

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Date 12/05/2006

Department of Commerce  
National Oceanic and Atmospheric Administration  
FOR CERTIFYING OFFICIAL: Barry West  
FOR CLEARANCE OFFICER: Diana Hynek

In accordance with the Paperwork Reduction Act, OMB has taken action on your request received 12/05/2006

ACTION REQUESTED: Revision of a currently approved collection  
TYPE OF REVIEW REQUESTED: Regular  
ICR REFERENCE NUMBER: 200612-0648-001  
TITLE: Northeast Multispecies Framework Adjustment 42 Permits Information Data Collection  
LIST OF INFORMATION COLLECTIONS: See next page

OMB ACTION: Approved without change  
OMB CONTROL NUMBER: 0648-0549  
The agency is required to display the OMB Control Number and inform respondents of its legal significance in accordance with 5 CFR 1320.5(b).

EXPIRATION DATE: 10/31/2009

DISCONTINUE DATE:

BURDEN:	RESPONSES	HOURS	COSTS
Previous	0	0	0
New	30,714	2,865	1,078,550
Difference			
Change due to New Statute	0	0	0
Change due to Agency Discretion	30,714	2,865	1,078,550
Change due to Agency Adjustment	0	0	0
Change Due to Potential Violation of the PRA	0	0	0

TERMS OF CLEARANCE:

OMB Authorizing Official: John F. Morrall III  
Acting 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 <span style="float: right;">b. <input type="checkbox"/> None</span> 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 ADJUSTMENT 42 PERMITS  
DATA COLLECTION  
OMB CONTROL NO.: 0648-NEW**

**INTRODUCTION**

This submission requests Office of Management and Budget (OMB) clearance of information collection provisions for the vessel permit requirements proposed under Framework Adjustment (FW) 42 to the Northeast (NE) Multispecies Fishery Management Plan (FMP). This information collection builds upon the information collection submission previously approved under OMB Control No.: 0648-0501 (measures proposed by FW 40A), OMB Control No.: 0648-0489 (measures proposed by Amendment 13), and OMB Control No.: 0648-0202 (Northeast Region Permit Family of Forms). The information collections for FW 40A previously approved under OMB Control No.: 0648-0501 were merged into the information collections under OMB Control No.: 0489-0489 in December 2005. The National Marine Fisheries Service (NOAA Fisheries Service) intends to integrate the information collection for Amendment 13 and FW 40A (those merged into OMB Control No.: 0648-0489) into OMB Control No.: 0648-0202 when circumstances allow.

Since the information collection under OMB Control No.: 0648-0489 has not been integrated with OMB Control No.: 0648-0202, this information collection submission for FW 42 is considered a new information collection. If approved, NOAA Fisheries intends to integrate this new information collection submission into OMB Control No.: 0648-0202 when circumstances allow. This information collection submission adds new provisions requiring approval by the OMB, but it also reduces the burden associated with specific provisions of OMB Control No.: 0648-0489 and 0648-0202. While the new provisions are specified in this supporting statement, the burden reductions associated with this information collection will be addressed once the information collections for OMB Control No.: 0648-0489 and this submission are merged into the collection for OMB Control. No.: 0648-0202.

The New England Fishery Management Council (Council) is proposing management measures under FW 42 that reduce fishing mortality on several groundfish stocks to achieve fishing mortality objectives of the rebuilding program established under Amendment 13 to the FMP. The proposed measures under FW 42 include the following provisions requiring new information collection requirements for the permit family of forms: (1) Differential DAS counting; (2) Revisions to the Category B (regular) Days-at-Sea (DAS) Program; (3) Mandatory vessel monitoring system (VMS) requirements; (4) Combined trips both inside and outside of the Eastern U.S./Canada Area; (5) Declaration of the intent to fish outside of the Gulf of Maine (GOM) Regulated Mesh Area (RMA); and (6) A revised DAS Transfer Program request form. This data collection submission requests approval of new information collection requirements to implement the above provisions for FW 42 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 Service. The Council develops management plans for fishery resources in New England. The NE Multispecies FMP manages twelve regulated groundfish species.

In December 2003, the Council adopted a suite of management measures in Amendment 13 to the FMP that would end overfishing and establish or revise required rebuilding plans for overfished stocks. Amendment 13 included a biennial adjustment process intended to review the status of groundfish stocks toward achieving the rebuilding objectives established under Amendment 13. If the stock status review indicates that the fishery is not achieving the rebuilding objectives for any stock, the Council will develop management measures that would achieve the rebuilding objectives of the FMP by the start of the next fishing year on May 1, according to the regulations at [50 CFR 648.90\(a\)\(2\)](#). As part of this biennial adjustment process for the 2006 fishing year, the latest stock assessment, conducted in August 2005, indicated that the rebuilding objectives were not being met for six groundfish stocks. Accordingly, the Council began development of FW 42 to implement measures that would achieve the rebuilding objectives for all groundfish species. The development of this action was delayed such that the proposed measures would not be implemented by the start of the 2006 fishing year on May 1.

The Secretary implemented emergency measures ([0648-AU09, published April 13, 2006](#)) that immediately reduce fishing mortality on specific groundfish stocks to ensure that overfishing does not continue to jeopardize the rebuilding program established under Amendment 13. These measures will remain in place until such time as more permanent management measures in FW 42 could be put into place. That emergency Secretarial action included many of the proposed measures in FW 42 to simplify transition from the emergency measures to the FW 42 measures and to minimize confusion in the fishing industry when dealing with the temporary emergency measures. In conjunction with the measures proposed by FW 42, the rebuilding objectives established under Amendment 13 would be met for the 2006-fishing year. Once implemented, the measures proposed by FW 42 would continue to achieve the rebuilding objectives of the FMP through the next biennial adjustment scheduled for 2008.

### **Differential DAS Counting**

The primary means of controlling fishing mortality in the NE Multispecies FMP is by limiting the number of DAS that a vessel can fish. Amendment 13 assigned each limited access permit holder a number of DAS that can be used. These DAS are categorized as either Category A DAS, Category B (Regular or Reserve) DAS, or Category C DAS. Category A DAS could be used to target any regulated groundfish stock in any area, while category B DAS may only be used in specific highly regulated programs designed to minimize the impact of the additional effort of Category B DAS. Category C DAS cannot be used anywhere at this time.

Because vessels fishing under a Category A DAS in inshore portions of the GOM and an

offshore area within the Southern New England (SNE)/Mid-Atlantic (MA) RMA caught substantial amounts of cod and yellowtail flounder, and therefore contributed the most to excessive fishing mortality on these stocks, FW 42 proposes to charge any Category A DAS used to land groundfish from these areas at a rate of 2:1. A vessel that fishes outside of these areas and merely transits these areas would not be charged DAS at the higher rate. Therefore, any vessel that plans to catch groundfish in these areas would be required to declare their intent to do so at the beginning of a trip. Vessels that have not declared their intent to fish in the inshore GOM differential DAS counting area may be in the area due to bad weather, or other circumstances beyond their control, provided its fishing gear is properly stowed and provided the vessel notifies NOAA Fisheries Service through its VMS. A vessel that declares into the inshore GOM differential DAS counting area due to circumstances beyond their control would be charged Category A DAS at a rate of 1:1 and not at the differential DAS counting rate of 2:1. Since FW 42 proposes a mandatory VMS requirement for all vessels intending to fish for groundfish on a NE Multispecies DAS, such area declarations must be submitted via VMS. These declarations identify which vessels intend to fish for groundfish in these areas and which vessels are merely transiting the areas so that DAS can be charged at the appropriate rate. Identification of vessels fishing for groundfish in these areas also facilitates enforcement of this measure. This declaration is a new reporting requirement that does not affect other reporting requirements proposed by this action, or previously approved by the OMB. The burdens associated with the purchase and installation of VMS for all groundfish DAS vessels is addressed below.

### **Category B (regular) DAS Program**

As specified above, the primary means the NE Multispecies FMP controls fishing mortality is by limiting and regulating the number and type of DAS that vessels can fish. Any Category B (Regular or Reserve) DAS that are used increase the amount of effort in the fishery. 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 special management programs. FW 40A, implemented in November 2004, included a pilot program that would allow Category B (regular) DAS to be used outside of any special access programs (SAPs) for one year, beginning November 19, 2004. This program was designed to provide opportunities to target healthy stocks without threatening stocks for which a mortality reduction is required. As a result, FW 42 proposes to continue a revised Category B (regular) DAS Program that takes into account necessary fishing mortality reductions for the 2006-fishing year.

FW 42 would continue many of the reporting requirements for this program that were previously approved under OMB Control No.: 0648-0501 for FW 40A and merged into 0648-0489. These reporting requirements include:

- The purchase, installation, and use of an approved Vessel Monitoring System (VMS);
- Notification to NOAA Fisheries Service 72 hours in advance of a Category B DAS trip so that NOAA Fisheries Service can plan observer coverage.
- Declaration of the use of a Category B (regular) DAS via VMS at the start of the trip;
- Submission of daily catch reports via VMS (this reporting requirement will be addressed in a separate PRA submission for the “Northeast Region Logbook Family of Forms” under OMB Control No.: 0648-0212); and
- Declaration of a change to the DAS being used on a trip (i.e., a DAS “flip”) if a vessel exceeds

the very low landing limits for stocks of concern.

Because FW 42 proposes a mandatory VMS requirement for all vessels fishing for groundfish under a DAS, the VMS requirements for this program is included in the description of the mandatory VMS requirement below.

Notifications for the purpose of observer deployment would be required to be submitted at least 72 hours prior to each fishing trip into this area via a telephone call to the contracting company tasked with providing observer coverage. These notifications would be used by NOAA Fisheries Service to ensure that trips 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 Service-approved observer or sea sampler. Such requests are made at the discretion of the Regional Administrator (RA) for the purpose of monitoring fishing activities, collection of data, and compliance as stated under [§ 648.11](#).

Participants in the Category B (regular) DAS Program would be limited to very low catch limits and quarterly hard total allowable catch (TACs) amounts for regulated groundfish stocks of concern (stocks that are in poor condition and for which fishing mortality must be carefully controlled, as specified in FW 42). Vessels would only be allowed to use Category B (regular) DAS if they remain below these limits. If a vessel exceeds these low limits for any stock, it would be required to “flip” the DAS it is using from a Category B (regular) DAS to a Category A DAS. This “flip” would be accomplished by sending an electronic message to NOAA Fisheries Service using the installed VMS. The “flip” must take place immediately, and before the vessel crosses the “VMS Demarcation Line” – a regulatory line that defines when a vessel is entering port and has stopped a fishing trip. This requirement to “flip” a DAS ensures that the additional effort from Category B (regular) DAS will be used to target healthy stocks and will not threaten the mortality objectives of Amendment 13. The requirement for a vessel to report a DAS flip through the VMS facilitates the enforcement of this provision. Because the notice must be given before the vessel lands its fish, it provides an opportunity for the U.S. Coast Guard and NOAA enforcement agents to meet vessels at the pier and determine if they complied with the low landing limits required for the use of Category B (regular) DAS use.

### **Mandatory VMS**

VMS units are an effective tool to monitor vessel position, identify vessels participating in special management programs (i.e., the Category B (regular) DAS Program or any approved SAP), accurately charge DAS based on time fishing in a particular area, and to monitor catch from special management programs. Because FW 42 proposes to charge DAS at a higher rate when fishing in particular areas, it is important to utilize VMS to monitor the amount of time a vessel fishes in a particular area to properly account for DAS usage. VMS also allows NOAA Fisheries Service staff to effectively monitor vessel position to enforce the closed area and other area-based provisions of the FMP as well as identify participants in, and monitor catch from, special management programs. Given the recent emphasis on area-based management in the groundfish fishery, the use of VMS would provide a valuable tool to effectively and efficiently implement area-based management measures while minimizing the burden on affected vessels.

This information collection submission would revise the burdens associated with the purchase, installation, and use of VMS for any vessel issued a limited access NE Multispecies DAS permit



and allocated Category A or B DAS that intends to fish for groundfish using a DAS, including those participating in a special management program. The proposed mandatory VMS requirement eliminates the need for the current telephone system (i.e., the call-in system) to monitor trip start and end dates/times to calculate DAS usage, as this function is performed electronically through the VMS. The burdens associated with these provisions will be adjusted when the collections are merged with 0648-0202.

### **Combined Trips Inside/Outside of the Eastern U.S./Canada Area**

An informal understanding was reached between the U.S. and Canada regarding the management of GB cod, GB haddock, and GB yellowtail flounder resources found within the waters of both countries within an area known as the U.S./Canada Management Area. Provisions outlining the U.S. portion of the understanding were incorporated into Amendment 13 to the NE Multispecies FMP. Requirements for American vessels fishing in the U.S./Canada Management Areas rely upon hard TACs for GB cod, GB haddock, and GB yellowtail flounder. The hard TACs established for GB cod and GB haddock only apply to fish caught in the Eastern U.S./Canada Area, while the hard TAC for GB yellowtail flounder applies to any yellowtail flounder caught in either the Eastern or Western U.S./Canada Area. Because the hard TACs for cod and haddock only apply to fish caught in the Eastern U.S./Canada Area, regulations implemented by Amendment 13 do not allow a fishing vessel to fish inside and outside the Eastern U.S./Canada Area on the same trip.

Currently, vessels issued a limited access NE Multispecies permit that are fishing under a NE Multispecies DAS and wishing to operate within the U.S./Canada Management Area, including the Eastern U.S./Canada Haddock SAP Pilot Program and the Closed Area II Yellowtail Flounder SAP, are required to utilize a VMS and declare the area in which they intend to fish. This information collection was previously approved under OMB Control Number 0648-0489 and 0648-0501. However, due to concerns over vessel safety and decreased flexibility that limits a vessel's opportunity to meet operational costs when fishing exclusively in the Eastern U.S./Canada Area on a particular trip, the emergency Secretarial action recently implemented by NOAA Fisheries Service allows vessels to fish in the Eastern U.S./Canada Area (or either SAP within the Eastern U.S./Canada Area) as well as areas outside of the Eastern U.S./Canada Area on the same trip. These vessels must declare their intention to do so using VMS either prior to leaving port, or prior to leaving the Eastern U.S./Canada Area. This is referred to as a "flex" trip. Vessels electing to fish inside and outside of the Eastern U.S./Canada Area on a "flex" trip would be charged Category A DAS for the entire trip and any cod or haddock caught would be counted toward the Eastern U.S./Canada Area TACs, while any yellowtail flounder caught would count toward the overall U.S./Canada Management Area TAC. Vessels fishing on a "flex" trip would be required to abide by the most restrictive trip limit for the areas fished. FW 42 proposes to continue the ability for vessels to fish inside and outside of the Eastern U.S./Canada Area on a "flex" trip.

The information collection for the declaration of the intent to fish inside and outside of the Eastern U.S./Canada Area is being interpreted as a modification of the DAS "flip" under the emergency Secretarial action. As described above, when a vessel "flips" its DAS declaration from Category B DAS to Category A DAS, it is informing NOAA Fisheries Service that it is changing the DAS being used for that trip. In a similar manner, a vessel would "flip" its area declaration from exclusively in the Eastern U.S./Canada Area to being able to fish inside and

outside of the Eastern U.S./Canada Area on the same trip. Since the original information collection submission for the DAS flipping measure in FW 40A overestimated the number of DAS flips that would occur during a particular fishing year, the emergency Secretarial action reduced the burden associated with that measure and added a burden for the declaration of the intent to fish inside and outside of the Eastern U.S./Canada Area by the same amount. In this manner, the burdens of both information collections are appropriately accounted for and the information collection submissions would more accurately reflect vessel practices. To document this revision, the information collection previously approved under OMB Control No.: 0648-0202 was revised by means of a worksheet, as authorized by the OMB. Therefore, there is no need to further revise the information collection burden for this provision in this information collection submission. However, a description of the revised burdens is included here to document this practice and for future reference.

The proposed requirement to declare a vessel's intent to fish inside and outside of the Eastern U.S./Canada Area is necessary to effectively monitor and enforce the provisions of the areas fished. In addition, such notifications provide the necessary information to accurately account for any cod, haddock, or yellowtail flounder toward the appropriate U.S./Canada Management Area hard TACs on such "flex" trips.

### **Declaration of Intention to Fish Outside of the GOM RMA**

Because the possession limits for GOM cod are smaller (800 lb/DAS, up to 4,000 lb/trip) than the possession limit for Georges Bank (GB) cod (1,000 lb/DAS, up to 10,000 lb/trip), vessels fishing south of the GOM RMA are currently required to obtain a letter of authorization (LOA) to document their intent to fish outside of the GOM RMA for a particular period of time and exempt them from the smaller possession limit for GOM cod. This LOA is the primary means to enforce the GOM cod trip limit exemption provision. However, because FW 42 proposes to require all groundfish vessels to use VMS, the proposed rule would replace the requirement to obtain a LOA to become exempt from the GOM cod possession limit with a VMS declaration prior to each trip. This VMS declaration would document a vessel's intent to fish outside of the GOM RMA for each particular trip and exempt it from the GOM cod possession limits. Such a VMS declaration would replace the LOA as the means to enforce the GOM cod trip limit exemption provision. In doing so, this VMS declaration would provide greater flexibility to vessels because it would eliminate the minimum participation period of the current cod exemption LOA.

### **DAS Transfer Program**

The DAS Transfer Program was originally implemented by Amendment 13 and approved under OMB Control No.: 0648-0489. This program allowed vessels to consolidate NE Multispecies DAS allocations, with the transferring DAS allocation subject to a conservation tax and vessel baseline upgrade requirements. The measures proposed by FW 42 would revise this program to allow applicants to specify which DAS allocation would be subject to the conservation tax rather than encouraging applicants to move permits among vessels to minimize the impact of the conservation tax. In addition, FW 42 allows an applicant to specify whether the recipient vessel would accept the smaller vessel baseline characteristics in lieu of using a vessel's one-time upgrade allowance. Such revisions are expected to facilitate participation and administration of this program, as without such revisions, applicants would be obligated to move permits among

vessels to minimize the impact of the conservation tax and upgrade requirements.

**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 would be used by several offices of NOAA Fisheries Service and the U.S. Coast Guard for the monitoring, implementation, and enforcement of the provisions outlined in the NE Multispecies FMP, as revised by FW 42.

Under FW 42, any vessel issued a limited access NE Multispecies DAS permit and intending to fish for groundfish in the inshore GOM or an offshore area of the SNE/MA RMA would be required to declare their intent to fish in these areas via VMS prior to each trip. Failure to declare its intent to fish in these areas would prohibit a vessel from fishing in these areas. Differential DAS counting in specific areas in the inshore GOM and an offshore area of the SNE/MA RMA would ensure that the fishery continues to rebuild overfished groundfish stocks, as required by the Magnuson-Steven Act. Requiring vessels to declare their intent to fish within these areas, or to declare that they are in these areas due to circumstances beyond their control, via VMS facilitates administration and enforcement of this measure by allowing NOAA Fisheries Service Office of Law Enforcement (the division of NOAA Fisheries Service responsible for monitoring vessel activity and DAS use) to identify vessels intending to fish in these areas so that the appropriate DAS charge rate may be applied to such vessels (i.e., a rate of 2:1 would apply only to vessels intending to fish in these areas). The use of VMS and a declaration into these particular areas ensures that vessels DAS would be properly charged and that measures designed to reduce fishing effort on stocks that require the most protection are effectively administered.

