

(1) Double Vessel Monitoring System (VMS) Polling in Certain Areas

Federal Register Page: 55395

Section: 648.9(c)(1)(ii) VMS Requirements

Recommendation: Explicitly confirm in Final Rule that additional costs of double polling will be borne by the Government, and set forth specific procedure for Government to pay VMS vendors directly for such costs.

Explanation: Section 648.9(c)(1)(ii) would require VMS reporting “*At least twice per hour, 24 hours per day*” for all groundfish vessels fishing in the US/Canada Management Areas and in the Closed Area I Hook Gear Haddock SAP. This is twice the level of VMS reporting required of groundfish vessels fishing in all other management areas. Since VMS polling imposes a significant operational cost, this requirement would appear to constitute a substantial additional economic burden on fishermen operating in the applicable areas.

NSC notes, however, that Appendix C (“Draft Paperwork Reduction Act Supporting Documents”) of Framework Adjustment 40-A to the Northeast Multispecies Fishery Management Plan (FW40A) dated July 2, 2004, suggests that it is the intent of NMFS that these additional costs associated with double VMS polling are to be borne by the agency. Specifically, Appendix C (Justification 13) states the following:

“As stated previously, vessels operating within the U.S./Canada Area, the CAI hook gear haddock SAP, or the CAII haddock SAP must use a VMS. These vessels would be polled twice per hour while operating under these provisions. The costs of this increased polling were considered under a previous submission but were borne by respondents or record keepers. This submission changes the burden estimate for increased polling by shifting it to the government.”

NSC has no strong objection to the added responsibility for vessels fishing in the US/Canada Management Areas or in the Closed Area I Hook Gear Haddock SAP to provide VMS reports twice per hour would be required under section 648.9(c)(1)(ii), provided there is a strong scientific and management basis for this requirement and that such additional costs associated with the increased polling are indeed borne by the government.

NSC strongly suggests that, in assuming such costs, NMFS arrange to have the VMS provider companies bill NMFS directly for their share of these costs rather than use a system whereby fishermen would have to be reimbursed by NMFS for the additional costs paid to the VMS providers. Finally, NSC requests that the Final Rule explicitly state that these additional VMS polling costs will be borne by the government and that it set forth the procedure for how those costs will be paid by NMFS directly.

(2) Combined Trips to the Western U.S. / Canada Area

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Section: 648.85(a)(3)(ii)(B) Special Management Programs / Declaration

Recommendation: Strike limitation on fishing inside and outside of Western US/Canada area: “..., *provided it does not enter or exit the area more than once on any trip,*”

Explanation: The Amendment 13 Final Rule prohibits a vessel from fishing both inside and outside of the Western U.S. Canada Area on the same fishing trip. This restriction severely disrupts traditional fishing operations; precludes the efficient targeting of the strong haddock stock; and threatens to shift fishing effort from Georges Banks towards western inshore areas of the Gulf of Maine where reducing the fishing mortality on stocks of concern is a fundamental objective of Amendment 13.

This Amendment 13 restriction would impose negative economic and conservation impacts that are unnecessary and unacceptable. It is inconsistent with the Amendment 13 policy and objectives to increase opportunities for fishermen to target strong stocks. There is no other apparent conservation benefit of this restriction which appears to serve only the purpose of accounting for yellowtail flounder harvests under the US/Canada Stock Sharing Arrangement—a purpose which can and will be satisfied by the VMS reporting requirements that apply each and every time a vessel enters or leaves the Western US/Canada Area.

The New England Fishery Management Council (NEFMC) invested considerable time and effort into ameliorating this problem by developing in Framework 40-A (FW40A) a measure that provides the appropriate degree of flexibility and reporting responsibilities to fishing operations inside and in the vicinity of the Western U.S. Canada Area. On May 12, 2004, the NEFMC adopted the following section of the “Draft Framework Adjustment 40-A to the NE Multispecies Fishery Management Plan” dated May 4, 2004. This excerpt that speaks for itself is as follows.

“5.5 U.S./CANADA RESOURCE SHARING UNDERSTANDING (D)

5.5.1 Measure D.1: Combined Trips to the Western US/CA Area

Vessels can fish both inside the western US/CA area and outside the western US/CA area on the same trip (but not in the eastern US/CA area). If a vessel fishes both inside and outside the area on the same trip, it is bound by the more restrictive regulations for the area fished. In addition, the vessel must report its catch in an area via VMS. Reports must be submitted daily and when crossing the boundary between the Western US/CA area and other areas.

