

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 new information collection received on 03/28/2005.

TITLE: Northeast Multispecies Framework Adjustment 40-B
Permit Information Data Collection

AGENCY FORM NUMBER(S): None

ACTION : APPROVED WITH CHANGE
OMB NO.: 0648-0521
EXPIRATION DATE: 05/31/2008

BURDEN:	RESPONSES	HOURS	COSTS(\$,000)
Previous	0	0	0
New	441,626	593	90
Difference	441,626	593	90
Program Change		593	90
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
7. Title	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
8. Agency form number(s) (<i>if applicable</i>)	6. Requested expiration date a. <input type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: _____ / _____
9. Keywords	10. Abstract
11. Affected public (<i>Mark primary with "P" and all others that apply with "x"</i>) a. ___ Individuals or households d. ___ Farms b. ___ Business or other for-profit e. ___ Federal Government c. ___ Not-for-profit institutions f. ___ 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. ___ Application for benefits e. ___ Program planning or management b. ___ Program evaluation f. ___ Research c. ___ General purpose statistics g. ___ Regulatory or compliance d. ___ 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 FRAMEWORK 40B
PERMIT DATA COLLECTION**

INTRODUCTION

This submission requests Office of Management and Budget (OMB) clearance of information collection provisions for the vessel permit requirements proposed under Framework Adjustment 40B (Framework 40B) to the Northeast (NE) Multispecies Fishery Management Plan (FMP). This information collection submission builds upon a previously approved submission under the “Northeast Region Permit Family of Forms” (OMB Control No. 0648-0202). OMB Control No. 0648-0202 includes information collection burden estimates for provisions relating to the permitting requirements of all FMP’s managed by the Northeast Regional Office of the National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NOAA Fisheries). Currently, OMB Control No. 0648-0202 is being modified to include information collection provisions proposed under Amendment 2 to the Monkfish FMP. Since these revisions are currently under review with the OMB, this submission to further modify the information collections approved under OMB Control No. 0648-0202 is considered a new information collection. If approved, NOAA Fisheries intends to integrate this new information collection submission for the provisions contained in Framework 40B into OMB Control No. 0648-0202 when circumstances allow.

The New England Fishery Management Council (Council) is proposing management measures under Framework Adjustment 40B 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. The proposed measures under Framework 40B include the following provisions requiring new information collection requirements: (1) Requests for allocation of Georges Bank (GB) cod to facilitate research projects; (2) The Western Gulf of Maine (WGOM) Rod/Reel Haddock Special Access Program (SAP); (3) Herring vessel observer and law enforcement notifications; (4) Request for Days-at-Sea (DAS) credit from standing by an entangled whale. This information collection submission requests approval of new information collection requirements to implement the above provisions for Framework Adjustment 40B to the NE Multispecies FMP.

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 programs to facilitate targeting of healthy groundfish stocks. Framework 40A built upon the measures adopted in Amendment 13, implementing additional programs that would allow vessels to target healthy groundfish stocks without compromising the rebuilding objectives established under Amendment 13. Framework 40B further builds upon these actions to improve the effectiveness of the effort reductions implemented under Amendment 13 and to establish an additional opportunity to target healthy groundfish stocks without compromising the rebuilding objectives of the FMP. To do so, Framework 40B proposes to facilitate research on GB cod through a research set-aside total allowable catch (TAC), establish an additional SAP to facilitate the harvest of healthy groundfish stocks, and collect further groundfish bycatch information from herring vessels.

GB Cod Research Set-aside TAC

Amendment 13 established a range of measures to control fishing mortality that would prevent overfishing and allow overfished stocks to rebuild. For some species, the measures included in Amendment 13 are likely to reduce fishing mortality more than is needed to maintain the rebuilding schedule for these species. As a result, Framework 40A established incidental catch TAC's for stocks of concern (i.e., stocks under rebuilding programs whose Amendment 13 fishing mortality reductions would be closer to the rebuilding program) that would allow for limited increases of effort on these stocks without compromising the rebuilding objectives of Amendment 13.

Framework 40B proposes to set aside 10 percent of the GB cod incidental catch TAC to facilitate research. This TAC would be used to allow researchers to conduct experiments on groundfish without increasing fishing mortality on GB cod. Any TAC not allocated to research would be distributed to other programs using portions of the GB incidental catch TAC such as the Regular B DAS Pilot Program or the Eastern U.S./Canada Haddock SAP Pilot Program implemented under Framework 40A. Researchers would be required to submit a written request to NOAA Fisheries for a portion of the TAC they would require to conduct their experiments. NOAA Fisheries would then allocate a portion of the research set-aside TAC to these researchers. This request would include the amount of GB cod researchers anticipate to catch during the course of their experiments. This information is necessary to track the amount of GB cod expected to be caught during research operations. If not all of the research set-aside TAC has been allocated to facilitate research, information collected under this request would also be used to determine the amount of remaining TAC that should be redistributed to other programs utilizing this TAC as specified above.

WGOM Rod/Reel Haddock SAP

One of the ways the NE Multispecies FMP controls fishing mortality is by limiting the number of days that vessels can fish. Amendment 13 assigned each limited access permit holder a number of DAS that can be used. These DAS are categorized as Category A DAS, Category B (regular or reserve) DAS, or Category C DAS. Category A DAS could be used beginning May 1, 2004; to target any regulated groundfish stock. The management measures in Amendment 13 (including the allocation of Category A DAS) are designed so that the mortality objectives will be met for all stocks. The number of allocated Category A DAS was chosen so that the

appropriate amount of effort would be available to achieve, but not exceed, the target TAC amounts established for all regulated groundfish species consistent with the mortality objectives of the FMP. Any Category B DAS that are used increase the amount of effort. In order to prevent these additional DAS from threatening the mortality objectives of Amendment 13, Category B DAS can only be used to target healthy groundfish stocks in specific programs. Amendment 13 implemented one such program, the Closed Area II Yellowtail Flounder SAP, while Framework 40A implemented two additional SAP's (Closed Area I Hookgear Haddock SAP and the Eastern U.S./Canada Haddock SAP Pilot Program) and the Regular B DAS Pilot Program.

