

NEW ENGLAND FISHERY MANAGEMENT COUNCIL

Enforcement

I. STATUS

The Enforcement Committee met on April 3, 2008 to discuss the running clock and sector enforcement issues.

II. COUNCIL ACTION

The Council may receive recommendations with respect to the running clock and sector enforcement.

III. INFORMATION

1. Committee recommendations from April 3, 2008
2. Enforcement Analysis, Groundfish Amendment 13
3. Background Material for April 3rd VMS/Enforcement Committee
4. Coast Guard, Advance notice of proposed rulemaking, 73FR62, concerning Commercial Fishing Industry Vessel regulations to enhance maritime safety
5. Miss Sonya captain: Fishing 'harder than it's got to be', Gloucester Daily Times, March 29, 2008
6. Correspondence



#2

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*

**Enforcement Analysis
GROUNDFISH AMENMENT 13**

**Sector Management - Pages 837 & 841-842
Running Clock – Pages 838, 840**

5.5 Enforcement Analysis

The following general enforcement comments and concerns are based on the specific alternatives in draft Amendment 13 to the Northeast Multispecies FMP. These comments have not been updated based on the proposed action to achieve rebuilding objectives. The proposed action, however, adopts many of the same measures that were considered in Alternative 1. Specific comments from enforcement on the alternatives are now annotated with the proposed action.

Closed area enforcement issues remain the same. These areas must be clearly defined with limited access to the areas in order to allow for efficient and effective offshore enforcement. Ample notice and well defined rules and restrictions must be in place for successful closed area enforcement.

Possession limits do not present any new enforcement concerns although can be manpower intensive in general. Vessels fishing in specific areas with restrictions on possession limits can be monitored more effectively through the use of VMS.

Gear restrictions are enforceable at-sea when they are clearly defined and limit the use of gear with net stowage requirements and other measures remaining in place. Gear restrictions should be written to encompass dockside enforcement.

Minimum fish size can be manpower intensive. No new enforcement concerns.

Special access programs which allow certain vessels in closed areas needs to be closely monitored. VMS would be an extremely important enforcement monitoring tool for any special access programs. The NOAA Fisheries Office for Law Enforcement (OLE) recommends the issuance of a special authorization letter that defines the requirements and restrictions for special access programs. In order to maximize enforcement, NMFS Law Enforcement suggests vessels should not be allowed to fish in any other areas while operating under a special access trip.

Area management measures also pose enforcement concerns when vessels are allowed to fish in multiple areas. NMFS Law Enforcement recommends vessels who elect to fish in a particular area, should fish in that area for the entire trip. A vessel must declare its intention to fish in a particular area prior to sailing on that trip. From the enforcement perspective, VMS would be an extremely valuable enforcement tool in any area management scheme.

Sector management poses certain enforcement and legal concerns. In general, NMFS Law Enforcement does not support sector management, however, more details are required to make an informed decision.

TAC monitoring under sector and area management alternatives requires and assumes that daily electronic dealer reporting will take place. If TACs are area specific, this proposal would require monitoring of every vessel's activity to ensure they are fishing in the specified area. To successfully accomplish the monitoring, enforcement recommends mandatory VMS on all vessels involved in this fishery.

Recreational measures need to be consistent across the board in the recreational fishery. Same bag limits/possession limits for recreational and head/charter boats.

Experimental fisheries should be limited with clearly defined restrictions and limitations that are enforceable.

DAS leasing may pose significant enforcement concerns due to the burden of administrative tracking. Program requirements must be clearly identified with an adequate administrative process in place prior to implementation.

Running clocks can only be enforced with dockside presence. NMFS Law Enforcement does not support the use of running clocks.

5.5.1 Fishery Administration

This section addresses topics material to the management of the multispecies fishery.

5.5.1.1 Fishing Year

Altering the fishing year as described in this section does not present any enforcement concerns. For purposes of enforcement, fishing years should be consistent among all fishery management plans.

The fishing year is not being changed.

5.5.1.2 DAS Pro-Ration

This alternative provides two options concerning the proration of DAS. The options focus on how DAS will be adjusted if the fishing year is changed and/or if the management measures for Amendment 13 are implemented during the ongoing fishing year. DAS proration is not an enforcement issue as currently described in this alternative and poses no new enforcement concerns. NMFS Law Enforcement strongly suggests advanced notification to industry and enforcement regarding new DAS allocations.

DAS pro-ration has not been adopted.

5.5.1.3 U.S./Canada Resource Sharing Understanding

A significant problem is that the US/CA area is around CA II, where there could be a separate TAC for these two areas. Access options, some mutually exclusive, are many and yet to be determined, including: declaration, one area versus several areas, VMS or sign-in program, DAS not counted or counted 2 for 1 or 3 for 1.

It is the consensus of the Enforcement committee that VMS should be required.

The proposed action adopts A VMS requirement for fishing in the US/CA area.

5.5.1.4 Special Access Programs

This section proposes a general program which would allow fishing for a specific stock or stocks which may be permitted based on gear used, techniques, DAS adjustments, specific area(s), specific stocks or any other parameters which could be developed to allow a specific fishery.

NMFS Law Enforcement reserves comment until specific measures are identified for the special access program. The NMFS Law Enforcement issues raised in 5.5.1.4.1(Georges Bank Yellowtail Flounder Access Program), 5.5.1.5(Closed Area Administration) and 5.5.3.2.4(Gear Restrictions) would also apply to this section.

5.5.1.4.1 Georges Bank Yellowtail Flounder Access Program

This measure would allow fishing vessels to make two trips per month into a specific area of Closed Area II to fish for yellowtail flounder from June through December. Under this program vessels are restricted to 30,000 pounds of yellowtail flounder, must use VMS, do not start their DAS clock until they enter CA II unless they are fishing east of 69W on Georges Bank and are restricted to no more than one-fifth of the GB cod landing limit.

This measure is similar to the Sea Scallop Exemption Program, which allows vessels to fish in closed areas under specific conditions. Enforcement's recommendation on any consideration of allowing fishing in a closed area in the multispecies fishery should be modeled after the sea scallop exemption program. For instance, vessels would not be allowed to harvest yellowtail outside of the Exemption Area, must not enter or exit the Exemption Area more than once per trip and provide daily fishing reports through VMS. Additionally, vessels electing to fish in the Exemption Area would have a specific number of DAS subtracted from its DAS allocation. If the vessel exceeds the specific DAS, then DAS would be charged as actual time.

This scheme proposes allowing vessels to fish for other species; (i.e. GB cod) after leaving Closed Area II. Permitting vessels to fish in a closed area for a specific species, then exit the area and continue to fish for other species would pose considerable enforcement concerns. Distinguishing between fish (i.e. cod) caught in the exempted area or outside of the area is highly unlikely.

All limited access multispecies vessels intending to fish in this Exemption Program would be required to have a working VMS unit. Prior to fishing in the Exemption Program, each vessel should give advanced notification for each trip. Increasing the use of VMS would escalate enforcement resources requiring additional manpower for monitoring, system evaluation and investigative matters. As the demands and functions of VMS increase, so does the cost of the VMS unit.

The proposed action adopts a VMS requirement.

5.5.1.4.2 Southern New England/Mid-Atlantic Winter Flounder Incidental Catch Program

This alternative will allow a by-catch of 200 pounds of winter flounder while fishing for summer flounder west of 72-30W. The enforcement issues are similar to those previously described under area access programs. Enforcement of this management scheme are best achieved utilizing VMS and USCG surface patrols in conjunction with at-sea boardings. Dockside enforcement would be difficult without the usage of VMS tracking.

5.5.1.5 Closed Area Administration

Consideration of allowing additional gears into closed areas will "complicate enforcement of closed areas." Increasing the number of vessels allowed to fish in closed areas without VMS will compromise enforcement, whereas vessel identification and fishing activity will be difficult to monitor. Monitoring of the additional vessels would also expand resource needs of enforcement to effectively ensure vessels do not possess multispecies.

No changes are being made to the vessels allowed into closed areas with the exception of approved special access programs, all of which include a VMS requirement.

5.5.1.6 Leasing of DAS

This alternative proposes the leasing of DAS from one vessel to another. Allocation or DAS leasing (trading) is a current management scheme in the surf clam/ocean quahog fisheries and is authorized by NOAA/NMFS. Development of a DAS leasing alternative should incorporate the leasing/trading of allocation of the surf clam/ocean quahog system into the multispecies fishery.

Program requirements must be clearly identified with an adequate administrative process in place prior to implementation. At a bare minimum, leases would have to be arranged, documented and approved and ample notification provided to enforcement and fishermen, detailing each vessel's new DAS allocation prior to the upcoming fishing year.

5.5.1.6.1 Conservation Equivalency Alternatives

These alternatives propose varying methods of leasing and subleasing DAS between multispecies vessels. As described in these alternatives, these measures do not pose any concerns to enforcement other than, those detailed in 5.5.1.6.

5.5.1.6.2 Limitations on Number of DAS Leased

Enforcement issues regarding DAS leasing are addressed in 5.5.1.6 and are applicable to this proposal.

5.5.1.6.3 Permit History Revisions

This alternative does not present any new enforcement concerns.

5.5.1.7 Recreational Fishing Permit

This alternative proposes four options;

- (1) no federal permit required
- (2) possessing regulated multispecies in the EEZ requires a permit
- (3) fishing for regulated multispecies in the EEZ requires a permit
- (4) fishing for and possessing regulated multispecies in the EEZ requires a permit

This alternative does not present any new enforcement related concerns as currently written. Enforcement of this management scheme relies primarily on at-sea boardings. Dockside enforcement of recreational permits would be extremely difficult without the ability to determine where the vessel had fished.

Should recreational vessel operator permits and fishing vessel trip reports be required, these provisions would require an increase in enforcement resources in order to effectively monitor the recreational fleet and the new permit requirements.

The proposed action does not adopt a recreational fishing permit.

5.5.1.8 Running Clock Alternatives

Running clocks can only be enforced via a dockside presence. NMFS Law Enforcement does not support the use of running clocks.

NMFS Law Enforcement supports the use of an "Industry funded weighmaster."

Permitting vessels to land overages and continually altering DAS poses several enforcement concerns. Vessels participating in this program should be required to do so under an extended period of time.

The "Extended Modified Running Clock" or similar versions have not been a reliable and manageable method to determine DAS. In the past, individuals who landed overages simply called-out of the DAS program upon landing, when they believed enforcement was not around. They did not call the "cod hail line" and if gone undetected, the overage was not accounted for. This proposal is manpower intensive and enforcement is unlikely.

The proposed action does not change the modified running clock.

5.5.1.9 Observer Coverage

Increasing observer coverage does not present any specific enforcement concerns and provides additional methods of discard and by-catch reporting, as well as monitoring of fishing activity. An increase in the amount of observer coverage in other fishery management plans, has added instances requiring enforcement involvement.

5.5.1.10 Vessel Monitoring System Requirements

In conjunction with this measure, NMFS Law Enforcement is of the opinion that any potential cost savings may be offset by deactivation/reactivation charges by the vendor.

In an effort to maintain enforcement consistency in VMS requirements, NMFS Law Enforcement does not support allowing any VMS vessel to be at-sea without a working/active unit. NMFS Law Enforcement recommends modification of the measure to allow vessels to opt out of VMS only if the vessel is to remain in port or tied to the dock.

The proposed action does not allow a vessel to be at sea without an operable VMS. Cost savings for many vessel include not just communication costs, but the costs associated with running a generator to provide power to the VMS.

5.5.1.11 Day Gill Net Block Out of the Fishery

Removing all requirements to take blocks out of the multispecies fishery does not present any specific enforcement concerns. NMFS Law Enforcement supports this measure for purposes of decreased enforcement requirements.

