

Angling category permit. That temporary rule is effective through July 9, 2003.

Since issuance of the June 12, 2003, temporary rule, NMFS has received numerous comments on a daily basis that other permits have been issued in incorrect categories due to confusion about the new HMS Angling category, human error in selecting the permit due to unfamiliarity with the automated permitting system, and possible administrative error. Persons issued permits in the Atlantic Tunas General and Harpoon and Atlantic HMS Angling and Charter/Headboat categories have also contacted NMFS to seek relief for permits issued in incorrect categories. Due to the unique circumstances of the new HMS Angling permit requirements, and the numerous errors in permit category issuance, this temporary rule provides a 10-day period for all Atlantic Tunas General, Harpoon, and Trap categories and Atlantic HMS Angling and Charter/Headboat category permit holders to correct permit category errors. Atlantic Tunas Longline and Purse Seine category permits are limited access permits and are not eligible for changes under this temporary rule.

For persons issued 2003 Atlantic Tunas and Atlantic HMS category permits after the effective date of this temporary rule, corrections to a permit category must be made within 10 days of the date of issuance of the permit (e.g., if a permit is issued on July 1, then corrections to the permit category must be made by July 10). For persons issued 2003 Atlantic Tunas and Atlantic HMS category permits prior to or on the effective date of this temporary rule (excluding Atlantic Tunas Longline and Purse Seine category permits), corrections to permit category errors must be made by July 3, 2003. It is incumbent upon permit holders to carefully review their existing permit category information, as, no further corrections to a permit category may be made after the above-mentioned 10-day periods.

Pending receipt of a new permit, permit holders are subject to the regulations applicable to their currently held permits.

#### Permit Category Changes

NMFS maintains an automated permitting system for the issuance of Atlantic Tunas vessel permits and HMS Angling vessel permits. To make a permit category correction under this temporary rule, dial (888) 872-8862 and press "0" from the main menu to reach a Customer Service representative.

#### Classification

This temporary rule is published under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act.

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this rule is consistent with the Magnuson-Stevens Act and other applicable laws.

The Assistant Administrator for Fisheries, NOAA (AA), finds for good cause that providing prior notice and public comment for this temporary rule, as required under 5 U.S.C. 553(b)(B), is impracticable and contrary to the public interest. The Atlantic HMS Fishery opened on June 1, 2003. Over the past 2 weeks, fishermen have been notifying NMFS that, as a result of confusion regarding the new HMS recreational Angling permit requirement and errors in selecting and/or issuing their permits, they had obtained Atlantic Tunas and Atlantic HMS permits in incorrect categories. Current regulations do not provide a mechanism for correcting permit category errors. Delay in issuing this temporary rule would prevent fishermen who intended to fish under the new Angling category or under different categories from being allowed to engage in their intended fishing activities for the next several months.

Because this temporary rule relieves a restriction by allowing an otherwise prohibited permit correction, it is not subject to a 30-day delay in effective date pursuant to 5 U.S.C. 553(d)(1).

NMFS will rapidly communicate this action to fishery participants through its FAX network and HMS Information Line.

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

This action is not significant within the meaning of Executive Order 12866.

Dated: June 23, 2003.

**Rebecca J. Lent,**

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[FR Doc. 03-16260 Filed 6-23-03; 4:30 pm]

**BILLING CODE 3510-22-S**

#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 030409081-3154-02; I.D. 032103B]

RIN 0648-AQ72

#### Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery

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

**ACTION:** Final rule.

**SUMMARY:** This final emergency rule implements emergency measures intended to reduce overfishing on species managed under the NE Multispecies Fishery Management Plan (FMP), under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This action continues most interim measures specified in the Settlement Agreement Among Certain Parties (Settlement Agreement), ordered to be implemented by the U.S. District Court for the District of Columbia (Court). The interim measures were implemented through an interim final rule published on August 1, 2002. The final emergency rule contains measures such as: A freeze on days-at-sea (DAS) at the highest annual level used from fishing years 1996-2000 and a 20-percent cut from that level; a freeze on the issuance of new open access Hand-gear permits; gear restrictions; modifications and additions to closure areas; and restrictions on yellowtail flounder catch. In addition, in response to public comment, this final emergency rule implements measures pertaining to haddock, including reducing the haddock minimum size limit for private recreational and party/charter vessels to 21 inches (52.5 cm), and relaxing the haddock trip limit (also known as bag limit) for charter/party and open access Handgear permit vessels. NMFS and two of the plaintiffs filed a motion with the Court requesting an extension of the August 22, 2003, implementation of Amendment 13 to the NE Fishery Management Plan (FMP) schedule in the Order until May 1, 2004. On December 4, 2002, the Court granted an extension of the Court-ordered timeline for implementation of Amendment 13 to

the FMP until May 1, 2004. Amendment 13 will put in place long-term measures to end overfishing and rebuild multispecies stocks. This emergency rule is necessary to ensure that there exist measures to reduce overfishing until implementation of Amendment 13.

**DATES:** Effective July 28, 2003.

**ADDRESSES:** Written comments regarding the approved collection-of-information requirements should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer). Copies of this final emergency rule, including the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) are available upon request from the Regional Administrator. The EA/RIR/FRFA is also accessible via the Internet at <http://www.nero.nmfs.gov>.

**FOR FURTHER INFORMATION CONTACT:** Thomas Warren, Fishery Policy Analyst, phone: 978-281-9347, fax: 978-281-9135; email: [thomas.warren@noaa.gov](mailto:thomas.warren@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

A proposed emergency rule for this action, requesting public comment, was published on April 24, 2003 (68 FR 20096), and subsequently corrected on May 9, 2003 (68 FR 24914), that would continue measures implemented on August 1, 2002, consistent with the Settlement Agreement, which was ordered to be implemented by the Court in a Remedial Order (Order) issued on May 23, 2002, as a result of *Conservation Law Foundation, et al. v. Evans, et al.* In addition to containing the interim measures implemented on August 1, 2002, consistent with the Settlement Agreement, which are being implemented through this final emergency rule, the proposed emergency rule contained a program that would allow limited access NE multispecies vessels to lease DAS. Due to the newness and potential controversiality of the DAS Leasing Program and its implications, NMFS extended the comment period through June 10, 2003, on the DAS leasing aspect of the proposed emergency rule only (68 FR 28188; May 23, 2003). This final emergency rule implements many of the same measures implemented through the August 1, 2002, interim final rule with some modifications in response to public comment, and does not implement the DAS Leasing

Program. If the DAS Leasing Program is approved, a separate final rule will be published to implement that program.

Pursuant to the Court's Order, NMFS published an interim final rule (67 FR 50292) on August 1, 2002, which implemented management measures consistent with the Settlement Agreement that intended to reduce overfishing on species managed under the FMP. Measures implemented on August 1, 2002, included: A freeze on DAS based on the highest annual level used from fishing years 1996-2000, reduced by 20 percent; a freeze on the issuance of new open access Hand-gear permits; increased gear restrictions for certain gear types, including gillnets, hook-gear and trawl nets; modifications and additions to the closure areas; limits on yellowtail flounder catch; a reduction in the haddock trip limit for open access Handgear vessels; a haddock trip limit for charter/party vessels fishing in the Gulf of Maine (GOM); and an increase in minimum haddock size for private recreational and party/charter vessels.

The Order specified that the management measures implemented by the August 1, 2002, interim rule must remain in effect until implementation of Amendment 13 to the FMP. Amendment 13 was initially scheduled to be in effect no later than August 22, 2003. However, due to the need for additional time to address unanticipated concerns related to NMFS' Northeast Fisheries Science Center's trawl survey and the new biological reference points developed for the NE multispecies stocks, NMFS and two of the plaintiffs filed a motion with the Court requesting an extension of the August 22, 2003, implementation schedule until May 1, 2004. On December 4, 2002, the Court granted an extension of the Court-ordered timeline for Amendment 13 implementation until May 1, 2004.