Any vessel issued a limited access NE Multispecies DAS permit and allocated Category B (regular) DAS may elect to participate in the Category B (regular) DAS Program continued through FW 42. A participating vessel would be required to use a VMS, notify the NOAA Fisheries Service Observer Program via telephone of its intent to participate in this program at least 72 hours prior to the start of a trip into this program, declare its intent to fish in this program via VMS prior to the start of the trip, and flip its DAS should it catch more groundfish stocks of concern than allowed. A vessel is not restricted by a limit on the number of trips that may be taken in this program and may participate in this program throughout the year, provided the program is not closed due to the attainment of a quarterly TAC in a particular stock area, the quarterly limit on the number of DAS has not been used, or due to an assessment by the Regional Administrator (RA) that declares that this program is not meeting the objectives of the FMP.

The use of VMS in the Category B (regular) DAS Program allows NOAA Fisheries Service staff to monitor vessel activity and enforce the provisions of the FMP. Notification to the Observer Program via telephone and the declaration of its intent to fish in this program via VMS ensures that the NOAA Fisheries Service staff can identify the pool of vessels intending to participate in this program so that the proper amount of observer coverage can be applied to this program. Notification of a DAS flip every time a vessel exceeds the restrictive trip limits proposed for this program is essential to the proper monitoring of DAS use and compliance with the appropriate regulations by NOAA Fisheries Service Office of Law Enforcement staff. Further, notification

of a DAS flip is used by staff within the Statistics Office to account for catch attributable to this program. As detailed in the information collection submission for OMB Control No.: 0648-0212, once a vessel flips from a Category B (regular) DAS to a Category A DAS, all catch associated with that trip is no longer accounted towards the hard TACs for groundfish stocks of concern specified for this program. Therefore, it is important to determine which category DAS a vessel is using in order to accurately monitor compliance with the regulations and accuracy of DAS use and catch distribution.

FW 42 would require any vessel issued a limited access NE Multispecies DAS permit and intending to fish for groundfish using a DAS to purchase, install, and use an operational VMS unit. Previously, a telephone system was used to collect information on the date and time the vessel sailed/landed and the gear type used in order to compute the number of DAS to be charged for a particular trip. However, FW 42 would eliminate the need for such a call-in system and, instead, would require all vessels issued a limited access NE Multispecies permit and intending to target groundfish under a NE Multispecies DAS to use a VMS to make determine DAS use. Using VMS, a NE Multispecies vessel would be required to declare what program (i.e., a SAP, the Category B (regular) DAS Program, or outside of a special management program) it intends to fish in and what category of DAS and the gear type (i.e., Day gillnet, Trip gillnet, or non-gillnet gear) it intends to use on that trip prior to leaving the dock. 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 Regional Administrator (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 DAS vessels would be polled once per hour throughout the year.

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 area and DAS declaration information provided to identify participants in the fishery, including those participating in SAPs (i.e., the Closed Area II Yellowtail Flounder SAP, the Eastern U.S./Canada Area Haddock SAP Pilot Program, or the Closed Area I Hook Gear Haddock SAP) or the Category B (regular) DAS Program; to properly calculate DAS usage; and to enforce the provisions of each program. Declaration of gear type is used by NOAA Fisheries Service Office of Law Enforcement to accurately track DAS usage, as Day gillnetters are charged DAS differently than Trip gillnet vessels or non-gillnet vessels.

Vessels may participate in any of the above programs multiple times throughout the fishing year. However, the RA may limit the number of trips into the SAPs, or close areas under these SAPs or the Category B (regular) DAS Program under specific circumstances. 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 all of the current SAPs and was used to monitor vessel activity in the Category B (regular) DAS Pilot Program during the 2004 and 2005 fishing years. In addition, VMS data has historically been used to monitor vessel activity of those vessels electing to use VMS outside of a special management program both prior to and after implementation of such programs in Amendment 13 and FW 40A.

FW 42 would allow any vessel issued a limited access NE Multispecies DAS permit to fish

inside and outside of the Eastern U.S./Canada Area on the same trip. Any vessel intending to fish inside and outside of the Eastern U.S./Canada Area on the same trip would be required to declare its intent to take a “flex” trip via VMS either before leaving the dock at the start of the trip or prior to leaving the Eastern U.S./Canada Area once underway. Any vessel that declares a “flex” trip would be charged Category A DAS for the entire trip, would have to abide by the most restrictive regulations between areas fished, and all catch of cod, haddock, and yellowtail flounder would be attributed to the Eastern U.S./Canada Area TACs. A vessel may elect to fish on a “flex” trip multiple times throughout the fishing year, provided it has sufficient Category A DAS for the duration of the trip and the Eastern U.S./Canada Area has not been closed due to the attainment of one of the hard TACs for the U.S./Canada Management Area. NOAA Fisheries Service staff would use the declaration of a “flex” trip to charge the vessel Category A DAS for the entire trip, monitor compliance with the most restrictive regulations between the two areas fished, and attribute the catch of cod, haddock, and yellowtail flounder to the Eastern U.S./Canada Area TACs.

The declaration of the intent to fish outside of the GOM RMA via VMS prior to each trip is necessary to identify which vessels are exempt from the GOM cod trip limits. Any vessel intending to fish outside of the GOM RMA would be required to declare its intent to do so prior to each fishing trip via VMS. This information would be used by NOAA Fisheries Service Office of Law Enforcement to enforce the GOM cod trip limits.

Any vessel issued a limited access NE Multispecies DAS permit may participate in the DAS Transfer Program. This information collection would revise the DAS Transfer Program request form by adding two questions to the form. Information collected by this form would be used by staff within NOAA Fisheries Service to process received DAS Transfer requests and monitor participation in this program.

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 declaration of area to be fished, category of DAS and gear type to be used, the intent to fish in the Category B (regular) DAS Program or any other special management program, the intent to fish inside and outside of the Eastern U.S./Canada Area on the same trip, and the intent to fish outside of the GOM RMA would be accomplished electronically through the VMS. Also, as specified above, all vessels intending to fish for groundfish under a NE Multispecies DAS would be required to purchase, install, and use a VMS under FW 42 to participate in the fishery. The use of VMS represents the most advanced means of reporting information relating to vessel

operations in the groundfish fishery to date. DAS Transfer Program request forms are available for printing online.

**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 Service has currently certified three vendors to provide VMS service to vessels participating in the NE Multispecies fishery. Each vendor offers comparable equipment and services over a range of prices. This reduces the burden on the public by increasing competition among vendors, thereby decreasing costs to the fishing industry to obtain and operate a VMS unit. Further, the increased variety of VMS units may allow vessel owners/operators to select the most economical and efficient unit to purchase, therefore minimizing costs associated with VMS. Finally, there is the potential that funding will be available to help offset the costs of the initial purchase of a VMS unit under FW 42. If this funding is available, the burden associated with the mandatory VMS requirement proposed under FW 42 would decrease.

**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 effectively prevent these proposed provisions of FW 42 from being implemented. This collection of information is necessary for a variety of reasons specific to each particular provision and described above. Without the area declarations proposed by this action, any vessel operating in the GOM or the SNE/MA RMA would be charged DAS at a rate of 2:1 for the entire duration of their trip. This would result in substantial negative economic impacts to the fishing industry unanticipated by the Council in the preparation of FW 42. Failure to collect the above information or collecting it less frequently would eliminate any flexibility in vessel operations provided by the ability for a vessel to declare its intent to fish inside and outside of the Eastern U.S./Canada Area on the same trip. Failure to collect such declarations would not enable NOAA Fisheries Service to implement this measure, as it would be impossible to accurately monitor and enforce the landing limits, DAS use, or catch attribution associated with this measure. Further, failure to allow vessels to fish inside and outside of the Eastern U.S./Canada Area may result in the continuation of unsafe practices by the fishing industry by eliminating opportunities to fish closer to shore should weather deteriorate during a trip into the Eastern U.S./Canada Area. Without the ability to fish inside and outside of this area on the same trip, vessel operators may feel compelled to continue fishing in the Eastern U.S./Canada Area longer than necessary to maximize landings, and therefore economic return, from a trip into this area, despite deteriorating weather conditions.

**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 area, DAS, and gear declarations requested with this submission would require more frequent reports. This information collection is required to be submitted prior to every trip taken under a NE Multispecies DAS. Requiring such declarations prior to every trip is necessary to accurately monitor vessel position and activity and properly charge for DAS used. This information would be used to by NOAA Fisheries Office of Law Enforcement to enforce provisions of the NE Multispecies FMP, including those regarding areas fished, DAS use, and possession limits.

**8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.**

The Council held many Council and Groundfish Oversight Committee meetings during the development of FW 42 during the period of March 2005 through March 2006 during which there were opportunities for public discussion of proposed management strategies. The Council approved the measures contained in FW 42, including those specified above, on February 2, 2006. The information collections contained in this submission are part of a proposed rule, RIN: 0648-AT24, to implement management measures outlined in FW 42 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. Once public comments have been considered, a final rule outlining the measures that would be implemented, as modified by public comment, would be published in the Federal Register.

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

Neither payments nor gifts are given to the respondents.

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

All data would be handled in accordance with NOAA Administrative Order 216-100, Confidentiality of Fisheries Statistics, and would not be released for public use except in aggregate statistical form (and without identifying the source of data, i.e., vessel name, owner, etc.). In addition, any information submitted according to the provisions outlined in FW 42, or any other management action implemented by NOAA Fisheries Service, 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.**

There are approximately 997 individual respondents estimated under this submission. These respondents represent those vessels issued a limited access NE Multispecies DAS permit and allocated NE Multispecies DAS. This number includes all entities that would be affected by this information collection, although different provisions affect different numbers of entities. Due to duplication of participants affected by the various provisions, affected entities were only counted once. Regulatory changes contained in this action alter current regulations, affecting previously approved burden estimates for several measures. However, reductions to previous estimates will be addressed once the information collections contained in OMB Control No.: 0648-0489 and this submission are merged into OMB Control No.: 0648-0202. The new burdens included in this information collection request are described in further detail below and summarized in Table 1 at the end of the text.

**Differential DAS Area Declarations**

FW 42 requires a vessel intending to fish for groundfish under a NE Multispecies DAS in the inshore GOM or an offshore in the SNE/MA RMA to declare its intent to fish in these areas prior to leaving port via VMS. FW 42 also requires that any vessel that does not intend to fish within the inshore GOM differential DAS counting area and is in the area due to circumstances beyond its control notify NOAA Fisheries Service. Such declarations are expected to take 5 minutes (0.083 hours) per response, including time to read through all of the menus and options presented. During fishing year 2004, a total of 529 vessels took a total of 14,043 trips into the GOM and 344 vessels took a total of 4,048 trips into the SNE/MA RMA. These numbers represent a conservative estimate of the number of trips that would likely be taken into the respective differential DAS counting areas proposed under FW 42. Because of the high cost in DAS associated with fishing in these areas, it is expected that fewer trips into these areas would be taken under FW 42. Analysis in FW 42 indicates that as few as 12,000 trips into the GOM inshore area would be taken, a 15 percent reduction from 2004. As a result, this information collection submission estimates that approximately 12,000 trips by 500 vessels would be taken in the GOM inshore area and 3,400 trips by 300 vessels would be taken in the SNE/MA offshore area, assuming a 15 percent reduction from 2004. This results in an anticipated yearly burden of 996 hours and 282 hours, respectively, for the inshore GOM and offshore SNE/MA differential DAS counting areas proposed by FW 42.

Given that FW 42 also proposes a mandatory VMS requirement for all NE Multispecies vessels fishing for groundfish on a NE Multispecies DAS, the burden associated with this provision would be included with the overall burden associated with the mandatory VMS requirement, as similar declarations, and their associated burdens, would be borne by all groundfish vessels. Therefore, it is no longer necessary to identify the individual burdens associated with specific declarations.



## **Category B (regular) DAS Program**

The Category B (regular) DAS Pilot Program was implemented under FW 40A as a means to target healthy groundfish stocks without compromising rebuilding stocks. This pilot program expired on October 31, 2005, but would be renewed by FW 42. Burdens associated with this program include the initial declaration to participate in this program prior to leaving port and the declaration of a DAS flip. Both declarations are made via VMS and are estimated to take 5 minutes (0.083 hours) each.

It is estimated that approximately 5,000 trips would be taken into the Category B (regular) DAS Program every year. This estimate includes 3,500 trips based on the number of available Category B (regular) DAS, plus an additional 1,500 due to the expected 1,500 flipped trips (once a trip is flipped, any Category B (regular) DAS that were used on that trip are converted to Category A DAS and no longer counted towards the quarterly Category B (regular) DAS limit, thereby increasing the pool of available Category B (regular) DAS that can be used in this program). The resulting yearly burden for declarations to participate in the Category B (regular) DAS Program under FW 42 is estimated to be 415 hours (0.083 hours x 5,000 declarations). The burden associated with DAS flips amounts to 125 hours (1,500 flips x 0.083 hours/flip).

The revised burden associated with the initial declarations into the Category B (regular) DAS Program (415 hours) would be included in the overall estimate of the burden associated with the mandatory VMS requirement, as specified in further detail below, and are not included as an individual burden. Because the burden associated with the DAS flipping provision of the Category B (regular) DAS Pilot Program was overestimated in FW 40A, NOAA Fisheries Service prepared a PRA worksheet for the emergency Secretarial action that modified the burdens included in OMB Control No.: 0648-0202 to accommodate flex trip declarations proposed under the emergency Secretarial action. This worksheet reduced the burden associated with DAS flips in the Category B (regular) DAS Pilot Program to 125 hours (i.e., a reduction of 42 hours, or 500 flips x 0.083 hours/flip) and added the burden associated with declarations of the intent to fish inside and outside of the Eastern U.S./Canada Area under a “flex” trip of 42 hours (i.e., 500 “flex” trip declarations x 0.083 hours/declaration). Because these revised burdens associated have already been incorporated by the worksheet for OMB Control No. 0648-0202, this information collection does not include the burden associated with DAS flips in this program, but merely describes the changes made by this worksheet and continued through the information collection submission for FW 42. Not only does this more accurately reflect the expected burdens associated with this provision, but it also documents actions taken by NOAA Fisheries Service during the development of the emergency Secretarial action to account for declarations associated with flex trips into the Eastern U.S./Canada Area. For further discussion about how DAS flips are handled under this submission is included in the discussion of the Eastern U.S./Canada Area flex trips below.

These burden estimates are considered conservative and are likely to continue to overestimate the actual burden that may be realized from this program. However, the low 2006 total allowable catches (TACs) and the associated low possession limits specified for this program increase the likelihood that vessels would exceed the possession limits for specific species and be required to flip to a Category A DAS. Also, the potential for future increases in the total allowable catch amounts specified for this program to increase participation in this program, a conservative estimate seems warranted over the duration of this information collection.

## **Mandatory VMS Requirement**

FW 42 proposes to require all limited access NE Multispecies vessels intending to fish for groundfish on a NE Multispecies DAS to use VMS. Vessels that do not currently possess a VMS would be required to purchase, install, and use a VMS unit once implemented. The installation of each VMS unit is estimated to take approximately 1 hour. Once installed, the vessel owner/operator would be required to submit a form as proof of installation. This form is estimated to take 5 minutes (0.083 hours) to complete. Any vessel intending to use a NE Multispecies DAS to fish for groundfish must declare its intent to fish in either a special management program (i.e., an approved SAP or the Category B (regular) DAS Program) or outside of a special management program, the category of DAS and type of gear to be used on that trip, and the specific area that in which the vessel intends to fish (i.e., the GOM inshore area, the offshore area in the SNE/MA RMA, or one of the U.S./Canada Management Area options) via VMS prior to leaving port. This declaration is expected to take approximately 5 minutes (0.083 hours).

Currently, there are 997 vessels in the NE Multispecies fishery that have been allocated NE Multispecies DAS and may be required to use VMS under FW 42. Information collection submissions prepared for Amendments 5 and 7 to the FMP had previously incorporated burdens associated with the purchase and installation of VMS units for all groundfish vessels under OMB Control No. 0648-0202. However, these burdens were removed in subsequent renewals of OMB Control No. 0648-0202 because VMS was not mandatory and very few vessels were actually using VMS in the groundfish fishery. In the latest renewal, the burden associated with the purchase and installation of 25 VMS units per year was included, but it was unclear how many of these vessels were estimated to be groundfish vessels. Because it is unclear whether this burden includes groundfish vessels, it was assumed that previous collections did not include groundfish vessels. This information collection would add the burden for the purchase and installation of VMS units by all vessels currently allocated NE Multispecies DAS for a total of 997 hours for installation and an additional 83 hours for proof of installation under FW 42. Vessels are only required to purchase and install a VMS once. **Therefore, these burdens become 332 hours and 28 hours, respectively, when annualized over the duration of this information collection.**

Automated polling of vessel position via VMS for all vessels that would be required to use VMS under FW 42 has already been approved under OMB Control No.: 0648-0489. That information collection submission assumed that every vessel allocated NE Multispecies DAS would participate in the Category B (regular) DAS Pilot Program proposed under FW 40A and would, therefore, be required to use VMS. Accordingly, there are no additional burdens associated with automated polling of vessel position via VMS under FW 42, as these burdens have already been approved.

During fishing year 2004, approximately 25,000 trips were taken under a groundfish DAS. However, vessels did not use all of their allocated DAS during that year. Accordingly, a conservative estimate of 30,000 trips under a groundfish DAS per year is likely to be sufficient to cover the anticipated burden associated with the VMS area, gear, and DAS declarations proposed by FW 42. **Assuming that each DAS declaration takes approximately 5 minutes (0.083 hours), the yearly burden associated with these declarations is estimated at 2,490 hours.** It should be noted that even if the VMS system becomes inoperable for any reason, the

burdens associated with VMS declarations prior to each trip using a NE Multispecies DAS are sufficient to cover any burdens associated with the temporary usage of the DAS call-in system. Therefore, there is no need to continue the burdens associated with the DAS call-in system in case the VMS system becomes inoperable, even as a back-up system.

It is important to note that the overall burden associated with NE Multispecies DAS trip declarations includes the declaration that a vessel intends to fish outside of the GOM RMA in order to become exempt from the GOM cod trip limit. Therefore, no additional burden is associated with that particular requirement. Previously, vessels were required to call the NOAA Fisheries Service Permit Office to obtain a LOA to exempt them from the GOM cod trip limit. However, should the VMS system become no longer available, it may be necessary to require vessels to obtain this exemption via the previous LOA by calling the NOAA Fisheries Service Permit Office, as previously required. Therefore, this information collection submission retains the previously approved burdens associated with obtaining the GOM cod trip limit LOA described in OMB Control No.: 0648-0202.

### **Eastern U.S./Canada Area Flex Trips**

As discussed above, both the emergency Secretarial action and FW 42 propose to allow vessels to fish both inside and outside of the Eastern U.S./Canada Area on the same trip (what is referred to as a “flex” trip), provided the vessel notifies NOAA Fisheries Service of its intent to do so via VMS. This declaration is expected to take 5 minutes (0.083 hours), including the time to read through all instructions. Because the burden associated with the DAS flipping provision of the Category B (regular) DAS Pilot Program had been overestimated in FW 40A, NOAA Fisheries Service prepared a PRA worksheet for the emergency Secretarial action that modified the burdens included in OMB Control No.: 0648-0202. This worksheet reduced the burden associated with DAS flips by 42 hours (i.e., 500 flips x 0.083 hours/flip) in the Category B (regular) DAS Pilot Program and added the burden associated with declarations of the intent to fish inside and outside of the Eastern U.S./Canada Area under a “flex” trip of 42 hours (i.e., 500 “flex” trip declarations x 0.083 hours/declaration). In doing so, all burdens associated with the emergency Secretarial action are accounted for and the burden associated with DAS flips in the Category B (regular) DAS Program more accurately reflect the expected burden of this provision. Since FW 42 would continue to allow vessels to fish inside and outside of the Eastern U.S./Canada Area on a “flex” trip, this information collection describes these changes to the burdens taken by the worksheet prepared for the emergency Secretarial action, but does not list these as additional burdens because the worksheet prepared for OMB Control No.: 0648-0202 already documented this shift in burden.