SAP's are narrowly defined fisheries that allow for increased access to specific stocks that might otherwise be restricted. Access to these stocks is permitted through exemptions to regulations that, in the absence of such exemptions, would prevent the full utilization of the allowable catch for those specific stocks. In doing so, the social and economic impacts associated with management initiatives are lessened. These access programs allow for increased yield of target stocks without compromising the efforts to rebuild overfished stocks, end overfishing, minimize bycatch, or minimize impact on essential fish habitat.

Framework 40B proposes to implement another SAP for vessels fishing for haddock in the GOM: The WGOM Closed Area Rod/Reel Haddock SAP. Vessels participating in this SAP would be required to meet the following requirements:

- Vessels would be required to obtain a Letter of Authorization (LOA) from the Regional Administrator (RA) declaring their intent to fish exclusively within the SAP for a minimum of seven days;
- Vessels would be required to purchase, install and use an approved Vessel Monitoring System (VMS);
- Vessel operators would be required to notify the NOAA Fisheries Observer Program 72 hours in advance of a trip into this SAP so that NOAA Fisheries can plan observer coverage;
- Vessel operators must declare their intent to participate in this SAP along with the type of DAS, if any, they are using during a trip into this SAP prior to the start of the trip using VMS;
- Vessel operators would be required to report the catch of stocks of concern daily through the VMS. This reporting requirement will be addressed in a separate new information collection request modifying the information collection previously approved for the "Northeast Region Logbook Family of Forms" (OMB Control No. 0648-0212).

Because SAP's allow for exemptions from the current regulations of a FMP, special permitting or LOA's are often required to ensure compliance and consistency with the purpose of the exemption. Special permits and LOA's provide a list of participants, their period of participation, and assist the agency in monitoring compliance with regulations governing these SAP's or exemption programs. Framework 40B would require vessels to participate in this SAP for a minimum of seven days. When participating in this SAP, vessels would be prohibited from fishing or setting any gear capable of catching groundfish outside of the SAP area. To facilitate the enforcement and monitoring of these provisions, Framework 40B would require vessels to obtain a LOA during the period they intend to participate in this SAP.

Vessels issued limited access NE multispecies permit that intend to fish in this SAP would be required to use a VMS. For those vessels that do not currently possess a VMS, vessel owners

would be required to purchase and install a certified VMS aboard their vessel. Vessels would be required to provide proof to the RA that a certified VMS has been installed, including the installation receipt from a NOAA Fisheries-certified VMS vendor. Once installed, the VMS units of limited access NE multispecies vessels are polled once per hour regardless of where they are operating. Without a VMS on board, monitoring vessel position, vessel participation in a SAP, DAS usage, and species' TACs as defined in Framework 40B and previous groundfish actions would not be possible.

Limited access multispecies vessels would be required to declare their intention to participate in this SAP through the VMS prior to leaving port. Under Framework 40B, category A or B DAS may be used within the WGOM Closure Area Rod/Reel Haddock SAP. Accordingly, vessels may choose whether to use a category A or B DAS prior to each trip into a particular SAP. Since Category B DAS may be used in approved SAPs, the declaration of DAS category is required to ensure that DAS are accurately monitored and enforced and that compliance with the provisions of approved SAPs and their possession limit regulations are maintained. Collecting this information would be necessary to monitor the activities of vessels participating this program, assess the amount of fish harvested under the agreement, and to enforce compliance with the provisions outlined in Framework 40B.

Proposed measures for this SAP would also require vessels to notify the NOAA Fisheries Observer Program of their intent to participate in this SAP 72 hours before beginning a trip into this SAP. This notification would be made in the form of a telephone call to the Observer Program. This notification is used by NOAA Fisheries to ensure that trips into each approved SAP are included in the pool of vessels that would receive observer coverage. These vessels may then be requested to carry on board a NOAA Fisheries-approved observer or sea sampler.

Herring Vessel Notifications

Currently, the herring fishery is considered an exempted fishery that is not capable of catching groundfish. However, recent reports of herring vessels catching regulated groundfish have prompted an interest in gaining a better understanding of the scope of groundfish bycatch in the herring fishery. This bycatch may not be accounted for in the rebuilding program established for the NE Multispecies FMP. Framework 40B proposes to require vessels with a Category I herring permit that fish in the GOM or GB Regulated Mesh Areas (RMA's) to notify the NOAA Fisheries Observer Program 72 hours before beginning a trip. In addition, if an observer is not provided for the trip, the vessel must notify NOAA Fisheries Office of Law Enforcement via VMS prior to offloading the catch. These provisions would be new requirements on the herring fishery and are intended to improve the ability to place an observer on herring vessels and to monitor offloads to determine the extent of groundfish bycatch in the herring fishery.

DAS Credit for Standing by and Entangled Whale

Every year, there are many reports of large whale entanglements. However, few entangled whales are actually disentangled because many of the reported entangled whales are never relocated. Given the effort reductions implemented under Amendment 13, vessels are reluctant to take the time to provide rescuers information about entangled whales because they could lose valuable fishing time. As a result, the Council included a measure in Framework 40B that would provide DAS credit for vessels that stand by an entangled whale. This credit would provide an

incentive for vessels to report and stand by entangled whales so that they can be successfully located and disentangled.

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.

The information requested under this submission would be used by several offices of NOAA Fisheries and the U.S. Coast Guard for the monitoring, implementation, and enforcement of the provisions proposed in Framework 40B.

As specified above, Framework 40B proposes to allocate 10 percent of the incidental catches TAC for GB cod to facilitate research. Information collected under this submission would be used by NOAA Fisheries staff to determine which research projects would be allocated portions of this TAC and how much of the remaining research set-aside TAC would be re-allocated to other programs using B DAS. Researchers interested in conducting research projects that are expected to catch GB cod would be required to submit one request to NOAA Fisheries once per year prior to May 1.

Vessels issued a limited access NE multispecies DAS permit and interested in participating in the WGOM Closure Area Rod/Reel Haddock SAP would be required to obtain a LOA to document their participation in this SAP. The minimum participation period for this LOA is seven days. To obtain a LOA for this SAP, vessels would be required to call NOAA Fisheries and request a LOA for the WGOM Closure Area Rod/Reel Haddock SAP. Given the season proposed for this SAP spans two months (March and April), it is possible that vessels could request this LOA several times throughout the season of this SAP. NOAA Fisheries Permit Office staff would use the information provided from the phone call to issue the requested LOA. This LOA would document a vessel's participation in the SAP and that the vessel has not set gear capable of catching groundfish outside of the WGOM Closure Area Rod/Reel Haddock SAP during the participation period of the LOA.