On January 22, 2003, NMFS published a notice in the **Federal Register** informing the public that NMFS was continuing the interim regulations for a second 180-day period (ending July 27, 2003). Under section 305(c)(3)(B) of the Magnuson-Stevens Act, interim regulations implemented under section 305(c) are limited to two, consecutive 180-day periods. The Court subsequently granted an extension of the original schedule for implementation of Amendment 13 to May 1, 2004. Thus, in order to comply with the Court Order to maintain the short-term measures until implementation of Amendment 13, the Secretary is implementing this final emergency rule under 305(c) of the Magnuson-Stevens Act.

This final emergency rule implements many of the same measures contained in the interim final rule published on August 1, 2002, as described below, with slight modifications to measures pertaining to haddock size and possession limits for recreational, party/charter, and open access Handgear vessels. As acknowledged in the Settlement Agreement, the Secretary maintains the discretion to modify measures contained therein. NMFS determined that slight modifications to certain haddock specific measures are justified due to the unique circumstances of the haddock fishery, including, the fact that overfishing is not occurring in the haddock fishery, the disproportionate haddock restrictions among different sectors of the fishery, and the potential for lowering discarded bycatch of haddock. Fishing mortality on haddock in the 2002 fishing year continued at a level well below the level necessary to ensure rebuilding of the stock within the timeframes specified in the Magnuson-Stevens Act. In response to this low level of fishing mortality, NMFS has relieved certain haddock trip limits during the 2002 fishing year (67 FR 45401; July 9, 2002), on commercial limited access multispecies vessels as allowed for in the multispecies regulations. Public comments for this proposed action pointed out that other fishing sectors fishing for haddock did not receive the same consideration with respect to haddock restrictions. This emergency rule significantly reduces these disproportionate haddock restrictions without jeopardizing the objective of preventing overfishing on haddock. Even though NMFS received public comments requesting modifications to other measures, NMFS determined that the changes to the haddock measures were the only appropriate ones because they apply to haddock only and the analysis in the EA demonstrates that these measures will not have a detrimental effect on haddock or any other multispecies stock. Moreover, these changes were designed to limit the changes to a return to haddock restrictions in effect before implementation of the August 1, 2002, interim regulations. These unique circumstances do not exist for implementing any other suggested modifications affecting other stocks of multispecies. The measures being implemented by this final emergency rule are described below.

*Regulated Mesh Areas (RMAs)*

This action continues the RMAs established by the August 1, 2002, interim rule for the Gulf of Maine

(GOM), Georges Bank (GB), Southern New England (SNE) and Mid-Atlantic (MA) RMAs. The GOM RMA is the area north of the GOM cod exemption line, which is currently used to define the areas where the GOM cod and GB cod trip limits apply, and the GB RMA lies south of the GOM cod exemption line, and continues south to the U.S. Exclusive Economic Zone (EEZ) for the areas east of 69 00' W. long. The SNE RMA is defined as the area west of the GB RMA and east of a line beginning at the intersection of 74 00' W. long. and the south-facing shoreline of Long Island, NY, and running southward along the 74 00' W. long. line. The MA RMA is defined as the area west of the SNE RMA. Specific management measures apply, depending on the area fished. For the purposes of the exempted fishery programs already implemented under the FMP, the GOM/GB and SNE RMAs, as defined under Amendment 7 to the FMP, remain in effect and are referred to as "Exemption Areas."

#### *DAS Freeze*

This action continues the DAS baseline that was established for each vessel by the August 1, 2002, interim rule, based on the permit history of that vessel. This baseline is as follows: The used DAS baseline for a limited access permit is calculated based on the highest number of DAS that a vessel(s) fished during any single fishing year among the 1996 through 2000 fishing years, which includes the period May 1, 1996, through April 30, 2001, not to exceed the vessel's current DAS allocation in any given year. For any vessel where the calculation of the baseline DAS results in a net amount of DAS less than 10, that vessel is allocated a used DAS baseline of 10 DAS. Because vessel owners were already provided an opportunity to correct any errors regarding their current DAS baselines (under the August 1, 2002, interim rule), and the DAS baseline will incorporate any corrections made, no additional opportunity to correct used DAS baseline allocations is provided under this action.

#### *DAS Effort Reduction*

These emergency measures will result in DAS allocations for the 2003 fishing year consistent with the 20-percent DAS reductions that were implemented by the August 1, 2002, interim rule (i.e., the current DAS allocations). That is, for the 2003 fishing year, each vessel's DAS allocation is equal to that vessel's used DAS baseline, minus 20 percent of that vessel's used DAS baseline. Effective

July 28, 2003, each vessel's DAS remaining for the 2003 fishing year is equal to that vessel's used DAS baseline, minus 20 percent of that vessel's used DAS baseline, minus any DAS that the vessel fished during the period May 1 through July 27, 2003.

#### *Freeze on Issuance of New Hand-gear Permits*

Under this action, vessels that have never been issued an open access NE multispecies Hand-gear permit are prohibited from obtaining a Hand-gear permit for the duration of this action.

#### *Prohibition on Front-loading the DAS Clock*

The term "frontloading the DAS clock" refers to the practice of vessel owners starting their DAS clock in advance of the actual departure of the vessel. This final emergency rule continues the prohibition on frontloading. Under this prohibition, a vessel owner or authorized representative is required to notify NMFS no earlier than 1 hour prior to the vessel leaving port to fish under the NE multispecies DAS program. A DAS will begin once the call has been received and a confirmation number is given. This measure applies to all management areas.

#### *Closed Area Additions/Modifications*

This final emergency rule continues the closure areas established under the August 1, 2002, interim rule for the Western Gulf of Maine (WGOM) Area Closure, the Rolling Closure Areas, the Cashes Ledge Closure Area, and the GB Seasonal Closure Area. Exemptions to the GOM rolling closure areas, WGOM, Cashes Ledge Closure Area, and GB Seasonal Closure Area remain the same as established under the August 1, 2002, interim rule (and corrected in 68 FR 14347, March 25, 2003). Charts of the closure areas are available from the Regional Administrator upon request (see **ADDRESSES**).

#### **Gear Restrictions**

##### *Trawl Vessels, When Fishing in the GOM, GB, or MA RMAs*

Under this final emergency rule, vessels fishing with otter trawl gear, and fishing any part of a NE multispecies DAS trip in the GOM, GB, or MA RMAs, are required to fish with a minimum 6.5-inch (16.5-cm) diamond or square mesh codend. This requirement applies only to the codend of the net; the minimum mesh-size for the remaining portion of the net is 6.0-inch (15.24-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh, or any combination thereof. The codend is defined as

follows: 25 meshes for diamond mesh, or 50 bars in the case of square mesh, from the terminus of the net for vessels 45 ft (13.7 m) in length and less; and 50 meshes for diamond mesh, or 100 bars in the case of square mesh, from the terminus of the net for vessels greater than 45 ft (13.7 m) in length.

##### *Gillnet Vessels, When Fishing in the GOM RMA*

Under this action, limited access NE multispecies vessels that obtain an annual designation as a Trip gillnet vessel, when fishing in the GOM RMA during any part of a trip under a multispecies DAS, are required to fish with nets with a minimum of 6.5-inch (16.5-cm) mesh and are restricted to 150 nets, with one tag fixed to each net. Multispecies vessels that obtain an annual designation as a Day gillnet vessel are allowed to fish up to 100 nets, provided that, when fishing any part of a trip under a NE multispecies DAS in the GOM RMA, the vessel complies with the following specifications: When fishing with flatfish nets, vessels can fish no more than 100 nets, with a minimum mesh size of 7 inches (17.8 cm), with one tag affixed to each net; vessels may only fish roundfish nets from July through February, and are allowed to fish no more than 50 nets, with a minimum mesh size of 6.5 inches (16.5 cm), with two tags affixed to each net. Any tag not affixed to a net must be retained on the vessel and be immediately available for inspection.

