

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Diana Hynek
Departmental Paperwork Clearance Officer
Office of the Chief Information Officer
14th and Constitution Ave. NW.
Room 6625
Washington, DC 20230

05/24/2005

In accordance with the Paperwork Reduction Act, OMB has taken the following action on your request for approval of a revision of an information collection received on 03/28/2005.

TITLE: Northeast Multispecies Days-at-Sea Leasing Program

AGENCY FORM NUMBER(S): None

ACTION : APPROVED WITH CHANGE

OMB NO.: 0648-0475

EXPIRATION DATE: 06/30/2006

BURDEN:	RESPONSES	HOURS	COSTS(\$,000)
Previous	2,800	233	1
New	1,867	700	2
Difference	-933	467	1
Program Change		467	1
Adjustment		0	0

TERMS OF CLEARANCE: None

OMB Authorizing Official	Title
Donald R. Arbuckle	Deputy Administrator, Office of Information and Regulatory Affairs

PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the supporting statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

1. Agency/Subagency originating request	2. OMB control number b. <input type="checkbox"/> None a. _____ - _____
3. Type of information collection (<i>check one</i>) a. <input type="checkbox"/> New Collection b. <input type="checkbox"/> Revision of a currently approved collection c. <input type="checkbox"/> Extension of a currently approved collection d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without an OMB control number For b-f, note Item A2 of Supporting Statement instructions	4. Type of review requested (<i>check one</i>) a. <input type="checkbox"/> Regular submission b. <input type="checkbox"/> Emergency - Approval requested by _____ / _____ / _____ c. <input type="checkbox"/> Delegated
	5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input type="checkbox"/> No
	6. Requested expiration date a. <input type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: _____ / _____
7. Title	
8. Agency form number(s) (<i>if applicable</i>)	
9. Keywords	
10. Abstract	
11. Affected public (<i>Mark primary with "P" and all others that apply with "x"</i>) a. <input type="checkbox"/> Individuals or households d. <input type="checkbox"/> Farms b. <input type="checkbox"/> Business or other for-profit e. <input type="checkbox"/> Federal Government c. <input type="checkbox"/> Not-for-profit institutions f. <input type="checkbox"/> State, Local or Tribal Government	12. Obligation to respond (<i>check one</i>) a. <input type="checkbox"/> Voluntary b. <input type="checkbox"/> Required to obtain or retain benefits c. <input type="checkbox"/> Mandatory
13. Annual recordkeeping and reporting burden a. Number of respondents _____ b. Total annual responses _____ 1. Percentage of these responses collected electronically _____ % c. Total annual hours requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____	14. Annual reporting and recordkeeping cost burden (<i>in thousands of dollars</i>) a. Total annualized capital/startup costs _____ b. Total annual costs (O&M) _____ c. Total annualized cost requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____
15. Purpose of information collection (<i>Mark primary with "P" and all others that apply with "X"</i>) a. <input type="checkbox"/> Application for benefits e. <input type="checkbox"/> Program planning or management b. <input type="checkbox"/> Program evaluation f. <input type="checkbox"/> Research c. <input type="checkbox"/> General purpose statistics g. <input type="checkbox"/> Regulatory or compliance d. <input type="checkbox"/> Audit	16. Frequency of recordkeeping or reporting (<i>check all that apply</i>) a. <input type="checkbox"/> Recordkeeping b. <input type="checkbox"/> Third party disclosure c. <input type="checkbox"/> Reporting 1. <input type="checkbox"/> On occasion 2. <input type="checkbox"/> Weekly 3. <input type="checkbox"/> Monthly 4. <input type="checkbox"/> Quarterly 5. <input type="checkbox"/> Semi-annually 6. <input type="checkbox"/> Annually 7. <input type="checkbox"/> Biennially 8. <input type="checkbox"/> Other (describe) _____
17. Statistical methods Does this information collection employ statistical methods <input type="checkbox"/> Yes <input type="checkbox"/> No	18. Agency Contact (person who can best answer questions regarding the content of this submission) Name: _____ Phone: _____

19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal Agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9

NOTE: The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It used plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention period for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):
 - (i) Why the information is being collected;
 - (ii) Use of information;
 - (iii) Burden estimate;
 - (iv) Nature of response (voluntary, required for a benefit, mandatory);
 - (v) Nature and extent of confidentiality; and
 - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of the provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee

Date

Agency Certification (signature of Assistant Administrator, Deputy Assistant Administrator, Line Office Chief Information Officer, head of MB staff for L.O.s, or of the Director of a Program or StaffOffice)

Signature

Date

Signature of NOAA Clearance Officer

Signature

Date

**SUPPORTING STATEMENT
NORTHEAST MULTISPECIES DAYS-AT-SEA LEASING PROGRAM
OMB CONTROL NO.: 0648-0475**

INTRODUCTION

This submission requests Office of Management and Budget (OMB) clearance of revisions to the information collection provisions for the Northeast (NE) Multispecies Days-at-Sea (DAS) Leasing Program to implement measures proposed under Framework Adjustment 40B (FW 40-B) to the Northeast (NE) Multispecies Fishery Management Plan (FMP). This information collection for this program was previously approved OMB Control No.: 0648-0475.

The New England Fishery Management Council (Council) is proposing management measures under FW 40-B that create additional opportunities for commercial fishing vessels to harvest healthy groundfish stocks and to modify existing programs implemented under Amendment 13 to improve the effectiveness of these programs. FW 40-B would allow vessels a one-time opportunity to downgrade their baseline specifications for the purposes of participating in the DAS Leasing Program. Therefore, this information collection submission is a revision of the previous burden estimates approved under OMB Control No.: 0648-0475 by including burden estimates for the one-time DAS Leasing Program baseline downgrade provision proposed in FW 40-B. Previously approved burden estimates are not affected by this submission.

A. JUSTIFICATION

1. Explain the circumstances that make the collection of information necessary.

Under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Secretary of Commerce (Secretary) has responsibility for the conservation and management of marine fishery resources off the coast of the U.S. The majority of this responsibility has been delegated to the Regional Fishery Management Councils and NOAA Fisheries. The Council develops management plans for fishery resources in New England. The NE Multispecies FMP manages twelve regulated groundfish species.

In 1999, the Council began development of an amendment to the management plan that would end overfishing and adopt required rebuilding plans for overfished stocks. On November 6, 2003, the Council approved measures outlined in Amendment 13. Final measures approved by the Secretary were implemented on May 1, 2004. The implementation of Amendment 13 brought the FMP into full compliance with the provisions of the Magnuson-Stevens Act and other applicable law. Amendment 13 included substantial reductions in the amount of effort available to target groundfish stocks. Effort in the NE multispecies fishery is controlled through DAS. Therefore, Amendment 13 resulted in substantial reductions in the number of DAS for NE multispecies vessels.

The reduction in the DAS allocated to NE multispecies permit holders has limited the ability of some vessels to participate in the fishery, resulting in a loss of revenue and/or the ability to operate at a profit. To mitigate some of the adverse economic impacts resulting from this effort reduction, the Council established a DAS Leasing Program, among other provisions, in

Amendment 13. A DAS Leasing Program enables vessels to increase their revenue by either leasing additional DAS from another vessel and using them to increase their participation in the fishery, or by leasing their allocated DAS that they may not use to another vessel.

Vessels participating in the DAS Leasing Program may only lease DAS to or from vessels within specified size restrictions of their DAS Leasing Program vessel baseline characteristics. For the purposes of this program, the baseline horsepower (HP) and length overall (LOA) specifications are those specifications associated with the permit as of January 29, 2004. A lessor (i.e., vessel selling DAS to another vessel) may not lease DAS to any vessel with a baseline HP rating that is more than 20 percent greater than the baseline HP of the lessee vessel. A lessor also may not lease DAS to any vessel with a baseline LOA that is more than 10 percent greater than the baseline LOA of the baseline of the lessee vessel's LOA. Vessels may lease DAS to another vessel with smaller baseline characteristics, however.

These size restrictions have limited the number of vessels eligible to lease DAS to or from within the DAS Leasing Program. Specifically, vessels that have a large DAS Leasing Program baseline, but are fishing with a smaller vessel have a smaller pool of eligible vessels to exchange DAS through the DAS Leasing Program. Therefore, the Council proposed a measure in FW 40-B that would allow a one-time permit baseline characteristics downgrade for the purpose of participating in the DAS Leasing Program. This measure would enable vessel owners to downgrade their permit baseline characteristics to match the physical characteristics of the vessel currently associated with the permit.

2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.

All vessels with a valid limited access NE multispecies DAS permit are eligible to lease groundfish Category A DAS to or from another such vessel, subject to certain restrictions. Eligible vessels acquiring DAS through leasing are termed lessees; eligible vessels leasing-out DAS are termed lessors. DAS associated with a CPH may not be leased. Vessels issued a Small Vessel or Handgear A permit, i.e., vessels that do not require the use of groundfish DAS, are not allowed to lease DAS, and vessels participating in an approved Sector under the Sector Allocation Program are not allowed to lease DAS to non-sector vessels during the fishing year in which the vessel is participating in the Sector.

An eligible vessel wanting to lease groundfish DAS must submit a complete application to the Regional Administrator at least 45 days prior to the time that the vessel intends to fish the leased DAS. Leased DAS will be effective only during the fishing year for which they are leased. A vessel may lease DAS to as many qualified vessels as desired, provided that the vessels comply with all of the restrictions and conditions of the DAS Leasing Program. Vessels are allowed to lease as few as 1 DAS to any one vessel. The maximum number of DAS that can be leased by a lessee is the lessee's vessel's DAS allocation for the 2001 fishing year (excluding any carryover DAS).

FW 40-B proposes to allow a one-time permit baseline characteristics downgrade for the purpose of participating in the DAS Leasing Program. Vessels would be only be able to downgrade their

DAS Leasing Program baseline one time. This downgraded baseline would remain in effect until the DAS Leasing Program expires or the permit is transferred to another vessel through the vessel replacement process.

Several offices of NOAA Fisheries Service to implement the DAS Leasing Program and to track DAS usage will use the information requested. Owner name, vessel name, permit number, and official numbers are common identifiers used by NOAA Fisheries Service. During the operation of the DAS Leasing Program, this information is used to verify the existence of current, valid permits aboard vessels participating in the leasing program. In addition, this information is necessary to identify baseline specifications associated with these permits, determine available DAS to be used in the leasing request, and execute the DAS lease.

Enforcement offices within NOAA Fisheries Service currently track the DAS usage of permit holders. Information collected through this information request enables enforcement officials, including the U.S. Coast Guard, to monitor compliance with the provisions of the FMP, including those governing DAS usage. Information relating to the total price paid for the DAS could be used by offices within NOAA Fisheries Service as well as by the Council to assess the value of DAS to permit holders. With the reductions of DAS enacted through recent management measures, it is estimated that the value of DAS will increase. This information could be used in the evaluation of the affects of future management measures on individual permit holders as well as communities. This information may also be used in future vessel buy-back programs and other effort reducing programs.

Vessels intending to downgrade their DAS Leasing Program baseline would be required to specify the current vessel's LOA and HP specifications and check whether information documenting the specifications have been submitted previously or are being submitted along with the downgrade application form. NOAA Fisheries Service staff to identify the current specifications and the appropriate documents to be used to verify the specifications of the vessel whose DAS Leasing Program baseline is to be downgraded would use this information.

Signatures of the participants in the program are necessary to acknowledge the DAS transfer by both parties. Without both signatures, the leasing request would not be processed. This, along with the other data requirements involved in this leasing program, are similar to the collection of information involved in the Atlantic surfclam and ocean quahog Individual Transferrable Quota (ITQ) fishery. As a result, permit holders may already be familiar with providing the information necessary to process a DAS leasing request.

Between April 30, 2004, and January 19, 2005, the Northeast Regional office received a total of 192 DAS lease requests. This is approximately 22 DAS lease requests per month with a maximum of two entities (lessor and lessee) submitting each lease. Annually, this brings the total 528 responses per year, well below that for which this collection is currently budgeted.

The Section 515 Information Quality Guidelines apply to this information collection and comply with all applicable information quality guidelines, i.e., OMB, Department of Commerce, and NOAA guidelines. The information collected as part of the DAS leasing pilot program may be used in the analysis of current management initiatives and in the development of future management measures for the NE multispecies fishery. All data will be kept confidential as required by NOAA Administrative Order 216-100, Confidentiality of Fisheries Statistics, and

will not be released for public use except in aggregate statistical form (and without identifying the source of data, i.e., vessel name, owner, etc.). Only authorized personnel would have access to this information as necessary to implement the DAS Leasing Program.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

This collection of information would be done via a paper form and delivered through the mail or in person. The need to obtain an original signature of both permit holders involved in a DAS lease or a DAS Leasing Program baseline downgrade request necessitates paper format and prevents electronic formats from being viable means of exchange. No improved information collection technology has been identified to reduce this burden further. Every effort will be made in the future to use computer technology to reduce the public burden. The form used to collect the information needed to operate this leasing program may be made available online at the NOAA Northeast Regional Office (NERO) website.

4. Describe efforts to identify duplication.

Other than information such as the vessel owner's name, vessel name, permit number and official number needed to identify participants, no information will be collected that is already collected through other means.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

Only the minimum data to meet the requirements of the above data needs are requested from all participants. Since most of the respondents are small businesses, separate requirements based on the size of the business have not been developed.

6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.

The DAS Leasing Program is designed to offer opportunities to the fishing industry to recover some of the potential financial losses emanating from the recent reductions in DAS. This program is an optional program and is not mandated by any regulation. If this information is not collected, thereby preventing permit holders from recovering potential losses from reduced DAS allocations, some vessels would be unable to continue participating in the fishery.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

The data collection is consistent with OMB guidelines.

8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their

views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

The Council held many Council and Groundfish Oversight Committee meetings during the development of FW 40-B during the period July 2004 through November 2004 during which there were opportunities for public discussion of proposed management strategies. The Council approved the measures contained in FW 40-B, including those specified above, on November 17, 2004. The information collections contained in this submission are part of a proposed rule to implement management measures outlined in FW 40-B to the NE Multispecies FMP. This rule announces the one-time permit downgrade provision for the DAS Leasing Program and solicits public comment on the program and the information collection requirements necessary to implement this program. The final rule implementing FW 40-B to the FMP is anticipated to be May 1, 2005.

9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

Neither payments nor gifts are given to the respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.

All data would be handled in accordance with NOAA Administrative Order 216-100, Confidentiality of Fisheries Statistics, and would not be released for public use except in aggregate statistical form (and without identifying the source of data, i.e., vessel name, owner, etc.). In addition, any information submitted according to the provisions outlined in FW 40-B would be considered confidential and would not be disclosed except as provided in Section 402(b) of the Magnuson-Stevens Act.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

There are no questions of sensitive nature.

12. Provide an estimate in hours of the burden of the collection of information.

The number of potential participants in this program would be approximately 1,400 entities (vessel owners) issued a limited access NE multispecies permit. This is because only vessels issued a limited access NE multispecies permit are eligible to participate in the DAS Leasing Program and downgrade their DAS Leasing Program baseline. The permit holders wishing to participate in the DAS Leasing Program are required to fill out a NE Multispecies DAS Leasing Program Application form (attached). One form is required in order to process an individual DAS leasing request, requiring the vessel information and the signature of both participants. While each participant may be required to fill out portions of each DAS lease request, the potential pool of participants remains at the total number of vessels with a NE Multispecies DAS permit, or 1,400 vessels. Therefore, the number of participants approved under OMB Control

No. 0648-0475 is revised to 1,400 under this submission. In addition, each participant must review the DAS lease request and fill out their respective portion of the request. Each review of the DAS lease request takes 0.083 hours (five minutes) per participant, or an overall response time of 0.166 hours per application. This clarifies the previously approved information collection under OMB Control No. 0648-0475 to properly account for the number of participants and the response time per DAS lease request. The previously approved burden estimates of 233 hours, however, remains unchanged.

FW 40-B may increase the number of DAS leasing requests due to the fact that there is a larger pool of vessels with smaller baseline characteristics. However, this revised information collection submission would not change the total number of DAS lease request anticipated on a yearly basis and approved under OMB Control No. 0648-0475.

The estimated burden for the one-time permit baseline characteristics downgrade for the DAS Leasing Program proposed in FW 40-B would be approximately 1 hour to fill out the request form (attached) and assemble any necessary documentation for the potential 1,400 participants. This would result in a total burden of 1,400 hours (1 hour per submission x 1,400 submissions), or an annualized burden of 467 hours, assuming 3-year approval of this information collection. Therefore, the additional burden for this information collection is 467 hours per year. However, it should be noted that this is a one-time provision. Thus, this burden will be distributed over the duration of the DAS Leasing Program. The program is expected to expire on April 30, 2006, unless extended by the Council. It is anticipated that not every vessel would chose to downgrade their DAS Leasing Program baseline, however. Therefore, this burden estimate is considered to be a highly conservative estimate of the burden that may actually be realized.

Therefore, the total annualized burden to the public associated with the DAS Leasing Program amounts to 700 hours. These figures are summarized in Table 1.

13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in #12 above).

This information collection does not require respondents to purchase new or additional equipment or services. Most computers, telephones and/or facsimile machines utilized by the respondents would have already been purchased as part of customary and usual business practices, thus start up costs associated with these programs are negligible.

Previously approved information collection burdens under OMB Control No. 0648-0475 specified a yearly cost burden of \$1,176, assuming postage for 2,800 mailings and copying costs for each application. These costs are not affected by the new provision included in FW 40-B and specified below.

For the one-time opportunity to downgrade a vessel's DAS Leasing Program Baseline, vessels would be required to submit a completed downgrade request form and mail it to NOAA Fisheries Service. Participants may wish to make copies of supporting documents when submitting this information to NOAA Fisheries Service. Assuming every individual vessel would elect to downgrade their baseline, a highly conservative estimate, the total cost for mailing DAS Leasing Program baseline downgrade request forms amounts to \$518 (1,400 requests x \$0.37/request), or

an annualized burden of \$173 hours, assuming 3-year approval of this information collection. Copying costs associated with this provision would likely total approximately \$700 (1,400 participants x 5 pages copied/participant x \$0.10/copy), or an annualized burden of \$233, assuming 3-year approval of this information collection. Together, the annualized costs for this new measure amount to \$406. Note that the costs associated with this provision are a conservative estimate and would only be realized one time for each vessel participating.

The previously approved submission for OMB Control No. 0648-0475 specified yearly costs to participants based on mailing and copying costs associated with 1,400 DAS lease applications per year. This cost amounted to \$1,176 assuming two stamps per request (one to mail the request to the other leasor and another one to mail the request to NOAA Fisheries Service) and copying costs (\$0.10/page). Therefore, the total costs to individuals participating in the DAS Leasing Program for record-keeping and application purposes are estimate to be \$1,582, or an increase of \$406 from the previous burden. This information is summarized in Table 1 below.

14. Provide estimates of annualized cost to the Federal government.

Costs associated with the program reflect a cost of \$15/hour to the government at the ZP-02 level. The cost to the government for the DAS Leasing Program is expected to require 10 minutes per DAS lease request and 2 hours per permit baseline characteristics downgrade. This results in an estimated annualized cost to the government of \$3,510 (1,400 applications x 0.167 hours/response x \$15/hour) to review DAS leasing requests, and an additional cost of \$1,076 to process and print out lease receipts to participants. The DAS Leasing Program baseline downgrade provision included in FW 40-B would result in an overall total cost to the government of \$42,000 (1,400 applications x 2 hours x \$15/hour) to process the downgrade requests, or an annualized cost to the government of \$14,000, assuming 3-year approval of this information collection. Note that the costs associated with the DAS Leasing Program baseline downgrade provision are a conservative estimate and would only be realized one time for each vessel participating.

In total, the total yearly costs to the government from the DAS Leasing Program would be approximately \$18,586 (\$3,510 + \$1,076 + \$14,000), including the \$14,000 cost associated with the new provision in FW 40-B. Annualized costs to the Federal government for these programs include staff costs and system operation associated with processing the information.

This information is summarized in Table 1.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.

This information collection submission includes revisions to the information collection approved in OMB Control No. 0648-0475 based on the addition of the new DAS Leasing Program baseline downgrade provision proposed in FW 40-B. This provision would result in an additional annualized burden of 467 hours per year and an additional annualized cost of \$406 to participants. These additional burdens are considered program changes for this submission.

This program change results from requests made by the fishing industry to allow the size and horsepower specifications of the current permitted vessel, and not the baseline specifications

associated with the permit, to be used for the purposes of the DAS Leasing Program. In order for individuals to notify NOAA Fisheries Service that they wish to downgrade their vessel permit baseline specifications, a downgrade request form (attached) is required to be filled-out and sent to NOAA Fisheries Service.

16. For collections whose results will be published, outline the plans for tabulation and publication.

Results from this collection may be used in scientific, management, technical or general informational publications such as Fisheries of the United States, which follows, prescribed statistical tabulations and summary table formats. Data are available to the general public on request in summary form only; data are available to NOAA FISHERIES SERVICE employees in detailed form on a need-to-know basis only.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

All forms will display the OMB control number and expiration date along with information relevant to the Paperwork Reduction Act of 1995.

18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.

All instances of this submission comply with 5 CFR 1320.9.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

No statistical methods are employed in the information collection procedures; the requirements are optional for all eligible participants in the NE multispecies fishery.

Table 1.

Collection	Number of Entities	Items per Entity	Total # of Items (Responses)	Response Time	Total Burden Hours	Cost	
						Public	Government
DAS Lease Request	1,400	1	1,400	0.166	233	\$1,176	\$4,546
Request to Downgrade Baseline ¹	467	1	467	1	467	\$406	\$14,000
Totals²	1,400		1,867		700	\$1,582	\$18,546

¹This total represents the annualized burden, assuming OMB approval of the information collection for this submission over three years. Since this provision is a one-time measure, the total burden for this provision over three years would be 1,400 hours and \$1,218, or 467 hours and \$406 annually.

²Due to duplication of participants, the total number of entities affected by this information collection remains at the total number of vessels currently holding a limited access NE multispecies permit, or 1,400 vessels.



**APPLICATION TO DOWNGRADE
NE MULTISPECIES DAYS-AT-SEA (DAS)
LEASING BASELINE**

Provide all information requested

**SUBMIT TO
NE MULTISPECIES DAS LEASING PROGRAM
US DEPARTMENT OF COMMERCE, NOAA
NATIONAL MARINE FISHERIES SERVICE
ONE BLACKBURN DRIVE, GLOUCESTER, MA 01930**

Owner Name: _____

Permit #: _____

Vessel Name: _____

Official #: _____
(or state registration #)

Current Vessel Specifications: Length Overall: _____

Horsepower: _____

Check One:

_____ Downgrade DAS Leasing baseline of above vessel to the specifications on verified documents that have been previously submitted.

_____ Downgrade DAS Leasing baseline of above vessel to the specifications on verified documents that I am currently submitting with this application.

Signed: _____
(Vessel Owner)

Dated: _____

By signing this application you agree to downgrade the vessel specifications Length Overall (LOA) and Horsepower (HP) for DAS Leasing purposes only. This is a one-time DAS Leasing baseline downgrade for this permit that can not be reversed for this vessel and can not be applied for again in the future, even if the current vessel baseline specifications change through modification or replacement. If a vessel replacement occurs after a DAS Leasing baseline downgrade has occurred the DAS Leasing baseline will revert to the original DAS Leasing baseline specifications for that permit.

This form is required to obtain approval for the downgrade of DAS leasing baseline specifications under 50 CFR 648.xx for NE multispecies permit holders. Signature of this form certifies that permit holders comply with limited access permit requirements specified in 50 CFR 648.xx and that information provided on this form is true, complete and correct to the best of their knowledge, and made in good faith (18 U.S.C. 1001). Making a false statement on this form is punishable by law.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

Public reporting burden for this collection of information is estimated to average 5 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information. Send comments regarding this burden estimate or suggestions for reducing this burden estimate or any other aspect of this collection of information to NMFS, One Blackburn Drive, Gloucester MA 0193.



Lessor (Person transferring DAS) Information:

Owner Name: _____

Permit #: _____

Vessel Name: _____

Official #: _____
(or state registration #)

Lessee (Person receiving DAS) Information:

Owner Name: _____

Permit #: _____

Vessel Name: _____

Official #: _____
(or state registration #)

Number of NE Multispecies DAS to be Leased: _____

Total Price Paid for Leased DAS: _____

Signed: _____
(Lessor)

Signed: _____
(Lessee)

Dated: _____

Dated: _____

DAS may be leased only through the end of the current fishing year and must be used in accordance with the regulations found at 50 CFR 648.82(k). Please see a summary of conditions and restrictions on the reverse side of this form.

NOTE: Lessee's ability to receive leased DAS may be affected by the availability of DAS held by lessor.

This form is required to obtain approval for the leasing of DAS under 50 CFR 648.82(k) and to monitor DAS allocation and usage for limited access NE multispecies permit holders. Signature of this form certifies that permit holders comply with limited access permit requirements specified in 50 CFR 648.4, and that the information provided on this form is true, complete and correct to the best of their knowledge, and made in good faith (18 U.S.C. 1001). Making a false statement on this form is punishable by law.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

Public reporting burden for this collection of information is estimated to average 5 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information. Send comments regarding this burden estimate or suggestions for reducing this burden estimate or any other aspect of this collection of information to NMFS, One Blackburn Drive, Gloucester MA 01930.

§ 648.2 Definitions.

DAS Lease - the transfer of the use of DAS from one limited access NE multispecies vessel to another limited access NE multispecies vessel for a period not to exceed a single fishing year.

DAS Lessee - the NE multispecies limited access vessel owner and/or the associated vessel that acquires the use of DAS from another NE multispecies limited access vessel.

DAS Lessor - the NE multispecies limited access vessel owner and/or the associated vessel that transfers the use of DAS to another NE multispecies limited access vessel.

Sub-lease - the leasing of DAS that have already been leased to another vessel

§ 648.82(k) NE Multispecies DAS Leasing Program.

(1) Program description. For fishing years 2004 and 2005, eligible vessels, as specified in paragraph (k)(2) of this section, may lease Category A DAS to and from other eligible vessels, in accordance with the restrictions and conditions of this section. The Regional Administrator has final approval authority for all NE multispecies DAS leasing requests.

(2) Eligible vessels. (i) A vessel issued a valid limited access NE multispecies permit is eligible to lease Category A DAS to or from another such vessel, subject to the conditions and requirements of this part, unless the vessel was issued a valid Small Vessel or Handgear A permit specified under paragraphs (b)(5) and (6) of this section, respectively, or is a valid participant in an approved Sector, as described in § 648.87(a). Any NE multispecies vessel that does not require use of DAS to fish for regulated multispecies may not lease any NE multispecies DAS.

(ii) DAS associated with a Confirmation of Permit History may not be leased.

(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 March 1. 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. (Sub-sections

(4) Conditions and restrictions on leased DAS--(i) Confirmation of Permit History. DAS associated with a confirmation of permit history may not be leased.

(ii) Sub-leasing. In a fishing year, a Lessor or Lessee vessel may not sub-lease DAS that have already been leased to another vessel. Any portion of a vessel's DAS may not be leased more than one time during a fishing year.

(iii) Carry-over of leased DAS. Leased DAS that remain unused at the end of the fishing year may not be carried over to the subsequent fishing year by the Lessor or Lessee vessel.

(iv) Maximum number of DAS that can be leased. A Lessee may lease Category A DAS in an amount up to such vessel's 2001 fishing year allocation (excluding carry-over DAS from the previous year, or additional DAS associated with obtaining a Large Mesh permit). For example, if a vessel was allocated 88 DAS in the 2001 fishing year, that vessel may lease up to 88 Category A DAS. The total number of Category A DAS that the vessel could fish would be the sum of the 88 leased DAS and the vessel's 2004 allocation of Category A DAS.

(v) History of leased DAS use and landings. Unless otherwise specified in this paragraph (k)(4)(v), history of leased DAS use will be presumed to remain with the Lessor vessel. Landings resulting from a leased DAS will be presumed to remain with the Lessee vessel. For the purpose of accounting for leased DAS use, leased DAS will be accounted for (subtracted from available DAS) prior to allocated DAS. In the case of multiple leases to one vessel, history of leased DAS use will be presumed to remain with the Lessor in the order in which such leases were approved by NMFS.

(vi) Monkfish Category C and D vessels. A vessel that possesses a valid limited access monkfish Category C or D permit and leases NE multispecies DAS to another vessel is subject to the restrictions specified in § 648.92(b)(2).

(vii) DAS Category restriction. A vessel may lease only Category A DAS, as described under paragraph (d)(1) of this section.

(viii) Duration of lease. A vessel leasing DAS may only fish those leased DAS during the fishing year in which they were leased.

(ix) Size restriction of Lessee vessel. A Lessor only may lease DAS to a Lessee vessel with a baseline main engine horsepower rating no greater than 20 percent of the baseline engine horsepower of the Lessor vessel. A Lessor vessel only may lease DAS to a Lessee vessel with a baseline length overall that is no greater than 10 percent of the baseline length overall of the Lessor vessel. For the purposes of this program, the baseline horsepower and length overall specifications of vessels are those associated with the permit as of January 29, 2004.

(x) Leasing by vessels fishing under a Sector allocation. A vessel fishing under the restrictions and conditions of an approved Sector allocation, as specified in § 648.87(b), may not lease DAS to or from vessels that are not participating in such Sector during the fishing year in which the vessel is a member of that Sector.

§ 648.92(b)(2) Category C and D limited access monkfish permit holders.

(iii) Category C and D vessels that lease NE multispecies DAS. (A) A monkfish Category C or D vessel that has "monkfish-only" DAS, as specified in paragraph (b)(2)(ii) of this section, and that leases NE multispecies DAS from another vessel pursuant to § 648.82(k), is required to fish its available "monkfish-only" DAS in conjunction with its leased NE multispecies DAS, to the extent that the vessel has NE multispecies DAS available.

(B) A monkfish Category C or D vessel which leases DAS to another vessel(s), pursuant to § 648.82(k), is required to forfeit a monkfish DAS for each NE multispecies DAS that the vessel leases, equal in number to the difference between the number of remaining multispecies DAS and the number of unused monkfish DAS at the time of the lease. For example, if a lessor vessel, which had 40 unused monkfish DAS and 47 allocated multispecies DAS, leased 10 of its multispecies DAS, the lessor would forfeit 3 of its monkfish DAS (40 monkfish DAS - 37 multispecies DAS = 3) because it would have 3 fewer multispecies DAS than monkfish DAS after the lease.

Dated: June 7, 2004.

William T. Hogarth,

Assistant Administrator for Fisheries.

[FR Doc. 04-13210 Filed 6-7-04; 4:50 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 040112010-4167-03; I.D. 122203A]

RIN 0648-AN17

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Amendment 13 Regulatory Amendment

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

ACTION: Final rule, regulatory amendment.

SUMMARY: The final rule to implement Amendment 13 to the NE Multispecies Fishery Management Plan (Amendment 13) was published on April 27, 2004, and the majority of measures became effective on May 1, 2004. This final rule, regulatory amendment amends observer notification requirements of Amendment 13 to relieve a restriction. The required observer notification period for groundfish Days-at-Sea (DAS) vessels fishing in the U.S./Canada Management Area is reduced from 5 working days to 72 hours. The intent is to provide maximum flexibility to the fishing industry while still meeting the requirements and objectives of the management program.

DATES: Effective June 10, 2004.

FOR FURTHER INFORMATION CONTACT:

Thomas Warren, Fishery Policy Analyst, (978) 281-9347, fax (978) 281-9135, e-mail Thomas.Warren@NOAA.gov.

SUPPLEMENTARY INFORMATION: The April 27, 2004, final rule implementing Amendment 13 (69 FR 22906) included an administrative measure for the purpose of selecting vessels for observer coverage. Vessel owners who choose to fish in either of the two U.S./Canada Management Areas, must provide notice to NMFS of the vessel name, contact name for coordination of observer deployment, telephone number for contact, date, time and port of departure at least 5 working days prior to the beginning of any trip that is declared

into the U.S./Canada Management Area. The goal of this requirement was to obtain a level of observer coverage on NE multispecies vessels fishing in the U.S./Canada Management Area that is consistent with the rest of the fishery (i.e., 10 percent for the 2004 fishing year). The objective is to provide notification to the NMFS Observer Program of planned trips, prior to the departure of the trip, so that the Observer Program has sufficient time to contact and deploy observers.

Although a notification period of 5 working days was determined to be optimal in terms of the operational requirements of the NMFS Observer Program, public comments received from numerous industry members have indicated that a shorter notification requirement would provide vessels greater flexibility to react to contingencies such as weather developments. Upon further consideration, NMFS has determined that a notification period of 72 hours represents a balance between the requirements of the Observer Program and the interests of the fishing industry, while still meeting the objectives of Amendment 13. Therefore, this final rule reduces the notification time for groundfish DAS vessels prior to departure of a trip into the U.S./Canada Management Area from 5 working days to 72 hours.

Classification

The Assistant Administrator for Fisheries, NOAA, finds good cause pursuant to 5 U.S.C 553(b)(B) to waive the requirement to provide prior notice and the opportunity for public comment on this regulatory amendment as such procedures are unnecessary and contrary to the public interest. The timing of the advance notification for the purposes of placing observers on fishing vessels is purely a NMFS administrative function. The objective of the advance notification is to allow the Observer Program sufficient time to contact and deploy observers. Reducing the notification period from five days to three days does not impact the fishery management measures that became effective on May 1, 2004. In addition, numerous industry members, the fishery management council and the State of Maine, requested a reduction to the notification period. Fisherman will benefit from a shorter notification period because it will provide vessels greater flexibility to react to contingencies such as weather developments, while still allowing sufficient time to place observers on vessels. Further, the AA has determined

that the 30-day delay in effectiveness requirement under 5 U.S.C. 553(d)(1) is not applicable because this action relieves a restriction as described in the **SUPPLEMENTARY INFORMATION** section of this rule.

