

## **NEW ENGLAND FISHERY MANAGEMENT COUNCIL**

### **Enforcement**

#### **I. STATUS**

The Enforcement Committee met on October 1, 2007 in Newburyport, MA.

#### **II. COUNCIL ACTION**

1. The Council may approve the Q&A for VMS usage
2. The Council may approve the “Enforcement Considerations for Regional Fishery Management Councils” as its new enforcement policy
3. The Council may encourage NMFS to continue to develop a computerized chart on the NERO web page to help fishermen identify which possession limits they must obey
4. The Council may determine the best method to distribute the Contact List, and send a letter to NMFS requesting that the Contact List be maintained on the NERO web page to keep the phone numbers current

#### **III. INFORMATION**

1. October 1, 2007 meeting summary
2. Q&A for VMS usage (to be distributed by NERO)
3. Enforcement Considerations for Regional Fishery Management Councils (attachment #2 of Oct. 1<sup>st</sup> summary)
4. Contact list (attachment #3 of Oct. 1<sup>st</sup> summary)
5. Letter to Andrew Cohen, OLE, regarding written report on missing VMS positions and network outages, October, 18, 2007
6. Cumulative actions under VMS/Enforcement special funds, November 2006 – October 2007



VMS-ENFORCEMENT COMMITTEE  
NEFMC

#1

October 1, 2007

Meeting Summary

**Review the Q&A from NERO**

The Q&A represents the most asked questions received by NERO, OLE, and the VMS Team (attachment 1). It is separated into Regulatory and Functional sections. Andy Cohen wanted the OLE web page listed under Other information, in order to offer the most current information. Bill Semrau suggested expanding Regulatory question 5 to specify, what action a vessel should take if it intends to fish inside and outside of the VMS demarcation line on the same trip. The committee decided to forward the questions to the next Council meeting in November. NERO will provide the answers for that meeting, place the Q&A on the web page, and, subsequently, update it for Monkfish Amendment 4 (October 22, 2007), Surfclam/Ocean Quahog Framework 1 (January 2008), and Maine/Mahogany Quahog (January 2009).

**Changing fishing code outside the demarcation line**

This issue involved both changing fisheries at sea, and correcting an incorrect fishing code at sea. Changing fisheries at sea would not be possible for different DAS trips. For instance, if a Scallop DAS trip changed, at sea, to a Multispecies DAS, how should the DAS be counted or allocated? Both programs are based on DAS including steaming time to and from the demarcation line and the fishing grounds. Allowing the correction of fishing codes at sea would leave no incentive for fishermen to declare properly before they sail. The Committee consensus was that changing a code at sea is not consistent with the current method of counting days-at-sea, and that effective enforcement requires that owner/operators declare their intent before leaving port.

**Utilize VMS to change or remove regulations**

The committee received a presentation on possession limit regulations. Of the fourteen Northeast fishery plans included in the regulations, twelve of them have possession limit sections. Part 648 regulations, as of August 2007, had 45 pages referencing possession limits. Simplifying regulations and making them more consistent would better achieve the precepts below. Trip limits are developed by management to control fishing effort or achieve a TAC. Changing to possession limits is necessary to, greatly, improve the limit's enforceability by expanding both the time and place available, beyond the transaction point. Current regulations include one of or any combination of the following definitions: fish for, catch, possess, transport, land, sell, trade, and barter. These definitions may be enforced per trip, day, calendar day, DAS, 24-hour period, and in combination (per DAS and per trip), or not specified. So a question may be: why have

both landing and possession restrictions? Is possession enough? Separately, several limits also include prohibitions on ‘fishing for’, but if it is not possible to determine the fisher’s intent, does this stipulation add anything? Finally, some fisheries, Monkfish for example, have several sections defining different fisheries or permit categories but the same possession limit. Is it possible to simply have one incidental possession limit for everyone? In some cases, an enforcement agent may be faced with examining a fishing trip on which some species have “per DAS” limits, some have “per day” and “per trip” limits, and others have per trip limits. All species with per day limits must be offloaded, but per trip species may be kept onboard for a subsequent trip (section 648.86 (i)), which raises the question as to which amounts should be used to calculate percentage possession limits. Some rules stipulate based on the weight of one (target) species, and others based on landings or total weight on board.

The committee made note of a potentially unsafe regulation: section 648.59 (c)(5)(v) states “If an Access Area is not open in the subsequent fishing year, then the additional compensation trip authorization would expire at the end of the Access Area Season in which the trip was broken. For example, a vessel that terminates a Closed Area II trip on December 10, 2006, may not carry its additional compensation trip into the 2007 fishing year because Closed Area II is not open during the 2007 fishing year, and must complete any compensation trip by January 31, 2007“. January is generally the worst weather of the year.

The Council asked the committee to investigate any regulations that could be changed or removed because of the expansion of the VMS program, and to provide it with a suite of recommendations (the Q&A above is intended to answer this question). In one case, the converse is true: Limits per DAS cause problems when VMS is used to calculate the DAS, and it simplifies matters to allow fishermen under “per DAS” limits to use call-in instead, thus giving both them and enforcement agents a clear trip time-length?

The committee felt that a computerized chart should be provided on a web page, and fishermen could enter the parameters relevant to their current trip to identify the possession limits they must obey. Sue Murphy and Moira Kelley indicated that NERO is currently working on such an approach, but that it is proving very difficult technically and is not ready yet.

The committee decided not to recommend any changes to the possession limit regulations to the Council at this time.

### **Law Enforcement Precepts from OLE**

The Council’s Executive committee recently endorsed an edited version of OLE’s precepts as its Enforcement Policy. Andy Cohen saw no substantive difference between the two. E J Marohn said the USCG and NOAA had just developed Enforcement Considerations for Councils, to be used as new member training (attachment 2), which is a combination of the OLE precepts and the Coast Guard’s Enforceability Matrix. The consensus of the Committee was to forward the Enforcement Considerations to the Council and propose it as the Council’s Enforcement Policy.

## **Written Report on Network Outages and Missing Positions**

The written report was not available at the meeting, but Bill Semrau provided preliminary analysis of the raw data he received the previous Friday. This information, however, depends on Bill's assumption that only missed position reports over 2 hours in duration were tallied, as well as only those missed position reports seaward of the demarcation line. Before the information may be released, these and any other assumptions/parameters must be confirmed with the data analyst. Bill also indicated that scheduled network maintenance by some vendors every six months results in a very brief network outage. Finally, Bill showed two charts illustrating how missed reports from a vessel affected their DAS calculation and one that did not.

The consensus of the committee was to send a letter to Jonathan Pinkerton reiterating its request for the written report at the earliest possible time. Concerns to be answered in the report should include; are the same vessels having all the missing position reports, are most of them installation issues, and rank other circumstances that are responsible for network outages and missing positions. It was noted that the next Council meeting was November 6-8, 2007 in Newport, RI, and that, in order to have the written report on the agenda, it must be received at the Council office before October 12, 2007.

## **Contact List**

The committee looked at the contact list from the ASMFC web page. It decided to list one phone number per state (some states must list two), the NOAA Enforcement hotline, both USCG district phone numbers, as well as the USCG radio channels (attachment 3). If State Enforcement chiefs could select one contact number, that would be preferred. NERO may include the list in the Q&A letter. The committee recommends putting the contact list on another web page, not ASMFC's, in order to have the most current contact numbers available.

The Coast Guard is the primary emergency agency to be contacted.

## **Other Business**

The committee decided not to have any more meetings at this time, and to use the remaining special funds, as necessary, to distribute the contact list above.

## Attachment 1

### VMS Q&A

#### Regulatory Questions

1. When making a fishing trip, when must I make my VMS activity declaration?
2. Am I required to wait for a response after submitting my VMS activity declaration?
3. How often is my VMS unit required to send position reports?
4. When can I turn my VMS unit off? What if my vessel will be out of the water for an extended period of time?
5. What VMS declaration do I need to make when I am fishing exclusively in state waters?
6. If I have both a limited access monkfish and a limited access multispecies DAS permit, am I subject to the multispecies VMS requirements when fishing under a monkfish DAS?
7. I have a VMS unit on board my vessel, when can I, or must I, use the DAS call-in system?
8. For which exemption programs can I declare into through VMS and for which am I still required to get a Letter of Authorization (LOA)?
9. Under what circumstances may I change my VMS activity code while I have fish on board?

#### Functional Questions

10. How can I tell if my VMS unit is functioning properly? What do I do if I discover my unit has stopped reporting while I am at sea?
11. How do I know if my fishing trip has successfully started or ended? Why have I not received my trip start or end emails?
12. If I have declared the wrong VMS activity code and I am out at sea, what should I do?
13. What should I do if the Observer Program does not respond to my VMS observer notification request?

14. When do I use the “DOF” (Declared out of Fishery) code?
15. How do I declare a multispecies “Flex” trip, or “Flip” my multispecies DAS from Category B to Category A DAS?
16. If I am on a Scallop Access Area trip and need to end the trip prior to harvesting my entire trip limit, how do I use my VMS unit to inform NMFS that I am “breaking” my trip?
17. Before starting a Scallop Access Area “compensation” trip to fish for the remainder of the scallop trip limit from a previous trip that was “broken” (see question # 16), as indicated in my broken trip compensation letter received from NMFS, what VMS code do I select?
18. If I need to use the multispecies “cod running clock” to account for the total amount of cod I have on board, what do I do?
19. When I select a VMS activity declaration, I receive a VMS “code” back. Where can I get a list of these codes and their meanings?
20. Why can't I submit a VMS activity declaration thru my SkyMate unit? What is the ‘Code Log’?

Other information:

For questions regarding VMS regulations and requirements, please contact the Sustainable Fisheries Division at 978-281-9315.

For questions regarding VMS usage, please contact the Office of Law Enforcement VMS team at 978-281-9213.

For questions regarding problems or malfunctions with your individual VMS unit, first contact your unit’s manufacturer, and then the Office of Law Enforcement VMS Team, as above.

For questions regarding the VMS reimbursement program, please contact the VMS Support Center, NMFS Office of Law Enforcement, at 888-219-9228.

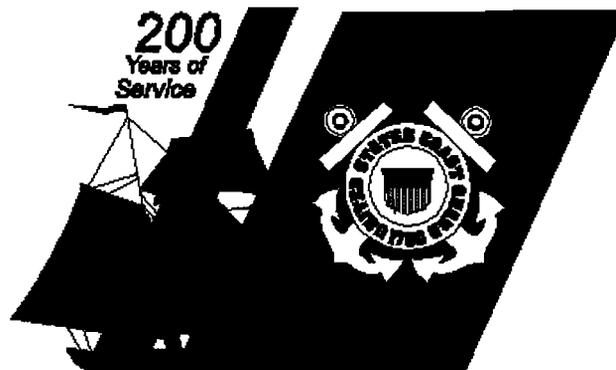




# Enforcement Considerations For Regional Fishery Management Councils

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>No</b>	<b>No</b>	<b>Yes</b>
<b>Limiting Amount/ Percent Onboard</b>	<b>No</b>	<b>Limited</b>	<b>Yes</b>
<b>Prohibiting Retention</b>	<b>No</b>	<b>Yes</b>	<b>Yes</b>
<b>Requiring Retention</b>	<b>Limited</b>	<b>Yes</b>	<b>No</b>
<b>Size Restrictions</b>	<b>No</b>	<b>Yes</b>	<b>Yes</b>
<b>Closed Areas</b>	<b>Yes</b>	<b>Yes</b>	<b>No</b>
<b>Closed Seasons</b>	<b>Limited</b>	<b>Yes</b>	<b>Yes</b>
<b>Gear/Vessel Restrictions</b>	<b>Limited</b>	<b>Yes</b>	<b>Limited</b>
<b>Limited Access Privilege Programs</b>	<b>No</b>	<b>Limited</b>	<b>Yes</b>
<b>Recordkeeping/ Reporting</b>	<b>No</b>	<b>Limited</b>	<b>Yes</b>
<b>Permits</b>	<b>Limited</b>	<b>Yes</b>	<b>Yes</b>

## 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 fisherman 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.