##### *Gillnet Vessels, When Fishing in the GB RMA*

Under this final emergency rule, limited access NE multispecies vessels that fish under a NE multispecies DAS with gillnet gear in the GB RMA at any time throughout the fishing year are required to declare into the Day or Trip gillnet category. Vessels fishing under either the Day or Trip gillnet category in the GB RMA during any part of a trip under a NE multispecies DAS are required to fish with nets with a minimum of 6.5-inch (16.5-cm) mesh and are restricted from fishing more than 50 nets, with two tags fixed to each net.

##### *Trawl Vessels, When Fishing in the SNE RMA*

Under this final emergency rule, when fishing any part of a NE multispecies DAS in the SNE RMA, otter trawl vessels are required to fish with a minimum 7.0-inch (17.8-cm) diamond or 6.5-inch (16.5-cm) square mesh codend. This requirement applies only to the codend of the net, which is

defined as described above under the GOM and GB trawl mesh restrictions.

*Gillnet Vessels, When Fishing in the SNE RMA*

Under this final emergency rule, limited access NE multispecies vessels that fish under a NE multispecies DAS with gillnet gear in the SNE RMA at any time throughout the fishing year are required to declare into the Day or Trip gillnet category. Vessels fishing under either the Day or Trip gillnet category in the SNE RMA during any part of a trip under a NE multispecies DAS are required to fish with nets with a minimum of 6.5-inch (16.5-cm) mesh, and are restricted from fishing more than 75 nets, with two tags fixed to each net.

*Gillnet Vessels, When Fishing in the MA RMA*

Under this final emergency rule, limited access NE multispecies vessels that fish under a NE multispecies DAS with gillnet gear in the MA RMA are allowed to fish the same type and number of nets as allowed prior to the implementation of the August 1, 2002, interim rule. That is, vessels are allowed to fish up to 160 nets. Vessels fishing

under the monkfish DAS program are limited to 150 nets.

*Gillnet Vessels, When Fishing Under a Monkfish DAS*

Under this final emergency rule, any monkfish vessel that has a monkfish limited access Category C or D permit (i.e., a vessel that possesses both a monkfish and NE multispecies limited access permit) and that is fishing under a monkfish DAS, in all areas, is restricted from fishing more than 150 nets, provided the vessel fishes with nets with a minimum mesh size of 10 inches (25.4 cm). Vessels are required to affix one tag to each net. Category A and B monkfish vessels remain unaffected by these measures.

*Large-Mesh Vessel Permit Categories*

Under this final emergency rule, vessels that have a valid limited access NE multispecies Large Mesh Individual DAS category or a Large Mesh Fleet DAS category permit, when fishing in the GOM, GB, and SNE RMAs, with trawl nets or sink gillnets, are required to fish with nets with a minimum mesh size of 8.5-inch (21.6-cm) diamond or square mesh throughout the entire net. Vessels fishing with trawl nets or sink

gillnets when fishing in the MA RMA are required to fish with nets with a minimum mesh size of 7.5-inch (19.0-cm) diamond or 8.0-inch (20.3-cm) square mesh throughout the entire net.

*Hook-gear Vessels*

Under this final emergency rule, vessels that have a valid NE multispecies limited access permit are prohibited from using de-hookers (crucifiers) with less than 6-inch (15.2-cm) spacing between the fairlead rollers. In addition, limited access Small-vessel permitted vessels and limited access permitted vessels that fish any part of a NE multispecies DAS trip in the GOM, GB or SNE RMAs are required to use 12/0 or larger circle hooks on longline gear, and are subject to a maximum number of rigged hooks on board the vessel. Specifically, vessels fishing in the GOM or SNE RMAs are prohibited from possessing more than 2,000 rigged hooks, and vessels fishing in the GB RMA are prohibited from possessing more than 3,600 rigged hooks.

Table 1 summarizes the gear restriction measures for each gear sector when fishing in the various RMAs.

**BILLING CODE 3510-22-S**

Table 1. Gear Restrictions by Regulated Mesh Areas.

	GOM	GB	SNE	Mid-Atl
<b>MINIMUM MESH SIZE RESTRICTIONS FOR GILLNET GEAR</b>				
NE Multispecies Day Gillnet Category*	July-February only: <u>Roundfish nets</u> 6.5" (16.5 cm) mesh; 50-net allowance; 2 tags/net	<u>All nets</u> 6.5" (16.5 cm) mesh; 50-net allowance; 2 tags/net	<u>All nets</u> 6.5" (16.5 cm) mesh; 75-net allowance; 2 tags/net	<u>Roundfish nets</u> 5.5" (14.0 cm) diamond or 6.0" (15.2 cm) square mesh; 80-net allowance; 2 tags/net
	Year-round: <u>Flatfish nets</u> 7.0" (17.8 cm) mesh; 100-net allowance; 1 tag/net			<u>Flatfish nets</u> 5.5" (14.0 cm) diamond or 6.0" (15.2 cm) square mesh; 160-net allowance 1 tag/net;
NE Multispecies Trip Gillnet Category*	<u>All nets</u> 6.5" (16.5 cm) mesh; 150-net allowance; 1 tag/net	<u>All nets</u> 6.5" (16.5 cm) mesh; 50-net allowance; 2 tags/net	<u>All nets</u> 6.5" (16.5 cm) mesh; 75-net allowance; 2 tags/net	<u>All gillnet gear</u> 5.5" (14.0 cm) diamond or 6.0" (15.2 cm) square mesh; No net limit; no tag requirement
Monkfish Vessels**	10" (25.4 cm) mesh/150-net allowance			
	1 tag/net			
<b>MINIMUM MESH SIZE RESTRICTIONS FOR TRAWL GEAR</b>				
Codend only mesh size*	6.5" (16.5 cm) diamond or square		7.0" (17.8 cm) diamond or 6.5" (16.5 cm) square	6.5" (16.5 cm) diamond or square
Large Mesh Category - entire net	8.5" (21.59 cm) diamond or square			7.5" (19.0 cm) diamond or 8.0" (20.3 cm) square
<b>MAXIMUM NUMBER OF HOOKS AND SIZE RESTRICTIONS FOR HOOK-GEAR***</b>				
Limited access multispecies vessels	2,000 hooks	3,600 hooks	2,000 hooks	4,500 hooks (Hook-gear vessels only)
	No less than 6" (15.2 cm) spacing allowed between the fairlead rollers			
	12/0 circle hooks required for longline gear			N/A

\* When fishing under a NE multispecies DAS

\*\* Monkfish Category C and D vessels, when fishing under a monkfish DAS

\*\*\* When fishing under a NE multispecies DAS or when fishing under the Small-vessel permit

*Cod Minimum Fish Size (Commercial Vessels)*

Under this final emergency rule, the minimum size for cod that may be lawfully sold is 22 inches (55.9-cm) total length.