### **GOM Differential DAS Area Heaving-to Declaration**

A vessel that has not declared its intent to fish in the inshore GOM Differential DAS Area but is in the area due to adverse weather or circumstances beyond its control must declare that it is neither fishing nor transiting in this area via VMS – what is termed as a heaving-to declaration. During fishing year 2004, a total of 529 vessels took a total of 14,043 trips into the GOM RMA. Assuming that one percent of the yearly trips into the GOM RMA would be in the inshore GOM Differential DAS Area for circumstances beyond its control, vessels operating in such a manner would need to submit approximately 140 VMS declarations indicating that they are neither fishing nor transiting while in this area on a yearly basis. **Assuming that each declaration**

**takes approximately 5 minutes (0.083 hours) per response, the annualized burden for such declarations is estimated at approximately 12 hours.**

### **DAS Transfer Program**

As specified above, this information collection adds two more questions to the DAS Transfer Program request form. However, it is not expected that these additional questions will increase the burden associated with the submission of this form beyond that which was previously approved under OMB Control No.: 0648-0489. Therefore, there are no additional burdens associated with revisions to the DAS Transfer Program proposed under FW 42.

Total burden for this collection is 2,862 hours (332 + 38 + 2,490 + 12).

### **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 cost burdens associated with the measures proposed by FW 42 are summarized in Table 1 and described in further detail below.

### **Differential DAS Area Declarations**

Under FW 42, a vessel electing to fish in the inshore GOM or an offshore area of the SNE/MA RMA would be required to declare its intent to fish for groundfish in those areas under a NE Multispecies DAS via VMS. Each declaration costs \$0.50. Assuming that 12,000 trips would be taken into the inshore GOM each year, the annualized cost burden of this requirement would be \$6,000. Assuming that 3,400 trips would be taken into the offshore area of the SNE/MA RMA, the annualized cost burden of this requirement would be an additional \$1,700. However, the costs associated with this declaration are included with an overall cost estimate associated with similar declarations required by the mandatory VMS requirement proposed in FW 42. For information on the costs of such declarations, see the discussion of the mandatory VMS requirement below.

### **Category B (regular) DAS Program**

Costs associated with the Category B (regular) DAS Program include the cost to declare the intent to fish in this program prior to each trip and the costs associated with declaring a DAS flip. Such costs were previously estimated by the information collections under FW 40A. A revised cost burden to account for the reduced estimate of DAS flips in the Category B (regular) DAS Program of \$750 (1,500 DAS flips x \$0.50/flip) was incorporated into the worksheet prepared for OMB Control No.: 0648-0202 during the development of the emergency Secretarial action referenced above and is not included in this submission. The cost burden associated with initial declarations into this program would be incorporated into the overall estimate of the costs associated with area, DAS, and gear type declarations resulting from the mandatory VMS requirement proposed by FW 42 and specified in further detail below.

## **Mandatory VMS**

FW 42 would require that all limited access NE Multispecies vessels that intend to fish for groundfish under a NE Multispecies DAS use a VMS. All vessels that do not currently possess VMS must obtain one under this provision. The cost of purchasing and installing a VMS was previously approved in earlier information collections under OMB Control No.: 0648-0202 for Amendments 5 and 7 to the FMP, but was removed because the VMS requirement in the groundfish fishery was not mandatory in the groundfish fishery and very few vessels were utilizing VMS to fish for groundfish.

Previous estimates of the purchase price for an approved VMS unit ranged from \$3,600 to \$6,000 per unit. A recent estimate indicates that the most expensive VMS unit approved for operations in the NE Region cost approximately \$3,000. Installation costs range between \$150 - \$200 per unit. The cost burdens associated with the purchase and installation of a VMS unit as part of the mandatory VMS requirement proposed under FW 42 would be limited to those vessels issued a limited access NE Multispecies permit and allocated DAS under Amendment 13, or 997 vessels. Therefore, assuming that a VMS unit would cost \$3,000 and installation would cost an additional \$200, the costs associated with the mandatory VMS requirement proposed by FW 42 is estimated at \$3,190,400 (i.e., 997 vessels x \$3,200/vessel). This cost would be borne by vessels only once, so the annualized burden for a mandatory VMS requirement over the duration of this information collection would be approximately **\$1,063,467**. It should be noted, however, that Congress has appropriated approximately \$4,000,000 to assist in the purchase of VMS units required by any management action implemented during fiscal year 2006. Accordingly, it is likely that some form of subsidy will be made available to assist in the purchase of VMS units by groundfish vessels under FW 42, thereby decreasing, or even eliminating, the economic burden of the purchase of VMS units as proposed under FW 42.

Vessels would be required to mail in proof of installation of the VMS unit to NOAA Fisheries Service. Using a postage rate of \$0.39/vessel, the annualized cost of submitting proof of installation would be an additional **\$129**.

Costs associated with area and DAS declarations prior to each trip fishing under a NE Multispecies DAS are estimated at \$0.50/submission. In 2004, approximately 25,000 trips were taken under a groundfish DAS. Since not all of the allocated DAS were used during 2004, and because of continued effort reductions in the fishery, there is an incentive to maximize the utilization of DAS allocated. Therefore, a conservative estimate of the number of trips expected under FW 42 was determined to be approximately 30,000 trips/year. The yearly cost associated with VMS declarations for these 30,000 trips amounts to **\$15,000** (30,000 trips x \$0.50/trip).

Yearly operations costs associated with the use of VMS have already been approved. The previous information collection submission assumed that every vessel allocated NE Multispecies DAS would participate in the Category B (regular) DAS Pilot Program proposed under FW 40A and would, therefore, be required to use VMS. Accordingly, there are no additional costs associated with VMS usage under FW 42, as these costs have already been approved.

## **Eastern US/CAN Flexibility**

Under FW 42, a NE Multispecies vessel would be allowed to fish inside and outside of the

Eastern U.S./Canada Area on the same trip, provided the vessel declared its intent to do so via VMS. Each declaration is estimated to cost \$0.50. Assuming that 500 such declarations are made every year, the annualized cost of this measure would amount to \$250. It is difficult to accurately estimate the yearly cost associated with this provision. However, it is likely that the above burden is a conservative estimate of the likely burden associated with this measure.

The emergency Secretarial action has already considered the burden associated with declarations to fish inside and outside of the Eastern U.S./Canada Area by preparing a worksheet prepared for OMB Control No.: 0648-0202 that reclassified the burdens associated with 500 DAS flips in the Category B (regular) DAS Pilot Program as “flex” trip declarations. Since FW 42 would continue to allow vessels to fish inside and outside of the Eastern U.S./Canada Area on a “flex” trip, but would not alter the burden previously approved in the emergency Secretarial action worksheet, this information collection merely describes, but does not include, these changes to the burdens taken by the worksheet prepared for the emergency Secretarial action. As a result, this information collection does not list this cost in Table 1.

### **GOM Differential DAS Area Heaving-to Declaration**

As described above, it is estimated that approximately one percent of the yearly trips into the GOM will be required to declare that the vessel is in the GOM Differential DAS Area due to circumstances beyond its control and is not fishing or transiting. Each declaration would be required to be made via VMS. Each declaration would cost \$0.50. During the 2004 fishing year, approximately 14,043 trips were taken in the GOM RMA. Therefore, approximately 140 GOM Differential DAS Area heaving-to declarations are expected each year, resulting in an annualized cost burden of **\$70**.

Total annualized costs would be \$1,078,666 ( $\$1,063,467 + \$129 + \$15,000 + \$70$ ).

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

A full summary of the following information may be found in Tables 1 and 2.

NOAA Fisheries Service currently operates a VMS system for several fisheries in the NE, including the NE Multispecies fishery. The ongoing (recurring) costs associated with the administration of the VMS system amount to \$352,293 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 substantially with the mandatory VMS requirement proposed under FW 42. These declarations are performed through the VMS and are automatically entered into computer databases.

Costs associated with the review of proof of VMS installation include review time by NOAA Fisheries Service staff. Each form requires 5 minutes of review by staff at a rate of \$25/hour. Earlier information collection submissions for OMB Control No.: 0648-0202 included the costs associated with reviewing 52 VMS proof of installation forms, as this was the number of groundfish vessels using VMS at that time. However, because FW 42 requires all groundfish vessels intending to fish on a NE Multispecies DAS to use VMS, all groundfish DAS vessels must purchase and install a VMS unit. Therefore, this information collection submission removes previous estimates for such costs (\$108) and adds a revised estimate to account for the

costs associated with all groundfish DAS vessels purchasing and installing a VMS. A total of 997 groundfish vessels have been allocated DAS under Amendment 13 and would have to purchase a VMS. Using the assumptions for staff review time provided above, the annualized cost of reviewing VMS proof of installation forms is estimated to be \$689 (\$25/hour x (0.083 hours x 332 forms/year)).

**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 need to reduce fishing mortality on several groundfish stocks to maintain progress along the Amendment 13 rebuilding program requires a number of new measures under FW 42. The proposed data collection would be used to implement a mandatory VMS requirement to all vessels fishing under a NE Multispecies DAS and to allow vessels to fish inside and outside of the Eastern U.S./Canada Area on the same trip. Such provisions require new information collections and would be considered a program change. The net public burden and cost associated with the provisions included in FW 42 are estimated as 2,862 hours and a net increase in costs of \$1,078,666.

**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 Associated with the Northeast Permit Family of Forms (OMB Control No. 0648-0489 and 0648-0202), as Revised by FW 42 to the NE Multispecies FMP.**

Permit Requirement	Annualized # of Entities	Items Per Entity	Total # of Items	Response Time	Total Burden	Cost to:	
						Public	Govt. <sup>(1)</sup>
<b>VMS Purchase and Installation</b>							
VMS Purchase and Installation	332	1	332	1 hr	332	\$1,063,467	\$0
VMS Proof of Installation	332	1	332	5 min	28	\$129	\$689
<b>Area and DAS Declaration (time burden and message cost)</b>							
Groundfish Vessels Fishing Under a NE Multispecies DAS (all programs)	997	30	30,000	5 min	2,490	\$15,000	\$0
GOM Differential DAS Area Heaving-to Declaration	140	1	140	5 min	12	\$70	\$0
<b>Totals<sup>(5)</sup></b>	<b>997</b>		<b>30,804</b>		<b>2,862</b>	<b>\$1,078,666</b>	<b>\$689</b>

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

(2) Counts affected entities only once.



**Table 2: Current Costs to the Government from VMS Monitoring.**

<b>Annual Costs</b>	Salary and Benefits <sup>1</sup>	\$230,000
	Internet Connection <sup>2</sup>	\$7,500
	Equipment <sup>3</sup>	\$20,000
	Back-up System <sup>4</sup>	\$38,960
	Software Licensing	\$3,500
	Supplies <sup>5</sup>	\$11,000
	Training and Travel	\$8,000
	<b>Total Ongoing Costs</b>	<b>\$318,960</b>
<b>Start-up Costs</b>	Software Adaptations	\$100,000
	<b>Annualized Start-up Costs (at 3-year amortization)</b>	<b>\$33,000</b>
<b>Total Annual Costs<sup>6</sup></b>		<b>\$352,293</b>

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 discs, repairs, and supplies associated with non-lease equipment (modem, router, thermal paper, WORM drive)
6. Estimated by adding up the start-up costs to ongoing costs

**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 a permit holder letter to be drafted at a later time. 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 FW 42 to the Northeast (NE) Multispecies Fishery Management Plan (FMP). Management measures under FW to the NE Multispecies FMP were developed to ensure that stocks continue to meet the Amendment 13 rebuilding objectives.

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

This information will be outlined in a permit holder letter to be drafted at a later time. 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 there are no new forms associated with the information collected as part of this submission for provisions included within FW 42, this information will be included in the proposed rule prepared for this action. Public comments regarding these information collections will be solicited at this time.

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

All of the information required by FW 42 is necessary to participate in the NE Multispecies fishery. These requirements 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 a permit holder letter to be drafted at a later time. 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 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.



**APPLICATION TO  
PERMANENTLY TRANSFER  
NE MULTISPECIES DAYS-AT-SEA (DAS)**

Provide all information requested.

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

**Transferor (Person Transferring DAS) Information:**

Owner Name: \_\_\_\_\_ Permit #: \_\_\_\_\_

Vessel Name: \_\_\_\_\_ Official #: \_\_\_\_\_  
(or state registration #)

**Transferee (Person receiving DAS) Information:**

Owner Name: \_\_\_\_\_ Permit #: \_\_\_\_\_

Vessel Name: \_\_\_\_\_ Official #: \_\_\_\_\_  
(or state registration #)

**Conservation Tax to be applied to the DAS of the: transferring / receiving vessel.**

(Please circle one)

**Baseline of the Transferee (i.e., receiving) Vessel (check one of the options below):**

\_\_\_\_\_ Use Smaller Baseline Between the Two Vessels

\_\_\_\_\_ Use Larger Baseline Between the Two Vessels

(NOTE: This option will utilize the one-time allowable upgrade for this permit.)

**Total Price Paid for Transferred DAS:** \_\_\_\_\_

Signed: \_\_\_\_\_  
(Transferor)

Signed: \_\_\_\_\_  
(Transferee)

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

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

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

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

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 648**

[Docket No. 060209031-6092-02; I.D. 020606C]

RIN 0648-AU09

**Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Emergency Secretarial Action**

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

**ACTION:** Temporary rule; emergency interim final rule and request for comments.

**SUMMARY:** NMFS implements this interim final rule pursuant to its authority to issue emergency measures under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This emergency action implements measures intended to reduce immediately the fishing mortality rate (F) on certain groundfish species to prevent overfishing and maintain the rebuilding programs of the Northeast (NE) Multispecies Fishery Management Plan (FMP). Specifically, this emergency action implements differential days-at-sea (DAS) counting for all groundfish vessels not participating in the U.S./Canada Management Area on Georges Bank (GB), reduced trip limits for certain species, and recreational possession restrictions, among other provisions. In addition, this action continues two programs that would otherwise expire by the end of the 2005 fishing year (FY) on April 30, 2006: The DAS Leasing Program and a modified Regular B DAS Program on GB. Due to the impact of these proposed measures on the monkfish fishery, this emergency action also limits participation of monkfish Category C, D, or F permits in the Regular B DAS Program and revises the method of calculating available monkfish-only DAS for Category C, D, F, G, or H monkfish vessels. Further, this action eliminates the daily and maximum trip limits for haddock for FY 2006. Also, because of the substantive nature of this emergency rule and the necessary shortened comment period on the proposed rule for this action, this rule is being implemented as an emergency interim action and seeks additional public comment. This action is intended to prevent overfishing while maintaining specific programs designed

to help mitigate the economic and social impacts of effort reductions under the FMP until more permanent management measures can be implemented through Framework Adjustment (FW) 42 to the FMP.

**DATES:** Effective May 1, 2006, through October 10, 2006, or until superseded by another final rule, whichever occurs first. Additional comments on this emergency interim action must be received by May 15, 2006.

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

- E-mail:

*MultsEmergency@NOAA.gov*. Include in the subject line the following: "Comments on the Proposed Rule for Groundfish Emergency Action."

- 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 Emergency Action."

- Fax: (978) 281-9135.

Copies of this rule, its Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis (IRFA), and the Environmental Assessment (EA) are available from Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. The Final Regulatory Flexibility Analysis (FRFA) consists of the IRFA, public comments and responses, and the summary of impacts and alternatives contained in the Classification section of the preamble of this emergency interim final rule. Copies of the small entity compliance guide are available from the Regional Administrator at the above address. The EA/RIR/IRFA prepared for this action are also accessible via the Internet at <http://www.nero.nmfs.gov>.

Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this emergency interim final 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](mailto:David_Rostker@omb.eop.gov), or fax to (202) 395-7285.

**FOR FURTHER INFORMATION CONTACT:** Douglas W. Christel, Fishery Policy Analyst, (978) 281-9141, fax (978) 281-9135.

**SUPPLEMENTARY INFORMATION:**

**Background**

This interim final rule implements emergency measures, authorized by section 305(c) of the Magnuson-Stevens Act, intended to immediately reduce F on specific groundfish stocks beginning May 1, 2006, in order to maintain the rebuilding program established under Amendment 13 to the FMP. A proposed rule requesting public comment on this emergency action filed with the **Federal Register** on February 24, 2006, and published on March 3, 2006 (71 FR 11060). Public comments were accepted through March 9, 2006, as clarified through a correction to the proposed rule (71 FR 12669; March 13, 2006). A full discussion of the background of this emergency action was presented in the preamble to the proposed rule for this emergency action and is not repeated here. In summary, Amendment 13 established a biennial adjustment process to review the fishery and implement any changes necessary to ensure that the fishery continues to meet the Amendment 13 rebuilding objectives, including meeting the F targets for each year of the rebuilding program. The Groundfish Plan Development Team (PDT) of the New England Fishery Management Council (Council) utilized the results of the latest stock assessment, the August 2005 Groundfish Assessment Review Meeting (GARM II), to calculate estimates of the 2005 calendar year F for all groundfish stocks. This analysis indicated that F<sub>2005</sub> for particular groundfish stocks, (*i.e.*, Gulf of Maine (GOM) cod, Cape Cod (CC)/GOM yellowtail flounder, Southern New England (SNE)/Mid-Atlantic (MA) yellowtail flounder, SNE/MA winter flounder, GB winter flounder, white hake, and GB yellowtail flounder) is, in some cases, substantially less than that observed for 2004, but still higher than the 2006 target F specified in the Amendment 13 rebuilding program. As a result, F for these stocks must be reduced at the start of FY 2006 on May 1, 2006. The Council began the development of measures in FW 42 to the FMP that would achieve the necessary F reductions for FY 2006. However, at its November 15-17, 2005, meeting, the Council announced that it was not able to complete FW 42 in time for NMFS to implement these measures by May 1, 2006. Although at its January 31-February 2, 2006, meeting the Council voted to adopt a suite of management measures under FW 42, it is not possible to implement these measures by May 1, 2006.

Therefore, pursuant to section 305(c) of the Magnuson-Stevens Act, this interim final rule implements measures

to immediately reduce F for specific groundfish stocks and prevent overfishing in the groundfish fishery for the start of FY 2006 on May 1, 2006, until long-term management measures adopted by the Council in FW 42, if approved by NMFS, can be implemented. Justification of this emergency action for ecological, economic, and social reasons is contained in the preamble of the proposed rule for this action and is not repeated here.

Although the management measures implemented by this emergency action do not, by themselves, achieve the full Amendment 13 F reductions for all groundfish stocks that require F reductions for FY 2006, this action, in combination with measures adopted by the Council in FW 42, are intended to achieve the necessary Amendment 13 F objectives. To ensure that the groundfish fishery meets the Amendment 13 rebuilding objectives, additional management measures through Secretarial action may be necessary during FY 2006, especially if FW 42 is implemented later than anticipated.

The primary objective of this emergency action is to put into place a suite of simple, interim management measures by the start of FY 2006 that would immediately and substantially reduce F on several groundfish stocks most in need of F reductions to maintain the Amendment 13 rebuilding program. Other objectives include: (1) Implementing management measures that are as fair and equitable to all vessels as possible, as well as easy to understand, implement, administer and enforce; (2) implementing measures that are similar to those adopted by the Council in FW 42, to the extent practicable, in order to minimize confusion and adjustment to those measures, if FW 42 is approved and implemented; and (3) minimizing the social and economic impacts of the emergency measures as much as practicable while still meeting the F reduction objectives.

Because of the intense interest in this action and because the comment period for the proposed action was necessarily short, NMFS is implementing this as an emergency interim final rule and will accept public comment on the measures implemented by this action through May 15, 2006.