Framework 40B would require vessels participating in the WGOM Closure Area Rod/Reel Haddock SAP to use a VMS. Vessels not already possessing a VMS would be required to purchase and install a VMS unit meeting the criteria specified in the final rule for Amendment 13. Vessels would only be required to purchase a certified VMS unit one time. Vessels required to install a new VMS in order to participate in these programs would be required to submit documents to prove that an operational NOAA Fisheries-certified VMS unit has been installed. Once multispecies vessels chose to use VMS, they would be polled once per hour to determine geographic location regardless of the area they are fishing in. Polling would continue 365 days per year, regardless of vessel activity, unless the VMS is turned off according to the VMS power down exemption process implemented under Amendment 13. VMS data would be used by NOAA Fisheries and law enforcement personnel to monitor vessel activity, including vessel location, DAS use, and catch reporting and ensure compliance with the provisions of this SAP.

As stated previously, Amendment 13 created three categories of DAS within the NE multispecies fishery. Category B DAS may only be used in specific circumstances. Therefore, it is important to determine which category DAS a vessel is using in order to accurately monitor compliance

with the regulations. All limited access NE multispecies vessels are eligible to participate in the WGOM Closure Area Rod/Reel Haddock SAP. Vessels that are regulated by the DAS requirements would be required to declare their intent to participate in this SAP along with which category DAS they would be operating under prior to each fishing trip. This information must be submitted by those vessels participating in this SAP every time they intend to operate under the requirements of this SAP. This information would be used by NOAA Fisheries law enforcement personnel to monitor and track DAS usage and insure compliance with the appropriate regulations.

The NOAA Fisheries Office of Law Enforcement would use proof of VMS installation and operation, geographic data obtained from the polling of vessels, as well as the intent and DAS declaration information provided to participate in the WGOM Closure Area Rod/Reel Haddock SAP to identify participants as well as enforce the program provisions. Vessels may participate in these programs multiple times throughout the fishing year. DAS and area declaration information would be used by enforcement personnel to monitor compliance with effort and area restrictions. This information is currently being used to track and monitor vessel position; DAS use; and the number of trips into the Regular B DAS Pilot Program and the SAP's implemented under Framework 40A and Amendment 13.

NOAA Fisheries would use notifications of the intent to fish within the WGOM Closure Area Rod/Reel Haddock SAP to ensure that these trips have adequate observer coverage. Vessels would be required to inform NOAA Fisheries of the vessel name, contact name for coordination of observer deployment, telephone number for contact, date, time and port of departure, and the area to be fished prior to each trip into the WGOM Closure Area Rod/Reel Haddock SAP. NOAA Fisheries, or a contractor designated to implement the Observer Program, would use this information to select which vessels, in addition to all other eligible vessels operating outside of these programs, would be requested to carry NOAA Fisheries-approved observers or sea samplers during a specific trip. Observers would be used to monitor vessel activity and to collect catch and discard data. This information is currently being used to deploy NOAA Fisheries-approved observers or sea samplers for vessels intending to fish in other Category B DAS programs implemented under Amendment 13 and Framework 40A.

Vessels issued a Category 1 herring permit that intend to fish for herring in the GOM or GB Regulated Mesh Areas must call the NOAA Fisheries Observer Program and request an observer at least 72 hours in advance of any trip into these areas. In addition, if an observer waiver is granted, vessels would be required to notify the NOAA Fisheries Office of Law Enforcement of the time and place of landing prior to crossing the VMS demarcation line on their return to port. NOAA Fisheries, or a contractor designated to implement the Observer Program, would use this information to select which vessels, in addition to all other eligible vessels operating outside of these programs, would be requested to carry NOAA Fisheries-approved observers or sea samplers during a specific trip. Observers would be used to monitor vessel activity and to collect catch and discard data. NOAA Fisheries Office of Law Enforcement would use information on the time and place of landing will facilitate the ability of enforcement personnel to observe landing operations to collect additional groundfish bycatch information from the herring fishery.

Vessels standing by an entangled whale would be required to notify the U.S. Coast Guard and/or the Center for Coastal Studies of the location of the entangled whale and that the vessel intends to stand by the entangled whale until a response team arrives. The vessel would be required to

remain available to answer questions on the on the condition of the animal, possible species identification, severity of entanglement, etc., and take photographs of the whale, if possible. Once a response team arrives or the vessel is notified that a response team is not available to conduct a rescue operation, the vessel may discontinue standing by the entangled whale and could resume fishing operations. The vessel could then request DAS credit for time spent standing by the entangled whale by submitting a written request to the Regional Administrator. This written request must contain at least the following information: Date and time when the vessel began its stand-by status, date of first communication with the USCG and/or the Center for Coastal Studies, and date and time when the vessel terminated its stand-by status. Vessels may, in theory, stand by multiple entangled whales per year and request DAS credit for such efforts.

Information provided by the vessel to the U.S. Coast Guard and/or the Center for Coastal Studies would be used by these organizations to identify the species of whale, track the position of the animal, the monitor the condition of its entanglement. This information would then be used by the Center for Coastal Studies to initiate response efforts to disentangle the reported entangled whale. Information provided by a vessel to the Regional Administrator would be used by NOAA Fisheries Service Office of Law Enforcement staff to verify that the vessel had stood by an entangled whale and to provide DAS credit for time spent standing by an entangled whale, if appropriate.

It is anticipated that the information collected would be disseminated to the public or used to support publicly disseminated information. As explained in the preceding paragraphs, the information gathered has utility. NOAA Fisheries would retain control over the information and safeguard it from improper access, modification, and destruction, consistent with NOAA standards for confidentiality, privacy, and electronic information. See response #10 of this Supporting Statement for more information on confidentiality and privacy. The information collection is designed to yield data that meet all applicable information quality guidelines. Prior to dissemination, the information would be subjected to quality control measures and a pre-dissemination review pursuant to Section 515 of Public Law 106-554.

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.

The use of VMS involves the electronic collection of vessel position, activity code selection, and DAS category usage when participating in the WGOM Closure Area Rod/Reel Haddock SAP. The VMS unit automatically transmits vessel position information, while vessel operators would be required to manually enter activity codes and DAS selections. VMS represents the most advanced means of reporting this information to date. These requirements mirror those implemented under Amendment 13 and Framework 40A to participate in SAP's and the Regular B DAS Pilot Program. The provision to provide DAS credit for vessels standing by an entangled whale does not involve the use of any automated techniques, but would require the use of a Very High Frequency (VHF) radio and/or cellular or satellite phones.