Rationale: The regulations implementing Amendment 13 do not allow vessels fishing in the western US/CA area from fishing outside that area on the same trip. This restriction unnecessarily restricts fishing operations on Georges Bank. Vessels have historically fished the entire area on the same trip as they

search for fish. For example, vessels targeting haddock – a healthy stock and one that the Council is trying to encourage vessels to target - often fish the entire length of the northern boundary of CAI. Half of this northern boundary is within the western US/CA area, while half is outside this area. Under existing regulations, vessels are not able to fish along the entire boundary, but must choose which area they will stay in. The Council is concerned that faced with this restriction, vessels will avoid the western US/CA area in order to have more flexibility in their fishing operations.

The proposed measure provides fishermen some flexibility to fish in a wider area, while addressing concerns over monitoring the US/CA Resource Sharing Understanding TAC for GB yellowtail flounder.”

Section 648.85(a)(3)(ii)(B) of the Proposed Rule proposes to implement the measure adopted by the NEFMC as follows:

“(B) A vessel fishing under a NE multispecies DAS in the Western U.S./ Canada Area may fish inside and outside the Western U.S./Canada Area on the same trip, provided it does not enter or exit the area more than once on any trip, and complies with the possession restrictions specified in paragraph (a)(3)(iv)(C)(4) of this section, and the reporting requirements specified in § 648.85(a)(3)(v).”

In part, this provision correctly reflects the NEFMC’s measure by authorizing vessels to “*fish inside and outside the Western U.S./Canada Area on the same trip*”.

However, the provision adds the new restriction that a vessel may enter or exit the Area only once during any trip. Clearly, this does not reflect the intent or stated recommendations of the NEFMC, nor does it reflect any of the extensive deliberations on this issue found in the meeting records of the Groundfish Oversight Committee meetings and NEFMC.

In fact, this added restriction not only negates the objectives of the NEFMC to achieve greater flexibility, it actually presents a situation that is even less flexible and more detrimental than the status quo Amendment 13 provision, which prohibits fishing inside and outside the Area on the same trip altogether. Fishermen that might have taken the chance of leaving the Western U.S. Canada Area to target haddock, but are unsuccessful in locating haddock, would have no option but to continue fishing in areas where reducing the fishing mortality on certain yellowtail flounder stocks and other stocks of concern is a fundamental objective of Amendment 13. This presents a strong disincentive to targeting the strong haddock stock in contradiction to the objectives of Amendment 13, and it creates a greater risk of exceeding the fishing mortality targets of, for example, Cape Cod/Gulf of Maine yellowtail flounder and other stocks of concern.

Just like the original Amendment 13 restriction, this restriction would continue to severely disrupt traditional fishing operations; preclude the efficient targeting of the strong haddock stock in contradiction to the objectives of Amendment 13; and threaten to shift fishing effort from Georges Banks towards western inshore areas of the Gulf of Maine where

reducing the fishing mortality on yellowtail flounder stocks and other stocks of concern is also a fundamental objective of Amendment 13. Vessels fishing in this area would have to report their locations and catch each and every time they enter or leave the Area which would provide sufficient monitoring and data on the stock composition of the catch of yellowtail flounder for both domestic management purposes and the purposes of the US/Canada Stock Sharing Arrangement. Thus, there does not appear to be any conservation or monitoring basis for this restriction.

NSC strongly urges NMFS to remove the clause, “*provided it does not enter or exit the area more than once on any trip*”, from section 648.85(a)(3)(ii)(B) of the Proposed Rule.

(3) Eastern U.S./Canada Haddock SAP Pilot Program

Federal Register Page: 55398

Section: 648.85(b)(5)(ii) Special Management Programs / Incidental TACs

Recommendation: Strike the incidental TAC allocation of “...34 percent to the Eastern U.S./Canada Haddock SAP Pilot Program”. Reallocate this incidental TAC to the Regular B DAS Pilot Program.

Explanation: As stated in section 3 of the Preamble (69 FR 5531) of the Proposed Rule with respect to the Eastern U.S./Canada Haddock SAP Pilot Program:

“The SAP would close if the Regional Administrator projects that the haddock or cod TAC for the Eastern U.S./Canada Area has been caught (landings and discards).”

Indeed, this Area is subject to a hard TAC for Georges Bank cod of 300mt in fishing year 2004 and 260mt in fishing year 2005 pursuant to the US/Canada Stock Sharing Arrangement. As is clear from the statement cited above, the Regional Administrator (RA) will close the SAP and terminate fishing in the Eastern U.S. Canada Area when this hard TAC is projected to be caught. Consistent with the spirit of this Arrangement, if the US harvest exceeds this hard TAC in a fishing year, such excess harvest would be deducted from the US hard TAC in the following fishing year. NSC supports this straight forward approach to ensuring the conservation of Georges Bank cod.

