reduced or eliminated when the participant is eligible for Medicare health benefits or for health benefits under a comparable State health benefit plan. Pursuant to the authority contained in section 9 of the Act, and in accordance with the procedures provided therein and in § 1625.30(b) of this part, it is hereby found necessary and proper in the public interest to exempt from all prohibitions of the Act such coordination of retiree health benefits with Medicare or a comparable State health benefit plan.

(c) *Scope of exemption.* This exemption shall be narrowly construed. It does not apply to the use of eligibility for Medicare or a comparable State health benefit plan in connection with any act, practice or benefit of employment not specified in paragraph (b) of this section. Nor does it apply to the use of the age of eligibility for Medicare or a comparable State health benefit plan in connection with any act, practice or benefit of employment not specified in paragraph (b) of this section.

Appendix to § 1625.32—Questions and Answers Regarding Coordination of Retiree Health Benefits with Medicare and State Health Benefits

Q1. Why is the Commission issuing an exemption from the Act?

A1. The Commission recognizes that while employers are under no legal obligation to offer retiree health benefits, some employers choose to do so in order to maintain a competitive advantage in the marketplace—using these and other benefits to attract and retain the best talent available to work for their organizations. Further, retiree health benefits clearly benefit workers, allowing such individuals to acquire affordable health insurance coverage at a time when private health insurance coverage might otherwise be cost prohibitive. The Commission believes that it is in the best interest of both employers and employees for the Commission to pursue a policy that permits employers to offer these benefits to the greatest extent possible.

Q2. Does the exemption mean that the Act no longer applies to retirees?

A2. No. Only the practice of coordinating retiree health benefits with Medicare (or a comparable State health benefit plan) as specified in paragraph (b) of this section is exempt from the Act. In all other contexts, the Act continues to apply to retirees to the same extent that it did prior to the issuance of this section.

Q3. May employers continue to offer ''Medicare carve-out plans'' that deduct from the health benefits provided to Medicare-eligible retirees those health benefits that Medicare provides, while continuing to provide to Medicare-eligible retirees those health benefits that Medicare does not provide?

A3. Yes. Employers may continue to offer such ''carve-out plans'and make Medicare the primary payer of health benefits for Medicare-eligible retirees. Employers may also continue to offer ''carve-out plans'' to those retirees eligible for health benefits pursuant to a comparable State health benefit plan and make the comparable State health plan the primary payer of health benefits for these State-eligible retirees.

Q4. Does the exemption also apply to dependent and/or spousal health benefits that are included as part of the health benefits provided for retired participants?

A4. Yes. Because dependent and/or spousal health benefits are benefits provided to the retired participant, the exemption applies to these benefits, just as it does to the health benefits for the retired participant. However, dependent and/or spousal benefits need not be identical to the health benefits provided for retired participants. Consequently, dependent and/or spousal benefits may be altered, reduced or eliminated pursuant to the exemption whether or not the health benefits provided for retired participants are similarly altered, reduced or eliminated.

Q5. Does the exemption permit employers to use Medicare (or comparable State health benefit plan) eligibility, or the age of Medicare eligibility (or the age of eligibility for a comparable State health benefit plan) as a basis for other acts, practices or decisions regarding retirees?

A5. No. Employer use of Medicare (or comparable State health benefit plan) eligibility or the age of Medicare eligibility (or the age of eligibility for a comparable State health benefit plan) in a manner other than as specified in paragraph (b) of this section likely would be considered reliance upon an age-defined factor. Reliance upon an age-defined factor in making distinctions in employee benefits violates the Act, unless the employer satisfies one of the Act's specified defenses or exemptions.

Q6. Does the exemption apply to existing, as well as to newly created, employee benefit plans?

A6. Yes. The exemption applies to all retiree health benefits that coordinate with Medicare (or a comparable State health benefit plan) as specified in paragraph (b) of this section, whether those benefits are provided for in an existing or newly created employee benefit plan.