4. Describe efforts to identify duplication.

NOAA Fisheries is aware of all related fishery management activities, and these requirements do not duplicate any in existence.

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.

NOAA Fisheries recently certified a new VMS vendor that is less expensive than the other certified VMS vendor currently being used by the fishing industry. In addition, this new VMS vendor uses hardware and software that more closely mirrors those used in home computers. These units are, therefore, more familiar to industry participants than the other certified vendor. This reduces the burden on the public by minimizing the need to learn to use unfamiliar hardware and software associated with VMS as well as minimizing costs associated with VMS.

Vessels would be able to communicate to the U.S. Coast Guard or the Center for Coastal Studies that they are standing by an entangled whale using VHF. This would not result in any additional costs to vessel.

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

The consequences of not conducting the collection of information described above would prevent these provisions of Framework 40B from being implemented. This collection of information is necessary for a variety of reasons specific to each particular provision. Failure to collect the above information or collecting it less frequently may compromise the ability of the provisions outlined in Framework 40B to provide opportunities to target healthy stocks without threatening the mortality objectives of Amendment 13. This may also prevent vessels from participating in programs specified in Framework 40B such as the WGOM Closure Area Rod/Reel Haddock SAP. This program could help offset some of the potential negative economic impacts caused by reductions in DAS that were adopted by Amendment 13. The GB cod research TAC set-aside proposed in Framework 40B would not be able to be allocated to facilitate research projects unless NOAA Fisheries is aware of research projects that could potentially catch GB cod. Failure to collect information on research projects catching GB cod would prevent NOAA Fisheries from accounting for the GB cod mortality associated with these research projects. Failure to collect information on herring vessel activity or collecting it less frequently could undermine efforts proposed in Framework 40B to collect groundfish bycatch information by herring vessels. This information is important in determining the impact of herring vessel operations on groundfish fishing mortality. Failure to collect information on the location of entangled whales could reduce the possibility that these whales could be spotted and rescue efforts attempted. This could result in the death of the entangled whale, including some endangered species such as the Right whale, in some circumstances.

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

Some of the requirements may not be consistent with OMB guidelines with regard to the reporting frequency. While OMB does not allow that respondents be required to report more often than quarterly, requirements for VMS polling requested with this submission would require more frequent reports. This information collection is required to be submitted once per hour. Polling of vessels once per hour is required in order to accurately monitor vessel position and activity. In addition, since the season for this SAP is specified for only two months of the year, collecting VMS information, including activity code declaration and DAS selection, on more than a quarterly basis is required to allow vessels to fish in this SAP more than once per fishing year. This information would be used to by NOAA Fisheries Office of Law Enforcement to enforce provisions of the WGOM Closure Area Rod/Reel Haddock SAP. Failure to collect information on the time and place of herring vessel offloading could minimize the ability of law enforcement personnel from observing herring vessel landings operations. This could reduce the amount of groundfish bycatch data obtained from the herring fishery, potentially leading to underestimating groundfish bycatch in the herring fishery. As specified above, failure to collect information on the location of entangled whales, or collecting it less frequently could jeopardize efforts to locate and disentangle whales that have become wrapped up in fishing gear.

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 Framework 40B 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 Framework 40B, 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 Framework Adjustment 40B to the NE Multispecies FMP. This rule announces the provisions specified above and solicits public comment on the program and the information collection requirements necessary to implement this program.

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 Framework 40B 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 following information is summarized in Table 1 at the end of the text. There are approximately 1,510 individual respondents estimated under this submission. These respondents include five research scientists, 105 herring vessels, and 1,400 vessels issued limited access NE multispecies permits that could stand by an entangled whale. Of these 1,400 vessels issued a limited access NE multispecies permit, only 200 are expected to participate in the WGOM Rod/Reel Haddock SAP. Due to duplication of participants in the various programs, affected entities were only counted once. Regulatory changes contained in this action would implement new burden estimates for new programs specified under Framework 40B. This submission provides an estimate of new burdens associated with these new programs.

Framework 40B would establish a research set-aside TAC for GB cod. Researchers would be able to apply to use portions of this TAC by submitting a written request to NOAA Fisheries by May 1. Each written request is anticipated to take approximately 30 minutes to prepare, including time to determine how much GB cod is expected to be caught during research vessel operations. There is no information available to determine the number of research TAC applications expected to be received by NOAA Fisheries as the decision to apply for research TAC rests exclusively with each individual researcher. An estimate of five research set-aside TAC requests was used for this submission based upon a conservative estimate of the number of research projects catching GB cod on a yearly basis. Using this estimate, the annual time burden for requesting GB cod research set-aside TAC is three (3) hours.

The WGOM Closure Area Rod/Reel Haddock SAP would require vessels possessing a limited access NE multispecies DAS permit and electing to participate in this SAP to obtain a LOA from the Regional Administrator. These LOA's may be obtained by calling the NOAA Fisheries Permit Office. It is estimated that each call to request this LOA would take approximately five (5) minutes per request. While any vessel issued a limited access NE multispecies DAS permit would be eligible to participate in this SAP, it is estimated that approximately 50 such vessels would participate in this SAP. It is estimated that each vessel would request one LOA per year. Thus, for this provision, the annual burden would amount to four (4) hours.

Amendments 5 and 7 to the NE Multispecies FMP granted the RA the authority to require all NE multispecies vessels to purchase, install, and use a certified VMS upon notice. NE multispecies vessels may voluntarily use VMS, but to date, only approximately 140 vessels have elected to do so. Although this has yet to be required of all NE multispecies vessels, previously approved information collection submissions (OMB Control No. 0648-0202) for earlier groundfish actions

included the burdens associated with requiring all NE multispecies vessels to purchase, install, and use a certified VMS unit. The number of vessels used in these burden estimates totaled 1,600 vessels, the number of NE multispecies vessels in the fishery at that time. Since that time, the number of NE multispecies vessels has declined. Therefore, the number of vessels in the original burden estimates would likely include the number of vessels likely to participate in the WGOM Closure Area Rod/Reel Haddock SAP and required to use a VMS as proposed under Framework 40B. Therefore, the burden associated with purchase and installation of VMS for the participants the WGOM Closure Area Rod/Reel Haddock SAP for this action has already been considered and approved under previous submissions of OMB Control No. 0648-0202. As a result, for this action, the time burdens of one (1) hour for VMS installation and five (5) minutes (0.083 hours) for the proof of installation are included, but no number of entities is specified.

