



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
NORTHEAST REGION
55 Great Republic Drive
Gloucester, MA 01930-2276

February 26, 2009

Small Entity Compliance Guide

Dear Northeast (NE) Multispecies Permit Holder:

This letter is to inform you of the regulations that are **currently in effect** as a result of the February 17, 2009, and February 23, 2009, Federal Court Orders in the case of *Commonwealth of Massachusetts and State of New Hampshire v. Carlos M. Gutierrez* (Civil Action No.: 06-12110-EFH) (Court Order). The February 17, 2009, Court Order rescinded the suspension of measures implemented under Framework Adjustment (FW) 42 with the exception of differential days-at-sea (DAS) counting through March 27, 2009. On February 23, 2009, the Court ruled again and ordered that differential DAS counting in both the Gulf of Maine (GOM) and Southern New England (SNE) Differential DAS Areas be suspended through April 10, 2009, or until further notice. In addition, the February 17, 2009, Court Order extended the deadline to submit requests to lease DAS through March 31, 2009. All management measures that are not affected by these Court Orders will remain in effect. This letter describes regulations that are now in effect until further notice.

VESSEL MONITORING SYSTEM (VMS) REQUIREMENTS

FW 42 measures that required all NE multispecies vessels fishing under a NE multispecies DAS to use VMS are now in effect. Due to the recent Court Order, this provision is reinstated until further notice. As outlined in an October 18, 2006, permit holder letter, a vessel that fishes landward of the VMS demarcation line at any point during a trip is required declare into and out of the DAS program via the call-in system, or Interactive Voice Response (IVR) system, and enter a "DOF-DOF" (declared out of fisheries code) on the VMS prior to such a trip.

DAS COUNTING

Due to the Court Order temporarily suspending the GOM and SNE Differential DAS Areas, all NE multispecies vessels fishing under a Category A DAS will be charged DAS at a rate of 1:1 for the duration of the trip until further notice, even if declared into these areas via VMS.

Vessels fishing exclusively in the Eastern U.S./Canada Area will be charged DAS at a rate of 1:1 for the time spent in the Eastern U.S./Canada Area.

COMMERCIAL TRIP LIMITS

The following commercial trip limits are now in effect:

- **White Hake:** 1,000 lb per DAS, up to 10,000 lb per trip
- **Cape Cod (CC)/GOM and SNE/Mid-Atlantic Yellowtail Flounder:** 250 lb per DAS, up to 1,000 lb per trip. Please note that letters of authorization (LOAs) are not required to land yellowtail flounder. These LOAs were in effect prior to FW 42 and are no longer applicable.
- **GOM Cod Trip Limit Exemption:** In order to be exempt from the GOM cod trip limit of 800 lb per DAS, up to 4,000 lb per trip, vessels must declare their intent to



fish south of the GOM Regulated Mesh Area (RMA) for the entire trip via VMS. Vessels exempt from the landing limit requirement may transit the GOM/GB RMA north of this exemption area, provided that their gear is stowed in accordance with one of the provisions of 50 CFR 648.23(b).

- **Georges Bank (GB) Winter Flounder:** 5,000 lb per trip
- **GB Yellowtail Flounder:** 10,000 lb per trip, unless otherwise notified. Currently, the trip limit has been revised to 2,500 lb per trip until further notice.
- **Eastern GB Cod:** NE multispecies vessels fishing in the Eastern U.S./Canada Area may not land more than 500 lb of cod per DAS, or any part of a DAS, up to 5,000 lb per trip, unless otherwise notified. Currently, the trip limit has been revised to 1,000 lb per DAS, up to 10,000 lb per trip until further notice.

Cod Running Clock Provision: While differential DAS counting is suspended, any vessel declared into either the GOM or SNE Differential DAS Areas via VMS must submit the Cod Running Clock form via VMS (Macro 40 for Boatracs vessels) if not enough DAS have elapsed to account for the amount of cod on board the vessel. The vessel will be charged up to an additional 24 hours of DAS to fully account for the amount of cod landed. A vessel fishing inside/outside of the VMS demarcation line on the same trip and using the DAS call-in system must continue to wait up to an additional 24 hours before calling out of the DAS program if not enough DAS have elapsed to account for the amount of cod on board the vessel.