## Contact List

<b>USCG – VHF Radio</b>	Channel 16	Call in any Emergency
<b>USCG – SSB Radio</b>	Channel 2182	Call in any Emergency
<b>Federal Agency</b>	<b>Phone Number</b>	<b>Contact</b>
<b>Us Coast Guard Maine to New Jersey</b>	617-223-8555	1 <sup>st</sup> District Command Center
<b>Us Coast Guard Mid New Jersey to North Carolina</b>	757-389-6231	5 <sup>th</sup> District Command Center

<b>NOAA Enforcement</b>	800-853-1964	Hotline
<b>State Agency</b>	<b>Phone Number</b>	<b>Contact</b>
<b>Maine</b>	207-624-7000	Communication Center BMP Duty Supervisor
<b>New Hampshire</b>	603-271-3361 603-271-3636	NHFG Dispatcher (0800-1630 hrs) State Police (1630-0800 hrs)
<b>Massachusetts</b>	617-626-1665 800-632-8075	Dispatcher MA only
<b>Rhode Island</b>	401-222-3070	Dispatcher
<b>Connecticut</b>	860-424-3333	Dispatcher Center
<b>New York</b>	800-847-7332	Operator
<b>New Jersey</b>	609-748-2050 877-927-6337	(0800-1630 hrs) Hotline
<b>Delaware</b>	302-739-4580	Dispatcher
<b>Maryland</b>	410-260-8888	Police Communication Center
<b>Virginia</b>	866-541-4646 757-247-2266	Supervisor on Call
<b>North Carolina</b>	800-682-2632	Dispatcher

All contacts are 24/7 unless otherwise noted (e.g. 0800-1630 hours)

[www.nmfs.gov/contact](http://www.nmfs.gov/contact)



VMS-Enforcement Meeting  
Cumulative Actions  
Special VMS Funding

#2

November 2006 - Present

ACTION	STATUS
<p>1. The special funds, with respect to VMS usage, safety, and enforceability, will provide for public committee meetings on the days just prior to the council meetings during 2007; specifically, February 5 in Portsmouth, April 9 in Mystic, June 18 in Portland, September 17 in Plymouth, and November 5 in Newport.</p>	<p><b>Four meetings were held in February, April, June and October.</b></p> <p>No more meetings are scheduled.</p>
<p>2. The advisors will be invited to these meetings, and immediately new advisors will be sought from the public, state law enforcement agencies and the three VMS vendors. John Pinkerton, the national VMS chief for NOAA, and the general public will also be invited.</p>	<p><b>New advisors were selected at the February committee meeting, and approved by the Executive committee.</b></p> <p>The three vendors, and one potential vendor, have attended most meetings. Three of the four made presentations at the meetings; SkyMate has not. Jon Pinkerton attended the February and June meetings.</p>
<p>3. The committee should be expanded to include a voting representative from NOAA Fisheries, making a total of six. The committee currently includes a representative from USCG, the Chief of OLE, and three other council members.</p>	<p><b>Sustainable Fisheries – RO has a voting member now.</b></p>
<p>4. To make the committee meetings more effective, the public will be invited to submit written recommendations and ideas, relative to VMS usage, prior to their participation at any specific meeting. This will allow for a clear understanding of the recommendations, and facilitate the discussion during the meeting.</p>	<p>Recommendations were received, mostly via email, prior to some of the meetings.</p>

5a. The committee will produce a laminated sheet with prioritized emergency contacts: USCG, OLE, states' Law Enforcement.	A prototype laminated sheet with verified phone numbers and radio frequencies has been produced.
5b. In terms of safe harbor messages, instruct fishermen how to contact enforcement agencies by email, telephone and radio.	<b>A letter from OLE (5/2/2007) explains that safe harbor requests will continue to be handled on a case-by-case basis, and Federal overages will be lost.</b>
6. Request a change in VMS polling based on a vessel's declaration into a particular fishery.	<b>A letter from the RO (4/5/2007) indicates that current technology provided by the VMS vendors does not support changing the reporting rate by fishery declaration.</b>
7. Request a re-evaluation of the turtle-chain rule to allow enforcement discretion when measuring the chain configuration to address safety concerns.	<b>USCG informed the committee that they are able to measure the chain bag flat on deck, obviating safety concerns.</b>
8. The MAFMC should have a voting member on the NEFMC VMS-Enforcement Committee.	<b>MAFMC has a voting member now.</b>
9. NMFS should complete the days-at-sea (DAS) web page as soon as possible.	<b>A letter from the RO (3/30/2007) estimates that a prototype of the DAS system for users will be deployed in the fall of 2007.</b>
10. Ask all VMS vendors, including potential vendors, to contact their clients and explain in detail how their safety features work and encourage fishermen to implement any needed procedures immediately. This may be done at the next billing cycle.	Although three vendors (Thrane&Thrane, Faria and Boatrac) gave presentations of their safety features during committee meetings (SkyMate did not give a formal presentation, but answered questions during the June meeting), it is not known if they have contacted their clients in this regard.
11. Charge the staff to develop guidelines for how VMS affects all current regulations. This may be achieved by updating all enforcement analyses (EA) for all a plan's regulations, not just the most recent.	NERO developed guidelines with a Q&A sheet. An extensive review of all possession/trip limit regulations was presented at the 10-1-2007 meeting.
12. Request from NOAA any information they may have relative to graduated penalty/fee schedules used as guidance for enforcement and legal counsel.	The Council tabled this motion.

<p>13. Ask NMFS to report on the functioning of VMS monitoring from May 1, 2006 to January 2007, including how often vessel signals are lost, average length of lost signals and what limitations may exist with increased use of VMS to provide future monitoring information. If possible, break out the information by vendor.</p>	<p><b>Jon Pinkerton reported on outages at the June meeting. A formal, written report may be available at the February 2008 meeting.</b></p>
<p>14. Recommend to the scallop committee that the landing and declaration issue be addressed to be consistent with multispecies regulations and other fisheries regulations, one landing in a 24 hour period, as this may lead to unsafe fishing practices.</p>	<p><b>The scallop committee voted to change the rule to one landing per calendar day, and will submit it in Framework 20.</b></p>
<p>15. Request OLE draft a list of concerns and recommendations to establish a protocol for safe harbor.</p>	<p><b>A letter from OLE (5/2/2007) explains that safe harbor requests will continue to be handled on a case-by-case basis.</b></p>
<p>16. The council asked NMFS to evaluate VMS requirements and determine if other processes, such as the “legacy code” and/or IVR, would be more practical than current practices.</p>	<p><b>A letter to Permit Holders (9/20/2007) indicates that a vessel may confirm that it intends to fish under the last VMS activity code received by NMFS at the end of the previous trip, via IVR.</b></p>
<p>17. Request NMFS develop an updated, more user friendly, VMS system, with consideration given to addressing issues that would allow easing regulations that are inconsistent or duplicative, and that would allow for reporting requirements to increase industry flexibility and administrative ease.</p>	<p>The council returned this to the committee and asked it to develop a suite of recommendations to change the regulations. The committee reviewed extensively all possession/trip limit regulations on 10-1-2007, but does not recommend any changes at this time.</p>
<p>18. Request NMFS to establish a declaration that would allow vessels to transit closed areas with minimal gear stowage requirements, as the gear stowage requirements create serious safety concerns.</p>	<p><b>A letter from the RO (8/3/2007) indicates that non-compliance with fishery regulations, such as gear stowage requirements, due to circumstances beyond the control of a vessel operator will continue to be handled on a case-by-case basis.</b></p>
<p>19. The committee passed the Enforcement Analysis for Scallop Amendment 11 on to the scallop committee.</p>	<p><b>An EA was done by OLE and incorporated into Scallop Amendment 11.</b></p>

<p>20. Ask NMFS to examine the requirement to only change fishing code from inside the demarcation line on a fishery requiring VMS; i.e., Herring, Scallops (General Category, Limited Access), Multispecies.</p>	<p>The council returned this to the committee and asked it to develop a suite of recommendations to change the regulations. <b>The committee discussed this at its 10-1-2007 meeting, and determined that changing the code at sea is not consistent with current DAS counting and that effective enforcement requires declaring before sailing.</b></p>
<p>21. Inform the Council that if the minimum size for haddock changes, the VMS-Enforcement committee recommends one consistent size for both the Gulf of Maine and Georges Bank.</p>	<p><b>NOAA Fisheries temporarily changed the commercial minimum size for both Georges Bank and the Gulf of Maine haddock to 18 inches.</b></p>
<p>22. The council requested the committee to develop a suite of recommendations to change the regulations, including items 16 and 19 above, at its next meeting.</p>	<p>The Sustainable Fisheries office developed a Q&amp;A sheet designed to show what works and what does not work with VMS, and eventually provide a VMS pamphlet illustrating the inconsistencies, such as power down provisions, and duplications in the regulations.</p>
<p>23. Recommend that “Enforcement Considerations for Regional Fishery Management Councils” become the New England Council’s new enforcement policy.</p>	<p>The Executive committee reviewed this document at its November 5, 2007 meeting.</p>
<p>24. Recommend that the contact list, see 5a above, be placed on a web page in order to have the most current phone numbers available.</p>	<p>NERO will determine the best NMFS web page on which to put the contact list.</p>



#3

New England Fishery Management Council

50 WATER STREET | NEWBURYPORT, MASSACHUSETTS 01950 | PHONE 978 465 0492 | FAX 978 465 3116

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

October 18, 2007

Mr. Andrew Cohen, OLE  
NOAA/NERO  
One Blackburn Drive  
Gloucester, MA 01930

Dear Andy,

At our recent VMS/Enforcement meeting, the Committee reiterated the Council's request for a written report on VMS network outages and missing positions at the earliest possible time. I understand you are coordinating the report with your Headquarters. I will plan on scheduling time for the report at our February 12-14, 2008 Council meeting which will be held in Portsmouth, New Hampshire.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul". The signature is fluid and cursive, with a large initial "P" and a long, sweeping tail that loops back under the name.

Paul J. Howard  
Executive Director

## SMALL ENTITY COMPLIANCE GUIDE

The following is a list of commonly asked questions regarding the vessel monitoring system (VMS). The answers to these questions are subject to change and are valid as of this date. Please see the National Marine Fisheries Service (NMFS) Northeast Regional Office (NERO) Fishing Industry Homepage for updates and more information: [www.nero.noaa.gov/nero/fishermen](http://www.nero.noaa.gov/nero/fishermen). Once you are on the website, click on the “Vessel Monitoring Systems” page.

