



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

May 26, 2005

SMALL ENTITY COMPLIANCE GUIDE

Dear Northeast (NE) Multispecies Days-at-Sea (DAS) and
Category 1 Herring Permit Holder:

This letter is to inform you of new regulations implementing Framework Adjustment 40-B (FW 40-B) to the NE Multispecies Fishery Management Plan (FMP), which was partially approved by the National Marine Fisheries Service (NOAA Fisheries Service). **These new regulations become effective on June 1, 2005.**

FW 40-B was developed by the New England Fishery Management Council (Council) to improve the effectiveness of the Amendment 13 effort control program, develop additional opportunities to target healthy groundfish stocks using Category B (Regular and Reserve) DAS, and collect more information regarding groundfish bycatch in the herring fishery. FW 40-B implements a number of measures, including: (1) Changes to the DAS Leasing and Transfer Programs; (2) revisions to the Closed Area (CA) II Yellowtail Flounder Special Access Program (SAP); (3) changes to the Georges Bank (GB) Cod Hook Sector (Sector) eligibility and GB cod allocation provisions; (4) the establishment of a DAS credit for vessels standing by an entangled whale; (5) notification requirements for Category 1 herring vessels fishing in the Gulf of Maine (GOM)/GB Exemption Area; and (6) the elimination of the net limits and gillnet tag requirements for Trip gillnet vessels. In addition, this final rule also clarifies the prohibition of the discard of any fish by any gear type prior to bringing that gear on board the vessel.

DAS TRANSFER PROGRAM REVISIONS

FW 40-B revises the DAS conservation tax and size restrictions associated with the DAS Transfer Program as specified below. This action does not affect the other requirements of the program (i.e., the vessel transferring DAS must still retire from all state and Federal commercial fisheries). The NOAA Fisheries Service also takes this opportunity to explain how carry-over DAS are treated during a DAS Transfer transaction as well as how DAS are transferred in the middle of a fishing season.

DAS Conservation Tax: Under FW 40-B, Category A and B (Regular and Reserve) DAS that are exchanged through the DAS Transfer Program are reduced by 20 percent (Amendment 13 implemented a 40 percent conservation tax for Category A and B DAS). Category C DAS will continue to be reduced by 90 percent, as implemented under Amendment 13.

Size Restrictions: FW 40-B removes the tonnage requirement from the size restrictions for the DAS Transfer Program. Under FW 40-B, the baseline characteristics of the vessel receiving DAS must be within 10 percent of the baseline length overall (LOA) and within 20 percent of the baseline horsepower (HP) of the transferring vessel.



For the purposes of the DAS Transfer Program, the baseline LOA and HP are those associated with the permit as of January 29, 2004.

Carry-over DAS: Carry-over DAS may not be transferred under the DAS Transfer Program; only a vessel's DAS baseline allocation may be transferred to another vessel.

Mid-season DAS Transfers: If a vessel requests to transfer DAS to another vessel under the DAS Transfer Program in the middle of a fishing season and the vessel has fished some of its DAS, the vessel receiving DAS (i.e., the Transferee) would only be allowed to fish any unused DAS (minus the conservation tax) transferred, plus its own DAS allocation, during that fishing year. The full baseline DAS allocation, as reduced by the conservation tax, will be available for use at the start of the next fishing year.

For example: Vessel A has a baseline DAS allocation of 60 Category A and 40 Category B (Regular and Reserve) DAS. Vessel A fishes 10 Category A DAS through June of the fishing year. On July 1, Vessel A transfers its DAS allocation to Vessel B. Vessel B receives 48 Category A DAS (i.e., 60 minus 20% conservation tax), and 32 Category B (Regular and Reserve) DAS (i.e., 40 DAS minus 20% conservation tax). However, since vessel A used 10 Category A DAS, Vessel B would only be allowed to use 38 Category A DAS and the 32 Category B (Regular and Reserve) DAS transferred, plus any additional DAS based on its own DAS allocation, for the remainder of that fishing year. Beginning the next fishing year, Vessel B would be able to use the full 48 Category A and 38 Category B (Regular and Reserve) DAS transferred, plus its own DAS allocation.

