

2,5-furandione from the requirement of a tolerance will be safe.

X. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these rules from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes, or otherwise have any unique impacts or local governments. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November

9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4).

Although this action does not require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. As such, to the extent that information is publicly available or was submitted in comments to EPA, the Agency considered whether groups or segments of the population, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

XI. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 12, 2009.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In §180.960, the table is amended by adding alphabetically the following polymer to read as follows:

§ 180.960 Polymers; exemptions from the requirement of a tolerance.

Polymer	CAS No.
2-Propenoic acid, monoester with 1,2-propanediol, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) and 2,5-furandione, minimum number average molecular weight (in amu), 25,000.	955015-23-3

[FR Doc. E9-5293 Filed 3-10-09; 8:45 am]

BILLING CODE 6560-50-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 090224229-9245-01]

RIN 0648-AX72

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Secretarial Final Interim Action

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final interim rule; temporary suspension of regulations and request for comments.

SUMMARY: In response to February 17, 2009, and February 23, 2009, Court Orders, issued by the U.S. District Court, District of Massachusetts, NMFS is temporarily suspending specific regulations implemented under Framework Adjustment (FW) 42 to the Northeast (NE) Multispecies Fishery Management Plan (FMP); namely differential days-at-sea (DAS) counting in the Gulf of Maine (GOM) and Southern New England (SNE). In addition, and also in response to the February 17, 2009, Court Order, NMFS is extending, by 30 days, the fishing year 2008 March 1 deadline for submission of DAS leasing applications.

DATES: Section 648.82(e)(2) is stayed effective March 6, 2009, through April 10, 2009, and the amendment to § 648.82(k)(3) introductory text is effective March 6, 2009, through March 31, 2009. Comments must be received by April 10, 2009.

ADDRESSES: You may submit comments, identified by 0648-AX72, by any one of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal e-rulemaking portal: <http://www.regulations.gov>.

- **Mail:** Paper, disk, or CD-ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930-2276. Mark the outside of the envelope: "Comments on NE Multispecies Final Interim Rule to Temporary Suspend Differential DAS."

- **Fax:** (978) 281-9135.

Instructions: All comments received are part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter "N/A" in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF formats only.

FOR FURTHER INFORMATION CONTACT:

Thomas Warren, Fishery Policy Analyst, (978) 281-9347, fax (978) 281-9135.

SUPPLEMENTARY INFORMATION:

Amendment 13, implemented on April 27, 2004 (69 FR 22906), brought the FMP into conformance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requirements, including measures to end overfishing and rebuild all overfished groundfish stocks. In addition, Amendment 13 established a biennial FMP adjustment process that requires the New England Fishery Management Council (Council) to review the fishery periodically using the most recent scientific information available, recommend target total allowable catches (TACs), and recommend to the Regional Administrator any changes to management measures necessary to achieve the goals and objectives of the FMP.

Pursuant to this biennial adjustment, and the August 2005 stock assessment updates of the 19 stocks managed under the FMP (GARM II; Northeast Fisheries Science Center Reference Document 05-130), the Council developed management measures under FW 42 to reduce fishing mortality rates on six groundfish stocks that were identified as overfished in Amendment 13, in order to maintain compliance with the rebuilding program of the FMP. In addition, FW 42 included a rebuilding program for Georges Bank (GB) yellowtail flounder, and implemented target TACs, as well as incidental catch TACs, for fishing years 2006, 2007, and 2008. FW 42 also continued to authorize, as well as modify, specific management measures that helped to mitigate the economic and social impacts of the FMP.

FW 42 (71 FR 62156, October 23, 2006) became effective on November 22, 2006, and included the following management measures: Recreational restrictions; a vessel monitoring system (VMS) requirement for all groundfish DAS vessels; differential DAS counting in a portion of the GOM and SNE areas; commercial trip limits; renewal of the Regular B DAS Program; renewal of the DAS Leasing Program; renewal and modification of the Eastern U.S./Canada Haddock SAP; authorization of the GB Cod Fixed Gear Sector; modification of the Closed Area I Hook Gear Haddock SAP; modification of the Eastern U.S./Canada Management Area regulations to provide increased flexibility; modification of the DAS Transfer Program; standardization of requirements and gear performance incentives for the Special Management Programs; modification of the cod landing limit in the Eastern U.S./Canada Area; and modification of the SNE/Mid-Atlantic Regulated Mesh Area mesh requirement.

On November 21, 2006, the Commonwealth of Massachusetts and the State of New Hampshire filed a legal challenge of FW 42 and requested that it should be vacated on the basis that it violated several provisions of the Magnuson-Stevens Act, including National Standard 1. With respect to the National Standard 1 challenge, plaintiffs alleged that the Agency did not adequately consider the applicability of the mixed-stock exception in approving FW 42. As a result, plaintiffs claim that FW 42 measures, such as the 2:1 DAS counting provision, was overly strict.

On January 26, 2009, the U.S. District Court, District of Massachusetts, in the case of *Commonwealth of Massachusetts and State of New Hampshire v. Carlos M. Gutierrez* (Civil

Action No. 06-12110-EFH), issued a Memorandum and Order that temporarily suspended FW 42, "pending serious consideration and analysis" of the mixed-stock exception. In its January 26, 2009, Order, the Court agreed with the Secretary of Commerce (Secretary) that the Guidelines are advisory, and stated that it believed that "prudent agency administration dictates that Commerce at least seriously consider and analyze the Mixed-Stock Exception, which Commerce admits that it did not do." The Court ordered that "this review process shall be completed no later than sixty (60) days from the date of this order, on which date, or sooner, Commerce shall file a report of its findings with the court."