### QUESTIONS ABOUT VMS USAGE REQUIREMENTS

**1. Am I required to have a VMS unit onboard my vessel?**

Vessel owners in the following fisheries are **required** to use VMS:

<b>Scallop</b>	<ul style="list-style-type: none"> <li>• Limited Access Full-time</li> <li>• Limited Access Part-time</li> <li>• General Category 1B</li> <li>• Limited Access Occasional (if participating in the Scallop Access Area Program)</li> </ul>
<b>Northeast (NE) Multispecies</b>	<ul style="list-style-type: none"> <li>• Limited Access fishing under Category A or B days-at-sea (DAS)</li> </ul>
<b>Herring</b>	<ul style="list-style-type: none"> <li>• All Limited Access, except fixed gear</li> </ul>
<b>Monkfish</b>	<ul style="list-style-type: none"> <li>• Limited Access Category F (Offshore Exemption Permit)</li> <li>• See question #2</li> </ul>
<b>Surfclam/Ocean Quahog</b>	<ul style="list-style-type: none"> <li>• Open Access (beginning January 1, 2008)</li> </ul>

Vessel owners in the following fisheries may **elect** to provide DAS notifications through VMS:

<b>Monkfish</b>	<ul style="list-style-type: none"> <li>• Category A or B</li> </ul>
<b>Scallop</b>	<ul style="list-style-type: none"> <li>• Limited Access Occasional</li> </ul>

**2. If I only fish under Monkfish DAS activity declarations, but I also have a NE multispecies DAS permit, am I required to have a VMS?**

**Yes**, if you have a monkfish Category C or D permit and fish NE multispecies DAS concurrently with your monkfish DAS, you are required to have and use an operational VMS unit. If you do not have any NE multispecies DAS or you lease out all of your NE multispecies DAS, you are not required to use VMS.

**3. How often is my VMS unit required to send position reports? In other words, what is my polling frequency?**

VMS polling frequency is determined by the permits currently issued to your vessel. If you have more than one VMS permit, then the most restrictive regulations would apply (see table below.) That is, if you have both a limited access NE multispecies permit and you use DAS, and a General Category 1B scallop permit, you will be polled twice per hour, regardless of whether you are fishing under a NE multispecies

DAS, under the general category scallop provisions, or have declared out of either fishery.

PERMIT	FREQUENCY
NE multispecies	1 x per hour
Monkfish	1 x per hour
Herring	1 x per hour
Limited access scallop	2 x per hour
General category scallop 1B	2 x per hour

**4. When can I turn my VMS unit off? What if I am going to be out of the water for an extended period of time?**

A VMS unit may only be turned off under very specific circumstances and each circumstance is unique to the permit issued to the vessel. If you have used your VMS to declare and fish under a NE multispecies or monkfish DAS, then you may not turn your unit off (except with an LOE, as described below) even after you have used all of your DAS for that fishing year. Again, the most restrictive regulations apply when there are multiple VMS permits on a vessel. See table below.

PERMIT	UNIT MAY BE TURNED OFF ...	UNLESS...
<b>NE Multispecies</b>	With an LOE <sup>1</sup> for at least 72 hours (out of the water)	<i>No exceptions</i>
	With an LOE for a minimum of 30 days (vessel may not be moved from dock)	The vessel has another VMS permit requiring VMS
<b>Monkfish</b>	With an LOE for at least 72 hours (out of the water)	<i>No exceptions</i>
	With a monkfish Category F Offshore Fishery Program permit, outside of the Offshore Fishery Season	The vessel has another VMS permit that requires the vessel to report via VMS 24 hours, 7 days a week
<b>Herring</b>	Any time the vessel is in port	The vessel has another VMS permit that requires the vessel to report via VMS 24 hours, 7 days a week
<b>Limited Access Scallop</b>	With an LOE for at least 72 hours (out of the water)	<i>No exceptions</i>
<b>General Category Scallop 1B</b>	When tied to a dock or mooring and the vessel owner/operator has submitted the “Power Down” code	The vessel has another VMS permit that requires the vessel to report via VMS 24 hours, 7 days a week
	With an LOE for at least 72 hours (out of the water)	<i>No exceptions</i>

<sup>1</sup> A Letter of Exemption (LOE) to turn off your VMS unit may be obtained from the NMFS OLE VMS Team (see “Contact Information” below.)

**QUESTIONS ABOUT VMS DECLARATIONS AND IVR**

**5. When am I required to make my VMS activity declaration?**

Vessel owners/operators who are required to or elect to use VMS are required to make an activity declaration prior to leaving port, for each trip, unless otherwise authorized by the Regional Administrator (see question #6).

**6. Are there any instances where I don't have to make a declaration through my VMS unit prior to leaving port?**

**Yes, but only if you're confirming that you will be using the same VMS activity code submitted on the previous fishing trip (i.e., you will be fishing in the same fishery, the same area, and using the same gear as your last fishing trip).**

NMFS recently implemented a one-year pilot program allowing vessel owners to now choose to enter the appropriate VMS code for each trip using their VMS unit, or use the Interactive Voice Response (IVR) system, also known as "call-in," to confirm that they are using the most recent VMS code accepted by NMFS. That is, to use IVR, the trip you intend to take must be exactly the same as the most recent code accepted by NMFS. For example, if your most recently accepted code was a NE multispecies U.S./Canada Area 4 plus open plus Gulf of Maine Differential Area, and you intend to make the identical trip, you may use the IVR to confirm the use of this code. On the other hand, if your most recently submitted (and accepted) code was a General Category scallop power-down code, you must make a new trip activity declaration through your VMS unit prior to leaving the dock.

**7. Do I have to wait for a response after submitting my VMS activity declaration?**

While it is strongly recommended that you wait for a response after submitting your VMS activity declaration, it is not currently required. The initial response, also known as an "acknowledgement," that you receive is from your VMS vendor, not NMFS. The response simply means that the code you've submitted was accepted by the vendor and is in route to NMFS. Should the VMS code that you submitted not be accepted by the vendor, you will be required to return to port and resubmit your code.

**8. When I select a VMS activity declaration, I receive a VMS "code" back. Where can I get a list of these codes and their meanings?**

A list of all the current VMS activity codes and their meanings is available on the Fishing Industry Homepage VMS webpage. Go to [www.nero.noaa.gov/nero/fishermen](http://www.nero.noaa.gov/nero/fishermen) and click on the "Vessel Monitoring Systems" link.

**9. When am I allowed to change my VMS activity code or make a declaration seaward of the demarcation line?**

Following are instances where a vessel owner/operator may change his/her VMS activity code seaward of the VMS demarcation line:

- A vessel owner/operator fishing under a NE multispecies Category B Regular or B Reserve DAS may change its VMS code by "flipping" to a NE multispecies category A DAS.
- A vessel owner/operator fishing under a NE multispecies A DAS or a monkfish DAS may "flex" out of the Eastern U.S./Canada Area into either the Western U.S./Canada Area, or into any of the areas outside of the U.S./Canada Management Area.
- A vessel owner/operator may transition from a NE multispecies DAS to a monkfish/NE multispecies combined DAS trip when fishing in the Monkfish Northern Fishery Management Area.

In addition, all vessel owners/operators must change their VMS code if ordered to do so by NMFS Office of Law Enforcement (OLE).

**10. How do I declare a NE multispecies or monkfish “Flex” trip, “Flip” my DAS from NE multispecies Category B to Category A DAS, or transition from a NE multispecies trip to a monkfish and NE multispecies trip?**

In order to “flex” out of the Eastern U.S./Canada Area or “flip” from a Category B DAS to a Category A DAS, you must re-declare your entire code as if you were starting your trip and either add the new area in which you intend to fish (“flex”) or select a Category A DAS under the same area and program you are currently fishing (“flip”). Note that you may enact your “flex” code either prior to leaving the dock or prior to leaving the Eastern U.S./Canada Area by declaring all the areas in which you intend to fish.

Currently, to transition from a NE multispecies DAS trip to a monkfish/NE multispecies trip when fishing exclusively in the Monkfish Northern Fishery Management Area (as specified under Monkfish Framework 4), you must submit an email through your VMS unit to the VMS team ([NMFS.OLE.NE@Noaa.gov](mailto:NMFS.OLE.NE@Noaa.gov)) prior to crossing the VMS demarcation line on your way back to port. A system is currently being developed to allow this change to happen in a similar manner to “flipping” and “flexing.” A subsequent permit holder letter will detail that system.

**11. I have a VMS unit on board my vessel. When can I, or must I, use the IVR system?**

If you are required to or elect to have a VMS unit on board your vessel, you may only use the IVR system for the following purposes:

- If you intend to fish in a DAS program both **inside and outside** the VMS demarcation line on the same trip or **entirely within** the VMS demarcation line, then you must declare out of the fishery (“DOF”) on your VMS unit and call the IVR system to declare your trip and again upon landing to end your trip. Your DAS clock will begin (and end on your return) when you receive your confirmation code from the IVR system.
- As noted under question #10, currently you may use the IVR system to confirm the use of the most recent VMS activity code accepted by the NMFS VMS monitoring program. Please note that your DAS clock will begin with your first position report seaward of the demarcation line.
- Herring limited access permitted vessels are required to use the IVR system to report catch each week, whether or not they fish. All catch (landings and discards) must be reported.
- Open access herring permitted vessels must submit a weekly catch report (landings and discards) for any trip during which the vessel catches greater than 2,000 lb.

- NE multispecies DAS Day gillnet vessels must use the IVR system to declare their blocks out of the gillnet fishery and all NE multispecies DAS vessels must use the IVR system to declare a 20-day spawning block out of the fishery between March 1 and May 31 of each year.

**12. When do I use the “DOF” (Declared out of Fishery) code?**

Prior to leaving port, you must use the “DOF” code when you are not fishing in, or operating under any regulations of, a program or fishery that requires a VMS declaration (see question #1.) You must use the “DOF” code because no vessel that is required to or elects to participate in the VMS program may be seaward of the demarcation line with the VMS unit off and without having declared an activity code.

In addition, all General Category scallop vessels must declare an activity code (“DOF” or a trip code) prior to moving from a dock or mooring. “DOF” codes should be used when participating in any activity other than fishing; for example, fueling, transiting without fish on board, recreational boating, etc. Also, any vessel fishing in state waters and not under a DAS, or those vessels fishing under a DAS, but landward of the VMS demarcation line must enter a “DOF” code (see question #8.)

**13. What VMS declaration do I need to make when I am fishing exclusively in state waters?**

If you are fishing exclusively in state waters and you are not fishing under a DAS program, or another program that requires a VMS declaration (such as General Category scallop), then you need to declare out of the fishery by declaring the “DOF” activity code.

**QUESTIONS ABOUT THE VMS “FORMS”**

**14. For which exemption programs can I use my VMS to enroll and for which am I still required to get a Letter of Authorization (LOA)? In what other programs may I use my VMS to enroll?**

With the implementation of VMS, NMFS has been able to replace some LOAs with a VMS enrollment; however, many of the programs requiring an LOA still require the vessel owner to obtain the paper form. In addition, other exemption programs may also be accessed through your VMS unit (see table below).

Contact the Permits Office (978-281-9370) for more information on obtaining a paper LOA. Please visit the NMFS webpage, listed at the top of this letter, for updated information.

**Exemption Programs that Accept VMS Enrollment**

<b>Gulf of Maine (GOM) Cod Trip Limit Exemption</b> (unless you are required or authorized to declare your DAS trip through the IVR system)
<b>GOM and Southern New England (SNE) Differential DAS Layover</b>
<b>NE Multispecies Cod Running Clock</b> (see question #16)
<b>Scallop Broken Trip Program</b> (see questions #14 and 15)

Please note that the former SNE/Mid-Atlantic and Cape Cod/GOM yellowtail flounder possession letters are not on either list. Currently, the yellowtail flounder

possession limits are the same in both areas; therefore, the possession limit exemption letters are no longer necessary.