This action is authorized by 50 CFR part 648 and is exempt from review under 12866. This action modifies a collection-of-information requirement for the purposes of the Paperwork Reduction Act. Although the costs associated with this reporting requirement do not change as a result of this final rule, the burden to the industry will be reduced because this rule relieves a restriction.

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

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 7, 2004.

Rebecca Lent,

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 § 648.85, the last sentence in paragraph (a)(3)(ii) is revised to read as follows:

§ 648.85 Special management programs.

(a) * * *

(3) * * *

(ii) * * * For the purposes of selecting vessels for observer deployment, a vessel fishing in either of the U.S./Canada Management Areas specified in paragraph (a)(1) of this section, must provide notice to NMFS of the vessel name, contact name for coordination of observer deployment, telephone number for contact, date, time and port of departure, at least 72 hours prior to the beginning of any trip which it declares into the U.S./Canada Management Area as required under this paragraph (a)(3)(ii).

* * * * *

[FR Doc. 04-13315 Filed 6-10-04; 8:45 am]

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Federal Register

**Friday,
November 19, 2004**

Part II

Department of Commerce

**National Oceanic and Atmospheric
Administration**

50 CFR Part 648

**Magnuson-Stevens Fishery Conservation
and Management Act (Magnuson-Stevens
Act) Provisions; Fisheries of the
Northeastern United States; Northeast
(NE) Multispecies Fishery; Framework
Adjustment 40-A; Interim Final Rule**

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 648****[Docket No.; ID 080204G]****RIN 0648-AS34****Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Framework Adjustment 40-A**

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

ACTION: Interim final rule; request for comments.

SUMMARY: NMFS is implementing approved measures contained in Framework Adjustment 40-A (FW 40-A) to the NE Multispecies Fishery Management Plan (FMP). FW 40-A was developed by the New England Fishery Management Council (Council) to provide additional opportunities for vessels in the fishery to target healthy stocks of groundfish in order to mitigate the economic and social impacts resulting from the effort reductions required by Amendment 13 to the FMP, and to harvest groundfish stocks at levels that approach optimum yield (OY). This rule implements three programs to allow vessels to use Category B Days-at-Sea (DAS) (both Regular and Reserve) to target healthy stocks: Regular B DAS Pilot Program; Closed Area (CA) I Hook Gear Haddock Special Access Program (SAP) for the Georges Bank (GB) Cod Hook Sector (Sector); and Eastern U.S./Canada Haddock SAP Pilot Program. In addition, FW 40-A relieves an Amendment 13 restriction that prohibited vessels from fishing both in the Western U.S./Canada Area and outside that area on the same trip.

DATES: Effective November 19, 2004. Comments must be received by December 20, 2004.

ADDRESSES: You may submit comments by any of the following methods:

- E-mail: FW40A@NOAA.gov.

Include in the subject line the following: "Comments on the Proposed Rule for Groundfish Framework 40-A."

- Federal E-Rulemaking Portal: <http://www.regulations.gov>.

- Mail: Paper, disk, or CD-ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One

Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on the Interim Rule for Groundfish Framework 40-A."

- Fax: (978) 281-9135.

Copies of FW 40-A, its Regulatory Impact Review (RIR), and the Environmental Assessment (EA) are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, The Tannery Mill 2, Newburyport, MA 01950. NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is contained in the Classification section of this rule. Copies of the Small Entity Compliance Guide are available from the Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298.

Written comments regarding this interim final rule should be submitted to the Regional Administrator at the above address. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule should be submitted to the Regional Administrator by e-mail to David Rostker, David_Rostker@omb.eop.gov or fax to (202) 395-7285.

FOR FURTHER INFORMATION CONTACT: Thomas Warren, Fishery Policy Analyst, phone: (978) 281-9347, fax: (978) 281-9135.

SUPPLEMENTARY INFORMATION:**Background**

The Council developed Amendment 13 to bring the FMP into compliance with all Magnuson-Stevens Act requirements, including ending overfishing and rebuilding all overfished groundfish stocks. Amendment 13 was partially approved by the Secretary of Commerce on March 18, 2004. A final rule implementing the approved measures was published April 27, 2004 (69 FR 22906), and most measures became effective on May 1, 2004. Amendment 13 adopted a suite of management measures to reduce fishing mortality on groundfish stocks that are either overfished, or where overfishing is occurring. For several stocks, the fishing mortality targets adopted in Amendment 13 represented substantial reductions from previous levels. For other stocks, the fishing mortality targets were set at or above previous levels, and fishing mortality could remain the same or potentially increase without causing overfishing. Because most fishing trips in this fishery catch a wide range of species, and the principal management tool used in the

FMP to reduce fishing effort is DAS, the reduction in DAS implemented by Amendment 13 impacts numerous species. It is difficult to design management measures that selectively change fishing mortality for individual species. Because the management measures in Amendment 13 were designed to reduce fishing mortality where necessary, they may also reduce fishing mortality more than is necessary for other, healthier stocks due to the multispecies nature of the fishery. As a result, yield from healthier stocks may have been reduced and the ability of the FMP to ensure OY from these stocks may be diminished. OY is the amount of fish that will provide the greatest overall benefit to the nation. Because of the complexity of Amendment 13, it was not possible to develop and analyze measures to increase yield on these healthier stocks in time to meet litigation-imposed deadlines. FW 40-A was conceived and developed as a follow-up to Amendment 13 to implement programs that would provide additional opportunities to target healthy groundfish stocks in order to maximize the ability to achieve OY. These programs will also mitigate some of the negative economic and social impacts caused by the effort reductions in Amendment 13.

Among the primary Amendment 13 management measures to control fishing mortality are DAS reductions. Amendment 13 categorized the DAS allocated to each permit as Category A DAS, Category B DAS, which were further categorized as Regular B and Reserve B, and Category C DAS. Category A DAS can be used to target any regulated groundfish stock, while Category B DAS are to be used only to target healthy groundfish stocks in a restricted manner. Category C DAS cannot be used at all at this time. Amendment 13 implemented one program that allows the use of B DAS (CA II Yellowtail Flounder SAP). This interim final rule implements the following B DAS Programs proposed in FW 40-A, with the exceptions noted below: The Regular B DAS Pilot Program; the CA I Hook Gear Haddock SAP for the Sector; and the Eastern U.S./Canada Haddock SAP Pilot Program. The disapproved measures are: Allowance of non-Sector participants in the CA I Hook Gear Haddock SAP; and the use of a flounder net in the Eastern U.S./Canada Haddock SAP Pilot Program. Further explanation of the reasons for disapproval of those measures is provided under Disapproved Measures.

Comments and Responses

Regular B DAS Pilot Program

Comment 1: One commenter suggested that, under the Regular B DAS Pilot Program, GB yellowtail flounder should not be listed as one of the stocks that can withstand additional fishing effort, given the recent updated status of the stock and the fact that the Council approved 2005 fishing year TAC lower than the TAC adopted for the 2004 fishing year.

Response: FW 40–A identifies GB yellowtail flounder as a target stock, i.e., a stock that can support additional fishing effort under the Regular B DAS Pilot Program. The list of target species was provided for informational purposes, and is based upon the analyses in Amendment 13. Based on the recent Transboundary Management Guidance Committee (TMGC) Guidance Document for the 2005 fishing year, there is an indication that the biomass level for GB yellowtail flounder may be lower than previously estimated in Amendment 13. The harvest level of GB yellowtail flounder for the current fishing year is based upon the best available information at the time FW 40–A was developed, and the harvest of the GB yellowtail flounder stock will be limited by a hard TAC. The TAC for GB yellowtail flounder that the Council approved for the 2005 fishing year takes into account the current estimate of the biomass level, and the TAC for the 2004 fishing year. The TAC for GB yellowtail flounder and the use of Regular B DAS to target this stock is consistent with the TMGC's management strategy and the goals of the FMP.

Comment 2: Seven commenters were concerned that, under the proposed rule, participants in the Regular B DAS Pilot Program would be prohibited from fishing in the Eastern U.S./Canada Area, and that this prohibition would restrict opportunities to use Regular B DAS. The commenters noted that this restriction was inconsistent with the FW 40–A document, would contribute to the underharvest of the U.S./Canada haddock TAC, and prevent realization of OY. The Council, in a September 29, 2004, letter to NMFS clarified its intent that vessels should be allowed to participate in the Regular B DAS Pilot Program and fish in the Eastern U.S./Canada Area.

Response: NMFS agrees that the proposed rule was inconsistent with the Council's intent; this interim final rule is accordingly revised to allow vessels the opportunity to fish under the Regular B DAS Pilot Program when fishing in the Eastern U.S./Canada Area.

Comment 3: Two commenters suggested a clarification to the requirement for vessels participating in the Regular B DAS Pilot Program to notify NMFS for the purpose of deploying observers. Specifically, the commenters noted that the requirement that vessels provide information on the planned fishing area or areas (Gulf of Maine (GOM), GB, or Southern New England (SNE)/Mid-Atlantic (MA)) should be clarified to indicate that the area planned for fishing is not binding (i.e., even though a vessel indicates it intends to fish in the GOM, it can change its plan and fish elsewhere).

Response: NMFS agrees that this requirement is non-binding and has revised the regulatory text of the interim final rule to clarify this requirement.

Comment 4: Two commenters disagreed with an aspect of the Regular B DAS Pilot Program and the Eastern U.S./Canada Haddock SAP Pilot Program requirement to "flip" from a Regular B DAS to an A DAS. Specifically, the commenters did not support the timing of the flipping requirement as written in the proposed rule, which would have required vessels to flip immediately if the vessel brings on board more legal-sized groundfish than the applicable landing limit. The commenters stated that the proposed regulatory language was not consistent with the Council's intent that a vessel flip from a Regular B DAS to an A DAS prior to crossing the demarcation line on the way back to port after fishing. One commenter suggested that, if the requirement for immediate flipping were retained, the restriction should not apply on a per-DAS basis, but should instead be applied to the maximum trip limit.

Response: Based on public comment, including the Council's, NMFS agrees that the proposed rule was not consistent with the Council's intent, and this interim final rule requires a vessel to flip from a B DAS to an A DAS prior to crossing the demarcation line, if the vessel has on board more legal-sized groundfish than the landing limits.

Comment 5: Two commenters stated that the Regional Administrator's, Northeast Regional Office NMFS (Regional Administrator's) authority to close the Regular B DAS Pilot Program is too vague. The Council suggested removal of the Regional Administrator's authority to close for reasons relating to observer coverage, and stated that the Council did not recommend using the level of observer coverage as a basis for closing the Program.

Response: Because the Regular B DAS Pilot Program and the Eastern U.S./Canada Haddock SAP Pilot Program are

pilot programs, and one of the objectives of these programs is to test the Regular B DAS concept, NMFS believes that consistency with the objectives of the FMP must be a condition for the continuation of the program. Pursuant to the authority granted the agency under section 305(d) of the Magnuson-Stevens Act, this interim rule provides that the Regional Administrator may terminate the programs if it is projected that continuation of the programs would undermine the achievement of the objectives of the FMP or the programs. With respect to the comments that the Regional Administrator's authority is too vague, NMFS believes that, in this case, the non-specific nature of this authority is in the best interest of the NE multispecies fishery. Because there are no data regarding fishing practices under the Regular B DAS Pilot Program, it would be difficult for the Regional Administrator to develop precise criteria to demonstrate that the programs are working as designed. NMFS intends to deploy a level of observers that is much higher than in the fishery at-large, and to closely monitor all sources of information in order to monitor the incidental TACs and ensure that continuing operation of the pilot programs is consistent with the goals of the FMP.

Comment 6: One commenter suggested that FW 40–A implement hard TACs on the stocks that are targeted (while fishing under a B DAS). The commenter was concerned that the Amendment 13 allocation of A DAS may not adequately limit the level of fishing mortality on the target stocks, and questioned the assumption in the FW 40–A analysis that concludes the current fishing mortality rates are less than the target fishing mortality rates (for the target stocks). The commenter noted that the rate of harvest of the GB yellowtail flounder from the CA II Yellowtail Flounder SAP was higher in reality than had been estimated in the Amendment 13 analysis, and concluded that, in a similar manner, the rate of harvest of other target stocks under the programs proposed by FW 40–A may also be higher than anticipated in the FW 40–A analysis. The commenter concluded that hard TACs on target stocks are necessary to ensure that the mortality targets are not exceeded.

Response: A hard TAC for target stocks while fishing under an A DAS was not included in FW 40–A. Because NMFS can only approve or disapprove substantive measures in a framework adjustment, it cannot add a new, substantive measure that was not proposed in FW 40–A. Regarding the commenter's concerns about the

allocation of A DAS, with the exception of the hard TACs implemented for the U.S./Canada Management Area and the GB cod hard TAC associated with the Sector, Amendment 13 implemented DAS as the principal management tool to control fishing effort. Although FW 40-A implements incidental hard TACs for stocks of concern for the Regular B DAS Pilot Program, as well as hard TACs for species of concern (for both SAPs) and for target species for one of the two SAPs, it does not modify the basic strategy of the use of A DAS to control effort on target stocks under the Regular B DAS Pilot Program. Table 40 in FW 40-A compares the target fishing mortality to the expected fishing mortality and concludes that, for the healthy stocks, the fishing mortalities that are expected to result from the Amendment 13 measures are approximately one-half the Amendment 13 target fishing mortalities. Information on landings to date of GB haddock from the U.S./Canada Management Area in the 2004 fishing year show that, for GB haddock, the current landings are well below the U.S./Canada TAC. Although the use of B DAS to target stocks that are in relatively good condition is an additional source of fishing mortality, FW 40-A implements many constraints on the use of B DAS that will limit fishing mortality on target stocks (e.g., incidental TACs, limitation of number of B DAS used, hard TACs for the SAPs). Due to these constraints, it is very likely that the use of B DAS will be limited by incidental hard TACs in the Regular B DAS Pilot Program, and by hard TACs or incidental hard TACs in the two SAPs implemented under FW 40-A prior to exceeding the target TACs for the target stocks. Secondly, the FW 40-A document concludes that Regular B DAS use in the pilot program will occur in all allowable areas and will not be focused on any single stock. Lastly, as indicated in the response to Comment 5, the Regional Administrator is provided the authority to close the programs if continuation of the programs are determined to be inconsistent with the objectives of the FMP.

Comment 7: One commenter supported hard incidental TACs for the Regular B DAS Pilot Program, but was against increasing the incidental TACs in 2005, as proposed in FW 40-A, stating that this increase was not supported by scientific information currently available. The commenter was particularly concerned about the GB cod incidental TAC increase, urged use of the precautionary approach, and

suggested that any increases should be delayed until the 2005 assessments.

Response: The increase in TACs for the 2005 and 2006 fishing year are based upon the Amendment 13 analysis that indicates stocks will increase in size and is based on the best scientific information available. In 2005, a biennial review will be conducted in accordance with the process implemented by Amendment 13. At that time, the Plan Development Team (PDT) will perform a review of the fishery, develop target TACs for the upcoming fishing year, and develop options for Council consideration on any necessary changes to measures to achieve the goals and objectives of the FMP. This biennial review, however, does not preclude the Council from adjusting the TACs through a management action at any time, if necessary, in order to respond to new information on the status of the stock.

Comment 8: One commenter expressed general support for the range of management measures proposed to implement the Regular B DAS Pilot Program, including the Vessel Monitoring System (VMS) requirements, NMFS notification for deployment of observers, daily reporting via VMS, mandatory flipping, the prohibition on discarding, and the 1-year duration of the program.

Response: NMFS agrees and the interim final rule implements these proposed measures.

Comment 9: Two commenters did not support the Regular B DAS Pilot Program requirements regarding white hake. The commenters suggested that similar management measures be applied to the white hake stock as apply to the rest of the groundfish stocks of concern, i.e., when the incidental TAC of white hake is harvested for a quarter, the entire white hake stock area should be closed to the use of a Regular B DAS for the remainder of the quarter, rather than a prohibition on white hake retention. The commenters believe that the proposed FW 40-A measure to prohibit retention of white hake would provide less protection for that stock than for the other groundfish stocks of concern, and that such separate treatment is not justified due to the status of the white hake stock and the level of fishing mortality on that stock. Lastly, one commenter stated that the prohibition on retention of white hake (when the incidental TAC has been harvested) is inconsistent with the mandatory discard provision of the Regular B DAS Pilot Program.

Response: The FW 40-A document proposed that, for stocks of concern, with the exception of white hake, once

the incidental TAC has been harvested, the stock area should close to the use of Regular B DAS. The stated reason for this exception is the fact that the geographic area associated with the white hake stock covers all the statistical areas under management by the FMP. Because of the large stock area, as well as the relatively low incidental TAC for white hake, closure of the stock area upon harvest of the TAC could result in relative swift closure of the entire Regular B DAS Pilot Program, resulting in relatively few economic benefits accruing to the fishery. Although the incidental catch TACs are the primary measure to control fishing mortality, they are not the only control. The maximum number of Regular B DAS that may be used per quarter is 1,000. The FW 40-A analysis indicates that the incidental TACs for CC/GOM yellowtail flounder, GB cod, and white hake are likely to be caught before 1,000 Regular B DAS are used. When the TACs for CC/GOM yellowtail flounder or GB cod are harvested, the geographic areas associated with those stocks will be closed to the use of Regular B DAS. Table 52 of FW 40-A indicates that the size of the TAC and the number of DAS that it may take to catch the TAC are lower for both CC/GOM yellowtail flounder and GB cod (9 mt, 794 days; 19.75 mt, 435 days, respectively) than for white hake (38.5 mt; 849 days). Based upon this information, closure of the CC/GOM yellowtail flounder and GB cod stock areas will likely occur prior to the time the white hake quarterly TAC is reached. Because these two stock areas comprise essentially the same area as the white hake stock, and closure on the basis that these stock incidental TACs are reached would result in the closure of the areas to the use of Regular B DAS, the incidental TACs for CC/GOM yellowtail flounder and GB cod are likely to provide indirect protection to white hake. NMFS agrees that white hake is a stock of concern, and believes that the management measures for white hake achieve an acceptable balance of protection of the stock and consideration of economic factors.

Comment 10: One commenter requested that NMFS include in the letter to permit holders announcing the approval of FW 40-A and the interim final rule implementing the management measures a clarification that only monkfish vessels with a monkfish limited access Category C or D permit may use a Regular B DAS.

Response: NMFS will include this clarification in the letter to NE multispecies permit holders. This clarification is necessary due to the complexity of the rules that pertain to

the vessels with both limited access multispecies and monkfish permits.

CA I Hook Gear Haddock SAP

Comment 11: Eight commenters did not support the proposed CA I Hook Gear Haddock SAP measures pertaining to the harvest of cod. Five of these expressed concern about the potential impact of the use of A DAS by non-Sector vessels in the SAP on GB cod given that, as proposed, cod caught under an A DAS would not count toward the incidental TAC for GB cod. The commenters stated that FW 40–A does not include a quantitative analysis of the impacts of the use of an A DAS in CA I, specifically with respect to GB cod, and made the point that an A DAS fished inside CA I is not equivalent to an A DAS fished outside of CA I. One commenter stated that the unconstrained use of A DAS in the SAP would exacerbate the derby aspect of the fishery and create a safety concern due to the small size of vessels that may choose to participate, and the weather that can be expected during the season proposed for the SAP. One commenter suggested that all legal-sized cod caught by non-sector vessels should be retained in order to minimize the potential impact on cod. Four commenters stated that the incidental TAC for GB cod allocated to non-Sector vessels (16 percent of the overall GB cod incidental TAC; 12.6 mt for the 2004 fishing year) is too high, and two commenters stated that only cod caught on a B DAS should count toward the incidental TAC.

Response: NMFS agrees that the potential impact of the SAP on GB cod as proposed for non-Sector vessels is of concern, and is one of the reasons NMFS has disapproved the measures that allow the participation of non-Sector vessels in the SAP. A full explanation of the reasons for the disapproval of the management measures that pertain to the non-Sector vessels is contained in the preamble of this rule under “Disapproved Measures.” The specific changes to the regulations are identified in the preamble under “Changes to the Proposed Rule.”

Comment 12: Four commenters expressed concerns regarding the different rules proposed for the Sector and non-Sector vessels. Two commenters noted that the management measures proposed for the non-Sector vessels put the Sector vessels at a financial disadvantage compared with the non-Sector vessels. One commenter considered the different rules applicable to the non-Sector as an unfair double-standard. One commenter believed that the rules that were proposed to pertain

to the non-Sector vessels did not accurately reflect the results of the research that forms the basis of the analysis of the impacts of the SAP.

Response: NMFS agrees that the FW 40–A document did not fully justify the differences in the proposed management measures that pertain to Sector and non-Sector participants in the SAP. Furthermore, implementation of two sets of rules for the SAP (Sector rules and non-Sector rules) would be extremely difficult to enforce and monitor, creating a significant administrative burden to NMFS. The administrative and enforcement costs, with relatively little economic benefit derived from the non-Sector vessels, is one of the reasons that NMFS has disapproved the measures that would have allowed the participation of non-sector vessels in the SAP. A full explanation of the reasons for the disapproval of the management measures that would have pertained to the non-Sector vessels is contained in this preamble under “Disapproved Measures.”

Comment 13: Five commenters addressed the proposed requirement for VMS double polling of vessels participating in the CA I Hook Gear Haddock SAP. Commenters requested either that the requirement for double polling be eliminated, or that NMFS not hold vessel owners responsible for paying for double polling.

Response: NMFS concurs and has removed the requirement of mandatory double polling from the interim final rule because the additional cost (to vessel owners or NMFS) was not specifically included in FW 40–A and may not currently be justified. Instead this interim final rule requires that double polling may be initiated by NMFS, at its discretion, for NE multispecies vessels fishing in the U.S./Canada Area or in a SAP. If NMFS uses its discretion to initiate double polling in the future, NMFS will pay for the cost of the second poll.

Comment 14: One commenter did not support Sector vessels fishing in CA I, and believed that access to that area is unjustified because it is a closed area.

Response: The access to CA I by Sector vessels implemented by this interim final rule is consistent with the premise of a SAP and the goals of the FMP. Allowing vessels to fish in CA I is justified by the status of the haddock stock, the potential economic gains for the fishery, and the limited scope and duration of the program and the restrictions that limit the biological impacts. This interim final rule implements a hard TAC for haddock harvested in the SAP, and current

regulations include a hard TAC for GB cod harvested by the Sector, including cod caught incidentally in the SAP.

Comment 15: Two commenters suggested that the interim final rule prohibit vessels that are participating in the CA I SAP from having either a gillnet or trawl onboard.

Response: Because the intent of this SAP is to allow vessels to use demersal longlines or tubtrawl gear to target haddock in a portion of CA I, this interim final rule clarifies that only longline or tubtrawl gear are allowed aboard vessels that participate in this SAP.

Comment 16: One commenter noted that the SAP may create a derby fishery for haddock, and stated concern that there could be impacts on the haddock market.

Response: NMFS agrees that as proposed there may have been incentive for non-Sector, as well as Sector vessels to fish in the SAP, thus creating a derby and potentially impacting the haddock market, at least in the short term. Although vessels may choose whether and when to participate in the SAP, disapproval of participation of non-Sector vessels in this SAP will likely lessen or eliminate a potential derby because Sector vessels are fishing under Sector rules that strictly limit and spread out effort on cod, which should also have an impact on how and when effort directed at haddock in this SAP will occur.

Comment 17: Three commenters requested clarification in the interim final rule about the requirement for the Sector to provide observer funding in this SAP, if necessary. They requested that NMFS make it clear that Sector vessels would not be unfairly burdened with the costs associated with funding non-Sector vessels participating in the SAP.

Response: The commenters' concerns should be resolved by the fact that non-Sector vessels will not be allowed to participate in the SAP. A full explanation of the reasons for the disapproval of the management measures that pertain to the non-Sector vessels is contained in the preamble of this rule under “Disapproved Measures.”

Comment 18: Three commenters were concerned with the specific provisions regarding the haddock TAC and the GB cod incidental TAC associated with the SAP as proposed, and how they may affect the Sector's fishing activities in the SAP. Three commenters suggested that NMFS make it clear that, when the incidental GB cod TAC is harvested, Sector vessels would be allowed to continue to fish under a B DAS in the

SAP, since they are fishing under a separate GB cod TAC allocation. One commenter further clarified that Sector vessels should be allowed to continue to fish in the SAP until the haddock TAC has been harvested. The Council commented that the proposed rule was incorrect in stating that only haddock caught under a B DAS in the SAP would be counted against the haddock TAC, and clarified that the Council's intent was that all haddock caught in the SAP should be applied against the haddock TAC.

Response: All cod caught by Sector vessels fishing in the SAP will be counted against the Sector's allocation of GB cod. The proposed rule stated that the GB cod incidental TAC would apply to non-Sector vessels fishing in the SAP. The commenters' concerns regarding this issue should be resolved by the fact that participation in the SAP by non-Sector vessels has been disapproved. With respect to the haddock TAC, NMFS agrees with the Council that FW 40-A intended that haddock harvested under either an A DAS or B DAS should count toward the 1,000-mt haddock TAC. Although the preamble of the proposed rule was consistent with the Council's intent (i.e., all haddock caught in the SAP would be counted against the haddock TAC), the regulatory text of the proposed rule was incorrect and conflicted with the preamble of the proposed rule in stating that only haddock caught under a B DAS would be counted against the haddock TAC. NMFS has corrected the regulatory text of this interim final rule to reflect Council intent that the all haddock caught in the SAP will be counted against the TAC.

Comment 19: One commenter suggested that all legal-sized cod caught by non-Sector vessels should be retained in order to minimize the impact of the SAP on GB cod.

Response: The commenter's concerns are rendered moot by the fact that participation in the SAP by non-Sector vessels has been disapproved. A full explanation of the reasons for the disapproval of the management measures that pertain to the non-Sector vessels is contained in this preamble under "Disapproved Measures."

Comment 20: One commenter suggested that because white hake may be caught in the SAP, and white hake is a groundfish stock of concern, the interim final rule should include measures to monitor and control the bycatch of white hake in the SAP.

Response: Such a measure was not proposed by the Council in FW 40-A. Because NMFS can only approve or disapprove substantive measures in a

framework adjustment, it cannot add a new substantive measure that is not part of FW 40-A. Furthermore, such new requirements are not necessary because the vessel reporting requirements in the current regulations already require vessels with a NE multispecies permit to report all species landed or discarded. The bycatch of white hake is controlled indirectly by the haddock TAC set for the SAP, which will limit the total amount of fishing effort in the SAP. Further, the disapproval of participation of non-Sector vessels in the SAP will reduce potential effort in this SAP.

Comment 21: One commenter requested clarification as to whether Sector participants in the SAP must report cod and haddock catches from the SAP using VMS, or through the Sector Manager. The commenter suggested that Sector vessels should be required to report daily either through VMS or the Sector Manager.

Response: FW 40-A states that the Sector Manager will provide NMFS with daily reports of cod and haddock landings. The proposed rule regulatory text stated that the owner or operator of a vessel participating in the Sector and declared into the CA I Hook Gear Haddock Area must submit reports to the Sector Manager, with instructions to be provided by the Sector Manager, of each day fished, when declared into the area. The Council's intent was for Sector members to report through the Sector Manager. NMFS believes it is impractical to administer two separate reporting systems in order to allow vessels the option of either reporting through VMS or the Sector Manager. The preamble of the interim final rule will clarify that Sector members participating in the SAP must report daily to the Sector manager and that the Sector Manager will report daily to NMFS.

Comment 22: One commenter requested that NMFS clarify that all GB cod caught by Sector members participating in the SAP be counted against the Sector's allocation of GB cod.

Response: The preamble to the proposed rule stated "All cod caught by Sector vessels would count against the Sector's cod TAC." NMFS will clarify the regulatory text to explicitly state that all cod caught by Sector vessels will count against the Sector's allocation of GB cod.

Eastern U.S./Canada Haddock SAP Pilot Program

Comment 23: Two commenters strongly supported this Pilot Program due to the healthy status of the GB haddock stock, as well as the need to

encourage the harvest of the stocks managed under the U.S./Canada Resource Sharing Understanding.

Response: NMFS agrees that this Pilot Program is justified because it will provide additional opportunity for NE multispecies DAS vessels using trawl gear to target haddock using B DAS and is consistent with the goals of FW 40-A and the FMP. The SAP Pilot Program is thus implemented through this interim final rule.

Comment 24: One commenter did not support the requirement to provide information to NMFS 72 hours prior to departing on a trip into the Eastern U.S./Canada Haddock SAP Pilot Program (for the purpose of deploying observers), and stated that the requirement is impractical and poses risks to safety. Two commenters did not support the requirement to provide such information to NMFS for trips into the CA I Hook Gear Haddock SAP.

Response: This requirement is consistent with the observer notification requirement currently in effect for vessels fishing in the U.S./Canada Management Area. Vessel owners who choose to fish in either of these programs must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; and date, time, and port of departure at least 72 hours prior to the beginning of any trip that it declares into the SAP, in accordance with instructions provided by the Regional Administrator. The objective is to provide notification to the NMFS Observer Program of planned trips, prior to the departure of the trip, so that the Observer Program has sufficient time to contact and deploy observers. Monitoring of these new programs is critical to their success and continuation or adjustment, and to collect critical information on their effectiveness. NMFS has determined that a notification period of 72 hours represents a balance between the requirements of the Observer Program and the interests of the fishing industry, while still meeting the objectives of FW 40-A. NMFS disagrees that such notification poses a safety risk. The vessel operator is responsible for safe operation of the vessel, and NMFS does not expect vessel operators to make decisions that subject their vessels to unnecessary risk in order to comply with this observer regulation or any other regulation. The NMFS observer program will work with vessel owners in order to try to accommodate their needs.

Comment 25: One commenter believed that the allocation of an incidental GB cod TAC to the Eastern

U.S./Canada Haddock SAP Pilot Program has no purpose and appeared to represent an inconsistency with the U.S./Canada Resource Understanding. The commenter interpreted this incidental TAC as an additional allocation of GB cod that would result in the overharvest of the agreed upon U.S. GB cod TAC (under the Resource Understanding). Furthermore, he stated that the existence of the U.S./Canada Resource Sharing Understanding TAC for GB cod makes the proposed incidental GB cod TAC unnecessary. The commenter suggested that the incidental GB cod TAC proposed for this SAP be reallocated to the Regular B DAS Pilot Program.

Response: The incidental GB cod TAC for this SAP is not an allocation of GB cod that NE multispecies vessels may catch in addition to the United States's share of the GB cod TAC established under the U.S./Canada Resource Sharing Understanding. The GB cod TAC set pursuant to the Understanding represents the total amount of GB cod that may be caught from the Eastern U.S./Canada Area. It is important to note that the SAP area represents only a small portion of the Eastern U.S./Canada Area.

Comment 26: Two commenters expressed general support for the range of management measures proposed to implement the Eastern U.S./Canada Haddock SAP Pilot Program, with one commenter stating that it would be important for the economic survival of the fleet.

Response: NMFS agrees that the range of management measures developed for the Eastern U.S./Canada Haddock SAP Pilot Program is appropriate, that the opportunity that the program affords is important, and has approved this SAP and its proposed measures, with the exception of the proposed use of flounder nets as explained under Comment 27.

Comment 27: Two commenters expressed concern about the proposed gear requirements for this SAP. One commenter stressed the need for high levels of observer coverage in order to carefully monitor the effectiveness of the allowable trawls in minimizing retention of cod. The second commenter suggested that only use of the haddock separator trawl be allowed in the SAP area, rather than the haddock separator trawl and the flatfish net.

Response: NMFS agrees that sufficient levels of observer coverage are necessary in order to monitor the SAP and ensure that the SAP does not undermine achievement of the goals of the FMP. NMFS also agrees with the commenter that suggested that only the haddock

separator trawl be allowed to be used in the SAP. Due to concerns regarding GB yellowtail flounder and GB cod bycatch in the SAP area, NMFS has disapproved the use of a flatfish net when fishing in the Eastern U.S./Canada Haddock SAP Pilot Program. Participating vessels may have a flounder net on board the vessel while in the SAP area, provided the flounder net is stowed in accordance with the regulations. A full explanation of the reasons for disapproval of the flounder net is contained in this preamble under "Disapproved Measures."

Combined Trips to Western U.S./Canada Area

Comment 28: Seven commenters supported the measure that allows vessels to fish both inside and outside of the Western U.S./Canada Area (but not in the Eastern U.S./Canada Area) on the same trip, but believe that the measure, as written in the proposed rule, did not fully reflect the intent of the Council. Specifically, they stated that the proposed restriction to one entry and exit to/from the Western U.S./Canada Area per trip does not allow sufficient flexibility. One commenter stated that this flexibility is important for the economic survival of the groundfish fleet during the fishery's rebuilding.

Response: The proposed rule would have limited vessels to one entry and exit of the Western U.S./Canada Area per trip in order to enable accurate monitoring of yellowtail flounder landings from inside and outside of the Western U.S./Canada Area. The stock of yellowtail flounder inside the Area is different from the stock outside the Area, and landings must be attributed to the correct yellowtail flounder stock. In response to comments, NMFS re-evaluated its capability to monitor such landings and concluded that it will be able to monitor landings from inside and outside of the Western U.S./Canada Area. Therefore, NMFS has modified the interim final rule to allow vessels unlimited flexibility to fish inside and outside of the Western U.S./Canada Area during a single trip in order to be more fully consistent with Council intent and to provide greater flexibility to the fleet.