#### **Management Measures Implemented by This Emergency Interim Final Rule**

All measures in effect prior to May 1, 2006, and not amended by this emergency action, remain in effect. The current management measures include

two default measures in Amendment 13 that were designed to go into place on May 1, 2006, unless certain conditions were met. One default measure for the revision of the allocation ratio of Category A:B DAS from 60:40 to 55:45, is not revised by this emergency action and will go into place on May 1, 2006. This measure, therefore, is not discussed specifically in the description of the measures implemented by this emergency action. However, the second default measure implemented by Amendment 13 (*i.e.*, differential DAS counting at a rate of 1.5:1 throughout the SNE/MA Regulated Mesh Area (RMA)) is revised by this emergency action, as described further below, and the revised measures, not the Amendment 13 default measure, will go into place on May 1, 2006.

A description of the management measures implemented by this emergency action follows.

##### *1. Differential DAS Counting*

Measures adopted by the Council in FW 42 rely upon reduced trip limits for GB winter flounder, GB yellowtail flounder, and white hake, rather than differential DAS counting, to achieve the necessary F reductions for these species during FY 2006. In response to public comment/concerns and further analysis, in order to more closely mirror the measures adopted by the Council in FW 42 and to more effectively achieve OY in the fishery, the differential DAS counting measure specified in the proposed rule for this action is revised to remove differential DAS counting for vessels participating in the U.S./Canada Management Area on GB and replace that proposed measure with trip limits for GB winter flounder and white hake adopted by the Council in FW 42 (see measures 5 and 6 below). This revision will allow vessels to more readily target healthy groundfish stocks on GB without compromising the rebuilding efforts of overfished stocks, particularly CC/GOM and SNE/MA yellowtail flounder stocks just outside the U.S./Canada Management Area along the South Channel. In addition to replacing the differential DAS counting measure on GB with trip limits for specific stocks needing F reductions for FY 2006, the Regional Administrator is able to exert additional controls that limit the F effects from potential redirected effort onto GB through the authority provided in the current regulations at § 648.85(a)(3)(iv) to modify access to the U.S./Canada Management Area, as well as trip limits for GB cod, GB haddock, and GB yellowtail flounder. This management strategy is consistent with the approach taken to restrict

participation in the Regular B DAS Program to the U.S./Canada Management Area, as described in the proposed rule for this action.

Therefore, under this emergency action, all NE multispecies Category A DAS used by a vessel issued a limited access NE multispecies DAS permit, with the exception noted below, will be charged at a rate of 1.4:1, unless the vessel is participating in the U.S./Canada Management Area. Any Category A DAS used by a groundfish vessel that declares its intent to fish, and fishes, exclusively within in the U.S./Canada Management Area will be charged at a rate of 1:1. A vessel fishing both inside and outside of the U.S./Canada Management Area on the same trip must abide by the more restrictive regulations in either area. With respect to DAS, this means that any vessel that declares its intent to fish some or all of its trip, or fishes some or all of its trip other than for transiting purposes, inside and outside of either the Eastern or the Western U.S./Canada Area on the same trip will be charged Category A DAS at the rate of 1.4:1 for the entire trip, whether or not the vessel actually harvests fish from outside of the U.S./Canada Management Area. A vessel intending to fish, or fishing, within the Eastern U.S./Canada Area that also elects to fish within the Western U.S./Canada Area on the same trip must declare its intent to do so via VMS and will be charged Category A DAS at a rate of 1:1 for the entire trip (see measure 11 for further details). A vessel intending to fish, or fishing both inside and outside of the Western or Eastern U.S./Canada Areas must declare its intent to do so via VMS prior to leaving the dock and/or prior to leaving the Eastern U.S./Canada Area, respectively, and will be charged NE multispecies Category A DAS at a rate of 1.4:1 for the entire trip. For example, a groundfish trawl vessel fishing exclusively in the GOM on a 5-day (120-hr) trip would be charged for 7 DAS (168 hr) (120 hr × 1.4) of DAS use. A groundfish trawl vessel fishing exclusively in the Western U.S./Canada Area on a 5-day (120-hr) trip would be charged for 5 days (120 hr) of DAS use. A groundfish trawl vessel that steams to and fishes both inside and outside of the Western U.S./Canada Area on a 5-day (120-hr) trip would be charged for 7 days (168 hr) (120 hr × 1.4) of DAS use. A groundfish trawl vessel fishing in the Eastern U.S./Canada Area that elects to fish in the Western U.S./Canada Area on the same trip of 5 days (120 hr) would be charged for 5 days (120 hr) of DAS use. For further examples of the impact of fishing inside and outside of the

Eastern U.S./Canada Area, refer to the description of measure 11, Eastern U.S./Canada Area Flexibility.

Day gillnet vessels not participating in the U.S./Canada Management Area will be charged at a rate of 1.4:1 for the actual hours used for any trip of 0–3 hours in duration, and for any trip of greater than 11 hours. For Day gillnet trips outside of the U.S./Canada Management Area of between 3 and 11 hours duration, vessels will be charged 15 hours. A Day gillnet vessel fishing inside of the U.S./Canada Management Area will be charged DAS at a rate of 1:1 for the actual hours used for any trip of 0–3 hours in duration, and for any trip of greater than 15 hours. For Day gillnet trips inside the U.S./Canada Management Area of between 3 and 15 hours duration, vessels will be charged 15 hours. A Day gillnet vessel fishing in the GOM or the Western U.S./Canada Area for 10 hours would be charged for 15 hours of DAS use; a Day gillnet vessel fishing in the GOM for 10 hours would be charged for 14 hours of DAS use (10 hours  $\times$  1.4). A Day gillnet vessel fishing exclusively within the Western U.S./Canada Area for 20 hours would be charged for 20 hours of DAS use.

A vessel issued a limited access monkfish Category C, D, F, G, or H permit and fishing under a monkfish DAS will have its NE multispecies DAS charged at a rate of 1.4:1 when fishing outside of the U.S./Canada Management Area on any trip or portion of a trip, but its monkfish DAS will continue to be charged at a rate of 1:1, regardless of area fished. Because differential DAS counting of NE multispecies DAS could result in a net allocation of NE multispecies Category A DAS that is less than the number of monkfish DAS allocated, a Category C, D, F, G, or H monkfish vessel may fish under a monkfish-only DAS when groundfish DAS are no longer available, provided the vessel fishes under the provisions of the monkfish Category A or B permit. The number of monkfish-only DAS that may be used by a vessel is equal to the difference between the number of its net monkfish DAS allocation and the number of its net NE multispecies Category A DAS allocation. See § 648.92(b)(2)(iv) for definitions of net monkfish DAS and net NE multispecies Category A DAS. For any vessel that fishes any of its allocated NE multispecies Category A DAS outside of the U.S./Canada Management Area and is, therefore, subject to differential counting of NE multispecies DAS at a rate of 1.4:1, the number of monkfish-only DAS that may be used by that vessel is increased by 0.286 DAS for every NE multispecies DAS charged

when fishing in the differential DAS area to adjust for differential DAS counting of NE multispecies DAS. This adjustment factor is equal to the rate at which monkfish-only DAS increase for each additional NE multispecies Category A DAS charged when fishing outside of the U.S./Canada Management Area at a rate of 1.4:1, using the formula: Monkfish-only DAS = Net Monkfish DAS Allocation – (Net Groundfish DAS Allocation  $\div$  1.4). This adjustment is necessary to ensure that a monkfish Category C and D vessel is able to use its full allocation of monkfish DAS despite differential DAS counting of NE multispecies DAS. For example, if a vessel has an annual allocation of 40 monkfish DAS and 30 NE multispecies DAS, the vessel has an annual allocation of 10 monkfish-only DAS. If this vessel uses 2 NE multispecies DAS outside of the U.S./Canada Management Area, the vessel is actually charged 2.8 NE multispecies DAS (2 DAS  $\times$  1.4), and its monkfish-only DAS are adjusted upwards by 0.57 DAS (2 DAS  $\times$  0.286). If this same vessel fishes exclusively within the U.S./Canada Management Area, the vessel would not be allocated any additional monkfish-only DAS and would be allowed to use only 10 monkfish-only DAS. All groundfish DAS must be used before a vessel can use any available monkfish-only DAS.

The proposed rule for this emergency action inadvertently failed to specify how differential DAS counting would affect the current cod running-clock requirement. The current cod running-clock requirements at § 648.86(b)(1)(ii) and (b)(2)(ii) mandate that any vessel that has been called into only part of an additional 24-hour DAS block, and possesses an additional day's worth of cod on board must keep its DAS clock running until the appropriate amount of time has elapsed. This measure was intended to ensure that the proper number of DAS were charged for the amount of cod landed. For example, a vessel that fishes in the GOM for 25 hours and lands 1,200 lb (544 kg) of cod (2 DAS of cod), would have been required to keep its DAS clock running until 48 hours had elapsed to cover the amount of cod landed. Under this emergency action, the cod running-clock provision is revised to account for differential DAS counting. Vessels fishing any part of a NE multispecies DAS trip in an area requiring differential DAS counting and that are using a vessel monitoring system (VMS) must declare that they have caught an additional day's worth of cod via VMS. Vessels fishing any part of a NE multispecies DAS trip in an area

requiring differential DAS counting and that are not required to use VMS must call out of the DAS program upon landing and declare that they have caught an additional day's worth of cod via the Interactive Voice Response (IVR), or call-in system. Any trip of between 24–34 hours in duration will be charged 48 hours of DAS use because any trip of between 24–34 actual hours in duration, when charged at a rate of 1.4:1, calculates to less than the minimum of 48 hours of DAS use required to fully account for the amount of cod caught. For example, a trip that fished for 25 hours in the GOM could land up to 1,200 lb (544 kg) of GOM cod (2 day's worth), but would be charged 48 hours. This same trip, if charged at a rate of 1.4:1, would only be charged for 35 hours. Any trip greater than 34 hours would be charged at a rate of 1.4:1 for the entire trip. For example, a vessel that fished for 35 hours in the GOM could land up to 1,200 lb (544 kg) of GOM cod, but would be charged 49 hours (35 hours  $\times$  1.4 = 49 hours). Similarly, vessels fishing exclusively in the U.S./Canada Management Area under a Category A DAS for the entire trip will be required to declare that they have caught an additional day's worth of cod via VMS and will be charged additional DAS, rounded to the next whole DAS, at a rate of 1:1. For example, a vessel that fishes for 25 hours in the Western U.S./Canada Area could land up to 2,000 lb (907 kg) of GB cod (2 days' worth), but would be charged 48 hours. This strategy ensures that the original intent of the cod running-clock provision (*i.e.*, that vessels could land an additional day's worth of cod, provided they are charged up to an additional 24 hours of DAS use) is maintained, without compromising the conservation objectives of the differential DAS counting measure.

## 2. GOM Cod Trip Limit

For vessels operating under a NE multispecies DAS, the possession limit of GOM cod is reduced to 600 lb (272 kg) per DAS, up to 4,000 lb (1,814 kg) per trip. For vessels operating under the limited access NE multispecies Handgear A permit regulations, the GOM cod possession limit is reduced to 250 lb (113 kg) per trip. The GOM cod trip limit for vessels operating under the open access Handgear B provisions is maintained at 75 lb (34 kg) per trip.

## 3. GB Yellowtail Flounder Trip Limit

The GB yellowtail flounder trip limit is reduced to 10,000 lb (4,536 kg) per trip. The Regional Administrator may increase or decrease the GB yellowtail

flounder trip limit to ensure that the GB yellowtail flounder total allowable catch (TAC) in the U.S./Canada Management Area is not under- or overharvested during FY 2006, pursuant to the authority provided in the existing regulations.

#### 4. CC/GOM and SNE/MA Yellowtail Flounder Trip Limit

The CC/GOM and SNE/MA yellowtail flounder trip limits are revised as follows: 500 lb (227 kg) per DAS, up to 2,000 lb (907 kg) per trip during July, August, September, December, January, February, March, and April; 250 lb (113 kg) per trip during May, June, October, and November.

#### 5. GB Winter Flounder Trip Limit

Partially in response to public comment/concerns, the proposed emergency action was revised to include a trip limit for GB winter flounder of 5,000 lb (2,268 kg) per trip. This trip limit will serve as the primary means to achieve the necessary F reduction for this stock for FY 2006, rather than the differential DAS counting measure on GB in the proposed rule for this action.

#### 6. White Hake Trip Limit

Similar to the trip limit for GB winter flounder, partially in response to public comment/concerns, the proposed emergency action was revised to include a trip limit for white hake of 1,000 lb (454 kg) per DAS, up to 10,000 lb (4,536 kg) per trip. This trip limit would serve as the primary means to achieve the necessary F reduction for this stock for FY 2006, rather than the differential DAS counting measure on GB in the proposed rule for this action.

#### 7. Modified Regular B DAS Program

The Regular B DAS Pilot Program was originally implemented by the FW 40A final rule (69 FR 67780; November 19, 2004), and was intended to provide opportunities to use Regular B DAS outside of a special access program (SAP) (and outside of closed areas) to target stocks that can withstand additional fishing effort. This emergency action continues a modified Regular B DAS Program that allows eligible vessels to target healthy groundfish stocks (primarily GB haddock) under a NE multispecies Regular B DAS without compromising the objectives of this emergency action. Because stocks in the GOM and SNE RMAs require substantial F reductions for FY 2006, participation in the Regular B DAS Program is restricted to the U.S./Canada Management Area on GB. A vessel participating in the Regular B DAS Program trip may fish under a NE

multispecies Regular B DAS in the Eastern U.S./Canada Area and/or the Western U.S./Canada Area on the same trip, but may not fish in an approved SAP, in a closed area, or outside of the U.S./Canada Management Areas on the same trip.

All vessels issued a limited access NE multispecies permit and allocated Regular B DAS are eligible to participate in this program. To reduce F on monkfish resulting from the use of Regular B DAS, Category C, D, or F monkfish vessels may not use a NE multispecies Regular B DAS and a monkfish DAS under the Regular B DAS Program on the same trip. These vessels may still participate in the Regular B DAS Program, but they are required to fish under a NE multispecies DAS only and are subject to the incidental catch limits for monkfish when fishing under a NE multispecies Regular B DAS.

In order to limit the potential biological impacts of the program, only 500 Regular B DAS may be used during the first quarter of the calendar year (May through July), while 1,000 Regular B DAS may be used in subsequent quarters (August through October, November through January, and February through April). Only trips that were completed under a NE multispecies Regular B DAS (*i.e.*, trips that were not flipped to a Category A DAS) are counted towards the quarterly Regular B DAS limit. NMFS will administer the quarterly 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. Once the maximum number of Regular B DAS are used in a quarter, the Regular B DAS Program will end for that quarter. These DAS are not allocated to individual vessels, but are used by participating vessels on a first-come, first-served basis. Regular B DAS used under this program 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 participating in this program must be equipped with an approved and operational 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 must provide the following information: Vessel name, contact name for coordination of observer deployment, telephone number of contact, date, time,

and port of departure. Prior to departing on the trip, the vessel owner or operator must notify NMFS via VMS that the vessel intends to participate in the Regular B DAS Program. Vessels fishing in the Regular B DAS Program are required to report their catches of groundfish stocks of concern (*i.e.*, cod, yellowtail flounder, winter flounder, American plaice, white hake, witch flounder) 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, are not subject to this reporting requirement.

Vessels fishing in this program are prohibited from discarding legal-sized regulated groundfish, and will be limited to landing no more than 100 lb (45.4 kg) of each groundfish species of concern (cod, American plaice, white hake, winter flounder, witch flounder, and yellowtail flounder) per DAS, unless further restricted (see below). Vessels fishing with trawl gear must use a haddock separator trawl when participating in this program. For vessels fishing with trawl gear, possession of flounders (all species, combined); monkfish (whole weight), unless otherwise specified below; and skates is limited to 500 lb (227 kg) each, and possession of lobsters is prohibited to ensure the proper utilization of the haddock separator trawl; a properly configured haddock separator trawl should not catch large quantities of these species. To further reduce the targeting of monkfish under this program, Category C, D, G and H monkfish vessels participating in this program are restricted by the monkfish incidental catch limits. In the Northern Fishery Management Area specified under the monkfish FMP, the limit is 400 lb (181 kg) tail weight per NE multispecies DAS, or 50 percent of the total weight of fish on board, whichever is less. In the Southern Fishery Management Area specified under the monkfish FMP, the incidental catch limit is 50 lb (23 kg) tail weight per NE multispecies DAS. Discarding of legal-sized monkfish is prohibited when fishing under this program. If a vessel harvests and brings on board legal-sized groundfish species of concern or monkfish in excess of these landing limits, the vessel operator must retain the excess catch, and notify NMFS via VMS in order to change its DAS category from a Regular B DAS to a Category A DAS ("DAS flip") prior to crossing the VMS demarcation line on its return trip to port. If a vessel flips from a Regular B DAS to a Category A



DAS, it will be charged Category A DAS at a rate of 1.4:1 for the entire trip if fishing any part of its trip outside of the U.S./Canada Management Area, or 1:1 if fishing exclusively within the U.S./Canada Management Area for the entire trip; will be subject to the possession and landing restrictions that apply to the fishery as a whole (*i.e.*, not the Regular B DAS Program limits); and may discard species to maintain compliance with possession and landing restrictions outside of the Regular B DAS Program.

In order to ensure that a vessel always has the ability to flip to a Category A DAS while fishing under a Regular B DAS (should it catch a groundfish species of concern in an amount that exceeded the trip limit), in the case of a vessel that fishes all of its DAS outside of the U.S./Canada Management Area, 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 divided by 1.4. For example, if a vessel plans a trip under the Regular B DAS 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 Program would be 5 divided by 1.4, or 3.6 days. However, to ensure that there is an adequate amount of Category A DAS available should the vessel be required to “flip” its DAS, it is advisable that a vessel owner, when planning a Regular B DAS Program trip, fish a lower number of Regular B DAS than the required maximum number.

In order to limit the potential impact on F that the use of Category B DAS (Regular or Reserve) may have on groundfish stocks of concern, a quarterly incidental catch TAC is set for groundfish stocks of concern for each program allowing the use of Category B DAS (Regular or Reserve). This action adds GB winter flounder and GB yellowtail flounder to the list of groundfish stocks of concern, based on the results of GARM II, and allocates a

portion of the incidental TAC to the Regular B DAS Program, as specified in further detail below. The Regular B DAS Program quarterly incidental catch TACs are divided to correspond to the allocation of Regular B DAS among quarters, such that the 1st quarter (May–July) receives 13 percent of the incidental TACs, and the remaining quarters (August–October, November–January, and February–April) will each receive 29 percent of the incidental TACs. The specific TACs specified for this program has been proposed by a concurrent agency action, which published in the **Federal Register** on March 13, 2006 (71 FR 12665). 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 U.S./Canada Management Area are prohibited for the remainder of that quarter. Vessels would be able to once again use Regular B DAS under this program at the beginning of the subsequent quarter.

The Regional Administrator has 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 Program would undermine the achievement of the objectives of the FMP or the Regular B DAS Program, or if the level of observer coverage were insufficient to make such a projection.

*8. Redefinition of Incidental Catch TACs and Allocation to Special Programs*

Incidental catch TACs were first adopted in FW 40A in order to limit the catch of stocks of concern while vessels were using Category B DAS. As a result of groundfish assessments completed under GARM II, FW 42 proposes to modify the number of incidental catch TACs, as well as the size and allocation of such incidental catch TACs. FW 42 proposes the creation of two new stocks of concern (GB yellowtail flounder and GB winter flounder) and the specification of incidental catch TACs for these two species, as well as the modification of the size of the incidental

catch TACs with respect to the target TACs from which they are calculated (see Table 1). These incidental catch TACs limit the impact of the use of Category B DAS on stocks of concern.