**15. I am fishing a limited access Scallop Access Area trip, but I have to end the trip prior to harvesting my entire scallop trip limit. How do I use my VMS unit to inform NMFS that I am “breaking” my trip?**

Prior to leaving the Scallop Access Area in which you are fishing, you must submit the Scallop Broken Trip Form from your VMS unit. This form requires that you enter the date and the amount, in pounds, of scallop meats on board your vessel. You must also specify the reason for breaking the trip (e.g., unsafe weather conditions, mechanical problem, medical problem, etc).

Within 30 days after you have returned to port and off-loaded your catch, you must also submit (via mail or fax) a Scallop Broken Trip Adjustment sheet, which can be found on the web at [www.nero.noaa.gov/sfd](http://www.nero.noaa.gov/sfd), as well as the receipt or weigh-out slip from your dealer. Once NMFS verifies the compensation amount, you will receive a letter detailing information about this trip, including a confirmation number. You will need to enter this confirmation number into the VMS unit on your compensation trip (see question #17.)

**16. Before starting a Scallop “compensation” trip to a Scallop Access Area (i.e., after having broken a Scallop Access Area trip, I am now fishing for the remainder of that trip limit, as specified in my broken trip letter), what VMS code do I select?**

You must declare your compensation trip by selecting the appropriate Scallop Access Area code and by selecting “Yes” when your VMS unit asks you if the trip you are taking is a compensation trip. You must also submit the compensation confirmation number(s) you received in response to your request(s) for a broken trip, using the “Scallop Compensation Trip Form” in your VMS. Please see the Sea Scallop Access Area Requirements information sheet for more information: <http://www.nero.noaa.gov/sfd/sfdscallop.html>.

**17. If I need to use the “Cod Running Clock” to account for the total amount of cod I have on board, what do I do?**

Prior to crossing the demarcation line on your way back into port, you must submit the NE multispecies Cod Running Clock Form from your VMS. For Boatracs users, it is Macro 26. For Skymate users, click on “TRIP,” then select “Cod Running Clock.” For Thrane & Thrane users, click on “Forms,” then “Reports,” and then select “Cod Running Clock.”

**QUESTIONS CONCERNING PROBLEMS WITH THE VMS UNIT**

**18. What do I do if I discover my VMS unit has stopped reporting while I am at sea?**

If your VMS unit stops positioning at sea and you are unable to get the unit working properly, you must immediately return the vessel to port to have the VMS unit repaired. Once the unit has been repaired, it is recommended that you call the NMFS

OLE VMS Team (see below for contact information) to verify that NMFS is once again receiving your vessel's position reports.

See Attachment 1 for information on how to determine if your unit is functioning properly (i.e., sending position reports to NMFS.)

**19. How do I know if my fishing trip has successfully started or ended? Why have I not received my trip start or end emails?**

A trip begins with the first position report seaward of the VMS demarcation line, and ends with the first position report shoreward of the VMS demarcation line on the way back to port. NMFS sends "trip start" and "trip end" emails to inform vessel owners of the time and activity code under which the vessel started/ended a trip. Due to the inherent nature of satellite communication, the trip start emails are delayed by 2 hours, and the trip end emails by 6 hours. This allows NMFS to ensure that the proper data are being recorded and that, in the case of DAS, vessels are being accurately charged against their clocks.

It is important to note that there are times that NMFS must turn off the trip start and end emails. Generally, this is because there are delays in receiving data from the satellites. Once the NMFS monitoring system recognizes that there are no longer delays in the data feed, the emails are turned back on. All current and pending trip start and end emails are sent at this point. This may be why you receive trip start and end emails for several trips all at the same time.

If you do not receive your trip start or end emails, please contact the VMS team (see below for contact information). The VMS team can verify that the trip start and ends are being recorded properly in the NMFS system and that the unit is otherwise working properly. Vessel owners may also provide a secondary email address for receiving trip and other information emails.

**20. If I have declared the wrong VMS activity code and I am out at sea, what should I do?**

If you are informed by NMFS OLE that you have declared the wrong VMS activity code while at sea, you must stop your fishing activity and correct the error as instructed. If you realize that you have declared the wrong VMS code and are going back to the demarcation line to correct your code, you should contact the VMS Team and inform them of the situation. Vessels that repeatedly declare the wrong code may be subject to enforcement action.

**21. What should I do if I have replaced my VMS unit?**

If your VMS unit is replaced, you should contact the NMFS OLE VMS Team and inform them of the situation. The VMS Team will assist you in sending a test activity code declaration and ensure that your unit is registered and connected to the VMS monitoring system. See below for contact information.

**22. Why can't I submit a VMS activity declaration thru my SkyMate unit? What is the 'Code Log'?**

Look at the upper left hand corner of the screen in the blue banner under the line “The system is running.” If there is a message that states either “message pending” or “1 unread acknowledgement,” then you must either delete the last code request submitted to clear the queue in the code log OR read the unread acknowledgement in the code log prior to submitting another request.

### **23. If I am having problems with my unit, who should I contact?**

If you are having problems related to the functionality of your VMS unit, you should contact your VMS vendor (see below). You should also contact the VMS Team to report your mechanical problems.

If you are having problems with making an activity declaration, please contact the VMS Team.

#### **Contact Information**

For questions regarding VMS regulations and requirements, please contact the Sustainable Fisheries Division at 978-281-9315.

For questions regarding VMS usage, please contact the NMFS Office of Law Enforcement VMS Team at 978-281-9213.

For questions regarding problems or malfunctions with your individual VMS unit, first contact your unit’s manufacturer, and then the NMFS Office of Law Enforcement VMS Team at 978-281-9213.

For questions regarding the VMS reimbursement program, please contact the VMS Support Center, NMFS Office of Law Enforcement, at 888-219-9228.

For the Interactive Voice Response System (IVR) (also known as the “call-in system”), please call 1-888-284-4904. (If the IVR system is not responding properly, please call the back-up number 1-888-487-9994.) You will need your IVR PIN to enter or access any information in the IVR system. You may obtain your PIN from the VMS Team at 978-281-9213.

#### **Vendor Information:**

SkyMate, Inc.	1-866-759-6283	support@skymate.com
Boatracs, Inc.	1-800-262-8722	operations@boatrac.com
Thrane & Thrane	1-757-463-9557	TSC_US@thrane.com

## ATTACHMENT 1

**How can I tell if my VMS unit is positioning properly (i.e., sending regular position reports to NMFS)?**

### **For SkyMate Users:**

Click on the “**Position**” button (left side of SkyMate software screen). Next, click on the “**Position**” tab. If “**Method**” shows “**GPS**”, it means the GPS antenna and receiver are in good working order. The positional data should be valid. If “**Method**” shows “**Poor Doppler**”, it means the GPS antenna/ receiver are not functioning well and the position shown on the screen is approximated by the Doppler function built into the communicator. This approximation is unreliable. If this situation persists, check the GPS connections at this point and call SkyMate (1-866-SKYMATE) for technical support. Note - the LEDs on the SkyMate satellite communicator don't indicate the GPS status.

### **For Boatracs Users:**

To make sure the Boatracs unit is positioning, there is a light indicator labeled “**No Signal**” to the right of the screen. If an amber-colored light is illuminated, the unit is not positioning.

An alternate means to check is to press the “**View Status**” button and ‘down arrow’ once to check the “**M0**” value. The M0 value will have a ‘positive’ number if the unit is positioning (the higher the better, but the average in the Northeast is between 13 and 18).

A final means is to call Boatracs 24-hour Client Care (1-800-262-8722) to verify positioning data, or send an e-mail request to Boatracs ([support@boatrac.com](mailto:support@boatrac.com)) from the VMS unit. E-mail is delivered by a different satellite system; if there is a problem with positioning, e-mail capability may still be available.

### **For Thrane & Thrane Users:**

The “**Mobile Status**” window at the top of the screen provides several indicators that the VMS transceiver is functioning properly.

“**Connections**” provides the status of three functions by displaying a green or red light-bar: (1) “**GPS**” – whether the transceiver has acquired a GPS position; (2) “**Ant. Signal**” – whether the transceiver has acquired a satellite signal; and (3) “**PC Connect**” – whether there is a good connection between the message terminal and the transceiver. A green light-bar indicates a good connection. An intermittent red light-bar doesn't necessarily indicate a fault; however, a permanent red light-bar may indicate that the unit is not positioning and the transceiver needs to be serviced.

To verify that the unit has sufficient power, check the LED indicators on the exterior of the interconnect (IC) box. An illuminated green LED indicates that there is sufficient power to the transceiver unit. An illuminated red LED indicates that there is DC power applied to the IC box. When both the green and red LEDs are illuminated, the unit has sufficient power. The LEDs do not indicate whether the message terminal has sufficient power.

#5

Conservation Plan (HCP) that will provide the framework for distribution and management of former Fort Ord lands has not been completed. Therefore, for the purpose of the draft economic analysis, FORA was not classified as a small entity. From this analysis, we certify that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. Therefore, an initial regulatory flexibility analysis is not required.

*Executive Order 13211—Energy Supply, Distribution, and Use*

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. One critical habitat unit (Prunedale, Unit 7) contains 17 ac (7 ha) of land held in a conservation easement owned by Pacific Gas and Electric Company. Pacific Gas and Electric Company maintains power lines that cross this unit; however, because the company does not plan to develop this land any further, the designation of revised critical habitat is not expected to have an adverse effect on energy production. Although the proposed designation of revised critical habitat for *Chorizanthe pungens* var. *pungens* is considered a significant regulatory action under E.O. 12866 because it may raise novel legal and policy issues, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

*Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.), the Service makes the following findings:

(a) This rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments," with two exceptions. It excludes "a condition of federal assistance." It also excludes "a duty arising from participation in a voluntary

Federal program," unless the regulation "relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding" and the State, local, or tribal governments "lack authority" to adjust accordingly. (At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement.) "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. Non-Federal entities that receive Federal funding, assistance, permits, or otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) As discussed in the draft economic analysis of the proposed designation of revised critical habitat for *Chorizanthe pungens* var. *pungens*, there is expected to be no impact on small governments or small entities. There is no record of consultations between the Service and any of these governments since *C. p. var. pungens* was listed as threatened on February 4, 1994 (59 FR 5499). It is likely that small governments involved with developments and infrastructure projects would be interested parties or involved with projects involving section

7 consultations for *C. p. var. pungens* within their jurisdictional areas. Any costs associated with this activity are likely to represent a small portion of a local government's budget. Consequently, we do not believe that the designation of revised critical habitat for the *C. p. var. pungens* would significantly or uniquely affect these small governmental entities. As such, a Small Government Agency Plan is not required.

*Executive Order 12630—Takings*

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of proposing revised critical habitat for *Chorizanthe pungens* var. *pungens*. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. The takings implications assessment concludes that this proposed designation of revised critical habitat for *C. p. var. pungens* does not pose significant takings implications.

**Authors**

The primary authors of this notice are the staff of the Ventura Fish and Wildlife Office.

**Authority**

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

Dated: October 5, 2007.

**David M. Verhey,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. E7–20241 Filed 10–15–07; 8:45 am]  
BILLING CODE 4310–55–P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 070809451–7452–01]

RIN 0648–AV79

**Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 42**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

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

**SUMMARY:** The current regulations governing the Northeast (NE) multispecies fishery contain a number of inadvertent errors, omissions, and ambiguities, including some that may appear to be inconsistent with the measures adopted by the New England Fishery Management Council (Council) and approved by the Secretary of Commerce (Secretary) in recent actions taken under the NE Multispecies Fisheries Management Plan (FMP), including Amendment 5, Framework Adjustment (FW) 38, Amendment 13, FW 40-A, FW 41, and FW 42. The intent of this action is to correct these errors and omissions and to clarify specific regulations to ensure consistency with, and accurately reflect the intent of, previous actions under this FMP.