The proposed action does not change the day gillnet block out requirements.

5.5.1.12 DAS Counting

This alternative does not present any new enforcement concerns. *The proposed action does not change DAS counting provisions.*

5.5.1.13 Reporting Requirements

These reporting requirements are described as “broad” alternatives and can only be addressed in a very general manner.

Daily electronic dealer reporting does not present any enforcement concerns as described in the scheme. Reporting through the DAS call-in system and a separate call-in number are addressed in 5.5.3.4.2.1 and are applicable.

5.5.1.14 Open Access Hand Gear-Only Permit Alternatives

These alternatives do not pose any new enforcement related concerns.

5.5.1.15 Sector Allocation

Sector allocations are described to be an “OPTION” and voluntary. This option is designed to augment the primary overall management program selected for Amendment 13.

5.5.1.15.1 Enforcement of Sector Provisions

Under this provision, the sector “is a legal entity that can be subject to NMFS enforcement action for violations of the regulations pertaining to sectors.” As written, the language regarding enforcement’s role is unclear. Enforcement recommends clear concise language detailing its responsibilities concerning “violations of regulations pertaining to sectors.”

From the enforcement perspective, this option is vague, convoluted and complex. Given the absence of a specific detailed plan, NMFS Law Enforcement does not support this alternative.

The proposed action adopts a sector allocation system.

5.5.1.15.1.1 VMS Requirements

There is no VMS requirement specific to this alternative; however, if other alternatives must be used in conjunction with the sector allocation alternative, then any VMS requirements under those alternatives will be imposed on the sectors. Sectors may establish their own VMS requirements as long as they remain in compliance with any other VMS requirements established by other alternatives adopted in conjunction with sector allocation.

5.5.1.15.2 Georges Bank Hook/Gillnet Sector Allocation

This alternative is voluntary and creates two distinct areas for Georges Bank cod. The sectors are split between gillnetters and hook fishermen. This measure is to be utilized in conjunction with other management measures.

5.5.1.15.2.1 GB Cod Hook Sector

Gear

Refer to enforcement concerns previously detailed in 5.5.3.1.5, these comments are applicable to the above.

Trip/Possession Limits

NMFS Law Enforcement's recommendation is to define "landing" under this section as currently stated in the regulations. Land is defined as "means to begin offloading fish, to offload fish, or enter port with fish."

Monitoring

VMS has proven to be an extremely valuable enforcement monitoring tool.

5.5.1.15.2.2 GB Cod Gillnet Sector

Gear

The USCG has commented that enforcement of gillnet limits at-sea is unlikely due to their inability to haul gear.

5.5.1.15.2.3 Hook/Gillnet sector GB Closed Area I Access Program

As with vessels authorized to fish in exempted fisheries at the present time, vessels who elect to participate in this closed area access program should be required to have a letter of authorization. Vessels should also be restricted to only fishing in the closed area during these trips. Enforcement of this program can be accomplished with VMS, USCG aerial and surface patrols along with at-sea boardings by USCG units. Dockside enforcement can be conducted in combination with VMS tracking to determine area fished.

5.5.1.15.2.4 VMS Requirements

VMS is required for both the vessels in the longline sector and the vessels in the gillnet sector, as indicated above.

5.5.1.16 GOM Inshore Conservation and Management Stewardship Plan

This area management proposal is solely for the stocks in the GOM. This option was not selected.

5.5.1.16.1.1 Management Areas

Enforcement concerns of vessels electing to fish in specific zones are addressed in 5.5.3.3.3 Movement Between Areas. Enforcement issues regarding possession limits, gear restrictions, and closed areas are discussed in 5.5.3.1.3, 5.5.3.1.4, and 5.5.3.1.5 and are applicable to these proposals.

5.5.1.16.1.2 Observer Coverage

This measure would implement 100% coverage on all mid-water trawl vessels and 20% on all multispecies

vessels in the GOM. Increasing observer coverage does not present any new specific enforcement concerns and provides additional methods of discard and by-catch reporting, as well as monitoring of fishing activity. Consequently, NMFS Law Enforcement recognizes that any increase in the amount of observer coverage will also result in increased referrals requiring enforcement involvement.

5.5.2 Alternatives to Control Capacity

5.5.2.1 Capacity Committee Alternatives

As currently described, this alternative poses no new enforcement concerns.

5.5.3 Management Alternatives to Address Rebuilding Requirements

These specific alternatives were not adopted. Many of the provisions, however, have been incorporated into the proposed action.

5.5.3.1 Alternative 1 – Up to 65% Reduction in Used DAS

This alternative was not selected, but many of the measures in this alternative are part of the proposed action.

5.5.3.1.1 Effort Controls

5.5.3.1.2 DAS Restrictions

This option may require vessels fishing in SNE and MA regulated mesh areas to be charged DAS at a 1.5:1 rate. The proposal would require monitoring of each vessel's activity to accurately document their time in the aforementioned areas. From NMFS Law Enforcement's perspective, the only effective manner to accurately document the DAS ratios associated with this alternative would require mandatory VMS on all vessels fishing in these areas. Consequently, increasing the number of participants into the VMS system would require additional enforcement resources for monitoring and investigative inquiries due to the increased vessel monitoring load.

Utilization of the DAS call-in system to document time spent in specific areas would be considerably less enforceable, whereas there is no discernable method to document how long a vessel was in the area.

The proposed action adopts differential DAS counting in the SNE/MA RMA in future years.

5.5.3.1.3 Closed Areas

Year-Round Closed Areas and Seasonal Closed Areas

NMFS Law Enforcement's general guidance concerning implementation of closed area management is consistent for all management plans and is based in the "Precepts for Efficient Fisheries Enforcement". This alternative proposes two types of areas (closed and rolling). As identified in our Precepts, enforcement of closed areas is enhanced when the areas are "plain-shaped and clearly defined", straight lines on a straight north/south or east/west axis and their status (open, closed, open to some vessels) is maintained for reasonably long periods of time.

It is suggested that closed areas should be designed with a surrounding buffer to prevent brief incursions into the protected area. Use of VMS to enforce closed areas is less effective whereas VMS is voluntary for limited access multispecies vessels. Mandatory VMS on all multispecies vessels would greatly enhance enforcement's ability to track vessels and determine any closed area incursions. Enforcement of closed areas can be conducted with aerial and surface patrols and at-sea boarding by USCG units.

5.5.3.1.4 Possession Limits

Vessels restricted to possession limits while fishing in specific areas can be enforced by VMS and USCG enforcement through aerial and surface patrols in combination with at-sea boardings.

5.5.3.1.5 Gear restrictions

As with the current gear restrictions, enforcement relies on at-sea boardings to measure compliance. Enforcement of at-sea gill net limits is difficult to enforce, whereas the USCG has indicated they do not have the ability to haul gear.

Under this measure, large mesh vessels are restricted to certain mesh sizes based solely on the area fished. VMS is an extremely valuable enforcement monitoring tool and would increase the ability to determine areas fished by vessels with both mesh and landing limit restrictions.

Also under this alternative, long line vessels would be allowed to fish with no more than 4,500 12/0 hooks. From an enforcement perspective, this limitation on the number of hooks in use is virtually unenforceable. Additionally, the 12/0 size hook needs to be defined whereas the 12/0 hook is sold by several different companies and differ in size. NMFS Law Enforcement recommends identification and comparison by each manufacturer as to their 12/0 hook standard.

5.5.3.1.6 Minimum Fish sizes

Minimum fish sizes as described in the settlement agreement will continue to be in effect. The minimum fish sizes do not present any new enforcement concerns.

5.5.3.1.7 VMS Requirements

There is no VMS requirement automatically implemented by this alternative. The current call-in system and voluntary VMS will be maintained.

The only effective manner to accurately document the DAS ratios associated with this alternative would require mandatory VMS on all vessels fishing in these areas. Likewise, VMS is an extremely valuable enforcement monitoring tool and would increase the ability to determine areas fished by vessels with both mesh and landing limit restrictions.

5.5.3.2 Alternative 2 - Reduction in Allocated DAS/Gear Modifications

This alternative was not selected.

5.5.3.2.1 Effort Controls

Option 1

This option reduces allocated DAS by 30% for all vessels fishing in the GOM MA. All vessels intending to fish in the GOM must declare into the fishery for a minimum of 30 days. If the TAC is not met at the end of third quarter of the fishing year, the vessels revert back to the allocated DAS initially implemented on August 1, 2002 (20%).

From an enforcement perspective, the most effective method to track each vessel's location is to require the installation of VMS on each vessel fishing in the GOM. Since vessels allocated DAS are limited to 30% less while fishing in the GOM, the most feasible method to keep track is through the use of VMS. Without VMS, vessels electing to fish in the GOM could do so without the knowledge of the NMFS, thereby circumventing the reduction in DAS.

Another enforcement issue concerns the notification process. There must be timely notice to fishermen regarding the GOM cod landings exceeding or not surpassing 75 % of the TAC at the end of the third quarter.

Option 2

Option 2 differs from Option 1 in that a vessel is limited to using no more than 70% of its allocated DAS while fishing in the GOM MA. If vessels intend to fish in the GOM they must enroll for a minimum of 30 days and all DAS used will be charged against the GOM limit.

NMFS Law Enforcement's comments described in Option 1, above, would also apply to this option.

5.5.3.2.2 Closed Areas

NMFS Law Enforcement's recommendation concerning closed area management measures is documented in our "Precepts for Efficient Fisheries Enforcement". In addition to the issues raised in 5.5.3.1.3, NMFS Law Enforcement suggests fisherman and enforcement are given appropriate notification regarding the closure of specific areas.

5.5.3.2.3 Possession Limits

This measure proposes to reduce the daily/trip limit if 75% of the GB cod or haddock TAC is harvested. The only enforcement concern is proper advanced notification to all fisherman and enforcement of the change to the possession limit.

This measure also proposes trip limits for Cape Cod yellowtail while fishing in statistical areas 514 and 521 or in certain thirty minute squares in the inshore GOM. Vessels should be required to declare into this fishery and would be limited to the aforementioned trip limit while enrolled. Therefore vessels choosing to fish outside of this area while enrolled would still be subject to the 50/lb trip limit. Possession limits while fishing in specific areas are more readily enforced by VMS and USCG aerial and surface platforms, as well as at-sea boardings by USCG units. Dockside enforcement can only be conducted if the vessels are enrolled to fish in the above referenced statistical areas and are limited to 50 lbs of yellowtail per trip, regardless of the area fished

5.5.3.2.4 Gear Restrictions

Georges Bank and Gulf of Maine

This measure requires the mandatory use of separator trawl net and/ or a flounder net. A flounder net is not defined in current regulations, but this Amendment proposes the following definition: "a flounder net is defined as a two-seam low-rise groundfish net." It is still unclear what a low-rise net is from this definition. For example, would low-rise be less than some height, the distance between top and bottom, etc.

Further, a separator trawl is defined as:

A separator trawl is defined as a groundfish trawl modified to a vertically-oriented trouser trawl configuration, with two codends arranged one above the other. The bottom cod end is left open. A horizontally oriented large mesh (6 ½ inch square mesh minimum) separating panel is installed between the selvages joining the upper and lower panels, extending from the front of the trouser junction forwards to the aft section of the first belly behind the fishing circle.

Trip and Day gillnet vessels are restricted to the number of nets they can possess, fish, haul or deploy. Establishing restrictions on "no tie-down gillnets" can only be enforced with at-sea boardings.