Because FW 42 has been delayed, the definition of the two new stocks of concern, the creation of two new incidental catch TACs, and the reallocation of incidental catch TACs among special programs is implemented through this action (see Table 2) on an interim basis. Although this action does not impact many stocks of concern, in order to simplify the process of TAC specification for FY 2006, as well as reduce confusion in the industry, this action defines the incidental catch TACs for all stocks of concern, and allocates TAC among programs consistent with FW 42 proposals. This action does not specify values for TACs for FY 2006. A separate action will specify all TACs for the FMP for FY 2006 (Incidental Catch TACs, Target TACs, and U.S./Canada Management Area TACs for GB), as proposed in the **Federal Register** on March 13, 2006 (71 FR 12665).

TABLE 1.—DEFINITION OF INCIDENTAL CATCH TACs

Stock	Percentage of total target TAC
GB cod .....	2
GOM cod .....	1
GB yellowtail flounder .....	2
CC/GOM yellowtail flounder .....	1
SNE/MA yellowtail flounder .....	1
American plaice .....	5
Witch flounder .....	5
SNE/MA winter flounder .....	1
GB winter flounder .....	2
White hake .....	2

These incidental catch TACs will be distributed to the various programs that utilize Category B DAS and catch these stocks of concern. The incidental catch TACs are proposed to be distributed among the Category B DAS programs as indicated in Table 2:

TABLE 2.—DISTRIBUTION OF INCIDENTAL CATCH TACs FOR CATEGORY B DAS PROGRAMS

Stocks of concern	Regular B DAS program (percent)	Closed area hook gear haddock SAP (percent)	Eastern U.S./Canada haddock SAP (percent)
GB cod .....	50	16	34
GB yellowtail flounder .....	100	NA	NA
GB winter flounder .....	100	NA	NA
Witch flounder .....	100	NA	NA
American plaice .....	50	NA	50
White hake .....	50	NA	50

### 9. DAS Leasing Program

The DAS Leasing Program was implemented by Amendment 13 to help mitigate the economic and social impacts of effort reductions in the fishery, and will expire on April 30, 2006. This action continues the DAS Leasing Program, without change, to help mitigate the economic and social impacts resulting from the current FMP regulations that strictly limit fishing effort.

### 10. Eastern U.S./Canada Haddock SAP Pilot Program

This emergency action delays the opening of the Eastern U.S./Canada Haddock SAP Pilot Program from May 1 until August 1 and allocates a portion of the GB yellowtail flounder and GB winter flounder incidental catch TAC to the Eastern U.S./Canada Haddock SAP Pilot Program (see Table 2). Once any of these incidental catch TACs is caught, the use of Category B (Regular or Reserve) DAS in this SAP are prohibited. As explained above, the value of these new incidental catch TACs are being proposed through a concurrent agency action for implementation by May 1, 2006. Finally, possession of flounders (all species, combined); monkfish (whole weight); and skates is limited to 500 lb (227 kg) each, and possession of lobsters is prohibited to ensure the proper utilization of the haddock separator trawl in this SAP.

### 11. Eastern U.S./Canada Area Flexibility

This emergency action allows a vessel that begins a fishing trip in the Eastern U.S./Canada Area to choose to fish in other areas on the same trip. If a vessel chooses to fish outside of the Eastern U.S./Canada Area after fishing inside that area, the operator must notify NMFS via VMS either prior to leaving the dock, or prior to leaving the Eastern U.S./Canada Area on its return to port, and must comply with the most restrictive possession limits and DAS charge for the areas fished. A vessel electing to fish inside and outside of the Eastern U.S./Canada Area is charged Category A DAS at a rate of 1:1 for the entire trip, if fishing only within the Eastern and Western U.S./Canada Area; or at a rate of 1.4:1 for the entire trip, if the vessel fishes outside of the U.S./Canada Management Area at any time during the trip; and the vessel will not receive any steaming time credit. In addition, all cod and haddock caught on the entire trip is applied against the Eastern U.S./Canada Area TACs for these species; all yellowtail flounder caught is applied to the overall U.S./

Canada Management Area TAC for this species. For example, if a vessel elects to fish inside of the Eastern U.S./Canada Area and in the GOM on the same trip, the vessel would be charged Category A DAS at a rate of 1.4:1 for the entire trip (*i.e.*, dock to dock) and would have to abide by the more restrictive trip limits for CC/GOM yellowtail flounder (*i.e.*, 500 lb (227 kg) per DAS, up to 2,000 lb (907 kg) per trip) and GB cod in the Eastern U.S./Canada Area (*i.e.*, 500 lb (227 kg) per DAS, up to 5,000 lb (2,268 kg) per trip). Conversely, if a vessel elects to fish inside of the Eastern and Western U.S./Canada Area for the entire trip, the vessel would be charged Category A DAS at a rate of 1:1 for the entire trip (*i.e.*, dock to dock) and would have to abide by the more restrictive trip limits for GB cod in the Eastern U.S./Canada Area (*i.e.*, 500 lb (227 kg) per DAS, up to 5,000 lb (2,268 kg) per trip). The vessel must comply with reporting requirements for the Eastern U.S./Canada Area for the entire trip. A vessel is prohibited from fishing outside of the Eastern U.S./Canada Area on the same trip if it has already exceeded the restrictive possession limits for a particular species outside of the Eastern U.S./Canada Area. For example, if a vessel fishing in the Eastern U.S./Canada Area in June has already caught 500 lb (226.8 kg) of GB yellowtail flounder, the vessel operator would be prohibited from fishing in the GOM RMA or SNE/MA RMA on the same trip because the vessel has already exceeded the June SNE/MA and GOM yellowtail flounder possession limit of 250 lb per trip (113.4 kg per trip) proposed by this action. However, the vessel could continue to fish within the Western U.S./Canada Area for the remainder of the trip.

### 12. Recreational Restrictions

Private recreational vessels and vessels fishing under the charter/party regulations of the FMP are prohibited from possessing or retaining any cod from the GOM RMA from November 1–March 31. Also, the minimum size of cod for private recreational vessels and charter/party vessels fishing in the GOM is increased from 22 inches (56 cm) to 24 inches (61 cm) for the duration of this emergency action. Private recreational and charter/party vessels are allowed to transit the GOM RMA with cod caught from outside this area, provided all bait and hooks are removed from fishing rods and all cod are stored in coolers or ice chests.

### 13. Removal of the Haddock Trip Limits

FW 33 to the FMP, which became effective May 1, 2000 (65 FR 21658),

implemented the current haddock trip limit regulations at § 648.86(a). To ensure that haddock landings do not exceed the target TAC, FW 33 established a haddock trip limit of 3,000 lb (1,360.8 kg) per NE multispecies DAS and a maximum trip limit of 30,000 lb (13,608 kg) of haddock for the period May 1 through September 30; and 5,000 lb (2,268 kg) of haddock per DAS and 50,000 lb (22,680 kg) per trip from October 1 through April 30. To prevent the underharvest of the haddock TACs, the regulations at § 648.86(a)(1)(iii)(B) specify that, if the Regional Administrator projects that less than 75 percent of the haddock target TAC will be harvested in the fishing year, the trip limit may be adjusted or eliminated through publication of a notice in the **Federal Register**.

For FY 2006, the proposed U.S. portion of the target TAC for haddock (GB and GOM combined) is 36,588 metric tons (mt) (March 13, 2006; 71 FR 12665). Based on recent historical fishing practices and preliminary landings data, it is projected that less than 75 percent of the haddock target TAC for FY 2006 (27,441 mt) will be harvested by April 30, 2007, under the restrictive daily possession and trip limits. Furthermore, this projection indicates that eliminating the daily and maximum trip limits for haddock would not likely precipitate haddock landings reaching the U.S. portion of the Eastern U.S./Canada Area haddock TAC of 7,480 mt. Therefore, the Regional Administrator has determined that eliminating the 3,000-lb (1,360.8-kg) and 5,000-lb (2,268-kg) daily haddock possession limits, as well as the maximum trip limits of 30,000-lb (13,608-kg) and 50,000-lb (22,680-kg) for May 1 through September 30, 2005, and October 1, 2005, through April 30, 2006, respectively, will increase the likelihood that at least 75 percent of the target TAC will be harvested for FY 2006. The removal of the daily and maximum trip limits for haddock for FY 2006 through this emergency interim rule would provide additional sources of fishing revenue and regulatory relief to help mitigate some of the adverse economic impacts of continued effort reductions necessary in this emergency action. In order to prevent the TAC from being exceeded, the Regional Administrator will continue to monitor haddock landings and adjust the trip limit through publication of a notification in the **Federal Register**, pursuant to § 648.86(a)(1)(iii), if necessary.

## Comments and Responses

Forty-five comments were received during the comment period for the proposed rule for this action, including three from groups representing the fishing industry, two from groups representing conservation interests, five from elected officials, and one from the State of Maine Division of Marine Fisheries (State of Maine). Three comments were received after the comment period had closed (*i.e.*, after March 3, 2006) and were not considered. In addition, several commenters expressed concerns that were not relevant to the proposed action. Since these concerns were not directed at the proposed measures or other aspects of this emergency action, NMFS is not responding to these particular concerns in this preamble.

### Differential DAS Counting

*Comment 1:* Twenty commenters indicated that the proposed action's broad approach to reducing F on all groundfish stocks through the use of differential DAS counting in all areas is inappropriate, especially considering that the catches of healthy stocks would also be reduced. These commenters stated that a targeted regional approach to reduce F would better address excessive F on some stocks without unnecessarily reducing F on healthy stocks.

*Response:* NMFS agrees that differential DAS counting on GB may unnecessarily reduce the ability to achieve OY from healthy groundfish stocks on GB. After further consideration, NMFS concludes that a more targeted approach is likely to reduce F on specific GB stocks without reducing the catch of healthy groundfish stocks. As discussed in further detail in the response to Comment 7, NMFS has decided to implement the proposed FW 42 trip limits for GB winter flounder and white hake (*i.e.*, 5,000 lb (2,268 kg) per trip and 1,000 lb (454 kg) per DAS, up to 10,000 lb (4,536 kg) per trip, respectively) and eliminate the differential DAS counting measure for vessels fishing under a NE multispecies DAS in the U.S./Canada Management Area under this emergency action. The management measures currently specified for the U.S./Canada Management Areas provide additional assurance that any potential redirected effort onto GB would not increase F on other overfished stocks such as GB cod and GB yellowtail flounder. Specifically, the current regulations require all vessels participating in the U.S./Canada Management Area to use VMS and submit daily catch reports for

GB cod, GB haddock, and GB yellowtail flounder. These stocks are managed by hard TACs (*i.e.*, the fishery is closed if the TAC is reached) on all or portions of these stocks within the U.S./Canada Management Area. Through VMS and daily catch reports, vessel activity and groundfish catch within the U.S./Canada Management Area can be effectively monitored. In addition, the U.S./Canada Management Area regulations provide the Regional Administrator with the authority to modify trip limits and access to the U.S./Canada Management Area to control effort in this area and to ensure that the TACs for cod, haddock, and yellowtail are not exceeded during the fishing year. Thus, this revision would allow vessels to achieve OY from healthy groundfish stocks from this area, while providing assurances that redirected effort onto GB would not result in excessive F for other groundfish stocks. In combination with the subsequent management measures proposed in FW 42, this emergency action will likely achieve all of the necessary F reductions for FY 2006, resulting in F rates that are consistent with the requirements of the Amendment 13 rebuilding schedule, without unnecessarily sacrificing yield from healthy groundfish stocks.

However, differential DAS counting is appropriate in the GOM and SNE/MA RMAs. As specified above, results of the most recent biennial adjustment process indicated that F on two groundfish stocks in both the GOM (cod and yellowtail flounder) and SNE/MA (yellowtail flounder and winter flounder) RMAs exceed the 2006 F targets specified in Amendment 13 and require substantial F reductions. Because the groundfish fishery is characterized as a commingled fishery, with many species concentrated in mixed assemblages, it is difficult to target management measures that affect one stock without also affecting other stocks. Therefore, the proposed emergency measures were developed over a broad geographic scale in order to ensure that stocks that need F reduction are adequately protected. Although these stocks are found in higher concentrations in somewhat localized areas, due to concerns over bycatch and discards, it is important that management measures protect these stocks throughout their entire range. In addition, the stocks in the GOM and SNE/MA RMAs, particularly the yellowtail flounder stocks, are severely overfished and require the greatest F reductions to maintain consistency with the Amendment 13 rebuilding

programs. Spawning stock biomass for both stocks continue to decline and F for SNE/MA yellowtail flounder continues to increase. Protecting these stocks throughout their entire range would be consistent with the National Standard 1 guidelines at § 600.310(f)(5), and would decrease the likelihood that these stocks would meet the Amendment 13 F objectives. Therefore, differential DAS counting for vessels fishing outside of the U.S./Canada Management Area, including throughout the entire GOM and SNE/MA RMAs, is implemented by this emergency interim rule.

*Comment 2:* Several commenters suggested that NMFS should implement management measures that specifically target those vessels that contributed the most to the high F's observed by the most recent stock assessment, and contend it would be unfair for all vessels, even those who did not target the overfished stocks, to bear the burden of additional restrictions. Ten commenters, including three industry groups and the State of Maine, asserted that the proposed differential DAS counting does not address the underlying problems causing the excessive F on some stocks, as an inshore fishery directing on GOM cod is maintained.

*Response:* All vessels that caught groundfish species, particularly GOM cod or CC/GOM and SNE/MA yellowtail flounder, contributed to the excessive F's observed in the recent stock assessment. The measures implemented by this emergency action treat the fishery as a whole and apply the necessary effort reductions in a fair and equitable manner to all fishery participants, consistent with National Standard 4 guidelines. This is consistent with the approach taken by NMFS in previous groundfish actions. The proposed measures are intended as a temporary stop-gap measure necessary only to immediately reduce F until long-term measures proposed in FW 42 can be implemented. During the development of FW 42, the Council considered several mechanisms to more specifically target the causes of excessive F in the groundfish fishery, including a 24-hour minimum DAS charge (Alternative 4) and an individual quota system (*i.e.*, "the industry proposal"). The Council ultimately chose not to pursue such targeted management strategies, electing to adopt a broader strategy through differential DAS counting instead. FW 42 relies upon a mandatory VMS requirement for all vessels fishing on a NE multispecies DAS and other measures to more directly address F on specific

groundfish stocks by implementing area-specific differential DAS counting measures. Given the limited time available to develop, review, and implement the management measures under this emergency action, it was not possible to implement area-specific differential DAS counting measures identical to those in FW 42 in time for the required May 1, 2006, implementation date. The FW 42 measures were not adopted by the Council until after the analysis for this emergency action was completed and because other regulatory requirements necessary to implement the area-specific measures in FW 42 would delay implementation of this action beyond May 1, 2006. Both the differential DAS counting strategies in this emergency action and those adopted by the Council in FW 42 maintain an inshore fishery for GOM cod to some degree. However, both actions attempt to minimize incentives to specifically target GOM cod. This emergency action utilizes differential DAS counting at a rate of 1.4:1 in the GOM, in combination with low trip limits for GOM cod, to minimize incentives to target GOM cod, while FW 42 relies upon a higher trip limit and differential DAS counting rate of 2:1 in a more confined area of the GOM. This emergency action takes the same basic approach toward achieving the necessary F reductions as FW 42, but applies the measures in a slightly different manner throughout the entire range of the GOM and SNE/MA groundfish stocks. Differential DAS counting for all Category A DAS used outside of the U.S./Canada Management Area, along with the trip limits implemented by this action, are designed to achieve the necessary F reductions for GOM cod, GB winter flounder, SNE/MA winter flounder, SNE/MA yellowtail flounder, and white hake, and will substantially reduce F on CC/GOM yellowtail flounder in FY 2006. This action, as implemented through this emergency interim rule, more closely resembles measures adopted under FW 42 than did the proposed measures, in that differential DAS counting will not apply to any Category A DAS used in the U.S./Canada Management Area on GB. This will provide the fishery more opportunity to achieve OY from healthy groundfish stocks while providing assurances that any redirected effort onto GB will not jeopardize the rebuilding of overfished stocks such as GB cod and GB yellowtail flounder, consistent with the requirements of National Standard 1.

*Comment 3:* One industry group suggested that the differential DAS counting measure, as proposed (*i.e.*, differential DAS counting in all areas) would encourage effort to shift to other areas. One environmental group disagreed, stating that the proposed management measures would prevent the redirection of effort.

*Response:* NMFS asserts that the management measures contained in the proposed rule for this action (*i.e.*, differential DAS counting in all areas) would have prevented the redirection of effort into other areas. While the measures originally proposed would have prevented overfishing and eliminated incentives to redirect effort into other areas, based on more recent analyses, NMFS has concluded that those measures would have unnecessarily reduced the catch of healthy groundfish stocks which may have hampered achieving OY from the fishery. Consistent with National Standard 1, NMFS has revised the proposed differential DAS counting measures to more effectively prevent overfishing and achieve OY in the fishery, while limiting the impacts of potential redirected effort. As described in further detail in the response to Comment 7, NMFS has eliminated differential DAS counting for vessels fishing in the U.S./Canada Management Areas on GB. Analysis of the impacts of this revision indicate that this action would achieve the necessary F reductions for several groundfish stocks. While more GB cod would be caught under this interim action than under the original proposed measures, F on GB cod is still reduced. GB cod mortality is consistent with the Amendment 13 F targets for FY 2006; thus, the Amendment 13 rebuilding trajectory is maintained. In addition, the potential of redirected effort onto GB due to this revision of the proposed action is mitigated by the current management restrictions of the U.S./Canada Management Area. These restrictions facilitate the effective monitoring of any additional effort by requiring vessels to use a VMS and submit daily catch reports. In addition, the Regional Administrator is authorized to modify trip limits and access to the U.S./Canada Management Area in order to ensure that the U.S./Canada Management Area TACs for GB cod, GB haddock, and GB yellowtail flounder are not exceeded during the fishing year. These provisions help ensure that the impacts of any redirected effort onto GB are accounted for and are limited. Any impacts resulting from the redirection of effort into other programs such as the

approved SAPs or the Regular B DAS Program is also limited by the regulations governing those individual programs and does not compromise the rebuilding objectives of this action or the fishery.

*Comment 4:* Nineteen commenters were concerned that counting DAS used at a rate of 1.4:1 in the entire GOM rather than for just a portion of the GOM will increase incentives to fish inshore on GOM cod, suggesting that the proposed action increases F on GOM cod, rather than reducing it. These commenters assert that vessels will fish closer to shore because of the high DAS cost to fish offshore. Further, they contend that vessels will take advantage of the reduced differential DAS counting rate in the inshore GOM during the emergency action, compared to the higher rate proposed under FW 42 (*i.e.*, 2:1), to maximize earnings during the summer months when fish are available and prices are high. Finally, one commenter claimed that the proposed differential DAS counting throughout the GOM violates National Standard 1 of the Magnuson-Stevens Act.

*Response:* The proposed differential DAS counting measure, in conjunction with the reduced trip limit for GOM cod (*i.e.*, 600 lb (272 kg) per DAS, up to 4,000 lb (1,814 kg) per trip), is intended to minimize incentives to target GOM cod without subsequently increasing discards or discard F. As explained further in Comment 16 below, some commenters, including the State of Maine, supported reducing the GOM cod trip limit to 400 lb/DAS if it would further reduce incentives to target GOM cod. While NMFS agrees that a reduced trip limit, in conjunction with differential DAS counting, will reduce incentives to target GOM cod, a lower trip limit than that proposed would likely result in excessive discards and discard F. As described in the Amendment 13 discussion of bycatch (Section 5.2.8 of the Amendment 13 Environmental Impact Statement), it is projected that fishermen with limited DAS available to fish, whether from reductions in allocations or differential DAS counting, would attempt to maximize their return on every trip and would attempt to convert any discards into landings. Effort reductions such as differential DAS counting proposed in this emergency action, in conjunction with the proposed trip limits, should decrease incentives to target GOM cod, as decreasing the available Category A DAS and reducing the GOM cod trip limit under this action will make trips less profitable and will decrease incentives for targeting cod.

