

Operations Handbook  
Discussion Documents

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Tuesday, February 12

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New England Fishery Management Council

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John Pappalardo, *Chairman* | Paul J. Howard, *Executive Director*

**MEMORANDUM**

**DATE:** February 4, 2008  
**TO:** Council  
**FROM:** Executive Director Paul J. Howard  
**SUBJECT:** Policy Approval

The attached policies will be discussed by the Council as a follow-up to its review of the Council Member Handbook in November 2007. The following will be discussed on Tuesday, February 12.

- 1) **Advisory Panel Policy** – The Executive Committee has recommended no changes at this time.
- 2) **Enforcement Policy** – At the February meeting the Council discussed appending the document *Enforcement Considerations for Regional Fishery Management Councils* developed by NOAA’s Office for Law Enforcement, NOAA General Counsel and the U.S. Coast Guard for use as guidelines during the development of a management action.
- 3) **Sector Policy** – At its Executive Committee and January 24, 2008 Council meetings several issues were discussed concerning sectors (see highlighted sections). The first is a clarification and the second relates to an issue that should be considered further and approved as appropriate at the February 2008 meeting.
- 4) **Policy for Recommending Approval of Additional Gear Types in the U.S. Canada Haddock Special Access Program and Regular B DAS Program** – Now that the Council is able to request that the Regional Administrator authorize new gear for these programs, the Council should approve a procedure for doing so to ensure recommendations are sound and to prevent confusion about how new gear requests might be addressed.

# Advisory Panels

## Purpose

Council Advisory Panels (APs), which meet the requirements for a fishing industry advisory committee (FIAC) are charged with carrying out the objectives and duties listed below for a specific fishery management plan (FMP) or management problem. The Council may establish or abolish its Advisory Panels as necessary.

## General

New England Council APs shall be appointed by and serve at the pleasure of the Council.

When a Council oversight committee determines that an Advisory Panel will facilitate its work in preparing or amending a fishery management plan (FMP) or provide assistance in addressing a special issue or problem, the Council will appoint an AP.

Every fall, each oversight committee reviews its existing advisory panel membership and recommends any changes to the Council's Executive Committee. A maximum of 15 individuals may be appointed to any Advisory Panel.

The Executive Committee provides final approval for membership on all NEFMC Advisory Panels. The three-year term of advisors begins on October 1st or as soon thereafter as possible.

All decisions and recommendations made by an Advisory Panel are considered to be advisory in nature and are not binding on the Council.

## Membership

The Advisory Panels shall be composed of individuals who are either actively engaged in some aspect of the region's commercial or recreational fisheries, or are knowledgeable and interested in the conservation and management of a fishery or group of fisheries that are managed by the Council. Panel membership shall also reflect as broad a cross-section as possible of interests and expertise from the standpoint of geographical distribution, user group representation, and social and economic diversity that generally may be found within the Council's geographical area of concern.

Other Councils may be invited to name advisors to serve as members of a New England Council's Advisory Panel if the FMP, amendment or, problem under consideration extends into the management area of the other Council.

The New England Council will reimburse advisors from the New England region for travel expenses. Advisors from outside New England may be reimbursed by either the New England Council or other Council(s) whom the advisor(s) may represent.

## Appointments

At the end of each year of a three-year term, advisors performance and attendance will be reviewed by the oversight committees and if needed new members will be solicited to fill any vacancies.

Additional advisors could be appointed in response to the creation of a new

panel, the addition of members to an existing panel, resignation, or Council action that removes a member.

The Executive Director will solicit applicants through the news media, Council mailing lists, and/or other means deemed appropriate.

The Executive Director will send each candidate a questionnaire to complete and return to the Council or require the candidate to submit a resume to the Council, depending on the nature of the Advisory Panel.

The relevant oversight committee will review the qualifications of the nominees and recommend appointments to the Council Chairman.

***Prior to selection, nominees shall be subject to an additional level of review by NOAA's Office of Law Enforcement. Advisory Panel membership may be declined if applicants have had a marine resource violation.***

## Terminations

An Advisory Panel member will be replaced at the Council's discretion if he or she:

- Transfers employment or moves to a different location.
- Is absent from two consecutive meetings without giving adequate notification or reason to the Council Executive Director.
- Appears unable or unwilling to fulfill their obligation as an Advisory Panel member.

- Their area of expertise is no longer required.
- The Chairman, in consultation with the Executive Committee, determines whether an Advisory Panel member should be removed for just cause (e.g., violation of marine resource regulation or felony, conviction, etc.; these examples are not all inclusive.)

## Operation

**Organization:** A chairman for each Advisory Panel will be designated by the oversight committee chairman (with the advice of committee members), reviewed by the Executive Committee and approved by the Council Chairman.

If an oversight committee determines it is necessary, the Advisory Panel may also designate a vice-chairman who will be selected in the same manner as the AP Chairman.

**Meetings:** Advisory Panels will meet as directed by their oversight committee chairman. They may meet in conjunction with their oversight committee or independently.

Advisory Panel meetings shall be scheduled by the Executive Director, as often as necessary to fulfill the panel's responsibilities, taking into consideration time and budget constraints. Generally, meetings will be scheduled for one day. Meetings of more than one day must have prior approval from the Council Chairman.

The Advisory Panel Chairman will be given explicit directions and guidance from the Oversight Committee Chairman concerning committee tasks (i.e.

prepare comments on draft public hearing document, prepare comments on the scoping document, prepare comments and advise on a specific measure, etc.) Each Advisory Panel meeting shall be open to the public and the conduct of business will be in accordance with the guidelines found on page 66, Committees and Advisory Panels, of the Magnuson-Stevens Fishery Conservation and Management Act (Blue Book).

The chairman of the oversight committee may attend meetings of the Advisory Panel at his or her discretion and will be reimbursed for expenses. Other members of the oversight committee or Council may attend, but will not be reimbursed for expenses.

The Executive Director may provide support as necessary for panel activities within budget limitations and staff availability.

## **Travel Authorization and Reimbursement**

Members of Advisory Panels shall serve with compensation, provided funding is available. Advisors are eligible for reimbursement of travel expenses incurred while attending authorized meetings scheduled by the Executive Director and subject to availability of funds.

Additionally, non-Council, non-Federal and non-state members of the Council's Research Steering Committee shall be compensated in the same manner as members of the Council's Advisory Panels. The same caveats about availability of funds will apply to reimbursement of these individuals.

Instructions for reimbursement can be found in the Council's Policy on ***"Travel Authorization and Reimbursement"***.

# Enforcement Policy

## General

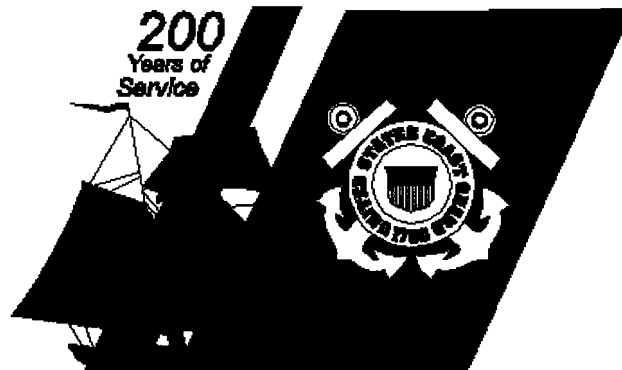
During the development of a fishery management plan, the Council and its oversight committees shall be guided by the appended Enforcement Considerations prepared by the NOAA Office of Law Enforcement, NOAA General Counsel for Enforcement and Litigation and the U.S. Coast Guard. The purpose is to enhance the likelihood of approving effective fishery management programs that accomplish the goals and objectives associated with Council actions.