**NE Multispecies Possession Restrictions***Yellowtail Flounder*

This final emergency rule requires enrollment in one of two authorization programs for any possession of yellowtail flounder, and continues restrictions on the harvest of yellowtail flounder when fishing in the SNE and MA RMAs and in the GB RMA south of 40° 00' N. lat. From March 1 through April 30, 2004, all vessels are subject to a possession and landing limit of 250 lb (113.4 kg) of yellowtail flounder per trip when fishing any part of a trip in the SNE and MA RMAs north of 40° 00' N. lat. In addition, from June 1 through February 28, all vessels are subject to a possession and landing limit of 750 lb (340.3 kg) of yellowtail flounder per day, and a maximum trip limit of 3,000 lb (1,361.2 kg) per trip when fishing any part of the trip in the SNE and MA RMAs north of 40° 00' N. lat. A vessel fishing for yellowtail flounder in the SNE and MA RMAs north of 40° 00' N. lat. may possess and land up to the seasonal yellowtail flounder allowable limits, provided the vessel does not fish south of 40° 00' N. lat. and has on board a SNE/MA yellowtail flounder possession/landing authorization issued by the Administrator, Northeast Region, NMFS (Regional Administrator). Under this final emergency rule, all vessels are prohibited from possessing yellowtail flounder in the MA, SNE or GB RMAs unless fishing north of 40° 00' N. lat., or unless the vessel is transiting areas south of 40° 00' N. lat. and all fishing gear on board the vessel is properly stowed according to the regulations. Vessels fishing east or north of this area are not subject to the yellowtail flounder possession limit restrictions, provided that the vessel does not fish west of the GB RMA and possesses on board a GOM/GB yellowtail flounder possession/landing authorization issued by the Regional Administrator. Vessels exempt from the yellowtail flounder possession limit requirements may transit areas outside of the specific exempted area that they are fishing, provided that their gear is stowed in accordance with one of the provisions of § 648.23(b).

*Hand-gear Permitted Vessels*

Under this final emergency rule, the maximum haddock possession limit for vessels that have been issued a valid

open access Hand-gear permit has been modified from the interim measures to allow up to the trip limit in effect prior to the implementation of the Settlement Agreement, 300 lb (136.1 kg) of haddock per trip. However, the maximum possession limit for cod or yellowtail flounder, combined, remains at 200 lb (90.7 kg) per trip. In other words, such vessels may land a maximum of 300 lb (136.1 kg) combined cod, haddock, or yellowtail flounder, provided that no more than 200 lb (90.7 kg) of which are cod or yellowtail flounder. Such vessels are not required to obtain a yellowtail flounder possession/landing authorization in order to harvest yellowtail flounder, but are not allowed to harvest yellowtail flounder south of 40° 00' N. lat. The haddock limit is changed in order to enhance the equitable distribution of fish harvest among sectors of the NE multispecies fishery, decrease discarding, and mitigate economic impacts resulting from the measures implemented as a result of the Settlement Agreement.

*GB Cod Trip Limit*

This final emergency rule continues the current method of how the DAS clock accrues for those vessels fishing in the GB RMA and harvesting GB cod, which is consistent with how the DAS clock accrues when fishing in the GOM RMA and harvesting GOM cod. That is, a vessel subject to this landing limit restriction can come into port with, and offload cod in excess of the landing limit, as determined by the number of DAS elapsed since the vessel called into the DAS program, provided that the vessel operator does not call out of the DAS program and does not depart from a dock or mooring in port until the rest of the additional 24-hr block of the DAS has elapsed, regardless of whether all of the cod on board is offloaded.

*GOM Cod*

This action maintains the daily possession limit for GOM cod at 500 lb (227.3 kg) per DAS, with a maximum possession limit of 4,000 lb (1,818.2 kg) per trip.

*Recreational and Charter/Party Vessel Restrictions*

Under this final emergency rule, the minimum fish size for haddock that can be retained by a federally permitted charter/party vessel not on a NE multispecies DAS, or a private recreational vessel not holding a Federal permit and fishing in the EEZ, is reduced from 23 inches (58.4-cm) to 21 inches (52.5-cm) total length, which was the minimum size limit in effect prior to the implementation of the

Settlement Agreement. This final emergency rule also removes the haddock bag limit for the charter/party sector when fishing in the GOM RMA and not under a NE multispecies DAS. This final emergency rule continues the current cod bag (possession) limit for the charter/party sector when a vessel is fishing in the GOM RMA and not under a DAS. Each person on a charter/party vessel not fishing under a DAS in the GOM RMA is allowed to possess no more than 10 cod per trip during the period April through November, and no more than 5 cod per trip during the period December through March. This final emergency rule continues the minimum fish size of 23 inches (58.4-cm) total length for cod that can be retained by a federally permitted charter/party vessel not on a NE multispecies DAS, or a private recreational vessel not holding a Federal permit and fishing in the EEZ. This action continues the cod and haddock possession limit of no more than 10 cod or haddock, combined, for private recreational vessels, and continues the further restriction of the cod possession limit for private recreational vessels when fishing in the GOM RMA, by requiring that during the period December through March, each person on a recreational vessel may possess no more than five cod. Cod and haddock harvested by recreational vessels with more than one person aboard can be pooled in one or more containers. Compliance with the possession limit is determined by dividing the number of fish on board by the number of persons on board. The haddock minimum size and bag limit are changed in order to enhance the equitable distribution of fish harvest among sectors of the NE multispecies fishery, decrease discarding, and mitigate potential economic impacts resulting from the measures implemented as a result of the Settlement Agreement.

For a vessel that intends to charter/party fish in the GOM closed areas, this final emergency rule requires that the vessel possess on board a letter of authorization (LOA) issued by the Regional Administrator. The LOA is required for the entire fishing year if the vessel intends to fish in the year-round GOM closure areas, and for a minimum of 3 months if the vessel intends to fish in the seasonal GOM closure areas. Vessels can obtain an LOA by calling the NMFS Permit Office at 978-281-9370.

All other existing recreational measures remain in effect, including the no-sale provision for all fish caught for both the party/charter and private recreational sectors when not fishing

under a NE multispecies DAS. Table 2 summarizes the party/charter and private recreational sector measures.

TABLE 2. CHARTER/PARTY AND PRIVATE RECREATIONAL FISHING MEASURES.

	Minimum Fish Size <sup>1</sup>	Bag Limit (combined)	GOM Closure Exemption Authorization
Charter/party not on a NE multispecies DAS	haddock 21 (52.5 cm) ... cod 23 ..... (57.5 cm) ...	<i>April-November:</i> 10 cod <sup>2</sup> <i>December-March</i> 5 cod <sup>2</sup>	A minimum of 3 months, or duration of closure
Private Recreational	haddock 21 (52.5 cm) ... cod 23 ..... (57.5 cm) ...	<i>Areas outside of GOM RMA:</i> 10 cod/haddock <i>GOM RMA:</i> 10 cod/haddock, no more than 5 which can be cod, Dec.-Mar.	N/A N/A

<sup>1</sup> All other minimum fish sizes remain unchanged.  
<sup>2</sup> When fishing in the GOM RMA.

**Observer Coverage**

NMFS was ordered by the Court to expand its observer coverage for all gear sectors in the NE multispecies fishery by providing 5-percent coverage, or higher, if statistically necessary to monitor and collect information on bycatch, as well as other biological and fishery-related information. Additionally, NMFS was ordered, by May 1, 2003, to expand further its observer coverage to 10 percent for all gear sectors, or that level necessary to provide statistically reliable data. NMFS has determined, based upon internal agency decision-making, that 5-percent observer coverage would provide sufficiently robust statistical data to assess the amount and type of bycatch in the NE multispecies fishery. This conclusion is based upon an analysis of the relative precision of discard estimates of 17 groundfish stocks, using observer coverage and landings data for the year 2000 (Northeast Fisheries Science Center, 2003), and NMFS has therefore implemented this level of observer coverage in the NE multispecies fishery.

**Other Modifications to Regulations**

For the 2002 fishing year, vessels electing a Day or Trip gillnet designation were allowed to change their designation prior to September 1, 2002, because the interim final rule was implemented during the middle of the fishing season. This exemption was only necessary for the 2002 fishing year and, therefore, is not included in this final emergency rule. In the August 1, 2002 interim rule, the Cashes Ledge Area Closure regulations inadvertently omitted a reference to transiting, under a listing of allowable exemptions to the closure. The relevant reference is added by this final emergency rule.