**DATES:** Written comments must be received on or before October 31, 2007.

**ADDRESSES:** You may submit comments, identified by 0648-AV79, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>.
- Mail: Paper, disk, or CD-ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on the Proposed Rule to Correct/Modify NE Multispecies Regulations."

- Fax: (978) 281-9135.

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 publically 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.

Copies of the Regulatory Impact Review (RIR) prepared for this action are available upon request from the Regional Administrator at the above address. Copies of the environmental assessments (EAs) prepared for FW 42, FW 41, FW 40-A, and FW 38; and the

supplemental environmental impact statements (SEIS) prepared for Amendments 5 and 13 may be obtained from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to David Rostker, Office of Management and Budget (OMB), by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or fax to (202) 395-7285.

**FOR FURTHER INFORMATION CONTACT:** Douglas W. Christel, Fishery Policy Analyst, phone (978) 281-9141, fax (978) 281-9135.

#### SUPPLEMENTARY INFORMATION:

##### Background

The most recent management action in the NE multispecies fishery, FW 42, was implemented by a final rule that published in the *Federal Register* on October 23, 2006 (71 FR 62156) and became effective on November 22, 2006. FW 42 superseded measures implemented by an emergency final rule that published on April 13, 2006 (71 FR 19348) that was implemented because of a delay in the development of FW 42. However, upon further review of regulations implemented by the FW 42 final rule, NMFS found that the current regulations contained several inadvertent errors, omissions, and ambiguities that appear to be inconsistent with the measures adopted by the Council and approved by the Secretary. Some of the errors were due to failure of the current regulations to adapt or reinstate measures that were included or modified by the April 13, 2006, emergency final rule. Other errors were the result of incorrect references or a failure to adequately address administrative issues associated with specific measures. Further review of the current regulations revealed that there were other errors related to previous management actions under the FMP, including Amendments 5 and 13, FW 40-A, FW 41, and FW 38, as specified below. Pursuant to section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), this action proposes to correct these errors, revise specific measures to facilitate administration of such measures, and clarify or modify the current regulations to maintain consistency with FW 42 and other previous actions. The following proposed corrections are listed in the

order in which they appear in the regulations.

#### Proposed Measures

##### 1. Definitions for Lessor, Lessee, Transferor, and Transferee

The April 27, 2004, final rule implementing measures approved under Amendment 13 (69 FR 22906) created two programs designed to allow vessels to obtain additional NE multispecies days-at-sea (DAS) in order to offset the economic impacts of effort reductions under that action. These programs, the DAS Leasing and DAS Transfer Programs, include provisions that specifically apply to either the vessel giving or receiving DAS. While the regulations refer to these vessels as the "lessor/transferor" and "lessee/transferee" for both of these programs, respectively, the Amendment 13 final rule never explicitly defined these terms. As a result, this rule would define each of these terms at 50 CFR 648.2 to clarify the applicability of specific provisions for each of these programs.

##### 2. Vessel Monitoring System (VMS) Notification Requirements

Currently, vessels issued limited access permits in several fisheries are either required to use VMS, or may elect to use VMS in lieu of using the DAS call-in system. The final rule implementing FW 42 required all NE multispecies vessels fishing under a NE multispecies DAS to use VMS and indicated that such vessels would be sent letters detailing the procedures pertaining to VMS purchase, installation, and use. However, the current regulations do not specifically address what procedures other vessels using VMS should follow.

Because the NMFS VMS and DAS systems use the VMS activity code declared by the vessel operator to enforce existing area-based regulations and accurately charge DAS based upon where the vessel fishes, what gear the vessel uses, the DAS type used, and the management program in which the vessel is participating, it is critical that the VMS activity code declared on each trip accurately reflects the vessel's intended operations. If the VMS activity code is incorrect, for example, DAS could be inaccurately charged and a vessel may be subject to enforcement action, increasing the burden on both vessel operators and NMFS for inaccurate VMS declarations. Although the current regulations do not specifically detail how and when a vessel should declare its intended fishing activity via VMS for all fisheries,

NMFS believes it is essential that all vessels using VMS must declare their intended activity through VMS prior to each trip to ensure that the VMS activity code declared accurately represents the vessel's intended activity for that trip. NMFS has recently sent letters to all affected permit holders instructing vessel operators on the proper use of VMS, including a letter on March 7, 2007, that required vessel operators to declare a VMS activity code prior to each trip.

The FW 42 final rule modified the regulations at § 648.10(b)(2) to state that NMFS shall send letters to all limited access NE multispecies DAS permit holders providing detailed information on the procedures pertaining to VMS usage. Because the current regulations do not specifically describe the procedures pertaining to VMS usage in other fisheries, this action would modify the VMS notification requirements at § 648.10(b)(2) to specify that NMFS would send letters specifying the procedures pertaining to VMS purchase, installation, and use to all affected permit holders. Thus, this action would clarify that vessels required, or electing to use VMS are subject to the VMS usage requirements outlined in any previous and future permit holder letters. In addition, this action would specify at § 648.10(b)(5) that vessels using VMS must declare the vessel's intended fishing activity via VMS prior to leaving port before each fishing trip.

### 3. Gulf of Maine (GOM) Grate Raised Footrope Trawl Exempted Whiting Fishery Prohibitions

The GOM Grate Raised Footrope Trawl Exempted Whiting Fishery was implemented through a July 9, 2003, final rule (68 FR 40808). However, this final rule did not update the prohibitions at § 648.14(a)(35) and (43) to include this new exempted fishery. The prohibition at § 648.14(a)(35) prohibits the use of small mesh outside of listed exempted fisheries, while the prohibition at § 648.14(a)(43) indicates that it is unlawful for anyone to violate the provisions of listed exempted fisheries. This action would add a reference to the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery at § 648.80(a)(16) to these prohibitions.

### 4. In-season Action Prohibition

Starting with the implementation of Amendment 13 in 2004, the FMP has developed several Special Management Programs that provide the Regional Administrator with the authority to implement in-season adjustments to

management measures, including revising trip limits, access to specific areas, and gear requirements. In-season actions are implemented through a temporary rule, with requirements outlined in letters sent to affected permit holders. Despite the authority to implement such in-season actions, there is no specific prohibition regarding the provisions of an in-season action. Therefore, this action would implement a provision at § 648.14(a)(78) prohibiting vessels from violating the requirements of an in-season action.

### 5. Georges Bank (GB) Seasonal Closure Area Applicability

The GB Seasonal Closure Area was first implemented by the final rule implementing measures approved under FW 33 to the FMP (April 24, 2000; 65 FR 21658). This closure applies to any vessel fishing with gear capable of catching groundfish and is effective from May 1 through May 31 of each fishing year. On November 19, 2004, the final rule implementing FW 40-A (69 FR 67780) established the Eastern U.S./Canada Haddock Special Access Program (SAP). This SAP allows vessels to target haddock using Category B DAS from May 1 through December 31 of each fishing year. The SAP area includes portions of the GB Seasonal Closure Area during the period of the closure. When the Council developed this SAP, it intended to exempt these SAP participants from the GB Seasonal Closure Area. However, the regulations implementing FW 40-A did not exempt such participating vessels from this closure. As a result, a final rule corrected this oversight and exempted vessels participating in the Eastern U.S./Canada Area Haddock SAP from the GB Seasonal Closure Area (December 27, 2005; 70 FR 76422). Both the April 13, 2006, emergency rule and the FW 42 final rule adjusted the start date of the Eastern U.S./Canada Haddock SAP from May 1 to August 1 of each fishing year. As a result, an exemption from the GB Seasonal Closure Area is no longer necessary for vessels participating in that SAP. Therefore, this action would remove the exemption at § 648.81(g)(2)(iv).

### 6. DAS Leasing Program Application Requirements

The final rule implementing Amendment 13 established the DAS Leasing Program. This program allows vessels to temporarily exchange Category A DAS on a yearly basis, provided participating vessels submit an application to lease DAS and the Regional Administrator approves the lease request. The FW 42 final rule

revised the introductory text of the DAS Leasing Program regulations at § 648.82(k)(3). However, through an oversight in the regulatory text for that rule, the regulations at § 648.82(k)(3)(i) through (iii) were inadvertently removed. These regulations include the DAS Leasing Program application requirements and the authority of the Regional Administrator to approve or disapprove DAS leasing applications. These provisions are necessary to effectively administer the DAS Leasing Program. Therefore, this action would reinsert the provisions at § 648.82(k)(3)(i) through (iii) that were inadvertently removed.

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

For vessels required to use VMS, the current regulations specify the minimum VMS positional polling rate. Vessels are responsible for paying for such VMS positional polls. When the Council adopted measures to include in Amendment 13, the Council did not specify a particular VMS positional polling rate that vessels would be responsible for paying for while fishing in the U.S./Canada Management Area. However, the Amendment 13 final rule indicated that a vessel participating in the U.S./Canada Management Area would be subject to a minimum VMS position polling rate of two polls per hour at the vessel's expense. NMFS, under the authority provided in section 305(d) of the Magnuson-Stevens Act, included this increased polling rate with the intent to facilitate and enhance the enforcement of area-specific management provisions. While NMFS can request a vendor to temporarily increase the VMS positional polling rate on individual vessels in any fishery at the Agency's expense to facilitate enforcement operations, to date, NMFS has not imposed the higher VMS positional polling rate on individual NE multispecies trips into the U.S./Canada Management Area, which would be at a participating vessel's expense, due to technical limitations.

Since implementing this requirement for vessels to pay for an increased polling frequency, NMFS has determined that such a measure should originate with the Council, similar to the way the Council adopted the requirement for vessels to pay for a polling rate of two VMS positional polls per hour for vessels participating in the Atlantic sea scallop fishery. The VMS positional polling rate for which all other vessels using VMS are required to pay for is one positional poll per hour. Because the Council did not specifically recommend that NE multispecies

vessels must pay for a higher VMS polling rate while fishing in the U.S./Canada Management Area, NMFS has decided to remove the increased VMS positional polling rate applicable to NE multispecies vessels. Therefore, this action would remove references to an increased VMS positional polling rate for vessels participating in the U.S./Canada Management Area from the regulations at §§ 648.9(c)(1)(ii), 648.10(b)(2)(iii), and 648.85(a)(3)(i).

#### 8. Haddock Total Allowable Catch (TAC) in the Closed Area (CA) I Hook Gear Haddock SAP

The CA I Hook Gear Haddock SAP was first implemented by the FW 40–A final rule, but was later modified by the rule implementing measures approved under FW 41 to the FMP (September 14, 2005; 70 FR 54302). The FW 41 final rule split the SAP into two seasons (one season for vessels participating in an approved Sector and another season for non-Sector vessels), with the haddock TAC distributed accordingly. The FW 42 final rule further modified the manner in which the haddock TAC for this SAP is calculated, but did not revise the season or the distribution of the haddock TAC. The regulations implemented by the FW 42 final rule included revisions to the manner in which the haddock TAC is calculated, but inadvertently omitted the provisions that distributed the haddock TAC among the two seasons, including the authority of the Regional Administrator to adjust the quota to each season to account for under- or over-harvest of the haddock TAC during the first season of the SAP. Accordingly, the current regulations do not accurately reflect the provisions adopted by the Council and implemented under the FW 41 final rule. These provisions are necessary to administer this SAP effectively. Therefore, this action would revise the regulations at § 648.85(b)(7)(iv)(F) to reinsert the FW 41 provisions that were inadvertently removed.