General Comments

Comment 29: One commenter supported many of the monitoring and reporting requirements proposed for the B DAS programs proposed under FW 40-A but suggested that, for all programs, vessels be required to report all fish landed and discarded, as well as location fished, through the VMS. In

addition, the commenter suggested that, for each area fished, information be reported by 10-minute squares rather than by statistical area.

Response: The VMS reporting requirements implemented by FW 40-A for vessels participating in the three programs are in addition to the existing reporting requirements that such vessels must also comply with. That is, vessels are required to submit Vessel Trip Reports (VTRs) that include information on all species landed and discarded, as well as location fished. The specific VMS requirements implemented by this interim final rule were designed to support the specific real-time reporting demands of the three programs in FW 40-A. The VMS requirements enable real-time monitoring of TACs of either incidental or target stocks. Requiring vessels to report all species and location fished through VMS is not justified because it is not necessary in order to monitor the TACs, would unnecessarily duplicate the information reported through VTRs, and would add additional cost and burden to the vessel owner/operator. A requirement that vessels report by 10-minute square areas was not proposed by the Council and would be inconsistent with the NMFS Northeast Region's current methodology of reporting.

Comment 30: Two commenters stated that sufficient observer coverage is critical to the proposed B DAS programs, and stated that there would be strong incentives for fishermen to misreport discards in these programs. They recommended that the level of observer coverage be between 20 and 50 percent, and requested that NMFS identify the specific level of observer coverage that will be provided to these proposed programs.

Response: NMFS agrees that sufficient observer coverage is critical to the programs implemented by this interim final rule and NMFS intends to deploy a much higher level of observer coverage to the programs than deployed to the fishery at large.

Comment 31: One commenter believes that the TACs for the target stocks are too high for all these B DAS programs, stating that the calculations for the TACs for these stocks were based upon the fishing mortality rates that correspond to Fmsy instead of the lower fishing mortality rates that correspond to OY. The commenter noted that the analysis that identifies target stocks relies on the information contained in Table 40, on page 131 of the FW 40-A document.

Response: NMFS believes that the TACs were calculated in an appropriate manner and are based upon the best

available scientific information. The basis for setting TACs on target stocks is the fishing mortality rate schedule in Amendment 13 to the FMP.

Amendment 13 implemented an adaptive F approach to rebuild most stocks and a phased F approach for a few others. The adaptive approach sets F=Fmsy for 2004–2008, and adjusts effort and F in 2009–2014 to ensure rebuilding is achieved. To be consistent with Amendment 13, the FW 40A TACs should be computed using the Fmsy values until 2008. The national standard guidelines state that “Optimum yield means the amount of fish that will provide the greatest overall benefit to the Nation...” As a consequence, OY in the context of FW 40A is the yield that results from following the Amendment 13 rebuilding plan and associated F schedule for individual stocks. Using a lower F rate schedule (75 percent of Fmsy) would require changing Amendment 13 rebuilding plans.

Comment 32: One commenter urged NMFS to evaluate carefully the effectiveness of the A DAS management measures adopted in Amendment 13 to determine if they have achieved the expected fishing mortality reductions and suggested that, if such measures have failed to perform as expected, the Regular B DAS Pilot Program must be re-evaluated.

Response: NMFS agrees that it will be important to evaluate the effectiveness of the Amendment 13 management measures and the implications of any management measures implemented subsequent to Amendment 13. Both the regular B DAS Program and the Eastern U.S./Canada Haddock SAP are pilot programs with limited durations for the purpose of evaluating their impact on groundfish stocks of concern. The 2005 biennial review of the groundfish fishery is the appropriate context for such an evaluation.

Comment 33: One commenter suggested that, because barndoor skate and thorny skate may be caught in the B DAS programs proposed under FW 40–A, the interim final rule should include measures to monitor and control the bycatch of barndoor and thorny skates.

Response: NMFS will monitor bycatch of barndoor and thorny skates as well as all other species in the B DAS programs. The vessel reporting requirement in the current regulations require all vessels with a NE multispecies permit to report all species landed and/or discarded. The bycatch of all species, including skates will be controlled indirectly by the target TACs set for the two SAPs proposed in FW 40–A, and by the incidental TACs and

DAS restrictions of the Regular B DAS Pilot Program, which will limit the total amount of fishing effort in the programs. FW 40–A includes a Skate Baseline Review, consistent with the requirements of the Northeast Skates Fishery Management Plan, that concludes that the overall impact of the FW 40–A management measures on skates is expected to be low.

Comment 34: The Council commented that the list of stocks of concern should not be codified, noting that, if a stock status changes, a revision to the regulations would be necessary. The Council suggested that, instead, the regulations be revised to require the Regional Administrator to determine the list of stocks of concern, based on current information.

Response: In order to implement the proposed FW 40–A measures, such as incidental TACs, that are specific to specific stocks of concern, the regulations must reference such stocks of concern. A process that would require the Regional Administrator to define stocks of concern was neither developed by the Council, nor included in the proposed rule. Because particular management measures are applied on a stock-specific basis to stocks of concern, adjustment to the stocks of concern would require a regulatory change.

Comment 35: The Council commented that FW 40–A allows vessels fishing in the Eastern U.S./Canada Area to fish anywhere in the Eastern U.S./Canada Area using either an A or B DAS, including the CA II Yellowtail Flounder SAP and the Eastern U.S./Canada Haddock SAP Pilot Program on the same trip, providing the SAPs are open. The Council added that, at a minimum, a vessel should be able to fish in both the CA II Yellowtail Flounder SAP and the Eastern U.S./Canada Haddock SAP Pilot Program on the same trip under a B DAS.

Response: Vessels may use either an A or B DAS in the CA II Yellowtail Flounder SAP and the Eastern U.S./Canada Haddock SAP Pilot Program. However, should a vessel intend to fish outside either of these two SAPs when fishing in the Eastern U.S./Canada Area, it must fish under an A DAS for the entire trip, despite fishing part of the trip in one of the two SAPs. The reason for this restriction is that with the exception of the Regular B DAS Pilot Program, B DAS may not be used outside of a SAP. FW 40–A contains no justification for, or analysis of the potential impact of allowing vessels to fish under a Reserve or Regular B DAS in the U.S./Canada Area outside of a SAP or the Regular B DAS Program.

Comment 36: One commenter suggested that the use of a combination of Reserve B and Regular B DAS be allowed on the same trip into a SAP.

Response: The proposed rule would have prohibited vessels from using a Regular B DAS and Reserve B DAS on the same trip (in a SAP) due to the concern that it would not be technically feasible to administer such a measure. However, based upon further consideration, NMFS has determined that it will be possible to administer this measure and has modified the regulatory text in this interim final rule to allow the use of both types of B DAS on the same trip when fishing in a SAP.

Disapproved Measures

Non-Sector Participants in the CA I Hook Gear Haddock SAP

FW 40–A proposed the CA I Hook Gear Haddock SAP for a directed haddock fishery for both GB Cod Hook Sector members and non-members. Management measures proposed for the non-Sector vessels were considerably different from those pertaining to Sector vessels. The proposed program for non-Sector vessels fishing in the SAP was complex, in that it proposed to: Count cod catch against the SAP’s incidental cod TAC only when fishing under a B DAS; allow participants to fish both inside and outside the SAP area on the same trip under different gear restrictions; and allow non-DAS groundfish vessels to participate in the SAP, but did not provide for how specific measures would apply to these vessels. The proposed provisions would be very difficult to enforce and monitor, and were not fully analyzed. Due to the relatively low number of non-Sector vessels (10) that are expected to participate in this proposed SAP, and the relatively high cost to implement the proposed program, the overall cost/benefit ratio would be very high. Furthermore, there appear to be insufficient controls on GB cod mortality for the proposed SAP, and an insufficient analysis of the impact of non-Sector vessels on GB cod. In contrast, the rules that pertain to Sector participants in the SAP are relatively simple (i.e., cod caught under A and B DAS count toward the GB cod TAC, the same gear restrictions apply regardless of where Sector vessels are fishing on a particular trip, only DAS permit categories are eligible to participate in the Sector). Furthermore, all cod caught by Sector vessels would count toward the Sector’s allocation of GB cod; therefore, the fishing mortality on GB cod would be fully accounted for. Many commenters expressed concerns

regarding the proposed CA I Hook Gear Haddock SAP. The environmental organizations and hook fishermen that commented were opposed to the fact that GB cod caught in the SAP while fishing on a Category A DAS would not count toward the incidental GB cod Total Allowable Catch (TAC), and noted that there has not been an analysis of allowing the use of A DAS in CA I. Although some commenters expressed broad support for the SAP, the most of the commenters were either against the program or noted qualified support for the program, taking issue with specific aspects of the SAP (e.g., how accounting of the TACs would occur with respect to Category A and B DAS, the different measures proposed for Sector and non-Sector vessels, and the accounting of cod and haddock catches).

Because of the insufficient controls on GB cod mortality, the proposed measures are not consistent with national standard 1 and section 303(a)(1)(A) of the Magnuson-Stevens Act. Because of the high cost/benefit ratio of the proposed SAP, the proposed measures are not consistent with national standard 7. Therefore, NMFS has disapproved the applicability of this measure to non-Sector vessels.

Because of the disapproval of the non-Sector participation in the CA I Hook Gear Haddock SAP, the proposed incidental GB cod TAC allocated under FW 40-A for non-Sector vessels fishing in the CA I Hook Gear Haddock SAP (16 percent of the total GB cod incidental catch TAC; i.e., 12.6 mt, 15.5 mt, and 20.3 mt in Fishing Years 2004, 2005, and 2006, respectively) is reallocated to the Regular B DAS Pilot Program. The FW 40-A document states that: "The use of Category B (Regular) DAS, outside of a SAP, will be constrained by a "hard" incidental catch TAC for stocks of concern. These TACs are reduced by the amount of the total incidental catch TAC that is assigned to SAPs." The implication of this text is that the TAC assigned for the Regular B DAS Pilot Program is reduced in order to allocate an incidental TAC to a SAP. Therefore, NMFS concludes that it is appropriate that the Regular B DAS Pilot Program absorb the incidental GB cod TAC originally allocated to the non-Sector vessels in the CA I Hook Gear Haddock SAP. Thus, the total amount of the annual GB cod incidental TAC allocated to the Regular B DAS Pilot Program is increased from the amount specified in FW 40-A (50 percent; 39.5 mt, and 48.5 mt, for fishing years 2004 and 2005, respectively) to 66 percent (52.14 mt and 64.02 mt, for fishing years 2004 and 2005, respectively). The amount allocated to the Eastern U.S./

Canada Haddock SAP Pilot Program will remain at 27 mt, 33 mt, and 43 mt for fishing years 2004, 2005, and 2006, respectively (34 percent), because no additional GB cod incidental TAC is being allocated to this program. Although the EA does not explicitly analyze the impact of such a re-allocation (of 16 percent of the GB incidental cod TAC), based upon the FW 40-A analysis of the proposed action and alternatives, NMFS concludes that the biological and economic impacts of the three programs being implemented (combined) will be very similar to those impacts analyzed in FW 40-A. The social impacts will be slightly different, in that no benefits from the CA I Hook Gear Haddock SAP will be received by non-Sector vessels. Because how any reallocation of this GB incidental TAC should be handled was not specified in the proposed rule, NMFS is soliciting comment on this management measure.

Use of Flounder Nets in the Eastern U.S./Canada Haddock SAP Pilot Program

FW 40-A proposed that vessels fishing in the Eastern U.S./Canada Haddock SAP Pilot Program would be allowed to fish with either a haddock separator trawl or with a flatfish net (consistent with the gear regulations pertaining to the Eastern U.S./Canada Area). Commenters raised concerns about the effectiveness of the required trawl gear, and the need to monitor the program carefully with high levels of observers. One industry member recommended restricting the allowable gear to the haddock separator trawl (i.e., prohibit flatfish nets in this area). This SAP was proposed specifically to allow vessels to target haddock, which the haddock separator trawl is intended to do. Although information on the effectiveness of the haddock separator trawl is still preliminary, data indicate that the design of the haddock separator trawl may be successful in selecting for haddock, and the use of this net is likely to result in a lower level of cod and yellowtail flounder bycatch than would allowance of a flatfish net in this area. Given the fact that, during the 2004 fishing year the yellowtail flounder TAC from the Eastern U.S./Canada Area was harvested at a high rate, allowance of a flatfish net in this area would be problematic. Because the use of the flounder net has not been demonstrated to minimize bycatch of GB cod and yellowtail flounder for vessels targeting haddock, the proposed measure is not consistent with national standard 9 or section 303(a)(11)(A) of the Magnuson-Stevens Act, regarding minimizing

bycatch mortality. Further, to allow gear that would result in substantial catches of cod and yellowtail flounder in the U.S./Canada Area, could result in early closure of that area to all groundfish DAS vessels and result in foregone opportunities to harvest haddock, which would be inconsistent with the objectives of the FMP. In light of this information, NMFS has disapproved the use of a flounder net for vessels fishing in the Eastern U.S./Canada Haddock SAP Pilot Program.

Approved Measures

NMFS has approved the remainder of the measures proposed in FW 40-A. A description of these approved measures follows.

1. Regular B DAS Pilot Program

The Regular B DAS Pilot Program creates opportunities to use B Regular DAS outside of a SAP to target stocks that can withstand additional fishing effort (GOM, haddock, pollock, GOM winter flounder, GB haddock, GB yellowtail flounder, and GB winter flounder). The pilot program will run part of both the 2004 and 2005 fishing years, from November 19, 2004 through October 31, 2005. In order to limit the potential biological impacts of the program, only 1,000 B Regular DAS per quarter (November 19, 2004 through January 2005, February through April 2005, May through July 2005, and August through October 2005) may be allocated for use for the entire pilot program. These DAS will not be allocated to individual vessels, but will be used by vessels on a first-come, first-served basis.

Vessels participating in this program must be equipped with an approved VMS. The vessel owner or operator must notify the NMFS Observer Program at least 72 hours in advance of a trip in order to facilitate observer coverage. This notice will require reporting of the following information: The general area or areas that will be fished (GOM, GB, or Southern New England (SNE)); vessel name; contact name for coordination of observer deployment; telephone number of contact; date, time, and port of departure. Providing notice of the area that the vessel intends to fish will not restrict the vessel's activity to only that area identified for that trip, but will be used to plan observer coverage to ensure statistically robust results. Prior to departing on a trip, the vessel owner or operator must notify NMFS via VMS that the vessel intends to participate in the Regular B DAS Pilot Program. There are no specific gear requirements for participation, but vessels will not be

allowed to fish on that trip in a SAP or in a seasonal or year-round closed area, and must comply with the gear requirements of the FMP. Vessels may fish in the Regular B DAS Pilot Program and in the U.S./Canada Management Area on the same trip, provided the vessel abides by the most restrictive regulations that apply. The proposed rule for FW 40-A would have prohibited fishing in the Regular B DAS Pilot Program and the Eastern U.S./Canada Area on the same trip; however, this interim final rule, in order to be consistent with Council intent, allows participation in the Regular B DAS Pilot Program in the Eastern U.S./Canada Area. Because this measure was not included in the proposed rule, NMFS is soliciting additional comment on this management measure. While fishing under a Regular B DAS in this program, Regular B DAS will accrue at the rate of 1 DAS for each calendar day, or part of a calendar day, fished. For example, a vessel that leaves on a trip at 11 p.m. on the first calendar day and returns at 10 p.m. on the second calendar day, will be charged 48 hours of B Regular DAS instead of 23 hours, because the fishing trip would have spanned 2 calendar days. Vessels fishing in this program are prohibited from discarding legal-sized regulated groundfish and are limited to landing 100 lb (45.4 kg) per DAS for each of six groundfish stocks of concern (GOM cod, GB cod, American plaice, white hake, SNE/MA winter flounder, and witch flounder), and are limited to a landing limit of 25 lb (11.3 kg) per DAS for each of two stocks of concern (CC/GOM and SNE/MA yellowtail flounder). If a vessel harvests and brings on board legal-sized regulated

groundfish in excess of the landing limits, the vessel operator must retain the excess catch and notify NMFS via VMS prior to crossing the demarcation line in order to change its DAS category from a Regular B DAS to a Category A DAS ("DAS flip"). The landing limits will be applied at the end of a vessel's trip. For example, a vessel declared in the Regular B DAS Pilot Program that catches 300 lb (136.2 kg) of cod on the first day of a 2-day trip will not be required to flip immediately to an A DAS on the first day, but, if after completing its fishing trip after 26 hours (being charged 48 hours), the vessel has caught 300 lb (136.2 kg), the vessel will be required to flip to an A DAS prior to crossing the demarcation line (for 2 days of fishing the vessel is only allowed 2-days-worth of cod, or 200 lb). Based upon public comment and to ensure consistency with FW 40-A, this interim final rule has modified the proposed rule language that stated that a vessel must flip its DAS category immediately upon exceeding the landing limit. Instead, this interim final rule requires a vessel to flip its DAS category prior to crossing the VMS demarcation line on its return trip to port. If a vessel flips from a Regular B DAS to an A DAS, it will be charged Category A DAS, which will accrue to the nearest minute, for the entire trip, and will be subject to the possession and landing restrictions that apply to the fishery as a whole (i.e., not the Regular B DAS Pilot Program limits). In addition, this interim final rule has modified the proposed rule language to resolve a potential problem with the prohibition on discarding. The interim final rule allows discarding of regulated groundfish in instances where

mandatory retention would conflict with a prohibition on retention of such species (e.g., the current prohibition on retention of yellowtail flounder from the Western U.S./Canada Area). In order to ensure that a vessel will always have the ability to flip to a Category A DAS while fishing under a Regular B DAS (should it encounter a groundfish species of concern in an amount that exceeds the trip limit), the number of Regular B DAS that may be used on a trip is limited to the number of Category A DAS that the vessel has at the start of the trip. For example, if a vessel plans a trip under the Regular B DAS Pilot Program and has 5 Category A DAS available, the maximum number of Regular B DAS that the vessel may fish on that trip under the Regular B DAS Pilot Program would be 5.

NMFS will administer the 1,000 Regular B DAS maximum by monitoring the number of Regular B DAS accrued on trips that end under a Regular B DAS. Declaration of the trip through VMS does not serve to reserve a vessel's right to fish under a Regular B DAS. In order to be considered actively fishing in the program, a vessel must both declare their trip via VMS and have crossed the demarcation line. When 1,000 Regular B DAS are used in a quarter, the Regular B DAS Pilot Program will end for that quarter.

In order to limit the potential impact on fishing mortality that the use of Category B DAS (Regular B DAS or Reserve B DAS) may have on groundfish stocks of concern, a quarterly Incidental TAC is set for the groundfish stocks of concern, as summarized in the following table:

INCIDENTAL TACS FOR B REGULAR DAS PILOT PROGRAM (MT)

Stocks of Concern	Nov 2004 to Jan 2005	Feb 2005 to Apr 2005	May 2005 to Jul 2005	Aug 2005 to Oct 2005
GOM cod	48.5	48.5	63.5	63.5
GB cod	26.07	26.07	32.01	32.01
Cape Cod/GOM yellowtail flounder	9	9	12.5	12.5
American plaice	92.5	92.5	90	90
white hake	38.5	38.5	38	38
Southern New England/Mid-Atlantic (SNE/MA) yellowtail flounder	17.5	17.5	49.5	49.5
SNE/MA winter flounder	71.5	71.5	89	89
witch flounder	129.5	129.5	175	175

* Note: The incidental TACs for GB cod specified for the Regular B DAS Pilot Program have been revised from the proposed rule to account for the reabsorption of the GB cod incidental TAC proposed for the non-Sector vessels fishing in the CA I Hook Gear Haddock SAP (see Disapproved Measures for further explanation).

With the exception of white hake, if the incidental TAC for any one of these species is caught during a quarter (landings plus discards), use of Regular B DAS in the pertinent stock area will be prohibited for the remainder of that quarter. Because several stocks of

concern may be found in a given stock area, the closure of that stock area to the use of Regular B DAS will result in the prohibition of fishing under a Regular B DAS for all stocks of concern in that stock area, even if there is TAC remaining for some of the stocks of

concern for that quarter. All stock areas will reopen for the use of B Regular DAS at the beginning of the subsequent quarter. If the white hake incidental TAC is caught in a quarter, the possession of white hake will be prohibited when fishing under Regular

B DAS in all stock areas for the remainder of that quarter. White hake is treated differently than the other stocks of concern because the stock area for white hake covers all the waters from GOM through SNE, and closure of its stock area to the use of Regular B DAS, rather than prohibiting its possession, would unnecessarily curtail the Regular B DAS Pilot Program. Incidental TACs are not specified for ocean pout, southern windowpane flounder, and Atlantic halibut, three stocks of concern, because the magnitude of the catches of these stocks is considered insignificant.

This program allows the use of Regular B DAS by vessels fishing for species managed under other fishery management plans that require the use of a groundfish DAS, such as monkfish. A monkfish vessel with a limited access monkfish Category C or D permit that fishes under a monkfish DAS, and is therefore required to utilize a NE multispecies DAS, may choose to use a Regular B DAS instead of an A DAS, provided the use of the Regular B DAS is still allowed in the stock area the vessel will be fishing, and provided the vessel adheres to all applicable regulations.

To ensure adequate monitoring of these TACs, vessels fishing in the Regular B DAS Pilot Program are required to report their catch of groundfish stocks of concern, for which there is an incidental TAC, daily through VMS, including the amount of fish kept and discarded, by statistical area fished. In addition, NMFS is intending to increase observer coverage for this program in order to monitor adequately catch and the effectiveness of the pilot program measures in ensuring adherence to Amendment 13 fishing mortality goals. As another measure to ensure that the pilot program is carried out in a manner consistent with FW 40-A and Amendment 13 objectives, this interim final rule provides that the Administrator, Northeast Region, NMFS (Regional Administrator) may prohibit the use of Regular B DAS for the duration of a quarter or fishing year, if it is projected that continuation of the Regular B DAS Pilot Program will undermine the achievement of the objectives of the FMP or the Regular B DAS Pilot Program. NMFS is soliciting additional comments on the Regional Administrator's authority to close this program.

2. CA I Hook Gear Haddock SAP

This SAP allows vessels with a limited access NE multispecies DAS permit that are members of the GB Cod Hook Sector (Sector) to target haddock

using longline or tubtrawl gear, when fishing under either a Category A or B DAS within a defined portion of CA I from October 1 - December 31. A haddock TAC of 1,000 mt is specified, and the SAP will close to all participants when the Regional Administrator projects that the TAC (landings and discards from the use of A or B DAS) has been caught. Because the proposed rule specified that only haddock caught under a B DAS would count toward the TAC, and this interim final rule has been modified to reflect Council intent that the all haddock caught in the SAP count toward the TAC, NMFS is soliciting additional comment on this management measure. All GB cod caught, under either an A DAS or B DAS, will count toward the Sector's allocation of GB cod (in contrast to the Regular B DAS Pilot Program, or the Eastern U.S./Canada Haddock SAP Pilot Program, there is no incidental GB cod TAC specified).

In order to enable the NMFS Observer Program to administer the deployment of observers in the SAP, a vessel intending to participate in this SAP must notify NMFS by September 1 (with the exception of the 2004 fishing year) of its intention to fish in the program. For the 2004 fishing year, vessels must notify the NMFS Observer Program by a date set by the Regional Administrator. NE multispecies permit-holders will be notified of the deadline by mail. Notification by vessels intending to participate in this SAP will not have to include specific information about the date of any trip into the SAP; the intent is simply to require that vessels declare their intent for the purposes of providing the NMFS Observer Program with an estimate of the total number of vessels that may participate. If a vessel does not notify the NMFS Observer Program of its intent to participate in the SAP by the required date, it may not participate in the SAP during that fishing year. For the 2004 fishing year, this notification requirement is waived. If the Regional Administrator, based upon this estimated participation level, or other information, determines that funding is inadequate for the necessary level of observer coverage, the Sector may pay the additional costs required to deploy adequate levels of observers on the Sector vessels participating in this SAP in order to keep the SAP open. In addition, vessels must notify the NMFS Observer Program by telephone at least 72 hours prior to leaving on a trip to the CA I Hook Gear Haddock SAP and provide the following information: Vessel name; contact name for coordination of observer deployment;

telephone number of contact; and date, time, and port of departure. All vessels participating in this SAP must be equipped with an approved VMS. Vessels are required to declare into the SAP program via VMS and specify the type of DAS that will be used, prior to leaving port on a trip into the SAP.

Vessels may use either a Category A or Category B (Regular or Reserve) DAS to participate in the SAP. If fishing on a Category A DAS, vessels may fish inside the SAP and outside the SAP on the same trip. Vessels fishing under a Category B DAS may not fish both inside and outside the SAP area on the same trip. Participating vessels must fish in accordance with the Sector's Operations Plan (e.g., for the 2004 Operations Plan, such vessels are prohibited from discarding legal-sized cod and may fish an unlimited number of hooks). For species other than cod, all vessels are required to comply with the possession and trip limit restrictions currently specified in the regulations. Daily catch reports for each vessel fishing in the SAP must be submitted to the Sector Manager, and the Sector Manager must submit such catch reports daily to the Regional Administrator. In addition, NMFS is intending to increase observer coverage for this program in order to monitor adequately catch and the effectiveness of the SAP measures in ensuring adherence to Amendment 13 fishing mortality goals. As another measure to ensure that the SAP is carried out in a manner consistent with FW 40-A and Amendment 13 objectives, this interim final rule provides that the Regional Administrator may close the SAP for the duration of the fishing year if it is projected that continuation of the SAP will undermine the achievement of the objectives of the FMP or the SAP. NMFS is soliciting additional comments on the Regional Administrator's authority to close this SAP.

In addition, this interim final rule provides that the Regional Administrator has the authority to close the CA I Hook Gear Haddock Access Area for the duration of the fishing year if it is projected that continuation of the CA I Hook Gear Haddock SAP will undermine the achievement of the objectives of the FMP or the CA I Hook Gear Haddock SAP. NMFS is soliciting additional comments on the Regional Administrator's authority to close this program.

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

The Eastern U.S./Canada Haddock SAP Pilot Program will allow limited access NE multispecies DAS vessels to

target haddock using a Category B DAS from May 1 December 31, in a portion of the Eastern U.S./Canada Area, including the northernmost tip of CA II, provided the vessel fishes exclusively with a haddock separator trawl. The vessel may have a flounder trawl on board, provided the flounder net is stowed in accordance with the regulations. This 2-year pilot program will expire November 30, 2006. In order to limit the potential impact on fishing mortality that the use of Category B DAS may have on GB cod, an incidental GB cod incidental TAC is specified that represents 34 percent of the overall incidental catch TAC for GB cod for fishing years 2004, 2005, and 2006 (27 mt, 33 mt, and 43 mt, respectively, based on current information). The percentages could be changed by a future management action, and the incidental TACs may be recalculated in 2005 to reflect the best information available. When the Regional Administrator projects that the haddock TAC or incidental cod TAC has been harvested (landings and discards), participation in the SAP will close.

The following management measures for this SAP will be the same as the current regulations governing the Eastern U.S./Canada Area: Vessels fishing in this SAP must have an approved VMS and will not be charged steaming time either to or from the Eastern U.S./Canada Area. Vessel owners or operators planning a trip into this SAP are required to notify the NMFS Observer Program at least 72 hours prior to leaving on a trip into the SAP in order to facilitate observer coverage, and must provide the following information to the Observer Program: Vessel name; contact name for coordination of observer deployment; telephone number of contact; and date, time, and port of departure. In addition, participating vessels are required to declare into the SAP via VMS prior to departing on a trip into the SAP. Vessels must specify via VMS which areas within the Eastern U.S./Canada Area that they intend to fish in, and the type of DAS that will be used.

This interim final rule also implements measures for this SAP that are different from the regulations governing the Eastern U.S./Canada Area. The cod landing limit is now 1,000 lb (453.6 kg) per trip (Category A or B DAS), regardless of trip length, and discarding of legal-sized cod while fishing under a Category B DAS is prohibited. If a vessel fishing under a Category B DAS exceeds the cod landing limit, the owner or operator must notify NMFS via VMS and "flip" to a Category A DAS prior to crossing the vessel

demarcation line. Once a vessel flips to a Category A DAS, the vessel must comply with all landing restrictions that apply to Category A DAS. All vessels are required to comply with the haddock possession limits in place at the time of the fishing trip, regardless of the type of DAS the vessel is fishing under. In order to ensure that a vessel always will have the ability to flip to a Category A DAS while fishing under a B DAS, the number of Category B DAS that may be used on a trip is limited to the number of Category A DAS that the vessel has at the start of the trip. For example, if a vessel plans a trip into the Eastern U.S./Canada Haddock SAP Pilot Program and has 5 Category A DAS available, the maximum number of Category B DAS that it may fish under the Eastern U.S./Canada Haddock SAP Pilot Program is 5.

FW 40-A changes the cod landing limit for the CA II Yellowtail Flounder SAP from 100 lb (45.4 kg)/DAS and 1,000 lb (454 kg)/trip, to 1,000 lb (454 kg)/trip (and implements a DAS flipping requirement and no cod discard rule), in order to make the cod possession limits the same as those applicable to the Eastern U.S./Canada Haddock SAP Pilot Program. Although the proposed modification to the CA II Yellowtail Flounder SAP cod trip limit, including the no discard and flipping requirements, was clear in the FW 40-A document, the proposed rule inadvertently did not include the no discard and flipping requirements. This interim final rule corrects that error, and includes these requirements in order to be consistent with Council intent. Because the proposed rule did not include the no-discard and flipping requirements, NMFS is soliciting additional comments on this management measure. Vessels fishing in the Eastern U.S./Canada Area may fish in any combination of areas within the Eastern U.S./Canada Area, provided the area(s) is open and the vessel abides by the most restrictive regulations of the areas fished. For example, a vessel could fish in both the Eastern U.S./Canada Haddock SAP Pilot Program, and in the portion of the Eastern U.S./Canada Area that is not within a SAP on the same trip, provided the vessel fishes under a Category A DAS. Vessels fishing under a B DAS may fish in the Eastern U.S./Canada Haddock SAP Pilot Program and in the CA II Yellowtail Flounder SAP, but not in the portion of the Eastern U.S./Canada Area that is not included in these SAPs. Vessels are allowed to transit through CA II in order to enable vessels full access to the Eastern U.S./Canada Area.

Vessels participating in the Eastern U.S./Canada Haddock SAP Pilot Program must comply with the reporting requirements for fishing in the Eastern U.S./Canada Area. In addition, NMFS is intending to increase observer coverage for this program in order to monitor adequately catch and the effectiveness of the pilot program measures in ensuring adherence to Amendment 13 fishing mortality goals. As another measure to ensure that the pilot program is carried out in a manner consistent with FW 40-A and Amendment 13 objectives, this interim final rule provides that the Regional Administrator may close the pilot program for the duration of a fishing year, if it is projected that continuation of the pilot program will undermine the achievement of the objectives of the FMP or the pilot program. NMFS is soliciting additional comments on the Regional Administrator's authority to close this program.

4. Combined Trips to the Western U.S./Canada Area

Amendment 13 regulations restricted groundfish DAS vessels that had declared a trip and are fishing in the Western U.S./Canada Area from fishing in areas outside of that area during the same trip, in order to ensure that there is an accurate attribution of landings to the appropriate stock area and to facilitate enforcement of the regulations. The FW 40-A proposed rule would have modified this restriction in order to provide more flexibility to vessels by allowing them to fish both inside and outside the Western U.S./Canada Area on the same trip, but not in the Eastern U.S./Canada Area. However, the proposed rule would have limited vessels to one entry and exit to the Western U.S./Canada Area per trip. Commenters, including the Council, noted that this did not accurately reflect the Council's intent to address this issue. Therefore, this interim final rule was changed in response to these commenters so that vessels are not restricted in the number of times they may enter and exit the Western U.S./Canada Area on the same trip. In order to attribute landings to the appropriate stock accurately and to monitor the U.S. GB yellowtail TAC, in addition to the exiting reporting requirements, vessels must report catches (landings and discards) of yellowtail flounder, by statistical area, when crossing into or out of the Western U.S./Canada Area, and to comply with the most restrictive landing limits associated with the areas fished, as well as all other Western U.S./Canada Area requirements for that trip.

5. NMFS Modification to Administrative Measures

This interim final rule modifies two measures that were included in the proposed rule that did not originate in FW 40–A, but that were proposed by NMFS in order to administer the proposed programs.

The proposed rule specified a VMS polling rate of twice per hour for the proposed CA I Hook Gear Haddock SAP. However, based upon public comment that this requirement is costly and not necessary for enforcement purposes, this rule removes the polling rate requirement of twice per hour for this SAP. This interim final rule modifies the mandatory polling language from the proposed rule to state that double polling may be initiated by NMFS, at its discretion, for vessels fishing in the U.S./Canada Area or in a SAP. If NMFS uses its discretion to initiate double polling, NMFS will pay for the cost of the second poll each hour.

Secondly, the restriction in the FW 40–A proposed rule that would have prohibited vessels from fishing both a Regular B DAS and a Reserve B DAS on the same trip is removed. NMFS initially determined that it would not be possible to administer a program with such flexibility, but subsequently reconsidered its decision, and determined that it would be able to administer a program that allowed switching from a Regular B DAS to a Reserve B DAS in a SAP on the same trip. Because the proposed rule did not include this provision, NMFS is soliciting additional comment on this management measure.