**Comments and Responses**

A total of 76 comments were received on the proposed emergency rule that pertain to the management measures specified by the Settlement Agreement. Because management measures contained in this final emergency rule are being implemented as a result of a negotiated Settlement Agreement and a Court Order, NMFS has limited discretion to alter the measures that were published in the August 1, 2002, interim rule.

*Comment 1:* Sixty-nine commenters from the charter/party and private recreational sectors commented on the haddock restrictions implemented under the August 1, 2002, interim final rule and that were proposed to continue under this final emergency rule. Specifically, the commenters noted the disparity between the substantially higher haddock trip limits associated with the NE multispecies DAS limited access vessels and the lower trip limits associated with the charter/party and private recreational vessels. Some commenters stated that the difference in trip limits between the two sectors was not justified in light of the relatively small amount of haddock landed by the private recreational and charter/party sectors in comparison to the commercial DAS sector. They believe that the disparity in trip limits is unfair, and cited National Standard 4, which requires that assignment of fishing privileges among fishermen be fair and equitable.

Thirty-seven commenters from the charter/party or private recreational sectors suggested that haddock should be removed from the combined cod/haddock trip limit, which would result in a bag limit of 10 cod. Three commenters believed that the limit should be 20 cod/haddock combined, and one commenter thought that the bag limit should be five for haddock. Two

commenters stated that the haddock stock does not need the protection provided by the 10- haddock bag limit, and one commenter requested an explanation of why the recreational haddock catch should be restricted at all. One commenter stated that other factors such as the amount of free time available for fishing and weather, were more important determinants to overall levels of recreational catch than bag limits.

*Response:* The fact that a trip limit is different for various sectors of the groundfish fishery does not necessarily make those trip limits unfair. However, in this situation, the changes to the recreational sector regulations, when compared to the commercial sector regulations, created an unfair situation. Low numbers of haddock landings reported by private recreational and party/charter fishers, as indicated by the Marine Recreational Fisheries Statistics Survey and Vessel Trip Reports (VTR), supports the assertion that the total amount of haddock landed by the recreational and charter party sectors is small relative to the amount of haddock landed by the commercial sector.

Comparison of the most recent estimate of fishing mortality on the GOM stock of haddock with the recent estimate of the fishing mortality rate associated with maximum sustainable yield (Fmsy), indicates that fishing mortality could increase substantially over current levels. An increase in fishing mortality will not undermine the ability of the stock to rebuild within the timeframe required by the Magnuson-Stevens Act. In light of the current status of the haddock stocks, the current trip limit in effect for the NE multispecies limited access DAS vessels, the negative economic impacts that may have resulted from the 10 cod/haddock combined trip limit (see response to comment 2), and the

potential impact on discarding bycatch of haddock, a charter/party haddock bag limit is not necessary, and has therefore been removed under this final emergency rule. With respect to private recreational vessels, the haddock bag limit was unchanged by the Settlement Agreement and is, therefore, not changed by this final emergency rule. These changes make the haddock measures more consistent with National Standard 4.

*Comment 2:* Thirty-six commenters from the charter/party sector commented that the haddock size and trip limit restrictions that have been in effect since August 2002, and that were proposed to continue under this emergency action, have made customers reluctant to sign up for charter/party trips or caused trip cancellations. According to the commenters, this has resulted in about a 50-percent reduction in the number of trips and, thus, has created economic hardship for this sector of the fishing industry. One commenter predicted that relaxation of the haddock limits would have positive effects on businesses that rely on the recreational fishery (e.g., lodging, food, and tackle).

Sixty-five commenters from the charter/party and private recreational sectors commented on the haddock minimum size restriction, recommending that the minimum size be reduced to 19 or 21 inches (47.5 or 52.5 cm, respectively). The rationale provided was that few haddock reach 23 inches (57.5 cm), that the recreational size limit should be the same as the commercial size limit, and that culling of undersized fish (discarding) represents a waste of a valuable resource that results in increased fishing mortality on the stock. One commenter supported the current 23-inch (57.5-cm) minimum length for cod.

*Response:* NMFS agrees that fish size and trip limit restrictions on haddock, coupled with the size and trip limit restrictions on cod for the charter/party sector, may have been a factor in the decrease in the number of charter/party trips. Relaxation of the haddock restrictions may benefit the charter/party fishery and businesses that rely on the charter/party fishery, while not having a negative impact on the haddock resource, but restrictions on the GOM stock of cod are necessary in order to reduce overfishing. Prior to the Settlement Agreement, the minimum fish size limit for the private recreational and party/charter fisheries for both cod and haddock was 21 inches (52.5 cm). Reduction of the haddock minimum length restriction to 21 inches (52.5 cm) would decrease haddock

bycatch mortality by enabling fishers to keep some fish that they would otherwise be required to discard. Given this, and the current relatively low level of fishing mortality on haddock, this final emergency rule reduces the haddock minimum size restrictions for both the private recreational and charter/party vessels to 21 inches (52.5 cm), the minimum fish size regulation that was in effect prior to the Settlement Agreement.

*Comment 3:* Eight commenters did not support the more restrictive cod limits in December through March because they believe business was hurt by the low limit, that five fish are not worth the risks associated with winter fishing, and that the restriction amounts to a GOM closure for party/charter and private recreational vessels.

*Response:* NMFS continues to believe that the GOM bag limit of five cod during December through March for the private recreational and charter/party sectors is justified due to the need for a substantial reduction in fishing mortality for the GOM stock of cod. Data suggest that the majority of charter/party catch of cod occurs from November through April. Maintaining the five-cod bag limit from December through March will, therefore, afford continued needed protection for this stock, which is overfished.

*Comment 4:* One commenter stated that the proposed rule would not impose a seasonal bag limit on recreational cod caught on GB, despite the fact that the GB stock of cod is at a low level. The commenter believed this was justification for removal of the seasonal recreational bag limit (five cod in December through March) on GOM cod.

*Response:* A GB charter/party bag restriction for cod was not an alternative contained in the proposed rule or analyzed in the EA for this emergency action. Therefore, there is not a sufficient justification in the record to support implementation of such measures.

*Comment 5:* The State of Massachusetts Division of Marine Fisheries and the Associated Fisheries of Maine indicated that the limitations on the number of gillnets allowed for vessels with a Trip gillnet designation disadvantages that sector of the fishery, and suggested that the 150-net restriction either be eliminated, or that the 150-net limit apply everywhere, and not only to the GOM RMA. The commenters noted that the number of nets that can be safely carried on board the vessel is limited by the size of the vessel, and that access to pollock and haddock is restricted. One commenter

suggested that a limit of 75 nets be set for both Day and Trip gillnet vessels, that the flatfish net restriction in the GOM be removed, and that the day vessels have a 6.5-inch (16.3-cm) requirement year round.

*Response:* Several stocks of groundfish in the GOM and GB RMAs require significant mortality reductions, and the gillnet restrictions were part of the measures designed to reduce overfishing because such gear is extensively used in the areas where reductions are needed. NMFS agrees that a subset of the gillnet fishery will be affected by both types of gillnet restrictions (mesh size and maximum number of nets). Although the aggregate reduction in groundfish landings that may be attributed to the gear restrictions imposed on gillnet vessels is relatively small (e.g., 2.6 percent for GOM cod), such restrictions have the potential to achieve important reductions in fishing mortality on several stocks, particularly cod and yellowtail flounder, which are overfished. Although, the complexity of the management measures makes it difficult to compare precisely the impacts of all regulations across gear sectors, the EA concludes that the Preferred Alternative would not result in disproportionate impacts among gear groups. Therefore, this final emergency rule does not modify the gillnet restrictions that were part of the Settlement Agreement. Amendment 13 to the FMP will reassess the continuation of these measures.