Available trip report data was used to obtain an estimate of the number of limited access NE multispecies vessels (those already using hook gear or rod/reel gear) that have previously operated in the area surrounding the WGOM Closure Area Rod/Reel Haddock SAP. This resulted in an estimate of 100 vessels. It is anticipated that the potential to fish for haddock in the WGOM Closure Area could induce other limited access NE multispecies vessels to use rod/reel gear that have previously never utilized that gear to target groundfish in the GOM. Therefore, it is estimated that an additional 100 vessels could potentially participate in the WGOM Closure Area Rod/Reel Haddock SAP for a total of 200 potential participants.

Framework 40B would re-categorize 10 Category C DAS to Category B (reserve) DAS for those vessels allocated zero Category A or B DAS under Amendment 13. Under Amendment 13, approximately 400 vessels were allocated zero Category A or B DAS. These vessels could participate in the WGOM Closure Area Rod/Reel Haddock SAP using Category B (reserve) DAS. Of the 200 vessels eligible and likely to participate in this SAP, it is estimated that up to 50 of these vessels would be among the vessels allocated zero Category A or B DAS under Amendment 13 and therefore only Category B (reserve) DAS under Framework 40B. Overall, the 200 vessels eligible to participate in this SAP are not likely among the 140 NE multispecies vessels that currently use VMS. As a result, these vessels are considered new participants that would be required to abide by the VMS provisions proposed under Framework 40B and specified below.

A haddock TAC of 50 mt, or a little over 100,000 lb would control the WGOM Closure Area Rod/Reel Haddock SAP. Although a very small bycatch TAC is proposed for GOM cod, this TAC was not considered for this estimate as this SAP is intended to provide incentives to catch haddock without catching cod. Therefore, basing this information collection submission on the larger haddock TAC would provide a conservative estimate of the burden associated with this SAP. Once the haddock TAC is reached before the end of the season for the SAP (March – April), the SAP would be closed. Assuming that 500 lb of haddock are caught per day fished, this TAC would be caught in 200 days. Given the proximity of the WGOM Closure Area Rod/Reel Haddock SAP to many of the major groundfishing ports and the small size of the vessels likely to participate in this SAP, it is assumed that each trip would only last 1 day. Assuming that all 200 vessels participate in this SAP, each vessel would only be able to fish in this SAP approximately one day per year.

Once a limited access NE multispecies vessel elects to use VMS in order to fish the WGOM Closure Area Rod/Reel Haddock SAP, these vessels would be polled for vessel position once per

hour regardless of where the vessel operates. A recent submission for the information collection provisions contained in the NE Multispecies FMP Permit Family of Forms (OMB Control No. 0648-0202) and Framework 40A (OMB Control No. 0648-0501) assessed the burden for 997 NE multispecies vessels fishing with VMS. Of the 200 vessels likely to participate in the WGOM Closure Area Rod/Reel Haddock SAP, 150 of these vessels are likely included within the 997 vessels previously included in the information collection submissions for Framework 40A. The remaining 50 vessels eligible to participate in the WGOM Closure Area Rod/Reel Haddock SAP proposed under Framework 40B, but not included in the Framework 40A information collection submission, would likely include the vessels allocated zero Category A and B DAS under Amendment 13 as described above. Therefore, these vessels are not eligible to participate in the Category B (regular) DAS Pilot Program implemented under Framework 40A and were not included in the burden estimates approved for that action. Accordingly, for the burden associated with the automated VMS positional polling of vessels fishing in this program, a total of 50 vessels were used. The burden for the automated polling of vessel position is estimated to be five (5) seconds (0.001 hours) per poll. The annualized burden for VMS positioning for this provision is 438 hours [(24 polls/day x 365 days/year x 0.001 hours/poll x 50 vessels).

The WGOM Closure Area Rod/Reel Haddock SAP would create an opportunity to use Category A or B DAS in the WGOM Closure Area. Vessels subject to DAS requirements that intend to participate in this program would have to declare their intent to use a Category A or B DAS every time they wished to fish under this SAP. In addition, these vessels would be required to declare their intent to participate in this SAP prior to leaving the dock. These declarations are made through VMS. These declarations are expected to take five (5) minutes (0.083 hours) per response, including time to read through all of the menus and options presented. Since only 200 days are expected to be fished in this SAP each year and each trip requires only one declaration for the intended area to be fished and the DAS category to be used, this amounts to a total of 200 declarations for this submission and an annualized burden of 17 hours.

Framework 40B would require vessels participating in the WGOM Closure Area Rod/Reel Haddock SAP to notify NOAA Fisheries, or the contracting company tasked with providing observer coverage for Northeast fisheries, of their intent to fish within these programs at least 72 hours prior to each trip. This notification would be in the form of a telephone call to the Observer Program contractor. The reporting burden for 200 vessels eligible to participate in this SAP is based upon the estimated maximum number of trips that would be used in this SAP per year. As specified above, a total of 200 days, and therefore trips, is expected to be fished in this SAP per year. Therefore, for this submission, a total of 200 notifications (one per vessel) was used. Each notification is expected to take approximately two (2) minutes (0.033 hours) per call. This results in an annualized burden of seven (7) hours per year (200 notifications/year x 0.033 hours/notification).

Framework 40B would require vessels issued a Category 1 herring permit and intending to fish in either the GOM or GB RMA as defined in the NE Multispecies FMP to notify the observer program of their intent to fish in these areas prior to leaving port. This notification would be in the form of a telephone call to the Observer Program contractor. This call is expected to take two (2) minutes (0.033 hours) per call. As of 2003, there were 105 vessels issued a Category 1 herring permit fishing a total of 1,337 trips into the GOM and GB RMA's of the NE Multispecies FMP. Therefore, for this submission, a total of 1,337 notifications to the Observer Program would be required for a total yearly burden of 44 hours.