Changes from the Proposed Rule

NMFS has made several changes to the proposed rule as a result of public comment and because of the disapproval of the proposed management measures proposed for non-Sector vessels fishing in the CA I Hook Gear Haddock SAP, and the disapproval of the flounder net in the Eastern U.S./Canada Haddock SAP Pilot Program. Other changes are technical or administrative in nature, clarify the new management measures, or correct inadvertent omissions in the proposed rule. Due to the number of such changes, and the fact that some measures in the interim final rule differ substantively from the measures of the proposed rule, the final rule is published as an interim final rule in order to allow further opportunity for public comment on such measures. These changes are listed below in the order that they appear in the regulations.

In § 648.82, paragraph (e)(3) is revised to clarify how, under the Regular B DAS Pilot Program, possession limits relate to DAS use.

In § 648.9, paragraph (c)(1)(ii) is revised, in response to commenters, to remove the VMS polling rate requirement of twice per hour in reference to the CA I Hook Gear Haddock SAP, and to clarify that, for vessels fishing in the U.S./Canada Area specified in § 648.85(a) and for SAPs specified under § 648.85(b), polling twice per hour may be initiated by NMFS. Further explanation of this issue is contained in NMFS' response to Comment 13 in this preamble.

In § 648.14(a)(130), the prohibition regarding fishing inside and outside of the Western U.S./Canada Area is revised in response to comments and to reflect the changes made to the regulatory text at § 648.85(a)(3)(ii)(B) to allow such fishing in an unrestricted manner. Further explanation of this issue is contained in NMFS's response to Comment 28 in this preamble.

In § 648.14(c)(52), the prohibition regarding the A DAS balance restriction in the Regular B DAS Pilot Program is modified to remove redundant text from the prohibition at (c)(63) and to add a prohibition to disallow the use of Reserve B DAS under the Regular B DAS Pilot Program.

In § 648.14(c)(79) a prohibition regarding the discard of cod in the CA II Yellowtail Flounder SAP and DAS flipping provision is added because it was inadvertently omitted in the proposed rule and is necessary to be consistent with Council intent. Further explanation of this issue is contained in this preamble under Approved Measures.

In § 648.82, paragraph (d)(2)(i)(A) is revised, as requested by commenters, to allow vessels to fish under both a Regular B DAS and a Reserve B DAS on the same trip. Further explanation of this issue is contained in NMFS's response to Comment 36 in this preamble.

In § 648.85, paragraph (a)(3)(ii)(B) is revised to allow vessels to cross in and out of the Western U.S./Canada Area multiple times per trip, as requested by commenters, and in order to be consistent with Council intent. The paragraph is also revised to clarify that the reference to the most restrictive regulation applies to all regulations and not only the yellowtail possession limits, in order to be consistent with Council intent. Further explanation of this issue is contained in NMFS's response to Comment 28 in this preamble.

In § 648.85, paragraph (b)(3)(i) is revised to correct an inadvertent omission from the regulatory text in the proposed rule in order to be consistent with Council intent to include the flipping requirement and prohibition on cod discards in the CA II Yellowtail Flounder SAP. Further explanation of this issue is contained in this preamble under Approved Measures.

In § 648.85, paragraph (b)(3)(viii) is revised to clarify the new CA II Yellowtail Flounder SAP cod trip limits and make such limits consistent with the cod trip limits applicable to the Eastern U.S./Canada Haddock SAP Pilot Program. Further explanation of this issue is contained in this preamble under Approved Measures.

In § 648.85, paragraphs (b)(3)(xi) and (xii) are added to correct an inadvertent omission from the regulatory text in the proposed rule in order to be consistent with Council intent to include the flipping requirement and prohibition on cod discards in the CA II Yellowtail Flounder SAP. Further explanation of this issue is contained in this preamble under Approved Measures.

In § 648.85, paragraph (b)(5)(ii) is revised to reallocate the GB cod incidental TAC from the CA I SAP to the Regular B DAS Pilot Program. Further explanation of this issue is contained in this preamble under Disapproved Measures.

In § 648.85, paragraph (b)(6)(i) is revised, in response to comments, to be consistent with Council intent to allow fishing in the Regular B DAS Pilot Program and in the U.S./Canada Management Area on the same trip, but not in a SAP or in a closed area. Further explanation of this issue is contained in NMFS's response to Comment 2 in this preamble.

In § 648.85, paragraph (b)(6)(iii) is revised to clarify that NMFS will notify limited access NE multispecies permit holders of the Regular B DAS Pilot Program quarterly incidental TACs through a letter.

In § 648.85, paragraph (b)(6)(iv)(B) is revised, in response to comments, to clarify that the notification of area to be fished is non-binding.

In § 648.85, paragraph (b)(6)(iv)(E) is revised, in response to comments, to be consistent with Council intent to require flipping prior to crossing the demarcation line. Further explanation of this issue is contained in NMFS's response to Comment 4 in this preamble. This paragraph is also modified in order to allow discarding of regulated groundfish in instances where mandatory retention would conflict with a prohibition on retention of such species.

In § 648.85, paragraph (b)(6)(iv)(I) is revised to clarify that NMFS will notify limited access NE multispecies permit holders of the stock areas associated with the incidental TACs of the Regular B DAS Pilot Program through a letter.

In § 648.85, paragraph (b)(6)(vi) is modified to clarify the basis of the Regional Administrator's authority to close the Regular B DAS Pilot Program. Further explanation of this issue is contained in NMFS's response to Comment 5 in this preamble.

In § 648.85, paragraph (b)(7)(i) is revised as a result of NMFS's disapproval of the non-Sector portion of the CA I Hook Gear Haddock SAP, in order to modify the eligibility criteria of the SAP. Further explanation of this issue is contained in this preamble under Disapproved Measures.

In § 648.85, paragraph (b)(7)(iv)(A) is revised as a result of NMFS's disapproval of the non-Sector portion of the CA I Hook Gear Haddock SAP to modify the DAS use restrictions, and to correct an error in the proposed rule that would have prohibited Sector vessels from fishing inside and outside of the SAP are on the same trip, and to allow vessels to enter and exit the SAP more than once per trip, in order to be consistent with the Council's intent. Further explanation of this issue is contained in this preamble under Approved Measures.

In § 648.85, paragraph (b)(7)(iv)(C) is revised to clarify that for the 2004 fishing year, NMFS will send a letter to limited access NE multispecies permit holders that are members of the Sector to inform them of the date of the notification requirement.

In § 648.85, paragraph (b)(7)(iv)(D) is revised as a result of NMFS's disapproval of the non-Sector portion of the CA I Hook Gear Haddock SAP to modify the observer program funding authority.

In § 648.85, paragraph (b)(7)(iv)(F) is revised as a result of NMFS's disapproval of the non-Sector portion of the CA I Hook Gear Haddock SAP, and to clarify that only longline and tubtrawl gear are allowed on board participating vessels.

In § 648.85, paragraph (b)(7)(iv)(G) is revised as a result of NMFS's disapproval of the non-Sector portion of the CA I Hook Gear Haddock SAP, and to clarify the haddock landing limit in the SAP. Further explanation of this issue is contained in NMFS's response to Comment 18 in this preamble.

In § 648.85, paragraph (b)(7)(iv)(H) is revised to modify the reporting requirements, as a result of NMFS's disapproval of the non-Sector portion of the CA I Hook Gear Haddock SAP.

In § 648.85, paragraph (b)(7)(iv)(I) is revised as a result of NMFS's disapproval of the non-Sector portion of the CA I Hook Gear Haddock SAP, and to clarify that all cod caught count against the Sector's allocation of GB cod.

In § 648.85, paragraph (b)(7)(iv)(J) is revised, in response to comments and in order to be consistent with Council intent, to specify that all haddock caught in the CA I SAP (under either an A or B DAS) count against the haddock TAC.

In § 648.85, paragraph (b)(7)(iv)(K) is revised, in response to comments and in order to be consistent with Council intent, to specify that closure of the CA I SAP is triggered by any haddock caught in the SAP. Paragraph (b)(7)(iv)(K) is also revised as a result of NMFS's disapproval of the non-Sector portion of the CA I Hook Gear Haddock SAP to remove references to the CA I SAP incidental cod TAC.

In § 648.85, paragraph (b)(7)(v) is modified to clarify the basis of the Regional Administrator's authority to close the CA I Hook Gear Haddock SAP. Further explanation of this issue is contained in NMFS's response to Comment 5 in this preamble.

In § 648.85, paragraph (b)(8)(i) is revised as a result of NMFS's disapproval of the use of the flounder net in the Eastern U.S./Canada SAP Pilot Program. Further explanation of this issue is contained in NMFS's response to Comment 27 in this preamble.

In § 648.85, paragraph (b)(8)(v)(E) is revised as a result of NMFS's disapproval of the use of the flounder net in the Eastern U.S./Canada SAP Pilot Program and to limit the gear allowed on board the vessel. Further explanation of this issue is contained in NMFS's response to Comment 27 in this preamble.

In § 648.85, paragraph (b)(8)(v)(F) is revised to clarify the haddock trip limits that vessels fishing in the Eastern U.S./Canada Haddock SAP Pilot Program are subject to.

In § 648.85, paragraph (b)(8)(v)(I) is revised in response to comments and in order to be consistent with Council intent, to require flipping prior to crossing the VMS demarcation line, to clarify that the B DAS may be Regular or Reserve, and to clarify when the DAS accrual begins.

In § 648.85, paragraph (b)(8)(v)(L) is modified to clarify the basis of the Regional Administrator's authority to close the Eastern U.S./Canada Haddock SAP Pilot Program. Further explanation of this issue is contained in NMFS's

response to Comment 5 in this preamble.

Classification

The Regional Administrator determined that the management measures implemented by this rule are necessary for the conservation and management of the NE multispecies fishery, and are consistent with the Magnuson-Stevens Act and other applicable laws.

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

An EA was prepared for this action and analyzed the environmental impacts of the measures being implemented, as well as alternatives to such measures. The EA considered the extent to which the impacts could be mitigated, and considered the objectives of the action in light of statutory mandates, including the Magnuson-Stevens Act. NMFS also considered public comments received during the comment period on the proposed rule. A copy of the Finding of No Significant Impact for FW 40-A is available from the Regional Administrator (see ADDRESSES).

Current regulations allow vessels to use B DAS only in the CA II Yellowtail Flounder SAP, which has been closed for the duration of the 2004 fishing year because the maximum number of allowable trips were taken (and which was limited to vessels that could fish on eastern GB). This interim final rule implements three new programs and relieves the current restriction on the use of Regular B DAS so that vessels can participate in these programs using B DAS. Various sectors of the fishery in diverse geographic areas will benefit from the increased opportunity to use B DAS by being able to take additional fishing trips and to earn additional revenue that would not otherwise be available. The Assistant Administrator for Fisheries, under 5 U.S.C. 553(d)(3), finds that the 30-day delayed effectiveness period is not applicable because this interim final rule relieves restrictions on the NE multispecies fleet.

Public Reporting Burden

This interim final rule contains 13 new collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The collection of this information has been approved by OMB. The public's reporting burden for the collection-of-information requirements includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the

collection-of-information requirements. The new reporting requirements and the estimated average time for a response are as follows:

1. VMS purchase and installation, OMB #0648-0202 (1 hr/response);
2. VMS proof of installation, OMB #0648-0202 (5 min/response);
3. Automated VMS polling of vessel position once per hour when fishing in the Regular B DAS pilot program, OMB #0648-0202 (5 sec/response);
4. Automated VMS polling of vessel position once per hour when fishing in the U.S./Canada Management Area or the Eastern U.S./Canada Haddock SAP Pilot Program OMB #0648-0202 (5 sec/response);
5. Automated VMS polling of vessel position once per hour when fishing in the CA I Hookgear Haddock SAP, OMB #0648-0202 (5 sec/response);
6. SAP area and DAS use declaration via VMS prior to each trip into a SAP, OMB #0648-0202 (5 min/response);
7. Revised estimate of the area and DAS use declaration via VMS prior to each trip into the CA I Hookgear Haddock SAP, OMB #0648-0202 (5 min/response);
8. DAS "flip" notification via VMS for the Regular B DAS pilot program, OMB #0648-0202 (5 min/response);
9. DAS "flip" notification via VMS for the Eastern U.S./Canada Haddock SAP Pilot Program, OMB #0648-0202 (5 min/response);
10. Notice requirements for observer deployment prior to every trip into the Regular B DAS Pilot Program OMB #0648-0202, (2 min/response);
11. Revised estimate of the notice requirements for observer deployment prior to every trip into the CA I Hookgear Haddock SAP, OMB #0648-0202 (2 min/response);
12. Daily electronic catch and discard reports of stocks of concern when fishing under the Regular B DAS Pilot Program OMB #0648-0212, (0.25 hr/response);
13. Daily electronic catch and discard reports of GB yellowtail flounder when fishing on a combined trip into the Western U.S./Canada Area, OMB #0648-0212 (0.25 hr/response).

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to a 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.

Final Regulatory Flexibility Analysis

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), prepared this FRFA in support of FW

40-A. The FRFA describes the economic impacts that this interim final rule will have on small entities.

The FRFA incorporates the economic impacts summarized in the Initial Regulatory Flexibility Analysis (IRFA) for the proposed rule to implement FW 40-A (69 FR 55388, September 14, 2004) and the corresponding economic analysis prepared for FW 40-A (FW 40-A RIR). For the most part, those impacts are not repeated here. A copy of the IRFA, the FRFA, the RIR and FW 40-A are available from NMFS, Northeast Regional Office, and are on the Northeast Regional Office Website (see **ADDRESSES**). A description of the reasons why this action was considered, the objectives of, and legal basis for the interim final rule is found in the preamble to this interim final rule.

Description of and Estimate of the Number of Small Entities to which the Rule would Apply

This interim final rule implements changes with the potential to affect any vessel holding a NE multispecies limited access permit (approximately 1,400 active vessels). It is very likely, however, that these measures will impact substantially fewer than the total number of active limited access multispecies DAS permit holders, based upon historic and recent rates of participation in the fishery, and because the new programs implemented are voluntary in nature, and have some associated regulatory and economic costs. Because the programs are voluntary, no small entity is required to bear any additional regulatory or economic burden unless it chooses to. It is likely that participating vessels will do so on the basis of having decided that the benefits of participating in the program will exceed the costs of participation.

Based upon the information in FW 40-A, approximately 118 or more vessels may participate in the Regular B DAS Pilot Program, 50 vessels may participate in the CA I Hook Haddock SAP, and approximately 86 vessels may participate in the Eastern U.S./Canada Haddock SAP Pilot Program. Up to 236 vessels may choose to fish both inside and outside of the Western U.S./Canada Area on the same trip.

The Small Business Administration (SBA) size standard for small commercial fishing entities of \$ 3.5 million in gross receipts applies to limited access DAS permit holders. Data analyzed for Amendment 13 to the FMP indicated that the maximum gross receipts for any single commercial fishing vessel for the period 1998 to 2001 was \$ 1.3 million. For this reason,

each vessel in this analysis is treated as a single entity for purposes of size determination and impact assessment. All commercial fishing entities in this fishery fall under the SBA size standard for small commercial fishing entities, and there will be no disproportionate impacts between small and large entities.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Interim final Rule

The measures implemented by this interim final rule include the following provisions requiring either new or revised reporting and recordkeeping requirements: (1) VMS purchase and installation; (2) VMS proof of installation; (3) automated VMS polling of vessel position when fishing in the Regular B DAS pilot program; (4) automated VMS polling of vessel position when fishing in the U.S./Canada Management Area or the Eastern U.S./Canada Haddock SAP Pilot Program; (5) automated VMS polling of vessel position when fishing in the CA I Hookgear Haddock SAP; (6) SAP area and DAS use declaration via VMS prior to each trip into a SAP; (7) revised estimate of the area and DAS use declaration via VMS prior to each trip into the CA I Hookgear Haddock SAP; (8) DAS "flip" notification via VMS for the Regular B DAS pilot program.; (9) DAS "flip" notification via VMS for the Eastern U.S./Canada Haddock SAP Pilot Program; (10) notice requirements for observer deployment prior to every trip into the Regular B DAS Pilot Program; (11) revised estimate of the notice requirements for observer deployment prior to every trip into the CA I Hookgear Haddock SAP; (12) daily electronic catch and discard reports of stocks of concern when fishing under the Regular B DAS Pilot Program; (13) daily electronic catch and discard reports of GB yellowtail flounder when fishing on a combined trip into the Western U.S./Canada Area.

It is difficult to estimate accurately the reporting and recordkeeping burden associated under this action since the frequency of participation in the Category B (regular) DAS pilot program, the CA I Hookgear Haddock SAP, the Eastern U.S./Canada SAP Pilot Program, and fishing on a combined trip into the Western U.S./Canada Area will be determined entirely by the vessel owner.

All participants in these programs must use VMS. All vessels that do not currently possess VMS must obtain one in order to participate in the programs implemented in this interim final rule. The cost of purchasing and installing

VMS, along with the associated basic operational costs, have already been considered in previous analyses submitted in accordance with the PRA. Accordingly, the costs associated with the purchase, installation, and operation of VMS units are not summarized here. The new information-collection provisions associated with FW 40A involve the daily electronic reporting of catch and discards of fish by vessels electing to fish in the Regular B DAS Pilot Program, the CA I Hookgear Haddock SAP, the Eastern U.S./Canada SAP Pilot Program, and vessels fishing combined trips in the Western U.S./Canada Area. This information is required to be submitted via VMS. The NE VMS Program will pay for the cost associated with the submission of form-based data (i.e., daily catch reports). As a result, there are no additional costs to the public associated with the daily catch reports.

Only the minimum data to meet the requirements of the above data needs are requested from all participants. Since all of the respondents are small businesses, separate requirements based on the size of the business have not been developed.

A Summary of the Issues Raised by the Public Comments in Response to the IRFA, and a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

NMFS received 14 comment letters on the proposed rule. Of these, there were no comments on the IRFA, and five issues were noted that directly or indirectly dealt with economic impacts to small entities (vessels) resulting from the management measures presented in the proposed rule. These comments, and NMFS's responses to these comments are contained in the Comments and Responses section of this preamble (see Comments 2, 6, 28, 29, and 37). A summary of the five economic issues raised, and NMFS's responses, follow:

Issue A: The CA I Hook Gear Haddock SAP may create a derby fishery for haddock and may impact the market for haddock.

Response: The FW 40-A analysis states that the CA I Hook Gear Haddock SAP will improve profitability for vessels allowed to access haddock, and that all participating vessels will likely show positive economic gains. The analysis, however, did not take into account the potential effect that a derby may have on the profitability of trips into the SAP. Vessels may choose when to fish in the SAP in order to minimize the potential for a derby and an impact

on haddock prices. Specifically, participating vessels may choose to wait to fish, and balance the risk of fishing at the start of the SAP (i.e., low prices) with the risk of closure of the SAP later (i.e., waiting to fish in hopes of a higher price, and risking the closure of the SAP prior to fishing). NMFS agrees that the profitability may be reduced if a derby fishery results, but it is unknown whether a derby will occur, and what the magnitude of the reduction in profitability might be. Because non-Sector vessels will not be eligible to fish in this SAP as a result of NMFS's disapproval of that measure, the risk of a derby fishery and price impacts is reduced.

Issue B: One commenter noted concern that vessels may target cod in the CA I Hook Gear Haddock SAP due to the fact that the market price of cod is typically higher than the price of haddock, there is a higher incentive to target cod. Another commenter was concerned that vessels would be encouraged to invest in order to fish for cod in the SAP, because, as proposed, there was no restriction on cod harvest in the SAP under Category A DAS.

Response: NMFS agrees with the commenter that there is a price differential between the two species that could create some incentive to target cod. However, the availability of haddock within the SAP, as well as the less restrictive regulations on haddock also should be considered when considering the factors that may influence a vessel operator's decisions. Disapproval of the ability for non-Sector vessels to participate in the SAP reduces the likelihood that vessels will target cod in the SAP.

Issue C: Two commenters supported the proposed regulations allowing vessels the opportunity to fish both inside and outside of the Western U.S./Canada Area on the same trip, and noted that such flexibility is important to the economic survival of the fleet during the rebuilding period. The commenters stated that there should be no limit to the number of entries and exits per trip.

Response: NMFS agrees that such flexibility may decrease the chances of unprofitable trips due to the unavailability of the target species in a particular area, and is implementing unlimited flexibility for trips into the Western U.S./Canada Area.

Issue D: Several commenters stated that all of the programs proposed in FW 40-A are important for the economic survival of the fleet during rebuilding.

Response: NMFS agrees that the programs implemented by this interim final rule will enhance the potential for

vessels to become or remain profitable. NMFS approved most of the FW 40-A measures that will allow the targeting of healthy stocks while ensuring that the programs are consistent with the Amendment 13 conservation objectives.

Issue E: Seven commenters were concerned that the proposed rule prohibited participants in the Regular B DAS Pilot Program from fishing in the Eastern U.S./Canada Area on the same trip, and that this restriction would overly restrict opportunities to use Regular B DAS. The commenters stated that this restriction would contribute toward the under-harvest of the U.S./Canada haddock TAC, and prevent realization of optimum yield.

Response: NMFS agrees that allowing vessels to fish in both the Regular B DAS Pilot Program and the Eastern U.S./Canada Area on the same trip will provide additional flexibility for vessels to fish under a Regular B DAS, and enhance economic opportunity.

Economic Impacts Resulting From Disapproved Measures and Changes to the Proposed Rule

As discussed in the preamble of this interim final rule, NMFS has disapproved the proposed management measures that would have allowed non-sector vessels to participate in the CA I Hook Gear Haddock SAP. Although this disapproval will reduce the economic benefits with respect to the proposed rule, the FW 40-A analysis estimated that relatively few non-sector vessels would participate in the SAP (10 vessels; \$ 299,674 total surplus). The management measures proposed for non-Sector vessels did not adequately control fishing mortality on GB cod, and the management measures were complex, and therefore difficult to administer and enforce. NMFS concluded that the participation of non-Sector vessels would have yielded relatively little economic benefit in comparison to the high cost of implementation. Such measures would have undermined Amendment 13 objectives and would not have met the objectives of the Magnuson-Stevens Act. The GB cod incidental TAC that was allocated to the SAP is instead allocated to the Regular B DAS Pilot Program, and enable additional economic opportunity. Although none of this TAC is re-allocated to the Eastern U.S./Canada Haddock SAP Pilot Program, vessels participating in the Regular B DAS Pilot Program may also fish in the Eastern U.S./Canada Area (outside of a SAP). As a result of comments on the proposed rule, this interim final rule requires vessels participating in the Eastern U.S./Canada Haddock SAP Pilot

Program to fish with a haddock separator trawl. The haddock separator trawl is more likely to minimize the bycatch of yellowtail flounder and cod than would the flounder net. Allowing only use of the haddock separator trawl is consistent with the objectives of the SAP, as well as the Magnuson-Steven Act requirement to reduce bycatch. Based upon current information, it is unknown whether this requirement will result in additional cost to the potential SAP participants or whether the participants already own the haddock separator trawl. Specifically, it is unknown whether the vessels that may participate in the SAP will need to purchase or construct haddock separator trawls, or whether participants already have these nets as a result of the implementation of Amendment 13. A potential increase in cost to SAP participants is justified based upon the need to reduce bycatch.

As a result of comments on the proposed rule, this interim final rule allows vessels to enter or exit the Western U.S./Canada Area multiple times per trip. Because this measure provides vessel operators the flexibility to change plans and fish in various locations in order to account for changes in the distribution of fish, the measure will reduce the likelihood that vessels will have unprofitable trips.

As a result of comments on the proposed rule, this interim final rule allows vessels to use both types of B DAS (Regular and Reserve) on the same trip. The opportunity to use both types of B DAS provides vessel operators additional flexibility to determine the trip length, and may also enhance trip profitability.

As a result of comments on the proposed rule, this interim final rule allows vessels to fish in the Regular B DAS Pilot Program and in the Eastern U.S./Canada SAP Pilot Program on the same trip. This will provide additional flexibility for vessels to fish under a Regular B DAS, and enhance economic opportunity.

Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Interim final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities Was Rejected

This interim final rule contains programs that will provide small

entities with additional fishing opportunities that are intended to mitigate some of the negative economic impacts resulting from the implementation of Amendment 13. This interim final rule is expected to provide this opportunity, while also strictly limiting the increase in fishing mortality on multispecies stocks of concern in order to be consistent with the Amendment 13 rebuilding program.

The Regular B DAS pilot program allows limited access NE multispecies vessels to target relatively healthy groundfish stocks, using Regular B DAS, thereby, relieving some economic constraints caused by the Amendment 13 regulations. A total of 1,000 Regular B DAS per calendar quarter are allocated to the Regular B DAS Pilot Program, beginning November 1, 2004. Incidental TACs for eight groundfish stocks of concern will be set on a quarterly basis, and participating vessels will be required to use a VMS and report catches (both landings and discards) of the stocks of concern via the VMS on a daily basis. The economic impact of the program will depend on the types of fisheries defined by where, when, and how vessels decide to fish, and the resulting catch rates of groundfish stocks of concern. Examination of recorded trips taken in fishing year 2001 indicate that there are opportunities to fish in several different stock areas with low catches of stocks of concern. Average daily revenues from the GB trawl fishery are estimated to be at least \$ 2,200. Revenue estimates range from a low of \$ 688 (GOM trawl fishery) to a high of nearly \$ 3,000 per day (GB trawl fishery). Although these estimates suggest the potential value of being able to use B Regular DAS, the actual economic gains may be very different if vessels pursue fisheries that were not identified in the analysis. In addition, even if these average revenues are accurate estimates, the full benefits from the Regular B DAS Pilot Program may not be realized for two reasons: (1) The incidental catch TACs may limit the duration of the program in each quarter by reducing or eliminating the opportunities to use Regular B DAS; and (2) the DAS flipping requirement may decrease trip profitability or negatively impact the availability of Category A DAS to be used by that vessel elsewhere. Even if the full economic benefits of the programs are not realized, the programs will probably result in some additional revenue. The no action alternative would yield no economic benefits, because without the programs implemented by this interim final rule, no additional fishing

opportunities would be created. Therefore, the alternative implemented is favorable when compared to the no action alternative.

The CA I Hook Gear Haddock SAP allows NE multispecies DAS vessels that are members of the GB Cod Hook Sector (Sector) fishing with hook gear the opportunity to access haddock in a portion of CA I from October through December. Approximately 50 Sector vessels may participate in this program. Based upon the proposed haddock TAC of 1,000 mt, and an average of 5,000 lb (2268 kg) of haddock kept per trip, approximately 345 trips could be taken into this SAP. At an average haddock price of \$ 1.05 per lb, and average variable costs of \$ 364 per day, the potential revenue from fishing in the SAP is \$ 1.9 million, with an overall vessel profit of \$ 1.2 million (after subtracting variable costs and crew share). Dividing this profit among 50 potential hook vessels results in a vessel profit of \$ 24,186. If all participating vessels needed to purchase a VMS system at a cost of \$ 3,995 installed, which is at the high end of the cost range for available VMS systems, the profit would be reduced. Regardless of the precise amount of the profit, all participating vessels could benefit from an economic surplus. The no action alternative would yield no economic benefits because no SAP would be implemented, the access to the haddock would not occur, and no additional revenues to the Sector would accrue. Therefore, the alternative implemented is favorable when compared to the no action alternative.

The CA II Haddock SAP Pilot Program, will allow limited access groundfish vessels the opportunity to use Category B DAS to target haddock in a designated portion of the Eastern U.S./Canada Area. Most of the benefits will be limited to relatively large vessels, due to the offshore location of the SAP Pilot Program. Participating vessels will be subject to the existing requirements of the Eastern U.S./Canada Area, including use of a VMS, and a requirement to use a haddock separator trawl. Total revenue will be limited by the GB cod and haddock TACs already set for the Eastern U.S./Canada Area. The potential revenue of participating vessels under the proposed pilot program was calculated based upon historic landings compositions. The average estimated revenue per vessel is \$ 32,095 per trip, and ranges from \$ 22,571 to \$ 34,586 per trip. Smaller vessels will likely generate less revenue than larger vessels. The average vessel revenue is estimated to be \$ 4,527 per day, and ranges from \$ 3,060 to \$ 4,751

per day. These averages are higher than the average revenues on groundfish trips reported in the break-even analysis in Amendment 13. Because the SAP represents an opportunity for higher revenues, it will provide vessels with greater opportunity to remain profitable. The no action alternative would not implement the SAP and would not provide any opportunity for greater revenues. Therefore, the alternative implemented is favorable when compared to the no action alternative.

This interim final rule will also relieve additional Amendment 13 restrictions in order to allow vessels to fish both inside and outside of the Western U.S./Canada Area on the same trip. Although Vessel Trip Report data indicate that fishing in multiple statistical areas is not a common occurrence, observer data and fisher's comments indicate that some vessels do fish in multiple statistical areas on the same trip. Based upon industry comments, this regulatory change will reduce the risk of an unprofitable trip into the Western U.S./Canada Area. Without such flexibility, if a vessel does not locate a profitable amount of fish in the Western U.S./Canada Area it would not have option of fishing outside the area on the same trip. The no action alternative would prohibit vessels from fishing inside and outside of this area on the same trip, and would not reduce the risk of an unprofitable trip. Therefore, the alternative implemented is favorable when compared to the no action alternative.

FW 40-A also analyzed the aggregate economic benefits of two non-selected alternatives that differ from the selected alternative. Although it was estimated that Alternative 1, which does not include the Regular B DAS Pilot Program, would result in a similar overall economic benefit, the vessels that would benefit from the program would be very different under this alternative, and exclude those vessels not able to fish in the manner required by the two SAPs. The Regular B DAS Pilot Program has very different requirements from the two SAPs, and the participants may be different vessels than those participating in the SAPs. Alternative 2, which proposed the Regular B DAS Pilot Program for a duration of only 6 months, would have resulted in lower economic benefits for those vessels participating in the Regular B DAS Pilot Program when compared to the Pilot Program implemented by this rule, due to the shorter duration. The programs implemented by this rule will provide more diverse and sustained fishing opportunity than the non-selected

alternatives. The aggregate economic benefits of the opportunities implemented by this rule provide will include revenue from harvest of the targeted stocks, as well as from harvest under the incidental TACs.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) 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 rule making process, a small entity compliance guide was prepared. Copies of the guide will be sent to all holders of limited access DAS multispecies permits. The guide will be available on the Internet at <http://www.nero.noaa.gov>. Copies of the guide can also be obtained from the Regional Administrator (see ADDRESSES).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 16, 2004.

Rebecca Lent,

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 § 648.2, new definitions for "DAS flip" and "Incidental Total Allowable Catch (TAC)" are added in alphabetical order, to read as follows:

§ 648.2 Definitions.

* * * * *

DAS flip, with respect to the NE multispecies fishery, means ending fishing under a Regular B DAS and beginning fishing under a Category A DAS.

* * * * *

Incidental Total Allowable Catch (TAC), with respect to the NE multispecies fishery, means the total amount of catch (both kept and discarded) of a regulated groundfish stock of concern that can be taken by vessels fishing under Category B DAS.

* * * * *

■ 3. In § 648.9, paragraph (c)(1)(ii) is revised to read as follows:

§ 648.9 VMS requirements.

* * * * *

(c) * * *

(1) * * *

(ii) NMFS may initiate at its discretion, the transmission of a signal indicating the vessel's accurate position, at least twice per hour, 24 hours a day, for all NE multispecies DAS vessels that elect to fish with a VMS specified in § 648.10(b) or that are required to fish with a VMS as specified in § 648.85(a), for each groundfish DAS trip that the vessel has elected to fish in the U.S./Canada Management Areas, and as specified in § 648.85(b) for each groundfish trip that the vessel has elected to fish in either the CA II Yellowtail Flounder SAP, the CA I Hook Gear Haddock SAP, the Regular B DAS Pilot Program, or the Eastern U.S./Canada Haddock SAP Pilot Program.

* * * * *

■ 4. In § 648.10, paragraphs (b)(1)(vii) and (viii) are added, and paragraph (b)(3)(i) is revised to read as follows:

§ 648.10 DAS notification requirements.

* * * * *

(b) * * *

(1) * * *

(vii) A vessel electing to fish under the Regular B DAS Pilot Program, as specified in § 648.85(b)(6).

(viii) A vessel electing to fish in the Closed Area I Hook Gear Haddock SAP, as specified in § 648.85(b)(7).

* * * * *

(3) * * *

(i) A vessel issued a limited access NE multispecies, monkfish, occasional scallop, or Combination permit must use the call-in system specified in paragraph (c) of this section, unless the owner of such vessel has elected to do one or more of the following activities:

(A) Provide the notifications required by this paragraph (b), through VMS as specified under paragraph (b)(3)(iii) of this section; or

(B) Fish in the Eastern U.S./Canada Area or Western U.S./Canada Area as described in § 648.85(a)(2)(i); or

(C) Fish under the Regular B DAS Pilot Program specified at § 648.85(a)(6); or

(D) Fish in the CA I Hook Gear Haddock SAP specified in § 648.85(a)(7).