#### 9. White Hake Trip Limits

Early in the development of FW 42, the Council considered adopting a 500–lb (226.8–kg) per DAS, up to 5,000–lb (2,268–kg) per trip, limit for white hake. In order to implement the trip limits as soon as possible while FW 42 was still being developed, NMFS implemented an emergency rule establishing these trip limits. Subsequently, the Council adopted a white hake trip limit of 1,000 lb (453.6 kg) per DAS, up to 10,000 lb (4,536 kg) per trip in FW 42. The emergency rule was modified on April 28, 2006 (71 FR 25094) to reflect the white hake trip limit adopted by the

Council in FW 42. However, both the FW 42 proposed and final rules inadvertently included the lower white hake trip limit included in the original emergency final rule. Therefore, this action would correct the white hake trip limit found at § 648.86(e) to accurately reflect the white hake trip limit adopted by the Council in FW 42.

#### 10. Approval of Sector Applications

The procedure to review and approve sector allocations was first established through the Amendment 13 final rule. Although the SEIS prepared to support Amendment 13 did not specifically direct NMFS to publish a proposed rule when reviewing sector applications and operations plans, the Amendment 13 final rule included language that required NMFS to seek public comment on proposed sector operations plans through the publication of a proposed rule in the *Federal Register*. The Administrative Procedure Act (APA) allows agencies to waive the requirement to publish a proposed rule and to provide for public comment in limited circumstances. However, because the current regulations require NMFS to develop a proposed rule for each sector, NMFS must publish a proposed rule for sectors and does not have the ability to take advantage of the provision in the APA that allows the Assistant Administrator to waive proposed rulemaking should circumstances allow. Based upon the existing procedures and associated time lines, the requirement to develop a proposed rule may be too inflexible and can unnecessarily delay the start of proposed sector operations beyond the start of the fishing year on May 1. This can create unnecessary adverse economic and social impacts for sector participants, especially if the sector operations plans do not change between fishing years. Therefore, this action would revise the existing sector approval regulations at § 648.87(c)(1) and (2) by removing the requirement to develop a proposed rule, but indicating that sectors would be approved consistent with applicable law.

#### 11. Recreational Fish Size Restrictions

Although minimum fish size restrictions have been implemented since the initial development of the FMP, the final rule implementing measures approved under Amendment 5 (March 1, 1994; 59 FR 9872) specified that the minimum fish sizes also apply to any fish or part of a fish, including fillets. The Amendment 5 SEIS indicates that fish or fish parts must have the skin on for the purposes of identification to facilitate enforcement of the minimum

size provisions. The SEIS only provides one exception to this requirement, allowing commercial vessels to retain up to 25 lb (11.3 kg) of fillets of legal-sized fish for personal consumption. While not explicitly indicated, the intent of the skin-on provision applies to groundfish caught by any vessel—commercial, charter/party, or private recreational vessel.

The regulations implemented by the Amendment 5 final rule clearly outline the minimum fish size provisions for commercial vessels at § 648.83, including the skin-on provision in paragraph (a)(2) of that section. However, the recreational minimum fish size requirements at § 648.89 do not specifically include the skin-on provision. Because the charter/party regulations at § 648.89 do not specifically indicate that the skin-on provisions applies to such vessels, this action would add the skin-on provision outlined at § 648.83(a)(2) at § 648.89(b)(4).

#### 12. Additional Corrections

In addition to the changes specified above, the following changes to the regulations as amended by the final rule implementing FW 42 are proposed to correct inaccurate references and to further clarify the intent of FW 42 and previous actions. The changes listed below are in the order in which they appear in the regulations.

In § 648.4(c)(2)(iii)(A), the reference to the annual designation as either a Day or Trip gillnet vessel at “§ 648.82(k)” would be corrected to read “§ 648.82(j).”

In § 648.14, the reference to “§ 648.81(d)” in paragraph (a)(38) would be corrected to reference the transiting provision at § 648.81(i); the reference to “§ 648.81(b)(2)(i)” in paragraph (a)(39) would be corrected to reference the transiting provision at § 648.81(i); the reference to “§ 648.51(a)(2)(ii) and (e)(2)” in paragraph (a)(53) would be corrected to reference the gear stowage provisions at § 648.23(b); the reference to “§ 648.85(b)(6)” in paragraph (a)(153) would be corrected to read “§ 648.85(b)(4);” the reference to “§ 648.86(g)(1)(i) or (g)(2)(i)” in paragraph (b)(3) would be revised to read “§ 648.86(g)(1),” as § 648.86(g)(1)(i) and (g)(2) expired when the April 13, 2006, emergency rule (71 FR 19348) was superseded by the FW 42 final rule; the reference to “§ 648.86(g)(1)(i) or (g)(2)(i)” and “§ 648.81(g)(1)(ii) and (g)(2)(ii)” in paragraph (b)(4) would be corrected to read “§ 648.86(g)(1),” as § 648.86(g)(1)(i) and (g)(2) expired when the April 13, 2006, emergency rule was superseded by the FW 42 final rule; the

reference to “§ 648.86(b)(1)(i)” in paragraph (c)(24) would be corrected to read “§ 648.86(b)(1);” and the reference to “§ 648.86(b)(2)(ii) or (iii)” in paragraph (c)(26) would be corrected to read “§ 648.86(b)(2).”

In § 648.80(b)(2)(vi), the reference to “(a)(11)(i)(A) and (B)” in the introductory text would be corrected to read “(b)(11)(i)(A) and (B).”

In § 648.82(e)(1), the reference to “§ 648.10(c)(5)” would be corrected to read “§ 648.10.”

In § 648.85, the reference to “§ 648.94(b)(7)” in paragraph (b)(6)(iv)(D) would be revised to read “§ 648.94(b)(3),” as § 648.94(b)(7) expired when the April 13, 2006, emergency rule was superceded by the FW 42 final rule; and the references to “§ 648.85(b)(7)(iv)(G)” in paragraph (b)(7)(iii), (b)(7)(v)(D), and (b)(7)(vi)(D) would be corrected to read “§ 648.85(b)(7)(iv)(F),” as § 648.85(b)(7)(iv)(G) expired when the April 13, 2006, emergency rule was superceded by the FW 42 final rule. In addition, reference to specific stock areas at § 648.85(b)(6)(v) would be added to § 648.85(b)(6)(iv)(D) to clarify that the landing limits specified in this paragraph apply to particular stock areas. Further, reference to § 648.10 would be inserted at § 648.85(b)(7)(iv)(A) to clarify how DAS would be counted in the Closed Area I Hook Gear Haddock SAP. Finally, § 648.85(b)(7)(vi)(G) through (I) would be removed, as these paragraphs were included in the April 13, 2006, emergency rule and expired when that rule was superceded by the FW 42 final rule.

In § 648.86(i), the references to “§ 648.85(a)(3)(iv)” and “§ 648.85(a)(6)(iv)(D)” would be corrected to read “§ 648.85.”

In § 648.92, paragraph (b)(2)(iii) would be deleted, as this repeats the regulations at § 648.92(b)(2)(ii) and is not necessary.

#### Classification

Pursuant to sections 304 (b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the Assistant Administrator for fisheries, NOAA, 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 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. The factual basis for this determination is as follows:

The proposed allocation would correct/clarify the existing regulations to ensure that the current regulations accurately reflect measures adopted by the New England Fishery Management Council and approved by the Secretary of Commerce. This action would ensure that the economic impacts analyzed in previous actions would be realized, but would not impose any additional economic impacts on affected entities. The proposed action would not significantly reduce profit for affected vessels, as the proposed measures are either administrative in nature and would not affect vessel operations, or would have no economic impact beyond that previously analyzed. For example, FW 42 indicated that declarations of a vessel's intended activity via VMS prior to each trip would cost groundfish vessels approximately \$0.50 per declaration, or about \$15,000 per year. In addition, Amendment 13 indicated that the U.S./Canada Management Area gear requirements would cost participating vessels \$7,500 for a modified flounder net, or \$747 to comply with the haddock separator trawl requirement. This action would simply clarify or reinstate such requirements, respectively, but would not increase costs associated with these measures. Other measures corrected or clarified by this action would ensure that unnecessary costs, such as the costs for higher VMS positional polling rates, are eliminated or that vessels would be able to fully realize the economic benefits of special management programs by correctly distributing the available haddock resources in the Closed Area I Hook Gear Haddock SAP.

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains a number of collection-of-information requirements subject to the Paperwork Reduction Act (PRA) which have been approved by OMB as follows:

1. VMS purchase and installation, OMB # 0648-0202, (1 hr/response);
2. VMS proof of installation, OMB # 0648-0202, (1 hr/response);
3. Automated VMS polling of vessel position, OMB # 0648-0202, (5 sec/response);
4. Area and DAS declarations via VMS, OMB # 0648-0549 (5 min/response);
5. Standardized catch reporting requirements, OMB # 0648-0212 (15 min/response);
6. Sector manager daily reports for CA I Hook Gear Haddock SAP, OMB # 0648-0212, (2 hr/response);
7. DAS Leasing Program application, OMB # 0648-0202, (5 min/response);
8. Annual declaration to participate in the CA I Hook Gear Haddock SAP, OMB # 0648-0202, (2 min/response);

9. Sector allocation proposal, OMB # 0648-0202, (50 hr/response); and

10. Sector operations plan submission, OMB # 0648-0202, (50 hr/response).

These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This action would not create new information collections or modify the response time associated with any of the information collection referenced above. Instead, this action would revise the regulations underlying these information collections to correct inadvertent errors, omissions, and ambiguities in the current regulations, as described in the preamble. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

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

Fisheries, Fishing, Recordkeeping and reporting.

Dated: October 11, 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 proposed to be 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 § 648.2, definitions for “lessee,” “lessor,” “transferee,” and “transferor” are added, in alphabetical order, to read as follows:

#### § 648.2 Definitions.

\* \* \* \* \*

*Lessee* means a vessel owner who receives temporarily transferred NE multispecies DAS from another vessel through the DAS Leasing Program specified at § 648.82(k).

*Lessor* means a vessel owner who temporarily transfers NE multispecies DAS to another vessel through the DAS

Leasing Program specified at § 648.82(k).

\* \* \* \* \*

Transferee means a vessel owner who receives permanently transferred NE multispecies DAS and potentially other permits from another vessel through the DAS Transfer Program specified at § 648.82(l).

Transferor means a vessel owner who permanently transfers NE multispecies DAS and potentially other permits to another vessel through the DAS Transfer Program specified at § 648.82(l).

\* \* \* \* \*

3. In § 648.4, paragraph (c)(2)(iii)(A) is revised to read as follows:

**§ 648.4 Vessel permits.**

\* \* \* \* \*

- (c) \* \* \*  
(2) \* \* \*  
(iii) \* \* \*

(A) For vessels fishing for NE multispecies with gillnet gear, with the exception of vessels fishing under the Small Vessel permit category, an annual declaration as either a Day or Trip gillnet vessel designation as described in § 648.82(j). A vessel owner electing a Day or Trip gillnet designation must indicate the number of gillnet tags that he/she is requesting, and must include a check for the cost of the tags. A permit holder letter will be sent to the owner of each eligible gillnet vessel, informing him/her of the costs associated with this tagging requirement and providing directions for obtaining tags. Once a vessel owner has elected this designation, he/she may not change the designation or fish under the other gillnet category for the remainder of the fishing year. Incomplete applications, as described in paragraph (e) of this section, will be considered incomplete for the purpose of obtaining authorization to fish in the NE multispecies gillnet fishery and will be processed without a gillnet authorization.