Also proposed in this measure is the requirement of all multispecies permitted vessels to use 12/0 hooks while fishing with long line gear. 12/0 hooks must be clearly defined as this size hook differs from company to company. NMFS Law Enforcement recommends a comparison by each manufacturer as to acceptable

standard. Without a concise definition, this limitation on the number of hooks in use is virtually unenforceable.

The USCG has indicated at-sea enforcement of gillnet and hook limits at-sea are unlikely because of their inability to haul gear.

Gulf of Maine

Specifically in the GOM, trawl gear used inshore of 70 W must be a separator trawl net and/or flounder net, trawl gear would be restricted to the Raised footrope trawl in blocks 114,115,123,124 and 125, no-tie down gillnets in blocks 114, 115, 123, 124 and 125 and 10 inch twine top for scallop dredges while fishing in blocks 114, 115, 123, 124, and 125. Gear requirements should be uniform regardless of the area fished. Gear restrictions in specific areas are more readily enforced if vessels are restricted to possessing only the gear type described in this management measure. Vessels fishing in gear restricted and non restricted areas during the same trip and possessing different gear types would be very difficult to catch and require more enforcement manpower. Enforcement of these measures would only be conducted through at-sea boardings. Effective enforcement is improbable under this measure.

5.5.3.2.5 VMS Requirements

VMS is required for all vessels that fish in both the Gulf of Maine and Georges Bank. It is unclear whether this means only those fishing in both areas, and vessels fishing in either GOM or GB are not required to use VMS, or not.

From an enforcement perspective, the most effective method to track each vessel's location is to require the installation of VMS, on each vessel, fishing in the GOM. Possession limits while fishing in specific areas are more readily enforced by VMS and USCG aerial and surface platforms, as well as at-sea boardings by USCG units.

5.5.3.3 Alternative 3 - Area Management

This alternative was not selected.

5.5.3.3.1 Calculation of TACs

These two options determine the how the TACs will be identified for six different management areas. Enforcement does not have any specific concerns regarding which option is used to establish the TACs.

5.5.3.3.2 Consequences for Exceeding TACs

No new specific enforcement concerns.

5.5.3.3.3 Movement Between Areas

This measure describes five options allowing vessels to fish and move into one or more management areas at any time, during a trip, a different area on each trip, or one area during the entire fishing year.

Using the DAS call-in system to elect an area fishers intend to fish while at-sea or before leaving the dock would dramatically increase the need for at-sea enforcement presence to determine the specific area(s) fished. Although Options one, two and three requires vessels to be held to the more restrictive trip limit if they fish in more than one area, using the call-in system can not ensure enforcement's ability to determine any of the areas fished, except as reported by the vessel. Monitoring of hundreds of multispecies permitted vessels would be conducted through USCG aerial and surface patrols in conjunction with at-sea boardings by USCG units. Dockside enforcement would not be possible without the use of VMS.

(The use of the DAS call-in system for these proposals would increase resource needs by enforcement in order to determine if this system could be utilized effectively to track movement between areas. Modifying

the current DAS call-in system would require reprogramming and script changes at additional costs.) Option one and two also require using Vessel Trip Reports in conjunction with the DAS call-in system to evaluate the management measures for each area. Enforcement's concern is raised with the use of VTRs as a management measure. Enforcement has encountered numerous instances where individuals have submitted inaccurate and incomplete VTRs, as well as not submitting them at all. Often times VTRs are submitted in an untimely fashion.

Under Option four vessels may fish in one area per trip, however if they choose to fish in more than one area during the fishing year, they are required to install a Vessel Monitoring System. VMS is a valuable enforcement tool in identifying each vessels location. Vessels that are not required to have a VMS will be able to enter different management areas without the knowledge of enforcement.

Option five limits vessels to fishing only one management area per fishing year. Enforcement's concern is with vessels limited to fishing in a specific area, and is addressed in the other four options above.

Enforcement recommends any vessel electing to fish in any area should be required to enroll with a letter of authorization indicating the area(s) to be fished. Each vessel must fish in the selected area for a minimum period of time.

Use of VMS for all involved vessels would enhance enforceability of unauthorized fishing in management areas and aid in the enforcement of species quotas trip limits.

An increase in observer coverage would assist in monitoring both discards and fishing activity, whereas the TAC management scheme mandates accurate and dependable reporting.

5.5.3.3.4 VMS Requirements

VMS is required for all vessels moving between areas within a single trip. This applies to movement between areas options 1-4 but not option 5.

Determining the location of hundreds of vessels could only be enforced through the use of VMS. Use of VMS for all involved vessels would enhance enforceability of unauthorized fishing in management areas and aid in the enforcement of species quotas trip limits.

5.5.3.4 Alternative 4 - "Hard" Total Allowable Catch (TAC)

This alternative will develop TACs for "all stocks in the multispecies FMP on a single or multi-stock basis". A TAC may be designed for the recreational fishery and if one is developed, it will be observed independently from the commercial TAC. *This alternative was not selected.*

5.5.3.4.1 Hard TAC with Input Controls

This management measure incorporates a hard TAC with input controls. The term "input controls" should be clearly defined to identify which management measures they incorporate. The input controls as described in this alternative are derived from one of three options:

Option 1

The input controls in option 1 are the management measures outlined in Alternative 2 (5.5.3.2- Reduction in Allocated DAS/Gear Modifications). The enforcement issues are outlined in Alternative 2 and are the same for this option.

Options 2 and 3

Option 2 is based on the measures implemented by the Framework 33 court order effective April 30, 2004. In other words option 2 is the management measures currently in place. Option 3 is the management schemes implemented during the 2001 fishing year. Option 3 is also described as the No Action Alternative.

Option 2 and option 3 are very comprehensive management schemes. Enforcement reiterates it's recommendations outlined in the "Precepts for Efficient Fisheries Enforcement".

NMFS Law Enforcement does not foresee any new enforcement related concerns associated with this measure. NMFS Law Enforcement recommends review of previous enforcement comments relating to VMS, closed areas, Days-at-Sea, trip limits, possession limits, special access programs, and gear restrictions.

5.5.3.4.2 Monitoring the TAC

This measure requires up to date information to NMFS in order to accurately manage the TACs. Increased reporting (real time) of catches will be necessary as the TAC becomes closer to being fulfilled. Successful implementation of this management plan will require comprehensive monitoring, and as part of the monitoring system, enforcement recommends increasing observer coverage to monitor fishing activity.

5.5.3.4.2.1 Reporting System Options

The concept of "daily electronic dealer reporting" is supported by enforcement. At this time, this alternative does not identify the details regarding electronic dealer reporting and a vessel's trip identifier number. NMFS Law Enforcement's general concern regarding reporting is accountability and veracity of the reports and ensuring that these issues are sufficiently addressed.

Under option one, two and three dealer reporting will be accomplished by way of electronic reporting. Also under option one all limited access multispecies vessels will be required to have a VMS system and use this system to report the area they intend to fish. Vessels who have been issued a small vessel permit and open access vessels will be able to report utilizing a call-in number. Option two and three do not insist on VMS for limited access multispecies vessels and rely on call-in systems for all vessels.

Mandatory VMS for all limited access DAS multispecies vessels is supported by enforcement. Determining vessel incursions into areas which may be closed or have stock restrictions can be accomplished through the use of VMS and to a lesser extent at-sea enforcement. Determining where a vessel has fished is unlikely through dockside enforcement.

The expansion of VMS to hundreds of vessels would likely increase resource needs of enforcement to effectively oversee the administrative tasks and monitoring of escalated VMS usage.

Establishing a call-in number for "small vessel permit category and open access vessels" to report specific information would expand resource needs by enforcement and require implementation of infrastructure and administrative processes set up to collect, extract, and break down the information. The cod hail line was a variation of this call-in number and was set up for fishermen to report information regarding their cod landings. Very few fishermen called the cod hail line, and from the enforcement perspective, was an unsatisfactory mechanism to document the required information.

Enforcement concerns requiring fishermen to identify area fished through the DAS call-in system have been raised in 5.5.3.3.3 and are applicable under this option.

5.5.3.4.2.2 VMS Requirements

VMS is required for all vessels in Option 1 only. There are no VMS requirements for Options 2 and 3.

Mandatory VMS for all limited access DAS multispecies vessels is supported by enforcement. Determining vessel incursions into areas which may be closed or have stock restrictions can be accomplished through the use of VMS and to a lesser extent at-sea enforcement. Determining where a vessel has fished is unlikely through dockside enforcement.

5.5.3.4.2.3 Reaching the Total TAC

This management measure has two options:

Option 1- Closure of Stock Area

Under this proposal, the NMFS would close a particular area or entire statistical area(s) to gear capable of catching a particular species, if all of the TAC for that stock is projected to be caught. However, fishing gear believed to be incapable of catching the species for which the TAC would be reached, will still be able to fish in the closed area(s).

With area specific TACs, there will be an increased emphasis on enforcement of closed areas, possession limits, vessel inspections at sea (to determine gear used and retention of prohibited species), and accurate and timely reporting.

NMFS Law Enforcement strongly suggests that closed areas should be clearly defined in large, plain shapes and maintained for sensibly long periods of time. Multiple possession limits for various stocks in different areas will be difficult to enforce, particularly without ubiquitous VMS coverage. Use of VMS for all limited access multispecies vessels would greatly enhance enforceability of closed areas regardless of the reason for the closure. *See comments in 5.5.3.1.3 with regards to VMS and closed area enforcement and 5.5.1.5 concerning closed area administration.*

Possession limits can be monitored via dockside enforcement, however, enforcement would be limited without the ability to determine the specific area where the fish were caught. See comments in 5.5.3.1.4 with regards to possession limit enforcement.

To effectively monitor and report the catch in these TAC management areas this alternative may require an increase in observer coverage. The enforcement concerns related to increased observer coverage are addressed in 5.5.1.16.1.2. and 5.5.3.4.2.

Option 2 - Prohibition on Retention

Under this alternative, possession of a species is prohibited in an area for which all of the TAC for a specific stock is projected to be harvested, except for transiting purposes. If the vessel possesses the same species harvested from other stock areas, this alternative allows the vessel to transit the closed area as long as the gear is stowed appropriately and prohibits the vessel from fishing in the closed area.

NMFS Law Enforcement is concerned that this scheme would allow vessels to fish in the closed stock area with gear capable of catching the prohibited species and then move to other stock areas and catch the same species. Enforcement of the closed stock areas would be most effective through VMS, however, VMS can not identify where the closed species were caught. Vessels allowed to fish in closed stock areas with gear capable of catching closed stocks would require at-sea or aerial patrol units to enforce the closed areas.

As previously identified, multiple possession limits for various stocks in different areas along with transiting in closed stock areas while possessing prohibited stocks pose significant enforceability concerns.

With regards to both Option 1 and Option 2, NMFS Law Enforcement suggests appropriate advanced notification to industry and enforcement regarding any upcoming closed stock areas.

5.5.3.5 Recreational Fishing Measures

The minimum size and bag limits listed under the recreational fishing measures do not present any new enforcement issues.

Option 3 states "any trip in excess of 15 hours and covering two consecutive calendar days will be considered more than one day." Enforcement of this option with out being able to verify period of time

fished would be difficult and extremely resource intensive.

Option 3 is part of the proposed action. Vessels subject to this restriction are required to file VTRs recording time of sailing and the end of the trip.

5.5.4 Alternatives to Minimize the Adverse Effects of Fishing on Habitat

Alternative 2 – Complementary Benefits of Other Amendment 13 Alternatives (*Preferred Alternative*)

See the other alternatives.