* * * * *

■ 5. In § 648.14, paragraphs (a)(39), (104), (130), and (c)(8) are revised; and paragraphs (a)(142)–(152) and (c)(50) through (c)(79) are added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

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

* * * * *

(104) Fish for, harvest, possess, or land regulated species in or from the closed areas specified in § 648.81(a) through (f), unless otherwise specified in § 648.81(c)(2)(iii), (f)(2)(i), (f)(2)(iii), or as authorized under § 648.85.

* * * * *

(130) If declared into one of the areas specified in § 648.85(a)(1), fish during that same trip outside of the declared area, unless in compliance with the restrictions specified under § 648.85(a)(3)(ii)(B).

* * * * *

(142) If the vessel has been issued a limited access NE multispecies DAS permit and is in the area specified in § 648.85(b)(8)(ii), fail to comply with the VMS requirements in § 648.85(b)(8)(v)(B).

(143) If fishing under a NE multispecies DAS, enter or fish in the Eastern U.S./Canada Haddock SAP Pilot Program Area specified in § 648.85(b)(8)(ii), unless declared into the area in accordance with § 648.85(b)(8)(v)(D).

(144) Enter or fish in the Eastern U.S./Canada Haddock SAP Pilot Program outside of the season specified in § 648.85(b)(8)(iv).

(145) If fishing under a NE multispecies DAS in the Eastern U.S./Canada Haddock SAP Pilot Program, exceed the possession limits specified in § 648.85(b)(8)(v)(H).

(146) If fishing under the Eastern U.S./Canada Haddock SAP Pilot Program, fish for, harvest, possess or land any regulated NE multispecies from the area specified in § 648.85(b)(8)(ii), unless in compliance with the restrictions and conditions specified in § 648.85(b)(8)(v)(A) through (G).

(147) If fishing under a NE multispecies DAS in the Eastern U.S./Canada Area specified in § 648.85(a)(1), both outside and inside of the areas specified for a SAP under § 648.85(b)(3) and (8), fail to abide by the DAS and possession restrictions under § 648.85(b)(8)(v)(A)(2) through (4).

(148) If fishing under a NE multispecies DAS in the Eastern U.S./Canada Haddock SAP Area specified in § 648.85(b)(8)(ii), during the season specified in § 648.85(b)(8)(iv), fail to comply with the restrictions specified in § 648.85(b)(8)(v).

(149) If fishing under a NE multispecies DAS in the Eastern U.S./

Canada Area specified in § 648.85(a)(1)(ii), and not in a SAP specified in § 648.85(b) on the same trip, fail to comply with the requirements specified in § 648.85(a)(3).

(150) If fishing under a NE multispecies DAS in the Eastern U.S./Canada Area specified in § 648.85(a)(1)(ii), and in one of the SAPs specified in § 648.85(b)(3) or (8), fail to comply with the no discard and DAS flip provisions specified in § 648.85(b)(8)(v)(I) or the minimum Category A DAS requirement specified in § 648.85(b)(8)(v)(J).

(151) If fishing in the Eastern U.S./Canada Haddock SAP Pilot Program specified in § 648.85(b)(8), fail to comply with the reporting requirements specified in § 648.85(b)(8)(v)(G).

(152) If fishing under the Eastern U.S./Canada Haddock SAP Pilot Program specified in § 648.85(b)(8), fail to comply with the observer notification requirements specified in § 648.85(b)(8)(v)(C).

* * * * *

(c) * * *

(8) Fail to comply with the restrictions on fishing and gear specified in § 648.80(a)(3)(v), (a)(4)(v), (b)(2)(v), and (c)(2)(iv) if the vessel has been issued a limited access NE multispecies permit and fishes with hook-gear in areas specified in § 648.80(a), (b), or (c), unless allowed under § 648.85(b)(7)(iv)(F).

* * * * *

(50) Discard legal-sized regulated multispecies while fishing under a Regular B DAS in the Regular B DAS Pilot Program, as described in § 648.85(b)(6).

(51) If fishing under a Regular B DAS in the Regular B DAS Pilot Program, fail to comply with the DAS flip requirements of § 648.85(b)(6)(iv)(E) if the vessel harvests and brings on board more than the landing limit for a groundfish stock of concern specified in § 648.85(b)(6)(iv)(D).

(52) If fishing in the Regular B DAS Pilot Program, fail to comply with the restriction on DAS use as specified in § 648.82(d)(2)(i)(A).

(53) If fishing in the Eastern U.S./Canada Haddock SAP Pilot Area, and other portions of the Eastern U.S./Canada Area on the same trip, fail to comply with the restrictions in § 648.85(b)(8)(v)(A).

(54) If fishing in the Eastern U.S./Canada Haddock SAP Pilot Area, discard legal-sized cod while fishing under a Category B DAS, as described in § 648.85(b)(8)(v)(I).

(55) If fishing in the Eastern U.S./Canada Haddock SAP Pilot Area under

a Category B DAS, fail to comply with the DAS flip requirements of § 648.85(b)(8)(v)(I), if the vessel possesses more than the landing limit for cod specified in § 648.85(b)(8)(v)(F).

(56) If fishing in the Eastern U.S./Canada Haddock SAP Pilot Area under a Category B DAS, fail to have the minimum number of Category A DAS available as required under § 648.85(b)(8)(v)(J).

(57) If fishing in the Regular B DAS Pilot Program specified in § 648.85(b)(6), fail to comply with the requirements and restrictions specified in § 648.85(b)(6)(iv)(A) through (F), and (I).

(58) If fishing in the Regular B DAS Pilot Program specified in § 648.85(b)(6), fail to comply with the VMS requirement specified in § 648.85(b)(6)(iv)(A).

(59) If fishing in the Regular B DAS Pilot Program specified in § 648.85(b)(6), fail to comply with the observer notification requirement specified in § 648.85(b)(6)(iv)(B).

(60) If fishing in the Regular B DAS Pilot Program specified in § 648.85(b)(6), fail to comply with the VMS declaration requirement specified in § 648.85(b)(6)(iv)(C).

(61) If fishing in the Regular B DAS Pilot Program specified in § 648.85(b)(6), fail to comply with the landing limits specified in § 648.85(b)(6)(iv)(D).

(62) If fishing in the Regular B DAS Pilot Program specified in § 648.85(b)(6), fail to comply with the no discard and DAS flip requirements specified in § 648.85(b)(6)(iv)(E).

(63) If fishing in the Regular B DAS Pilot Program specified in § 648.85(b)(6), fail to comply with the minimum Category A DAS and Category B DAS accrual requirements specified in § 648.85(b)(6)(iv)(F).

(64) Use a Regular B DAS in the Regular B DAS Pilot Program specified in § 648.85(b)(6), if the program has been closed as specified in § 648.85(b)(6)(iv)(H) or (b)(6)(vi).

(65) If fishing in the Regular B DAS Pilot Program specified in § 648.85(b)(6), use a Regular B DAS in a stock area that has been closed, as specified in § 648.85(b)(6)(iv)(G).

(66) If fishing in the Regular B DAS Pilot Program specified in § 648.85(b)(6), fail to comply with the reporting requirements specified in § 648.85(b)(6)(iv)(I).

(67) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the requirements and conditions specified in § 648.85(b)(7)(iv)(A) through (H).

(68) If fishing in the CA I Hook Gear Haddock Access Area specified in § 648.85(b)(7)(ii), fail to comply with the requirements and conditions specified in § 648.85(b)(7)(i) and (b)(7)(iv)(A) through (H).

(69) Fish in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), outside of the season specified in § 648.85(b)(7)(iii).

(70) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the DAS use restrictions specified in § 648.85(b)(7)(iv)(A).

(71) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the VMS requirements specified in § 648.85(b)(7)(iv)(B).

(72) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the observer notification requirements specified in § 648.85(b)(7)(iv)(C).

(73) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the VMS declaration requirement specified in § 648.85(b)(7)(iv)(E).

(74) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the gear restrictions specified in § 648.85(b)(7)(iv)(F).

(75) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the landing limits specified in § 648.85(b)(7)(iv)(G).

(76) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the reporting requirement specified in § 648.85(b)(7)(iv)(H).

(77) Fish in the CA I Hook Gear Haddock Access Area specified in § 648.85(b)(7)(ii), if that area is closed as specified in § 648.85(b)(7)(iv)(K) or (b)(7)(v).

(78) Fish in the U.S./Canada Haddock SAP Pilot Program specified in § 648.85(b)(8), if the SAP Pilot Program is closed as specified in § 648.85(b)(8)(v)(K) or (L).

(79) If fishing in the Closed Area II Yellowtail Flounder SAP specified in § 48.85(b)(3), fail to comply with the no discard and DAS flip provision specified under § 648.85(b)(3)(xi).

* * * * *

■ 6. In § 648.81, paragraphs (b)(2)(iii), (b)(2)(iv) and (i) are revised to read as follows:

§ 648.81 NE multispecies closed areas and measures to protect EFH.

* * * * *

(b) * * *

(2) * * *

(iii) Fishing in the CA II Yellowtail Flounder SAP or the Eastern U.S./Canada Haddock SAP Pilot Program as specified in § 648.85(b)(3) and (8), respectively; or

(iv) Transiting the area, provided the vessel's fishing gear is stowed in accordance with the provisions of § 648.23(b); and

(A) The operator has determined, and a preponderance of available evidence indicates, that there is a compelling safety reason; or

(B) The vessel has declared into the Eastern U.S./Canada Area as specified in § 648.85(a)(3)(ii) and is transiting CA II in accordance with the provisions of § 648.85(a)(3)(vii).

* * * * *

(i) *Transiting*. A vessel may transit CA I, the Nantucket Lightship Closed Area, the Cashes Ledge Closed Area, the Western GOM Closure Area, the GOM Rolling Closure Areas, the GB Seasonal Closure Area, and the EFH Closure Areas, as defined in paragraphs (a)(1), (c)(1), (d)(1), (e)(1), (f)(1), (g)(1), and (h)(1), respectively, of this section, unless otherwise restricted, provided that its gear is stowed in accordance with the provisions of § 648.23(b). A vessel may transit CA II, as defined in paragraph (b)(2) of this section, in accordance with paragraph (b)(2)(iv) of this section.

* * * * *

■ 7. In § 648.82, paragraphs (d)(2)(i)(A) and (j)(1)(iii) are revised, and paragraph (e)(3) is added to read as follows:

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

* * * * *

(d) * * *

(2) * * *

(i) * * *

(A) *Restrictions on use*. Regular B DAS can only be used by NE multispecies vessels in an approved SAP or in the Regular B DAS Pilot Program as specified in § 648.85(a)(6). Unless otherwise restricted under the Regular B DAS Pilot Program as described in § 648.85(b)(6)(i), vessels may fish under both a Regular B DAS and a Reserve B DAS on the same trip (i.e., when fishing in an approved SAP as described in § 648.85(b) of this section). Vessels that are required by another fishery management plan (i.e., not the NE multispecies FMP) to utilize a NE multispecies DAS, e.g., as specified under § 648.92(b)(2), may elect to use a NE multispecies Category B DAS to satisfy that requirement.

* * * * *

(e) * * *

(3) For vessels electing to fish in the Regular B DAS Pilot Program, as specified at § 648.85(a)(6), and that remain fishing under a Regular B DAS for the entire fishing trip (without a DAS flip), DAS used will accrue at the rate of 1 full DAS for each calendar day, or part of a calendar day, fished. For example, a vessel that fished on one calendar day from 6 a.m. to 10 p.m. would be charged 24 hours of Regular B DAS, not 16 hours; a vessel that left on a trip at 11 p.m. on the first calendar day and returned at 10 p.m. on the second calendar day would be charged 48 hours of Regular B DAS instead of 23 hours, because the fishing trip would have spanned 2 calendar days. For the purpose of calculating trip limits specified under § 648.86, the amount of DAS deducted from a vessel's DAS allocation will determine the amount of fish the vessel could legally land.

* * * * *

(j) * * *

(1) * * *

(iii) Method of counting DAS. Unless electing to fish in the Regular B DAS Pilot Program specified in § 648.85(a)(6), and therefore subject to the DAS accrual provisions of § 648.82(e)(3), Day gillnet vessels fishing with gillnet gear under a NE multispecies DAS will accrue 15 hours of DAS for each trip of more than 3 hours, but less than or equal to 15 hours. Such vessels will accrue actual DAS time at sea for trips less than or equal to 3 hours, or more than 15 hours.

* * * * *

■ 8. In § 648.85, paragraphs (a)(3)(ii), (a)(3)(iv)(A), (a)(3)(v), (b)(3)(i) and (b)(3)(viii) are revised; paragraphs (b)(3)(xi) and (xii) are added, and paragraphs (a)(3)(iv)(C)(4), (a)(3)(v)(A) and (B), (a)(3)(vii), and (b)(5) through (8) are added to read as follows:

§ 648.85 Special management programs.

(a) * * *

(3) * * *

(ii) *Declaration*. To fish in the U.S./Canada Management Area under a groundfish DAS, a NE multispecies DAS vessel, prior to leaving the dock, must declare through the VMS, in accordance with instructions to be provided by the Regional Administrator, which specific U.S./Canada Management Area described in paragraphs (a)(1)(i) or (ii) of this section, or which specific SAP, described in paragraph (b) of this section, within the U.S./Canada Management Area the vessel will fish in, and comply with the restrictions and conditions in paragraphs (a)(3)(ii)(A) through (C) of this section. Vessels other than NE multispecies DAS vessels are

not required to declare into the U.S./Canada Areas.

(A) A vessel fishing under a NE multispecies DAS in the Eastern U.S./Canada Area may not fish, during the same trip, outside of the Eastern U.S./Canada Area, and may not enter or exit the Eastern U.S./Canada Area more than once on any trip.

(B) A vessel fishing under a NE multispecies DAS in the Western U.S./Canada Area may fish inside and outside the Western U.S./Canada Area on the same trip, provided it complies with the more restrictive regulations applicable to the area fished for the entire trip (e.g., the possession restrictions specified in paragraph (a)(3)(iv)(C)(4) of this section), and the reporting requirements specified in § 648.85(a)(3)(v).

(C) For the purposes of selecting vessels for observer deployment, a vessel fishing in either of the U.S./Canada Management Areas specified in paragraph (a)(1) of this section must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; and the date, time, and port of departure, at least 72 hours prior to the beginning of any trip that it declares into the U.S./Canada Management Area as required under this paragraph (a)(3)(ii).

* * * * *

(iv) * * *

(A) *Cod landing limit restrictions.* Notwithstanding other applicable possession and landing restrictions under this part, a NE multispecies vessel fishing in the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) of this section may not land more than 500 lb (226.8 kg) of cod per DAS, or any part of a DAS, up to 5,000 lb (2,268 kg) per trip, not to exceed 5 percent of the total catch on board, whichever is less, unless otherwise restricted under this part. A vessel fishing in both the Eastern U.S./Canada Area and either the CA II Yellowtail Flounder SAP or the Eastern U.S./Canada Haddock SAP Pilot Program on the same trip must comply with the cod possession restrictions for those programs for the entire trip, as specified in paragraphs (b)(3) and (8) of this section, respectively.

* * * * *

(C) * * *

(4) *Yellowtail flounder landing limit for vessels fishing both inside and outside the Western U.S./Canada Area on the same trip.* A vessel fishing both inside and outside of the Western U.S./Canada Area on the same trip, as allowed under paragraph (a)(3)(ii)(B) of

this section, is subject to the most restrictive landing limits that apply to any of the areas fished, for the entire trip.

* * * * *

(v) *Reporting.* The owner or operator of a NE multispecies DAS vessel must submit reports via the VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished when declared into either of the U.S./Canada Management Areas. The reports must include at least the information specified in paragraphs (a)(3)(v)(A) and (B) of this section, depending on area fished. The reports must be submitted in 24-hr intervals for each day, beginning at 0000 hr and ending at 2400 hr, and must be submitted by 0900 hr of the following day.

(A) *Eastern U.S./Canada Area.* For a vessel declared into the Eastern U.S./Canada Area in accordance with paragraph (a)(3)(ii) of this section, the reports must include at least the following information: Total pounds of cod, haddock and yellowtail flounder kept; and total pounds of cod, haddock, and yellowtail flounder discarded.

(B) *Western U.S./Canada Area.* For a vessel declared into the Western U.S./Canada Area in accordance with paragraph (a)(3)(ii) of this section, the reports must include at least the following information: Total pounds of yellowtail flounder kept and total pounds of yellowtail flounder discarded. In addition to these reporting requirements, a vessel that has declared that it intends to fish both inside and outside of the Western U.S./Canada Area on the same trip, in accordance with paragraph (a)(3)(ii) of this section, must report via VMS the following information when crossing the boundary into or out of the Western U.S./Canada Area: Total pounds of yellowtail flounder kept, by statistical area, and total pounds of yellowtail flounder discarded, by statistical area, since the last daily catch report.

* * * * *

(vii) *Transiting.* A multispecies DAS vessel declared into the Eastern U.S./Canada Area as defined in paragraph (a)(1)(ii) of this section, and not fishing in the CA II Yellowtail Flounder SAP described in paragraph (b)(3) of this section, may transit the CA II Yellowtail Flounder SAP as described in paragraph (b)(3)(ii) of this section, provided all fishing gear is stowed in accordance with the regulations at § 648.23(b).

(b) * * *

(3) * * *

(i) *Eligibility.* Vessels issued a valid limited access NE multispecies DAS

permit are eligible to participate in the Closed Area II Yellowtail Flounder SAP, and may fish in the Closed Area II Yellowtail Flounder Access Area, as described in paragraph (b)(3)(ii) of this section, for the period specified in paragraph (b)(3)(iii) of this section, when fishing under a NE multispecies DAS, provided such vessels comply with the requirements of this section, and provided the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) is not closed according to the provisions specified under paragraph (a)(1)(iv) of this section. Vessels are required to comply with the no discarding and DAS flip requirements specified in paragraph (b)(3)(xi) of this section, and the DAS balance requirements specified in paragraph (b)(3)(xii) of this section.

* * * * *

(viii) *Trip limits.* Unless otherwise authorized by the Regional Administrator as specified in paragraph (a)(3)(iv)(D) of this section, a vessel fishing in the CA II Yellowtail Flounder SAP may fish for, possess, and land up to 30,000 lb (13,608 kg) of yellowtail flounder per trip. Unless otherwise restricted, a NE multispecies vessel fishing any portion of a trip in the CA II Yellowtail Flounder SAP may not fish for, possess, or land more than 1,000 lb (453.6 kg) of cod per trip, regardless of trip length. A NE multispecies vessel fishing in the CA II Yellowtail Flounder SAP is subject to the haddock requirements described under § 648.86(a), unless further restricted under paragraph (a)(3)(iv).

* * * * *

(xi) *No-discard provision and DAS flips.* A vessel fishing in the Closed Area II Yellowtail Flounder SAP, under a B DAS (Regular or Reserve) may not discard legal-sized cod. If such a vessel harvests and brings on board more legal sized cod than the applicable maximum landing limit per trip specified under paragraph (b)(3)(viii) of this section, the vessel operator must notify NMFS prior to crossing the demarcation line via VMS on its return trip to port to initiate a DAS flip. Once this notification has been received by NMFS, the vessel will automatically be switched by NMFS to fishing under a Category A DAS. For a vessel that notified NMFS of a DAS flip, the Category B DAS that have accrued between the time the vessel started accruing Category B DAS at the beginning of the trip (i.e., at the time the vessel crossed into the Eastern U.S./Canada Area) and the time the vessel declared its DAS flip will be accrued as Category A DAS, and not Category B DAS. Once such vessel has initiated the DAS flip and is fishing under a Category

A DAS, the prohibition on discarding legal-sized cod no longer applies.

(xii) *Minimum Category A DAS.* For vessels fishing under a Category B DAS, the number of Category B DAS that can be used on a trip cannot exceed the number of available Category A DAS the vessel has at the start of the trip.

* * * * *

(5) *Incidental TACs.* Unless otherwise specified in this paragraph (b)(5), incidental TACs will be specified through the periodic adjustment process described in § 648.90, and allocated as described in paragraph (b)(5) of this section, for each of the following stocks: GOM cod, GB cod, CC/GOM yellowtail flounder, American plaice, white hake, SNE/MA yellowtail flounder, SNE/MA winter flounder, and witch flounder. NMFS will send letters to limited access NE multispecies permit holders notifying them of such TACs.

(i) *Stocks other than GB cod.* With the exception of GB cod, the incidental TACs specified under this paragraph (b)(5) shall be allocated to the Regular B DAS Pilot Program described in paragraph (b)(6) of this section.

(ii) *GB cod.* The incidental TAC for GB cod specified in this paragraph (b)(5), shall be subdivided as follows: 66 percent to the Regular B DAS Pilot Program, described in paragraph (b)(6) of this section; and 34 percent to the Eastern U.S./Canada Haddock SAP Pilot Program, described in paragraph (b)(8) of this section.

(6) *Regular B DAS Pilot Program—(i) Eligibility.* Vessels issued a valid limited access NE multispecies DAS permit and allocated Regular B DAS are eligible to participate in the Regular B DAS Pilot Program for the period specified in paragraph (b)(6)(ii) of this section, and may elect to fish under a Regular B DAS, provided they comply with the requirements and restrictions of this paragraph (b)(6), and provided the use of Regular B DAS is not restricted according to paragraphs (b)(6)(iv)(G) or (H), or paragraph (b)(6)(vi) of this section. Vessels are required to comply with the no discarding and DAS flip requirements specified in paragraph (b)(6)(iv)(E) of this section, and the DAS balance and accrual requirements specified in paragraph (b)(6)(iv)(F) of this section. Vessels may fish under the B Regular DAS Pilot Program and in the U.S./Canada Management Area on the same trip, but may not fish under the Regular B DAS Pilot Program and in a SAP on the same trip.

(ii) *Duration of program.* Fishing under this program may only occur from November 19, 2004 through October 31, 2005.

(iii) *Quarterly incidental catch TACs.* The incidental catch TACs specified in accordance with paragraph (b)(5) of this section shall be divided into quarterly catch TACs. NMFS will send letters to limited access multispecies permit holders notifying them of such TACs.

(iv) *Program requirements—(A) VMS requirement.* A NE multispecies DAS vessel fishing in the Regular B DAS Pilot Program described in paragraph (b)(6)(i) of this section must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(B) *Observer notification.* For the purposes of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; the date, time, and port of departure; and the planned fishing area or areas (GOM, GB, or SNE/MA) at least 72 hr prior to the beginning of any trip that it declares into the Regular B DAS Pilot Program as required under paragraph (b)(6)(iv)(C) of this section, and in accordance with instructions provided by the Regional Administrator. Providing notice of the area that the vessel intends to fish does not restrict the vessel's activity to only that area on that trip (i.e., the vessel operator may change his/her plans regarding planned fishing area).

(C) *VMS declaration.* To participate in the Regular B DAS Pilot Program under a Regular B DAS, a vessel must declare into the Program via the VMS, prior to departure from port, in accordance with instructions provided by the Regional Administrator. A vessel declared into the Regular B DAS Pilot Program cannot fish in an approved SAP described under this section on the same trip.

(D) *Landing limits.* A NE multispecies vessel fishing in the Regular B DAS Pilot Program described in this paragraph (b)(6), and fishing under a Regular B DAS, may not land more than 100 lb (45.5 kg) per DAS, or any part of a DAS, up to a maximum of 1,000 lb (454 kg) per trip, of any of the following species: Cod, American plaice, white hake, witch flounder, ocean pout, winter flounder and windowpane flounder. Such vessels may not land more than 25 lb (11.3 kg) per DAS, or any part of a DAS, up to a maximum of 250 lb (113 kg) per trip of yellowtail flounder, unless fishing the entire trip in the U.S./Canada Management Area as specified under paragraph (a)(1) of this section.

(E) *No-discard provision and DAS flips.* A vessel fishing in the Regular B DAS Pilot Program under a Regular B

DAS may not discard legal-sized regulated groundfish. This prohibition on discarding does not apply in areas or times where the possession or landing of such groundfish is prohibited. If such a vessel harvests and brings on board more legal sized regulated groundfish than the applicable maximum landing limit per trip specified under paragraph (b)(6)(iv)(D) of this section, the vessel operator must notify NMFS prior to crossing the demarcation line via VMS on its return trip to port to initiate a DAS flip. Once this notification has been received by NMFS, the vessel will automatically be switched by NMFS to fishing under a Category A DAS. For a vessel that notifies NMFS of a DAS flip, the Category B DAS that have accrued between the time the vessel started accruing Regular B DAS at the beginning of the trip (i.e., at the time the vessel crossed the demarcation line at the beginning of the trip) and the time the vessel declared its DAS flip will be accrued as Category A DAS, and not Regular B DAS. Once such vessel has initiated the DAS flip and is fishing under a Category A DAS, the prohibition on discarding legal-sized regulated groundfish no longer applies. A vessel that has declared a DAS flip will be subject to the landing restrictions specified under § 648.86.

(F) *Minimum Category A DAS and B DAS accrual.* For a vessel fishing under the Regular B DAS Pilot Program, the number of Regular B DAS that can be used on a trip cannot exceed the number of Category A DAS the vessel has available at the start of the trip. The vessel will accrue DAS in accordance with § 648.82(e)(3).

(G) *Restrictions when 100 percent of the incidental catch TAC is harvested.* With the exception of white hake, when the Regional Administrator provides notification through rulemaking consistent with the Administrative Procedure Act, that 100 percent of one or more of quarterly incidental TACs specified under paragraph (b)(6)(iii) of this section has projected to have been harvested, the use of Regular B DAS shall be prohibited in the pertinent stock area(s) as defined under paragraph (b)(6)(v) of this section for the duration of the calendar quarter. The closure of a stock area to all Regular B DAS use will occur even if the quarterly incidental catch TACs for other stocks in that stock area have not been completely harvested. When the Regional Administrator projects that 100 percent of the quarterly white hake incidental catch TAC specified under paragraph (b)(6)(iii) of this section has been harvested, vessels fishing under a Regular B DAS, or that complete a trip

under a Regular B DAS, will be prohibited from retaining white hake.

(H) *Closure of Regular B DAS program and quarterly DAS limit.* Unless otherwise closed as a result of the harvest of all incidental TACs as described in paragraph (b)(6)(iv)(G) of this section, or as result of an action by the Regional Administrator under paragraph (b)(6)(vi) of this section, the use of Regular B DAS shall, through rulemaking consistent with the Administrative Procedure Act, be prohibited when 1,000 Regular B DAS have been used during the calendar quarter, in accordance with § 648.82(e)(3).

(I) *Reporting requirements.* The owner or operator of a NE multispecies DAS vessel must submit catch reports via VMS in accordance with instructions provided by the Regional Administrator, for each day fished when declared into the Regular B DAS Pilot Program. The reports must be submitted in 24-hr intervals for each day, beginning at 0000 hr and ending at 2400 hr. The reports must be submitted by 0900 hr of the following day. For vessels that have declared into the Regular B DAS Pilot Program in accordance with paragraph (b)(6)(iv)(C) of this section, the reports must include at least the following information: Statistical area fished, total weight (lb/kg) of cod, yellowtail flounder, American plaice, white hake, winter flounder, and witch flounder kept; and total weight (lb/kg) of cod, yellowtail flounder, American plaice, white hake, winter flounder, and witch flounder discarded. All NE multispecies permit holders will be sent a letter informing them of the statistical areas.

(v) *Definition of incidental TAC stock areas.* For the purposes of the Regular B DAS Pilot Program, the species stock areas associated with the incidental TACs are defined below. Copies of a chart depicting these areas are available from the Regional Administrator upon request.

(A) *GOM cod stock area.* The GOM cod stock area is the area defined by straight lines connecting the following points in the order stated:

Point	N. Lat.	W. Long.
GOM1	(1)	70° 00'
GOM2	42° 20'	70° 00'
GOM3	42° 20'	67° 40'
GOM4	43° 50'	67° 40'
GOM5	43° 50'	66° 50'
GOM6	44° 20'	66° 50'
GOM7	44° 20'	67° 00'

GULF OF MAINE COD STOCK AREA—Continued

Point	N. Lat.	W. Long.
GOM8	(2)	67° 00'

(1) Intersection of the north-facing coastline of Cape Cod, MA, and 70° 00' W. Long.
 (2) Intersection of the south-facing Maine coastline and 67° 00' W. Long.

(B) *GB cod stock area.* The GB cod stock area is the area defined by straight lines connecting the following points in the order stated:

GEORGES BANK COD STOCK AREA

Point	N. Lat.	W. Long.
GB1	(1)	70° 00'
GB2	42° 20'	70° 00'
GB3	42° 20'	66° 00'
GB4	42° 10'	66° 00'
GB5	42° 10'	65° 50'
GB6	42° 00'	65° 50'
GB7	42° 00'	65° 40'
GB8	40° 30'	65° 40'
GB9	39° 00'	65° 40'
GB10	39° 00'	70° 00'
GB11	35° 00'	70° 0'
GB12	35° 00'	(2)

(1) Intersection of the north-facing coastline of Cape Cod, MA, and 70° 00' W. Long.
 (2) Intersection of east-facing coastline of Outer Banks, NC, and 35° 00' N. Lat.

(C) *CC/GOM yellowtail flounder stock area.* The CC/GOM yellowtail flounder stock area is the area defined by straight lines connecting the following points in the order stated:

CAPE COD/GULF OF MAINE YELLOWTAIL FLOUNDER STOCK AREA

Point	N. Lat.	W. Long.
CCGOM1 ..	(1)	70° 00'
CCGOM2 ..	41° 20'	(2)
CCGOM3 ..	41° 20'	69° 50'
CCGOM4 ..	41° 10'	69° 50'
CCGOM5 ..	41° 10'	69° 30'
CCGOM6 ..	41° 00'	69° 30'
CCGOM7 ..	41° 00'	68° 50'
CCGOM8 ..	42° 20'	68° 50'
CCGOM9 ..	42° 20'	67° 40'
CCGOM10 ..	43° 50'	67° 40'
CCGOM11 ..	43° 50'	66° 50'
CCGOM12 ..	44° 20'	66° 50'
CCGOM13 ..	44° 20'	67° 00'
CCGOM14 ..	(3)	67° 00'

(1) Intersection of south-facing coastline of Cape Cod, MA, and 70° 00' W. Long.
 (2) Intersection of east-facing coastline of Nantucket, MA, and 41° 20' N. Lat.
 (3) Intersection of south-facing Maine coastline and 67° 00' W. Long.

(D) *American plaice stock area.* The American plaice stock area is the area

defined by straight lines connecting the following points in the order stated:

AMERICAN PLAICE STOCK AREA

Point	N. Lat.	W. Long.
AMP1	(1)	67° 00'
AMP2	44° 20'	67° 00'
AMP3	44° 20'	66° 50'
AMP4	43° 50'	66° 50'
AMP5	43° 50'	67° 40'
AMP6	42° 30'	67° 40'
AMP7	42° 30'	66° 00'
AMP8	42° 10'	66° 00'
AMP9	42° 10'	65° 50'
AMP10	42° 00'	65° 50'
AMP11	42° 00'	65° 40'
AMP12	40° 30'	65° 40'
AMP13	39° 00'	65° 40'
AMP14	39° 00'	70° 00'
AMP15	35° 00'	70° 00'
AMP16	35° 00'	(2)

(1) Intersection of south-facing Maine coastline and 67° 00' W. Long.
 (2) Intersection of east-facing coastline of Outer Banks, NC, and 35° 00' N. Lat.

(E) *SNE/MA yellowtail flounder stock area.* The SNE/MA yellowtail flounder stock area is the area defined by straight lines connecting the following points in the order stated:

SOUTHERN NEW ENGLAND/MID-ATLANTIC YELLOWTAIL FLOUNDER STOCK AREA

Point	N. Lat.	W. Long.
SNE1	35° 00'	(1)
SNE2	35° 00'	70° 00'
SNE3	39° 00'	70° 00'
SNE4	39° 00'	71° 40'
SNE5	39° 50'	71° 40'
SNE6	39° 50'	68° 50'
SNE7	41° 00'	68° 50'
SNE8	41° 00'	69° 30'
SNE9	41° 10'	69° 30'
SNE10	41° 10'	69° 50'
SNE11	41° 20'	69° 50'
SNE12	(2)	70° 00'
SNE13	(3)	70° 00'
SNE14	(4)	70° 00'

(1) Intersection of east-facing coastline of Outer Banks, NC, and 35° 00' N. Lat.
 (2) Intersection of south-facing coastline of Nantucket, MA, and 70° 00' W. Long.
 (3) Intersection of north-facing coastline of Nantucket, MA, and 70° 00' W. Long.
 (4) Intersection of south-facing coastline of Cape Cod, MA, and 70° 00' W. Long.

(F) *SNE/MA winter flounder stock area.* The SNE/MA winter flounder stock area is the area defined by straight lines connecting the following points in the order stated:

SOUTHERN NEW ENGLAND/MID-ATLANTIC WINTER FLOUNDER STOCK AREA

Point	N. Lat.	W. Long.
SNEW1	(1)	70° 00'
SNEW2	42° 20'	70° 00'
SNEW3	42° 20'	68° 50'
SNEW4	39° 50'	68° 50'
SNEW5	39° 50'	71° 40'
SNEW6	39° 50'	70° 00'
SNEW7	35° 00'	70° 00'
SNEW8	35° 00'	(2)

(1) Intersection of north-facing coastline of Cape Cod, MA, and 70° 00' W. Long.

(2) Intersection of east-facing coastline of Outer Banks, NC, and 35° 00' N. Lat.