*Comment 6:* One commenter stated that the haddock trip limit associated with the open access Handgear permit category is not fair, given the more liberal haddock trip limit rules that the NE multispecies DAS vessels have been fishing under, and therefore should be removed. The commenter recommended that the cod and yellowtail flounder trip limits be set at the levels existing prior to implementation of the Settlement Agreement.

*Response:* In light of the current fishing mortality rate on the haddock stocks, the limit in effect for the NE multispecies limited access vessels concurrent with the implementation of the Settlement Agreement, the negative economic impacts that may have resulted from the 200-lb (90.7-kg) haddock trip limit, and the potential to reduce discarding, this final emergency rule increases the trip limit for the open access Handgear permitted vessels to 300 lb (136.1 kg) of cod, haddock, and yellowtail flounder, combined, no more than 200 lb (90.7 kg) of which, may consist of cod and yellowtail, combined. Maintenance of the 200-lb (90.7-kg) maximum for cod and yellowtail



flounder, combined, is necessary to ensure continued protection of those stocks.

*Comment 7:* Two commenters did not support the method used to calculate the NE multispecies DAS baseline implemented under the August 1, 2002, interim final rule, which was proposed to continue under this rule. One commenter suggested that, instead of a 20-percent DAS reduction from the baseline level, all vessels should have their DAS reduced by an equal number of days. Although not related to method by which days-at-sea are calculated, one commenter suggested that NE multispecies limited access DAS permit holders be compensated for lost DAS.

*Response:* The DAS baseline was chosen as a compromise to lessen impact on vessels as much as possible during a short-term interim period while Amendment 13 is being developed. NMFS recognizes that for some vessel owners the criterion may result in more severe impacts than for others. For such a broadly based measure, some differences in individual impacts are unavoidable. The conservation benefits of having a reduced overall cap on the amount of effort available for this fishery, on balance, justifies the freeze for this interim period, despite the more severe impacts on a few vessel owners. To help mitigate these impacts, in August, 2002, the President and Congress signed an Act that allocated funds to provide 12 million dollars in economic assistance to fishing communities of New England affected by federal restrictions. Amendment 13 is considering various alternative methods that define DAS baselines.

*Comment 8:* One commenter requested that the western border of the SNE RMA, which was redesignated by the Settlement Agreement, be returned to its original location. The commenter stated that it was not represented during the Settlement Agreement negotiations, and that the redesignation has been detrimental to some members of the industry, especially during January to June.

*Response:* NMFS acknowledges that re-designation of the western border of the SNE RMA from 72° 30' W. long. to 74° 00' W. long. altered the area of the SNE RMA and may have particularly impacted vessels fishing under a NE multispecies DAS in this re-designated area. Although the particular challenges facing fishers in this area may be unique, the implementation of the measures consistent with the Settlement Agreement made the minimum mesh requirements more restrictive in all the RMAs. Thus, NMFS believes the

continuance of the mesh size restrictions is justifiable, based on the overfished status of many stocks managed under the NE Multispecies FMP, and the positive impacts that may result from an increase in mesh size (e.g., improved spawning success and recruitment).

*Comment 9:* One commenter suggested that the Settlement Agreement management measures should be discontinued, due to the lack of a public process during the development of the measures.

*Response:* When implementing the August 1, 2002, interim action, NMFS was responding to a Court decision, in which the Court adopted the Settlement Agreement. In order to involve the public and solicit comment on the proposed rule, NMFS provided a 30-day comment period for the August 1, 2002, interim final rule and the proposed emergency rule published on April 24, 2003. In addition, the public had an opportunity to comment on the proposed emergency rule measures at the May 20, 2003, New England Fisheries Management Council meeting. Although the public was not involved in the development of the Settlement Agreement, NMFS has, to the extent possible, taken into consideration public comments and made alterations to the proposed measures.

*Comment 10:* Two conservation organizations, The Ocean Conservancy and Oceana, supported extension of the Settlement Agreement management measures, but were concerned that NMFS concluded that a 5 percent level of observer coverage is sufficient.

*Response:* NMFS agrees that it is appropriate and necessary to continue the majority of the Settlement Agreement measures until such time that Amendment 13 is implemented. The level of observer coverage is a result of NMFS' internal deliberations related to the adequacy of observer coverage and is neither specified in the regulations nor a part of this rulemaking. Pursuant to the Court Order NMFS was required to provide 10 percent observer coverage for all gear sectors, effective May 1, 2003, unless it was able to establish by the most reliable and current scientific information available that such increase was not necessary. NMFS' Northeast Fisheries Science Center conducted an analysis of the relative precision of discard estimates for the NE multispecies fishery and concluded that a 5 percent level of observer coverage on all trips fished under a NE multispecies DAS would provide sufficiently robust statistical data to assess and estimate the

amount and type of bycatch in the NE multispecies fishery.

*Comment 11:* The State of Maine's Department of Marine Resources supported the continuance of the measures specified in the Settlement Agreement, urged that no changes to the regulations be made, and stated that Amendment 13 is the appropriate vehicle for resolution of outstanding issues.

*Response:* As discussed above, NMFS is continuing most of the measures contained in the Settlement Agreement. The measures in the emergency proposed rule that were changed in this final emergency rule were limited to management measures for the haddock fishery, which is not subject to overfishing and where there are inequities between fishery sectors.

*Comment 12:* One commenter suggested that the requirement for Day gillnet vessels to take 120 days out of the fishery be modified to allow blocks to be taken in 3 to 7-day increments, and one commenter suggested that the commercial haddock limit be removed and therefore, there is not a sufficient basis to make such a change to the measures.

*Response:* These suggested changes were not analyzed or contained in the emergency proposed rule for this short term interim set of measures, and therefore, there is no justification in the record that such a change to these measures should be made.

#### Changes to the Proposed Interim Rule

The following changes to the proposed emergency rule are based upon public comment, and NMFS' decision to extend the comment period on the DAS Leasing Program. The changes listed below are in the order that they appear in the regulations.

In § 648.2, proposed new definitions pertaining to the DAS Leasing Program are removed to reflect that the DAS Leasing Program is not being implemented by this final emergency rule.

In § 648.4, the proposed modification to the consolidation restriction is removed to reflect that the DAS Leasing Program is not being implemented by this final emergency rule.

In § 648.14, the proposed prohibitions pertaining to the DAS Leasing Program are removed to reflect that the DAS Leasing Program is not being implemented by this final emergency rule.

In § 648.82(a)(1), the proposed modification to the DAS carry-over restrictions are removed to reflect that the DAS Leasing Program is not being

implemented by this final emergency rule.

In § 648.82, the proposed removal of paragraph (l)(3) is rescinded.

In § 648.82, proposed paragraph (m) is removed to reflect that the DAS Leasing Program is not being implemented by this final emergency rule.

In § 648.88, paragraph (a)(1) is modified to reflect that the NE multispecies open access Handgear permit category possession limit has changed in response to public comment, as described in the response to comment 6.

In § 648.89, paragraphs (b)(1) and (c)(2)(i) and (ii), the recreational cod and haddock minimum sizes and the charter/party haddock bag limit, respectively, are modified in response to public comment, as described in the response to comments 1 and 2.

In § 648.92(b)(2), the proposed modifications to monkfish DAS restrictions are removed to reflect that the DAS Leasing Program is not being implemented by this final emergency rule.

#### Classification

This rule has been determined to be significant for purposes of Executive Order 12866.