Under Framework 40B, if Category 1 herring vessels are not issued an observer, these vessels would be required to notify the NOAA Fisheries Office of Law Enforcement of the time and port of landing so that enforcement staff could observe offloading operations for groundfish bycatch. This notification would be in the form of an email using VMS. It is expected that this notification would take approximately five (5) minutes. The target observer rate for the herring fishery is 50 percent. Assuming a 50 percent observer coverage rate and a total number of trips into the GOM or GB RMA's of 1,337 trips per year, this provision would result in a total of 669 notifications per year, or 56 hours of additional burden.

Vessels standing by an entangled whale would be required to notify the U.S. Coast Guard and/or the Center for Coastal Studies of the whale's location and that they are intending to stand by the whale until the arrival of a response team. This notification would likely occur through the use of VHF radio. Each notification is expected to take approximately ten (10) minutes per response. Vessels standing by an entangled whale are estimated to communicate with either the U.S. Coast Guard or the Center for Coastal Studies every hour. The average time spent by a vessel standing by an entangled whale is estimated at 12 hours. Assuming that each communication takes approximately 10 minutes per response, the overall burden associated with this provision amounts to approximately 2 hours per event. There were 34 confirmed large whale entanglements in 2003 reported by a variety of vessels, including groundfish vessels. Assuming that vessels issued a limited access NE multispecies groundfish permit report 30 percent of these entanglements results in 10 such reports per year. Therefore, an estimated annualized burden for this provision would be 20 hours.

Vessels may request a DAS credit for time spent standing by an entangled whale through a written request to the Regional Administrator. Each request must include at least the following information: Date and time when the vessel began its stand-by status, date of first communication with the USCG and/or the Center for Coastal Studies, and date and time when the vessel terminated its stand-by status. It is estimated that each request would take approximately 30 minutes (0.5 hours) to prepare. This would result in an annualized burden of 5 hours, assuming 10 requests per year.

The information collections for provisions proposed under Framework 40B result in an annual burden of 593 hours for this submission.

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).

The following information is summarized in Table 1 at the end of the text.

Researchers submitting requests for GB cod research set-aside TAC would only incur costs associated with mailing these requests to NOAA Fisheries. Assuming a total of five TAC requests per year and a mailing rate of \$0.37 per letter for postage, the yearly costs associated with this provision amount to \$1.85, rounded to \$2.00.

As specified above, only approximately 50 NE multispecies DAS vessels are expected to participate in the WGOM Closure Area Rod/Reel Haddock SAP would be required to obtain a

LOA from the Regional Administrator. To obtain this LOA, vessels would be required to call the NOAA Fisheries Permit Office and request such a LOA. These vessels would incur costs for this call depending on where the call was placed. It is impossible to estimate the costs associated with these calls, but it is expected to be minimal. Therefore, no costs associated with this provision were included in this submission.

All participants in the WGOM Closure Area Rod/Reel Haddock SAP would be required to use VMS. All vessels that do not currently possess VMS must obtain one under this provision. The cost of purchasing and installing a VMS, along with the associated operational costs, have already been considered in previous information collection submissions for the pool of vessels expected to participate in this SAP. In fact, the costs associated with these previous estimates for VMS unit purchase and installation (\$6,000) are higher than current cost estimates (\$3,600) and are considered to over-estimate the actual costs. Accordingly, the costs associated with the purchase, installation, and operations of VMS units are not included in this submission.

Currently, there are two certified vendors providing VMS services, Boatracs and Skymate. To determine the annual operating costs of VMS units, an estimated monthly operations cost of \$150 was used. This represents the monthly operating costs of the Boatracs VMS, a more conservative estimate for the monthly operating costs between the two VMS systems currently certified. This cost assumes a vessel positional polling rate of two polls per hour. However, vessels participating in this SAP would only be polled once per hour. Therefore, this operations cost is a conservative estimate of the costs associated with participating in this SAP.

The monthly operating cost associated with VMS usage is a basic estimate and would vary from vessel to vessel based primarily upon the number of electronic messages sent and received by individual vessels. Because this action does not affect the number of electronic messages sent and received by an individual vessel, it is estimated that the provisions within Framework 40B would not increase the basic monthly operational costs of VMS beyond that which was previously estimated.

As specified above, the information collection submission for Framework 40A (OMB Control No. 0648-0501) included the yearly VMS operational costs associated with 945 vessels eligible to participate in the Category B Regular DAS Pilot Program. This number includes 150 vessels eligible to participate in the WGOM Closure Area Rod/Reel Haddock SAP proposed under Framework 40B as specified above. However, the yearly VMS operational costs associated with the 50 additional vessels eligible to participate in the WGOM Closure Area Rod/Reel Haddock SAP, but not included in OMB Control No. 0648-0501, were not accounted for in previous information collections. Therefore, this information collection includes the yearly VMS operational costs for these vessels. This results in a conservative yearly cost of \$90,000 for these vessels ($\$150/\text{month} \times 12 \text{ months/year} \times 50 \text{ vessels}$).

Vessels participating in the WGOM Closure Area Rod/Reel Haddock SAP as proposed in Framework 40B would be required to declare their intent to fish in this SAP along with the category of DAS they intend to use, if appropriate, via VMS prior to leaving port for each trip. Each declaration into this SAP and the DAS to be used would cost \$0.50 per submission. Assuming a trip length of 1 DAS, approximately 200 trips are expected to be taken in the WGOM Closure Area Rod/Reel Haddock SAP per year. This results in an annualized costs associated with these declarations of \$100 ($200 \text{ declarations} \times \$0.50/\text{declaration}$).

The 200 possible participants in the WGOM Closure Area Rod/Reel Haddock SAP and the 105 Category 1 herring vessels would be required to notify the NOAA Fisheries Observer Program at least 72 hours prior to starting a fishing trip into this SAP or the GOM or GB RMA, respectively. This notification would be in the form of a telephone call. Vessels would incur costs for this call depending on where the call was placed. It is impossible to estimate the costs associated with these calls, but it is expected to be minimal. For the consideration of this submission, there are no additional costs to the public for observer coverage as specified in Framework 40B.

Category 1 herring vessels fishing in the GOM or GB RMA that have been granted an observer waiver would be required to notify NOAA Fisheries Office of Law Enforcement of the time and port of landing via VMS prior to crossing the VMS demarcation line ending their trip. Each notification would cost \$0.50. Assuming a target observer coverage rate of 50% for herring trips into the GOM and GB RMA's results in approximately 668 trips with observers and 669 trips without observers. Therefore, under Framework 40B, Category 1 herring vessels are expected to make approximately 669 notifications to the NOAA Fisheries Office of Law Enforcement informing them of the time and port of landing. For the 669 notifications per year expected from this provision, the annualized cost to herring vessels would be \$335.