# Enforcement Considerations For Regional Fishery Management Councils

Developed by NOAA Office for Law Enforcement,  
NOAA General Counsel for Enforcement and Litigation, and  
The U.S. Coast Guard

October 2007



**NOAA OFFICE FOR LAW ENFORCEMENT,  
NOAA GENERAL COUNSEL FOR ENFORCEMENT AND LITIGATION  
AND  
UNITED STATES COAST GUARD**

**GUIDANCE FOR EFFECTIVE FISHERIES ENFORCEMENT**

Fisheries regulations are constantly being written and most of those in place seem to be in a continual state of change. Fishery Management Council, NMFS Sustainable Fisheries, Protected Resources, and Habitat staffs are tasked with the creation and revision of these regulations. Although involving enforcement personnel in the process is essential, it is difficult to include enforcement on every conference call and at every meeting. With that in mind, the following is provided for consideration by those who are assigned a project which include elements of enforcement.

Before approval and implementation of a Fishery Management Plan (FMP), the following measures are enforcement's advice as it relates to the plan's efficacy. The basis for these principles is the historical experience of over thirty years of enforcing the many and varied regulations promulgated under the Magnuson-Stevens Act on a nationwide basis.

Please note that the information in this paper is intended only as general guidance. Depending on the specific design of any regulatory program, the enforcement tools and strategies used in that program may require mixing or even deviation from the individual enforcement precepts mentioned in this paper. The information contained herein in no way limits NMFS and the Coast Guard's ability to employ the enforcement techniques that it considers most appropriate for accomplishing the goals of a specific regulatory program.

Each Fishery Management Council has a team of enforcement personnel, including NOAA Enforcement, Coast Guard, and State Enforcement, who should be your sounding board for ensuring that the regulations you are proposing are enforceable and will accomplish the desired outcome.

**ENFORCEABLE REGULATIONS ARE:**

**Simple and easy to understand** - The more complicated the rule, the higher the likelihood of creating loopholes and legal defenses. Straightforward requirements that are black and white without exceptions make it more difficult for intentional violators and conspirators to evade enforcement. For example, "possession of an undersize halibut on a commercial fishing vessel" is clearly a simple prohibition. It is illegal regardless of where taken or how it was harvested or any other variable, condition or stipulation.

Simple regulations are easier for industry to comply with. Complex regulations result in errors, misunderstandings, and cause industry to simply ignore them.

To the extent possible, consideration should be given to consistently similar management measures amongst the FMPs and regulatory areas, as well as between federal and state waters.

**Few as possible** - Adding too many control measures frustrate the industry as well as enforcement. Too many regulations allow for more possibilities for mistakes to be made and reports to be forgotten; and it gives more work for enforcement. Reports should be consolidated where possible, and instructions made simple. Regulations sometimes have to be very restrictive, but compliance should be easy for the industry.

**Fish is accountable and traceable throughout the wholesale process** - The intent of this requirement is for there to be traceability of product wherever found. This enables enforcement to intercept unlawful seafood at various funnel points such as airports and customs borders. With required documentation and labeling, everything could be traced back to the responsible harvester.

**Supported by appropriate penalties up to and including permit revocation and criminal charges for the most egregious offenses** - The penalty schedule of NOAA General Counsel is constantly evaluated to ensure it is sufficient to effectively penalize civil offenders commensurate with their violations. However, chronic repeat offenders who do not possess resources to pay their fines may warrant permit sanctions or revocations. Those who commit egregious crimes must be punished via criminal sanctions up to the felony level. In these cases, incarceration may be the appropriate avenue of attaining justice. (See PENALTY section below for more on this subject)

#### **REGULATIONS ARE MORE DIFFICULT TO ENFORCE IF THEY ARE:**

**Man power intensive regulations** – Regulations requiring monitoring of offloads are manpower intensive. Enforcement will never have enough manpower to monitor more than a small fraction of the total offloads. This requires constant shifting effort from port to port, while not having adequate resources to properly be pro-active towards serious offenders. Use of technologies such as VMS and electronic logbooks can allow enforcement to monitor remotely, reducing manpower needs.

**Complex or convoluted regulations** - Regulations such as by-catch limits are nearly impossible to enforce at-sea. Enforcement of these regulations requires monitoring the entire catch during offload. At that time, it is too late for the vessel to do something about any overages it may have. The fisherman must rely on their ability to estimate catch composition at sea to stay in compliance.

**Lack of accountability** - Fish can become “legal” merely by doctoring the records, without traceable accountability, or the ability to audit. Requiring a paperwork trail to track fish from harvest, to offload, and through the processing and shipping add to good accountability.

**Estimates** - Regulations requiring a vessel captain to estimate catch, catch composition, and/or discards are difficult to enforce. Using estimates may work just fine for managing a fishery.

However, enforcement cannot prove the false reporting of an estimated weight of a discard, nor can we establish how close an estimate must be before we can cite someone.

**Law Enforcement resource intensive** - Finally, any new plan or regulation must take into consideration the enforcement resources of the NMFS and the Coast Guard in terms of maximum capable enforcement contacts and investigative effort. Nationwide, enforcement is spread thin, so adding more regulations to enforce, usually means decreasing, or in some cases ceasing, effort in other areas.

## **PENALTIES**

Once regulations are in place, penalties are discussed. The goal of regulatory enforcement agencies is to ensure compliance, whereas prosecution agencies exist to assess responsibility and punish violations. The NOAA Fisheries Office for Law Enforcement (OLE) has both mandates. These two mandates often lead to conflict when we are criticized for not pursuing cases of wrongdoing more aggressively, and then criticized for being too heavy handed when pursuing major civil and criminal violations. OLE works with various NOAA and NMFS divisions, the Fishery Management Councils, NOAA General Counsel, and the U.S. Attorney's Office to determine the appropriate prosecution method for an offense. OLE has one of the most versatile selections of penalties of any agency in the United States. For civil violations, these include verbal warnings, fix-it notices, written warnings, summary settlement fines, as well as monetary penalties permit sanctions, permit suspensions, and permit revocations from NOAA General Counsel. There are also options for hearings with a Civil Administrative Law Judge or with a federal judge in federal civil court. Our goal is to seek the least penalty to gain compliance. If a penalty is too low, it may result in being considered simply the cost of doing business. If a penalty is too high, a person discovering they have committed a civil violation may decide to cover up the error instead of reporting it. Or, they may feel the need to challenge the violation in court, not to claim innocence, but to petition for a lower penalty. For criminal violations, penalties include monetary penalties, home confinement, and/or imprisonment. Criminal investigations and prosecutions are saved for the intentional violators who commit the violation many times, conspire with others, or those who intentionally commit one serious offense where a civil penalty would not be appropriate or adequate.

## **VESSEL MONITORING SYSTEMS (VMS)**

The technological sophistication of the modern fisherman is incredible, and demands equivalent technological applications by law enforcement to ensure that regulations and laws are being adhered to while at sea. VMS allows enforcement to use 21st century technologies to monitor compliance, track violators and provide substantial evidence for prosecution while maintaining the integrity of the individual fisherman's effort. VMS uses electronic transmitters placed on fishing vessels to transmit information about the vessel's position to enforcement agencies via satellite. This position information is used by enforcement to focus limited patrol time on those areas with the highest potential for significant violations. It is critical to recognize that VMS cannot replace at-sea enforcement by aircraft, vessels, and boarding teams, but rather complements existing capability and allows enforcement to target violators, thereby increasing efficiency. VMS is only useful for enforcement of regulations that are location specific, at-sea

boardings are still needed to verify compliance with other regulations, such as net mesh size and prohibited species.