Q7. Does the exemption apply to health benefits that are provided to current employees who are at or over the age of Medicare eligibility (or the age of eligibility for a comparable State health benefit plan)?

A7. No. The exemption applies only to retiree health benefits, not to health benefits that are provided to current employees. Thus, health benefits for current employees must be provided in a manner that comports with the requirements of the Act. Moreover, under the laws governing the Medicare program, an employer must offer to current employees who are at or over the age of Medicare eligibility the same health benefits, under the same conditions, that it offers to any current employee under the age of Medicare eligibility.

[FR Doc. 03–17738 Filed 7–11–03; 8:45 am]

BILLING CODE 6570–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 030409081–3081–01; I.D. 032103B]

RIN 0648–AQ72

Fisheries of the Northeastern United States; Magnuson-Stevens Fishery Conservation and Management Act Provisions; Northeast (NE) Multispecies Fishery

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

ACTION: Withdrawal of a portion of a proposed rule.

SUMMARY: NMFS withdraws a portion of a proposed emergency rule, published on April 24, 2003, which proposed continuation of NE multispecies management measures implemented on August 1, 2002, and DAS Leasing Program (Program). NMFS will not implement that portion of the proposed emergency rule that proposed the Program.

FOR FURTHER INFORMATION CONTACT: Thomas Warren, Fishery Policy Analyst, (978) 281–9347, fax (978) 281–9135, e-mail Thomas.Warren@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2002, NMFS published an interim final rule (67 FR 50292), which implemented the Settlement Agreement in Conservation Law Foundation, et al. v. Evans, et al. Civil No. 00–1134 (D.D.C.). The August 1, 2002, interim final rule was in response to a Remedial Order issued on May 23, 2002, by the U.S. District Court for the District of Columbia (Court). Pursuant to the Court's Remedial Order, the measures implemented in the August 1, 2002, interim final rule are expected to remain in place until implementation of Amendment 13 to the NE Multispecies Fishery Management Plan (FMP). Because the Court granted an extension of the Amendment 13 implementation date until May 1, 2004, and because the August 1, 2002, interim final rule was to expire on July 27, 2003, NMFS published a proposed emergency rule on April 24, 2003, (68 FR 20096) that would continue the current measures until implementation of Amendment 13.

In addition to continuing the management measures that were first implemented on August 1, 2002, (as

specified in the Settlement Agreement), the proposed emergency rule included measures to implement a DAS Leasing Program under its emergency action authority (section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act and 62 FR 44421, August 21, 1997) in order to mitigate the potential harm resulting from the continuation of the August 1, 2002, interim final rule measures. The April 24, 2003, proposed emergency rule specified a Program that would have allowed limited access NE multispecies vessels to lease their NE multispecies DAS. The intent of the Program was to alleviate some of the negative economic and social impacts that may result from the reduced DAS allocations that will continue as a result of implementation of the final emergency rule. The Program was designed to maintain conservation neutrality, i.e., to maintain groundfish fishing effort close to the level that would be fished under the current management measures in the absence of the Program. The impetus for the Program was a request by the New England Fishery Management Council (Council) on May 20, 2002, that NMFS implement a DAS leasing program, on a permanent basis, through the most expedient mechanism. The Council, which is considering such a Program to be implemented on a permanent basis in Amendment 13, reiterated this request to NMFS on December 19, 2002. Additional information regarding the proposed Program measures appears in the preamble of the April 24, 2003, proposed emergency rule and is not repeated here.

Due to the newness and potential controversiality of the DAS Leasing Program and its implications, NMFS published a notice in the **Federal Register** (68 FR 28188; May 23, 2003) that extended the comment period on the DAS leasing aspect of the proposed emergency rule only through June 10, 2003, (the comment period on the Settlement Agreement measured remained unchanged and, thus, ended on May 27, 2003). Extension of the comment period on the Program allowed additional time for the public to comment on this important component of the proposed emergency rule. On June 27, 2003, a final emergency rule that continued the Settlement Agreement measures, with modifications, was published in the **Federal Register** (68 FR 38234). That rule did not contain measures pertaining to the proposed Program because of the extension of the comment period for the DAS leasing aspect of the proposed emergency rule.