(G) *Witch flounder stock area.* The witch flounder stock area is the area defined by straight lines connecting the following points in the order stated:

WITCH FLOUNDER STOCK AREA

Point	N. Lat.	W. Long.
WF1	(1)	67° 00'
WF2	44° 20'	67° 00'
WF3	44° 20'	66° 50'
WF4	43° 50'	66° 50'
WF5	43° 50'	67° 40'
WF6	42° 20'	67° 40'
WF7	42° 20'	66° 00'
WF8	42° 10'	66° 00'
WF9	42° 10'	65° 50'
WF10	42° 00'	65° 50'
WF11	42° 00'	65° 40'
WF12	40° 30'	65° 40'
WF13	40° 30'	66° 40'
WF14	39° 50'	66° 40'
WF15	39° 50'	70° 00'
WF16	(2)	70° 00'
WF17	(3)	70° 00'
WF18	(4)	70° 00'

(1) Intersection of south-facing Maine coastline and 67° 00' W. Long.

(2) Intersection of south-facing coastline of Nantucket, MA, and 70° 00' W. Long.

(3) Intersection of north-facing coastline of Nantucket, MA, and 70° 00' W. Long.

(4) Intersection of south-facing coastline of Cape Cod, MA, and 70° 00' W. Long.

(vi) *Closure of the Regular B DAS Pilot Program.* The Regional Administrator, based upon information required under §§ 648.7, 648.9, 648.10, or 648.85, and any other relevant information, may, through rulemaking consistent with the Administrative Procedure Act, prohibit the use of Regular B DAS for the duration of a quarter or fishing year, if it is projected that continuation of the Regular B DAS Pilot Program would undermine the achievement of the objectives of the FMP or Regular B DAS Pilot Program.

(7) *CA I Hook Gear Haddock SAP—(i) Eligibility.* Vessels that have been issued a valid limited access NE multispecies DAS permit and that are members of the GB Cod Hook Sector

(Sector) are eligible to participate in the CA I Hook Gear Haddock SAP, and may fish in the CA I Hook Gear Haddock Access Area, as described in paragraph (b)(7)(ii) of this section, for the season specified in paragraph (b)(7)(iii) of this section, provided such vessels comply with the requirements of this section, and provided the SAP is not closed according to the provisions specified under paragraphs (b)(7)(iv)(K) or (b)(7)(v) of this section. Copies of a chart depicting this area are available from the Regional Administrator upon request.

(ii) *CA I Hook Gear Haddock Access Area.* The CA I Hook Gear Haddock Access Area is the area defined by straight lines connecting the following points in the order stated:

CLOSED AREA I HOOK GEAR HADDOCK ACCESS AREA

Point	N. Lat.	W. Long.
Hook 1	41° 25.6'	69° 20.2'
Hook 2	41° 29.2'	69° 08.1'
Hook 3	41° 08.5'	68° 50.2'
Hook 4	41° 06.4'	69° 03.3'

(iii) *Season.* Eligible vessels may fish in the CA I Hook Gear Haddock SAP from October 1 through December 31.

(iv) *Program restrictions—(A) DAS use restrictions.* Vessels fishing in the CA I Hook Gear Haddock SAP may use Category A, Regular B or Reserve B DAS, in accordance with § 648.82(d)(2), unless otherwise restricted in paragraph (b)(7)(iv) of this section. A vessel fishing in the CA I Hook Gear Haddock SAP may not initiate a DAS flip. A vessel fishing both inside and outside of the SAP on the same trip may only use a Category A DAS on such a trip, and is subject to the gear and reporting requirements specified in paragraphs (b)(7)(iv)(F) and (H), respectively.

(B) *VMS requirement.* An eligible NE multispecies DAS vessel fishing in the CA I Hook Gear Haddock SAP specified in this paragraph (b)(7) must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(C) *Observer notifications.* With the exception of the 2004 fishing year, to be eligible to participate in the CA I Hook Gear Haddock SAP, a vessel must notify the NMFS Observer Program by September 1 of its intent to participate. This notification need not include specific information about the date of the trip. For the 2004 fishing year, a vessel must notify NMFS by a date set by the Regional Administrator. All eligible NE multispecies permit holders

will be sent a letter informing them of the date of this requirement. For the purposes of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; and date, time, and port of departure at least 72 hr prior to the beginning of any trip that it declares into the CA I Hook Gear Haddock SAP, as required in paragraph (b)(7)(iv)(B) of this section, and in accordance with instructions provided by the Regional Administrator.

(D) *Observer program funding.* A Sector vessel shall pay for an observer required by NMFS to be taken to participate in the CA I Hook Gear Haddock SAP, if the Regional Administrator determines that the funding of observers by NMFS is inadequate to provide sufficient observer coverage for the total number of vessels participating in the SAP.

(E) *VMS declaration.* To participate in the CA I Hook Gear Haddock SAP, a vessel must declare into the SAP via VMS, prior to departure from port and provide information on the type of DAS (Category A, Regular B, or Reserve B) that it intends to fish, and whether it intends to fish outside of the SAP on the same trip, in accordance with instructions provided by the Regional Administrator. A vessel declared into the CA I Hook Gear Haddock SAP cannot fish in another SAP specified under this section on the same trip.

(F) *Gear restrictions.* A vessel fishing in the CA I Hook Gear Haddock SAP may fish with and possess on board demersal longline gear or tub trawl gear only, and is subject to the gear requirements of the Sector Operations Plan as approved under § 648.87(d).

(G) *Landing limits.* A vessel fishing in the CA I Hook Gear Haddock Access Area described in paragraph (b)(7)(ii) of this section is subject to the cod landing limit in effect under the Sector's Operations Plan as approved under § 648.87(d), and the haddock limits described under 648.86(a).

(H) *Reporting requirements.* The owner or operator of a vessel participating in the Sector, as described under § 648.87(d)(1), and declared into the CA I Hook Gear Haddock Area, must submit daily reports to the Sector Manager, with instructions to be provided by the Sector Manager, for each day fished, when declared into the CA I Hook Gear Haddock Area. For all vessels that have declared into the CA I Hook Gear Haddock Access Area in accordance with paragraph (b)(7)(iv)(B) of this section, the reports must include at least the following information: Total

weight (lb/kg) of cod and haddock kept, and total weight (lb/kg) of cod and haddock discarded. The Sector Manager will provide daily reports to NMFS containing the including at least the following information: Total weight (lb/kg) of cod and haddock kept, and total weight (lb/kg) of cod and haddock discarded.

(I) *Incidental cod TAC.* There is no incidental cod TAC specified for Sector vessels fishing in the CA I Hook Gear Haddock SAP. All cod caught by Sector vessels fishing in the SAP count toward the Sector's annual GB cod TAC, specified in § 648.87(d)(1)(iii).

(J) *Haddock TAC.* The maximum amount of haddock (landings and discards) that may be harvested in a fishing year from the CA I Hook Gear Haddock Access Area by eligible vessels is 1,000 mt. Haddock harvested under either a Category A or a Category B DAS count toward this TAC.

(K) *Mandatory closure of CA I Hook Gear Haddock Access Area.* When the Regional Administrator projects that the haddock TAC specified in paragraph (b)(7)(iv)(J) of this section has been caught by vessels fishing in this SAP, NMFS shall close, through rulemaking consistent with the Administrative Procedure Act, the CA I Hook Gear Haddock Access Area to all eligible NE multispecies vessels.

(v) *General Closure of the CA I Hook Gear Haddock Access Area.* The Regional Administrator, based upon information required under §§ 648.7, 648.9, 648.10, or 648.85, and any other relevant information, may, through rulemaking consistent with the Administrative Procedure Act, close the CA I Hook Gear Haddock Access Area for the duration of the season, if it is projected that continuation of the SAP would undermine the achievement of the objectives of the FMP or the CA I Hook Gear Haddock SAP.

(8) *Eastern U.S./Canada Haddock SAP Pilot Program—(i) Eligibility.* Vessels issued a valid limited access NE multispecies DAS permit, and fishing with trawl gear as specified in paragraph (b)(8)(v)(E) of this section, are eligible to participate in the Eastern U.S./Canada Haddock SAP Pilot Program, and may fish in the Eastern U.S./Canada Haddock SAP Area, as described in paragraph (b)(8)(ii) of this section, during the program duration and season specified in paragraphs (b)(8)(iii) and (iv) of this section, provided such vessels comply with the requirements of this section, and provided the SAP is not closed according to the provisions specified in paragraphs (b)(8)(v)(K) or (L) of this section. Copies of a chart depicting this

area are available from the Regional Administrator upon request.

(ii) *Eastern U.S./Canada Haddock SAP Area.* The Eastern U.S./Canada Haddock SAP Area is the area defined by straight lines connecting the following points in the order stated:

EASTERN U.S./CANADA HADDOCK SAP AREA

Point	N. Lat.	W. Long.
CAI13	42° 22'	67° 20' ⁽¹⁾
SAP1	42° 20'	67° 20'
SAP2	42° 20'	67° 40'
SAP3	41° 10'	67° 40'
SAP4	41° 10'	67° 20'
SAP5	42° 10'	67° 20'
SAP6	42° 10'	67° 10'
CAI13	42° 22'	67° 20' ⁽¹⁾

⁽¹⁾ U.S./Canada maritime boundary.

(iii) *Duration of program.* The Eastern U.S./Canada Haddock SAP Pilot Program is in effect from November 19, 2004 through November 20, 2006.

(iv) *Season.* Eligible vessels may fish in the Eastern U.S./Canada Haddock SAP Pilot Program from May 1 through December 31.

(v) *Program restrictions—(A) DAS use restrictions.* A vessel fishing in the Eastern U.S./Canada Haddock SAP Pilot Program may elect to fish under a Category A, or Category B DAS, in accordance with § 648.82(d)(2)(i)(A) and the restrictions of this paragraph (b)(8)(v)(A).

(1) If fishing under a Category B DAS, a vessel is required to comply with the no discarding and DAS flip requirements specified in paragraph (b)(8)(v)(I) of this section, and the minimum Category A DAS requirements of paragraph (b)(8)(v)(J) of this section.

(2) A vessel that is declared into the Eastern U.S./Canada Haddock SAP Pilot Area, described in paragraph (b)(8)(ii) of this section, may fish, on the same trip, in the Eastern U.S./Canada Haddock SAP Area and in the CA II Yellowtail Flounder Access Area, described in paragraph (b)(3)(ii) of this section, under either a Category A DAS or a Category B DAS.

(3) A vessel may choose, on the same trip, to fish in either/both the Eastern U.S./Canada Haddock SAP Area and the CA II Yellowtail Flounder Access Area, and in that portion of the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) of this section that lies outside of these two SAPs, provided the vessel fishes under a Category A DAS and abides by the VMS restrictions of paragraph (b)(8)(v)(D) of this section. The use of a Category A DAS is required because the use of Category B DAS is not allowed in that portion of the

Eastern U.S./Canada Area that lies outside of SAPs.

(4) Vessels that elect to fish in multiple areas, as described in this paragraph (b)(8)(v)(A), must fish under the most restrictive trip provisions of any of the areas fished for the entire trip.

(B) *VMS requirement.* A NE multispecies DAS vessel fishing in the Eastern U.S./Canada Haddock SAP Area specified under paragraph (b)(8)(ii) of this section, must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(C) *Observer notifications.* For the purposes of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; areas to be fished; and date, time, and port of departure at least 72 hr prior to the beginning of any trip which it declares into the Eastern U.S./Canada Haddock SAP Area specified in paragraph (b)(8)(ii) of this section, as required under paragraph (b)(8)(v)(D) of this section, and in accordance with instructions provided by the Regional Administrator.

(D) *VMS declaration.* Prior to departure from port, a vessel intending to participate in the Eastern U.S./Canada Haddock SAP must declare into the SAP via VMS and provide information on the type of DAS (Category A, Regular B, or Reserve B) that it intends to fish, and on the areas within the Eastern U.S./Canada Area that it intends to fish, in accordance with paragraph (b)(8)(v)(A) of this section and instructions provided by the Regional Administrator.

(E) *Gear restrictions.* A NE multispecies vessel fishing in the Eastern U.S./Canada Haddock SAP Pilot Program must use one of the haddock separator trawl nets authorized for the Eastern U.S./Canada Area, as specified in paragraph (a)(3)(iii)(A) of this section. No other type of fishing gear may be on the vessel during a trip to the Eastern U.S./Canada Haddock SAP Area, with the exception of a flounder net as described in paragraph (a)(3)(iii) of this section, provided the flounder net is stowed in accordance with § 648.23(b).

(F) *Landing limits.* Unless otherwise restricted, NE multispecies vessel fishing any portion of a trip in the Eastern U.S./Canada Haddock SAP Pilot Program may not fish for, possess, or land more than 1,000 lb (453.6 kg) of cod per trip, regardless of trip length. A NE multispecies vessel fishing in the Eastern U.S./Canada Haddock SAP Pilot Program is subject to the haddock

requirements described under § 648.86(a), unless further restricted under paragraph (a)(3)(iv) of this section.

(G) *Reporting requirements.* The owner or operator of a vessel declared into the Eastern U.S./Canada Haddock SAP, as described in paragraph (b)(8) of this section, must submit reports in accordance with the reporting requirements described in paragraph (a)(3)(v) of this section.

(H) *Incidental cod TAC.* The maximum amount of GB cod (landings and discards) that may be caught from the Eastern U.S./Canada Haddock SAP Area in a fishing year, by vessels fishing under a Category B DAS, as authorized in paragraph (b)(8)(v)(A) of this section, is the amount specified in paragraph (b)(5)(i)(B) of this section.

(I) *No discard provision and DAS flips.* A vessel fishing in the Eastern U.S./Canada Haddock SAP Pilot Program under a Category B DAS may not discard legal-sized cod. If a vessel fishing under a Category B DAS harvests and brings on board more legal-sized cod than the landing limit specified under paragraph (b)(8)(v)(F) of this section, the vessel operator must notify NMFS prior to crossing the demarcation

line via VMS on its return trip to port to initiate a DAS flip to Category A DAS. Once this notification has been received by NMFS, the vessel will automatically be switched to fishing under a Category A DAS. For a vessel that notifies NMFS of a DAS flip, the Category B DAS that have accrued between the time the vessel started accruing Category B DAS at the beginning of the trip (i.e., at the time the vessel crossed into the Eastern U.S./Canada Area at the beginning of the trip) and the time the vessel declared its DAS flip will be accrued as Category A DAS, and not Category B DAS. Once such vessel has initiated the DAS flip and is fishing under a Category A DAS, the prohibition on discarding legal-sized cod no longer applies.

(J) *Minimum Category A DAS.* To fish under a Category B DAS, the number of Category B DAS that can be used on a trip cannot exceed the number of available Category A DAS the vessel has at the start of the trip.

(K) *Mandatory closure of Eastern U.S./Canada Haddock SAP Pilot Program.* When the Regional Administrator projects that the TAC allocation specified in paragraph (b)(8)(v)(H) of this section has been caught by vessels fishing under Category

B DAS, NMFS shall prohibit the use of Category B DAS in the Eastern U.S./Canada Haddock SAP Pilot Program, through notice in the **Federal Register**, consistent with the Administrative Procedure Act. In addition, the closure regulations described in paragraph (a)(3)(iv)(E) of this section shall apply to the Eastern U.S./Canada Haddock SAP Pilot Program.

(L) *General closure of the Eastern U.S./Canada Haddock SAP Area.* The Regional Administrator, based upon information required under §§ 648.7, 648.9, 648.10, or 648.85, and any other relevant information may, through rulemaking consistent with the Administrative Procedure Act, close the Eastern U.S./Canada Haddock SAP Area for the duration of the season, if it is projected that continuation of the Eastern U.S./Canada Haddock SAP Pilot Program would undermine the achievement of the objectives of the FMP or the Eastern U.S./Canada Haddock SAP Pilot Program.

* * * * *

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agency's interpretation of what EIPs should contain in order to meet the requirements of the CAA. Because this guidance is non-binding and does not represent final agency action, EPA is using the guidance as an initial screen to determine whether approvability issues arise.

5. Excess emissions provisions are addressed by "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup and Shutdown," EPA's Office of Air and Radiation and Office of Enforcement and Compliance Assurance, September 20, 1999 ("Excess Emissions Policy").

B. Does the Rule Meet the Evaluation Criteria?

We believe this rule is consistent with the CAA as applied by relevant policy and guidance regarding emissions trading programs, excess emissions provisions, enforceability, RACT, and SIP relaxations. Specifically, the submitted rule amendments were found to fulfill the requirements of EPA's previous conditional approval of the RECLAIM program rules and to address all concerns raised therein with respect to our Excess Emissions Policy. The TSD has more information on our evaluation.

C. Public Comment and Final Action

Because EPA believes the submitted rule fulfills all relevant requirements, we are proposing to fully approve it as described in section 110(k)(3) of the Act. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate this rule into the federally enforceable SIP.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5

U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone,

Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 17, 2004.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 04-20682 Filed 9-13-04; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No 040804229-4229-01; I.D. 080204G]

RIN 0648-AS34

Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Framework Adjustment 40-A

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement measures in Framework Adjustment 40-A (FW 40-A) to the NE Multispecies Fishery Management Plan (FMP). FW 40-A was developed by the New England Fishery Management Council (Council) to provide additional opportunities for vessels in the fishery to target relatively healthy stocks of groundfish in order to mitigate the economic and social impacts resulting from the effort reductions required by Amendment 13 to the FMP, and to harvest groundfish stocks at levels that approach optimum yield (OY). The proposed action would create three programs to allow vessels to use Category B Days-at-Sea (DAS) (both Regular and Reserve) to target healthy stocks: Regular B DAS Pilot Program; Closed Area (CA) I Hook Gear Haddock Special Access Program (SAP); and Eastern U.S./Canada Haddock SAP Pilot Program. In addition, FW 40-A proposes to relieve an Amendment 13 restriction that currently prohibits vessels from fishing both in the Western U.S./Canada Area, and outside that area on the same trip. The intended effect of FW 40-A would be to provide fishing opportunities that would mitigate some of the negative economic and social impacts caused by the effort reductions in Amendment 13.

DATES: Comments must be received by September 29, 2004.

ADDRESSES: Written You may submit comments by any of the following methods:

- E-mail: FW40A@NOAA.gov.

Include in the subject line the following: "Comments on the Proposed Rule for Groundfish Framework 40-A".

- Federal e-Rulemaking Portal: <http://www.regulations.gov>.

- Mail: Paper, disk, or CD-ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on the Proposed Rule for Groundfish Framework 40-A."

- Fax: (978) 281-9135.

Copies of FW 40-A, its Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), and the Environmental Assessment (EA) are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, The Tannery Mill 2, Newburyport, MA 01950.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule should be submitted to the Regional Administrator at the address above and to David Rostker, Office of Management and Budget (OMB), by e-mail at David_Rostker@omb.eop.gov, or fax to (202) 395-7285. NMFS prepared a summary of the IRFA, which is contained in the Classification section of the preamble of this proposed rule.

FOR FURTHER INFORMATION CONTACT: Thomas Warren, Fishery Policy Analyst, phone: (978) 281-9347, fax: (978) 281-9135.

SUPPLEMENTARY INFORMATION:

Background

The Council developed Amendment 13 to bring the FMP into compliance with all Magnuson-Stevens Act requirements, including ending overfishing and rebuilding all overfished groundfish stocks. Amendment 13 was partially approved by the Secretary of Commerce on March 18, 2004. A final rule implementing the approved measures was published April 27, 2004 (69 FR 22906), with most measures becoming effective May 1, 2004. Amendment 13 adopted a suite of management measures to reduce fishing mortality on groundfish stocks that are either overfished, or where overfishing is occurring. For several stocks, the fishing mortality targets adopted in Amendment 13 represented substantial

reductions from previous levels. For other stocks, the fishing mortality targets were set at or above previous levels, and fishing mortality could remain the same or potentially increase without causing overfishing. Because most fishing trips in this fishery catch a wide range of species, and the principal management tool used in the FMP to reduce fishing effort is DAS, the reduction in DAS implemented by Amendment 13 impacts numerous species. It is difficult to design management measures that selectively change fishing mortality for individual species. Because the management measures in Amendment 13 were designed to reduce fishing mortality where necessary, they may also reduce fishing mortality more than is necessary for other, healthier stocks. As a result, yield from healthier stocks may have been sacrificed and the ability of the FMP to ensure OY from these stocks may be diminished. OY is the amount of fish that will provide the greatest overall benefit to the nation. FW 40-A proposes programs that would provide additional opportunities to target healthy groundfish stocks in order to maximize the ability to achieve OY. These programs would also mitigate some of the negative economic and social impacts caused by the effort reductions in Amendment 13.

Among the primary Amendment 13 management measures to control fishing mortality are DAS reductions. Amendment 13 categorized the DAS allocated to each permit as Category A, Category B DAS which are further categorized as Regular B, and Reserve B, and Category C DAS. Category A DAS can be used to target any regulated groundfish stocks, while Category B DAS are to be used only to target healthy groundfish stocks. Category C DAS cannot be used at all at this time. The regulations implementing Amendment 13 include only one opportunity to use Category B DAS: A SAP designed to target Georges Bank (GB) yellowtail flounder in CA II. FW 40-A proposes additional opportunities to use Category B DAS. The Council understood at the time Amendment 13 was submitted, that additional means to allow use of Category B DAS would be explored and possibly implemented through the framework process in the FMP.

Proposed Measures

FW 40-A proposes three programs that would create additional opportunities to target healthier groundfish stocks. These are: The Regular B DAS Pilot Program, the CA I Hook Gear Haddock SAP, and the

Eastern U.S./Canada Haddock SAP Pilot Program. In addition, FW 40-A would relieve the restrictions on the area that can be fished on the same trip by vessels fishing in the Western U.S./Canada Area. A description of the proposed management measures follows.

1. Regular B DAS Pilot Program

The proposed Regular B DAS program would create opportunities to use B Regular DAS outside of a SAP (and outside closed areas) to target stocks that can withstand additional fishing effort (Gulf of Maine (GOM) haddock, pollock, GOM winter flounder, GB haddock, GB yellowtail flounder, and GB winter flounder). In addition, the program would provide the Council with information that could be used to design future Regular B DAS programs. The pilot program is proposed to run for 1 year, from November 1, 2004, (or starting with the effective date of FW 40-A, if after November 1, 2004) through October 31, 2005. In order to limit the potential biological impacts of the program, only 1,000 B Regular DAS per quarter (November through January, February through April, May through July, and August through October) would be allocated for use for the entire pilot program. These DAS would not be allocated to individual vessels, but would be used by vessels on a first-come, first-served basis.

Vessels participating in this program would be required to be equipped with an approved Vessel Monitoring System (VMS). The vessel owner or operator would be required to notify the NMFS Observer Program at least 72 hours in advance of a trip in order to facilitate observer coverage. This notice would require reporting of the following information: The general area or areas that will be fished (GOM, GB, or Southern New England (SNE)), vessel name, contact name for coordination of observer deployment, telephone number of contact, date, time, and port of departure. Providing notice of the area that the vessel intends to fish would not restrict the vessel's activity to only that area on that trip, but would be used to plan observer coverage. Prior to departing on the trip, the vessel owner or operator would be required to notify NMFS via VMS that the vessel intends to participate in the Regular B DAS Pilot Program. There would be no specific area or gear requirements for participation, but vessels would not be allowed to fish on that trip in a SAP, in the Eastern U.S./Canada Area, or in a seasonal or year-round closed area, and would be required to comply with the gear requirements of the FMP. While fishing under a Regular B DAS in this

program, Regular B DAS would accrue at the rate of 1 DAS for each calendar day, or part of a calendar day, fished. For example, a vessel that left on a trip 1 hour before midnight on one day, and fished until 1 hour after midnight on the next calendar day, would be charged 48 hours of B Regular DAS. Vessels fishing in this program would be prohibited from discarding legal-sized regulated groundfish, and would be limited to landing 100 lb (45.4 kg) per DAS for each groundfish species of concern, with the exception of yellowtail flounder, which would have a landing limit of 25 lb (11.3 kg) per DAS. If a vessel harvests and brings on board legal-sized regulated groundfish in excess of the landing limits, the vessel operator would be required to retain the excess catch, and immediately notify NMFS via VMS in order to change its DAS category from a Regular B DAS to a Category A DAS ("DAS flip"). Although the Council proposed in FW 40-A that the DAS flip must occur at some time prior to the vessel crossing

the VMS demarcation line, NMFS is proposing that the DAS flip must occur immediately upon exceeding the landing limits in order to enhance the effectiveness and enforceability of this measure. Because the timing of notification of the DAS flip was not explicitly stated in FW 40-A, NMFS is highlighting this measure for comment. If a vessel flips from a Regular B DAS to a Category A DAS, it would be charged Category A DAS which would accrue to the nearest minute for the entire trip (i.e., not to the nearest day), and would be subject to the possession and landing restrictions that apply to the fishery as a whole (i.e., not the Regular B DAS Pilot Program limits). In order to ensure that a vessel would always have the ability to flip to a Category A DAS while fishing under a Regular B DAS (should it encounter a groundfish species of concern in an amount that exceeded the trip limit), the number of Regular B DAS that would be allowed to be used on a trip would be limited to the number of Category A DAS that

the vessel has at the start of the trip. For example, if a vessel plans a trip under the Regular B DAS Pilot Program and has 5 Category A DAS available, the maximum number of Regular B DAS that the vessel could fish on that trip under the Regular B DAS Pilot Program would be 5.

NMFS would administer the 1,000 Regular B DAS maximum by monitoring the number of Regular B DAS accrued on trips that end under a Regular B DAS. Declaration of the trip through VMS would not serve to reserve a vessel's right to fish under a Regular B DAS. Once 1,000 Regular B DAS were used in a quarter, the Regular B DAS Pilot Program would end for that quarter.

In order to limit the potential impact on fishing mortality that the use of Category B DAS (Regular B DAS or Reserve B DAS) may have on groundfish stocks of concern, a quarterly Incidental Total Allowable Catch (TAC) would be set for the groundfish stocks of concern, as summarized in the following table:

PROPOSED INCIDENTAL TACS FOR B REGULAR DAS PILOT PROGRAM (MT)

Stocks of Concern	Nov 2004 to Jan 2005	Feb 2005 to Apr 2005	May 2005 to Jul 2005	Aug 2005 to Oct 2005
GOM cod	48.5	48.5	63.5	63.5
GB cod	19.75	19.75	24.25	24.25
Cape Cod/GOM yellowtail flounder	9	9	12.5	12.5
American plaice	92.5	92.5	90	90
white hake	38.5	38.5	38	38
Southern New England/Mid-Atlantic (SNE/MA) yellowtail flounder	17.5	17.5	49.5	49.5
SNE/MA winter flounder	71.5	71.5	89	89
witch flounder	129.5	129.5	175	175

With the exception of white hake, if the incidental TAC for any one of these species were caught during a quarter (landings plus discards), use of Regular B DAS in the pertinent stock area would be prohibited for the remainder of that quarter. Because several stocks of concern may be found in a given stock area, the closure of that stock area to the use of Regular B DAS would result in the prohibition of fishing under a Regular B DAS for any stock of concern in that stock area, even if there were TAC remaining for some of the stocks of concern for that quarter. All stock areas would reopen for the use of B Regular DAS at the beginning of the subsequent quarter. If the white hake incidental TAC were caught in a quarter, the possession of white hake would be prohibited when fishing under Regular B DAS in any stock area for the remainder of that quarter. White hake would be treated differently than the other stocks of concern because the stock area for white hake covers all the

waters from GOM through SNE, and closure of its stock area to the use of Regular B DAS rather than prohibiting its possession, would unnecessarily curtail the Regular B DAS Pilot Program.

This proposed program would allow the use of Regular B DAS by vessels fishing for species managed under other fishery management plans that require the use of a groundfish DAS to fish for, such as monkfish.

Vessels fishing in the Regular B DAS Pilot Program would be required to report their catches of groundfish stocks of concern daily through VMS, including the amount of fish kept and discarded, by statistical area fished. Vessels fishing for species managed by other fishery management plans, and not landing groundfish would not be subject to this reporting requirement.

The Administrator, Northeast Region, NMFS (Regional Administrator) would have the authority to prohibit the use of Regular B DAS for the duration of a quarter or fishing year, if it is projected

that continuation of the Regular B DAS Pilot Program would undermine the achievement of the objectives of the FMP or the Regular B DAS Pilot Program, or if the level of observer coverage were insufficient to make such a projection.

2. CA I Hook Gear Haddock SAP

This SAP would allow vessels with a limited access or open access NE multispecies permit to target haddock using longline or tub trawl gear, when fishing under either a Category A or B DAS within a defined portion of CA I during the period October 1 - December 31. A haddock TAC of 1,000 mt would be specified, and the SAP would close to all participants when the Regional Administrator projects that the TAC (landings and discards) has been caught. In order to limit the fishing mortality that the use of a Category B DAS may have on GB cod, an incidental GB cod TAC for vessels fishing under a Category B DAS in this SAP would be set at 16

percent of the overall incidental catch TAC for GB cod, which would be 12.6 mt, 15.5 mt, and 20.3 mt for the 2004, 2005, and 2006 fishing years, respectively, based on current information. The percentages could be changed by a future management action, and the TACs would be recalculated in 2005, through the periodic adjustment process, to reflect the best available information. When the Regional Administrator projects that this incidental TAC has been caught, fishing in the SAP on a Category B DAS would no longer be allowed (for any participant). Vessels fishing on a trip in which they have declared into the Regular B DAS Pilot Program would be prohibited from fishing in this or any other SAP on the same trip.

In order to enable the NMFS Observer Program to administer the deployment of observers in the SAP, a vessel intending to participate in this SAP would be required to notify NMFS by September 1 (with the exception of the 2004 fishing year) of its intention to fish in the program. For the 2004 fishing year, vessels would be required to notify the NMFS Observer Program by a date set by the Regional Administrator. Should a final rule adopting Framework 40-A be issued, NE multispecies permit-holders would be notified of the deadline through a letter that would be sent after issuance of such rule. Notification by vessels intending to participate in this SAP would not have to include specific information about the date of any trip into the SAP; the intent is simply to require that vessels declare their intent to participate in the SAP. This information is intended to provide the NMFS Observer Program with an estimate of the total number of vessels that intend to participate in the SAP. If a vessel does not notify the NMFS Observer Program of its intent to participate in the SAP by the required date, it would not be allowed to participate in the SAP during that fishing year. If the Regional Administrator, based upon this estimated participation level, determines that funding is inadequate for the necessary level of observer coverage for both the GB Cod Hook Sector (Sector), and non-Sector vessels, the Sector would pay the additional costs required to deploy adequate levels of observers on the Sector vessels participating in this SAP. Vessels would be required to notify the NMFS Observer Program by telephone at least 72 hours prior to leaving on a trip to the SAP, and would be required to provide the following information: Vessel name; contact name for coordination of

observer deployment; telephone number of contact; and date, time and port of departure. All vessels participating in this SAP, including open access vessels, would be required to be equipped with an approved VMS. Vessels would be required to declare into the SAP program via VMS and specify the type of DAS that would be used, prior to leaving port on a trip into the SAP.

Vessels could use either a Category A or Category B (Regular or Reserve) DAS to participate in the SAP. If fishing on a Category A DAS, vessels could fish inside the SAP area and outside the SAP area on the same trip. Vessels fishing under a Category B DAS could not fish both inside and outside the SAP area on the same trip. Vessels fishing under a Category B DAS (and fishing only inside the SAP) would be exempt from the current limitation on the number of hooks fished. Specific requirements for the SAP would differ for Sector and non-Sector vessels. All non-Sector vessels would be required to report their catches (landings and discards) of haddock and groundfish stocks of concern daily via VMS. Limited access NE multispecies vessels that are not in the Sector would be limited to fishing a maximum of 4 DAS in the SAP on a single trip and would be subject to a cod possession limit of 500 lb (226.8 kg) per DAS, with a maximum of 2,000 lb (907.2 kg) per trip. This landing limit would apply for the entire trip for any vessel participating in the SAP, whether using a Category A or Category B DAS. There is no flipping provision proposed for this SAP (i.e., vessels may not switch from using Category B to Category A DAS on a trip). Vessels participating in the SAP that have a limited access Handgear A or open access Handgear B permit would be restricted to 300 lb (136.1 kg) of cod per trip and 75 lb (34.0 kg) of cod per trip, respectively. For species other than cod, all vessels would be required to comply with the possession and trip limit restrictions currently specified in the regulations.

Non-Sector vessels fishing both inside and outside of the SAP on the same trip (under a Category A DAS) would be restricted to the gear limits that apply to the area outside the SAP, and would have to report the amount of haddock and groundfish stocks of concern caught (retained and discarded) when crossing the boundary into or out of the SAP area. Cod caught by a non-Sector vessel while fishing under a Category A DAS would not be counted against the incidental cod TAC. Cod catches while fishing under a Category B DAS would be counted against the incidental cod TAC.

Sector vessels that fish in the CA I Hook Gear Haddock SAP would not be allowed to fish outside the SAP area on the same trip. All cod caught by Sector-vessels would count against the Sector's cod TAC and, in accordance with the Sector's Operations Plan, such vessels would be prohibited from discarding legal-sized cod and would be able to fish an unlimited number of hooks. Daily catch reports for each Sector vessel fishing in the SAP could be submitted by the Sector manager, rather than by the vessel.

The Regional Administrator would have the authority to close the CA I Hook Gear Haddock Access Area for the duration of the season if the level of observer coverage is insufficient to project whether continuation of the SAP would undermine the achievement of the objectives of the FMP or the CA I Hook Gear Haddock SAP.