Although not primarily a safety device, VMS may contribute to increased vessel safety. Some VMS transceivers allow constant two-way communication between the vessel and shoreside monitors. If an accident were to occur, the recorded track of the vessel may aid rescue efforts.

Expansion of VMS into additional domestic fisheries would increase the efficiency of enforcement operations by enabling more efficient patrol planning in those fisheries.

## **OBSERVERS**

The NOAA Fisheries Observer Program authorizes NOAA Fisheries employees or contract personnel to embark on fishing vessels in support of an FMP. It is critical to note that observers are NOT enforcement personnel. Rather, they provide fishery managers with more accurate data with which to make management decisions. Maintaining the integrity of unbiased observer data is at the core of effective fisheries management and is a top enforcement priority. Significant violations include failure to carry a required observer, observer harassment, and biasing of samples. NOAA Fisheries regulations establish national safety standards for commercial fishing vessels carrying observers. These regulations require that any commercial fishing vessel, not otherwise inspected, must pass a Coast Guard dockside safety examination before carrying a NOAA Fisheries observer. Further, an observer may conduct an independent review of the fishing vessel's major safety items and may refuse to sail if there are major deficiencies. This is significant because NOAA Fisheries prohibits a vessel required to carry an observer from fishing if an observer is not aboard.

## MATRIX of MANAGEMENT MEASURES

The following matrix is designed to help fishery managers and staff better understand the enforcement aspects related to certain management measures. It is important to note that these guidelines address the enforceability of regulations, not necessarily the merits of the regulation. Where it is applicable and important to enforcement agencies, the guidelines address safety, economics and biology considerations.

This matrix allows fishery managers and staff rapidly identify how enforceable a management measure is by at-sea cutter patrols, aircraft patrols, and dockside enforcement. The matrix is supplemented by an analysis defining each management measure, outlines the enforcement advantages and disadvantages of the measure, and then concludes with a recommendation on how to write regulations to make the management measure the most enforceable.

**Fishery Management Measure Enforceability Matrix**

	<b>Surveillance – Aircraft/Ship/VMS</b>	<b>At-Sea Boarding</b>	<b>Dockside</b>
<b>Limiting Amount/ Percent Landed</b>			
<b>Limiting Amount/ Percent Onboard</b>		Limited	
<b>Prohibiting Retention</b>			
<b>Requiring Retention</b>	Limited		
<b>Size Restrictions</b>			
<b>Closed Areas</b>			
<b>Closed Seasons</b>	Limited		
<b>Gear/Vessel Restrictions</b>	Limited		Limited
<b>Limited Access Privilege Programs</b>		Limited	
<b>Recordkeeping/ Reporting</b>		Limited	
<b>Permits</b>	Limited		

## **ENFORCEMENT ADVANTAGES AND DISADVANTAGES OF FISHERY MANAGEMENT MEASURES**

### **LIMITING AMOUNT/PERCENT LANDED**

#### **Definition:**

- This management measure aims to reduce bycatch retention/mortality by limiting the amount or percentage landed.

#### **Advantages:**

- Measure acts as an incentive to focus fishing efforts in areas that minimize bycatch if there is some penalty associated with excessive bycatch (i.e. fishery will be closed as a result of reaching a limit).

#### **Disadvantages:**

- This is a landing provision, and is difficult to enforce at sea, through either surveillance or boardings. Effectiveness is directly proportional to dockside effort expended.
- High grading may be an issue.

#### **Recommendations:**

- Consider prohibitions which regulate areas, seasons, types of gear or types of operations to minimize bycatch.
- Policies should incorporate industry best practices and consider industry recommendations.
- Segregating catch at sea would facilitate enforcement.
- On catcher processor vessels, regulations should prescribe that eventual landing limits shall not be exceeded while at sea. This allows for enforcement at sea as well as dockside. If an at sea boarding determines that the trip limit is met, then the F/V returns to port to preclude further resource degradation/economic advantage.

### **LIMITING AMOUNT/PERCENT ON BOARD**

#### **Definition:**

- This management measure aims to reduce bycatch retention/mortality by limiting the amount or percentage of a bycatch species allowed on board a fishing vessel.

#### **Advantages:**

- This measure is similar to limiting amount/percentage landing, but allows for at sea enforcement.
- If an at sea boarding determines that the limit/percentage is met, then the fishing vessel returns to port to preclude further retention.

#### **Disadvantages:**

- Full and accurate count of catch onboard cannot easily be done at sea during in most fisheries (due to species mixing, loading, icing, safety of boarding party in accessing fish hold at sea, etc.).
- High-grading may be an issue.

#### **Recommendations:**

- Regulations should specify how much target species catch is required to justify retention of bycatch species and in what amounts. This is necessary to preclude bycatch species from becoming a targeted catch.
- Consider prohibitions which regulate types of gear or types of operations to minimize bycatch catches. When regulating gear, it is best if the gear types are readily identifiable by aircraft.

- Policies should incorporate industry best practices and consider industry recommendations.
- Segregating catch at sea would facilitate enforcement.
- This provision works best with frozen product.

## **PROHIBITING RETENTION**

### **Definition:**

- This enforcement measure aims to restrict retention by prohibiting the retention of certain species aboard fishing vessels.

### **Advantages:**

- Prohibition violations are easier to document and enforce than regulations that allow a limited percentage to be retained.
- Allows for at-sea enforcement. Once fish are landed, detecting a violation for retention of prohibited species is easy if enforcement is present.

### **Disadvantages:**

- May create an incentive to hide prohibited species from observers or to underreport prohibited species catch if it influences the fishing season.

### **Recommendations:**

- Consider prohibitions which regulate types of gear or types of operations to minimize bycatch catches. When regulating gear, it is best if the gear types are readily identifiable by aircraft.
- Policies should incorporate industry best practices and consider any industry recommendations.

## **REQUIRING RETENTION**

### **Definition:**

- This enforcement measure requires retention of all catch.

### **Advantages:**

- Allows for enforcement during boardings or aircraft/vessel surveillance, as catch discards can be observed from a distance.
- Provides managers with a more accurate picture of the impact of a fishery on target and bycatch species, and allows managers to close the fishery when a limit is landed.

### **Disadvantages:**

- Difficult to enforce shoreside.

### **Recommendations:**

- Policies should incorporate industry best practices and consider industry recommendations.

## **SIZE RESTRICTIONS**

### **Definition:**

- Possession or fish below or above a specified size is prohibited.

### **Advantages:**

- Violations are easy to document and prosecute.

### **Disadvantages:**

- Effectiveness is limited by the amount of processing done at sea.
- Effectiveness is proportional to the effort expended in dockside checks and at-sea boardings. Has potential to be manpower intensive.

- May provide incentive to high-grade.

**Recommendations:**

- Prohibit processing/filleting at sea for fisheries where size restrictions are used. Measurements should include head and tail intact.
- Require standardized measurement procedures, equipment and techniques by state and federal agencies.
- Maintain same regulations across state and federal boundaries.

## CLOSED AREAS

**Definition:**

- Fishing in a specific geographic area is prohibited.