NMFS acknowledges that the reduced differential DAS counting rate applied throughout the entire GOM as proposed may seem to provide incentives for offshore vessels to target inshore GOM cod. However, for the reasons stated above, NMFS contends that such incentives are minimized due to the reduced GOM cod trip limit. In addition, over the past 5 years, prices for cod in Boston during the months this action is likely to be in effect (*i.e.*, May through July) are the lowest of the year. Further, it is likely that inshore vessels will fish more of their allocated DAS under this emergency action due to the reduced differential DAS counting rate. In doing so, prices for GOM cod could possibly decrease further during the summer months than previously observed, further decreasing the profitability of targeting inshore GOM cod. Also, fishing a majority of allocated DAS at the beginning of the fishing year would minimize the potential to earn a steady income from groundfish throughout the year, as a vessel would have fewer DAS to fish for the remainder of the year. This would also limit a vessel's ability to capitalize on the historically higher prices offered for cod during the late fall through early spring months. As a result, there are fewer incentives for vessels to fish inshore on GOM cod under this emergency action. Furthermore, based on historical fishing practices, few trips were taken in the offshore GOM between May and July. During FY 2005, trips taken outside of the inshore GOM area proposed in FW 42 between May and July accounted for less than 5 percent of the trips taken in the GOM during FY 2005 to date. Because vessels that historically fish in the offshore portion of the GOM do not take many trips in this area between May and July, and because they would be charged DAS at a higher rate during this time, there are few incentives to increase fishing trips in the GOM during these months. Waiting to fish under the measures proposed in FW 42 (*i.e.*, no differential DAS counting in the offshore portion of the GOM) would allow these vessels to maximize the value of their DAS allocation. Finally, because this emergency action charges vessels participating in the U.S./Canada Management Area at a rate of 1:1 instead of the differential DAS counting rate of 1.4:1, there are actually incentives to fish outside of the GOM and within the U.S./Canada Management Area. Therefore, based on past fishing practices, historical market conditions, 1:1 DAS counting within the U.S./Canada Management Area, and the

potential incentives to wait until FW 42 is implemented, it is unlikely that offshore vessels would have sufficient incentive to change their previous fishing behavior to target inshore GOM cod under this emergency action.

Some commenters have suggested that vessels will wait to fish under the proposed FW 42 measures, while others contend that vessels will increase effort under the proposed emergency action. Because incentives to fish on GOM cod during this emergency action will vary among individual fishermen based on their DAS allocations, previous fishing practices, gear fished, target species, and market conditions, it is difficult to predict the behavior of individual fishermen operating under these emergency measures.

The Closed Area Model (CAM) attempts to incorporate profit maximization behavior into its assessment of F impacts of proposed measures. This model assumes that every vessel will attempt to fish in a manner that maximizes the profit of fishing operations, thereby modeling potential changes in fishing behavior to adapt to changing regulations. In doing so, the CAM attempts to estimate F effects based on anticipated behavior in response to the proposed measures. Although competing incentives may exist under this emergency action, the results of the CAM analysis indicate that the emergency measures are successful at achieving the necessary F reductions for GOM cod. Because the CAM already incorporated profit maximization behavior, the results of the CAM indicate that, should offshore effort shift to targeting inshore GOM cod under this emergency action in order to maximize returns from allocated DAS, the emergency measures would likely still be able to achieve the F reductions necessary to maintain the Amendment 13 rebuilding programs. Combined with the measures proposed in FW 42, this emergency action will continue to rebuild GOM cod, despite potential changes in vessel behavior.

Finally, the commenter who suggested that applying differential DAS counting throughout the GOM is not consistent with National Standard 1 did not offer a reason. Presumably, this commenter was concerned that the proposed measure would not allow for the achievement of OY. This emergency action is an emergency action intended to immediately reduce F on the necessary stocks for the start of FY 2006. This action is not required, by itself, to completely end overfishing and rebuild overfished stocks. However, this action does immediately and substantially reduce F on GOM cod, GB winter

flounder, SNE/MA winter flounder, SNE/MA yellowtail flounder, and white hake enough to achieve the rebuilding objectives of the FMP, which complies with National Standard 1 and other applicable law in that it ends overfishing and rebuilds overfished groundfish stocks within the required timeframe. The rebuilding strategy was designed to achieve OY, as reduced by social, economic, and ecological factors, and is consistent with the national standard guidelines at § 600.310. Because these emergency measures ensure that several groundfish stocks remain on the Amendment 13 rebuilding trajectory, they are consistent with National Standard 1.

*Comment 5:* Eight commenters, including two elected officials, suggested that the proposed differential DAS counting approach will reduce haddock landings by forcing offshore vessels to stop fishing until differential DAS counting in the offshore portion of the GOM is eliminated upon the implementation of FW 42. These commenters indicated that this would impact shoreside infrastructure and compromise domestic fish markets by reducing the domestic supply of fish.

*Response:* As described in the response to Comment 4, it is nearly impossible to accurately predict expected vessel behavior in relation to the measures in either this emergency action or FW 42. Further, there are conflicting incentives that make fishing during the emergency action more beneficial than waiting for the implementation of the proposed FW 42 measures for some vessels, but less beneficial for other vessels. It is unclear how fishermen will react to these measures, increasing the difficulty of projecting the impact to shoreside infrastructure. There is the possibility that some vessels would elect not to fish during the emergency action. This could reduce the supply of haddock and other groundfish species to domestic markets, encouraging fish processors to seek fish supply from other markets, both foreign and domestic.

While the differential DAS counting measure in this emergency action could reduce the amount of fish landed from the offshore GOM, the action is intended to maintain additional opportunities to fish in a manner that would result in a smaller DAS charge than if the vessel fished an equivalent length trip in the GOM under differential DAS counting. For instance, this action continues a modified Regular B DAS Program that would have otherwise expired. This allows vessels to target GB haddock and other healthy GB groundfish stocks while fishing

under a Regular B DAS. Category B DAS are not charged at the differential rate of 1.4:1, but are charged on a calendar day basis. Charging Category B DAS in this manner results in less of a DAS charge than differential DAS counting, particularly for longer trips. In addition, this action, as revised, does not implement differential DAS counting for vessels fishing in the U.S./Canada Management Area. Therefore, a vessel could fish in the U.S./Canada Management Area during this emergency action and avoid differential DAS counting. In addition, a vessel fishing in the Eastern U.S./Canada Area is not be charged for steaming time to and from this area. As a result, this action maintains several opportunities for vessels to continue to land groundfish species with less of a DAS charge than if the vessel fished exclusively in the offshore GOM. By providing these additional opportunities, it is intended that any disruption to the supply of fish would be minimized. Moreover, this emergency action is temporary in nature. Measures under FW 42 will likely become effective a few months after the start of the fishing year, if approved. Any disruptions to shoreside infrastructure thus would be temporary.

*Comment 6:* Four commenters recommended that NMFS allow VMS vessels, or vessels issued a letter of authorization (LOA), to fish under the proposed FW 42 measures. These commenters suggested that VMS and/or the LOA would facilitate the enforcement of area-specific differential DAS counting measures proposed in FW 42.

*Response:* NMFS has revised this emergency action to remove the differential DAS counting requirement for vessels participating in the U.S./Canada Management Area and implements the proposed FW 42 trip limits for GB winter flounder and white hake instead. This revision partially addresses the concerns expressed by these commenters in that it allows vessels already using VMS to fish under the proposed FW 42 measures when fishing in the U.S./Canada Management Area. Because the existing regulations for the U.S./Canada Management Area require vessels to use a VMS, vessels that do not already have a VMS unit must purchase and install one to take advantage of 1:1 DAS counting within the U.S./Canada Management Area.

It would not be appropriate to allow vessels using a VMS in the GOM or SNE/MA RMAs, or allow vessels that have been issued a LOA to fish under the proposed FW 42 measures. First, the measures adopted by the Council in FW

42 have not been formally determined to be consistent with the national standards of the Magnuson-Stevens Act or other applicable law. These measures are currently under review. Further, to date, NMFS has not solicited public input regarding the FW 42 measures through a proposed rule. Although several individuals have expressed support for the proposed FW 42 measures through comments on this emergency action (see Comment 9 below), there are others who do not agree with this management strategy. Because of the substantive and controversial nature of the proposed FW 42 measures, it is important to consider additional public comment on the proposed FW 42 measures prior to implementing such measures through this emergency action. While the use of VMS or a LOA may facilitate the enforcement and administration of the FW 42 area-specific measures, it is still very difficult to effectively enforce area-specific DAS requirements via an LOA. Enforcement of such a measure requires increased at-sea enforcement beyond that used to enforce the LOA for possession limits, because DAS are used as the primary effort control for the groundfish fishery. If DAS are not properly charged, the F objectives of the FMP may be exceeded. There are significant incentives to violate the conditions of the LOA due to difficulty enforcing such a provision, especially after Category A DAS are further reduced by the Amendment 13 default DAS reduction on May 1, 2006. Because of limited at-sea enforcement capability and incentives to avoid differential DAS counting, enforcement of the differential DAS counting areas proposed by FW 42 is problematic under a LOA.

*Comment 7:* One commenter indicated that the Amendment 13 default DAS reduction scheduled for implementation on May 1, 2006, should be able to sufficiently reduce F for GB winter flounder, while another individual claimed a trip limit would suffice. One commenter recommended that NMFS implement the trip limits for GB winter flounder and white hake adopted by the Council in FW 42. Four commenters contested that differential DAS counting on GB is unnecessary and compromises the ability of the fishery to maximize benefits of resources on GB, as required by National Standards 1 and 8. These individuals assert that there is no need for emergency action on many of the stocks on GB, especially GB winter flounder, as this stock is only marginally overfished. Eight individuals contend that differential DAS counting will significantly reduce catches of

healthy stocks, sacrificing yield from these stocks and failing to achieve OY for these stocks in violation of National Standard 1. Finally, one commenter supported the proposed differential DAS counting on GB, indicating that it will achieve F reductions for the stocks in need of F reductions and offers further protection and benefits for GB cod.

*Response:* The Amendment 13 default DAS reduction will reduce F on GB winter flounder by approximately 7 percent, GB yellowtail flounder by 5 percent, and white hake by just over 2 percent. Based on the results of GARM II, F on these stocks must be reduced by 46 percent, 40 percent, and 13 percent, respectively. As a result, the default measures are insufficient to achieve the necessary F reductions for these stocks. Therefore, additional measures need to be implemented in order to maintain the Amendment 13 rebuilding programs for specific stocks.

In a mixed-stock fishery, it is virtually impossible to reduce F, and therefore yield, from one stock without affecting the yield from another stock. Therefore, necessary F reductions on one stock will also result in F reductions on other stocks. NMFS first proposed differential DAS counting on GB because, at the time that the proposed emergency measures were developed and analyzed, the Council had not considered measures to achieve the necessary F reductions for GB winter flounder or white hake. The trip limits ultimately adopted by the Council in FW 42 were first proposed by the PDT in late January 2006 and were only considered by the Council at its February 1-2, 2006, meeting. Differential DAS counting on GB achieved the necessary F reductions for white hake and substantially reduced F on GB winter flounder, but at the expense of reduced yield from other healthy groundfish stocks. Final analysis on the proposed FW 42 measures was not completed until early March 2006. This analysis indicates that the proposed FW 42 measures, including the trip limits for GB winter flounder and white hake, achieve the necessary F reductions for GB winter flounder and white hake, while minimizing reductions in yield of healthy groundfish stocks on GB such as haddock, pollock, American plaice, and witch flounder.

NMFS acknowledges that applying differential DAS counting on GB may reduce the yield of some healthy groundfish stocks, reducing the likelihood of achieving OY for those stocks. However, NMFS remains concerned about the potential for redirected effort onto GB. Although

many of the groundfish stocks on GB do not need immediate F reductions to comply with the Amendment 13 rebuilding programs, there are several stocks on GB that are seriously overfished with overfishing occurring, especially GB cod and GB yellowtail flounder. These stocks require careful management to ensure that they remain on the rebuilding schedules adopted in Amendment 13. If effort were to shift onto GB, there is the potential that this effort would increase F on GB cod, especially considering that only part of the GB cod stock within the Eastern U.S./Canada Area is managed by a hard TAC. In addition, considering that the proposed TAC for GB yellowtail flounder is 51 percent less than the 2005 TAC, increasing F on this stock would only cause additional future reductions in available catch. As a result, increasing F on either GB cod or GB yellowtail flounder could potentially undermine rebuilding efforts for these stocks. Therefore, it is important to ensure that redirected effort onto GB does not jeopardize efforts to protect these other overfished stocks on GB.

NMFS explored the feasibility of removing differential DAS counting on GB and implementing the proposed FW 42 trip limits for GB winter flounder and white hake instead. Without differential DAS counting in all areas, NMFS was concerned that redirected effort may substantially increase F on other overfished groundfish stocks, particularly on GB. Therefore, any option to remove differential DAS counting on GB would need to achieve the necessary F reductions for groundfish stocks on GB without leading to increased F on other overfished stocks. Because the GB RMA includes portions of the CC/GOM and SNE/MA yellowtail flounder stock areas, stocks that are severely overfished and require substantial F reductions in FY 2006, NMFS did not consider any options that could potentially increase effort and, therefore, F on these stocks. Because the U.S./Canada Management Area encompasses the vast majority of the waters within the GB RMA, but does not include any portion of the CC/GOM and SNE/MA yellowtail flounder stock areas, NMFS focused on analyzing options that would remove the differential DAS counting requirement for vessels fishing in the U.S./Canada Management Area. In addition, the current regulations governing the U.S./Canada Management Area provide greater assurance that any redirected effort would not increase the F on other overfished groundfish stocks, because a portion of the GB cod stock and the

entire GB yellowtail flounder stock is managed by a hard TAC within the U.S./Canada Management Area. Further, any vessel fishing in the U.S./Canada Management Area is required to use a VMS and submit daily catch reports. NMFS can more easily monitor groundfish catch from the U.S./Canada Management Area in an effort to more accurately project catch rates and more effectively assess the scale of potential redirected effort onto GB. In addition, pursuant to the regulations at § 648.85(a)(3)(iv)(D), the Regional Administrator has the authority to modify trip limits and access to the U.S./Canada Management Areas to ensure that TACs specified for these areas is not exceeded. This provides sufficient authority for the Regional Administrator to ensure that redirected effort does not compromise the rebuilding objectives of the FMP. As a result, NMFS analyzed two options to eliminate differential DAS counting on GB: (1) Eliminate differential DAS counting for the entire U.S./Canada Management Area; and (2) eliminate differential DAS counting from just the Eastern U.S./Canada Area. The results of preliminary analysis for these options indicated that either option would result in comparable ecological impacts to those from the original proposal to implement differential DAS counting throughout the entire GB RMA. Under each option, F, and, therefore, yield, would increase for some stocks, but decrease for others. For example, under the original proposal (*i.e.*, differential DAS counting in all areas), F of GB haddock would decrease by 17 percent. Under revised Option 1, F on GB haddock would decrease by only 5.6 percent, while F on GB haddock would decrease by nearly 24 percent under Option 2. Overall, revised Option 1 achieves greater ecological benefits than the original proposal. Option 1 would achieve the necessary F reductions for five stocks (GOM cod, GB winter flounder, SNE/MA winter flounder, SNE/MA yellowtail flounder, and white hake), while the original proposal would only achieve the necessary F reductions for three stocks (GOM cod, SNE/MA winter flounder, and white hake). Option 2 would not meet the necessary F reductions for GOM cod, CC/GOM yellowtail flounder, or GB winter flounder and would result in additional reductions in F for healthy stocks beyond the original proposal. In addition, revised Option 1 would not excessively reduce the potential yield from healthy groundfish stocks compared to the other two options. Economic analysis of these options

indicates that revised Option 1 would offer substantially fewer adverse economic impacts than the original proposal. For example, Option 1 would result in an estimated \$16.8 million in reduced groundfish sales, while the original proposal and Option 2 would result in an estimated \$22.6 million and \$21.6 million reduction in groundfish sales, respectively. Adverse economic impacts to most ports would be less under Option 1, as well. Because Option 1 would achieve the necessary F reductions for nearly all of the stocks requiring F reductions for FY 2006 and attempts to minimize reductions in the potential yield from healthy groundfish stocks, Option 1 more closely achieves OY, as required by National Standard 1, than either the original proposal or Option 2. Because Option 2 would not achieve the necessary F reductions, would further reduce yield from healthy groundfish stocks compared to the original proposal, and would result in greater economic impacts than Option 1 or the original proposal, full analysis of Option 2 was not developed. Option 1 has been fully analyzed and is summarized in an addendum to the EA prepared for this action. The original EA and the addendum to the EA are available from the Regional Administrator (see **ADDRESSES**).

The National Standard 8 guidelines indicate that, if two alternatives offer comparable conservation benefits, the one with the less adverse economic impacts would be the preferred alternative. As one industry group correctly points out, the measures adopted in FW 42 offer comparable conservation benefits and would result in less severe economic impacts than the proposed emergency measures. However, the measures in FW 42 were not adopted by the Council under FW 42 until its February 1, 2006, meeting, after the analysis for the proposed emergency action had been completed. Therefore, the FW 42 measures were not considered as an alternative for the proposed emergency action. As explained above, the ecological impacts of revised Option 1 are comparable to the impacts of the original emergency proposal while the adverse economic impacts of revised Option 1 are substantially less. As a result, NMFS is implementing revised Option 1 under this emergency action.

National Standard 8 requires that management actions, consistent with the conservation requirements, consider the importance of fishery resources to fishing communities to provide for their sustained participation in the fishery and, to the extent practicable, minimize the adverse economic impacts on these



communities. The EA prepared for this action, including the addendum prepared to describe the impacts to the fishery resulting from the options to remove differential DAS counting for vessels fishing in the U.S./Canada Management Area, contains a consideration of the importance of fishery resources to fishing communities, along with an estimate of the economic impacts to these communities. This emergency action minimizes the adverse economic impacts to such communities by eliminating differential DAS counting in the U.S./Canada Management Area and through the continuation of the DAS Leasing Program and a modified Regular B DAS Program on GB. The revised emergency action being implemented by this interim rule is consistent with National Standards 1 and 8 because it implements differential DAS counting in a manner that achieves the ecological objectives of this action and the FMP, while attempting to achieve OY on a continuing basis and minimizing the adverse economic impacts to fishing communities.

*Comment 8:* One individual claimed that the proposed differential DAS counting measure in the GOM that would charge DAS used at a rate of 1.4:1 is better than the proposed FW 42 differential DAS counting measure that would charge DAS used at a rate of 2:1. The commenter states that this measure would save the inshore fleet and would avoid safety concerns associated with the FW 42 measure because inshore vessels would not be forced to fish offshore under 1.4:1 DAS counting. He contends that, under FW 42, smaller inshore vessels would fish farther offshore to avoid differential DAS counting at a rate of 2:1. Two other commenters disagreed, indicating that the proposed emergency action would decrease safety relative to the proposed FW 42 measures because vessels would take undue risks, such as fishing in rougher weather to capitalize on higher fish prices.