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

The Eastern U.S./Canada Haddock SAP Pilot Program would allow limited access NE multispecies DAS vessels fishing with trawl gear that complies with the gear requirements of the Eastern U.S./Canada Area (haddock separator trawl or flounder net) to target haddock using a Category B DAS, from May 1 December 31, in a portion of the Eastern U.S./Canada Area, including the northern-most tip of CA II. Under Amendment 13 (50 CFR § 648.85(a)(3)(iii)), the Regional Administrator has the authority to modify the types of fishing gear allowed to be used in the Eastern U.S./Canada Area (to further reduce cod catch), which includes the area of the proposed SAP. The proposed pilot program would be in effect for 2 years from the date of implementation of the program. The SAP would close if the Regional Administrator projects that the haddock or cod TAC for the Eastern U.S./Canada Area has been caught (landings and discards). In order to limit the potential impact on fishing mortality that the use of Category B DAS may have on GB cod, an incidental GB cod incidental TAC would be specified that represents 34 percent of the overall incidental catch TAC for GB cod for fishing years 2004, 2005, and 2006 (27 mt, 33 mt, and 43 mt, respectively, based on current information). The percentages could be changed by a future management action, and the incidental TACs would be recalculated in 2005, through the periodic adjustment process to reflect the best information available. Participation in the SAP by vessels using a Category B DAS would be

prohibited when the incidental catch TAC is projected to have been caught.

The following measures proposed for this SAP would be the same as the current regulations governing the Eastern U.S./Canada Area: Vessels fishing in this SAP must have an approved VMS and would not be charged steaming time either to or from the Eastern U.S./Canada Area. Vessel owners or operators planning a trip into this SAP would be required to notify the NMFS Observer Program at least 72 hours prior to leaving on a trip into the SAP in order to facilitate observer coverage, and would be required to provide the following information to the Observer Program: Vessel name; contact name for coordination of observer deployment; telephone number of contact; and date, time, and port of departure. In addition, participating vessels would be required to declare into the SAP via VMS prior to departing on a trip into the SAP. Vessels would also be required to specify via VMS which areas within the Eastern U.S./Canada Area that they intend to fish in, and the type of DAS that would be used. Vessels would be allowed to transit through CA II in order to enable vessels full access to the Eastern U.S./Canada Area. Discarding of legal-sized cod while fishing under a Category B DAS would be prohibited, and the cod landing limit would be 1,000 lb (453.6 kg) per trip (Category A or B DAS), regardless of trip length. If a vessel fishing under a Category B DAS exceeded the cod landing limit, the owner or operator would be required to immediately notify NMFS via VMS and "flip" to a Category A DAS. Once a vessel flipped to a Category A DAS, the vessel would be required to comply with all landing restrictions that apply to Category A DAS. All vessels would be required to comply with the haddock possession limits in place at the time of the fishing trip, regardless of the type of DAS the vessel is fishing under. In order to ensure that while fishing under a Category B DAS the vessel would always have the potential flip to a Category A DAS (should it catch cod in an amount that exceeds the landing limit), the number of Category B DAS that it would be allowed to use on a trip would be limited to the number of Category A DAS that the vessel has at the start of the trip. For example, if a vessel plans a trip into the Eastern U.S./Canada Haddock SAP Pilot Program, and has 5 Category A DAS available, the maximum number of Category B DAS that it could fish under the Eastern U.S./Canada Haddock SAP Pilot Program would be 5.

FW 40-A would change the cod landing limit for the CA II Yellowtail Flounder SAP from 100 lb (45.4 kg)/DAS and 1,000 lb (454 kg)/trip, to 1,000 lb (454 kg)/trip, in order to make the cod possession limits in the Eastern U.S./Canada Haddock SAP Pilot Program the same as in the CA II Yellowtail Flounder SAP. Vessels fishing in the Eastern U.S./Canada Area could fish in any combination of areas within the Eastern U.S./Canada Area, provided the area(s) is open and the vessel abides by the most restrictive regulations of the areas fished. For example, a vessel could fish in both the Eastern U.S./Canada Haddock SAP Pilot SAPPprogram, and in the portion of the Eastern U.S./Canada Area that is not within a SAP on the same trip, provided the vessel fishes under a Category A DAS.

The Regional Administrator would have the authority to close the Eastern U.S./Canada Haddock SAP Pilot Program for the duration of the season, if it is projected that continuation of the Eastern U.S./Canada Haddock SAP Pilot Program would undermine the achievement of the objectives of the FMP or the Eastern U.S./Canada Haddock SAP Pilot Program, or if the level of observer coverage is insufficient to make such a projection.

4. Combined Trips to the Western U.S./Canada Area

Current regulations restrict groundfish DAS vessels that have declared a trip and are fishing in the Western U.S./Canada Area from fishing in areas outside of that area during the same trip, in order to ensure that there is an accurate attribution of landings to the appropriate stock and facilitate enforcement of the regulations. FW 40-A proposes to provide more flexibility to vessels by allowing them to fish both inside and outside the Western U.S./Canada Area on the same trip, but not in the Eastern U.S./Canada Area. to address the concern of accurate attribution of landings to the appropriate stock, in addition to the current reporting requirements, vessels would be required to report catches (landings and discards) of yellowtail flounder, by statistical area, when crossing into or out of the Western U.S./Canada Area, and to comply with the most restrictive landing limits associated with the areas fished during that trip. Vessels would be required to comply with all other Western U.S./Canada Area requirements for that trip.

Classification

At this time, NMFS has not determined that the framework

adjustment that this proposed rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be significant for the purposes of E.O. Executive Order 12866.

Pursuant to 5 USC 603 an IRFA has been prepared, which describes the economic impacts that this proposed rule, if adopted, would have on small entities. The proposed action would implement three new programs and modify the existing rules for vessels fishing in the Western U.S./Canada Management Area in order to provide additional economic opportunities. The three programs include restrictions that would limit the biological impacts of the proposed action in order to be consistent with the rebuilding plans and objectives of the FMP. Current regulations under the FMP allow the development of such programs, provided they are consistent with the FMP objectives.

The proposed alternative was compared to the No Action alternative and a single non-selected alternative for each of the three programs (non-selected Regular B DAS Pilot Program, non-selected CA I Hook Gear Haddock SAP, and non-selected CA II Haddock SAP Pilot Program). The No Action alternative is comprised of the management measures that were implemented by Amendment 13 on May 1, 2004. The non-selected Regular B DAS Pilot Program would implement measures for a shorter duration than the proposed program. The non-selected CA I Hook Gear Haddock SAP would be the same as the proposed SAP, with the exception that it would not require advance notice to the Observer Program. The non-selected CA II Haddock SAP Pilot Program would include a longer season, a more restrictive GB cod possession limit, and would not include a Category B DAS flipping requirement.

A full description of the reasons why this action is being considered is found in the preamble to this proposed rule, and in the Executive Summary and Section 3.2 of FW 40-A. There are no Federal rules that may duplicate, overlap, or conflict with the proposed rule.

Description of and Estimate of the Number of Small Entities to which the Proposed Rule would Apply

The proposed action would implement changes with the potential to affect any vessel holding a NE

multispecies limited access permit or an open access Handgear B permit (approximately 1,800 active vessels). It is very likely, however, that the proposed measures would impact substantially less than the total number of active permit holders, based upon historic and recent rates of participation in the fishery, and because the proposed programs are voluntary in nature, and have some associated regulatory and economic costs. Because the programs are voluntary, no small entity would be required to bear any additional regulatory or economic burden unless it chose to. It is likely that participating vessels would have reached a decision that the benefits of participating in the program would exceed the costs of participation.

Based upon the information in FW 40–A, approximately 118 or more vessels may participate in the Regular B DAS Pilot Program, 60 vessels may participate in the CA II Hook Gear Haddock SAP, and approximately 86 vessels may participate in the Eastern U.S./Canada Haddock SAP Pilot Program. Up to 236 vessels could choose to fish both inside and outside of the Western U.S./Canada Management Area on the same trip.

The Small Business Administration (SBA) size standard for small commercial fishing entities is \$ 3.5 million in gross receipts and would apply to limited access permit holders and open access Handgear permits holders. Data analyzed for Amendment 13 indicated that the maximum gross receipts for any single commercial fishing vessel for the period 1998 to 2001 was \$ 1.3 million. For this reason, each vessel in this analysis is treated as a single entity for purposes of size determination and impact assessment. All commercial fishing entities would fall under the SBA size standard for small commercial fishing entities, and there would be no disproportionate impacts between small and large entities.

Economic Impacts of Proposed Action

The proposed action would implement a B Regular DAS pilot program which would allow limited access NE multispecies vessels to target relatively healthy groundfish stocks, using Regular B DAS, thereby, relieving some economic constraints caused by the current regulations. A total of 1,000 Regular B DAS per calendar quarter would be allocated to the Regular B DAS Pilot Program, beginning November 1, 2004. Incidental TACs for eight groundfish stocks of concern would be set on a quarterly basis, and participating vessels would be required

to use a VMS and report catches (both landings and discards) of the stocks of concern via the VMS on a daily basis. The economic impact of the program will depend on the types of fisheries defined by where, when, and how vessels decide to fish, and the resulting catch rates of groundfish stocks of concern. Examination of recorded trips taken in fishing year 2001 indicate that there are opportunities to fish in several different stock areas with low catches of stocks of concern. Average daily revenues from the GB trawl fishery are estimated to be at least \$ 2,200. Revenue estimates range from a low of \$ 688 (GOM trawl fishery) to a high of nearly \$ 3,000 per day (GB trawl fishery). Although these estimates suggest the potential value of being able to use B Regular DAS, the actual economic gains may be very different if vessels pursue fisheries that were not identified in the analysis. In addition, even if these average revenues are accurate estimates, the full benefits from the Regular B DAS Pilot Program may not be realized for two reasons: (1) The incidental catch TACs may limit the duration of the program in each quarter by reducing or eliminating the opportunities to use Regular B DAS; and (2) the DAS flipping requirement may decrease trip profitability or negatively impact the availability of Category A DAS to be used by that vessel elsewhere.

The proposed action would implement the CA I Hook Gear Haddock SAP which would allow NE multispecies vessels fishing with hook gear the opportunity to access haddock in a portion of CA I from October through December. Approximately 50 Sector, and 10 non-Sector vessels may participate in this program. Based upon the proposed haddock TAC of 1,000 mt, and an average of 5,000 lb (2268 kg) of haddock kept per trip, approximately 441 trips could be taken into this SAP. At an average haddock price of \$ 1.05 per lb, and average variable costs of \$ 364 per day, the potential revenue from fishing in the SAP is \$ 2.5 million, with a vessel profit of \$ 1.5 million (after subtracting variable costs and crew share). Dividing this profit among 60 potential hook vessels results in a vessel profit of \$ 25,729. If all participating vessels needed to purchase a VMS system at a cost of \$ 3,995 installed, which is at the high end of the cost range for available VMS systems, the profit would be reduced to \$ 22,829 per vessel. Regardless of the precise split of the potential harvest between Sector and non-Sector vessels, all participating hook vessels could benefit from an economic surplus.

The proposed action would also implement the CA II Haddock SAP Pilot Program, which would allow limited access groundfish vessels the opportunity to use Category B DAS to target haddock in a designated portion of the Eastern U.S./Canada Area. Most of the benefits would be limited to relatively large vessels, due to the offshore location of the SAP Pilot Program. Participating vessels would be subject to the existing requirements of the Eastern U.S./Canada Area, including the requirement to use either a haddock separator trawl or flounder net, and use of a VMS. Total revenue would be limited by the GB cod and haddock TACs already set for the Eastern U.S./Canada Management Area. The potential revenue of participating vessels under the proposed pilot program was calculated based upon historic landings compositions. The average estimated revenue per vessel is \$ 32,095 per trip, and ranges from \$ 22,571 to \$ 34,586 per trip. Smaller vessels would generate less revenue than larger vessels. The average vessel revenue is estimated to be \$ 4,527 per day, and ranges from \$ 3,060 to \$ 4,751 per day. These averages are higher than the average revenues on groundfish trips reported in the break-even analysis in Amendment 13; one can infer that the proposed SAP would provide vessels with greater opportunity to remain profitable.

The proposed action would also relax current restrictions in order to allow vessels to fish both inside and outside of the Western U.S./Canada Area on the same trip. Although Vessel Trip Report data indicate that fishing in multiple statistical areas is not a common occurrence, observer data and fisher's comments indicate that some vessels do fish in multiple statistical areas on the same trip. Based upon industry comments, this proposed regulatory change would reduce the risk of an unprofitable trip into the Western U.S./Canada Area.

The aggregate economic benefits of the opportunities proposed in FW 40–A would include revenue from harvest of the targeted stocks, as well as from harvest under the incidental TACs.

Economic Impacts of Alternatives to the Proposed Action

The No Action alternative would provide no new opportunities for economic benefits above the current level. Under the No Action alternative, vessels would not be able to fish as many B DAS, or in currently closed areas, and would therefore forgo potential revenues. Selection of the No Action alternative would mean no

fishing opportunities under the Regular B DAS Pilot Program, and the loss of potential average revenues of \$ 2,000 per day. Selection of the No Action alternative would mean no fishing opportunities under the Closed Area I Hook Gear Haddock SAP, and the loss of potential profits of \$ 25,000 for each of approximately 60 participating vessels. Similarly, potential average revenue from the Eastern U.S./Canada Haddock SAP Pilot Program that would be unavailable under the No Action alternative is estimated to be \$ 4,500 per day absent.

The non-selected Regular B DAS Pilot Program alternative would implement the program for only two calendar quarters and, therefore, would provide less economic benefits than the proposed Regular B DAS Pilot Program. Secondly, due to the shorter duration of the non-selected program, less information would be obtained for the potential development of a future program. The non-selected CA I Hook Gear Haddock SAP would not require advance notice to the Observer Program, and would therefore be less burdensome to small entities, but would also fail to account for the logistical needs of the Observer Program. The non-selected Eastern U.S./Canada Haddock SAP Pilot Program proposes a different season for the SAP, a more restrictive cod possession limit, and no DAS flipping requirement. Taken as a whole, the proposed action may provide greater opportunity to retain cod, and may meet the conservation objectives of the FMP more effectively by not allowing fishing in the SAP during months that are important for GB cod spawning.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule

Reporting and Recordkeeping Requirements

The proposed measures in FW 40-A include the following provisions requiring either new or revised reporting and recordkeeping requirements: (1) VMS purchase and installation; (2) VMS proof of installation; (3) automated VMS polling of vessel position once per hour when fishing in the Regular B DAS Pilot Program; (4) revised automated VMS polling of vessel position twice per hour when fishing in the U.S./Canada Management Area or the Eastern U.S./Canada SAP Pilot Program; (5) automated VMS polling of vessel position twice per hour when fishing in the CA I Hookgear Haddock SAP; (6) SAP area and DAS use declaration via VMS prior to each trip into a SAP; (7)

revised estimate of the area and DAS use declaration via VMS prior to each trip into the CA I Hookgear Haddock SAP; (8) DAS "flip" notification via VMS for the Regular B DAS Pilot Program; (9) DAS "flip" notification via VMS for the Eastern U.S./Canada Haddock SAP Pilot Program; (10) notice requirements for observer deployment prior to every trip into the Regular B DAS pilot program; (11) revised estimate of the notice requirements for observer deployment prior to every trip into the CA I Hookgear Haddock SAP; (12) daily electronic catch and discard reports of stocks of concern when fishing under the Regular B DAS pilot program; (13) daily electronic catch and discard reports of GB cod and GB haddock for vessels not participating in the GB Cod Hook Sector when fishing under the CA I Hookgear Haddock SAP; and (14) daily electronic catch and discard reports of GB yellowtail flounder when fishing on a combined trip into the Western U.S./Canada Area.

The measures proposed under FW 40-A would require vessels to use VMS. Costs not previously authorized under the Paperwork Reduction Act (PRA) involved with VMS operation include monthly operational costs associated with fees charged by the individual VMS vendor for satellite connection, as well as service and maintenance charges. The cost of the purchase and installation of VMS units to vessels participating in the NE multispecies fishery were considered and approved in a previous PRA submission. NMFS has currently certified two vendors to provide VMS services. A conservative cost estimate, based on operational charges for the Boatrac VMS vendor, is approximately \$ 100 per month for each NE multispecies vessel. Therefore, the yearly operational costs, per vessel, for VMS usage under the proposed provisions in FW 40-A are \$1,200. This represents the only compliance costs associated with this action.

Public Reporting Burden

This proposed rule contains collection of information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval. Public reporting burden for these collections of information are estimated to average as follows:

1. VMS purchase and installation, OMB# 0648-0202 (1 hr/response);
2. VMS proof of installation, OMB# 0648-0202 (5 min/response);
3. Automated VMS polling of vessel position once per hour when fishing in

the Regular B DAS pilot program, OMB# 0648-0202 (5 sec/response);

4. Revised automated VMS polling of vessel position twice per hour when fishing in the U.S./Canada Management Area or the Eastern U.S./Canada Haddock SAP Pilot Program OMB# 0648-0202 (5 sec/response);

5. Revised automated VMS polling of vessel position twice per hour when fishing in the CA I Hookgear Haddock SAP, OMB# 0648-0202 (5 sec/response);

6. SAP area and DAS use declaration via VMS prior to each trip into a SAP, OMB# 0648-0202 (5 min/response);

7. Revised estimate of the area and DAS use declaration via VMS prior to each trip into the CA I Hookgear Haddock SAP, OMB# 0648-0202 (5 min/response);

8. DAS "flip" notification via VMS for the Regular B DAS pilot program, OMB# 0648-0202 (5 min/response);

9. DAS "flip" notification via VMS for the CA II Haddock SAP, OMB# 0648-0202 (5 min/response);

10. Notice requirements for observer deployment prior to every trip into the Regular B DAS Pilot Program OMB# 0648-0202, (2 min/response);

11. Revised estimate of the notice requirements for observer deployment prior to every trip into the CA I Hookgear Haddock SAP, OMB# 0648-0202 (2 min/response);

12. Daily electronic catch and discard reports of stocks of concern when fishing under the Regular B DAS Pilot Program OMB# 0648-0212, (0.25 hr/response);

13. Daily electronic catch and discard reports of GB cod and GB haddock for vessels not participating in the GB Cod Hook Sector when fishing under the CA I Hookgear Haddock SAP, OMB# 0648-0212 (0.25 hr/response); and

14. Daily electronic catch and discard reports of GB yellowtail flounder when fishing on a combined trip into the Western U.S./Canada Area, OMB# 0648-0212 (0.25 hr/response).

These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Public comment is sought regarding: Whether this 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 estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of 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 to OMB (see **ADDRESSES**).

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to a 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: September 8, 2004.

William T. Hogarth,

*Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

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

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

2. In § 648.2, new definitions for “DAS flip” and “Incidental Total Allowable Catch (TAC)” are added in alphabetical order, to read as follows:

§ 648.2 Definitions.

* * * * *

DAS flip, with respect to the NE multispecies fishery, means ending fishing under a Regular B DAS and beginning fishing under a Category A DAS.

* * * * *

Incidental Total Allowable Catch (TAC), with respect to the NE multispecies fishery, means the total amount of catch (both kept and discarded) of a regulated groundfish stock of concern that can be taken by vessels fishing under Category B DAS.

* * * * *

3. In § 648.9, paragraph (c)(1)(ii) is revised to read as follows:

§ 648.9 VMS requirements.

* * * * *

(c) * * *

(1) * * *

(ii) At least twice per hour, 24 hours a day, for all NE multispecies DAS vessels that elect to fish with a VMS specified in § 648.10(b) or that are required to fish with a VMS as specified in § 648.85(a), for each groundfish DAS trip that the vessel has elected to fish in the U.S./Canada Management Areas, and as specified in § 648.85(a)(1), for

each groundfish trip that the vessel has elected to fish in the CA I Hook Gear Haddock SAP.

* * * * *

4. In § 648.10, paragraphs (b)(1)(vi) and (vii) are added, and paragraph (b)(3)(i) is revised to read as follows:

§ 648.10 DAS notification requirements.

* * * * *

(b) * * *

(1) * * *

(vi) A vessel electing to fish under the Regular B DAS Pilot Program, as specified in § 648.85(b)(6).

(vii) A vessel electing to fish in the CA I Hook Gear Haddock SAP, as specified in § 648.85(b)(7).

* * * * *

(3) * * *

(i) A vessel issued a limited access NE multispecies, monkfish, occasional scallop, or Combination permit must use the call-in system specified in paragraph (c) of this section, unless the owner of such vessel has elected to one or more of the following activities:

(A) Provide the notifications required by this paragraph (b), through VMS as specified under paragraph (b)(3)(iii) of this section; or

(B) Fish in the Eastern U.S./Canada Area or Western U.S./Canada Area as described in § 648.85(a)(2)(i); or

(C) Fish under the Regular B DAS Pilot Program specified at § 648.85(a)(6); or

(D) Fish in the CA I Hook Gear Haddock SAP specified in § 648.85(a)(7).

* * * * *

5. In § 648.14, paragraphs (a)(39), (a)(104), (a)(130), and (a)(142)–(152), and paragraphs (c)(8) and (c)(50) are revised; and paragraphs (c)(51)–(c)(78) are added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

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

* * * * *

(104) Fish for, harvest, possess, or land regulated species in or from the closed areas specified in § 648.81(a) through (f), unless otherwise specified in § 648.81(c)(2)(iii), (f)(2)(i), (f)(2)(iii), or as authorized under § 648.85.

* * * * *

(130) If declared into one of the areas specified in § 648.85(a)(1), fish during that same trip outside of the declared area, unless in compliance with the restrictions under § 648.85(a)(3)(ii), or enter or exit the declared area more than once per trip.

* * * * *

(142) If the vessel has been issued a limited access NE multispecies DAS permit and is in the area specified in § 648.85(b)(8)(ii), fail to comply with the VMS requirements in § 648.85(b)(8)(v)(B).

(143) If fishing under a NE multispecies DAS, enter or fish in the Eastern U.S./Canada Haddock SAP Pilot Program Area specified in § 648.85(b)(8)(ii), unless declared into the area in accordance with § 648.85(b)(8)(v)(D).

(144) Enter or fish in the Eastern U.S./Canada Haddock SAP Pilot Program outside of the season specified in § 648.85(b)(8)(iv).

(145) If fishing under a NE multispecies DAS in the Eastern U.S./Canada Haddock SAP Pilot Program, exceed the possession limits specified in § 648.85(b)(8)(v)(H).

(146) If fishing under the Eastern U.S./Canada Haddock SAP Pilot Program, fish for, harvest, possess or land any regulated NE multispecies from the area specified in § 648.85(b)(8)(ii), unless in compliance with the restrictions and conditions specified in § 648.85(b)(8)(v)(A) through (G).

(147) If fishing under a NE multispecies DAS in the Eastern U.S./Canada Area specified in § 648.85(a)(1), both outside and inside of the areas specified for a SAP under § 648.85(b)(3) and (8), fail to abide by the DAS and possession restrictions under § 648.85(b)(8)(v)(A)(2) through (4).

(148) If fishing under a NE multispecies DAS in the Eastern U.S./Canada Haddock SAP Area specified in § 648.85(b)(8)(ii), during the season specified in § 648.85(b)(8)(iv), fail to comply with the restrictions specified in § 648.85(b)(8)(v).

(149) If fishing under a NE multispecies DAS in the Eastern U.S./Canada Area specified in § 648.85(a)(1)(ii), and not in a SAP specified in § 648.85(b) on the same trip, fail to comply with the requirements specified in § 648.85(a)(3).

(150) If fishing under a NE multispecies DAS in the Eastern U.S./Canada Area specified in § 648.85(a)(1)(ii), and in one of the SAPs specified in § 648.85(b)(3) or (8), fail to comply with the no discard and DAS flip provisions specified in § 648.85(b)(8)(v)(I) or the minimum Category A DAS requirement specified in § 648.85(b)(8)(v)(J).

(151) If fishing in the Eastern U.S./Canada Haddock SAP Pilot Program specified in § 648.85(b)(8), fail to comply with the reporting requirements specified in § 648.85(b)(8)(v)(G).

(152) If fishing under the Eastern U.S./Canada Haddock SAP Pilot Program specified in § 648.85(b)(8), fail to comply with the observer notification requirements specified in § 648.85(b)(8)(v)(C).

* * * * *

(c) * * *

(8) Fail to comply with the restrictions on fishing and gear specified in § 648.80(a)(3)(v), (a)(4)(v), (b)(2)(v), and (c)(2)(iv) if the vessel has been issued a limited access NE multispecies permit and fishes with hook-gear in areas specified in § 648.80(a), (b), or (c), unless allowed under § 648.85(b)(7)(iv)(F).

* * * * *

(50) Discard legal-sized regulated multispecies while fishing under a Regular B DAS in the Regular B DAS Pilot Program, as described in § 648.85(b)(6).

(51) If fishing under a Regular B DAS in the Regular B DAS Pilot Program, fail to comply with the DAS flip requirements of § 648.85(b)(6)(iv)(E) if the vessel harvests and brings on board more than the landing limit for a groundfish stock of concern specified in § 648.85(b)(6)(iv)(D).

(52) If declared to fish under a Regular B DAS in the Regular B DAS Pilot Program, fail to have the minimum number of Category A DAS available as required in § 648.85(b)(6)(iv)(F).

(53) If fishing in the Eastern U.S./Canada Haddock SAP Pilot Area, and other portions of the Eastern U.S./Canada Area on the same trip, fail to comply with the restrictions in § 648.85(b)(8)(v)(A).

(54) If fishing in the Eastern U.S./Canada Haddock SAP Pilot Area, discard legal-sized cod while fishing under a Category B DAS, as described in § 648.85(b)(8)(v)(I).

(55) If fishing in the Eastern U.S./Canada Haddock SAP Pilot Area under a Category B DAS, fail to comply with the DAS flip requirements of § 648.85(b)(8)(v)(I), if the vessel possesses more than the landing limit for cod specified in § 648.85(b)(8)(v)(F).

(56) If fishing in the Eastern U.S./Canada Haddock SAP Pilot Area under a Category B DAS, fail to have the minimum number of Category A DAS available as required under § 648.85(b)(8)(v)(J).

(57) If fishing in the Regular B DAS Pilot Program specified in § 648.85(b)(6), fail to comply with the requirements and restrictions specified in § 648.85(b)(6)(iv)(A) through (F), and (I).

(58) If fishing in the Regular B DAS Pilot Program specified in

§ 648.85(b)(6), fail to comply with the VMS requirement specified in § 648.85(b)(6)(iv)(A).

(59) If fishing in the Regular B DAS Pilot Program specified in § 648.85(b)(6), fail to comply with the observer notification requirement specified in § 648.85(b)(6)(iv)(B).

(60) If fishing in the Regular B DAS Pilot Program specified in § 648.85(b)(6), fail to comply with the VMS declaration requirement specified in § 648.85(b)(6)(iv)(C).

(61) If fishing in the Regular B DAS Pilot Program specified in § 648.85(b)(6), fail to comply with the landing limits specified in § 648.85(b)(6)(iv)(D).

(62) If fishing in the Regular B DAS Pilot Program specified in § 648.85(b)(6), fail to comply with the no discard and DAS flip requirements specified in § 648.85(b)(6)(iv)(E).

(63) If fishing in the Regular B DAS Pilot Program specified in § 648.85(b)(6), fail to comply with the minimum Category A DAS and Category B DAS accrual requirements specified in § 648.85(b)(6)(iv)(F).

(64) Use a Regular B DAS in the Regular B DAS Pilot Program specified in § 648.85(b)(6), if the program has been closed as specified in § 648.85(b)(6)(iv)(H) or (b)(6)(vi).

(65) If fishing in the Regular B DAS Pilot Program specified in § 648.85(b)(6), use a Regular B DAS in a stock area that has been closed, as specified in § 648.85(b)(6)(iv)(G).

(66) If fishing in the Regular B DAS Pilot Program specified in § 648.85(b)(6), fail to comply with the reporting requirements specified in § 648.85(b)(6)(iv)(I).

(67) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the requirements and conditions specified in § 648.85(b)(7)(iv)(A) through (H).

(68) If fishing in the CA I Hook Gear Haddock Access Area specified in § 648.85(b)(7)(ii), fail to comply with the requirements and conditions specified in § 648.85(b)(7)(i) and (b)(7)(iv)(A) through (H).

(69) Fish in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), outside of the season specified in § 648.85(b)(7)(iii).

(70) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the DAS use restrictions specified in § 648.85(b)(7)(iv)(A).

(71) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the VMS requirements specified in § 648.85(b)(7)(iv)(B).

(72) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the observer notification requirements specified in § 648.85(b)(7)(iv)(C).

(73) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the VMS declaration requirement specified in § 648.85(b)(7)(iv)(E).

(74) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the gear restrictions specified in § 648.85(b)(7)(iv)(F).

(75) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the landing limits specified in § 648.85(b)(7)(iv)(G).

(76) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the reporting requirement specified in § 648.85(b)(7)(iv)(H).

(77) Fish in the CA I Hook Gear Haddock Access Area specified in § 648.85(b)(7)(ii), if that area is closed as specified in § 648.85(b)(7)(iv)(K) or (b)(7)(v).

(78) Fish in the U.S./Canada Haddock SAP Pilot Program specified in § 648.85(b)(8), if the SAP Pilot Program is closed as specified in § 648.85(b)(8)(v)(K) or (L).

* * * * *

6. In § 648.81, paragraphs (b)(2)(iii), (b)(2)(iv) and (i) are revised to read as follows:

§ 648.81 NE multispecies closed areas and measures to protect EFH.

* * * * *

(b) * * *

(2) * * *

(iii) Fishing in the CA II Yellowtail Flounder SAP or the Eastern U.S./Canada Haddock SAP Pilot Program as specified in § 648.85(b)(3) and (8), respectively; or

(iv) Transiting the area, provided the vessel's fishing gear is stowed in accordance with the provisions of § 648.23(b); and

(A) The operator has determined, and a preponderance of available evidence indicates, that there is a compelling safety reason; or

(B) The vessel has declared into the Eastern U.S./Canada Area as specified in § 648.85(a)(3)(ii) and is transiting CA II in accordance with the provisions of § 648.85(a)(3)(vii).

* * * * *

(i) *Transiting*. A vessel may transit CA I, the Nantucket Lightship Closed Area, the Cashes Ledge Closed Area, the Western GOM Closure Area, the GOM Rolling Closure Areas, the GB Seasonal

Closure Area, and the EFH Closure Areas, as defined in paragraphs (a)(1), (c)(1), (d)(1), (e)(1), (f)(1), (g)(1), and (h)(1), respectively, of this section, unless otherwise restricted, provided that its gear is stowed in accordance with the provisions of § 648.23(b). A vessel may transit CA II, as defined in paragraph (b)(2) of this section, in accordance with paragraph (b)(2)(iv) of this section.

* * * * *

7. In § 648.82, paragraphs (d)(2)(i)(A) and (j)(1)(iii) are revised, and paragraph (e)(3) is added to read as follows:

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

* * * * *

(d) * * *

(2) * * *

(i) * * *

(A) *Restrictions on use.* Regular B DAS can only be used by NE multispecies vessels in an approved SAP or in the Regular B DAS Pilot Program as specified in § 648.85(a)(6). Vessels may not fish under both a Regular B DAS and a Reserve B DAS on the same trip. Vessels that are required by another fishery management plan (i.e., not the NE multispecies FMP) to utilize a multispecies DAS, as specified under § 648.92(b)(2), may elect to use a Category B DAS to satisfy that requirement.

* * * * *

(e) * * *

(3) For vessels electing to fish in the Regular B DAS Pilot Program, as specified at § 648.85(a)(6), and that remain fishing under a Regular B DAS for the entire fishing trip (without a DAS flip), DAS used will accrue at the rate of 1 full DAS for each calendar day, or part of a calendar day, fished. For example, a vessel that fished on one calendar day from 6 a.m. to 10 p.m. would be charged 24 hours of Regular B DAS, not 16 hours; a vessel that left on a trip 1 hour before midnight on the first calendar day and that fished until 1 hour after midnight of the next calendar day would be charged 48 hours of Regular B DAS because the fishing trip would have spanned 2 calendar days.

* * * * *

(j) * * *

(1) * * *

(iii) *Method of counting DAS.* Unless electing to fish in the Regular B DAS Pilot Program specified in § 648.85(a)(6), and therefore subject to the DAS accrual provisions of § 648.82(e)(3), Day gillnet vessels fishing with gillnet gear under a NE multispecies DAS will accrue 15 hours of DAS for each trip of more than

3 hours, but less than or equal to 15 hours. Such vessels will accrue actual DAS time at sea for trips less than or equal to 3 hours, or more than 15 hours.

* * * * *

8. In § 648.85, paragraphs (a)(3)(ii), (a)(3)(iv)(A), (a)(3)(v), and (b)(3)(viii) are revised; and paragraphs (a)(3)(iv)(C)(4), (a)(3)(v)(A) and (B), (a)(3)(vii), and (b)(5) through (b)(8) are added to read as follows:

§ 648.85 Special management programs.

* * * * *

(a) * * *

(3) * * *

(ii) *Declaration.* A NE multispecies DAS vessel that intends to fish in the U.S./Canada Management Area under a groundfish DAS must, prior to leaving the dock, declare the specific U.S./Canada Management Area described in paragraphs (a)(1)(i) or (ii) of this section, or the specific SAP, described in paragraph (b) of this section, within the U.S./Canada Management Area, through the VMS, in accordance with instructions to be provided by the Regional Administrator and comply with the restrictions and conditions in paragraphs (a)(3)(ii)(A) through (C) of this section. Vessels other than NE multispecies DAS vessels are not required to declare into the U.S./Canada Areas.