#### Final Regulatory Flexibility Analysis

NMFS prepared a FRFA that analyzes the potential economic impacts of the final rule on small commercial fishing entities. The proposed emergency rule was published in the **Federal Register** on April 24, 2003. A copy of the Initial Regulatory Flexibility Analysis (IRFA) is available from the Regional Administrator (see **ADDRESSES**). Changes to the emergency proposed rule were made as a result of comments, as explained in the responses to comments 1, 2, and 3, and to reflect that the DAS Leasing Program was removed from this final emergency rule. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of the preamble, in the SUMMARY, and in the FRFA. Gross revenue, in the absence of reliable cost data, is considered to be a proxy for profitability. A summary of the analysis follows:

The FRFA considered three alternatives: The Preferred Alternative, the No Action Alternative, and a Hard TAC Alternative. Analysis of the Preferred Alternative examined the impacts on industry that would result from the continuation of the current management measures (Settlement Agreement), with modifications to the haddock measures. Analysis of the No Action Alternative examined the

impacts on industry that would result from implementation of the management measures that were in place for the 2001 fishing year (prior to implementation of the Court Order) and allowing fishing inside the WGOM Area Closure. Analysis of the Hard TAC Alternative examined the impacts to the industry that would result from a hard TAC system that achieved similar fishing mortality reductions as the Preferred Alternative. The economic impacts of the first two alternatives were analyzed and described according to the type of management measure as follows: (a) Commercial measures that were modeled (DAS restrictions, area closures, and trip limits); (b) commercial measures that were not modeled (changes to the open access hand gear category, prohibition on frontloading, prohibition on de-hooker use, mesh size restrictions, and limitations on the number of gillnets and hooks); and (c) recreational measures (private recreational vessel and party/charter). The Hard TAC Alternative is a fundamentally different type of management scheme and the economic impacts were examined in a qualitative manner because this fishery has not operated under Hard TAC system and therefore, there is insufficient data to provide a quantitative assessment of the economic impacts.

A total of seventy-six comments were received on the proposed emergency rule. Of these comments, fifty-eight addressed the economic impacts of the proposed measures. The principal concerns were the private recreational and party/charter haddock and cod restrictions, the haddock restrictions for the open access Handgear permit category, the limitations on the number of gillnets allowed, the boundary of the SNE RMA, and the DAS baseline calculation.

Forty-three comments addressed the economic impacts of the proposed charter/party and private recreational haddock regulations, and one comment addressed the economic impacts of the recreational measures on businesses related to the recreational fishery. According to the commenters, the haddock size and trip limit restrictions that have been in effect since August 2002, and that will continue under this final emergency rule, have made charter/party customers reluctant to sign up for trips or have caused trip cancellations resulting in about a 50-percent reduction in the number of trips and concomitant reduction in gross receipts. This rule restores the minimum size limit for haddock to 21 inches (52.5-cm) for recreational and

party/charter vessels and restores the no haddock trip limit measure for party/charter vessels. Relaxation of the haddock restrictions may provide additional revenue for the charter/party fishery and businesses that rely on the charter/party fishery by allowing increased catch and resulting in a greater number of trips. Response numbers one and two in the comments and responses section of this rule address these issues.

Five comments addressed the economic impacts of the proposed charter/party and private recreational cod regulations. Commenters believe that the five cod limit in combination with the haddock restrictions has discouraged customers from taking trips. Although the cod trip limit in the GOM may be a disincentive for fishers to book charter/party trips, relaxation of the cod limit is not justified due to the need to reduce fishing mortality on the GOM cod stock. The relaxation of the haddock limit by this rule may mitigate some of the economic impact of the continuation of the cod trip limit. Response number three in the comments and responses section of this rule addresses this concern.

Four comments were received relative to the impacts of the net limits for the Trip gillnet category. The commenters stated that the limitations on the number of gillnets allowed for vessels with a Trip gillnet designation disadvantages that sector of the fishery. This final emergency rule implements gear restrictions on all the limited access sectors. Although the EA estimates that the gear limitations will reduce gross revenues for 24 trip vessels, it concludes that the Preferred Alternative would not result in disproportionate impacts among gear groups. Consistent with the Settlement Agreement as order to be implemented by the Court, the continuation of the Trip gillnet restrictions is justified because of the potential for these restrictions to achieve important reductions in fishing mortality and is, therefore, unchanged by this rule. Response number five in the comments and responses section of this rule addresses this issue.

One commenter stated that the haddock trip limit associated with the open access Handgear permit category is unfair, and should be increased to 300 lb (136.1-kg). This rule restores the haddock trip limit for this sector resulting in increased gross revenues from an increase in the amount of haddock retained for sale. Response number six in the comments and response section addresses this comment.

One commenter requested that the western border of the SNE RMA, which was redesignated by the Settlement Agreement, be returned to its original location because of negative economic impacts. The designation of the SNE RMA, the associated mesh restrictions, and the potential for negative economic impacts on a portion of the industry is justifiable, based on the following: The positive biological impacts that may result from an increase in mesh size, the overfished status of many stocks, and the fact that all the RMAs will be subject to restrictive minimum mesh sizes. Response number nine in the comments and responses section addresses this comment.

Four comments did not support the method used to calculate the DAS baseline, based upon the resultant low numbers of DAS for some vessel owners and the negative economic impacts. The DAS baseline implemented by this rule results in a lower number of DAS available for use by the fishery and a decrease in gross revenues earned by individual vessels. The conservation benefits of having a reduced overall cap on the amount of effort available for this fishery are consistent with the Court Order, goals and objectives of the FMP and Magnuson-Stevens Act for overfished fisheries. To help mitigate negative economic impacts from DAS reductions, in August, 2002, the Congress passed and the President signed an Act that allocated funds to provide 12 million dollars in economic assistance to fishing communities of New England affected by federal restrictions. Response number seven in the comments and responses section addresses this issue.

All commercial vessels with a NE multispecies permit had gross receipts less than \$3.5 million, the SBA size standard for defining a small versus large commercial fishing business (3,894 NE multispecies vessels) (EA for the Settlement Agreement, June 2002). Therefore, there will be no disproportionate economic impacts between small and large entities.

This action will impact all limited access NE multispecies permit holders (1,383), all open access Hand gear-only permit holders (2,973), and all party/charter operators (1,028 open access permit holders). Based upon the June 2002 EA, the number of participating vessels that may be affected by any one or more of the measures is about 37 percent of the total number of those eligible to participate in some component of the NE multispecies fishery.

The DAS allocations implemented under the August 2002 interim final rule

continue under this emergency action. The reductions in 2002 DAS allocations impacted all limited access permit categories. There were 1,383 limited access permits with baseline DAS allocations for the 2002 fishing year. Of these permits, 343 received the minimum allocation of 8 DAS. A total of 71,180 DAS were allocated for the fishing year; a reduction of 45.7 percent compared to the final fishing year 2001 allocations.

The relative reduction in DAS allocations varied by permit category. The total reduction for Individual allocation vessels (Category A) was 21.7 percent, as compared with 49 percent for Category B and 65.9 percent for Category D. Reductions in total DAS allocations for FY 2002 were larger for small vessels (less than 50 ft (15.2 m)), than for medium or large vessels. New York and New Jersey were the two states with the largest reduction in fishing year 2002 DAS allocations. In contrast, under the No Action Alternative, the DAS allocations would be markedly larger, with the potential for DAS use to increase above that which was recorded for the 2001 fishing year.

Relative changes to gross revenue were calculated based upon an estimation that DAS use in fishing year 2003 would range from 25 to 35 percent less than the number of DAS used during the 2001 fishing year. The estimated revenue loss for the 84 most affected vessels would be 21.3 percent, or greater, for an assumed 25-percent reduction in DAS, and would be 25 percent for an assumed 35-percent reduction in DAS. For vessels in the 25th to 50th percentile, the estimated revenue loss range from 19.7 to 11.5 percent for a 35-percent reduction in DAS use. Revenue loss for the least affected vessels would be no more than 1.5 percent. Relative dependence upon groundfish revenue is an important factor among the various factors that may determine the severity of the impact of the DAS measures on a particular vessel. The greater a vessel's dependence upon groundfish for annual fishing income, the greater the revenue loss is likely to be. The No Action Alternative would have resulted in no negative impacts or slightly positive impacts, in comparison with the measures being implemented.