**Advantages:**

- Fairly easy to enforce if below recommendations are followed.
- Very easy to monitor with VMS. However, even with VMS cueing, a response asset is generally required to document the violation for prosecution. Aircraft and surface patrols also verify the accuracy of the VMS picture.
- Easy to document presence in the closed area by aircraft and vessel surveillance. It is tougher to document fishing activity without an at sea boarding, depending on the fishery and gear type.

**Disadvantages:**

- Without VMS, effectiveness is directly proportional to the surveillance effort.

**Recommendations:**

- Clearly defined areas. Use exact latitude/longitude and straight lines. Avoid simply stating distance offshore, center point and radius, or depth contours.
- Regular shaped areas. In most situations, closed areas are easier to enforce if they are square or rectangle shaped, since it is more clear cut that a vessel is west/east, north/south of an indicated line, and therefore, in or outside a closed area.
- Large closed areas are preferred in most situations. Small closed areas with open areas in between make it easier to cheat by enabling a vessel to quickly enter and exit a closed area. However, if making smaller areas opens fishing grounds, then there may be less incentive to violate the closed area restriction.
- Temporary, short-term closures can be difficult to enforce, as communicating the requirement to the fishing fleet can be challenging.
- If possible, close an area to all activity; limit grand-fathering and other exemptions. Where practical, areas should be closed to all types of fishing as well as transiting fishing vessels.
- If transit is allowed, fishing gear should be stowed and transit must be continuous (i.e. no loitering/stopping). If vessels need to stop/loiter in a closed area, include a requirement to notify enforcement. Stowage requirements must be clearly defined.
- Regulated gear areas are difficult to enforce, because they still require at-sea boardings to verify that fishing vessel is using legal gear in the closed area.

## CLOSED SEASONS

**Definition:**

- Fishing during specific times of the year is prohibited

**Advantages:**

- Large vessel fisheries are easy to monitor since vessels are in port or in other fisheries.
- Gear intensive fisheries (pots, etc.) are noticeable if a vessel gears up for a trip.
- The presence of a particular species in the marked during a closed season should be detected if retention is prohibited everywhere.

**Disadvantages:**

- Small vessel fisheries are more difficult to monitor. Smaller quantities are easier to hide in the market.
- Fisheries with multiple gear types for the same species are especially difficult to enforce if only one gear type has a closed season.

**Recommendations:**

- See Closed Areas: ensure closures are clearly defined; limit exemptions to the closed season, and dates/times should be defined to the minute.
- Regulations should fully describe what activity is allowed to occur before, during, and after the closure. For example: all gear must be hauled in prior to the closure, gear may not be set prior to the opening. For short duration fisheries, prohibit all fishing with any gear type 72 hours before and after the fishery.
- Monitoring the fishing vessels with VMS during closed seasons can greatly aid enforcement.

## **GEAR/VESSEL RESTRICTIONS**

**Definition:**

- Specific gear types or gear modifications are prohibited. Gear includes not only the primary methods and tools to harvest the resource, but also includes vessels, horsepower and other such variables. Certain regulatory gear may be required to minimize catch of bycatch species and/or protect certain marine species (i.e., pelagic vs. demersal trawls or protected species avoidance gear).

**Advantages:**

- Gear is easy to inspect dockside and in most cases, readily visible at sea.

**Disadvantages:**

- Restrictions on gear employment (i.e. set/trawl depth) are more difficult to enforce. For example, a limitation on amount of fixed gear/hooks is difficult to regulate/enforce.
- Normally gear needs to be inspected at-sea to ensure gear is in compliance while engaged in the act of fishing. This becomes resource intensive as it may require multiple checks at sea and is intrusive; as it may require interrupting fishing operations for the gear to be inspected while at sea, which tends to foster ill will towards enforcement officers.

**Recommendations:**

- If use is prohibited, then allowing the gear on board should be prohibited.
- Gear restrictions should be standardized across state and federal boundaries.
- Federal and state enforcement officers should develop and use standard procedures, equipment and techniques.

## **LIMITED ACCESS PRIVILEGE PROGRAMS**

**Definition:**

- These programs delineate a specified amount of particular fish species to be allocated to an individual, a particular vessel, a processor, or a community.

**Advantages:**

- LAPPs are often praised for their safety benefits. By allowing a quota that can be caught over an extended period of time, fishermen are able to choose when to fish rather than being forced to fish during bad weather based on mandated time periods (e.g. derby fisheries).
- Once an individual fishermen has met their quota, additional fish are treated as prohibited species, as discussed above.

**Disadvantages:**

- Manpower intensive. LAPPs spread out fishing effort over long periods, requiring increased monitoring and enforcement.
- Individual quota holders have the incentive to underreport their landings throughout the fishing season.

**Recommendations:**

- Effectiveness depends on monitoring landings.
- Electronic reporting provides real time debiting of an individual's quota account. That is beneficial to enforcement, to the fisherman, and fishery managers. Electronic reporting also decreases reporting errors.
- VMS should be considered for LAPP fisheries.
- If at-sea quota debiting is allowed, the use of certified scales, observers, and video monitoring should be considered to ensure accuracy.

## RECORDKEEPING AND REPORTING

**Definition:**

- A requirement to keep records of specified information on board the vessel. As technology permits, the data from records could be transmitted to managers for decision-making, depending on the fishery and the need for near real-time catch/effort information.

**Advantages:**

- At-sea boardings can verify the presence and use of logbooks and other records.
- Dockside monitoring of offloads can verify accuracy of catch data.

**Disadvantages:**

- Full and accurate count of catch onboard is difficult at sea for unprocessed fish, due to species mixing, loading, icing, safety of boarding party in accessing fish hold at sea, etc.

**Recommendations:**

- Regulations need to identify the time requirements for completing reports and entering data into logbooks (e.g. per set, daily, end of trip). By specifically describing the time requirement, enforcement can better determine whether to focus effort at-sea or shoreside.
- Require a standard logbook format for all federal fisheries.
- Use of electronic reports can simplify enforcement. Electronic reports can be used as a way to provide enforcement near real-time data before or during a boarding. Electronic reporting also reduces reporting errors.

## PERMITS

**Definition:**

- Document which indicates allowable gear type, fishing areas, and/or species which are allowed to be retained.

**Advantages:**

- Easy to track and identify.
- Revocation or suspension of permit is an effective penalty provision.
- Easy method for enforcement to determine lawful operations.

**Disadvantages:**

- Permits are largely used by enforcement to identify allowed fishing activity, but the bureaucracy for amending and issuing them creates a system that can be frustrating for fishermen to follow.

**Recommendations:**

- Require original permits, not copies, to be carried on board the vessel at all times.
- Permit transfers must follow strict guidelines and should require adequate notification to enforcement.
- Standardize permit format across fishery management plans where possible.

# Sector Policy

## Definition of “Sector”

A *sector* means a group of persons holding limited access vessel permits in the fishery management plan through which the sector is being formed, who have voluntarily entered into a contract and agree to certain fishing restrictions for a specified period of time, and which has been granted a TAC(s) in order to achieve objectives consistent with applicable FMP goals and objectives.

## Formation of Sectors

Each FMP may adopt a sector program through a plan amendment to enable limited access permit holders in the respective fishery to form sectors. In developing a sector program, the responsible species committees should adhere to the policy described in this document. Each committee should also review the Multispecies FMP sector program provisions as a basis for such a program, making modifications as needed to suit the specific fisheries.