DAS LEASING PROGRAM REVISIONS

FW 40-B allows a vessel the one-time opportunity to downgrade its DAS Leasing Program permit baseline specifications to the physical specifications of the vessel currently using the permit. **This one-time downgrade only applies to the DAS Leasing Program permit baseline and does not affect any other permit baselines currently specified for the permit (i.e., the baselines used for vessel upgrades or replacements).** For the purposes of the DAS Leasing Program, the baseline LOA and HP are those associated with the permit as of January 29, 2004.

For example: The DAS Leasing Program baseline specifications for the permit currently being used by Vessel A is established at a LOA of 100 feet and a HP of 500 HP. However, Vessel A actually has a LOA of 75 feet and a HP of 400 hp. Under FW 40-B, Vessel A may downgrade its DAS Leasing Program baseline LOA and HP to 75 feet and 400 HP, respectively, for the purposes of the DAS Leasing Program only.

Affect of Vessel Replacements/Upgrades: If a vessel permit is upgraded or moved to another vessel during a vessel replacement, the downgraded DAS Leasing Program baseline reverts to the original DAS Leasing Program baseline established on January 29, 2004, and cannot be downgraded again for the purposes of the DAS Leasing Program.

For example: If Vessel A in the above example is replaced by Vessel B, the DAS Leasing Program baseline specifications for the permit revert to 100 feet and 500 HP. Vessel B cannot downgrade its DAS Leasing Program baseline in the future.

Duration of DAS Leasing Program Baseline Downgrade: The downgraded DAS Leasing Program baseline remains valid until the permit is upgraded or placed on a replacement vessel as specified above, or until the DAS Leasing Program expires.

CA II YELLOWTAIL FLOUNDER SAP REVISIONS

FW 40-B revises several measures regulating vessel activities in the CA II Yellowtail Flounder SAP, including changing the season, reducing the trip limit for GB yellowtail flounder, reducing the monthly trip allowance per vessel, and establishing the authority for the Regional Administrator to adjust the total number of trips allowed into the SAP per year as follows:

Season: Framework 40-B revises the start date for this SAP to July 1. Therefore, **the season for this SAP runs from July 1 through December 31.** As a reminder, the Regional Administrator may close access to this SAP because the vessels have taken the maximum number of trips allowed into this SAP during a fishing year or because the Eastern U.S./Canada Area is closed due to the projected harvest of 100 percent of the GB cod, GB haddock, or GB yellowtail flounder TAC's specified for the U.S./Canada Management Area.

Trip Limit: The trip limit for GB yellowtail flounder is reduced to 10,000 lb per trip. The Regional Administrator may adjust this trip limit up to 30,000 lb per trip, as provided in the regulations. When adjusting the trip limit, the Regional Administrator must consider the availability of GB yellowtail flounder TAC, the potential catch of GB yellowtail flounder outside of this SAP, recent discard estimates for GB yellowtail flounder, and the expected number of participants in this SAP.

Monthly Number of Trips Per Vessel: Unless otherwise restricted, vessels are limited to one trip into this SAP per month during the specified season. FW 40-B reduced this monthly trip limit from 2 trips per month as implemented in Amendment 13.