(A) A vessel fishing under a NE multispecies DAS in the Eastern U.S./Canada Area may not fish, during the same trip, outside of the Eastern U.S./Canada Area, and may not enter or exit the Eastern U.S./Canada Area more than once on any trip.

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

(C) For the purposes of selecting vessels for observer deployment, a vessel fishing in either of the U.S./Canada Management Areas specified in paragraph (a)(1) of this section must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; and the date, time, and port of departure, at least 72 hr prior to the beginning of any trip that it declares into the U.S./Canada Management Area as required under this paragraph (a)(3)(ii).

* * * * *

(iv) * * *

(A) *Cod landing limit restrictions.*

Notwithstanding other applicable possession and landing restrictions under this part, a NE multispecies vessel fishing in the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) of this section may not land more than 500 lb (226.8 kg) of cod per DAS, or any part of a DAS, up to 5,000 lb (2,268 kg) per trip, not to exceed 5 percent of the total catch on board, whichever is less, unless otherwise restricted under this part. A vessel fishing in both the Eastern U.S./Canada Area and either the CA II Yellowtail Flounder SAP or the Eastern U.S./Canada Haddock SAP Pilot Program on the same trip must comply with the cod possession restrictions for those programs, as specified in paragraphs (b)(3) and (8) of this section, respectively.

* * * * *

(C) * * *

(4) *Yellowtail flounder landing limit for vessels fishing both inside and outside the Western U.S./Canada Area on the same trip.* A vessel fishing both inside and outside of the Western U.S./Canada Area on the same trip, as allowed under paragraph (a)(3)(ii)(B) of this section, is subject to the most restrictive landing limits that apply to any of the areas fished.

* * * * *

(v) *Reporting.* The owner or operator of a NE multispecies DAS vessel must submit reports via the VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished when declared into either of the U.S./Canada Management Areas. The reports must include at least the information specified in paragraphs (a)(3)(v)(A) and (B) of this section, depending on area fished. The reports must be submitted in 24-hr intervals for each day, beginning at 0000 hr and ending at 2400 hr, and must be submitted by 0900 hr of the following day.

(A) *Eastern U.S./Canada Area.* For a vessel declared into the Eastern U.S./Canada Area in accordance with paragraph (a)(3)(ii) of this section, the reports must include at least the following information: Total pounds of cod, haddock and yellowtail flounder kept; and total pounds of cod, haddock, and yellowtail flounder discarded.

(B) *Western U.S./Canada Area.* For a vessel declared into the Western U.S./Canada Area in accordance with paragraph (a)(3)(ii) of this section, the reports must include at least the following information: Total pounds of yellowtail flounder kept and total

pounds of yellowtail flounder discarded. In addition to these reporting requirements, a vessel that has declared that it intends to fish both inside and outside of the Western U.S./Canada Area on the same trip, in accordance with paragraph (a)(3)(ii) of this section, must report via VMS the following information when crossing the boundary into or out of the Western U.S./Canada Area: Total pounds of yellowtail flounder kept, by statistical area, and total pounds of yellowtail flounder discarded, by statistical area, since the last daily catch report.

* * * * *

(vii) *Transiting*. A multispecies DAS vessel declared into the Eastern U.S./Canada Area as defined in paragraph (a)(1)(ii) of this section, and not fishing in the CA II Yellowtail Flounder SAP described in paragraph (b)(3) of this section, may transit the CA II Yellowtail Flounder SAP as described in paragraph (b)(3)(ii) of this section, provided all fishing gear is stowed in accordance with the regulations at § 648.23(b).

(b) * * *

(3) * * *

(viii) *Trip limits*. Unless otherwise authorized by the Regional Administrator as specified in paragraph (a)(3)(iv)(D) of this section, a vessel fishing in the CA II Yellowtail Flounder SAP may fish for, possess, and land up to 30,000 lb (13,608 kg) of yellowtail flounder per trip, and may not fish for, possess, or land more than 1,000 lb (453.6 kg) of cod per trip, regardless of trip length.

* * * * *

(5) *Incidental TACs*. Unless otherwise specified in this paragraph (b)(5), incidental TACs will be specified through the periodic adjustment process described in § 648.90, and allocated as described in paragraph (b)(5) of this section, for each of the following stocks: GOM cod, GB cod, CC/GOM yellowtail flounder, American plaice, white hake, SNE/MA yellowtail flounder, SNE/MA winter flounder, and witch flounder. NMFS will send letters to limited access NE multispecies permit holders notifying them of such TACs.

(i) *Stocks other than GB cod*. With the exception of GB cod, the incidental TACs specified under this paragraph (b)(5) shall be allocated to the Regular B DAS Pilot Program described in paragraph (b)(6) of this section.

(ii) *GB cod*. The incidental TAC for GB cod specified in this paragraph (b)(5), shall be subdivided as follows: 50 percent to the Regular B DAS Pilot Program, described in paragraph (b)(6) of this section; 16 percent to the CA I Hook Gear Haddock SAP, described in

paragraph (b)(7) of this section; and 34 percent to the Eastern U.S./Canada Haddock SAP Pilot Program, described in paragraph (b)(8) of this section.

(6) *B Regular DAS Pilot Program*—(i) *Eligibility*. Vessels issued a valid limited access NE multispecies DAS permit and allocated Regular B DAS are eligible to participate in the Regular B DAS Pilot Program for the period specified in paragraph (b)(6)(ii) of this section, and may elect to fish under a Regular B DAS, provided they comply with the requirements and restrictions of this paragraph (b)(6), and provided the use of Regular B DAS is not restricted according to paragraphs (b)(6)(iv)(G) or (H), or paragraph (b)(6)(vi) of this section. Vessels are required to comply with the no discarding and DAS flip requirements specified in paragraph (b)(6)(iv)(E) of this section, and the DAS balance and accrual requirements specified in paragraph (b)(6)(iv)(F) of this section. Vessels may not fish under the B Regular DAS Pilot program in the Eastern U.S./Canada Area.

(ii) *Duration of program*. Fishing under this program may only occur from November 1, 2004, through October 31, 2005.

(iii) *Quarterly incidental catch TACs*. The incidental catch TACs specified in accordance with paragraph (b)(5) of this section shall be divided into quarterly catch TACs.

(iv) *Program requirements*—(A) *VMS requirement*. A NE multispecies DAS vessel fishing in the Regular B DAS Pilot Program described in paragraph (b)(6)(i) of this section must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(B) *Observer notification*. For the purposes of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; the date, time, and port of departure; and the planned fishing area or areas (GOM, GB, or SNE/MA) at least 72 hr prior to the beginning of any trip that it declares into the Regular B DAS Pilot Program as required under paragraph (b)(6)(iv)(C) of this section, and in accordance with instructions provided by the Regional Administrator.

(C) *VMS declaration*. Prior to departure from port, a vessel intending to participate in the Regular B DAS Pilot Program and to fish under a Regular B DAS must declare into the Program via the VMS, in accordance with instructions provided by the Regional Administrator. A vessel declared into the Regular B DAS Pilot Program cannot

fish in an approved SAP described under this section on the same trip.

(D) *Landing limits*. A NE multispecies vessel fishing in the Regular B DAS Pilot Program described in this paragraph (b)(6), and fishing under a Regular B DAS, may not land more than 100 lb (45.5 kg) per DAS, or any part of a DAS, up to a maximum of 1,000 lb (454 kg) per trip, of any of the following species: Cod, American plaice, white hake, witch flounder, ocean pout, winter flounder and windowpane flounder. Such vessels may not land more than 25 lb (11.3 kg) per DAS, or any part of a DAS, up to a maximum of 250 lb (113 kg) per trip of yellowtail flounder, unless fishing the entire trip in the U.S./Canada Management Area as specified under paragraph (a) (1) of this section.

(E) *No-discard provision and DAS flips*. A vessel fishing in the Regular B DAS Pilot Program under a Regular B DAS may not discard legal-sized regulated groundfish. If such a vessel harvests and brings on board more legal sized regulated groundfish than the applicable maximum landing limit per trip specified under paragraph (b)(6)(iv)(D) of this section, the vessel operator must notify NMFS immediately via VMS to initiate a DAS flip. Once this notification has been received by NMFS, the vessel will automatically be switched by NMFS to fishing under a Category A DAS. For a vessel that notified NMFS of a DAS flip, the B DAS that have accrued between the time the vessel started accruing Regular B DAS at the beginning of the trip (i.e., at the time the vessel crossed the demarcation line at the beginning of the trip) and the time the vessel declared its DAS flip will be accrued as Category A DAS, and not Regular B DAS. Once such vessel has initiated the DAS flip and is fishing under a Category A DAS, the prohibition on discarding legal-sized regulated groundfish no longer applies. A vessel that has declared a DAS flip will be subject to the landing restrictions specified under § 648.86.

(F) *Minimum Category A DAS and B DAS accrual*. For a vessel fishing under the Regular B DAS Pilot Program, the number of Regular B DAS that can be used on a trip cannot exceed the number of Category A DAS the vessel has available at the start of the trip. The vessel will accrue DAS in accordance with § 648.82(e)(3).

(G) *Restrictions when 100 percent of the incidental catch TAC is harvested*. With the exception of white hake, when the Regional Administrator projects that 100 percent of one or more of incidental TACs specified under paragraph (b)(6)(iii) of this section has been

harvested, the use of Regular B DAS will be prohibited in the pertinent stock area(s) as defined under paragraph (b)(6)(v) of this section for the duration of the calendar quarter. The closure of a stock area to all Regular B DAS use will occur even if the incidental catch TACs for other stocks in that stock area have not been completely harvested. When the Regional Administrator projects that 100 percent of the white hake incidental catch TAC specified under paragraph (b)(6)(iii) of this section has been harvested, vessels fishing under a Regular B DAS, or that complete a trip under a Regular B DAS, will be prohibited from retaining white hake.

(H) *Closure of Regular B DAS program and quarterly DAS limit.* Unless otherwise closed as a result of the harvest of all incidental TACs as described in paragraph (b)(6)(iv)(G) of this section, or as result of an action by the Regional Administrator under paragraph (b)(6)(vi) of this section, the use of Regular B DAS will, through rulemaking consistent with the Administrative Procedure Act, be prohibited when 1,000 Regular B DAS have been used during the calendar quarter, in accordance with § 648.82(e)(3).

(I) *Reporting requirements.* The owner or operator of a NE multispecies DAS vessel must submit catch reports via VMS in accordance with instructions provided by the Regional Administrator, for each day fished when declared into the Regular B DAS Pilot Program. The reports must be submitted in 24-hr intervals for each day, beginning at 0000 hr and ending at 2400 hr. The reports must be submitted by 0900 hr of the following day. For vessels that have declared into the Regular B DAS Pilot Program in accordance with paragraph (b)(6)(iv)(C) of this section, the reports must include at least the following information: Statistical area fished, total weight (lb/kg) of cod, yellowtail flounder, American plaice, white hake, winter flounder, and witch flounder kept; and total weight (lb/kg) of cod, yellowtail flounder, American plaice, white hake, winter flounder, and witch flounder discarded.

(v) *Definition of incidental TAC stock areas.* For the purposes of the Regular B DAS Pilot Program, the species stock areas associated with the incidental TACs are defined in the following charts. Copies of a chart depicting these areas are available from the Regional Administrator upon request.

(A) *GOM cod stock area.* The GOM cod stock area is the area defined by straight lines connecting the following points in the order stated:

GULF OF MAINE COD STOCK AREA

Point	N. Lat.	W. Long.
GOM1	(1)	70° 00'
GOM2	42° 20'	70° 00'
GOM3	42° 20'	67° 40'
GOM4	43° 50'	67° 40'
GOM5	43° 50'	66° 50'
GOM6	44° 20'	66° 50'
GOM7	44° 20'	67° 00'
GOM8	(2)	67° 00'

(1) Intersection of the north-facing coastline of Cape Cod, MA, and 70° 00' W. Long.

(2) Intersection of the south-facing Maine coastline and 67° 00' W. Long.

(B) *GB cod stock area.* The GB cod stock area is the area defined by straight lines connecting the following points in the order stated:

GEORGES BANK COD STOCK AREA

Point	N. Lat.	W. Long.
GB1	(1)	70° 00'
GB2	42° 20'	70° 00'
GB3	42° 20'	66° 00'
GB4	42° 10'	66° 00'
GB5	42° 10'	65° 50'
GB6	42° 00'	65° 50'
GB7	42° 00'	65° 40'
GB8	40° 30'	65° 40'
GB9	39° 00'	65° 40'
GB10	39° 00'	70° 00'
GB11	35° 00'	70° 00'
GB12	35° 00'	(2)

(1) Intersection of the north-facing coastline of Cape Cod, MA, and 70° 00' W. Long.

(2) Intersection of east-facing coastline of Outer Banks, NC, and 35° 00' N. Lat.

(C) *CC/GOM yellowtail flounder stock area.* The CC/GOM yellowtail flounder stock area is the area defined by straight lines connecting the following points in the order stated:

CAPE COD/GULF OF MAINE YELLOWTAIL FLOUNDER STOCK AREA

Point	N. Lat.	W. Long.
CCGOM1	(1)	70° 00'
CCGOM2	41° 20'	(2)
CCGOM3	41° 20'	69° 50'
CCGOM4	41° 10'	69° 50'
CCGOM5	41° 10'	69° 30'
CCGOM6	41° 00'	69° 30'
CCGOM7	41° 00'	68° 50'
CCGOM8	42° 20'	68° 50'
CCGOM9	42° 20'	67° 40'
CCGOM10	43° 50'	67° 40'
CCGOM11	43° 50'	66° 50'
CCGOM12	44° 20'	66° 50'
CCGOM13	44° 20'	67° 00'
CCGOM14	(3)	67° 00'

(1) Intersection of the south-facing coastline of Cape Cod, MA, and 70° 00' W. Long.

(2) Intersection of the east-facing coastline of Nantucket, MA and 41° 20' N. Lat. and 67° 00' W. Long.

(3) Intersection of south-facing Maine coastline and 67° 00' W. Long.

(D) *American plaice stock area.* The American plaice stock area is the area defined by straight lines connecting the following points in the order stated:

AMERICAN PLAICE STOCK AREA

Point	N. Lat.	W. Long.
AMP1	(1)	67° 00'
AMP2	44° 20'	67° 00'
AMP3	44° 20'	66° 50'
AMP4	43° 50'	66° 50'
AMP5	43° 50'	67° 40'
AMP6	42° 30'	67° 40'
AMP7	42° 30'	66° 00'
AMP8	42° 10'	66° 00'
AMP9	42° 10'	65° 50'
AMP10	42° 00'	65° 50'
AMP11	42° 00'	65° 40'
AMP12	40° 30'	65° 40'
AMP13	39° 00'	65° 40'
AMP14	39° 00'	70° 00'
AMP15	35° 00'	70° 00'
AMP16	35° 00'	(2)

(1) Intersection of the south-facing Maine coastline and 67° 00' W. Long.

(2) Intersection of the east-facing coastline of Outer Banks, NC and 35° 00' N. Lat.

(E) *SNE/MA yellowtail flounder stock area.* The SNE/MA yellowtail flounder stock area is the area defined by straight lines connecting the following points in the order stated:

SOUTHERN NEW ENGLAND/MID-ATLANTIC YELLOWTAIL FLOUNDER STOCK AREA

Point	N. Lat.	W. Long.
SNE1	35° 00'	(1)
SNE2	35° 00'	70° 00'
SNE3	39° 00'	70° 00'
SNE4	39° 00'	71° 40'
SNE5	39° 50'	71° 40'
SNE6	39° 50'	68° 50'
SNE7	41° 00'	68° 50'
SNE8	41° 00'	69° 30'
SNE9	41° 10'	69° 30'
SNE10	41° 10'	69° 5'
SNE11	41° 20'	69° 50'
SNE12	(2)	70° 00'
SNE13	(3)	70° 00'
SNE14	(4)	70° 00'

(1) Intersection of east-facing coastline of Outer Banks, NC, and 35° 00' N. Lat.

(2) Intersection of south-facing coastline of Nantucket, MA, and 70° 00' W. Long.

(3) Intersection of north-facing coastline of Nantucket, MA, and 70° 00' W. Long.

(4) Intersection of south-facing coastline of Cape Cod, MA, and 70° 00' W. Long.

(F) *SNE/MA winter flounder stock area.* The SNE/MA winter flounder stock area is the area defined by straight lines connecting the following points in the order stated:

SOUTHERN NEW ENGLAND/MID-ATLANTIC WINTER FLOUNDER STOCK AREA

Point	N. Lat.	W. Long.
SNEW1	(1)	70°00'
SNEW2	42°20'	70°00'
SNEW3	42°20'	68°50'
SNEW4	39°50'	68°50'
SNEW5	39°50'	71°40'
SNEW6	39°50'	70°00'
SNEW7	35°00'	70°00'
SNEW8	35°00'	(2)

(1) Intersection of north-facing coastline of Cape Cod, MA, and 70° 00' W. Long.

(2) Intersection of east-facing coastline of Outer Banks, NC, and 35° 00' N. Lat.

(G) *Witch flounder stock area.* The witch flounder stock area is the area defined by straight lines connecting the following points in the order stated:

WITCH FLOUNDER STOCK AREA

Point	N. Lat.	W. Long.
WF1	(1)	67°00'
WF2	44°20'	67°00'
WF3	44°20'	66°50'
WF4	43°50'	66°50'
WF5	43°50'	67°40'
WF6	42°20'	67°40'
WF7	42°20'	66°00'
WF8	42°10'	66°00'
WF9	42°10'	65°50'
WF10	42°00'	65°50'
WF11	42°00'	65°40'
WF12	40°30'	65°40'
WF13	40°30'	66°40'
WF14	39°50'	66°40'
WF15	39°50'	70°00'
WF16	(2)	70°00'
WF17	(3)	70°00'
WF18	(4)	70°00'

(1) Intersection of south-facing Maine coastline and 67°00' W. Long.

(2) Intersection of south-facing coastline of Nantucket, MA, and 70°00' W. Long.

(3) Intersection of north-facing coastline of Nantucket, MA, and 70°00' W. Long.

(4) Intersection of south-facing coastline of Cape Cod, MA, and 70°00' W. Long.

(vi) *Closure of the Regular B DAS Pilot Program.* The Regional Administrator, based upon information required under §§ 648.7, 648.9, 648.10, or 648.85, and any other relevant information, may prohibit, through rulemaking consistent with the Administrative Procedure Act, the use of Regular B DAS for the duration of a quarter or fishing year, if it is projected that continuation of the Regular B DAS Pilot Program would undermine the achievement of the objectives of the FMP or Regular B DAS Pilot Program, or if the level of observer coverage is insufficient to make such a projection.

(7) *CA I Hook Gear Haddock SAP—(i) Eligibility.* Vessels issued a valid limited access NE multispecies DAS

permit, a limited access Handgear A permit, or an open access Handgear B permit are eligible to participate in the CA I Hook Gear Haddock SAP, and may fish in the CA I Hook Gear Haddock Access Area, as described in paragraph (b)(7)(ii) of this section, for the season specified in paragraph (b)(7)(iii) of this section, provided such vessels comply with the requirements of this section, and provided the SAP is not closed according to the provisions specified under paragraphs (b)(7)(iv)(K) or (b)(7)(v) of this section. Copies of a chart depicting this area are available from the Regional Administrator upon request.

(ii) *CA I Hook Gear Haddock Access Area.* The CA I Hook Gear Haddock Access Area is the area defined by straight lines connecting the following points in the order stated:

CLOSED AREA I HOOK GEAR HADDOCK ACCESS AREA

Point	N. Lat.	W. Long.
Hook 1	41°25.6'	69°20.2'
Hook 2	41°29.2'	69°08.1'
Hook 3	41°08.5'	68°50.2'
Hook 4	41°06.4'	69°03.3'

(iii) *Season.* Eligible vessels may fish in the CA I Hook Gear Haddock SAP from October 1 through December 31.

(iv) *Program restrictions—(A) DAS use restrictions.* Vessels fishing in the CA I Hook Gear Haddock SAP may use Category A, Regular B or Reserve B DAS, in accordance with § 648.82(d)(2)(i)(A). A vessel fishing in the CA I Hook Gear Haddock SAP may not initiate a DAS flip. With the exception of vessels legally participating in the GB Cod Hook Sector, as authorized under § 648.87(d)(1), a vessel fishing in the CA I Hook Gear Haddock SAP, under either a Category A or Category B DAS, may fish a maximum of 4 DAS in the SAP per trip. A vessel fishing both inside and outside of the SAP on the same trip may only use a Category A DAS on such a trip, may only enter or exit the CA I Hook Gear Haddock SAP described in paragraph (b)(7)(ii) of this section once per trip, and is subject to the gear and reporting requirements specified in paragraphs (b)(7)(iv)(F) and (H), respectively.

(B) *VMS requirement.* A NE multispecies DAS vessel fishing in the CA I Hook Gear Haddock SAP specified in this paragraph (b)(7) must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(C) *Observer notifications.* With the exception of the 2004 fishing year, a vessel intending to participate in the CA I Hook Gear Haddock SAP must notify the NMFS Observer Program by telephone by September 1 of its intent to participate. This notification need not include specific information about the date of the trip. For the 2004 fishing year, a vessel must notify NMFS by a date set by the Regional Administrator. For the purposes of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; and date, time, and port of departure at least 72 hr prior to the beginning of any trip that it declares into the CA I Hook Gear Haddock SAP, as required in paragraph (b)(7)(iv)(B) of this section, and in accordance with instructions provided by the Regional Administrator.

(D) *Observer program funding.* The Regional Administrator may authorize the funding of observers by Sector vessels (for Sector vessels), consistent with applicable law, based upon the estimated participation level of vessels in the CA I Hook Gear Haddock SAP, if it is determined that the funding is inadequate to provide sufficient observer coverage for total number of vessels (both the non-Sector and GB Cod Hook Sector vessels).

(E) *VMS declaration.* Prior to departure from port, a vessel intending to participate in the CA I Hook Gear Haddock SAP must declare into the SAP via VMS, and provide information on the type of DAS (Category A, Regular B, or Reserve B) that it intends to fish, and whether it intends to fish outside of the SAP on the same trip, in accordance with instructions provided by the Regional Administrator. A vessel declared into the CA I Hook Gear Haddock SAP cannot fish in another SAP specified under this section on the same trip.

(F) *Gear restrictions.* A vessel fishing exclusively in the CA I Hook Gear Haddock SAP is exempt from the maximum number of hook restriction specified in § 648.80(a)(4)(v). Unless otherwise exempted by a Sector letter of authorization, as described under § 648.87(c)(3), a vessel fishing both inside and outside of the SAP on the same trip is subject to the maximum number of hooks fished specified under § 648.80(a)(4)(v).

(G) *Landing limits.* Unless otherwise exempted by a Sector letter of authorization, as described under § 648.87(c)(3), a NE multispecies vessel fishing in the CA I Hook Gear Haddock Access Area described in paragraph

(b)(7)(ii) of this section may not land more than 500 lb (226.8 kg) of cod per DAS, or any part of a DAS, up to 2,000 lb (4,403 kg) per trip.

(H) *Reporting requirements.* With the exception of vessels participating in the Sector, as described under § 648.87(d)(1), the owner or operator of a vessel declared into the CA I Hook Gear Haddock Area, as described in paragraph (b)(7)(ii) of this section, must submit reports via VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished when declared into the CA I Hook Gear Haddock Access Area. The reports must be submitted in 24-hr intervals for each day, beginning at 0000 hr and ending at 2400 hr. The reports must be submitted by 0900 hr of the following day. When such vessel fishes both inside and outside the Closed Area I Hook Gear Haddock Area on the same trip, as allowable under paragraph (b)(7)(iv)(A) of this section, the owner or operator must also submit a report when the vessel leaves or enters the area, as appropriate. The owner or operator of a vessel participating in the Sector, as described under § 648.87(d)(1), and declared into the CA I Hook Gear Haddock Area, must submit reports to the Sector Manager, with instructions to be provided by the Sector Manager, for each day fished, when declared into the CA I Hook Gear Haddock Area. For all vessels that have declared into the CA I Hook Gear Haddock Access Area in accordance with paragraph (b)(7)(iv)(B) of this section, the reports must include at least the following information: Total weight (lb/kg) of cod and haddock kept, and total weight (lb/kg) of cod and haddock discarded.

(I) *Incidental cod TAC.* The maximum amount of GB cod (landings and discards) that may be harvested by non-Sector vessels from the CA I Hook Gear Haddock Access Area in a fishing year is the amount specified under paragraph (b)(5) of this section.

(J) *Haddock TAC.* The maximum amount of haddock (landings and discards) that may be harvested in a fishing year from the CA I Hook Gear Haddock Access Area by vessels fishing under a Category B DAS is 1,000 mt.

(K) *Mandatory closure of CA I Hook Gear Haddock Access Area.* When the Regional Administrator projects that the haddock TAC specified in paragraph (b)(7)(iv)(J) of this section has been caught by vessels fishing under Category B DAS, NMFS will close, through rulemaking consistent with the Administrative Procedure Act, the CA I Hook Gear Haddock Access Area to all NE multispecies vessels. When the Regional Administrator projects that the

incidental cod TAC specified in paragraph (b)(7)(iv)(I) of this section has been caught, NMFS shall, through rulemaking consistent with the Administrative Procedure Act, prohibit the use of Category B DAS in the CA I Hook Gear Haddock Access Area.

(v) *General Closure of the CA I Hook Gear Haddock Access Area.* The Regional Administrator, based upon information required under §§ 648.7, 648.9, 648.10, or 648.85, and any other information, may, through rule-making consistent with the Administrative Procedure Act, close the CA I Hook Gear Haddock Access Area for the duration of the season, if the level of observer coverage is insufficient to project whether continuation of the SAP will undermine the achievement of the objectives of the FMP or the CA I Hook Gear Haddock SAP.

(8) *Eastern U.S./Canada Haddock SAP Pilot Program—(i) Eligibility.* Vessels issued a valid limited access NE multispecies DAS permit, and fishing with trawl gear, are eligible to participate in the Eastern U.S./Canada Haddock SAP Pilot Program, and may fish in the Eastern U.S./Canada Haddock SAP Area, as described in paragraph (b)(8)(ii) of this section, during the program duration and season specified in paragraphs (b)(8)(iii) and (iv) of this section, provided such vessels comply with the requirements of this section, and provided the SAP is not closed according to the provisions specified in paragraphs (b)(8)(v)(K) or (L) of this section. Copies of a chart depicting this area are available from the Regional Administrator upon request.

(ii) *Eastern U.S./Canada Haddock SAP Area.* The Eastern U.S./Canada Haddock SAP Area is the area defined by straight lines connecting the following points in the order stated:

EASTERN U.S./CANADA HADDOCK SAP AREA

Point	N. Lat.	W. Long.
CAII3	42°22'	(¹) 67°20'
SAP1	42°20'	67°20'
SAP2	42°20'	67°40'
SAP3	41°10'	67°40'
SAP4	41°10'	67°20'
SAP5	42°10'	67°20'
SAP6	42°10'	67°10'
CAII8	42°22'	(¹) 67°20'

(¹) U.S./Canada maritime boundary.

(iii) *Duration of program.* The Eastern U.S./Canada Haddock SAP Pilot Program is in effect from [date of implementation of FW 40–A] through [date 2 years from the date of implementation of FW 40–A].

(iv) *Season.* Eligible vessels may fish in the Eastern U.S./Canada Haddock SAP Pilot Program from May 1 through December 31.

(v) *Program restrictions—(A) DAS use restrictions.* A vessel fishing in the Eastern U.S./Canada Haddock SAP Pilot Program may elect to fish under a Category A, or Category B DAS, in accordance with § 648.82(d)(2)(i)(A) and the restrictions of this paragraph (b)(8)(v)(A).

(1) If fishing under a Category B DAS, a vessel is required to comply with the n°discarding and DAS flip requirements specified in paragraph (b)(8)(v)(I) of this section, and the minimum Category A DAS requirements of paragraph (b)(8)(v)(J) of this section.

(2) A vessel that is declared into the Eastern U.S./Canada Haddock SAP Pilot Area, described in paragraph (b)(8)(ii) of this section, may fish, on the same trip, in the Eastern U.S./Canada Haddock SAP Area and in the CA II Yellowtail Flounder Access Area, described in paragraph (b)(3)(ii) of this section, under either a Category A DAS or a Category B DAS.

(3) A vessel may choose, on the same trip, to fish in either/both the Eastern U.S./Canada Haddock SAP Area and the CA II Yellowtail Flounder Access Area, and in that portion of the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) of this section that lies outside of these two SAPs provided the vessel fishes under a Category A DAS and abides by the VMS restrictions of paragraph (b)(8)(v)(D) of this section. The use of a Category A DAS is required because the use of Category B DAS is not allowed in that portion of the Eastern U.S./Canada Area that lies outside of SAPs.

(4) Vessels that elect to fish in multiple areas, as described in this paragraph (b)(8)(v)(A), must fish under the most restrictive trip provisions of any of the areas fished.

(B) *VMS requirement.* A NE multispecies DAS vessel fishing in the Eastern U.S./Canada Haddock SAP Area specified under paragraph (b)(8)(ii) of this section, must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(C) *Observer notifications.* For the purposes of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; areas to be fished; and date, time, and port of departure at least 72 hr prior to the beginning of any trip which it declares into the Eastern U.S./Canada Haddock SAP Area specified in

paragraph (b)(8)(ii) of this section, as required under paragraph (b)(8)(v)(D) of this section, and in accordance with instructions provided by the Regional Administrator.

(D) *VMS declaration.* Prior to departure from port, a vessel intending to participate in the Eastern U.S./Canada Haddock SAP must declare into the SAP via VMS and provide information on the type of DAS (Category A, Regular B, or Reserve B) that it intends to fish, and on the areas within the Eastern U.S./Canada Area that it intends to fish, in accordance with paragraph (b)(8)(v)(A) of this section and instructions provided by the Regional Administrator.

(E) *Gear restrictions.* A NE multispecies vessel fishing in the Eastern U.S./Canada Haddock SAP Pilot Program must use one of the haddock separator trawl nets or flounder trawl nets authorized for the Eastern U.S./Canada Area, as specified in paragraph (a)(3)(iii) of this section.

(F) *Landing limits.* A NE multispecies vessel fishing any portion of a trip in the Eastern U.S./Canada Haddock SAP Pilot Program may not fish for, possess, or land more than 1,000 lb (453.6 kg) of cod per trip, regardless of trip length. A NE multispecies vessel fishing in the Eastern U.S./Canada Haddock SAP Pilot Program is subject to the haddock requirements described under § 648.86(a).

(G) *Reporting requirements.* The owner or operator of a vessel declared into the Eastern U.S./Canada Haddock SAP, as described in paragraph (b)(8) of this section, must submit reports in

accordance with the reporting requirements described in paragraph (a)(3)(v) of this section.

(H) *Incidental cod TAC.* The maximum amount of GB cod (landings and discards) that may be caught from the Eastern U.S./Canada Haddock SAP Area in a fishing year, by vessels fishing under a Category B DAS, as authorized in paragraph (b)(8)(v)(A) of this section, is the amount specified in paragraph (b)(5)(i)(B) of this section.

(I) *No discard provision and DAS flips.* A vessel fishing in the Eastern U.S./Canada Haddock SAP Pilot Program under a Category B DAS may not discard legal-sized cod. If a vessel fishing under a Category B DAS harvests and brings on board more legal-sized cod than the landing limit specified under paragraph (b)(8)(v)(F) of this section, the vessel operator must notify NMFS immediately via VMS to initiate a DAS flip to Category A DAS. Once this notification has been received by NMFS, the vessel will automatically be switched to fishing under a Category A DAS. For a vessel that notified NMFS of a DAS flip, the Category B DAS that have accrued between the time the vessel started accruing Category B DAS at the beginning of the trip (i.e., at the time the vessel crossed the demarcation line at the beginning of the trip) and the time the vessel declared its DAS flip will be accrued as Category A DAS, and not Category B DAS. Once such vessel has initiated the DAS flip and is fishing under a Category A DAS, the prohibition on discarding legal-sized cod no longer applies. A vessel that has declared a DAS flip will be subject to

the landing restrictions specified under § 648.86.

(J) *Minimum Category A DAS.* For vessels fishing under a Category B DAS, the number of Category B DAS that can be used on a trip cannot exceed the number of available Category A DAS the vessel has at the start of the trip.

(K) *Mandatory closure of Eastern U.S./Canada Haddock SAP Pilot Program.* When the Regional Administrator projects that the TAC allocation specified in paragraph (b)(8)(v)(H) of this section has been caught by vessels fishing under Category B DAS, the use of Category B DAS in the Eastern U.S./Canada Haddock SAP Pilot Program will be prohibited. In addition, the closure regulations described in paragraph (a)(3)(iv)(E) of this section shall apply to the Eastern U.S./Canada Haddock SAP Pilot Program.

(L) *General closure of the Eastern U.S./Canada Haddock SAP Area.* The Regional Administrator, based upon information required under §§ 648.7, 648.9, 648.10, or 648.85, and any other information may, through rulemaking consistent with the Administrative Procedure Act, close the Eastern U.S./Canada Haddock SAP Area for the duration of the season, if it is projected that continuation of the Eastern U.S./Canada Haddock SAP Pilot Program would undermine the achievement of the objectives of the FMP or the Eastern U.S./Canada Haddock SAP Pilot Program, or if the level of observer coverage is insufficient to make such a projection.

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