Vessels communicating with the U.S. Coast Guard or the Center for Coastal Studies would likely communicate using VHF or cellular phones. This would result in little or no cost to the vessel. However, it is possible that the vessel could be operating beyond the effective range of VHF radio or cellular phone capabilities. Under this circumstance, communication would only be possible using a satellite phone. However, due to the prohibitive cost of using the satellite phone for this elective measure, it is not likely that vessels would use the satellite phone to report an entangled whale. Vessels may request a DAS credit for time spent standing by an entangled whale by providing a written request to the Regional Administrator as specified above. Costs associated with this written request would involve postage costs only. Assuming that 10 such requests would be mailed per year, this amounts to a yearly cost of \$3.70, rounded to \$4. Therefore, for this submission, the public costs associated with this measure only include the costs for mailing in DAS credit requests to the Regional Administrator.

The information collections for provisions proposed under Framework 40B result in total costs to vessels of \$90,439 for this submission.

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

NOAA Fisheries Northeast Region currently operates a VMS system for the Atlantic sea scallop and NE multispecies fisheries. The ongoing (recurring) costs amount to \$300,000 a year and include staff costs, internet connection, training, travel and the annual costs for equipment and the back-up system (see Table 2). These costs are not expected to increase with the VMS requirement for vessels participating in the WGOM Closure Area Rod/Reel Haddock SAP under Framework 40B.

Researchers are expected to submit a total of five requests to receive portions of the GB cod research set-aside TAC. NOAA Fisheries staff would review each submission. It is estimated that each submission would require approximately 2 hours to review to determine if the project

should be allocated portions of the GB cod research set-aside TAC. Using a wage rate of \$25/hour, the total yearly cost to the government for this provision would amount to \$250.

The 50 NE multispecies DAS vessels expected to participate in the WGOM Closure Area Rod/Reel Haddock SAP would be required to obtain a LOA from the Regional Administrator. To obtain this LOA, vessels would be required to call the NOAA Fisheries Permit Office and request such a LOA. Each request for a LOA is expected to require approximately 10 minutes (0.17 hours) of response time by Permits Office staff. At a rate of \$25/hour, this provision is expected to result in a yearly cost to the government of \$213 (50 requests x 0.17 hours/request x \$25/hour).

As stated above, the additional VMS positional polling resulting from vessels fishing in the WGOM Closure Area Rod/Reel Haddock SAP proposed under Framework 40B is included in the monthly operational costs associated with VMS usage. In addition, vessels would be required to declare their intent to fish in and the category of DAS to be used when participating in the WGOM Closure Area Rod/Reel Haddock SAP. The costs associated with these positional polls and declarations are charged to individual vessels as specified above. The costs for monitoring VMS usage are included in the recurring costs associated with the VMS program specified above. Therefore, there is no additional government costs associated with these provisions under this submission.

Participants in the WGOM Closure Area Rod/Reel Haddock SAP as well as Category 1 herring vessels would be required to notify the Observer Program contractor or NOAA Fisheries prior to each trip. The contractor or NOAA Fisheries will make a determination whether an observer will be required for that trip and will advise the vessel operator if they need to accommodate an observer for a particular trip. It is expected that there would be approximately 200 trips per year in the WGOM Closure Area Rod/Reel Haddock SAP. Each response by the Observer Program or NOAA Fisheries is expected to require approximately 10 minutes (0.17 hours). A wage rate of \$25/hour was used to calculate the annualized cost to the government of \$850 (200 trips x 0.17 hours/response x \$25/hour) for this program. Category 1 herring vessels fishing in the GOM or GB RMA would also be required to make a similar notification prior to each trip. It is estimated that there would be approximately 1,337 trips into the GOM and GB RMA's by Category 1 herring vessels per year. This would result in an annualized cost to the government of \$5,682 (1,337 trips x 0.17 hours/response x \$25/hour).

Costs to the government associated with herring vessel notifications to NOAA Fisheries Office of Law Enforcement regarding the time and place of vessel landing include costs associated with processing these notices. It is estimated that approximately three (3) minutes (0.05 hours) are required to process each email and inform responsible staff of the intended time and place of landing. Assuming a 50 percent observer coverage rate and a total of 1,337 total trips, approximately 669 landings notices would be sent by Category 1 herring vessels each year. Using a wage rate of \$25/hour, the total yearly cost to the government for this provision amounts to \$836 (0.05 hours/notice x 669 notices x \$25/hour).

Although a majority of the communications from vessels standing by an entangled whale would occur directly with the Center for Coastal Studies, the U.S. Coast Guard may facilitate such communications. Therefore, the U.S. Coast Guard is estimated to spend approximately 30 minutes (0.5 hours) communicating to vessels standing by an entangled whale. Using a wage

rate of \$25/hour and assuming 10 such entanglement notifications per year results in an annualized cost to the government of \$250. It is estimated that it would take approximately 1 hour to respond to a written request for a DAS credit from vessels that have stood by an entangled whale. Using a wage rate of \$25/hour and assuming a total of 10 requests per year results in an annualized cost to the government of \$250.

The total annualized government cost for the new provisions included in Framework 40B is \$7,868.

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

Amendment 13 met Magnuson-Stevens Act requirements to adopt formal rebuilding programs for overfished fisheries, and to end overfishing. The regulations required to reduce fishing mortality on several groundfish stocks will likely result in substantial negative social and economic impacts to the fishing industry. Accordingly, a number of provisions within Framework 40B strive to provide flexibility and opportunities for the industry to take advantage of stocks in better condition. The proposed data collection would be used to implement and manage the above proposed permit-related program changes resulting from new requirements specified under Framework 40B.

As described above, this information collection request includes new information collection burdens associated with the provisions included in Framework 40B. These new collections, resulting in an additional burden of 593 hours and \$90,439, therefore, are considered program changes for this submission.

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 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.