Maximum Number of Trips Per Fishing Year: The maximum number of trips into this SAP per fishing year by all vessels is 320 trips. FW 40-B requires that the Regional Administrator, in consultation with the Council, establish the number of trips into this SAP, up to 320 total trips, for each fishing year. In making this determination, the Regional Administrator must consider the availability of GB yellowtail flounder TAC, the potential catch of GB yellowtail flounder outside of this SAP, recent discard estimates for GB yellowtail flounder, and the expected number of participants in this SAP. If the Regional Administrator determines that the available catch of GB yellowtail flounder, as determined by the criteria listed above, is insufficient to support 150 trips into this SAP with a possession limit of 15,000 lb per trip (i.e., is less than 1,021 mt), the Regional Administrator may choose to authorize zero trips into this SAP during a fishing year. **The number of trips into this SAP for the 2005 fishing year will be specified in a future notice once the Regional Administrator consults with the Council.**

GB COD HOOK SECTOR REVISIONS

FW 40-B allows all vessels, regardless of gear fished during previous fishing years, to join the Sector. Any landings of GB cod associated with participants in the Sector, regardless of gear previously fished, will be used to determine the Sector's yearly GB cod allocation. The maximum share of the GB cod TAC that the Sector could be allocated remains capped at 20 percent of the overall GB cod TAC.

DAS CREDIT FOR STANDING BY AN ENTANGLED WHALE

FW 40-B establishes a mechanism to allow a limited access groundfish vessel fishing under a NE multispecies DAS that reports and stands by an entangled whale to obtain DAS credit for the time spent standing by the entangled whale, provided the following requirements are met:

1. When the vessel begins standing by an entangled whale, the vessel operator must notify the U.S. Coast Guard and the appropriate organization (currently, the Center for Coastal Studies) of the location of the entangled whale and that the vessel intends to stand by the entangled whale until the arrival of an authorized response team. **The Center for Coastal Studies can be contacted at 1-800-900-3622;**
2. A vessel may transfer its stand-by status to another vessel by notifying the U.S. Coast Guard and the Center for Coastal Studies. The next vessel standing by the entangled whale must then notify the U.S. Coast Guard and the Center for Coastal Studies of the transfer and comply with these four requirements;
3. The vessel must remain in contact with the Center for Coastal Studies and be available to answer questions on the condition of the animal, including, but not limited to, possible species identification, severity of entanglement, and gear entangling the animal. The vessel must remain on scene until an authorized response team arrives or the vessel is notified that a response team is unavailable. If the vessel receives notice that a response team will not arrive, the vessel may discontinue standing by the animal and resume fishing operations; and
4. To receive credit for time standing by an entangled whale, a vessel must submit a written request to the Regional Administrator. This request must include the following information: Date and time when the vessel began standing by the entangled whale, date of first communication with the U.S. Coast Guard and the Center for Coastal Studies, and the date and time the vessel stopped standing by an entangled whale. DAS credit will not be authorized for any time that a vessel fishes while standing by an entangled whale.

NOAA Fisheries Service will review any DAS credit requests based upon the information available at the time of the request, regardless of whether an authorized response team arrives on scene. NOAA Fisheries Service will inform the permit holder of any DAS credit authorized or reasons why such a credit was not authorized.

CATEGORY 1 HERRING VESSEL REQUIREMENTS

For the purpose of collecting additional groundfish bycatch information in the herring fishery, FW 40-B implements two new requirements for Category 1 herring vessels intending to fish in the GOM/GB Exemption Area (see Figure 1 below). Herring vessels are still required to comply with the other provisions of the midwater trawl and purse seine gear exemptions specified in the regulations.

