, several were collected by one of the participating vessels prior to the start of the experimental fishery on May 1, 2001. Vessels participating in the 2001 experimental fishery experienced no gear interactions with marine mammals. However, one adult female loggerhead turtle was lethally taken off Virginia in May 2001 by a vessel participating in the experimental fishery.

Participating vessels would be selected by NCDMF based upon their knowledge of the gillnet fishery for monkfish, demonstrated knowledge of local waters and fishing methodology, availability of the vessel, possession of monkfish gillnet gear, and suitability of the vessel for carrying observers. In addition, participating vessels must possess an open access monkfish incidental catch permit (Category E). Vessels that hold limited access monkfish permits would be authorized to fish in the study area, provided they have not utilized all of their monkfish DAS and that they comply with other applicable law.

The target species would be blackfin monkfish and American monkfish. Incidental species are expected to be skates, rays, sharks, horseshoe crabs and bluefish. Participating vessels would be authorized to land and sell up to the amount of monkfish allowed under the monkfish limited access Category B permit; currently 1,000 lb (454 kg) of monkfish tails per day-at-sea (DAS). This landing limit is proposed to change to 450 lb (204 kg) per DAS at the start of the 2002 fishing year on May 1, 2002. For the 2002 experimental fishery, participating vessels would be restricted to a combined TAC of 100,000 lb (45,359 kg) of whole monkfish; the level of take authorized for the 2001 experimental fishery. All monkfish landed would be required to meet the minimum size requirement of 17 inches (43.2 cm) TL (§ 648.93(a)(1)), but participants would be authorized to temporarily (for the length of time necessary to collect the data, unless authorized to retain the fish by State or Federal permit) possess monkfish less than the minimum size for purposes of data collection. Participating vessels would also be authorized to sell any incidentally caught species, as long as the vessel holds the appropriate Federal and/or state permits and the corresponding minimum size and

possession/landing limit requirements are met.

The EFPs would allow three vessels to fish 40 monkfish DAS per vessel while exempting vessels from the limited access permit eligibility (50 CFR 648.4(a)(9)) and accompanying DAS reporting requirements (§ 648.10(c)) and the monkfish DAS and gear-marking requirements (§ 648.92). Monkfish DAS would be monitored by NCDMF and counted as specified at § 648.92(b)(8)(v), which defines actual at-sea time for trips as less than or equal to 3 hours or greater than 15 hours, or as 15 hours for trips greater than 3 hours but less than or equal to 15 hours.

In order to ensure that the data collected is not biased by fishing behavior in response to fish movements, participating vessels would also be authorized to possess and land monkfish in excess of the incidental catch limit specified under § 648.94(c)(3). In order to obtain data on blackfin monkfish distribution and abundance, a species that is reportedly smaller than the American monkfish, the participating vessels would be authorized to retain monkfish temporarily (for the length of time necessary to collect the data, unless authorized to retain the fish and by State or Federal permit) that are less than the minimum fish size of 17 inches (43.2 cm) TL (§ 648.93(a)(1)), and to fish gear that is less than the minimum gillnet mesh size requirement of 10-inch (25.4-cm) diamond mesh (§ 648.91(c)(1)(iii)).

Participating vessels would be required to fish in accordance with a sampling plan designed by the applicant, maintain logbooks documenting fishing activities, land all monkfish suspected of being blackfin monkfish in a whole condition to aid in identification, and allow biological information to be collected from the catches. In addition, participating vessels would only be authorized to land their catch at the port of Chincoteague, Virginia for purposes of project management and logistics, and to facilitate the collection of biological information of specimens by NCDMF biological staff. Given the need for at-sea sampling in order to adequately identify the blackfin monkfish component of the monkfish fishery and the need to record and monitor interactions between monkfish gillnet gear and threatened and endangered sea turtles and marine mammals, 100-percent observer coverage will be required for this experimental fishery.

The applicant recognizes that the monkfish gillnet fishery may be responsible for sea turtle mortality and

has proposed, in their application, a system of area closures triggered by dates, water temperatures and/or observed sea turtle interactions, to minimize the impact of the experimental fishery on threatened or endangered sea turtles. This proposal served as the basis for developing an interim final rule to protect sea turtles. This interim final rule (67 FR 13098; March 21, 2002), which is effective for 240 days starting from March 15, 2002, requires monkfish gillnet vessels to move their fishing operations steadily northward at specific points in time, based in part on sea surface temperature information. Participating vessels would be required to comply with the provisions of this interim final rule. In addition, the experimental fishery would terminate immediately if three loggerhead turtles are taken or one endangered sea turtle is taken. NMFS will take the necessary steps to ensure consistency with its obligations under the Endangered Species Act before issuing the EFPs.