One hundred and twenty-seven comments regarding the Program were received, the majority of which were from vessel owners and crew members. Other comments were submitted by other interested parties such as net manufacturers, seafood buyers, seafood processors, environmental organizations and state governments. Seventy-eight comments were in support of the Program, 48 were in opposition to the Program, and one took no position. The following organizations opposed the proposed Program: Cape Cod Hook Fisherman's Association, Island Institute, New Hampshire Marine Coalition, North Atlantic Marine Alliance, Northeast Seafood Coalition, Ocean Conservancy, Oceana, State of Maine Department of Marine Resources, State of Maine Department of Marine Resources Advisory Council, Stonington Fisheries Alliance, and West End Fisherman's Association. The following organizations supported the DAS Leasing Program: Associated Fisheries of Maine, Atlantic Offshore Lobstermans's Association, Portland Fish Exchange, and Sea Fresh USA (Portland buyer). The Small Business Administration's Office of Advocacy submitted a comment that encouraged NOAA Fisheries to give full consideration to the comments of all members of the small business community prior to making a final determination on whether to implement the Program.

There were two major recurring concerns expressed by commenters. The first concern was that the program would not help those vessels with a low number of DAS to obtain additional DAS to fish because such vessels would not be able to afford to lease DAS from other vessels. The commenters presumed that vessels that are large, financially successful, or have cash on hand would out-compete the small, financially marginal, or cash-poor vessels in the DAS leasing market. Commenters feared that the proposed Program would signal a shift in the make-up of the fishery toward corporate owned vessels with high landings. The second concern expressed was that the Program would not be conservation neutral, but would instead cause an increase in fishing effort and landings, and result in the need for additional fishing effort restrictions in the future. One commenter stated that DAS leasing is not appropriate in light of the sustained overfishing that has occurred over time, and the current importance of controlling fishing effort in the interim period (prior to implementation of Amendment 13). Some commenters believe that an emergency rule is not a proper regulatory mechanism to implement a new management tool that they perceive may have far-reaching implications for important aspects of the fishery in the future (e.g., fleet composition, allocative decisions).

Supporters of the program stated that the ability to lease DAS would enable them to remain economically viable and would be crucial to the survival of a full-time fishery. Commenters stated that the program would most help those that depend upon groundfish, would allow vessels to obtain a sufficient number of DAS to have a full-time job, and would be good for safety by enabling generation of additional revenue that could be used to maintain vessels. Many commenters stated that a DAS Leasing Program would maintain the continuity of groundfish landings and income, and enhance the future continuity of the infrastructure that supports the NE multispecies fishery. Some commenters were not concerned about the potential for the Program to influence the number or type of vessels that are active in the fishery, and stated that the NE multispecies fishery needs to expand and contract as conditions warrant.

Due to the level of uncertainty about potential positive and negative impacts of the proposed Program, aspects of the Program that are not supported by the public, the highly controversial nature of the Program, and the fact that a permanent DAS leasing program is under consideration in Amendment 13, NMFS believes that a DAS leasing program should not be implemented at this time on an interim basis only. Such a program is more appropriately addressed through a full public process, such as the development of Amendment 13. Therefore, NMFS is withdrawing that portion of the April 24, 2003, proposed emergency rule that would have implemented the Program. The other measures in the proposed emergency rule were approved and published in the June 27, 2003, final emergency rule.

This notification is not intended to solicit additional public comments to those already obtained in response to the proposed emergency rule, but rather to provide the public with notification regarding the decision of NMFS not to implement the proposed Program.

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

Dated: July 9, 2003.

Rebecca Lent,

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

[FR Doc. 03–17727 Filed 7–9–03; 2:09 pm]

BILLING CODE 3510–22–S