Alternative 3 – Habitat Closed Areas

Enforcement recommends following the guidance provided in the “Precepts for Efficient Fisheries Enforcement”. Closed Areas that are clearly defined in large, plain shapes for reasonably long time spans with minimal exceptions, exemptions or transiting provisions (except for compelling safety reasons). Again, use of VMS for all involved vessels would enhance enforceability of the closed area regardless of the reason for the closure. Increased use of VMS would, in all cases, require additional enforcement resources for monitoring as well as verification that the system is prepared to handle the increased vessel monitoring load.

Alternative 4 – Modified Groundfish closed areas with habitat subsets identified

This alternative would create “blocks”, “each approximately 75 square nautical miles in size, by the existing grid of latitude and longitude lines at 10 minute intervals.” The blocks would be further grouped into five areas (Gulf of Maine, Georges Bank, South Channel, Hudson Canyon, Southern). Closures would be applied to these areas in various ways by this alternative. From the enforcement perspective, the discussion of possible scenarios of closed and open areas created by this alternative seems fairly complicated. We again recommend a simple, long term closure practice whenever possible.

This alternative was not selected.

Alternative 5 - Closed areas designed to protect important EFH and balance fishery productivity)

Enforcement recommends following the guidance provided in the “Precepts for Efficient Fisheries Enforcement”. Alternatives 5A, 5B, and 5C show narrow, fishable corridors between two closed areas. Alternative 5D is preferred because it has the shortest corridor, but enforcement would prefer no narrow corridors at all. Again, use of VMS for all involved vessels would enhance enforceability of the closed area regardless of the reason for the closure.

This alternative was not selected.

Alternative 6 - Closed areas consistent with the Framework Adjustment 13 Scallop Closed Areas Access Program (*Preferred Alternative*)

The shapes/sizes of some of the areas designed off of the New England coast (such as CAI and NLCA) do not meet the general enforcement recommendation of large, plain shaped. Larger areas with straight line boundaries and the ability to provide a buffer between the area boundary and the stocks would enhance enforceability of this alternative.

This alternative was not selected.

Alternative 7 – Expand the list of gears prohibited in closed areas

Echoing the general enforcement comments on page 5, with respect to closed area enforcement, areas must be clearly defined with limited access to the areas in order to allow for efficient and effective offshore enforcement. Expanding the list of gears prohibited in year-round closed areas will further limit access, thus making offshore enforcement more efficient and effective. Transit rules are necessary, particularly for pots

and traps.

This alternative was selected, but only hydraulic clam dredges were added to the list of prohibited gear.

Alternative 8 – Restrictions on the use or rockhopper gear and/or roller gear (*Preferred Alternative*)

Like the proposed scallop restriction on rock chains, region wide (i.e., throughout the entire range of the multispecies fishery) restrictions on rockhopper and roller gear do not pose any significant enforcement related concerns. Any gear restrictions *by area* do pose enforcement concerns similar to the general enforcement comments on area management measures (page 6). As with other gear restrictions, this alternative would rely on at-sea boardings.

Additionally, clear and concise definitions of ‘rockhopper’ and ‘roller’ gear, and stowage rules, are necessary.

This alternative was not selected.

Alternative 9 – VMS on all groundfish vessels

One of the Enforcement Precepts is ‘Assisted by VMS’. Vessel Monitoring Systems are a tremendous asset to enforcement for monitoring days at sea as well as closed areas. Additionally, the knowledge of the whereabouts of fishing vessels eases the logistical burdens of extensive surveillance, which can be extremely manpower intensive. When developing new management plans consideration should be given to requiring implementation of VMS on vessels. This alternative does just that.

This alternative was not selected.

Alternative 10 – Habitat Closed Areas the are modifications of existing mortality closures and other proposed habitat closures (*Preferred Alternative*)

Alternative 10A modifies the borders of existing closed areas, or areas proposed for closure under the other alternatives. Alternative 10B is actually the same as scallop habitat alternative 8b; thus, a larger area is preferable to a small area, and an area with fewer edges is preferable to one with lots of edges. All other general enforcement comments relative to all gears being prohibited, VMS requirements, stowage and transit, apply.

This alternative was selected.

5.5.5 Other Issues

5.5.5.1 Northern Shrimp Fishery Exemption

This alternative does not pose any new enforcement related concerns.

5.5.5.2 Tuna Purse Seine Vessel Access to Groundfish Closed Areas

This alternative does not pose any new enforcement related concerns, other than those described in 3.4.7.

5.5.5.3 SNE General Category Scallop Vessel Exemption Program.

This alternative does not pose any new enforcement related concerns.

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BACKGROUND MATERIAL FOR APRIL 3RD VMS/ENFORCEMENT COMMITTEE

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There are two VMS forms currently in use that may be pertinent to the issue involving industry's request to send a VMS form to notify NMFS when weather requires they seek shelter inside a port.

The 'Cod Running Clock' (CRC) form was implemented with the Emergency Action in May 2006. The CRC form is only used in situations where the trip is > 24 hours. The form does not currently address trips < 24 hours.

The 'GOM or SNE Differential Area Layover' form was implemented with Framework 42 in November 2006. The layover form is used in order to remain inside a DAS differential area for safety reasons when not already declared into that area.

a. The CRC form is shown below. As stated, the form is submitted if:

- (1) Trip length (by VMS – demarc to demarc) is more than a whole day; and
- (2) Vessel is not fishing inside a differential area.

Cod Running Clock
<p>Submit this form if not enough Days-at-Sea (DAS) have elapsed to account for the amount of cod on board your vessel (i.e., 24 hours for each day's worth of Gulf of Maine cod or Georges Bank cod) and you are NOT fishing in the GOM or SNE Differential Areas. You will be charged up to an additional 24 hours of DAS to fully account for the amount of cod on board your vessel.</p> <p>You must submit this form before you cross the demarcation line on your return to port.</p>

The regional DAS database applies the DAS charging rules to the trip when the CRC form is received. This additional DAS charging only occurs if the fisherman sends in the form.

If a vessel declared into a differential area, the additional DAS charging is accomplished by applying a 2:1 factor for the entire trip when declared into the GOM area, or a 2:1 factor for time-in-area if declared into the SNE area (and 1:1 for time outside the differential area). Again, the CRC form is not submitted in these scenarios.

Refer to the related PHL of January 7, 2008, which clarified trip limits based on VMS trip length and not the 2:1 differential days charged.

b. The Layover form is shown below. As stated, the form is submitted if:

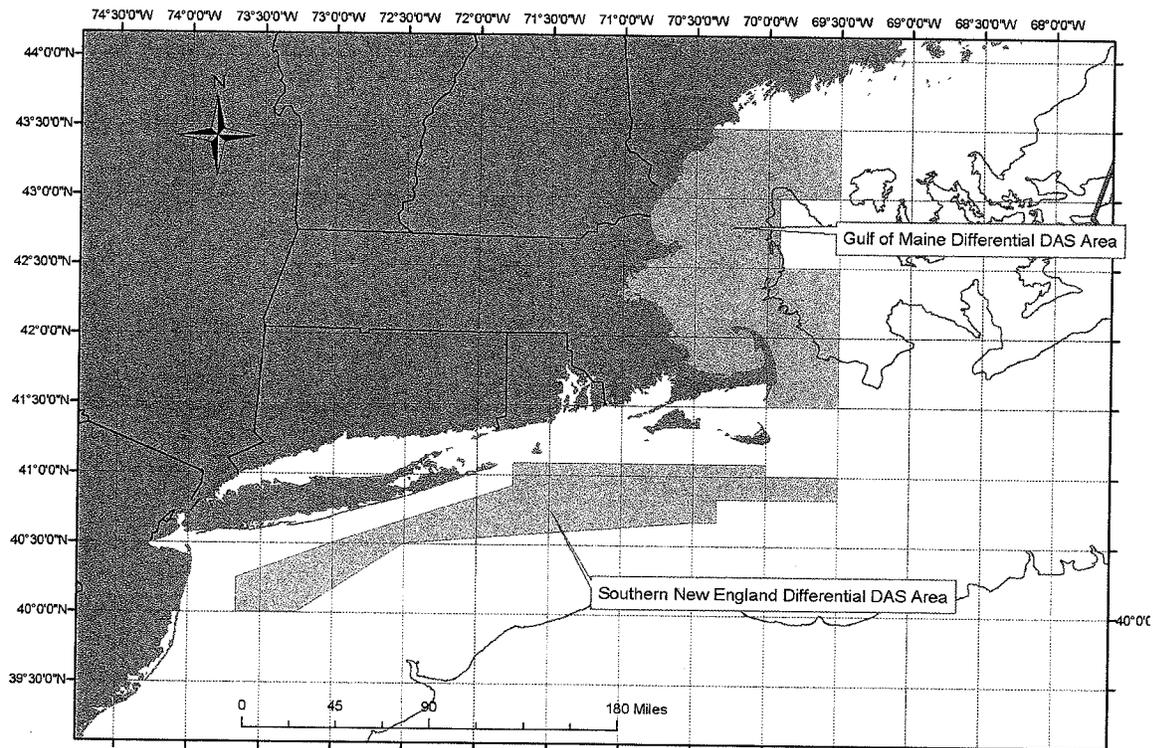
- (1) Laying over in one of the 2 differential areas; and
- (2) Not transiting through or already declared into a differential area.

GOM or SNE Differential Area Layover

Submit this form if you are laying-over in the Gulf of Maine or Southern New England Differential DAS Area (GOM DA, SNE DA). If you are in the GOM DA or SNE DA and are neither transiting, nor declared via VMS into the GOM DA or SNE DA, you must submit this form to indicate that you are laying-over due to inclement weather or some other event beyond your control.

This is primarily a tool for the fisherman to alert enforcement as to their intended action. The form does not specifically state that the vessel must remain outside demarc when laying over in the GOM (which is contiguous to the coast...see chartlet below).

c. The DAS differential areas are shown below:



d. Trip Stitching. The following is a reference document recently provided to NMFS agents:

What is “Trip Stitching” and how could it affect my Days-at-Sea trip?

The NMFS OLE monitoring system (SmartTRAC) records trips taken by vessels with a VMS unit onboard. A trip starts when the vessel crosses the VMS demarcation line headed for sea and ends when it crosses the line again headed back to port. “Trip Stitching” keeps a trip ‘open’ (or ‘stitches’ trip segments together) if a vessel briefly enters and positions inside the VMS demarcation line then exits outside the line to continue its trip. For example, vessels that transit through Vineyard and Nantucket Sound may cross the demarcation line several times on their outbound or inbound trip.

If trip stitching was not applied, a single trip may be recorded by NMFS as two or more trips, affecting the trip length and DAS charge. The rules associated with trip stitching as it applies to DAS trips are:

(1) Did the base declaration code (first 6 characters, ie, XXX-XXX) remain the same before and after the vessel entered the demarcation line?, and

(2) Was the vessel inside the demarcation line for less than 4 hours (70 minutes for gen cat scallop trips)?

If the answer to both questions is ‘yes’, trip stitching will keep the trip intact so that only one trip is recorded.

An unintended effect of trip stitching may occur when a vessel lands their catch and resails within 4 hours under the same VMS declaration code. Two separate trips may be ‘stitched’ as a single trip. Additionally, entering back inside the demarcation line for longer than 4 hours, such as when transiting the Vineyard/Nantucket Sound area, may result a single trip being recorded as two trips.

If a trip has been erroneously affected by trip stitching, call the VMS Team. The trip will be analyzed and a DAS modification can be made, if appropriate.