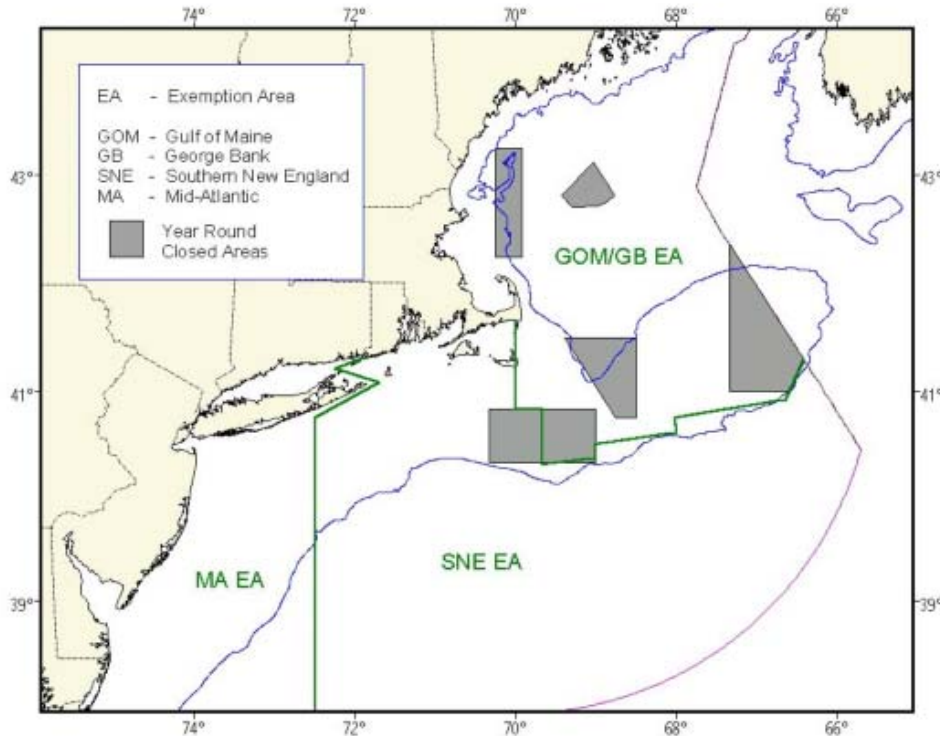


Figure 1: GOM/GB Exemption Area

Observer Program Notification: The vessel owner or operator of a Category 1 herring vessel intending to fish in the GOM/GB Exemption Area must call the NOAA Fisheries Observer Program at least 72 hours in advance of a trip in order to facilitate observer coverage. **The NOAA Fisheries Observer Program contact number is: (508) 990-9057.** The vessel owner or operator must call this number and provide the following information:

- Vessel name
- Contact name for coordination of observer deployment
- Telephone number of contact
- Date, time, and port of departure

Offloading Notification: If a Category 1 herring vessel is issued an observer waiver for a particular trip into the GOM/GB Exemption Area, the vessel must notify the NOAA Fisheries

Service Office of Law Enforcement of the time and place of landing via the vessel monitoring system (VMS). This notice must occur at least 12 hours before crossing the VMS demarcation line, or for vessels fishing landward of the VMS demarcation line for the entire trip, at least 12 hours prior to landing. This information will be used to coordinate efforts to monitor the offloading of herring vessels for groundfish bycatch.

TRIP GILLNET REVISIONS

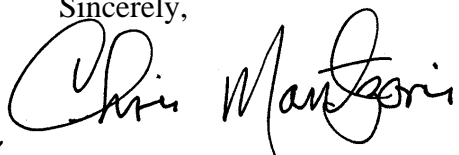
FW 40-B removes the net limits for Trip gillnet vessels fishing in all of the NE multispecies RMA's. Therefore, vessels fishing for groundfish that have a Trip gillnet category designation are no longer required to purchase gillnet tags for their groundfish gillnets. Vessels issued a limited access NE multispecies permit and a limited access Category C or D monkfish permit must still use gillnet tags when fishing for monkfish using gillnet gear.

DUMPING PROHIBITION

Vessels fishing under a Category B (Regular or Reserve) DAS in the CA II Yellowtail Flounder SAP, the Regular B DAS Pilot Program, or the Eastern U.S./Canada Haddock SAP Pilot Program are prohibited from discarding legal-sized cod and other regulated groundfish. Framework 40-B clarifies that the prohibition against discarding includes removing any fish caught using any gear, including dumping the contents of a net, until the gear is brought on board the vessel in order to fully account for the catch of regulated species in these programs.

This letter is only a summary of the NE multispecies regulations implemented under FW 40-B, 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 "NOAA Fisheries News Releases" on our website at <http://www.nero.noaa.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.