



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
NORTHEAST REGION
One Blackburn Drive
Gloucester, MA 01930-2298

February 5, 2008

SMALL ENTITY COMPLIANCE GUIDE

Dear Permit Holder:

This letter is to inform you of corrections to the regulations originally implemented by recent actions under the Northeast (NE) Multispecies Fishery Management Plan (FMP). **The corrections described in this letter will become effective on January 28, 2008.**

The regulations were found to contain several inadvertent errors and omissions that were inconsistent with the intent of recent actions under the FMP, including Amendment 13, Framework Adjustment (FW) 40-A, FW 41, and FW 42. In addition, some measures required further clarification to ensure proper implementation of these actions. NOAA's National Marine Fisheries Service (NMFS) has published a final rule to correct these measures, as described below.

Days-at-Sea (DAS) Leasing/Transfer Program Definitions

To clarify the applicability of specific provisions of the DAS Leasing and Transfer Programs, definitions for the following terms have been added to the regulations at 50 CFR 648.2:

- **Lessee:** A vessel owner who receives temporarily transferred NE multispecies DAS from another vessel through the DAS Leasing Program.
- **Lessor:** A vessel owner who temporarily transfers NE multispecies DAS to another vessel through the DAS Leasing Program.
- **Transferee:** A vessel owner who receives permanently transferred NE multispecies DAS and potentially other permits from another vessel through the DAS Transfer Program.
- **Transferor:** A vessel owner who permanently transfers NE multispecies DAS and potentially other permits to another vessel through the DAS Transfer Program.

Vessel Monitoring System (VMS) Notification Requirements

NMFS has clarified that it will send letters specifying the procedures pertaining to VMS purchase, installation, and use to all affected permit holders, as necessary, to inform industry of changes to such procedures or to remind vessel operators of relevant VMS requirements to increase compliance with such requirements. In addition, this rule specifies that vessels using VMS are subject to the VMS usage requirements outlined in any previous and future permit holder letter.

NMFS has also clarified that vessels using VMS must declare the vessel's intended fishing activity via VMS prior to leaving port before each fishing trip. A vessel may still confirm its intent to use the VMS activity code submitted for the previous fishing trip using the Interactive Voice Response (i.e., the IVR, or call-in system) system, as outlined in a



September 20, 2007, permit holder letter. These revisions eliminate the ambiguity in the current regulations regarding the applicability of the VMS notification requirements.

Gulf of Maine (GOM) Grate Raised Footrope Trawl Exempted Whiting Fishery

A reference to the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery has been added at § 648.80(a)(16) to the prohibitions at § 648.14(a)(35) and (a)(43) to facilitate the enforcement of this exempted fishery.

In-season Action Prohibition

Recent actions under the NE Multispecies FMP have increased the use of in-season actions to more effectively manage the fishery, including revisions to trip limit adjustments, area closures, and other measures. A provision has been added that makes it unlawful to violate the requirements of an in-season action to increase the ability to enforce such measures.

Georges Bank (GB) Seasonal Closure Area Applicability

The exemption from the GB Seasonal Closure Area for vessels participating in the Eastern U.S./Canada Haddock Special Access Program (SAP) has been removed, as it is no longer necessary now that the Eastern U.S./Canada Haddock SAP opens on August 1, after the GB Seasonal Closure Area expires on May 31.

DAS Leasing Program Application Requirements

The DAS Leasing Program application requirements and the authority of the Regional Administrator to approve or disapprove DAS leasing applications that were inadvertently removed by the FW 42 final rule has been restored to the regulations. This does not change any of the provisions of the DAS Leasing Program as originally implemented under Amendment 13, but ensures that the Regional Administrator can continue to implement the DAS Leasing Program as originally intended.

VMS Positional Polling Rates for U.S./Canada Management Area

The final rule implementing Amendment 13 indicated that a vessel participating in the Eastern U.S./Canada Area would have its position polled at least twice per hour. However, NMFS does not have the technical capacity to automatically change a vessel's VMS positional polling rate based upon its intended fishing activity. In addition, the Council did not specifically adopt a higher positional polling rate for vessels fishing in the Eastern U.S./Canada Area. Therefore, NMFS has removed references to an increased VMS positional polling rate for vessels participating in the U.S./Canada Management Area. However, the VMS positional polling rate may be temporarily increased for enforcement purposes at the expense of NMFS.

A NE multispecies DAS vessel will continue to be polled once per hour, regardless of area fished, unless subject to a higher VMS positional polling rate through its participation in other fisheries.

Closed Area (CA) I Hook Gear Haddock SAP

Several provisions of the CA I Hook Gear Haddock SAP originally implemented by FW 41 were inadvertently removed by the FW 42 final rule. These provisions distribute the yearly haddock total allowable catch (TAC) evenly between the two seasons of the SAP (i.e., October 1 – November 15 and November 16 – December 31) and allow the Regional Administrator to adjust the both the start date and the TAC of the second season of the SAP to account for under- or

over-harvest of the haddock TAC during the first season of the SAP. NMFS has restored these provisions to the regulations.

White Hake Trip Limits

The regulations implemented by FW 42 incorrectly specified a white hake trip limit of 500 lb/DAS, up to 5,000 lb/trip. NMFS has corrected the white hake trip limit to accurately reflect the 1,000 lb/DAS, up to 10,000 lb/trip white hake trip limit adopted by the Council in FW 42.

Approval of Sector Applications

The sector approval regulations implemented under Amendment 13 indicated that sectors may be approved by NMFS after consultation with the Council and solicitation of public comment for at least 15 days through a proposed rule. The requirement to publish a proposed rule to approve sectors may delay approval of a sector operations plan. To increase the likelihood that sector operations plans will be approved in a timely manner, NMFS has eliminated the requirement to specifically publish a proposed rule, while preserving the ability of NMFS to approve sector operations with public comment solicited through other means, as appropriate and consistent with applicable law.

Recreational Fish Size Restrictions

Amendment 5 specified that the minimum fish size provisions apply to any part of a fish, including fillets. Amendment 5 required that all fish or fish parts must have the skin on to increase the enforceability of that provision. The regulations were found to be unclear whether the requirement to land fish fillets or parts of fish with the skin still on applied to all vessels or only to commercial vessels. Therefore, NMFS has clarified that fish fillets, or parts of fish, must have skin on while possessed on board all vessels, including private recreational or party/charter vessels. "Skin on" means the entire portion of the skin normally attached to the portion of the fish or to fish parts possessed is still attached.

This letter is only a summary of the NE multispecies regulations and should not be considered as a substitute for the actual regulations. To read these regulations in their entirety, you are encouraged to obtain a complete copy by calling (978) 281-9315, or by accessing the Northeast Regional Office's web page at: <http://www.nero.nmfs.gov>. You may also receive permit holder letters by e-mail by clicking on "NOAA Fisheries News Releases" on our website at <http://www.nero.nmfs.gov>; or via fax by providing a fax number through a written request to the above address, or by faxing your request to 978-281-9135. If you have any questions regarding the above measures, please contact the Sustainable Fisheries Division at (978) 281-9315.

Sincerely,



for Patricia A. Kurkul
Regional Administrator

This small entity compliance guide complies with section 212 of the Small Business Regulatory Enforcement and Fairness Act of 1996.