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 26 and 28

[Docket No. USCG-2003-16158]

RIN 1625-AA77

Commercial Fishing Industry Vessels

AGENCY: Coast Guard, DHS.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Coast Guard is developing a set of proposed amendments to its commercial fishing industry vessel regulations. The proposed changes would enhance maritime safety by adding new requirements for vessel stability and watertight integrity, stability training and assessments, vessel maintenance and self-examinations, immersion suits, crew preparedness, safety training, emergency preparation, safety and training personnel, safety equipment, and documentation. Miscellaneous conforming, clarifying, and other administrative changes are also contemplated.

DATES: Comments and related material must reach the Docket Management Facility on or before July 29, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG-2003-16158 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Online:* <http://www.regulations.gov>.

(2) *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.

(3) *Fax:* 202-493-2251.

(4) *Hand delivery:* Room W12-140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call M.M. Rosecrans, Chief, Fishing Vessel Safety Division (CG-5433), U.S. Coast Guard, telephone 202-372-1245, or e-mail

Michael.m.rosecrans@uscg.mil. If you have questions on viewing or submitting material to the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's "Privacy Act" paragraph below.

We are interested in the potential impacts from this proposed rule on small businesses and we request public comment on these potential impacts. If you think that this proposed rule would have a significant economic impact on you, your business, or your organization, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why, how, and to what degree you think this rule would have an economic impact on you.

A. Submitting Comments

If you submit a comment, please include your name and address, identify the docket number for this rulemaking (USCG-2003-16158), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov> at any time, click on "Search for Dockets," and enter the docket number for this rulemaking (USCG-2003-16158) in the Docket ID box, and click enter. You may also visit the Docket Management Facility in room W12-140 on the Ground Floor of the West Building, 1200 New Jersey

Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

C. Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit <http://DocketsInfo.dot.gov>.

D. Public Meeting

The Coast Guard anticipates wide interest in this rulemaking and is considering how best to obtain early spoken comments from the public. If we determine a cost-effective way to receive spoken comments from all segments of the commercial fishing vessel industry and from the general public, we will announce it in a subsequent **Federal Register** notice.

II. Acronym Table

Acronym	Text
CFIVSAC	Commercial Fishing Industry Vessel Safety Advisory Committee.
CFR	Code of Federal Regulations.
CPR	Cardiopulmonary Resuscitation.
DOT	Department of Transportation.
EPIRB	Emergency Position Indicating Radio Beacon.
F/V	Fishing Vessel.
FRP	Fiberglass-reinforced Plastic.
IMO	International Maritime Organization.
NPRM	Notice of Proposed Rulemaking.
SNPRM	Supplemental Notice of Proposed Rulemaking.
U.S.C.	United States Code.

III. Note on the Regulatory Framework Affecting Commercial Fishing Industry Vessels

In the discussions that follow, we sometimes distinguish between documented and undocumented vessels. Under 46 U.S.C. chapter 121, a vessel of at least five net tons must meet the ownership tests and other criteria needed to obtain a certificate of documentation (Form CG-1270) with a fishery endorsement, before it can be employed in processing, storing, transporting (except in foreign commerce), planting, cultivating, catching, taking, or harvesting fish, shellfish, marine animals, pearls, shells, or marine vegetation in the navigable waters of the United States or its Exclusive Economic Zone. For Coast Guard regulations affecting the

#4

documentation of fishing industry vessels, see 46 CFR part 67. Fishing industry vessels 100 feet or greater in length are also subject to Maritime Administration requirements found in 46 CFR part 356.

IV. Background and Purpose

Commercial fishing remains one of the most hazardous occupations in the United States. Congress addressed this problem by enacting the Commercial Fishing Industry Vessel Safety Act of 1988 ("the 1988 Act," Pub. L. 100-424, as subsequently amended; see generally, 46 U.S.C. chapter 45, "Uninspected Commercial Fishing Industry Vessels"). The Act directed the Secretary of Transportation to provide safety requirements for fishing vessels, fish processing vessels, and fish tender vessels. It also established the Commercial Fishing Industry Vessel Safety Advisory Committee (CFIVSAC) to advise the Secretary on matters relating to the safe operation of commercial fishing vessels.

Coast Guard regulations under the 1988 Act were first issued on August 14, 1991 (56 FR 40364), and were further addressed in the following documents:

- August 3, 1992, interim rule (57 FR 34188) that amended the 1991 immersion suit requirements in 46 CFR 28.110, but advised the public that immersion suits would be the subject of further rulemaking;
- October 27, 1992, SNPRM (57 FR 48670) that proposed the adoption of stability regulations for vessels less than 79 feet in length;
- May 20, 1993, NPRM (58 FR 29502) that proposed further changes to immersion suit requirements;
- October 24, 1995, final rule (60 FR 54441) that adopted regulations for Aleutian Trade Act vessels;
- November 5, 1996, interim rule (61 FR 57268) that adopted safety equipment and vessel operating procedure regulations and deferred further action on the 1992 SNPRM's proposal to extend stability regulations to smaller vessels;
- September 4, 1997, final rule (62 FR 46672) that finalized the 1996 regulations with some changes; and
- July 15, 1998, notice (63 FR 38141) that announced the termination of the 1993 NPRM and the Coast Guard's plans for a subsequent rulemaking to address immersion suits, vessel stability, and other commercial fishing industry vessel issues.

These documents, as well as other background documents, are available in the docket. Each document may be downloaded.

In addition to past **Federal Register** notices, two recent studies indicated the need for further regulatory action. The first was the report of the Fishing Vessel Casualty Task Force appointed by the Coast Guard in 1999, following the loss of 11 commercial fishermen's lives in just three weeks. The Task Force report, "Living to Fish, Dying to Fish" (March 1999, see the docket), concluded that Coast Guard regulations issued under the 1988 Act had improved fishing vessel safety, but also identified several areas where further action is necessary. The Task Force recognized that some actions would be difficult to achieve; for instance, they concluded that an inspection program aimed at eliminating or reducing unsafe conditions would have the greatest beneficial impact on safety, but would be the most difficult measure to implement.

The second study was compiled by the Coast Guard and is titled "Analysis of Fishing Vessel Casualties—A Review of Lost Fishing Vessels and Crew Fatalities, 1994–2004" ("the 1994–2004 analysis"). This document is also available in the docket. Based upon the analysis, we concluded that flooding and capsizing are major causes of vessel loss and that casualties could be reduced by extending stability regulations to vessels less than 79 feet in length, improving crew preparedness, and by extending immersion suit requirements.

The tables that follow show data for vessel losses, fatalities, and cause of vessel losses from the 1994–2004 analysis. The data is included to clarify discussions elsewhere in this preamble. The numbers from these tables are used in the discussions that follow.

TABLE 1.—VESSEL LOSSES

Year	Number
1994	153
1995	117
1996	166
1997	138
1998	125
1999	123
2000	85
2001	133
2002	127
2003	114
2004	117
Total	1398

TABLE 2.—CAUSE OF VESSEL LOSS

Cause	Number
Flooding	493
Fire	282

TABLE 2.—CAUSE OF VESSEL LOSS—Continued

Cause	Number
Grounding	236
Capsizing	142
Collision	55
Allision	52
Unknown	42
Structural failure	35
Loss of vessel control	25
Weather	18
Explosion	9
Loss of electrical power	5
Overloading	1
Other	3
Total	1398

TABLE 3.—CAUSE OF FATALITIES

Casualty type	Fatalities
Vessel flooding, sinking, capsizing	328
Fall into water	154
Pulled overboard by gear	29
Diving accident	27
Dangerous atmosphere	18
Caught in winch	16
Smoke inhalation—vessel fire ..	10
Unknown injury type	10
Crushed by gear	10
Struck by line	7
Struck by moving object	7
Drowned clearing propeller	4
Caught in lines	3
Vessel collision	3
Other	15
Total	641

The major cause of fatalities between 1994 and 2004 can be traced to vessel losses. In the period reviewed, 1,398 vessels were lost and there were 641 fatalities. Of the 641 fatalities, 328 can be attributed to vessel losses (*i.e.*, flooding, sinking, and capsizing).

A. Past Recommendations

In addition to the two aforementioned studies, the Coast Guard reviewed all recommendations previously made regarding commercial fishing industry vessel safety. We examined recommendations from the National Transportation Safety Board, Marine Boards of Investigation, the Task Force report, and formal and informal marine casualty investigations. We then collected similar recommendations and determined the appropriate action to take for each group and individual recommendation.

Many recommendations addressed seeking authority to inspect commercial fishing industry vessels and to license mariners on board commercial fishing industry vessels to improve the condition of vessels and the competency

of mariners. The 1988 Act required the CFIVSAC to submit recommendations to Congress on inspection of vessels and licensing of mariners in the commercial fishing industry. The CFIVSAC recommended that Congress mandate vessel inspections and licensing of mariners. The Coast Guard requested additional authority to reclassify commercial fishing industry vessels as inspected vessels. This authority could provide for design and construction standards, mandatory inspections, and licensing of mariners on commercial fishing industry vessels similar to current requirements for cargo, passenger, and tank vessels. Congress has not granted the requested authority.

Wherever regulatory development authority already exists, we have analyzed each recommendation to determine the appropriate action. Some

of the recommendations needed no action as regulations or policies already address the recommendation. Some recommendations form the basis of the potential regulatory changes discussed here. In certain cases, we would consider phasing in new requirements in order to reduce the economic burden on industry. Other safety recommendations are either inappropriate, overtaken by events, or otherwise untimely. The results of this review, entitled "Review of Commercial Fishing Industry Vessel Safety Recommendations", are available in the docket.

In the following pages, we discuss the principal changes we are considering. Many changes could include documentation requirements. Documentation gives owners and operating personnel a written record of

regulatory compliance, reinforces the importance of that compliance, and facilitates quick compliance verification by the Coast Guard and other regulators.

V. Discussion of Regulatory Changes Under Consideration

A. Overview

Table 4 shows an overview of the new requirements we are considering, by vessel length. The potential new requirements are explained in more detail later in this document.

New stability and watertight integrity requirements, except for training, would apply only to vessels 50 to 79 feet because of the findings of the 1994–2004 analysis, the recommendations of the CFIVSAC, and because existing regulations apply to most vessels over 79 feet in length.

TABLE 4.—APPLICABILITY OF POTENTIAL NEW REQUIREMENTS BY VESSEL LENGTH

New requirement under consideration	All lengths	30' > L <= 40'	40' > L <= 50'	50' > L <= 60'	60' > L <= 70'	70' > L <= 80'	L > 80'
Initial Stability Test				X	X	X	
Stability Review at Alteration				X	X	X	
Five-Year Periodic Stability Review				X	X	X	
Shipbuilding Requirements				X	X	X	X
Stability Training		X	X	X	X	X	X
Immersion Suits	X	X	X	X	X	X	X
Safety Training, Emergency Drills and Documentation		X	X	X	X	X	X
EPIRB		X	X	X	X	X	X
Survival Craft Stowage							X
Embarkation Station							X
High Water Alarms		X	X	X	X	X	X
Door Notice	X	X	X	X	X	X	X
Departure Reports				X	X	X	X

B. Vessel Stability and Watertight Integrity

The major new requirements we are considering for vessel stability and watertight integrity include:

- Stability requirements for vessels between 50 and 79 feet in length and certain loadlined vessels that are currently exempt from stability requirements;
- Stability training for masters and owners of vessels greater than 30 feet in length;
- Minimum criteria for stability training and training instructors;
- Repeating lightweight surveys (and in some circumstances, inclining tests) and updating stability instructions at least once every five years;
- Addition of new items to be addressed in stability instructions;
- Revision of certain stability calculations;
- Upgrading and highlighting of watertight and watertight integrity requirements to prevent unintentional flooding;

- Emphasis on the owner's, as well as the master's, responsibility for vessel stability; and

- Notification to the Coast Guard prior to substantial vessel alteration or major conversion, recognizing that many stability and watertight integrity improvements can be made economically only during original construction or during a major modification.