With respect to gross annual revenue earned during the 2001 fishing year (pre-Settlement Agreement), these measures may have the largest adverse economic impacts on vessels in Maine, New Hampshire, and Massachusetts, but among these states, the estimated impacts would be similar. The No Action Alternative would have had

positive economic impacts on vessels that fish in the GOM and fish in the WGOM specifically. The least adverse economic impacts may be for those vessels from states bordering the GOM, and for small gillnet vessels or large hook vessels.

The required changes to mesh size were estimated to affect 424 trawl vessels fishing in the GOM or GB area, and 221 trawl vessels fishing in the SNE area. The average cost to replace a cod-end was estimated to be \$1,250. The mesh changes were estimated to affect 18 Day boat gillnet vessels that used tie-down nets fished in the GOM. The average cost to these vessels to replace their nets was \$7,794. The mesh changes were estimated to affect 31 Day boat gillnet vessels that used stand-up nets that fished in the GOM. The average cost to these vessels to replace their nets was \$9,300. The mesh changes were estimated to affect 25 Trip gillnet vessels that fished in the GOM. The average cost to these vessels to replace their nets was \$18,352. The mesh changes were estimated to affect 32 gillnet vessels that fished in either GB or SNE. The average cost to these vessels to replace their nets was \$8,800.

The required changes to gear limits would affect 30 bottom longline vessels, 72 Day gillnet vessels, and 24 Trip gillnet vessels. The average revenue loss for these vessels was estimated to be \$21,400.

Under these measures, individuals that provide passenger services to recreational anglers (charter/party vessels) will also be directly affected. Because the haddock bag limit for charter/party vessels, and the minimum haddock size for charter/party and private recreational vessels is relaxed by this rule, the negative economic impacts under these bag and minimum size restrictions are expected to be less than under the restrictions in effect since August 2002. Historic information suggests that the relationship between changes in bag and possession limits and passenger demand has been weak. Following implementation of a reduction in minimum fish size in 1997, the number of passengers on charter/party vessels increased. However, public comment received in response to the proposed rule supports the contention that low bag limits in conjunction with more restrictive minimum fish size limits may reduce passenger demand.

Relative to the final measures, the No Action Alternative would have mitigated most of the adverse economic impacts associated with this action. In general, gross fishing incomes would have increased, particularly for vessels

operating in the GOM, and would have had a particularly beneficial impact on small vessels and gillnet vessels, in general. However, the No Action Alternative also would have resulted in unacceptably high increases in fishing mortality rates that could compromise the rebuilding of several GOM stocks, GOM cod in particular. Therefore, it was determined that the No Action Alternative would not meet the regulatory objectives for this emergency action.

Relative to the final measures and the No Action Alternative, the Hard TAC Alternative would have had a more severe adverse economic impact because of the severe consequences of closing down fisheries when a TAC is reached. In any event, neither the No Action Alternative nor the Hard TAC Alternative were viable because they were not consistent with the Settlement Agreement ordered by the Court to be implemented.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and

shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide was prepared. The guide will be sent to all holders of permits issued for the NE multispecies fishery. In addition, copies of this final emergency rule and guide (i.e., permit holder letter) are available from the Regional Administrator (see ADDRESSES) and are also available at the following web site: <http://www.nmfs.gov/ro/doc/nero.html>.

There are no new recordkeeping requirements associated with this action.

This final emergency rule also contains previously-approved collection-of-information requirements that have been approved under OMB control number 0648-0202. Public reporting requirements for these requirements are 15 minutes for a request for a change in permit category and 5 minutes for an annual declaration as either a Day or Trip gillnet vessel. The response time estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information. Public comment is sought regarding: Whether

the proposed collection-of-information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimates; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS and OMB (see ADDRESSES).

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

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 24, 2003.

**John Oliver,**

*Deputy Assistant Administrator for Operations, 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 § 648.4, paragraphs (a)(1)(I)(2) and (c)(2)(iii) are revised to read as follows:

##### § 648.4 Vessel permits.

\* \* \* \* \*

(a) \* \* \*

(1) \* \* \*

(i) \* \* \*

(I) \* \* \*

(2) The owner of a vessel issued a limited access multispecies permit may request a change in permit category, unless otherwise restricted by paragraph (a)(1)(i)(I)(1) of this section. The owner of a limited access multispecies vessel eligible to request a change in permit category must elect a category upon the vessel's permit application and will have one opportunity to request a change in permit category by submitting an application to the Regional Administrator within 45 days of the effective date of the vessel's permit. If such a request is not received within 45 days, the vessel owner may not request a change in permit category and the

vessel permit category will remain unchanged for the duration of the fishing year. A vessel may not fish in more than one multispecies permit category during a fishing year.

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

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

\* \* \* \* \*

■ 3. In § 648.81, paragraph (h)(1) is revised to read as follows:

##### § 648.81 Multispecies closed areas.

\* \* \* \* \*

(h) \* \* \*

(1) No fishing vessel or person on a fishing vessel may enter, fish in, or be in, and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in, or on board a vessel in the area known as the Cashes Ledge Closure Area, as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (d) and (h)(2) of this section:

\* \* \* \* \*

■ 4. In § 648.88, paragraph (a)(1) is revised to read as follows:

##### § 648.88 Multispecies open access permit restrictions.

(a) \* \* \*

(1) Unless otherwise restricted under § 648.86(h), the vessel may possess and land up to 300 lb (136.1 kg) of haddock, cod, and yellowtail flounder, combined; one Atlantic halibut per trip; and

unlimited amounts of the other NE multispecies provided the following: The vessel does not possess more than 200 lb (90.7 kg) of cod and yellowtail flounder, combined; the vessel does not use or possess on board gear other than rod and reel or handlines while in possession of, fishing for, or landing NE multispecies; and provided it has at least one standard tote on board.

\* \* \* \* \*

■ 5. In § 648.89, paragraphs (b)(1), (c)(2)(i) and (ii) are revised to read as follows:

§ 648.89 Recreational and charter/party restrictions.

\* \* \* \* \*

(b) \* \* \*

(1) *Minimum fish sizes.* Persons aboard charter or party vessels

permitted under this part and not fishing under the NE multispecies DAS program, and private recreational fishing vessels in the EEZ, may not retain fish smaller than the minimum fish sizes, measured in total length (TL) as follows:

MINIMUM FISH SIZES (TL) FOR CHARTER, PARTY, AND PRIVATE RECREATIONAL VESSELS

Species	Size (inches)
Cod .....	23 (58.4 cm)
Haddock .....	21 (52.5 cm)
Pollock .....	19 (48.3 cm)
Witch flounder (gray sole) ....	14 (35.6 cm)
Yellowtail flounder .....	13 (33.0 cm)
Atlantic halibut .....	36 (91.4 cm)
Americal plaice (dab) .....	14 (35.6 cm)
Winter flounder (blackback) ..	12 (30.5 cm)

MINIMUM FISH SIZES (TL) FOR CHARTER, PARTY, AND PRIVATE RECREATIONAL VESSELS—Continued

Species	Size (inches)
Redfish .....	9 (22.9 cm)

\* \* \* \* \*  
(c) \* \* \*  
(2) \* \* \*

(i) During the period April 1 through November 30, each person on the vessel may possess no more than 10 cod.

(ii) During the period December 1 through March 31, each person on the vessel may possess no more than 5 cod.

\* \* \* \* \*

[FR Doc. 03-16404 Filed 6-25-03; 11:19 am]

BILLING CODE 3510-22-S