However, as also set forth in section 3 of the Preamble, and in section 648.85(b)(5)(ii) of the proposed modifications to the CFR, the Proposed Rule would allocate 34 percent of the US incidental TAC for Georges Bank cod to the Eastern U.S./Canada Haddock SAP Pilot Program. This allocation of incidental TAC of Georges Bank cod is *in addition to* the existing hard TAC of Georges Bank cod established under the US/Canada Stock Sharing Arrangement discussed above. This would appear to represent a unilateral declaration by the US to allocate and allow the harvest of an amount of Georges Bank cod harvest that exceeds the hard TAC negotiated under the Arrangement.

In practice, however, such allocation would have no purpose since the amount that the US over-harvested Georges Bank cod above the US hard TAC would be deducted from the US hard TAC in the following fishing year. The net gain of US Georges Bank cod harvest to

the US would be, of course, zero. Consequently, a sizeable portion (34 percent) of the Georges Bank cod incidental TAC-- that should otherwise be made available to achieve the objectives of Amendment 13 to fully utilize the OY of strong stocks through the Regular B DAS Pilot Program-- would be rendered useless by this allocation.

NSC anticipate that the allocation of Georges Bank cod incidental TAC to this SAP was made by the NEFMC and in the Proposed Rule in error, perhaps in an effort to harmonize this SAP with other B-day programs which are bound by Incidental TACs for the stocks of concern. However, the existence of the US/Canada Stock Sharing Arrangement hard TAC for Georges Bank cod in this area precludes the need for an additional allocation of the US Incidental Georges Bank cod TAC. NSC strongly recommends that the allocation of 34 percent of the Georges Bank cod incidental TAC to the Eastern US/Canada Haddock SAP Pilot Program be removed and reallocated to the Regular B DAS Pilot Program.

(4) Regular B DAS Pilot Program

Federal Register Page: 55398

Section: 648.85(b)(6)(i) Special Management Programs / B Regular DAS Pilot Program / Eligibility

Recommendation: Strike: *“Vessels may not fish under the B Regular DAS Program in the Eastern U.S. / Canada Area.”*

Explanation: NSC strongly supports the efforts of the National Marine Fisheries Service (NMFS) in the Proposed Rule to closely reflect the intent of the NEFMC to move forward with the timely implementation of the Regular B DAS Pilot Program. This program is fundamental to fulfilling the promise of Amendment 13 to mitigate the severe economic impacts of the DAS reductions that were necessary to rebuild stocks of concern by providing fishermen with the opportunity to apply their knowledge and ingenuity to more fully utilize the Optimum Yield (OY) of the stronger stocks consistent with the overall conservation and rebuilding objectives of the Fishery Management Plan (FMP).

However, NSC strongly objects to the provision set forth in the proposed modifications to section 648.85(b)(6)(i) of the Code of Federal Regulations (CFR), which states:

“Vessels may not fish under the B Regular DAS Pilot Program in the Eastern U.S./Canada Area.”

NSC does understand the purpose or intent of this restriction on the use of the Regular B DAS Pilot Program and notes that this concept was not contemplated or included by the NEFMC in FW40A. To the contrary, it would appear that the Eastern US/Canada Area is one of the areas where fishing under this Program would be most appropriate and could be prosecuted in a manner that is consistent with the conservation measures and US obligations that otherwise apply in this Area.

The rate of under-utilization of the haddock OY in this Area has been and is likely to continue to be perhaps the greatest among the various regulated areas. US fishing capacity

and opportunities are relatively limited in this area. Consistent with its purposes and Amendment 13, the Regular B DAS Pilot Program would encourage and facilitate greater utilization of the haddock Optimum Yield.

Further, fishing under the Regular B DAS Pilot Program would remain subject to the same gear restrictions that otherwise apply to this Area (haddock separator trawl net or flounder trawl net), as well as the same overall hard TAC for Georges Bank cod and other stocks set forth under the US Canada Stock Sharing Arrangement. Furthermore, the incidental TAC, monitoring, no-discard and “flip” provisions of the Regular B DAS Pilot Program would ensure this fishing activity would properly manage the fishing mortality of other stocks of concern in the Area.

NSC strongly urges NMFS to strike this provision prohibiting vessels from fishing under the B Regular DAS Pilot Program in the Eastern US/Canada Area.

(5) Regular B DAS Pilot Program

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Section: 648.85(b)(6)(iv)(B) Special Management Programs/ B Regular DAS Pilot Program / Observer Notification

Recommendation: Clarify that an advanced declaration of the “planned fishing area or areas” under this Program are not binding on the vessel’s fishing operations during a trip.