1. General Discussion

Stability is the capacity of a vessel to return to an upright condition after being "heeled" or leaned over by external forces. Watertight integrity refers to a vessel's ability to withstand a static head of water without any leakage. Current Coast Guard regulations require stability calculations to be made, and stability instructions prepared, for newly constructed or substantially altered vessels of 79 feet or more in length. We are considering adding stability and watertight integrity requirements for fishing vessels between 50 and 79 feet in length. Stability and watertight integrity standards have been

designed with 50- to 79-foot vessels in mind. Vessels of less than 50 feet in length might also benefit from such standards, but because standards for those vessels have not yet been designed, we are considering only 50- to 79-foot vessels at this time.

The 1988 Act mandates regulations for the operating stability of certain vessels. We originally proposed applying stability regulations to vessels of any length, but comments on our 1991 rulemaking expressed concern that the proposed standards drew upon International Maritime Organization (IMO) stability standards developed for vessels of 79 feet or more in length ("Torremolinos International Convention for the Safety of Fishing Vessels", 1977) that would be inappropriate for smaller vessels. In light of those concerns, we set the 1991 rule's threshold at 79 feet, but we indicated our intention to revisit requirements for smaller vessels. In 1992, we proposed extending stability regulations to smaller vessels, but as previously noted that regulatory effort was deferred in 1996.

The 1999 Task Force report called for developing stability regulations for vessels greater than 50 feet in length (Recommendation 4.1). As previously mentioned, the 1994–2004 analysis identified flooding, sinking, and capsizing as the leading causes of vessel loss. Of the vessel losses, capsizing accounted for 142 vessel losses (10 percent of all vessel losses). Of the 328 fatalities, 115 can be attributed to capsizing and sudden sinkings where individuals had insufficient time to properly use survival equipment, including immersion suits. These statistics explain why the Coast Guard continues to be concerned with stability and watertight integrity issues within the commercial fishing industry.

In 1995, the CFIVSAC was asked to assist in developing stability standards for commercial fishing industry vessels less than 79 feet in length. In 1997, the CFIVSAC's stability subcommittee offered a set of recommended standards that would apply to commercial fishing industry vessels 50 feet or more in length. Those recommended standards are contained in the docket and form the basis of the stability requirements we are considering for vessels 50 to 79 feet in length.

The Task Force report called for changes in how stability is treated. Recommendations addressed developing instructions readily understood by masters (Recommendation 4.3) and programmatic enforcement of all requirements with a focus on dockside checks (Recommendation 3.2). In 1999, due to the high number of deaths in the Alaska/Bering Sea crab fisheries, the Coast Guard and the Alaska Department of Fish and Game began a program to analyze crab-vessel loading when stability instructions are provided on board the vessel prior to departure. Despite having stability information on board, overloading still occurred in some instances. Factors contributing to this, as confirmed in casualty investigations, are that the calculations often were not understood by operating personnel and stability information was often not updated after changes were made to the vessel, which invalidated the instructions provided.

2. Stability Training

Lack of situational awareness and understanding regarding stability principles and watertight integrity have been shown to contribute to or have been the primary reasons for a high percentage of vessel losses from sinking, flooding, and sudden capsizing. Analysis of recommendations made for improving commercial fishing industry

vessel safety from Coast Guard investigating officers, the Task Force report, and other sources offer a number of recommendations for improving the competency of vessel masters relating to stability. Training in these principles may help prevent the cause of vessel losses. Therefore, we are considering requiring stability training for vessels 30 feet or more in length. We believe the 30-foot threshold covers all those vessels that are likely to operate in conditions where such training can be a critical safety factor.

The CFIVSAC has previously recommended mandatory stability training for masters of vessels. In July 2005, the CFIVSAC was asked to provide specific recommendations on who must have stability training and the composition of that training. The CFIVSAC recommended that the Coast Guard require masters and owners to receive a three-tiered regimen of stability instruction:

1. General principles of stability;
2. Risk factors specific to the region or fishery in which engaged; and
3. Vessel-specific training.

The requirements we are considering would be consistent with these recommendations.

The Coast Guard is inclined to adopt the CFIVSAC recommendation to require owners to receive training, since they provide operational guidance to the master in many instances. It is also the owner's responsibility to ensure the master is prepared for a voyage, including, but not limited to, understanding: the stability and watertight integrity risk factors; the stability instructions; and loading constraints and restrictions for the vessel.

The 1983 Marine Board of Investigation for the capsizing of the F/V ALTAIR and F/V AMERICUS stated that:

There is convincing evidence that commercial fishermen in general lack an appreciation of principles of stability. This investigation demonstrated that there was a critical failure to utilize information (stability booklets) readily available for determining safe loading.

An example of lack of situational awareness regarding stability is the sinking of the F/V NORTHERN EDGE. The F/V NORTHERN EDGE blocked its freeing ports as a standard practice when dumping scallops on deck. In an instant, the vessel took water on deck that could not run off because of the blocked freeing ports. Water entered the vessel's interior through an open weathertight door that led to progressive flooding and sudden capsizing with the loss of five persons. Stability training

would be intended to raise the situational awareness of masters, including the hazards presented by blocking freeing ports and leaving doors that may permit downflooding to remain open when not used for transit.

3. Stability Reassessment

The basis of all stability calculations is an accurate weight and location of the center of gravity in the lightweight condition. Any time there is uncertainty regarding the lightweight values, a reassessment of stability and/or a determination of the revised lightweight values is necessary.

A vessel in service for a period of time will experience weight changes. Some changes are easily determined such as the addition or removal of large equipment. In addition to weight changes that can be accurately determined from manufacturer's information, unaccounted weight changes occur. Unless carefully managed, weight changes tend to degrade the stability of a vessel by increasing the vessel's lightweight thereby decreasing the reserve buoyancy and raising the center of gravity, which decreases overall stability.

Unfortunately, most vessels do not have a weight management system to account for the many large and small changes that occur; therefore, as a vessel ages, the margin of safety degenerates and a stability reassessment is needed. A stability review at least once every five years could be a reasonable interval for examining the vessel for the accumulated changes, both known and unknown.

We are considering requiring a lightweight survey to determine the amount of change to a vessel's lightweight. If changes can be accounted for accurately, the lightweight survey would be sufficient and the stability instructions could be updated based on that survey. Otherwise, an inclining test could be required to determine the lightweight and location of the center of gravity.

C. Vessel Maintenance and Self-Examination

We are considering requiring the owners of vessels that operate beyond the boundary line, with more than 16 persons on board, or that are fish-tender vessels in the Aleutian trade to conduct monthly self-examinations of their vessels according to criteria that we would provide. Masters would document these self-examinations.

The 1994–2004 analysis revealed that the majority (69 percent) of vessel losses can be attributed to hull and machinery failures. Predominantly, the losses

occurred while the vessels were not engaged in fishing operations. The most prevalent operation directly preceding a vessel loss (616) was transiting during non-fishing activities. The next most prevalent operation contributing to vessel loss was sinking while the vessel was moored (163).

The vessels experiencing the highest numbers of losses were wooden-hull vessels (548), steel-hull vessels (277), and fiberglass-reinforced plastic (FRP) hull vessels (261). Of the wooden-hull vessels lost, 265 (48 percent) were between 20 and 40 years old. For steel-hull vessels lost, 185 (66 percent) were between 20 and 40 years old. For FRP-hull vessels lost, 197 (75 percent) were in this age range.

Hull and machinery failures leading to vessel loss accounted for 25 percent of the 328 fatalities attributed to vessel flooding, sinking, or capsizing. Maintenance is an issue of major concern in reducing the likelihood of vessel losses and consequent fatalities. Because vessel loss is a major contributor to fatalities, reductions in vessel losses should lead to fewer fatalities.

The 1988 Act authorized the Coast Guard to develop regulations for equipment, maintenance, and use of equipment to minimize the risk of serious injury on documented fishing industry vessels that operate beyond the boundary line, with more than 16 individuals on board, or that are fish-tender vessels in the Aleutian trade. The 1988 Act also requires regulations for operational stability, as mentioned elsewhere in this document. In addition, the Coast Guard has developed regulations for fire protection, fire extinguishing, firefighting equipment, dewatering and bilge systems, fuel systems, and electrical systems. Each of these areas has a critical maintenance component. For instance, a watertight hull envelope, which is necessary for operational stability, can be compromised by loose planking, corroded or eroded hull plating, or wasted-through hull fittings, all of which can lead to breaches of a vessel's watertight integrity and stability degradation.

As previously discussed, the Coast Guard lacks authority for mandatory inspections of most commercial fishing industry vessels. Nonetheless, periodic examinations of a vessel and its equipment by personnel on board the vessel or other employees selected by the owner may accomplish safety improvements by reducing the number of vessel losses from machinery and hull failures.

Self-examinations would be the responsibility of the owner and the master. The owner would determine: (a) The level of detail for the examination; (b) the testing required as part of the examination process; and (c) the acceptance criteria for each item examined, if none is otherwise specified by regulation. The master would be the individual that either performs the examinations or supervises the examination process and documents acceptable completion of the examination. The master would be required to maintain a record of examinations.

Most vessel owners and masters are familiar enough with their vessels that they are already effectively performing these periodic examinations. For those owners and masters, these requirements would have little impact. For owners and masters that do not follow good marine practice and do not routinely check their vessel's condition, these requirements would mean spending the time to systematically examine the vessel and its equipment and document the examinations. Given the high number of vessels lost to mechanical and hull failures, improvements within vessel maintenance areas should reduce vessel losses and fatalities. A more formal process and documentation of examinations may lead to better maintenance.

As vessels become larger and more complex, the ability of the master to personally perform all examinations becomes increasingly difficult. It is common for larger vessels to have licensed engineers and mates on board to share the burden and responsibility with the master for performing examinations or to have specialized vendors and subcontractors perform some maintenance and examinations. These persons would be able to continue those processes as before with the exception of documenting their examinations.

D. Immersion Suits

The immersion suit requirements in 46 CFR 28.110 were originally issued in 1991. We amended the requirements in 1992 in response to public objections.

Documented commercial fishing industry vessels currently must carry immersion suits whenever operating seaward of the boundary line and beyond 32 degrees north or 32 degrees south latitude. Prior to the 1992 amendment, we also applied this requirement to documented vessels on any of the Great Lakes.

We are considering requiring vessels to carry immersion suits for their crew members whenever they operate in

seasonally-cold waters. We would define "seasonally cold" much as we did in our 1993 NPRM.

All vessels, whether documented or not, must carry immersion suits while operating beyond-coastal cold waters; in Pacific coastal waters north of Point Reyes, CA; and on Lake Superior. Prior to the 1992 amendment, we also applied this requirement to all vessels operating in any cold-coastal waters or on any of the other Great Lakes. In issuing the 1992 amendment, we stated our intention to undertake further rulemaking under a recommendation of the CFIVSAC, which continued to support the 1991 scope of the requirement.

Our 1993 NPRM proposed extending immersion suit requirements to coastal and beyond-coastal waters that, regardless of latitude, are so cold at certain seasons that immersion suits can be important safety equipment. As previously noted, we terminated this proposal in 1998, with the intention of revisiting the immersion suit issue at a later time.