Table 1: Burdens and Costs Associated with the Information Collections for Permit-related Provisions Included in Framework 40B to the NE Multispecies FMP

Permit Requirement	# of Entities ⁽¹⁾	Items Per Entity	Total # of Items	Response Time	Total Burden	Cost to:	
						Public	Govt. ⁽²⁾
GB Cod Research Set-aside TAC Request	5	1	5	0.500	3	\$2	\$250
LOA for WGOM Closure Area Rod/Reel Haddock SAP Participants	50	1	50	0.083	4	\$0	\$213
VMS Installation for WGOM Closure Area Rod/Reel Haddock SAP							
VMS Purchase and Installation	0	1	0	1	0	\$0	\$0
VMS Proof of Installation	0	1	0	0.083	0	\$0	\$0
Automated VMS Polling of Vessel Position							
WGOM Closure Area Rod/Reel Haddock SAP ⁽³⁾	50	8,784	439,200	0.001	438	\$0	\$0
VMS Operational Costs⁽⁴⁾							
WGOM Closure Area Rod/Reel Haddock SAP ⁽³⁾	50	N/A	N/A	N/A	N/A	\$90,000	\$0
Area and DAS Declaration (time burden and message cost)							
WGOM Closure Area Rod/Reel Haddock SAP	200	1	200	0.083	17	\$100	\$0
Observer Notification Requirements							
WGOM Closure Area Rod/Reel Haddock SAP	200	1	200	0.033	7	\$0	\$850
Herring Vessel Notifications							
Observer Program Notification	105	13	1,337	0.033	44	\$0	\$5,682
NOAA Fisheries Office of Law Enforcement Landings Notification	105	3	669	0.083	56	\$335	\$836
DAS Credit for Vessels Standing by Entangled Whales							
Notification and Communication with USCG and Center for Coastal Studies	1,400	1	10	2	20	\$0	\$250
Request for DAS Credit	1,400	1	10	0.5	5	\$4	\$250
Totals⁽³⁾	1,510		441,626		593	\$90,439	\$7,868

(1) Counts affected entities only once.

(2) Assumes wage rate of \$25/hour.

(3) This estimate only includes an estimated 50 vessels eligible to participate in this SAP, but not included in the information collection burden estimate for Framework 40A.

(4) Assumes a monthly operational cost of \$150 per vessel.

Table 2. Costs to the Government from VMS Monitoring.

VMS Monitoring		
Annual Costs	Salary and Benefits ¹	\$230,000
	Internet Connection ²	7,500
	Equipment ³	20,000
	Back-up System ⁴	38,960
	Software Licensing	3,500
	Supplies ⁵	11,000
	Training and travel	8,000
	Total ongoing costs	\$300,000
Start-up Costs	Software adaptations	\$100,000
	Total fixed costs	\$100,000
	Annualized Start-up Costs	\$20,000
	(at 5 year amortization)	
Total Annual Costs⁶		\$320,000
Previously Committed Costs		\$300,000
Total Annual Costs⁷		
Net Annual Costs to Government from Herring VMS Monitoring		\$20,000

Source: Data supplied by NMFS, Office of Enforcement, Northeast Regional Center, and NMFS Headquarters

1. Salary and benefits, three program support personnel.
2. 24-hour maintenance of secure Internet node at Gloucester, MA.
3. Lease and maintenance contract on CPU and monitor.
4. Lease and maintenance contract on CPU and monitor.
5. Optical storage disks, repairs and supplies associated with non-lease equipment (modem, router, printer, thermal paper, WORM drive).
6. Estimated by adding up annualized start-up costs (\$2,383) to total ongoing costs.
7. System operating costs currently funded to support program for the sea scallop fishery.

**ATTACHMENT 1:
INFORMATION THAT MUST BE DISPLAYED ON FORMS
USED TO COLLECT INFORMATION FROM THE PUBLIC**

1. The policy reasons for collecting the information.

This information will be outlined in the preamble to the proposed rule for this action and in a permit holder letter to be drafted at a later time. The proposed rule is included with this submission and a summary of the information that will be presented in that letter is as follows:

This collection of information is necessary to implement and manage the provisions outlined in Framework 40B to the Northeast (NE) Multispecies Fishery Management Plan (FMP). Management measures under Framework 40B to the NE Multispecies FMP were developed to provide additional opportunities to target healthy stocks so that the Magnuson-Stevens Act requirement to attain optimum yield from the fishery can be met. In addition, other measures were developed to provide more information regarding groundfish bycatch in the herring fishery.

2. The way in which the information will be used to further performance of agency functions.

This information will be outlined in the preamble to the proposed rule for this action and in a permit holder letter to be drafted at a later time. The proposed rule is included with this submission and a summary of the information that will be presented in that letter is as follows:

The information requested in the specified provisions will be used by several offices of NMFS to implement the specific provisions, including to track DAS usage, participation in special access programs, and vessel monitoring system operation, among others. Information collected through this information request would enable enforcement officials, including the U.S. Coast Guard, to monitor compliance with the provisions of the FMP, including those governing DAS usage and possession restrictions.

3. An estimate of the average burden using the specified format.

Since all information collected as part of this submission for provisions included within Framework 40B are submitted electronically via VMS, this information will be included in the preamble to the proposed rule for Framework 40B included with this submission.

4. Whether responses are voluntary, required to obtain or retain a benefit, or mandatory.

This information will be included in a permit holder letter to be sent to all vessels with a valid NE multispecies DAS permit once implemented according to the provisions of the Administrative Procedures Act.

5. The nature and extent of confidentiality to be provided, if any.

This information will be outlined in the preamble to the proposed rule for this action and in a permit holder letter to be drafted at a later time. The proposed rule is included with this submission and a summary of the information that will be presented in that letter is as follows:

It is anticipated that the information collected will be disseminated to the public or used to support publicly disseminated information. As explained in the preceding paragraphs, the information gathered has utility. NOAA Fisheries will retain control over the information and safeguard it from improper access, modification, and destruction, consistent with NOAA standards for confidentiality, privacy, and electronic information. The information collection is designed to yield data that meet all applicable information quality guidelines. Prior to dissemination, the information will be subjected to quality control measures and a pre-dissemination review pursuant to Section 515 of Public Law 106-554.

6. A particular sentence involving the OMB Control Number.

This information will be outlined in the preamble to the proposed rule for this action and in a permit holder letter to be drafted at a later time.

Dated: June 7, 2004.

William T. Hogarth,

Assistant Administrator for Fisheries.

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

BILLING CODE 3510-22-S

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).

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[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 vessel 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 touse 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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