*Response:* The emergency action does not present incentives for smaller vessels to take undue risks because the differential DAS counting rate is applied throughout the GOM RMA. A vessel would be charged exactly the same DAS rate, regardless of where it fishes. The expected duration of this emergency action, May through July or August, represents some of the best weather conditions of the year, including the months in which the lowest wind speeds are recorded on a yearly basis in the GOM, according to the analysis prepared for FW 40B to the FMP. Therefore, it is unlikely that vessels

would take undue risks by fishing in rougher weather under this emergency action because, with the exception of the potential for a tropical storm or hurricane, weather conditions over the expected duration of this action are typically the best conditions of the year. In addition, prices for GOM cod during May through July are, on average, the lowest prices of the year. Therefore, it is also unlikely that vessels would be more inclined to fish under adverse weather conditions during this emergency action due to expected higher prices. Therefore, NMFS concludes there are minimal safety concerns associated with the differential DAS counting measure in this interim rule.

*Comment 9:* Fifteen commenters suggested that NMFS should implement the preferred alternative adopted by the Council in FW 42. One commenter explicitly requested that NMFS implement the FW 42 measures instead of the proposed emergency measures to ensure a seamless transition to the FW 42 measures once FW 42 is implemented.

*Response:* One of the objectives of this emergency action is to implement management measures that mirror those adopted by the Council in FW 42 as much as practicable without compromising the conservation objectives of this action or the FMP. Some commenters indicated that the proposed measures closely resembled the measures adopted in FW 42, while others claimed that the proposed measures are dramatically different than the FW 42 measures. NMFS began to develop the proposed emergency measures immediately after the Council announced that it would not be able to complete FW 42 in time for a May 1, 2006, implementation date, which occurred at the Council's November 15, 2005, meeting. At that time, the Council had not fully developed many of the measures that were finally adopted by the Council, and the Council was just starting to explore the potential that discrete differential DAS counting areas would achieve the necessary F reductions for FY 2006. At the time, there was uncertainty whether the Council would even adopt differential DAS counting as the primary means of reducing F under FW 42. In order to implement emergency management measures by the start of FY 2006, NMFS could not wait until the Council voted to adopt measures in FW 42 at its February 1, 2006, meeting. NMFS attempted to anticipate and mirror many of the provisions proposed in FW 42 at the time work began on the development of the emergency

measures, including differential DAS counting, in order to minimize transition to the FW 42 measures, once implemented. However, given the uncertainty of which measures would be proposed by the Council in FW 42, and the limited time available to prepare and review the proposed emergency action in time for a May 1, 2006, implementation date, it was not possible to predict with certainty what measures the Council would ultimately adopt in FW 42.

Because of the potentially substantial effort reductions necessary under this emergency action, and the controversial nature of this action, NMFS attempted to provide for as much advanced notice and opportunity for public input as possible, without compromising the need to implement emergency measures by May 1, 2006. Although NMFS attempted every means possible to minimize the time it would take to develop the proposed emergency action, due to the time necessary to develop the proposed management measures, prepare the required analytical documents, and publish both a proposed and a final rule consistent with the Administrative Procedure Act, NMFS had to complete the development of the proposed action before the Council voted on FW 42.

Based on public comment, NMFS is removing the differential DAS counting requirement for vessels participating in the U.S./Canada Management Areas (see also Response to Comment 6). While not identical to the measures proposed under FW 42, this revision more closely mirrors them, without compromising the objectives of this action.

*Comment 10:* Ten commenters opposed the proposed differential DAS counting measures, advocating for counting DAS as a minimum of 24 hours instead. In addition, three commenters recommended extending the duration of the GOM Rolling Closures by two weeks.

*Response:* One of the objectives of this emergency action is to implement management measures that mirror those adopted by the Council in FW 42 as much as practicable without compromising the conservation objectives of this action or the FMP. One of the alternatives considered during the development of FW 42 (*i.e.*, Alternative 4) was a minimum 24-hour DAS charge. However, while some expressed support for this measure, claiming that it more accurately addressed the underlying problem in the fishery, the Council ultimately did not adopt this alternative because of concerns that this alternative would provide incentives for vessels to fish longer hours and with less crew to



maximize the benefits of each allocated DAS. In doing so, some felt that this alternative would cause safety problems. Because of these concerns and the fact that the Council did not adopt the minimum 24-hour DAS charge under FW 42, this emergency action did not consider that alternative. Regarding extending the GOM Rolling Closures by 2 weeks, there is no analysis to conclude that such a measure would help to achieve the conservation or management objectives of this emergency action. In addition, there may be safety concerns attached to this type of measure, as members of the fishing industry expressed safety concerns about the existing GOM Rolling Closures during the Council-sponsored safety meetings conducted in 2005. Moreover, the Council did not consider extending these closures under FW 42.

*Comment 11:* One commenter stated that the proposed measures would treat all fishermen equally.

*Response:* NMFS has determined that the emergency action is consistent with National Standard 4 guidelines to the extent practicable, taking into account conservation requirements and differences in impacts because of geographic location and stocks that need protection.

*Comment 12:* One industry group claimed that the proposed differential DAS counting strategy would reduce access to the monkfish resource in the monkfish Northern Fishery Management Area (NFMA), resulting in a linear loss of monkfish DAS.

*Response:* While the differential DAS counting measure implemented by this interim rule would result in some decreased opportunities to target monkfish in the NFMA over the No Action alternative, the emergency action attempts to mitigate such decreased opportunities by revising the manner in which monkfish-only DAS are counted to accommodate differential DAS counting. A linear loss of monkfish DAS would only occur if monkfish DAS were also charged at a rate of 1.4:1. The proposed action would only charge NE multispecies at a rate of 1.4:1, while monkfish DAS would still be charged at a rate of 1:1. Because NE multispecies DAS are charged at a higher rate when fishing outside of the U.S./Canada Management Area, there is the possibility that monkfish Category C, D, F, G, or H vessels (*i.e.*, those monkfish vessels that are also issued a limited access NE multispecies permit) would not have sufficient groundfish DAS to ensure that they could fish their full allocation of monkfish DAS. To accommodate this, this rule will allow

a Category C, D, F, G, or H monkfish vessel to fish under a monkfish-only DAS when groundfish DAS are no longer available, provided the vessel fishes under the provisions of the monkfish Category A or B permit. Assuming that such vessels fish all of their NE multispecies DAS outside of the U.S./Canada Management Area, the maximum number of monkfish-only DAS that a vessel would be allowed to fish is equal to its net monkfish DAS allocations (including carry-over DAS) minus its net NE multispecies Category A DAS allocation (including carry-over DAS), divided by 1.4. If such vessels fish some or all of their NE multispecies DAS in the U.S./Canada Management Area, the number of monkfish-only DAS would be less than this amount. For example, a vessel allocated 40 monkfish DAS and 20 NE multispecies DAS would be able to fish 20 monkfish-only DAS (*i.e.*,  $40 - 20$ ) under the current regulations, or 25.7 monkfish-only DAS ( $(40 - 20 \div 1.4)$ ). Without such a provision, these vessels would have even less of an opportunity to fish for monkfish in the NFMA because they would only be allowed to fish under monkfish-only DAS equal to the difference between their monkfish and NE multispecies DAS allocations. Accordingly, this emergency action offers greater opportunity to target monkfish in the NFMA than if differential DAS counting were implemented without the corresponding revision to the monkfish-only DAS calculation. NMFS acknowledges that some vessels, particularly trawl vessels that operate exclusively in the NFMA, would have less of an opportunity to fish for monkfish in the NFMA under this emergency action, as monkfish-only DAS can only be used in an exempted fishery in the NFMA. Currently, the only exempted fisheries in the NFMA require the use of gillnets. Trawl vessels would be able to fish with trawl gear in the Southern Fishery Management Area, but would be subject to the more restrictive monkfish regulations in this area, including a reduced monkfish DAS allocation.

*Comment 13:* One industry group asserts that the proposed differential DAS counting measure exceeds the scope of the ecological, social, and economic analyses prepared for Amendment 13 because the fishery is meeting the Amendment 13 F targets for the GB cod stock.

*Response:* GB cod is currently rebuilding along the Amendment 13 rebuilding trajectory. However, GB cod is still severely overfished and overfishing is still occurring. Because of this, NMFS is concerned that any

potential redirection of effort on GB cod could negatively affect the rebuilding progress of this stock. NMFS has revised this emergency action to remove the differential DAS counting requirement from vessels participating in the U.S./Canada Management Areas on GB. This revision allows greater access to the GB cod stock, but does so in a manner that minimizes the potential for redirected effort onto GB to adversely affect GB cod. Although the effects of this emergency action are beyond the scope of the ecological, economic, and social analyses prepared for Amendment 13, the additional impacts of this measure on GB cod have been evaluated in the EA prepared for this action. The impacts of the revision to eliminate differential DAS counting for vessels participating in the U.S./Canada Management Area are analyzed in an addendum to the EA that is also available from the Regional Administrator (see **ADDRESSES**).

#### *Trip Limits*

*Comment 14:* Four commenters supported the proposed trip limits for GOM cod, while two commenters opposed them. Supporters claim that the proposed trip limit of 600 lb (272 kg) per DAS will reduce incentives to target GOM cod under this action, especially when implemented with differential DAS counting in the GOM. Two proponents of this trip limit indicated support for a 400 lb (181 kg) per DAS trip limit on GOM cod, if it would further reduce incentives to target GOM cod. Those opposed to the proposed GOM cod trip limit did not offer specific rationale for their opposition, but expressed general support for the 800 lb (363 kg) per DAS GOM cod trip limit in conjunction with alternative management options considered during the development of FW 42, particularly the 24-hour minimum DAS alternative.

*Response:* Analysis prepared for this action indicates that a 600 lb (272 kg) per DAS GOM cod trip limit, along with differential DAS counting, will reduce incentives to target GOM cod and will provide the necessary F reductions for this stock during FY 2006. Although no explicit analysis was prepared regarding the 400 lb (181 kg) per DAS trip limit for GOM cod, analysis prepared for Amendment 13 indicates that such a trip limit would offer additional F reduction for this stock, but may also substantially increase the discard rate.

*Comment 15:* One commenter asserts that trip limits have resulted in increased bycatch F in the groundfish fishery. This commenter further states that the emergency action does not provide adequate rationale or justification for the use of trip limits,

measures the commenter claims have a history of failure, without sufficient back-up measures (see Comment 16 below) in violation of National Standards 1 and 9. However, this comment focused mainly on National Standard 9 issues, and did not explain why the commenter felt the proposed trip limits violated National Standard 1. Another commenter supported setting reasonable catch limits that take into consideration discards.

*Response:* There is sufficient rationale and justification provided in both the proposed/interim rule and the supporting EA that the proposed trip limit for GOM cod does not violate either National Standard 1 or 9. The rationale for the proposed GOM cod trip limit builds upon information in Amendment 13 to the FMP. The Amendment 13 discussion of bycatch (Section 5.2.8 of the Amendment 13 Environmental Impact Statement) projects that fishermen with limited DAS available to fish, whether from reductions in allocations or differential DAS counting, will attempt to maximize their return on every trip, and will attempt to convert any potential discards into landings. In doing so, effort reductions such as differential DAS counting proposed in this emergency action, in conjunction with the proposed trip limits, should contribute to reduced bycatch. Differential DAS counting and the reduced trip limit for GOM cod decrease the profitability of targeting GOM cod, thereby reducing discards. However, it is impossible to predict the behavior of fishermen given the varying and competing incentives that affect behavior under this emergency action and under FW 42. The national standard guidelines for National Standard 9 (§ 600.350) require an assessment of the amount and type of bycatch and bycatch F for proposed measures and that proposed measures should minimize bycatch and bycatch F to the extent practicable. The EA prepared for this action provides the required assessment of the amount and type of bycatch expected from the proposed trip limits. The proposed trip limits were incorporated into the CAM used to analyze changes in F for most of the proposed management measures. This analysis attempts to estimate F resulting from the expected behavior of vessels attempting to maximize profits in response to the proposed measures. This analysis indicated that the cumulative effect of the majority of proposed emergency measures would result in a 33.8-percent reduction in F for GOM cod, including discard F. In addition,

the EA includes a discussion concerning the trip limit analysis prepared for Amendment 13. Based on extrapolations from the Amendment 13 trip limit analysis, a proposed GOM cod trip limit of 600 lb (272 kg) per DAS is likely to offer a reduction in F of about 5 percent compared to the current 800 lb (363 kg) per DAS trip limit for GOM cod. Compared to the current trip limit, the proposed GOM cod trip limit is likely to increase the discard rate by approximately 10 percent. The proposed trip limit represents a balance between the conservation benefits of reducing incentives to target GOM cod and minimizing discards and allowing vessels to harvest and land GOM cod without compromising rebuilding efforts for this stock. Therefore, NMFS has determined that the trip limit for GOM cod, which is implemented through this emergency action, is reasonable and takes into account bycatch and discard concerns.

*Comment 16:* Three commenters recommended that NMFS implement additional provisions that would ensure the efficacy of the proposed trip limits for GOM cod and CC/GOM and SNE/MA yellowtail flounder. Two of these commenters recommended implementing a discard prohibition for GOM cod and CC/GOM and SNE/MA yellowtail flounder, along with requiring a vessel to immediately end its trip once it has reached its trip limit of cod or yellowtail flounder. The third commenter suggested that NMFS should adopt hard-TAC backstops for GOM cod and CC/GOM and SNE/MA yellowtail flounder stocks and promote selective gears to target healthy stocks without substantial bycatch of stocks of concern.

*Response:* Specific provisions such as those offered by the commenters potentially may increase the efficacy of trip limits under specific circumstances, particularly for vessels participating in a special management program (*i.e.*, approved SAPs or the Regular B DAS Program). Such provisions have been adopted by the Council for implementation under FW 42 for all groundfish vessels participating in any special management program. These programs are designed to allow vessels to target healthy groundfish stocks without catching substantial amounts of stocks of concern. The objective of these programs is to avoid overfished stocks, not target them. These programs are highly regulated and include hard TAC backstops, gear requirements, VMS, and other provisions that enhance the effectiveness of these programs and increase the likelihood that effort under these programs would not compromise the rebuilding efforts of overfished

stocks. In contrast, GOM cod, and CC/GOM and SNE/MA yellowtail flounder are managed under an overall target TAC for each species. While hard TACs might prove an effective means of ensuring that F targets for each stock are not exceeded during a fishing year, it would be impracticable to implement such hard TACs through an emergency action, because the hard TAC backstops would expire when the emergency action expires. In this case, the hard-TAC backstops would expire once FW 42 is implemented, sometime during the summer of 2006, which would provide very little benefit to these stocks if implemented under this emergency action. In addition, because conversion to a hard-TAC management regime would represent a substantial change from the effort-based (*i.e.*, DAS) strategies employed in the groundfish fishery to date, particularly for the GOM and SNE/MA stocks, hard TACs should be vetted through the Council process. Further, due to the discrete nature of special management programs, it is relatively easy to identify participants within these programs and enforce the discard prohibitions and trip termination requirements recommended by the commenters. However, it is much more difficult to identify vessels catching GOM cod or CC/GOM or SNE/MA yellowtail flounder, much less enforce such provisions, when applied to such vessels fishing outside of a special management program within broad geographic areas.

#### *Modified Regular B DAS Program*

*Comment 17:* One commenter indicated that the Regular B DAS Program requires near 100-percent observer coverage to work. This commenter stated that all DAS flips occurred on trips with observers, suggesting that this is an indicator of the failure of this program to encourage the selective harvesting of healthy groundfish stocks unless adequately monitored and controlled.

*Response:* Since the Regular B DAS Pilot Program was first implemented by FW 40A in November 2004, approximately 33 percent of groundfish trips into this program have been observed. The measures currently in place are sufficient to effectively monitor vessel operations in this fishery. The methodologies employed to monitor this program meet accepted standards of precision and accuracy. The assertion by the commenter that all DAS flips under the Regular B DAS Pilot Program occurred on trips with observers is incorrect. In fact, over the duration of the Regular B DAS Pilot Program, DAS flips during observed

trips accounted for only 41 percent of recorded DAS flips; over 59 percent of the DAS flips occurred during trips without an observer present. A better indicator of the success of this program is whether the incidental catch TACs for particular species were exceeded compared to the amount of healthy groundfish stocks landed. Substantial amounts of haddock (over 2 million lb, or 907,000 kg), pollock (over 730,000 lb, or 331,000 kg), and redfish (over 130,000 lb, or nearly 59,000 kg) were landed, and the incidental catch TAC for only one groundfish stock of concern (GB cod) was exceeded during only one quarter (May–July of 2005, Quarter 1 of FY 2005), by approximately 21,000 lb (9,532 kg), due to increased participation in this program during that quarter, unexpectedly high catch rates for GB cod, and trips with excessive discards. This suggests that the program is quite successful at facilitating the targeting of healthy groundfish stocks without compromising rebuilding efforts of overfished stocks. Because this program offers additional opportunities to target healthy stocks such as haddock, pollock, and redfish without substantially affecting groundfish stocks of concern, offering additional opportunities to use Regular B DAS in the fishery and necessary sources of fishing revenue, the proposed revised Regular B DAS Program is implemented through this emergency action.

*Comment 18:* Two commenters opposed the proposed modifications to the Regular B DAS Program, indicating that the regulations governing the Regular B DAS Pilot Program, as originally implemented under FW 40A, are sufficient to control F from this program. One of these individuals argued that restricting this program to the U.S./Canada Management Area and requiring all vessels to use a haddock separator trawl is in violation of National Standard 4 because such measures are not fair and equitable to all vessels, as some vessels would be required to purchase the haddock separator trawl and safety considerations prevent smaller vessels from traveling far offshore to use their Regular B DAS under this program. Two other individuals and the Maine Department of Marine Resources objected to the restriction of this program to the U.S./Canada Management Area on the grounds that vessels should be allowed to target healthy groundfish stocks in the GOM.

*Response:* The original intent of the Regular B DAS Pilot Program was to allow vessels to target healthy groundfish stocks in all areas. However, as highlighted above, stocks in

particular areas require additional reductions in F during FY 2006. Stocks such as GOM cod and CC/GOM and SNE/MA yellowtail flounder require substantial F reductions for FY 2006. Therefore, the objective of this action is to reduce F on these stocks through effort reductions in the GOM and SNE/MA RMAs. Because the use of Category B DAS represents additional effort in the fishery, it would be inappropriate to increase effort in these areas, especially during the early summer months when particularly vulnerable stocks are spawning, by allowing vessels to participate in the Regular B DAS Program in the GOM or SNE/MA RMA. In addition, the very small incidental catch TACs proposed for CC/GOM and SNE/MA yellowtail flounder for the first quarter of the fishing year (May–July) are extremely difficult to monitor and are likely to be exceeded after only a few trips into the program. For example, the proposed incidental catch TACs for these species is only 441 lb (200 kg) for CC/GOM yellowtail flounder and 1,746 lb (792 kg) for SNE/MA yellowtail flounder during the first quarter of FY 2006. It is likely that the quarterly incidental catch TAC for CC/GOM and SNE/MA yellowtail flounder would be caught in only a few trips, especially if participating vessels catch up to the maximum possession limit on a daily basis. At this rate, it would be very difficult for NMFS to administer this program in these stock areas during the first quarter of the fishing year and would likely result in the program exceeding these quarterly TACs before NMFS could close these stock areas. Once these incidental catch TACs are harvested, NMFS is required to close the relevant stock areas under the Regular B DAS Program for the remainder of the quarter. Therefore, exceeding these TACs would not only result in increased and unaccounted F on these stocks, but it would also close this program outside of GB within days of the start of the first quarter on May 1. As a result, the existing measures are not sufficient to control F on these stocks under this program, especially during the first quarter, requiring the additional protection offered by these emergency measures. Prior to the expiration of the Regular B DAS Pilot Program on October 31, 2005, very few groundfish vessels fished under this program to target healthy groundfish stocks outside of the GB. Between November 2004 and October 2005, only 82 trips were completed under the Regular B DAS Pilot Program in the GOM RMA, and only 8 were completed under this program in the SNE/MA RMA, out of

over 436 trips completed throughout all areas under this program. As a result, the vast majority of participants in this program have been fishing on GB.