In developing a sector program, each species committee should state the objectives of such programs specific to the FMP, and such objectives will be the context for the periodic evaluation of specific sector programs.

Each FMP must identify a single, fixed and permanent baseline for the purpose of sector allocation, but the Council recognizes that there may be reasons for exceptions. In such a situation, the respective species committee should provide the Council with the rationale for adopting multiple, movable or temporary baselines.

Individual species committees should address the question of sector size limitations in the development of their own sector programs but each FMP, with the exception of red crab, should define a minimum sector size by specifying a minimum number of participants, expressed as a number of individuals or percent of permits, in order to ensure accountability among sector members, and not complicate administration or enforcement.

Individual species committees should address the geographic limitations on sectors in development of their sector programs.

Species committees should state which management measures within their respective FMPs could be eligible for exemption under sector programs, and such blanket exemptions would be subject to Council approval in the adoption of the FMP sector program.

## Allocation

Individual species committees, in considering sector proposals, must consider bycatch in other fisheries, effort displacement and the impact on common pool (non-sector) vessels and any other relevant factors when allocating TAC.

Sectors will adopt Annual Catch Limits (ACLs) and Accountability Measures (AMs) for species managed under the Sector’s FMP(s) and sector shares will be allocated as a percentage of the ACL of the applicable FMP. Species committees should consider stock condition in determining allocation eligibility in a manner consistent with the applicable FMPs. Sectors will adopt measures consistent with ACLs and

AMS for each FMP for incidentally caught species.

Discards will not count toward a sector's allocation but discards will count against a sector's shares, unless a sector can provide other accountability for the discards and obtain an exemption. In other words, the calculation of a sector allocation, as a percentage of the total landings, would be based on historic landings only (not discards), but when the TAC is calculated each year, and a sector's catch is monitored against the TAC, both landings and discards will be counted.

## Mortality Controls

Any allocation of TAC applied to a sector, when reached, would result in the sector fishery closing. Based on provisions in Multispecies Amendment 13 regarding overages by sector and non-sector vessels: if the sector does not exceed its assigned share or percentage in a given fishing year, but other sectors or the common pool do, the sector's allocation will not be reduced; if the sector exceeds its annual allocation but others do not, then the sector share will be reduced in the following year, and if all sector and open pool vessels stay within their shares, but the resource condition requires a reduction in catch, then all groups will take reductions.

Individual species committees should address the regulatory response to the situation where both sector and non-sector groups exceed their portion of the total TAC in the FMPs Accountability Measures. Overages of a sector's allocation would be addressed in the annual evaluation and reauthorization process, and that individual species committees should establish the appropriate response for repeated

overages, which may include disapproval of an operations plan.

In terms of mortality controls in fisheries not directly impacted by the sector fishery, each FMP sector program should require that sector applicants identify potential redirection of effort as a result of sector operations and propose limitations ("sideboards") if necessary to eliminate any adverse effects of effort redirection.

## Administrative, monitoring and other policies

Sectors will be required to report their catch annually consistent with the Multispecies FMP sector reporting requirements, and any additional monitoring requirements should be stated in each sector's Operations Plan and reviewed annually.

Each FMP may allow proposals that request authorization for multi-year operations. If a multi-year sector program is allowed, and if the range of possible changes (e.g., membership and quota) is analyzed in the Environmental Assessment (EA), then a new EA would not need to be prepared each year.

Each FMP may allow transfers of quota among sectors contingent on evaluation of proposals. If any transfers of TAC between sectors is allowed within an FMPs sector program, those transfers would be on an annual basis, and the sector TACs would be reset each year based on the membership (which might change from year to year). The FMP may also authorize sector managers to request a quota transfer between themselves, and that they may do so any time after the TAC(s) for the fishing year have been finalized. The species committees should develop

FMP specific criteria for the approval or disapproval of TAC transfers. If a sector transfers a portion of its TAC to another sector, and then exceeds its remaining portion, the transferred portion would not be affected, but the sector would have its TAC reduced proportionally the following year by the amount of the overage.

Each FMP should state that vessels can only be in one sector within that FMP in any fishing year. Furthermore, a vessel cannot be in more than one sector in different FMPs in the same year.

Each sector is responsible for ensuring that their eligibility criteria are implemented in a fair and uniform manner.

Species committees should adhere to the policy and guidelines described above, and wherever they deviate from these, should provide substantial rationale for such variance to the Council for its consideration and approval.

# Approval of Additional Gears for Use in the B-Regular DAS Program and the Eastern U.S./Canada SAP

## Background

In response to a Council request in June 2007, NMFS issued a final rule (72 FR 72965) on December 26, 2007 to amend the procedures and requirements for approval of additional gear types for use in the Eastern U.S./Canada Haddock Special Access Program (SAP) or additional trawl gear in the NE multispecies Regular B DAS (Days-at-Sea) Program.

The regulations allow the Council or its Executive Committee to request the Regional Administrator to authorize additional gear for use in both programs through a notice action if the proposed gear meets one of two standards in the regulations.

The standards require that new gear either reduce the catch of each regulated stock of species of concern or other non-groundfish stocks that are overfished or subject to overfishing, by at least 50% (by weight on a trip-by-trip basis); **or** that its catch of each regulated stock of species of concern, or other non-groundfish stocks that are overfished or subject to overfishing, be less than 5% of the total catch of regulated groundfish (also by weight on a trip-by-trip basis).

## Process

- 1) Before the Council considers recommending a new gear for either program, the proposed gear must have been the subject of a completed experiment and results reviewed by the Council's Research Steering Committee
- 2) If the gear merits further consideration based on the RSC review of the quality of the research, a formal request by the proponents should be made to the Executive Director who will ensure that the Council, through its appropriate groups, consider adding the new gear type to the allowed gears that may be used in the B Regular DAS program and the Haddock SAP.
- 3) The Council's Groundfish Plan Development Team (PDT) will then determine whether the gear meets the gear performance standards specified in the final rule, taking into account the comments and recommendations provided by the RSC. The PDT's finding will be forwarded to the Groundfish Committee for a review of the technical determination provided by the PDT and any relevant management considerations.
- 4) The Groundfish Committee will forward its findings to the full Council or the Council's Executive Committee, as appropriate, for development of a recommendation to the Regional Administrator.

of residential areas, schools, nursing homes, or daycares.

2. *Inhalation exposure.* For the same reasons non-occupational inhalation exposure to AF36 is expected to be minimal to non-existent.

#### V. Cumulative Effects

Another non-aflatoxin-producing strain of *Aspergillus flavus*, NRRL 21882, is undergoing research trials on corn in Texas, but not in the same areas to be treated during this EUP for AF36. Cumulative effects of these strains are not expected to exceed the risk cup for the registered *Aspergillus flavus* strains, AF36 and NRRL 21882. Furthermore, these strains are expected to decrease the presence of aflatoxin-producing colonies of the fungus on treated commodities and, thus, decrease the risks posed by the potent liver carcinogen, aflatoxin.

#### VI. Determination of Safety for U.S. Population, Infants, and Children

Based on the previously evaluated data, it is not necessary to use a safety factor to determine safety to children (see *Federal Register* of July 14, 2003 (68 FR 41535), as cited in Unit III.).

#### VII. Other Considerations

##### A. Endocrine Disruptors

See *Federal Register* of July 14, 2003 (68 FR 41535), as cited in Unit III.

##### B. Analytical Method(s)

See *Federal Register* of July 14, 2003 (68 FR 41535), as cited in Unit III.