HADDOCK SEPARATOR TRAWL PERFORMANCE INCENTIVES

To increase incentives for vessels to properly use a haddock separator trawl and other selective fishing gear such as the Ruhle trawl, FW 42 established restrictive trip limits applicable for the programs that require the use of such selective gear, such as the Regular B DAS Program and the Eastern U.S./Canada Haddock SAP. These trip limits include: 500 lb of flatfish (all species, combined), 500 lb of monkfish (whole weight), and 500 lb of skates (whole weight). These “performance incentives” are now in effect.

COMMERCIAL GEAR REQUIREMENTS

The commercial gear requirements in the SNE/MA RMA were revised under FW 42. These requirements, that any trawl vessel fishing in the SNE/MA RMA under a NE multispecies DAS may use either 6.5-inch diamond or square mesh in the cod-end, are now in effect.

DAS LEASING PROGRAM

The DAS Leasing Program was set to expire in April 2006, but was renewed by FW 42. The DAS Leasing Program is now in effect. As stated above, for the 2008 fishing year, vessel owners may submit requests for DAS leases to NOAA’s National Marine Fisheries Service through March 31, 2009.

DAS TRANSFER PROGRAM

Several provisions of the DAS Transfer Program were revised by FW 42. The following provisions are now in effect, as follows:

- The vessel transferring its NE multispecies DAS permit (i.e., the transferor) may transfer all non-NE multispecies permits as a bundle to the vessel receiving the NE multispecies DAS (i.e., the transferee), subject to regulations regarding vessel replacement.
- The transferor is not required to permanently relinquish all state and Federal fishing permits and may acquire other fishing permits after the transfer of NE multispecies DAS and any other bundled permits.
- The DAS conservation tax of 20% is maintained, but the transferee may specify which vessel's DAS are being acquired and, therefore, subject to the conservation tax.
- The baseline characteristics of the merged NE multispecies permits would be the smaller of the two vessels, unless the transferee vessel had not previously upgraded under the vessel replacement regulations and the applicant uses its one-time upgrade to adopt the larger baseline of the two vessels, consistent with the replacement regulations.

SPECIAL MANAGEMENT PROGRAMS

U.S./Canada Management Area:

To increase the efficiency and flexibility of fishing operations, FW 42 implemented measures allowing vessels to fish inside and outside of the Eastern U.S./Canada Area on the same trip (i.e., “flexing”). These measures are now in effect. Therefore, a vessel may fish inside/outside of the Eastern U.S./Canada Area on the same trip, provided the vessel operator declares into the appropriate area via VMS either prior to leaving the dock, or prior to leaving the Eastern U.S./Canada Area. In addition, the Regional Administrator may adjust trip limits and other provisions prior to the start of the fishing year and throughout the fishing year to avoid exceeding or ensure the harvest of U.S./Canada Management Area total allowable catch amounts.

Regular B DAS Program and the Eastern U.S./Canada Haddock SAP:

Both of these programs were set to expire, but were renewed by FW 42. Therefore, these programs are now in effect. In addition, FW 42 revisions of several provisions of the Regular B DAS Program, including the quarterly distribution of available Regular B DAS that may be used in this program and the incidental catch total allowable catch amounts for stocks of concern and prohibiting Monkfish Category C, D, and F vessels from participating in this program are now in effect.

GB COD FIXED GEAR SECTOR

The GB Cod Fixed Gear Sector is now in effect. As a result, participating vessels may continue to operate pursuant to the approved 2008 Sector Operations Plan, as described in the final rule published in the Federal Register on April 10, 2008 (73 FR 19439). Participating vessels are exempt from the GOM and GB cod trip limits; the GOM, GB, and SNE limit on the number of hooks fished; and the GB Seasonal Closure Area when using hook gear.

RECREATIONAL MEASURES

To reduce fishing mortality from recreational fishing vessels, FW 42 increased the size limit of GOM cod from 22 inches to 24 inches for private recreational and party/charter vessels. In addition, FW 42 implemented a seasonal prohibition on the retention of cod in the GOM RMA

from November through March. These measures are now in effect.

For more information regarding the FW 42 revisions summarized above, please see the October 18, 2006, permit holder letter available on the Northeast Regional Office website (<http://www.nero.noaa.gov/nero/nr/nrdoc/nrphlo6/06mulfw42fw3.pdf>). 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.noaa.gov>. You may also receive permit holder letters by e-mail by clicking on "Permit Holder Letters" at the same website.

If you have any questions regarding the above measures, please contact the Sustainable Fisheries Division at (978) 281-9315.

Sincerely,

A handwritten signature in black ink that reads "Chris Mangione". The signature is written in a cursive style with a large, prominent "C" at the beginning.

for

Patricia A. Kurkul
Regional Administrator