Explanation: While it may be helpful for the observer program to have some idea of the areas a fishing vessel plans or hopes to operate in, a vessel cannot be expected to limit its operations to that area based on a declaration made 72 hours in advance of when the trip begins. Vessels need to retain the flexibility at all times during a fishing trip—for both economic and safety reasons—to decide what areas they will fish. Such a decision could regularly occur a week or more after the initial declaration is made based on the catch rates or species composition during the trip, or based on changing weather conditions. NSC does not strongly object to the requirement for a vessel to make such a declaration, provided such information has some utility for scientific or management purposes. However, such a declaration cannot possibly be made binding on where a vessel ultimately operates during the trip without imposing a severe and undue economic and safety burden on the vessel operator. This needs to be clarified in the Final Rule.

(6) Regular B DAS Pilot Program

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Section: 648.85(b)(6)(iv)(E) Special Management Programs/ B Regular DAS Pilot Program / No-discard provision and DAS flips

Recommendation: Conform flip requirements to FW40A. Revert to FW40A requirement to flip from B Day to A day when crossing the demarcation line when returning to port. If not, clarify that vessels are subject to maximum trip limits for landing regulated groundfish, not the daily limit.

Explanation: The discussion in section 1 of the preamble (page 55390) and section 648.85(b)(6)(iv)(E) of the proposed amendments to the regulations are both somewhat ambiguous regarding what amount of regulated groundfish brought on board will trigger the requirement for a vessel to flip from a B DAS to an A DAS. As NSC understands it, FW40A would require a vessel to flip from a B day to an A day when the amount of regulated groundfish brought onboard exceeds the maximum landing limit for the number of days fished at the time the vessel crosses the demarcation line when returning to port. This amount could be the maximum trip limit, depending on the length of the trip. Instead, the proposed language requires a vessel to flip immediately at the time a vessel exceeds the “applicable maximum landing limit”.

If this requirement for an immediate flip is retained, then the language needs to be clarified to refer unambiguously to the maximum trip limit since it will not be possible for a fishermen or an enforcement officer to know how many days the trip will last at any given point in the trip. Enforcing the daily landing limit at some point during a fishing trip will deny fishermen the opportunity to improve their avoidance of stocks of concern as a trip progresses and, potentially, avoid the need to flip.

NSC suggests that requiring a vessel to flip immediately while on the fishing grounds is likely to pose an undue burden on fishing operations as it is difficult to know precisely the quantity of fish on board until the vessel ceases fishing operations and is traveling back to port. Attempting to enforce the flip requirement while the vessel is actively fishing on the fishing grounds is likely to generate confusion for both enforcement officers and fishermen over what amount of fish is allowed on board under a B DAS relative to the trip and daily limits. The proposed requirement to enforce the flip requirement before the vessel operator has had a reasonable opportunity to survey the amount of catch on board (before crossing the demarcation line when returning to port) is also likely to generate a volume of enforcement actions that are both unnecessary and controversial. As was extensively discussed and contemplated by the NEFMC when it prepared FW40A, fishermen need to be given a reasonable opportunity to comply with the flip provisions.

NSC strongly prefers that the requirement to flip immediately on the fishing grounds be stricken and that the original requirement set forth by the NEFMC in FW40A for flipping to occur upon crossing the demarcation line when returning to port be restored.

(7) Regular B DAS Pilot Program

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Section: 648.85(b)(6)(vi) Special Management Programs/ B Regular DAS Pilot Program / Closure of the Regular B DAS Pilot Program

Recommendation: Strike language providing additional authority to close program: “...,or if the level of observer coverage is insufficient to make such a projection.”

Explanation:

NSC is very uncomfortable with the extremely vague and open-ended authority this provision provides the Regional Administrator to close the Regular B DAS Pilot Program. As NSC understands it, the language would enable this closure to be made if the level of observer coverage is insufficient to make the projection that continuation of the Program would undermine the achievement of the objectives of the FMP or the Program itself.

It is not clear what criteria would be applied in evaluating whether the program is undermining the achievement of such broad objectives, nor is it known what specific level of observer coverage would be sufficient to make such a projection, whatever it is. In the absence of any specific criteria or scientific data, these appear to be extraordinarily subjective decisions.

FW40A provides clear and unambiguous triggers for the Regular B DAS Pilot program to be closed. These include when the incidental TACs are reached for any stock within a stock area, or when the total number of Regular B DAS used reaches the limit of 1000 DAS for a fishing year quarter. The NEFMC did not recommend using the level of observer coverage as a basis for closing the Program.

NSC supports a vigorous observer program for the Regular B DAS Pilot Program which will be instrumental in collecting important data regarding the success of the program. However, NSC does not believe that the level of observer coverage, as it subjectively relates to an undefined projection of whether the program undermines the overall objectives of the FMP and the Program itself, should be a criteria for keeping the Program open nor was that the NEFMC's intent.