##### C. Codex Maximum Residue Level

There is no Codex Maximum Residue Level (MRL) for residues of *Aspergillus flavus* AF36 on corn.

#### VIII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCFA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB

approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCFA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCFA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000) do not apply to this rule. In addition, this rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note).

#### IX. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to

publication of this final rule in the *Federal Register*. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

#### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 14, 2007.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

■ Therefore, 40 CFR part 180 is amended as follows:

#### PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.1206 is amended by adding paragraph (c) to read as follows:

§ 180.1206 *Aspergillus flavus* AF36; exemption from the requirement of a tolerance.

\* \* \* \* \*

(c) *Aspergillus flavus* AF36 is temporarily exempt from the requirement of a tolerance on corn when used in accordance with the Experimental Use Permit 71693-EUP-2. This temporary exemption from tolerance will expire December 31, 2011.

[FR Doc. E7-24979 Filed 12-21-07; 8:45 am]  
BILLING CODE 6560-50-S

#### DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 070808450-7714-02]

RIN 0648-AV83

Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Regulatory Amendment to Adopt Fishing Gear Standards for the NE Multispecies Regular B Day-At-Sea (DAS) Program and the Eastern U.S./Canada Haddock Special Access Program (SAP)

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

ACTION: Final rule.

**SUMMARY:** NMFS amends the regulations governing minimum performance standards of fishing gear proposed for use in both the NE multispecies Regular B DAS Program and the Eastern U.S./Canada Haddock SAP. The New England Fishery Management Council (Council) may request the Administrator, Northeast Region, NMFS (Regional Administrator) approve additional gear types for use in these programs if they meet the standard. The purpose of this rule is to provide greater flexibility to fishermen participating in these programs.

**DATES:** Effective January 25, 2008.

**FOR FURTHER INFORMATION CONTACT:** Douglas Potts, Fishery Management Specialist, (978) 281-9341, FAX (978) 281-9135.

**SUPPLEMENTARY INFORMATION:**

**Background**

On June 21, 2007, the Council approved a motion to recommend that the Regional Administrator approve gear performance standards for additional gear types in the Eastern U.S./Canada Haddock SAP, or additional trawl gear in the Regular B DAS Program.

On October 15, 2007, NMFS published a proposed rule in the *Federal Register* (72 FR 58280) to amend the regulations on procedures and requirements to approve additional gear types for use in these two programs. Public comment was accepted through November 14, 2007, and two comments were received, as summarized below. The NE multispecies DAS effort control system and the history of these two programs were outlined in the proposed rule and are not repeated here.

This final rule also corrects an inadvertent omission by reinserting relevant regulatory text specific to the U.S./Canada Management Area gear requirements that was inadvertently removed through the final rule implementing Framework Adjustment 42 to the Northeast Multispecies Fishery Management Plan. Additional details were provided in the proposed rule and are not repeated here.

**Comments and Responses**

NMFS received two comments during the comment period for the proposed rule. These comments were submitted by the Council and by the Cape Cod Commercial Hook Fisherman's Association (CCCHFA). The specific issues raised in these two comments are addressed below.

*Comment 1:* The Council noted that the term "stock of concern" is only defined in the regulations as regulated

groundfish stocks that are overfished or subject to overfishing and would not be applicable for non-regulated groundfish species.

*Response:* The proposed rule language specific to "other stocks of concern" was based upon the language in the original Council motion. To avoid any uncertainty about the phrase "other stocks of concern," the regulatory language has been further modified to define such other stocks as other non-groundfish stocks that are overfished or subject to overfishing identified by the Council.

*Comment 2:* The Council commented that the proposed rule was unclear on whether the required reductions in catch were for all regulated groundfish or just stocks of concern. From Council discussions it is clear the intent was to limit the reductions to stocks that are overfished or are experiencing overfishing.

*Response:* The regulatory language has been modified to clarify that reductions are specific to stocks that are overfished or experiencing overfishing.

*Comment 3:* The CCCHFA commented that the NMFS Regional Administrator should have greater flexibility to add or remove gear from these programs based on how that gear is used in the fishery, and not solely on its performance in a controlled research setting.

*Response:* To be consistent with the Council's request for gear standards, and the purpose of allowing certain types of gear in areas where bycatch of groundfish stocks of concern may occur, rigorous experimental comparison is necessary to thoroughly demonstrate that a new proposed gear is comparable to those currently approved. The potential for bycatch, and the impacts of environmental conditions, vessel size, or crew behavior are difficult to properly account for when monitoring the performance of gear in the commercial fishery. However, the performance of gear in the fishery will continue to be monitored and the use of inappropriate modification or misuse of gear to negate the required catch reduction may result in removal of gear from these programs.

*Comment 4:* The CCCHFA stated that allowing the Council to specify which stocks are subject to the standard and which are not would reduce flexibility in these programs.

*Response:* This provision was included in the regulatory text specifically to increase the flexibility for both the Council and the NMFS Regional Administrator. If the regulations specified which stocks had to show reduced catch and which could

sustain increased mortality, it would require a regulatory change to modify the regulations if rebuilt stocks, or stocks in relatively good condition, for example, declined in the future.

*Comment 5:* The CCCHFA expressed concern that experimental results may not translate well into gear performance in the fishery. Gear could be misused and either result in reduced harvest of the intended target species, or increased catch of bycatch species.

*Response:* The proper use of any approved gear is a legitimate concern. To the extent practical, important aspects of approved gear will be specified in the regulations. As noted in the response to Comment 3, the performance of gear in the fishery will continue to be monitored and possession limits, for example, could be adjusted to encourage the proper use of specific gear. If it becomes evident that a gear is not working effectively in the field, it may be removed from these programs.

**Changes From the Proposed Rule**

NMFS has made changes to the proposed rule. In § 648.85, paragraphs (b)(6)(iv)(j)(2)(i) and (ii) have been revised, in response to comment and in order to be consistent with Council intent, by specifying that required catch reductions apply to regulated species stocks of concern and non-groundfish stocks that are overfished or subject to overfishing.

**Classification**

The Administrator, Northeast Region, NMFS, determined that the final rule is necessary for the conservation and management of the NE multispecies fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

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

The Regional Administrator has determined that this final rule is a minor technical addition, correction, or change to a management plan and is therefore categorically excluded from the requirement to prepare an Environmental Impact Statement or equivalent document under the National Environmental Policy Act.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the

proposed rule and is not repeated here. No comments were received regarding this certification or on the economic impacts of the proposed rule. As a result, a regulatory flexibility analysis was not required and none was prepared.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 18, 2007

**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 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 § 648.14, paragraphs (a)(132) and (c)(81) are revised to read as follows:

**§ 648.14 Prohibitions.**

(a) \* \* \*

(132) If fishing with trawl gear under a NE multispecies DAS in the Eastern U.S./Canada Area defined in § 648.85(a)(1)(ii), fail to fish with a haddock separator trawl or a flounder trawl net, as specified in § 648.85(a)(3)(iii); unless using other gear as authorized under § 648.85 (b)(6) or (b)(8).

\* \* \* \* \*

(c) \* \* \*

(81) If fishing with trawl gear in the Regular B DAS Program specified in § 648.85(b)(6), fail to use a haddock separator trawl as described under § 648.85(a)(3)(iii)(A); or other gear as authorized under § 648.85(b)(6)(iv)(j).