\* \* \* \* \*

**§ 648.9 [Amended]**

4. In § 648.9, remove and reserve paragraph (c)(1)(ii).

5. In § 648.10, the introductory text of paragraph (b)(2), and paragraph (b)(2)(iii) are revised; and paragraph (b)(5) is added to read as follows:

**§ 648.10 DAS and VMS notification requirements.**

\* \* \* \* \*

- (b) \* \* \*

(2) The owner of such a vessel specified in paragraph (b)(1) of this section, with the exception of a vessel issued a limited access NE multispecies

permit as specified in paragraph (b)(1)(vi) of this section, must provide documentation to the Regional Administrator at the time of application for a limited access permit that the vessel has an operational VMS unit installed on board that meets the minimum performance criteria, unless otherwise allowed under this paragraph (b). If a vessel has already been issued a limited access permit without the owner providing such documentation, the Regional Administrator shall allow at least 30 days for the vessel to install an operational VMS unit that meets the criteria and for the owner to provide documentation of such installation to the Regional Administrator. The owner of a vessel issued a limited access NE multispecies permit that fishes or intends to fish under a Category A or B DAS as specified in paragraph (b)(1)(vi) of this section must provide documentation to the Regional Administrator that the vessel has an operational VMS unit installed on board that meets those criteria prior to fishing under a groundfish DAS. NMFS shall send letters to all affected permit holders providing detailed information on the procedures pertaining to VMS purchase, installation, and use.

\* \* \* \* \*

(iii) DAS counting for a vessel that is under the VMS notification requirements of this paragraph (b), with the exception of vessels that have elected to fish exclusively in the Eastern U.S./Canada Area on a particular trip, as described in this paragraph (b), begins with the first location signal received showing that the vessel crossed the VMS Demarcation Line after leaving port. DAS counting ends with the first location signal received showing that the vessel crossed the VMS Demarcation Line upon its return to port. For those vessels that have elected to fish exclusively in the Eastern U.S./Canada Area pursuant to § 648.85(a)(3)(ii), the requirements of this paragraph (b) begin with the first location signal received showing that the vessel crossed into the Eastern U.S./Canada Area and end with the first location signal received showing that the vessel crossed out of the Eastern U.S./Canada Area upon beginning its return trip to port, unless the vessel elects to also fish outside the Eastern U.S./Canada Area on the same trip, in accordance with § 648.85(a)(3)(ii)(A).

\* \* \* \* \*

(5) *VMS notification requirements for other fisheries.* Unless otherwise specified in this part, or via letters sent to affected permit holders under paragraph (b)(2) of this section, the

owner or authorized representative of a vessel that is required to use VMS, as specified in paragraph (b)(1) of this section, must notify the Regional Administrator of the vessel's intended fishing activity by entering the appropriate VMS code prior to leaving port at the start of each fishing trip. Notification of a vessel's intended fishing activity includes, but is not limited to, gear and DAS type to be used; area to be fished; and whether the vessel will be declared out of the DAS fishery, or will participate in the NE multispecies and monkfish DAS fisheries, including approved special management programs. A vessel cannot change any aspect of its VMS activity code outside of port, except that NE multispecies vessels are authorized to change the category of DAS used (i.e., flip its DAS), as provided at § 648.85(b), or change the area declared to be fished so that the vessel may fish both inside and outside of the Eastern U.S./Canada Area on the same trip, as provided at § 648.85(a)(3)(ii)(A). VMS activity codes and declaration instructions are available from the Regional Administrator upon request.

\* \* \* \* \*

6. In § 648.14, paragraphs (a)(35), (a)(38), (a)(39), (a)(43), (a)(53), (a)(153), (b)(3), (b)(4), (c)(24), and (c)(26) are revised and paragraph (a)(78) is added to read as follows:

**§ 648.14 Prohibitions.**

(a) \* \* \*

(35) Fish with, use, or have on board, within the areas described in § 648.80(a)(1) and (2), nets with mesh size smaller than the minimum mesh size specified in § 648.80(a)(3) and (4), except as provided in § 648.80(a)(5) through (8), (a)(9), (a)(10), (a)(15), (a)(16), (d), (e), and (i), unless the vessel has not been issued a NE multispecies permit and fishes for NE multispecies exclusively in state waters, or unless otherwise specified in § 648.17.

\* \* \* \* \*

(38) Enter or be in the area described in § 648.81(a)(1) on a fishing vessel, except as provided in § 648.81(a)(2) and (i).

(39) Enter or be in the area described in § 648.81(b)(1) on a fishing vessel, except as provided in § 648.81(b)(2) and (i).

\* \* \* \* \*

(43) Violate any of the provisions of § 648.80, including paragraphs (a)(5), the Small-mesh Northern Shrimp Fishery Exemption Area; (a)(6), the Cultivator Shoal Whiting Fishery Exemption Area; (a)(9), Small-mesh Area 1/Small-mesh Area 2; (a)(10), the

Nantucket Shoals Dogfish Fishery Exemption Area; (a)(11), the GOM Scallop Dredge Exemption Area; (a)(12), the Nantucket Shoals Mussel and Sea Urchin Dredge Exemption Area; (a)(13), the GOM/GB Monkfish Gillnet Exemption Area; (a)(14), the GOM/GB Dogfish Gillnet Exemption Area; (a)(15), the Raised Footrope Trawl Exempted Whiting Fishery; (a)(16) the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery; (a)(18), the Great South Channel Scallop Dredge Exemption Area; (b)(3), exemptions (small mesh); (b)(5); the SNE Monkfish and Skate Trawl Exemption Area; (b)(6), the SNE Monkfish and Skate Gillnet Exemption Area; (b)(8), the SNE Mussel and Sea Urchin Dredge Exemption Area; (b)(9), the SNE Little Tunny Gillnet Exemption Area; and (b)(11), the SNE Scallop Dredge Exemption Area. Each violation of any provision in § 648.80 constitutes a separate violation.

\* \* \* \* \*

(53) Possess, land, or fish for regulated species, except winter flounder as provided for in accordance with § 648.80(i) from or within the areas described in § 648.80(i), while in possession of scallop dredge gear on a vessel not fishing under the scallop DAS program as described in § 648.53, or fishing under a general scallop permit, unless the vessel and the dredge gear conform with the stowage requirements of § 648.23(b), or unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters.

\* \* \* \* \*

(78) Violate any provision of an in-season action to adjust trip limits, gear usage, season, area access and/or closure, or any other measure authorized by this part.

\* \* \* \* \*

(153) If fishing under the SNE/MA Winter Flounder SAP, described in § 648.85(b)(4), fail to comply with the restrictions and conditions under § 648.85(b)(4)(i) through (iv).

\* \* \* \* \*

(b) \* \* \*

(3) While fishing in the areas specified in § 648.86(g)(1), with a NE multispecies Handgear A permit, or under the NE multispecies DAS program, or under the limited access monkfish Category C or D permit provisions, possess yellowtail flounder in excess of the limits specified under § 648.86(g)(1), unless fishing under the recreational or charter/party regulations, or transiting in accordance with § 648.23(b).

(4) If fishing in the areas specified in § 648.86(g)(1) with a NE multispecies

Handgear A permit, or under the NE multispecies DAS program, or under the limited access monkfish Category C or D permit provisions, fail to comply with the requirements specified in § 648.81(g)(1).

(c) \* \* \*

(24) Enter port, while on a NE multispecies DAS trip, in possession of more than the allowable limit of cod specified in § 648.86(b)(1), unless the vessel is fishing under the cod exemption specified in § 648.86(b)(4).

\* \* \* \* \*

(26) Enter port, while on a NE multispecies DAS trip, in possession of more than the allowable limit of cod specified in § 648.86(b)(2).

\* \* \* \* \*

7. In § 648.80, paragraph (b)(2)(vi) is revised to read as follows:

**§ 648.80 NE multispecies regulated mesh areas and restrictions on gear and methods of fishing.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(vi) *Other restrictions and exemptions.* Vessels are prohibited from fishing in the SNE Exemption Area, as defined in paragraph (b)(10) of this section, except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (b)(3), (b)(5) through (9), (b)(11), (c), (e), (h), and (i) of this section, or if fishing under a NE multispecies DAS, if fishing under the Small Vessel or Handgear A exemptions specified in § 648.82(b)(5) and (b)(6), respectively, or if fishing under a scallop state waters exemption specified in § 648.54, or if fishing under a scallop DAS in accordance with paragraph (h) of this section, or if fishing under a General Category scallop permit in accordance with paragraphs (b)(11)(i)(A) and (B) of this section, or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit, or if fishing as a charter/party or private recreational vessel in compliance with the regulations specified in § 648.89. Any gear on a vessel, or used by a vessel, in this area must be authorized under one of these exemptions or must be stowed as specified in § 648.23(b).

\* \* \* \* \*

**§ 648.81 [Amended]**

8. In § 648.81, remove paragraph (g)(2)(iv).

9. In § 648.82, paragraph (e)(1) is revised and paragraphs (k)(3)(i) through (iii) are added to read as follows:

**§ 648.82 Effort-control program for NE multispecies limited access vessels.**

\* \* \* \* \*

(e) \* \* \*

(1) DAS shall accrue to the nearest minute and, with the exceptions described under this paragraph (e) and paragraph (j)(1)(iii) of this section, shall be counted as actual time called, or logged into the DAS program, consistent with the DAS notification requirements specified at § 648.10.

\* \* \* \* \*

(k) \* \* \*

(3) \* \* \*

(i) *Application information requirements.* An application to lease Category A DAS must contain the following information: Lessor's owner name, vessel name, permit number and official number or state registration number; Lessee's owner name, vessel name, permit number and official number or state registration number; number of NE multispecies DAS to be leased; total priced paid for leased DAS; signatures of Lessor and Lessee; and date form was completed. Information obtained from the lease application will be held confidential, according to applicable Federal law. Aggregate data may be used in the analysis of the DAS Leasing Program.

(ii) *Approval of lease application.* Unless an application to lease Category A DAS is denied according to paragraph (k)(3)(iii) of this section, the Regional Administrator shall issue confirmation of application approval to both Lessor and Lessee within 45 days of receipt of an application.

(iii) *Denial of lease application.* The Regional Administrator may deny an application to lease Category A DAS for any of the following reasons, including, but not limited to: The application is incomplete or submitted past the March 1 deadline; the Lessor or Lessee has not been issued a valid limited access NE multispecies permit or is otherwise not eligible; the Lessor's or Lessee's DAS are under sanction pursuant to an enforcement proceeding; the Lessor's or Lessee's vessel is prohibited from fishing; the Lessor's or Lessee's limited access NE multispecies permit is sanctioned pursuant to an enforcement proceeding; the Lessor or Lessee vessel is determined not in compliance with the conditions, restrictions, and requirements of this part; or the Lessor has an insufficient number of allocated or unused DAS available to lease. Upon denial of an application to lease NE multispecies DAS, the Regional Administrator shall send a letter to the applicants describing the reason(s) for application rejection. The decision by

the Regional Administrator is the final agency decision.