EFPs would be issued to three vessels to exempt them from monkfish limited access permit eligibility requirements; DAS and reporting requirements; gear-marking requirements; incidental monkfish possession and landing limits; the minimum fish size requirement (for data collection only); and minimum gillnet mesh size, as required by the FMP (50 CFR part 648, subpart F).

Based on the results of this EFP, this action may lead to future rulemaking.

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

Dated: April 12, 2002.

**John H. Dunnigan,**

*Director, Office of Sustainable Fisheries,  
National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 600

[I.D. 040202C]

#### Magnuson-Stevens Act Provisions, Subpart H; General Provisions for Domestic Fishing

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

**ACTION:** Notice of receipt of petition for rulemaking and request for comments.

**SUMMARY:** NOAA announces receipt of a petition for rulemaking under the Administrative Procedure Act. Oceana, a non-governmental organization concerned with the environmental health of the oceans, has petitioned the U.S. Department of Commerce to promulgate immediately a rule to establish a program to count, cap, and control bycatch in U.S. fisheries. The Oceana petition asserts that NMFS is not complying with its statutory obligations to monitor and minimize bycatch under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the Endangered Species Act (ESA), the Marine Mammal Protection Act (MMPA), and the Migratory Bird Treaty Act (MBTA). The petition seeks a regulatory program that includes a workplan for observer coverage sufficient to provide statistically reliable bycatch estimates in all fisheries, the incorporation of bycatch estimates into restrictions on fishing, the placing of limits on directed catch and bycatch in each fishery with provision for closure upon attainment of either limit, and bycatch assessment and reduction plans as a requirement for all commercial and recreational fisheries.

**DATES:** Comments will be accepted through June 17, 2002.

**ADDRESSES:** Copies of the petition are available, and written comments on the need for such a regulation, its objectives, alternative approaches, and any other comments may be addressed to William T. Hogarth, Ph.D., Assistant Administrator for Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910; telephone 301-713-2239. Comments may also be sent via fax to 301-713-1193, attn: Val Chambers. Comments will not be accepted if submitted via e-mail or Internet.

**FOR FURTHER INFORMATION CONTACT:** Val Chambers, telephone 301-713-2341, fax 301-713-1193, e-mail Val.Chambers@noaa.gov.

**SUPPLEMENTARY INFORMATION:** The petition filed by Oceana states that wasteful large-scale bycatch of birds, mammals, turtles, and fish is occurring in the United States and worldwide. The petition cites scientific estimates of bycatch poundage and indicates bycatch of a much larger magnitude. The petition asserts that NMFS is allowing this wastage to continue by not meeting its legal obligations for bycatch under the MSA, ESA, MMPA, and the MBTA.

The petition cites specific legal responsibilities of NMFS for bycatch under each of these statutes and concludes that NMFS must count, cap, and control bycatch under the MSA, ESA, and MMPA and that NMFS must

monitor and report bycatch of seabirds that occurs in fishing operations and take steps to reduce seabird bycatch. For the MSA and related regulations and Federal Court interpretations, the petition cites national standard 9 and other requirements for minimizing bycatch and related mortality, including a standardized reporting methodology for bycatch. The petition concludes that any FMP or regulation prepared to implement an FMP must contain measures to minimize bycatch in fisheries to the extent practicable and argues that greater observer coverage is required. For the ESA, the petition cites the prohibition on taking endangered species and protection of threatened species, including recovery plans to guide regulatory efforts, as well as consultation requirements and incidental take statements. For the MMPA, the petition cites requirements for a regulatory system to avoid and minimize takes of marine mammals reducing mortality or serious injury to insignificant levels, as well as take reduction plans and monitoring of marine mammal takes. For the MBTA, the petition cites the prohibition on taking any migratory bird, including seabirds, except as permitted by regulations issued by the Department of the Interior, and cites Federal case law and Executive Order 13186 as requirements that NMFS ensure that fishery management plans approved by NMFS comply with the MBTA. The petition also refers to the NMFS-issued National Plan of Action for reducing seabird bycatch and the need to prepare a national seabird bycatch assessment.

The exact and complete assertions of nonconformance with Federal law are contained in the text of Oceana's petition which is available via internet at the following NMFS web address: <http://www.nmfs/noaa.gov/sfa/sfweb/index.htm>. Also, anyone may obtain a copy of the petition by contacting NMFS at the above address.

The petition specifically requests that NMFS immediately undertake a rulemaking to meet its obligations under the above statutory authorities and that such rulemaking include the following four actions:

"1. Develop and implement a workplan for placing observers on enough fishing trips to provide statistically reliable bycatch estimates in all fisheries. This task involves several steps (taking into account the diversity of vessel category, gears used, and fishing region): (a) determining how many fishing trips must be observed, where observers should be stationed, and other details; (b) identifying funding sources to support such