The 1994–2004 analysis of fishing vessel casualties identified water exposure as "by far the most significant factor in personnel loss" and pointed out that water exposure is involved in 80 percent of all fatalities. Two hundred and thirty-four (71 percent) fatalities from vessel losses occurred in west coast and northeastern waters that tend to be colder and more severe than elsewhere in the country. At the same time, Coast Guard data indicate "fishermen survive nearly twice as often when survival equipment is used." The survival rate is even higher in the case of immersion suits: 61 percent for West Coast and northeastern incident victims who used the suits, compared with 27 percent for those who did not. Based on data from cold waters, we expect that requiring vessels to carry immersion suits if they are operating in cold waters would likely reduce casualties.

E. Crew Preparedness

We are considering the following crew preparedness requirements for vessels that operate beyond the boundary line, with more than 16 persons on board, or that are fish-tender vessels in the Aleutian trade:

- Recurring crew safety and survival training;
- Recurring drill requirements;
- Designation of a vessel safety officer;
- Presence of an on board drill conductor;
- Minimum training requirements for safety instructors, drill conductors, and

other individuals who are required to have safety training; and

- Cardiopulmonary resuscitation (CPR) and First Aid retraining every three years.

1. Training and Drills

The 1994–2004 analysis showed a marked increase in survivability for those familiar with lifesaving equipment, especially personal flotation devices. Of the 328 vessel-related fatalities due to sinking, flooding, and capsizing, only 48 (15 percent) had properly used personal flotation devices or immersion suits. Fatalities involving vessels that operate beyond the boundary line, with more than 16 persons on board, or that are fish-tender vessels in the Aleutian trade might be decreased by increasing the frequency with which realistic drills, involving all crew members, cover the proper use of lifesaving equipment.

The Marine Board of Investigation report into the 2001 sinking of the F/V ARCTIC ROSE, with the loss of 15 lives, recommended requiring recurring safety and survival training.

The need for this training is further demonstrated by the sinking of the F/V GULF KING 15. On December 11, 1997, the F/V GULF KING 15 burned and sank in the waters of the Gulf of Mexico, approximately 60 miles south of Freeport, Texas. The emergency position indicating radio beacon (EPIRB) failed to transmit a distress signal. All three crewmembers on board were able to abandon the vessel; however, they were unable to properly deploy the liferaft. They managed to cling to the uninflated liferaft for several hours. One of the crew drowned after letting go of the raft and the vessel master drowned while being rescued by another vessel. Had the EPIRB been operating properly, the crew would have had a better chance of surviving the casualty. Liferaft deployment and EPIRB operation are two of the topics that would be covered in the safety training we are considering.

A number of training organizations offer the type of training we have in mind, but it is not widespread enough for most of the commercial fishing industry. We think the initial investment for those desiring to provide this training is low and that the facilities needed for this training are generally available throughout the country.

We are considering requiring emergency drills after any personnel change involving persons to whom safety responsibilities are assigned. Most crews are small and rely heavily on teamwork and a shared understanding of responsibilities,

equipment, and methodologies in an emergency. Having only one individual with safety responsibilities within a crew of eight or less can significantly affect the functioning of the team, because team members are highly interdependent during an emergency.

2. Vessel Safety Officer

We are considering requiring vessels that operate beyond the boundary line, with more than 16 persons on board, or that are fish-tender vessels in the Aleutian trade, to have a designated safety officer. The safety officer would report to the master, or if the master is the designated safety officer, to the owner. The safety officer would report on the condition or status of safety equipment, emergency instruction, emergency drills, and safety orientations, among other things. The purpose of having a designated safety officer is to reinforce the importance of safety on board fishing industry vessels. The larger the vessel, the more responsibility the master has. The master has primary responsibility for safety on board, but his or her many other responsibilities can detract from the master's focus on safety.

The designation of a safety officer would not relieve the master of responsibility for the safety of the vessel and crew. The safety officer could provide assistance to the master in safety responsibilities and be a constant reminder that safety should never be overlooked, forgotten, or subordinated to other vessel business.

3. On Board Drill Conductors

For vessels that operate beyond the boundary line, with more than 16 persons on board, or that are fish-tender vessels in the Aleutian trade, we are considering requiring an on board fishing vessel drill conductor to conduct safety orientations. This requirement would conform to recommendations of the Task Force report and the casualty investigation on the sinking of the fish processing vessel GALAXY. Each orientation would include survival equipment location and use, and any potential hazards affecting the vessel such as deck machinery, hazardous materials, or confined or unventilated spaces. Addressing these potential hazards would increase the overall safety awareness of the crewmembers in their work environment. The lessons initially communicated through safety orientations would be reinforced through monthly emergency drills.

Current regulations permit safety instruction and emergency drills to be conducted by any qualified person. A common practice is to have a

professional trainer conduct the safety instruction and drills prior to the local fishing season; however, if a voyage lasts for an extended period of time or port calls are unpredictable, there may not be a professional trainer available for subsequent safety instruction and emergency drills. This potentially leaves the crew with nobody on board experienced in safety instruction and conducting emergency drills. Since on board instruction and drills are the primary means for the majority of those within the commercial fishing industry to become prepared for emergencies, this matter is too important to leave to chance.

In the past, the master was often qualified as a fishing vessel drill conductor, and this may remain the case. The master or a member of the crew who is trained as a fishing vessel drill conductor would be able to provide personal knowledge about the particulars, procedures, and equipment of that vessel. A second fishing vessel drill conductor would be required on board vessels with more than 16 individuals. This would alleviate the burden on the master and help ensure everyone gets trained in a timely manner. The Coast Guard does not believe more than two fishing vessel drill conductors are necessary on any particular vessel.

4. Requirements for Safety Instructors, Drill Conductors, and Other Safety Personnel

For vessels that operate beyond the boundary line, with more than 16 persons on board, or that are fish-tender vessels in the Aleutian trade, we are considering requiring minimum standards for the safety instructors, drill conductors, and for other personnel with specific safety responsibilities.

Fishing vessel safety instructors would need a valid Coast Guard letter of acceptance, renewable after five years. The letter of acceptance would verify that an instructor possesses necessary maritime and instructional experience, and is able to offer an eight-hour curriculum in various safety topics, using either a nationally recognized curriculum or one that the instructor submits for Coast Guard review.

Drill conductors and other individuals with specific safety responsibilities would need certification from a safety instructor attesting that they have satisfactorily completed the training that the safety instructor's letter of acceptance authorizes the safety instructor to give. Like letters of acceptance, these certificates would be valid for five years and could be

renewed after additional training. Fishing vessel drill conductors would also need to show that they can effectively communicate with all members of the crew despite any language barriers, either through translation or hands-on demonstration.

5. CPR and First Aid Training

We are considering expanding the existing requirements for CPR and First Aid training on vessels that operate beyond the boundary line, with more than 16 persons on board, or that are fish-tender vessels in the Aleutian trade. Currently, depending on the size of a vessel's crew, from one to four crew members must have certified training in CPR and First Aid. We are considering requiring refresher training every three years, per the recommendations and practice of the National Institute of Occupational Safety and Health, American National Red Cross, and American Heart Association. Training in first aid and CPR is readily available in most locations and is relatively inexpensive.

F. Safety Equipment

We are considering new measures, relating to the following safety equipment and affecting all commercial fishing industry vessels:

- Emergency position indicating radio beacons (EPIRBs);
- Survival craft;
- Embarkation stations;
- High water alarms; and
- Excess or outdated equipment.

1. EPIRBs

Current regulations require all commercial fishing vessels operating on the high seas or beyond three miles from the coastline of the Great Lakes to be equipped with EPIRBs, which can alert the worldwide search and rescue system and provide the exact location of a vessel in distress or immersed in water. By existing regulation (47 CFR 80.1061(f)), EPIRBs are supposed to be registered with the National Oceanic and Atmospheric Administration but this requirement is frequently overlooked, resulting in unregistered EPIRB activations and risk to Coast Guard search and rescue personnel. We are considering requiring that registration to be documented so that we can enforce the existing registration requirement.

2. Survival Craft

We are considering requiring all survival craft to be easily accessible, and launchable by just one crew member. This conforms to a recommendation of the GALAXY investigation. The means

used to comply with this requirement would be left up to the individual vessel, and, for smaller devices, could include manual launching.

3. Embarkation Stations

We are considering new measures to upgrade the safety and usability of survival craft embarkation stations in the event the crew must abandon ship. Embarkation stations would need to be equipped with emergency lighting and boarding ladders, in conformity with a GALAXY investigation recommendation. After a phase-in period, this requirement would be extended to Aleutian Trade Act vessels.

4. High-Water Alarms

In line with a recommendation from the ARCTIC ROSE investigation, we are considering requiring the use of high-water alarms in enclosed fish sorting or processing spaces. Sudden flooding in these spaces can threaten a vessel's stability. By installing alarms that would sound both in the affected space and in the vessel's operating station regardless of the vessel's heel or trim, the crew would have more time to restore watertight integrity or prepare for abandonment of the vessel.

5. Excess or Outdated Equipment

Safety equipment exceeding regulatory minimums would need to be maintained and inspected like required equipment, or else clearly labeled and segregated for "training use" only. Outdated equipment, like expired distress flares, could be kept for training use, but also would need to be clearly labeled and segregated for that purpose.

G. Documentation

Compliance with most of the measures under consideration would be facilitated by new documentation requirements. Vessel owners or masters would need to document stability training and assessments, vessel self-examinations, safety and survival training, and the use and maintenance of immersion suits and other safety equipment. Before leaving on a fishing trip, a vessel's master would need to file a departure report with the owner, attesting to the vessel's stability condition. Operating personnel would have a written record of compliance with the requirements. Written documentation would provide owners not operating as the vessel master with one means of ensuring that safety is not overlooked, and it would give them a record of operating personnel's activities. Written documentation of safety activities also allows the Coast Guard and other regulatory enforcement

agencies to more quickly verify compliance with the safety requirements. This leads to more thorough examinations and less time spent verifying compliance with safety requirements. This is especially beneficial when compliance is checked while vessels are engaged in fishing activities.

Questions

Public response to the following questions will help the Coast Guard develop a more complete and carefully considered rulemaking. The questions are not all-inclusive, and any supplemental information is welcome. In responding to each question, please explain the reasons for each answer. We encourage you to let us know your specific concerns with respect to each/any of the requirements under consideration.

1. Given the statistics on vessel losses in Tables 2 and 3, what issues related to stability and watertight integrity should the Coast Guard consider addressing in regulations?

2. Table 2 shows that vessel flooding results in the most vessel losses, and Table 3 shows that flooding and sinking account for a significant portion of fatalities. What areas should be addressed to reduce vessel flooding losses and fatalities?

3. What routine measures are used to prevent unintentional flooding?

4. How often is your vessel examined by a marine surveyor and under what circumstances? Is documentation of the survey provided?

5. Table 3 shows that fire is a significant cause of vessel losses. What areas should the Coast Guard consider addressing to reduce the number of fire-related vessel losses (including, but not limited to: construction standards, detection and extinguishing equipment, fire fighting equipment, and firefighting training)?

6. What means are used to limit the danger of fires and the consequence of fires?

7. Table 2 shows that a significant number of vessel losses are related to allisions, collisions, and groundings; how should the Coast Guard address these causes of vessel losses?

8. What impact has safety training had in improving safety within the commercial fishing industry? Do you have recommendations concerning safety training?

9. What impact has crew drills had in improving safety within the commercial fishing industry? Do you have recommendations concerning crew drills?

10. If training were required would it be accomplished during off-season times?

11. How would additional training impact one's ability to fish?

12. If stability standards for vessels between 50 feet and 79 feet in length are considered, what standards should apply, and to which vessels should the standards apply?