\* \* \* \* \*

■ 3. In § 648.85, paragraph (a)(3)(iii) introductory text is added, and

paragraphs (b)(6)(iv)(j)(2) and (b)(8)(v)(E)(2) are revised to read as follows:

**§ 648.85 Special management programs.**

(a) \* \* \*

(3) \* \* \*

(iii) *Gear requirements.* NE

multispecies vessels fishing with trawl gear in the Eastern U.S./Canada Area defined in paragraph (a)(1)(ii) of this section, unless otherwise provided in paragraphs (b)(6) and (b)(8) of this section, must fish with a haddock separator trawl or a flounder trawl net, as described in paragraphs (a)(3)(iii)(A) and (B) of this section (both nets may be onboard the fishing vessel simultaneously). Gear other than the haddock separator trawl or the flounder trawl net as described in paragraph (a)(3)(iii) of this section, or gear authorized under paragraphs (b)(6) and (b)(8) of this section, may be on board the vessel during a trip to the Eastern U.S./Canada Area, provided the gear is stowed according to the regulations at § 648.23(b). The description of the haddock separator trawl and flounder trawl net in this paragraph (a)(3)(iii) may be further specified by the Regional Administrator through publication of such specifications in the **Federal Register**, consistent with the requirements of the Administrative Procedure Act.

\* \* \* \* \*

(b) \* \* \*

(6) \* \* \*

(iv) \* \* \*

(j) \* \* \*

(2) *Approval of additional gear.* At the request of the Council or the Council's Executive Committee, the Regional Administrator may authorize additional gear for use in the Regular B DAS Program, through notice consistent with the Administrative Procedure Act. The proposed gear must satisfy standards specified in paragraph (b)(6)(iv)(j)(2)(i) or (ii) of this section in a completed

experiment that has been reviewed according to the standards established by the Council's research policy before the gear can be considered and approved by the Regional Administrator. Comparisons of the criteria specified in this paragraph (b)(6)(iv)(j)(2) will be made to an appropriately selected control gear.

(i) The gear must show a statistically significant reduction in catch of at least 50 percent (by weight, on a trip-by-trip basis) of each regulated species stock of concern, unless otherwise allowed in this paragraph (b)(6)(iv)(j)(2)(i), or other non-groundfish stocks that are overfished or subject to overfishing identified by the Council. This requirement does not apply to regulated species identified by the Council as not being subject to gear performance standards; or

(ii) The catch of each regulated species stock of concern, unless otherwise allowed in this paragraph (b)(6)(iv)(j)(2)(ii), or other non-groundfish stocks that are overfished or subject to overfishing identified by the Council, must be less than 5 percent of the total catch of regulated groundfish (by weight, on a trip-by-trip basis). This requirement does not apply to regulated species identified by the Council as not being subject to gear performance standards.

\* \* \* \* \*

(8) \* \* \*

(v) \* \* \*

(E) \* \* \*

(2) *Approval of additional gear.* The Regional Administrator may authorize additional gear for use in the Eastern U.S./Canada Haddock SAP in accordance with the standards and requirements specified at § 648.85(b)(6)(iv)(j)(2).

\* \* \* \* \*

- E-mail:

NMFS.Pr1Comments@noaa.gov and include in the subject line the following document identifier: Permit Regulations ANPR;

- Via the Federal eRulemaking Portal: <http://www.regulations.gov>;

- Fax: 301-427-2521, Attn: Chief, Permits, Conservation and Education Division (Permit Regulations ANPR); or

- Mail: Chief, Permits, Conservation and Education Division, Attn: Permit Regulations ANPR, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910.

Instructions: All comments received are part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Amy Sloan at (301) 713-2289.

**SUPPLEMENTARY INFORMATION:** The ANPR, published on September 13, 2007 (72 FR 52339), is available upon request and can be found on the NMFS Office of Protected Resources web site: [http://www.nmfs.noaa.gov/pr/permits/mmpa\\_anpr.htm](http://www.nmfs.noaa.gov/pr/permits/mmpa_anpr.htm).

Dated: October 9, 2007

**P. Michael Payne,**

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7-20229 Filed 10-12-07; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 070808450-7540-01]

RIN 0648-AV83

#### Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Regulatory Amendment to Adopt Fishing Gear Standards for the NE Multispecies Regular B Day-At-Sea (DAS) Program and the Eastern U.S./Canada Haddock Special Access Program (SAP)

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes to amend the regulations governing minimum performance standards of fishing gear proposed for use in both the NE multispecies Regular B DAS Program and the Eastern U.S./Canada Haddock SAP. Under the current regulations, the only fishing gear allowed for use in the Eastern U.S./Canada Haddock SAP and the only trawl gear allowed for use in the Regular B DAS Program is a properly configured haddock separator trawl. The purpose of this rule is to ultimately provide greater flexibility to fishermen participating in these programs.

**DATES:** Written comments must be received no later than 5 p.m. local time on November 14, 2007.

**ADDRESSES:** You may submit comments, identified by RIN 0648-AV83, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>

- Fax: (978) 281-9135, Attn: Douglas Potts

- Mail: Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930-2298. Please write on the envelope: Comments on Proposed B-DAS Gear Standard (RIN 0648-AV83).

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not

submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Douglas Potts, Fishery Management Specialist, (978) 281-9341, FAX (978) 281-9135.

#### SUPPLEMENTARY INFORMATION:

##### Background

Amendment 13 to the NE Multispecies Fishery Management Plan (FMP) differentiated DAS into three categories: Category A DAS; Category B (regular and reserve) DAS; and Category C DAS. Category B DAS (regular and reserve) were intended to allow effort on stocks that could support additional harvest while avoiding stocks of concern. The final rule implementing Framework Adjustment (FW) 40-A (November 19, 2004, 69 FR 67780) created two programs that allow vessels to use their allocation of Category B DAS, i.e., the Eastern U.S./Canada Haddock SAP Program and the Regular B DAS Program.

FW 40-A specified that vessels fishing in the Eastern U.S./Canada Haddock SAP must use gear that has been demonstrated not to catch significant amounts of cod. Upon implementation of FW 40-A, the only gear authorized for participation in this SAP was a haddock separator trawl, as described in 50 CFR 648.85(a)(3)(iii)(A). The FW 42 final rule (October 23, 2006, 71 FR 62156) modified the requirements for approval of other fishing gear for use in the Regular B DAS Program and the Eastern U.S./Canada Haddock SAP, as specified in § 648.85(b)(6)(iv)(j)(2) and (b)(8)(v)(E)(2), respectively. Specifically, this action authorized the Regional Administrator to approve the use of additional fishing gear in the Regular B DAS Program and the Eastern U.S./Canada Haddock SAP, provided the gear met performance standards to be proposed by the Council.

On June 21, 2007, the Council approved a motion to recommend that the Regional Administrator approve the following gear performance standards when considering additional gear for the Eastern U.S./Canada Haddock SAP, or additional trawl gear for the Regular B DAS Program: New gear must demonstrate a statistically significant reduction in catch of each regulated NE multispecies, and other stocks of concern, of at least 50 percent (by weight, on a trip-by-trip basis); or the

catch of each regulated NE multispecies, and other stocks of concern, in the new gear must be less than 5 percent of the total catch of regulated NE multispecies (by weight, on a trip-by-trip basis).

The Council further recommended that: These standards must be met in a completed experiment, where comparisons of new gear would be made to an appropriately selected control gear, that has been reviewed according to the standards established by the Council's research policy before the gear can be considered and approved by the Regional Administrator; and that the requests for additional gear in the Regular B DAS Program and the Eastern U.S./Canada Haddock SAP would be made by either the Council or Executive Committee.

