



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

November 30, 2010

Small Entity Compliance Guide

Subject: Changes for Midwater Trawl Vessels Fishing in Groundfish Closed Area I

Dear Limited Access Herring Category A or B Permit Holder:

This letter is to inform you that, **effective January 31, 2011**, NOAA's National Marine Fisheries Service (NMFS) will eliminate the exemption from bringing small amounts of fish on board after pumping operations are concluded for midwater trawl vessels fishing in Northeast (NE) multispecies Closed Area I (CA I) at 50 CFR 648.80(d)(7)(ii)(D). As a result of this change, any midwater trawl vessel fishing in CA I will no longer be able to routinely discard catch that remains in the net at the conclusion of pumping operations, without first bringing it on board the vessel and making it available for sampling and inspection by the observer.

This change is a result of a rulemaking process prompted by a Court-approved joint motion to stay pending litigation (*Taylor et al. v Locke*, 09-CV-02289-HHK) on the November 2, 2009, rule which initially allowed this exemption. As part of the stay agreement, a proposed rule was published on September 7, 2010, seeking public comment on the exemption for operational discards. Over 5,900 comments were received during the comment period, and, after thoroughly reviewing all comments received, NMFS published a final rule on November 30, 2010.

As of January 31, 2011, if any part of a midwater trawl tow is inside of CA I, the vessel will be prohibited from releasing any fish from the codend of the net after pumping operations are concluded, unless the fish have first been brought aboard the vessel and made available for sampling and inspection by the observer, subject to the exemptions described below. None of the other provisions of the requirement for 100% at-sea observer coverage in CA I are changed by this action.

In recognition that there are certain conditions under which fish cannot be sampled, the regulations provide three exemptions, which are not changed by this action. Fish that have not been pumped aboard the vessel may be released if the vessel operator determines that:

- Pumping or otherwise bringing the catch aboard would compromise the safety of the vessel;
- Mechanical failure precludes bringing some or all of the catch aboard the vessel; or
- Spiny dogfish have clogged the pump and consequently prevent pumping of the rest of the catch.

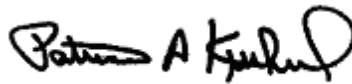


As a reminder, following the release of fish under any of these exemptions, the vessel must stop fishing and exit CA I. The vessel may continue to fish the remainder of the trip outside of CA I, but may not fish any part of a midwater trawl tow inside CA I for the remainder of that trip. The vessel operator must also complete, sign, and submit to NMFS a Closed Area I Midwater Trawl Released Codend Affidavit following such a release of fish. The affidavit form includes fields for vessel information and details of where, when, and why the tow was released, as well as a good-faith estimate of both the total weight of fish caught on that tow and the weight of fish released.

Further, a vessel operator must make all reasonable efforts (including strapping and splitting the net) to pump or otherwise bring aboard as much of the catch as possible before releasing the codend. The vessel operator must notify the observer of the reason for the release and give reasonable assistance to the observer in his/her efforts to visually inspect and identify the catch remaining in the net before it is released.

The Gulf of Maine/Georges Bank Herring Midwater Trawl Gear Letter of Authorization (LOA) will be modified to reflect the elimination of the exemption for operational discards. If your vessel is currently issued this LOA, a new revised LOA will be sent to you shortly. If you have any questions about these new requirements, please contact the Sustainable Fisheries Division at 978-281-9341.

Sincerely,

A handwritten signature in black ink, appearing to read "Patricia A. Kurkul". The signature is fluid and cursive, with a large initial "P" and "K".

Patricia A. Kurkul
Regional Administrator