13. How does a crew become experienced in safety procedures?

14. Should entry level crewmembers be expected to have a minimum level of familiarity with safety procedures?

15. How and when is stability guidance used? If stability guidance is available but not used, please explain why.

16. How are operating personnel made aware of stability and watertight integrity guidance?

17. How often should stability guidance be reviewed, updated, or validated?

18. How are modifications to a vessel or its gear accounted for relative to the vessel's maximum load, watertight integrity, and other stability considerations?

19. How adequate are current requirements for personal protection and survival equipment?

20. How do crew members become familiar with vessel safety and survival equipment?

21. How are safety risks aboard your vessel(s) identified and minimized?

22. If you are a small business, what economic impact on you, your business, or your organization would the rules we are considering have? In your comments please explain why, how, and to what degree such rules would have an economic impact.

23. Have you experienced—or are you aware of—any situations where any of the measures under consideration saved lives, or prevented/reduced harm/damage to vessels?

24. Are there areas not addressed that would benefit safety within the commercial fishing industry?

25. What are the costs of each requirement we are considering? Are there comparable alternative solutions to each requirement under consideration that may be more cost effective?

26. What are the direct and indirect costs of each requirement we are considering? For example, labor costs, training costs, and hourly wages of fishermen (or alternative measures of valuing their time if they are not salaried)? The costs of vessel losses, including equipment, lost catches, and any other opportunity costs?

27. Can any of the requirements we are considering be completed off-

season? If so, which ones? For those that cannot, how much time would be taken away from productive fishing time to complete the requirement? How would this affect revenue, i.e., fish catches?

28. What would be the impact on the domestic fishing industry, if any, of each requirement we are considering? Would there be a differential impact by size of vessel or region?

29. What would be the economic impact of each requirement we are considering on States, local, and tribal governments?

30. What other requirements, if any, should the Coast Guard be considering?

Dated: March 21, 2008.

Brian M. Salerno,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Stewardship.

[FR Doc. E8-6477 Filed 3-28-08; 8:45 am]

BILLING CODE 4910-15-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 25 and 74

[WT Docket No. 02-55; ET Docket Nos. 00-258 and 95-18; FCC 08-73]

Improving Public Safety Communications in the 800 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to eliminate, as of January 1, 2009, the requirement that Broadcast Auxiliary Service (BAS) licensees in the thirty largest markets and fixed BAS links in all markets be transitioned before the Mobile Satellite Service (MSS) operators can begin offering service. The Commission also seeks comment on how to mitigate interference between new MSS entrants and incumbent BAS licensees who have not completed relocation before the MSS entrants begin offering service. In addition, the Commission seeks comment on allowing MSS operators to begin providing service in those markets where BAS incumbents have been transitioned.

DATES: Comments must be filed on or before April 30, 2008, and reply comments must be filed on or before May 30, 2008.

ADDRESSES: You may submit comments, identified by [WT Docket No. 02-55, ET Docket No. 00-258 and ET Docket No. 95-18], by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Federal Communications Commission's Web Site:* <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.

- *E-mail:* [Optional: Include the E-mail address only if you plan to accept comments from the general public]. Include the docket number(s) in the subject line of the message.

- *Mail:* [Optional: Include the mailing address for paper, disk or CD-ROM submissions needed/requested by your Bureau or Office. Do not include the Office of the Secretary's mailing address here.]

- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: 202-418-0530 or TTY: 202-418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Nicholas Oros, Office of Engineering and Technology, (202) 418-0636, e-mail: Nicholas.Oros@fcc.gov, TTY (202) 418-2989.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Further Notice of Proposed Rule Making*, WT Docket No. 02-55, ET Docket No. 00-258, ET Docket No. 95-18, FCC 08-73, adopted March 5, 2008, and released March 5, 2008. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554. The full text may also be downloaded at: <http://www.fcc.gov>.

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by

Miss Sonya captain: Fishing 'harder than it's got to be'

By Richard Gaines

Staff writer

Gloucester Daily Times, March 29, 2008

Until it sank Tuesday morning returning from Stellwagen Bank, the two-day fishing trip of the dragger Miss Sonya and its two-man crew proceeded routinely, according to federal fishery regulators. That is to say Capt. Matteo Ferrara and his longtime mate Joe Lucido quickly found and hauled up the two-day limit of cod — 1,600 pounds — and yellowtail flounder — 500 pounds — then spent the rest of the trip — Monday night and early Tuesday morning — in a time warp, wasting fuel on a fool's errand. It was what they had to do to keep the trip legal. Having caught the two-day limit of fish in less than one day of fishing, they had to keep fishing without catching cod or yellowtail — or at least stay at sea — so that the tally at the auction would show no more than 800 pounds of cod and 250 pounds of yellowtail per day for the two days out of port. The financial penalties for overcatching are extreme and can include the loss of permit. Fishing boats typically try to catch a bit less than the maximum allowed in case their rough, running estimate of the weight of their catch is a little off. The time warp which engulfed the entire trip was the federal rule that doubles their fishing time on Stellwagen Bank — to inhibit the take from the fertile, convenient fishing grounds. A day of fishing on Stellwagen is charged as two against the days at sea allowed on each boat's permit. The Gulf of Maine multi-species groundfish permits allow 48 days of fishing, and sell on the open market for between \$100,000 and \$150,000 for boats about the size of the Miss Sonya. The 36-year-old Miss Sonya has a steel hull that measures 43 feet.

The rule effectively halves the value of a permit. "It makes fishing less efficient, and has been disastrous to the owners," said Jackie Odell, executive director of the Northeast Seafood Coalition, which includes boat owners and shoreside businesses from Maine to New York. According to Vito Giacalone, a fisherman, businessman and lobbyist, the "trip differential" rule also encourages fishing in more extreme conditions when the catch is found and discourages fishing trips anywhere but where the fish are known to be concentrated. The regulatory approach is a variation on the "effort control system" that has been in place since the early 1980s in varying incarnations under the Magnuson-Stevens Fishery Conservation and Management Act, which established the 200-mile limit to U.S. waters to bar foreign factory ships that had been pillaging the great fishing banks since the middle of the last century. Ferrara said the permit belonging to the boat's owner, Corrado Buccheri, had 14 or 15 days left on it when he spent about \$3,000 to put 1,000 gallons of diesel fuel in the Miss Sonya before noon Monday, and set out for Stellwagen with Lucido to catch cod and yellowtail. The opportunity to fish the nearby bank ends Monday — when that area closes for the year — and most local fishermen, especially those with small boats, consider it the most desirable fishery because of the quantity and quality of the fishing and convenience of location. Once it closes, the boats will be forced farther out to the northeast and southeast sectors of the Gulf of Maine to find the same top-choice cod and yellowtail, whose stocks have been recovering nicely.

So efficient was the Stellwagen fishing Monday that Ferrara said he and Lucido had two-days' limit of cod and yellowtail in the hold in a couple of hours. Then, with the fishing clock running at double time, they began cruising around Stellwagen, which begins about 20 miles southeast of Gloucester, as Ferrara checked the fishfinder for haddock. Ferrara, a veteran fisherman who had operated the Miss Sonya exclusively for Buccheri most of this year, said he can usually read "different colors" in the fishfinder to tell haddock from cod despite their close lineage. "There was nothing," said Ferrara. He wasn't surprised at this because haddock aren't expected in the area until a bit later in the season — after Stellwagen Bank is closed to fishermen. Rolling closures, designed to protect vulnerable stocks, is another side of "effort control" — forcing fishermen to fish inefficiently.

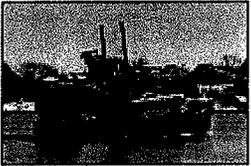
#5

The catch limit part of effort control impelled the crew of the Miss Sonya to keep fishing overnight without any real expectation of catching. The two fishermen were kept at sea longer than they needed to be, as the price for being too good at catching the previous day. Before dawn Tuesday morning, with nothing but cod and yellowtail showing on the fishfinder, and a miniature nor'easter whipping up, Ferrara decided enough was enough. After fishing and intentionally not catching for half a day, the old dragger was turned toward home. It got to within a couple of miles of the Dog Bar breakwater, began to take on water, turned over and sank just minutes after the Coast Guard rescued Ferrara and Lucido. "The life of the fisherman is dangerous, we know this," said Ferrara, 52, who for more than 30 years has fished out of Gloucester and in the past few years has fished out of Alaska in the summer. "Recently, it has gotten much harder than it's got to be."

Photos



A U.S. Coast Guard vessel maneuvers near the overturned hull of the Miss Sonya, which sank Tuesday while returning from Stellwagen Bank. Courtesy photo



The Gloucester fishing vessel Miss Sonya motors past Rocky Neck on Feb. 24. The boat sank Tuesday morning while returning from Stellwagen Bank. Courtesy photo

#6

From: Jim Ford- F/V Lisa Ann II
Sent: Thursday, March 13, 2008 1:06 PM
To: Lou Goodreau
Cc: VMS/Enforcement; EnforcementAdvisors; EnforcementIP
Subject: LAYING OUTSIDE THE DEMARC

VMS Enforcement,

I request that we do something about us boats that lay outside the demarc for 24 and 1 min and have 2 days of cod ,yellowtail .,I have been doing this for a long time now and have had many problems occur 3 weeks ago I broke my anchor hauler because it got hung on the bottom 500.00 for a new motor, and lost my anchor 200.00.Almost all our trips are 24-1min. With the price of fuel it only makes sense to do this.We have sat through allot of bad weather when we should at least be inside the harbor,time on the clock is not a issue with most of us that go 24-1min.Most draggers set a trawl door for a anchor so this means in bad weather we sit stern to the sea with a open stern, not a smart thing to do.I know there is a safe harbor provision,we are all out there to make a living not give it to charity.There should be a declaration on the vms to allow us to be charged 48 hrs in the 2 for one area.I would be much safer tied up or allowed to sit in the harbor on anc hor.Please at least consider the option for the safety of all of us.Thank you for you're time.

--

Jim Ford
F/V Lisa Ann II
Cell: 1-978-479-7014
Home: 603-642-3318
Fax: 603-347-1046

3/13/2008

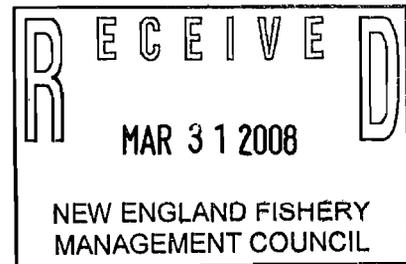


PORTLAND FISH EXCHANGE

#7

March 30, 2008

Rodney Avila, Chair of the Enforcement Committee
New England Fisheries Management Council
50 Water Street
Newburyport, Massachusetts 01950



Dear Chairman Avila:

I am writing to inform you that at the Groundfish Oversight Committee meeting held on March 28th, 2008; the committee voted favorably approving a motion recommending to consider either 'emergency or regulatory' action allowing fishing vessels to unload in multiple ports. The recommendation will move to the Council in April for their consideration.

At the April 3rd Enforcement Meeting; I am encouraging the committee to review why the current regulations preclude vessels from unloading in multiple ports and to discuss how the regulation can be amended. My understanding is that the NERO Office of Law Enforcement created this regulation, with no recommendation or action of the Council to do so. My hope is that the committee can find a workable solution that meets any of Enforcement's concerns.

The allowing of multiple port unloading is a priority for the Portland Fish Exchange; in that during the winter months, all of the Portland based off-shore draggers land in Gloucester and Boston. This attrition of vessels reduced our landings by over 75% from the prior months, exacerbating an already difficult situation for the shore-side businesses here in Portland.

I would appreciate your time and energy to address, and to move forward this committee recommendation favorably.

Sincerely,

Bert Jongerden, General Manager
Portland Fish Exchange
6 Portland Fish Pier
Portland, Maine 04101

B:LG, TN, CBK(4/1)