On February 2, 2009, the Secretary of Commerce filed two motions: A motion to alter or amend the Court's Order to lift the suspension of the FW 42 measure; and a motion to stay the temporary suspension of FW 42 pending resolution of the motion to alter or amend. On February 2, 2009, the Court denied the Secretary's motion to stay.

On February 13, 2009, the Commonwealth of Massachusetts and State of New Hampshire opposed, in part, the Secretary's February 2, 2009, motion to alter or amend and asked the Court to modify its Order by reinstating all FW 42 measures, except differential DAS counting (2:1 counting of DAS) in the GOM. The plaintiffs also requested that the March 1, 2009, deadline for submitting DAS leasing application to NMFS be extended by 30 days.

On February 17, 2009, the U.S. District Court of Massachusetts issued a second Order granting, in part, the Secretary's February 2, 2009, motion to alter or amend. Specifically, the February 17, 2009, Court Order reinstated FW 42, with the exception of 2:1 differential DAS counting and specified that differential DAS counting should remain suspended for 38 days from the date of the Order; i.e., through March 27, 2009. In addition, the Court ruled that the March 1, 2009, deadline for submitting applications for the DAS Leasing Program be extended by 30 days, i.e., March 31, 2009.

On February 19, 2009, NMFS filed an analysis of the mixed-stock exception with the Court which essentially concluded that this exception was not a viable alternative to consider or to implement in FW 42 because it could not be shown, in either the 1998 and 2009 National Standard 1 guidelines, that the threshold criterion regarding rebuilding programs specified for the mixed-stock exception would have been met.

On February 23, 2009, the Court issued a third Order, extending the suspension of differential DAS counting through April 10, 2009, to allow the Council time to review NMFS analysis of the mixed-stock exception, as submitted to the Court on February 19, 2009, as submitted to the Council during its regularly scheduled April 2009 meeting.

In response to the February 17, 2009, and February 23, 2009, Court Orders, NMFS, through this final interim rule, is issuing a temporary suspension of the FW 42 differential DAS counting regulations through April 10, 2009, and extending the fishing year 2008 March 1 deadline for submission of DAS leasing applications to March 31.

Classification

It has been determined that this rule is "not significant" for purposes of E.O. 12866.

The Administrator, Northeast Region, NMFS, determined that the temporary suspension of differential DAS counting implemented through this final interim rule is necessary in order to comply with the Court Order. Therefore, this action represents a non-discretionary modification to the FMP, as required by a Court Order.

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator of Fisheries (AA) finds good cause to waive prior notice and opportunity for public comment. Prior notice and opportunity for public comment are impracticable, as NMFS is required by court order to immediately implement these changes, and has no discretion in making these modifications to the rule. For the same reason, the AA finds good cause to waive the 30-day delay in the effective date under 5 U.S.C. 553(d)(3).

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* are inapplicable.

It has been determined that the Environmental Assessment/Finding of No Significant Impact statement prepared for FW 42 remains applicable and that the scope of this action falls within the range of measures previously analyzed. This final interim rule has been determined to be not significant for the purposes of Executive Order (E.O.) 12866. This final interim rule does not contain policies with Federalism or "takings" implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively. This final interim rule does not contain any new recordkeeping or reporting requirements.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 5, 2009.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 648.82, paragraph (e)(2) is stayed effective March 6, 2009, through April 10, 2009, and paragraph (k)(3) introductory text is revised to read as follows:

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

* * * * *

(k) * * *

(3) *Application to lease NE multispecies DAS.* To lease Category A DAS, the eligible Lessor and Lessee vessel must submit a completed application form obtained from the Regional Administrator. The application must be signed by both Lessor and Lessee and be submitted to the Regional Office at least 45 days before the date on which the applicants desire to have the leased DAS effective. The Regional Administrator will notify the applicants of any deficiency in the application pursuant to this section. Applications may be submitted at any time prior to the start of the fishing year or throughout the fishing year in question, up until the close of business on March 1, unless otherwise specified in this paragraph (k)(3). For the 2009 fishing year, applications may be submitted up until the close of business on March 31. Eligible vessel owners may submit any number of lease applications throughout the application period, but any DAS may only be leased once during a fishing year.

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[FR Doc. E9-5191 Filed 3-6-09; 4:15 pm]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 0401120010-4114-02]

RIN 0648-XN66

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Modification of the Yellowtail Flounder Landing Limit for the U.S./Canada Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; increase of landing limit.

SUMMARY: This action increases the Georges Bank (GB) yellowtail flounder trip limit to 5,000 lb (2,268 kg) for NE multispecies days-at-sea (DAS) vessels fishing in the U.S./Canada Management Area. This action is authorized by the regulations implementing Amendment 13 to the NE Multispecies Fishery Management Plan (FMP) and is intended to increase the likelihood of harvesting the total allowable catch (TAC) for GB yellowtail flounder without exceeding it during the 2008 fishing year. This action is being taken to allow vessels to fully harvest the TACs for transboundary stocks of GB cod, haddock, and yellowtail flounder under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Effective 0001 hours March 9, 2009, through April 30, 2009.

FOR FURTHER INFORMATION CONTACT: Allison Murphy, Fishery Management Specialist, (978) 281-9122, fax (978) 281-9135.

SUPPLEMENTARY INFORMATION: Regulations governing the GB yellowtail flounder landing limit within the U.S./Canada Management Area are found at 50 CFR 648.85(a)(3)(iv)(C) and (D). The regulations authorize vessels issued a valid limited access NE multispecies permit and fishing under a NE multispecies DAS to fish in the U.S./Canada Management Area, as defined at § 648.85(a)(1), under specific conditions. The TAC for GB yellowtail flounder for the 2008 fishing year (May 1, 2008 - April 30, 2009) was set at 1,950 mt (73 FR 16572, March 28, 2008), a