\* \* \* \* \*

10. In § 648.85, paragraphs (b)(7)(vi)(G) through (I) are removed, and paragraphs (a)(3)(i), (b)(6)(iv)(D), (b)(7)(iii), (b)(7)(iv)(A) and (F), (b)(7)(v)(D), and (b)(7)(vi)(D) are revised to read as follows:

**§ 648.85 Special management programs.**

(a) \* \* \*

(3) \* \* \*

(i) *VMS requirement.* A NE multispecies DAS vessel in the U.S./Canada Management Areas described in paragraph (a)(1) of this section must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

\* \* \* \* \*

(b) \* \* \*

(6) \* \* \*

(iv) \* \* \*

(D) *Landing limits.* Unless otherwise specified in this paragraph (b)(6)(iv)(D), a NE multispecies vessel fishing in the Regular B DAS Program described in this paragraph (b)(6), and fishing under a Regular B DAS, may not land more than 100 lb (45.5 kg) per DAS, or any part of a DAS, up to a maximum of 1,000 lb (454 kg) per trip, of any of the following species/stocks from the areas specified in paragraph (b)(6)(v) of this section: Cod, American plaice, white hake, witch flounder, SNE/MA winter flounder, GB winter flounder, GB yellowtail flounder, southern windowpane flounder, and ocean pout; and may not land more than 25 lb (11.3 kg) per DAS, or any part of a DAS, up to a maximum of 250 lb (113 kg) per trip of CC/GOM or SNE/MA yellowtail flounder. In addition, trawl vessels, which are required to fish with a haddock separator trawl as specified under paragraph (b)(6)(iv)(j) of this section, and other gear that may be required in order to reduce catches of stocks of concern as described under paragraph (b)(6)(iv)(j) of this section, are restricted to the following trip limits: 500 lb (227 kg) of all flatfish species (American plaice, witch flounder, winter flounder, windowpane flounder, and GB yellowtail flounder), combined; 500 lb (227 kg) of monkfish (whole weight); 500 lb (227 kg) of skates (whole weight); and zero possession of lobsters, unless otherwise restricted by § 648.94(b)(3).

\* \* \* \* \*

(7) \* \* \*

(iii) *Season.* The overall season for the CA I Hook Gear Haddock SAP is October 1 through December 31, which

is divided into two participation periods, one for Sector and one for non-Sector vessels. For the 2005 fishing year, the only participation period in which eligible Sector vessels may fish in the CA I Hook Gear Haddock SAP is from October 1 through November 15. For the 2005 fishing year, the only participation period in which eligible non-Sector vessels may fish in the SAP is from November 16 through December 31. For the 2006 fishing year and beyond, these participation periods shall alternate between Sector and non-Sector vessels such that, in fishing year 2006, the participation period for non-Sector vessels is October 1 through November 15, and the participation period for Sector vessels is November 16 through December 31. The Regional Administrator may adjust the start date of the second participation period prior to November 16 if the haddock TAC for the first participation period specified in paragraph (b)(7)(iv)(F) of this section is harvested prior to November 15.

(iv) \* \* \*

(A) *DAS use restrictions.* A vessel fishing in the CA I Hook Gear Haddock SAP may not initiate a DAS flip. A vessel is prohibited from fishing in the CA I Hook Gear Haddock SAP while making a trip under the Regular B DAS Pilot Program described under paragraph (b)(6) of this section. DAS will be charged as described in § 648.10.

\* \* \* \* \*

(F) *Haddock TAC—(1) Allocation and distribution.* The maximum total amount of haddock that may be caught (landings and discards) in the Closed Area I Hook Gear SAP Area in any fishing year is based upon the size of the TAC allocated for the 2004 fishing year (1,130 mt live weight), adjusted according to the growth or decline of the western GB (WGB) haddock exploitable biomass (in relationship to its size in 2004), according to the following formula:  $\text{Biomass}_{\text{YEAR } X} = (1,130 \text{ mt live weight}) \times (\text{Projected WGB Haddock Exploitable Biomass}_{\text{YEAR } X} / \text{WGB Haddock Exploitable Biomass}_{2004})$ . The size of the western component of the stock is considered to be 35 percent of the total stock size, unless modified by a stock assessment. The maximum amount of haddock that may be caught in this SAP during each fishing year is divided evenly between the two participation periods of October 1 - November 15 and November 16 - December 31, as specified in paragraph (b)(7)(iii) of this section. The Regional Administrator shall specify the haddock TAC for the SAP, in a manner consistent with applicable law.

(2) *Adjustments to the haddock TAC.* The Regional Administrator may adjust the portion of the haddock TAC specified for the second participation period to account for under- or over-harvest of the portion of the haddock TAC (landings and discards) that was harvested during the first participation period, not to exceed the overall haddock TAC specified in this paragraph (b)(7)(iv)(F).

\* \* \* \* \*

(v) \* \* \*

(D) *Reporting requirements.* The owner or operator of a Sector vessel declared into the Closed Area I Hook Gear Haddock SAP must submit reports to the Sector Manager, with instructions to be provided by the Sector Manager, for each day fished in the Closed Area I Hook Gear Haddock SAP Area. The Sector Manager shall provide daily reports to NMFS, including at least the following information: Total pounds of haddock, cod, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake kept; total pounds of haddock, cod, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake discarded; date fish were caught; and VTR serial number, as instructed by the Regional Administrator. Daily reporting must continue even if the vessel operator is required to exit the SAP as required under paragraph (b)(7)(iv)(F) of this section.

\* \* \* \* \*

(vi) \* \* \*

(D) *Reporting requirements.* The owner or operator of a non-Sector vessel declared into the Closed Area I Hook Gear Haddock SAP must submit reports via VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished in the Closed Area I Hook Gear Haddock SAP Area. The reports must be submitted in 24-hr intervals for each day fished, beginning at 0000 hr local time and ending at 2400 hr local time. The reports must be submitted by 0900 hr local time of the day following fishing. The reports must include at least the following information: Total pounds of haddock, cod, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake kept; total pounds of haddock, cod, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake discarded; date fish were caught; and VTR serial number, as instructed by the Regional Administrator. Daily reporting must continue even if the vessel operator is required to exit the SAP as required

under paragraph (b)(7)(iv)(F) of this section.

\* \* \* \* \*

11. In § 648.86, paragraphs (e) and (i) are revised to read as follows:

**§ 648.86 NE Multispecies possession restrictions.**

\* \* \* \* \*

(e) *White hake*. Unless otherwise restricted under this part, a vessel issued a NE multispecies DAS permit, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions may land up to 1,000 lb (453.6 kg) of white hake per DAS, or any part of a DAS, up to 10,000 lb (4,536 kg) per trip.

\* \* \* \* \*

(i) *Offloading requirement for vessels possessing species regulated by a daily possession limit*. Vessels that have ended a trip as specified in § 648.10(b)(2)(iii) or (c)(3) that possess on board species regulated by a daily possession limit (i.e., pounds per DAS), as specified at § 648.85 or § 648.86, must offload these species prior to leaving port on a subsequent trip. Other species regulated by an overall trip limit may be retained on board for a subsequent trip. For example, a vessel that possesses cod and winter flounder harvested from Georges Bank is subject to a daily possession limit for cod of 1,000 lb (453 kg)/DAS and an overall trip limit of 5,000 lb (2,267 kg)/trip for winter flounder. In this example, the vessel would be required to offload any cod harvested, but may retain on board winter flounder up to the maximum trip limit prior to leaving port and crossing the VMS demarcation line to begin a subsequent trip.

\* \* \* \* \*

12. In § 648.87, paragraphs (b)(1)(ix), (b)(1)(xv) and (xvi), (b)(2)(x), and (c) are revised to read as follows:

**§ 648.87 Sector allocation.**

\* \* \* \* \*

- (b) \* \* \*
- (1) \* \* \*

(ix) Unless exempted through a Letter of Authorization specified in paragraph (c)(2) of this section, each vessel operator and/or vessel owner fishing under an approved Sector must comply with all NE multispecies management measures of this part and other applicable law. Each vessel and vessel operator and/or vessel owner participating in a Sector must also comply with all applicable requirements and conditions of the Operating Plan specified in paragraph (b)(2) of this section and the Letter of Authorization

issued pursuant to paragraph (c)(2) of this section. It shall be unlawful to violate any such conditions and requirements and each Sector, vessel, and vessel operator and/or vessel owner participating in the Sector may be charged jointly and severally for civil penalties and permit sanctions pursuant to 15 CFR part 904.

\* \* \* \* \*

(xv) All vessel operators and/or vessel owners fishing in an approved Sector must be issued and have on board the vessel, a Letter of Authorization (LOA) issued by the National Marine Fisheries Service pursuant to paragraph (c)(2) of this section.

(xvi) The Regional Administrator may exempt participants in the Sector, pursuant to paragraph (c)(2) of this section, from any Federal fishing regulations necessary to allow such participants to fish in accordance with the Operations Plan, with the exception of regulations addressing the following measures for Sectors based on a hard TAC: Year-round closure areas, permitting restrictions (e.g., vessel upgrades, etc.), gear restrictions designed to minimize habitat impacts (e.g., roller gear restrictions, etc.), and reporting requirements (not including DAS reporting requirements). A framework adjustment, as specified in § 648.90, may be submitted to exempt Sector participants from regulations not authorized to be exempted pursuant to paragraph (c)(2) of this section.

\* \* \* \* \*

(2) \* \* \*

(x) Each vessel and vessel operator and/or vessel owner participating in a Sector must comply with all applicable requirements and conditions of the Operations Plan specified in this paragraph (b)(2) and the Letter of Authorization issued pursuant to paragraph (c)(2) of this section. It shall be unlawful to violate any such conditions and requirements unless such conditions or restrictions are identified as administrative only in an approved Operations Plan. Each Sector, vessel, and vessel operator and/or vessel owner participating in the Sector may be charged jointly and severally for civil penalties and permit sanctions pursuant to 15 CFR part 904.

(c) *Approval of a Sector and granting of exemptions by the Regional Administrator*. (1) Once the submission documents specified under paragraphs (a)(1) and (b)(2) of this section have been determined to comply with the requirements of this section, NMFS may consult with the Council and shall approve or disapprove Sector operations consistent with applicable law.

(2) If a Sector is approved, the Regional Administrator shall issue a Letter of Authorization to each vessel operator and/or vessel owner belonging to the Sector. The Letter of Authorization shall authorize participation in the Sector operations and may exempt participating vessels from any Federal fishing regulation, except those specified in paragraph (b)(1)(xvi) of this section, in order to allow vessels to fish in accordance with an approved Operations Plan, provided such exemptions are consistent with the goals and objectives of the NE Multispecies FMP. The Letter of Authorization may also include requirements and conditions deemed necessary to ensure effective administration of, and compliance with, the Operations Plan and the Sector allocation. Solicitation of public comment on, and NMFS final determination on such exemptions shall be consistent with paragraphs (c)(1) and (2) of this section.

(3) The Regional Administrator may withdraw approval of a Sector, after consultation with the Council, at any time if it is determined that Sector participants are not complying with the requirements of an approved Operations Plan or that the continuation of the Operations Plan will undermine achievement of fishing mortality objectives of the NE Multispecies FMP. Withdrawal of approval of a Sector may only be done after notice and comment rulemaking consistent with applicable law.

\* \* \* \* \*

13. In § 648.89, paragraph (b)(4) is added to read as follows:

**§ 648.89 Recreational and charter/party vessel restrictions.**

\* \* \* \* \*

(b) \* \* \*

(4) The minimum fish size applies to whole fish or to any part of a fish while possessed on board either a charter/party or a private recreational vessel. Fish fillets, or parts of fish, must have skin on while possessed on board a vessel and at the time of landing in order to meet minimum size requirements. "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.

\* \* \* \* \*

**§ 648.92 [Amended]**

14. In § 648.92, remove paragraph (b)(2)(iii).