The proposed rule seeks public comment on these standards and NMFS's interpretation of them. After review of the proposed performance standards, NMFS interprets that the phrase "... reduction in each regulated NE multispecies" would exclude any NE multispecies stock, identified by the Council as not being subject to the gear performance standard (e.g., Georges Bank haddock in the Eastern U.S./Canada Haddock SAP). Further, the term "stock of concern" is only defined in the regulations for species managed under the NE Multispecies FMP. However, in the proposed performance standards submitted by the Council, the term "stock of concern" is specific to non-groundfish stocks. Thus, the Council or the Council's Executive Committee, when considering prospective gear for the Eastern U.S./Canada Haddock SAP or the Regular B DAS Program, would need to consider what species of concern, in addition to non-excluded NE multispecies, e.g., monkfish or skates, should meet the criteria specified in the proposed performance standards before the Council or the Council's Executive Committee submits a request to the Regional Administrator for approval. The performance standards, as interpreted by NMFS, and as proposed in this rule, would therefore read as follows: "The Regional Administrator may authorize additional gear for use in the Regular B DAS Program (or the Eastern U.S./Canada Haddock SAP, as applicable) through notice consistent with all applicable law. The new gear must demonstrate a statistically significant reduction in catch of regulated NE multispecies, other than regulated NE multispecies identified by the Council as not being subject to this gear performance standard, and other non-groundfish stocks of concern identified by the Council, of at least 50

percent (by weight, on a trip-by-trip basis), or the catch of each non-targeted regulated NE multispecies and other stocks of concern identified by the Council in the new gear must be less than 5 percent of the total catch of regulated NE multispecies (by weight, on a trip-by-trip basis)."

This proposed rule would also correct an inadvertent omission by reinserting relevant regulatory text specific to the U.S./Canada Management Area gear requirements that was inadvertently removed through the final rule implementing FW 42. The Amendment 13 final rule (April 27, 2004, 69 FR 22906) established gear requirements for vessels participating in the Eastern U.S./Canada Area. Trawl vessels participating in this area are required to use either a haddock separator trawl or one of two flatfish nets defined in the regulations at § 648.85(a)(3)(iii)(A) and (B). These gear requirements were intended to allow vessels to harvest either haddock or flatfish without catching cod and other groundfish stocks not capable of supporting higher catch rates. An April 13, 2006, emergency final rule (71 FR 19348) revised the introductory text of the regulations at § 648.85(a)(3)(iii) to accommodate revised regulatory references associated with emergency measures. However, due to an error in the regulatory text of that rule, the emergency final rule inadvertently and indefinitely removed the introductory text at § 648.85(a)(3)(iii) from the regulations. This regulation was not reinserted in the FW 42 final rule, so the current regulations do not accurately reflect the original gear requirements implemented under Amendment 13, as contained in the original introductory text of § 648.85(a)(3)(iii). To correct this omission, this action would reinsert the introductory text at § 648.85(a)(3)(iii) that was inadvertently removed by the April 13, 2006, emergency final rule as revised by this rule to allow additional fishing gear that may be approved for use in the Regular B DAS Program and the Eastern U.S./Canada Haddock SAP.

#### Classification

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the NE Multispecies FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

The Regional Administrator has determined that this proposed rule is a minor technical addition, correction, or change to a management plan and is therefore categorically excluded from the requirement to prepare an Environmental Impact Statement or equivalent document under the National Environmental Policy Act.

The Chief Counsel for Regulation of the Department of Commerce 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. This amendment does not specifically change any gear requirements. It provides standards that must be met before a new gear can be proposed for use in these programs. Once a gear is proposed by the Council under these standards, then a fuller analysis of the environmental and/or economic impacts of its adoption may be necessary at that time. 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, Reporting and recordkeeping requirements.

Dated: October 9, 2007.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 648 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 § 648.14, paragraphs (a)(132) and (c)(81) are revised to read as follows:

#### § 648.14 Prohibitions.

(a) \* \* \*

(132) If fishing with trawl gear under a NE multispecies DAS in the Eastern U.S./Canada Area defined in § 648.85(a)(1)(ii), fail to fish with a haddock separator trawl or a flounder trawl net, as specified in § 648.85(a)(3)(iii); unless using other gear as authorized under § 648.85 (b)(6) or (b)(8).

\* \* \* \* \*

(c) \* \* \*

(81) If fishing with trawl gear in the Regular B DAS Program specified in § 648.85(b)(6), fail to use a haddock separator trawl as described under

§ 648.85(a)(3)(iii)(A); or other gear as authorized under § 648.85(b)(6)(iv)(J).  
\* \* \* \* \*

3. In § 648.85, paragraphs (a)(3)(iii) introductory text is added and paragraphs (b)(6)(iv)(J)(2) and (b)(8)(v)(E)(2) are revised to read as follows:

**§ 648.85 Special management programs.**

(a) \* \* \*

(3) \* \* \*

(iii) *Gear requirements.* NE

multispecies vessels fishing with trawl gear in the Eastern U.S./Canada Area defined in paragraph (a)(1)(ii) of this section, unless otherwise provided in paragraphs (b)(6) and (b)(8) of this section, must fish with a haddock separator trawl or a flounder trawl net, as described in paragraphs (a)(3)(iii)(A) and (B) of this section (both nets may be onboard the fishing vessel simultaneously). Gear other than the haddock separator trawl or the flounder trawl net as described in paragraph (a)(3)(iii) of this section, or gear authorized under paragraphs (b)(6) and (b)(8) of this section, may be on board the vessel during a trip to the Eastern U.S./Canada Area, provided the gear is stowed according to the regulations at § 648.23(b). The description of the haddock separator trawl and flounder

trawl net in this paragraph (a)(3)(iii) may be further specified by the Regional Administrator through publication of such specifications in the **Federal Register**, consistent with the requirements of the Administrative Procedure Act.

\* \* \* \* \*

(b) \* \* \*

(6) \* \* \*

(iv) \* \* \*

(J) \* \* \*

(2) *Approval of additional gear.* At the request of the Council or the Council's Executive Committee, the Regional Administrator may authorize additional gear for use in the Regular B DAS Program, through notice consistent with the Administrative Procedure Act. The proposed gear must satisfy standards specified in paragraph (b)(6)(iv)(J)(2)(i) or (ii) of this section in a completed experiment that has been reviewed according to the standards established by the Council's research policy before the gear can be considered and approved by the Regional Administrator. Comparisons of the criteria specified in this paragraph (b)(6)(iv)(J)(2) will be made to an appropriately selected control gear.

(i) The gear must show a statistically significant reduction in catch of at least

50 percent (by weight, on a trip-by-trip basis) of regulated species, unless otherwise specified in this paragraph, and other stocks of concern identified by the Council. This does not apply to regulated species identified by the Council as not being subject to gear performance standards; or

(ii) The catch of each regulated species, unless otherwise specified in this paragraph, and other stocks of concern identified by the Council, must be less than five percent of the total catch of regulated NE multispecies (by weight, on a trip-by-trip basis). This does not apply to regulated species identified by the Council as not being subject to gear performance standards.

\* \* \* \* \*

(8) \* \* \*

(v) \* \* \*

(E) \* \* \*

(2) *Approval of additional gear.* The Regional Administrator may authorize additional gear for use in the Eastern U.S./Canada Haddock SAP in accordance with the standards and requirements specified at § 648.85(b)(6)(iv)(J)(2).

\* \* \* \* \*

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