Restricting the Regular B DAS Program to the U.S./Canada Management Area does not allocate fishing privileges among fishermen and, therefore, does not violate National Standard 4. All vessels have the ability to fish in this program, provided the vessel has installed an operational VMS and complies with the other requirements of the Regular B DAS Program. The fact that there may be differential impacts on fishers because of geographic or other practical matters is consistent with National Standard 4 guidelines, provided the measures in question are reasonably calculated to achieve conservation objectives. The U.S./Canada Management Area was adopted by the Council in Amendment 13, based on an informal agreement between the United States and Canada. The location of this area was based on the definition of stock areas under the Resource Sharing Agreement. As specified in further detail in the response to Comment 27, although the preamble of the proposed rule for this action inadvertently specified that all vessels must use a haddock separator trawl when participating in the Regular B DAS Program, the regulatory text indicated that only trawl vessels would be required to use a haddock separator trawl when participating in the Regular B DAS Program. Despite this inadvertent error in the preamble to the proposed rule, the requirement that trawl vessels utilize a haddock separator trawl is still consistent with National Standard 4 because it is reasonably calculated to promote conservation and would not constitute an allocation of fishing privileges to particular fishermen.

*Comment 19:* Two commenters supported the haddock separator trawl requirement for trawl vessels participating in this program, indicating that it would offer sufficient protection to groundfish stocks of concern. However, one commenter suggested that NMFS remove the haddock separator trawl requirement for this program, asserting that the haddock separator trawl has not been shown to work, that the Pilot Program implemented under FW 40A did not exceed any of the incidental catch TACs for stocks of concern, and that such a requirement eliminates opportunities to experiment with more effective gear, such as the rope trawl, under this program.

*Response:* The required use of a haddock separator trawl by trawl vessels participating in the Regular B DAS

Program offers further protection to groundfish stocks of concern under this emergency action. While data from the Eastern U.S./Canada Haddock SAP Pilot Program (the only program in which participants were required to use a haddock separator trawl) indicated that the haddock separator trawl did not perform consistently as well as the original experimental fishery used to justify this gear, it was still effective at reducing the catch of cod compared to the catch of haddock in this SAP. The haddock separator trawl is the only trawl gear shown through experimental research to reduce the catch of cod when targeting haddock. Hook gear has been demonstrated to allow vessels to effectively target haddock without catching substantial amounts of cod or other stocks of concern. As a result, hook gear may be used to target haddock under the revised Regular B DAS Program in this emergency action. While other gears are currently being tested, the results of these gear experiments have not yet been provided to NMFS or the Council. As a result, there is incomplete information to suggest that other gear, including the rope trawl suggested by one commenter, is capable of reducing the catch of cod or other stocks of concern as effectively as the haddock separator trawl. Contrary to what was suggested by the commenter, under the Regular B DAS Pilot Program, the incidental catch TAC for GB cod was exceeded during the first quarter of FY 2005. The haddock separator trawl, should reduce catch of GB cod, reducing the possibility that the quarterly incidental catch TAC will be exceeded under this program. In addition, by reducing the catch of GB cod, the haddock separator trawl requirement should extend the availability of the hard TAC for GB cod in the Eastern U.S./Canada Area, thereby increasing the opportunity to achieve OY for haddock during FY 2006. Both NMFS and the Council have expressed interest in facilitating research into selective fishing gears in order to more fully integrate the use of these gears into the management program. However, before approving the use of such gear, the Council has suggested that it would like to review the performance of such selective gears to determine their effectiveness at reducing bycatch of stocks of concern. While the original intent of the Regular B DAS Pilot Program was to facilitate the use of more selective gears and ways of fishing, the requirement that trawl vessels use a haddock separator trawl in the revised Regular B DAS Pilot Program implemented in this emergency

action should ensure that the Regular B DAS Program achieves the primary objective of this program, which is to facilitate the targeting of healthy groundfish stocks without catching substantial amounts of groundfish stocks of concern. Therefore, this emergency interim rule retains the haddock separator trawl requirement for trawl vessels participating in the Regular B DAS Program.

*Comment 20:* One commenter supported and one commenter opposed the trip limits on flatfish, skates, monkfish, and lobsters for vessels fishing with a haddock separator trawl in the proposed Regular B DAS Program because it would increase discards.

*Response:* The Regular B DAS Program is intended to allow vessels to target healthy groundfish stocks such as haddock without catching substantial amounts of groundfish stocks of concern, particularly cod and certain flatfish. The proposed restrictive trip limits on flatfish, skates, monkfish, and lobsters are the same as those proposed in FW 42, and are meant to encourage the proper use of the haddock separator trawl in the Regular B DAS Program. When properly used, the haddock separator trawl has proven effective at reducing the catch of cod, flounders, and other species while having little impact on the catch of haddock. However, when improperly configured, this net is capable of catching large amounts of bottom-dwelling species such as flatfish and skates. This measure increases the incentive for fishermen to configure the net properly, since only small amounts of flounders, monkfish, and skates can be landed when haddock separator trawls are required. In doing so, this requirement should reduce discards, as an improperly-configured net would require vessel operators to spend time sorting the catch and discard any fish in excess of the proposed trip limits.

#### *DAS Leasing Program*

*Comment 21:* Two commenters opposed continuing the DAS Leasing Program through this emergency action, indicating that leasing DAS undermines efforts to reduce F on overfished stocks. Four commenters expressed support for the DAS Leasing Program, offering that it provides necessary benefits to the fishing industry.

*Response:* The DAS Leasing Program provides benefits to fishermen that offset some of the economic and social impacts resulting from continued effort reductions in the groundfish fishery. Analysis prepared for this action indicates that the DAS Leasing Program may have resulted in a small increase in

landings when compared to a regime without DAS leasing. However, this was anticipated by Amendment 13 analysis and was within the projected results. The stocks for which the DAS Leasing Program contributed to the highest increase in landings (GOM haddock, GB haddock, pollock, redfish, witch flounder, and American plaice) are all considered healthy groundfish stocks that do not need F reductions as part of this action. The DAS Leasing Program provided regulatory relief that allowed lessee vessels, on average, to fish enough DAS to cover their overhead and crew expenses, resulting in economic benefits to the fishery. National Standards 5 and 8 require that management measures consider efficiency in the utilization of fishery resources and provide for the sustained participation of fishing communities, respectively. Consistent with these national standards, this emergency action continues the DAS Leasing Program in order to increase the efficient utilization of fishery resources and help provide a means of mitigating some of the economic impacts of effort reductions in the fishery to promote continued participation, without jeopardizing conservation objectives of this action or the FMP.

#### *Eastern U.S./Canada Haddock SAP Pilot Program*

*Comment 22:* One commenter supported the proposed revisions to the Eastern U.S./Canada Haddock SAP, while another opposed the delayed opening of this SAP, suggesting that it would reduce the chances of catching haddock in this SAP and create additional gear conflicts with offshore lobster vessels due to an expected increase in participants.

*Response:* The delayed start date of August 1 for this SAP was proposed by the Council's Groundfish Advisory Panel, a group of industry representatives that provide input into Council decisions. The intention of this provision is to avoid concentrations of GB cod in the SAP area during the early summer, thereby lowering the catch rates of GB cod in this SAP. High catch rates of GB cod in this SAP contributed to the early closing of the Eastern U.S./Canada Area on in FY 2005, and, therefore, access to the Eastern U.S./Canada Haddock SAP. A delayed opening would reduce the catch rate of GB cod, allowing vessels greater access to the available haddock resource throughout the season specified for this SAP. An informal agreement between offshore lobster vessels and groundfish vessels fishing on GB was reached during 2005 to minimize potential gear

conflicts between these two groups during the season specified for this SAP. NMFS encourages such cooperation among fishing sectors and hopes that the agreement between the offshore lobster fleet and the groundfish fleet can continue during FY 2006 and that similar informal agreements can be worked out to mitigate any potential gear conflicts that may arise in the future.

#### *Eastern U.S./Canada Area Flexibility*

*Comment 23:* Two commenters supported allowing vessels to fish inside and outside of the Eastern U.S./Canada Area on the same trip. However, one commenter opposed attributing any cod caught on such trips towards the Eastern U.S./Canada Area GB cod hard TAC, indicating that this would likely cause the premature closure of the Eastern U.S./Canada Area because of the attainment of the GB cod TAC.

*Response:* This measure was first developed to address a safety concern identified by the Council's safety meetings held in 2005 to allow vessels to fish closer to shore under worsening weather conditions. To prevent the misreporting of cod, haddock, and yellowtail flounder caught on trips inside and outside of the Eastern U.S./Canada Area, all cod, haddock, and yellowtail flounder will count toward the Eastern U.S./Canada Area TACs for each species. This provision is necessary to reduce incentives to utilize this flexibility in situations other than adverse weather conditions. This is a conservative approach that will help ensure the TACs are not exceeded.

#### *Recreational Restrictions*

*Comment 24:* One commenter indicated that the recreational fishery is not responsible for the excessive F observed on GOM cod. This individual suggested that the commercial sector caused such F and should, therefore, bear the responsibility for reducing F on GOM cod. Two other commenters supported the recreational measures.

*Response:* Both the recreational and commercial fishing sectors catch GOM cod and contribute to the mortality on GOM cod stocks. During the development of FW 42, the Council decided that both the recreational and commercial fishing sectors should take an equivalent proportionate reduction in F. According to GARM II, F on GOM cod needs to be reduced by 32 percent to maintain the Amendment 13 rebuilding program during FY 2006. The recreational measures in this emergency action were proposed by the Recreational Advisory Panel during the development of FW 42, and are

designed to achieve at least a 32-percent reduction in F on GOM cod from the recreational fishing sector.

*Comment 25:* One individual expressed concern over the potential administrative conflict between the existing regulations at § 648.82(f)(2) that require charter/party vessels intending to fish in any of the GOM closed areas (including the GOM rolling closure areas) to obtain a LOA and participate in the charter/party fishery for a minimum period of 3 months and the proposed seasonal GOM cod possession prohibition. This commenter indicated that the proposed seasonal GOM cod possession prohibition, in conjunction with the 3-month minimum participation period requirement of the LOA, would force vessels to obtain another LOA for the start of the next fishing year, as the beginning of the new charter boat season (presumably April 1) would only allow for 60 days of participation before the end of the fishing year. The commenter suggested that NMFS revise the minimum participation period under this emergency action.

*Response:* The proposed seasonal GOM cod possession prohibition for charter/party vessels would neither affect the minimum participation period for the charter/party LOA, nor affect the ability for charter/party vessels to obtain such a LOA at any time during the fishing year. The proposed measures allow charter/party vessels to obtain a LOA to fish within the GOM closed areas throughout the fishing year, provided such vessels do not possess GOM cod between November through March. The minimum participation period requirement was developed by the Council in FW 33 to the FMP to minimize the monitoring and enforcement difficulties associated with charter/party vessels fishing in the GOM closed areas on one trip and then fishing under the commercial fishing regulations on a subsequent trip. The concern at the time was that such vessels would retain any cod caught in the closed areas under the charter/party regulations to sell upon landing on a subsequent commercial fishing trip. The Council has not proposed any changes to this minimum participation period, as the original problem that such a minimum participation period addresses still exists. As a result, it would be inappropriate to revise the minimum participation period under this action. Further, current policy requires charter/party vessels to obtain a new LOA for the start of the next fishing year on May 1, to accurately document the number of LOAs that were issued in a particular fishing year.

Allowing vessels to continue the participation period of a LOA between fishing years would undermine this effort. As a result, no changes to the minimum participation period or the current LOA issuance policy were made in this emergency action.

#### *General Comments*

*Comment 26:* Three commenters opposed this emergency action, stating that NMFS cannot use emergency authority to implement management measures that would affect stocks that are not overfished and that do not need additional F reductions. Further, one commenter indicated that NMFS does not have the authority to address monkfish through an emergency action under the NE Multispecies FMP. However, one commenter felt that the proposed emergency action is necessary and appropriate, as it is important to maintain progress in the Amendment 13 rebuilding programs.

*Response:* Section 305(c) of the Magnuson-Stevens Act specifies that, if the Secretary "finds that an emergency or overfishing exists or that interim measures are needed to reduce overfishing for any fishery, he may promulgate emergency regulations or interim measures to address the emergency or overfishing, without regard to whether a fishery management plan exists for such fishery." As a result, NMFS, acting on behalf of the Secretary, does have the authority to implement measures to address an emergency in the groundfish fishery, including implementing regulations that would affect participants in the monkfish fishery. The need for emergency action is well specified in the preamble to the proposed rule for this action and in the EA prepared for this action. Stocks in need of F reductions for FY 2006 are located in all areas. In addition, while there are some stocks that do not need immediate F reductions to comply with the Amendment 13 rebuilding programs, several of these stocks, in particular, GB cod and GB yellowtail flounder, are severely overfished and overfishing is still occurring. Due to the commingled nature of the groundfish fishery, it is very difficult to design management measures that would reduce F on some groundfish stocks, but not others. As a result, regardless of the measures implemented, F on all stocks is likely to decline. Because of the identified need to reduce F on several groundfish stocks located in all areas managed by the NE Multispecies FMP, and because other stocks are still overfished with overfishing still occurring, it is entirely appropriate to promulgate emergency regulations

under the authority of section 305(c) of the Magnuson-Stevens Act. In addition, the preamble of the proposed rule indicated that overfishing continues in the monkfish fishery and that the pace of rebuilding has slowed. The EA prepared for this action demonstrates that the Regular B DAS Pilot Program implemented by FW 40A to the FMP was a substantial source of F for the monkfish fishery. Therefore, this emergency action eliminates the possibility that this program would be used to target monkfish, providing the necessary means to reduce overfishing for this fishery, as provided by the authority in section 305(c) of the Magnuson-Stevens Act.

*Comment 27:* One commenter offered that the haddock separator trawl should be required by all vessels fishing on GB.

*Response:* As noted in the response to Comment 18, the preamble of the proposed rule for this action inadvertently specified that all vessels must use a haddock separator trawl when participating in the Regular B DAS Program, but should have stated that only trawl vessels must use a haddock separator trawl in this program.

*Comment 28:* Two commenters felt that the proposed action would reward larger offshore vessels at the expense of smaller, inshore vessels.

*Response:* The proposed action does not specifically favor any one group over another. The agency's policy guidelines for implementing emergency rules indicates that such rules demonstrate compliance with all of the national standards. National Standard 4 guidelines require that management measures shall be fair and equitable to all fishermen to the extent possible in meeting FMP objectives. The approach to this emergency action is consistent with these guidelines.

*Comment 29:* One commenter expressed concern that the proposed measures are inconsistent with the measures considered by the Council.

*Response:* A majority of the measures in this emergency action are intended to be consistent with those adopted by the Council in FW 42. While specific aspects of the measures proposed by this emergency action differ with what the Council ultimately adopted in FW 42, the emergency measures follow the same principles as the Council did in adopting FW 42. For instance, in FW 42, the Council chose to adopt differential DAS counting as the main measure to reduce F in the GOM and SNE/MA RMAs. This emergency action also relies upon differential DAS counting in these areas, although applied throughout the GOM, and SNE/MA RMAs, as opposed

to discrete areas in the GOM and SNE/MA RMAs adopted in FW 42. In addition, this emergency action implements the GB winter flounder and white hake trip limits proposed in FW 42 in lieu of differential DAS counting for vessels operating in the U.S./Canada Management Area.

*Comment 30:* Four commenters did not support the approach taken by the proposed emergency action and instead proposed alternative management regimes, including the Northeast Seafood Coalition's recent "Industry Proposal" or the GOM Inshore Fisheries Conservation and Stewardship Plan that was previously considered during the development of Amendment 13.

*Response:* It would be inappropriate to implement either of these alternatives outside of the Council process. Such comprehensive alternative management regimes should be afforded careful consideration and extensive public debate concerning the possible implications of such shifts in management strategy that is provided by the Council process. The "industry proposal" was analyzed by the Groundfish PDT in late March 2006. This analysis concluded that this program would not meet the conservation objectives of the FMP.

Although Amendment 13 contained a description of the GOM Inshore Fisheries Conservation and Stewardship Plan, no analysis regarding the impacts of this plan has been conducted to date.

*Comment 31:* One commenter contested that the EA prepared for this action did not consider a reasonable set of alternatives, asserting that the National Environmental Policy Act (NEPA) requires that at least one reasonable alternative in addition to the proposed action needs to be considered.

*Response:* NOAA Administrative Order 216-6 provides guidance on the environmental review procedures for complying with NEPA and the implementing regulations issued by the Council on Environmental Quality. This guidance requires that any EA prepared in the support of a management action must consider all reasonable alternatives, including the preferred action and the no action alternative. The EA prepared for this emergency action does consider a range of reasonable alternatives, including the preferred action and the no action alternative. The appropriate range of reasonable alternatives is generally those that meet the purpose and need for the action. The purpose of this action is to implement simple, short-term emergency management measures by the start of FY 2006 in order to immediately reduce F on several groundfish stocks to maintain

the Amendment 13 rebuilding programs and compliance with the Magnuson-Stevens Act. Further, the current regulations require that any management measures necessary to maintain the Amendment 13 rebuilding programs must be implemented by May 1, 2006. Because the measures adopted by the Council were not developed in time to meet the May 1, 2006, implementation date, emergency measures needed to be developed and analyzed prior to the Council's final vote on FW 42. Because any emergency measures would likely have differed with those finally adopted under FW 42, there is also a need to ensure that any proposed emergency management measures are consistent with those adopted under FW 42 to minimize confusion by the industry and facilitate adaptation to the FW 42 measures, if approved and implemented. Because of the rather narrow set of objectives for this emergency action, the range of reasonable alternatives was limited to those alternatives that would meet the purpose and need of this action. Other alternatives were considered for this emergency action but were not fully analyzed in the EA because they did not adequately address the purpose and need for this action. These other alternatives included area closures and a hard-TAC management regime. Based upon public comment, NMFS considered two additional management options for the elimination of differential DAS counting on GB. As discussed above in the response for Comment 7, NMFS prepared a preliminary analysis for these options. Based on this preliminary analysis, it was clear that only one option should be more thoroughly considered. A full analysis of this option was developed and included as an addendum to the original EA prepared for this action. Based upon this analysis, NMFS has revised the proposed emergency action to remove the differential DAS counting measure for those vessels participating in the U.S./Canada Management Area and implement the proposed FW 42 trip limits for GB winter flounder and white hake, instead. As a result, a reasonable range of alternatives considered for this action includes the revised proposed action, the original proposed action, and the no action alternative.

*Comment 32:* One elected official contested that welfare and economic issues have not been thought out properly.

*Response:* The analysis and consideration of the economic impacts of the emergency action are consistent with current agency guidance and applicable statutes regarding the

economic analysis of fishery management actions. The economic impact analysis contained in the EA prepared for this action presents a comprehensive evaluation of the expected economic impacts of the proposed measures. Although this economic analysis does not specifically address welfare issues, the economic impacts to fishing communities are detailed in the EA. Therefore, the economic analysis prepared for this action sufficiently addresses the economic issues associated with the proposed emergency action, as required by current analytical guidance and the Magnuson-Stevens Act.

*Comment 33:* One environmental group specified that the EA prepared for this action needs to state the probability that measures will achieve projected results.

*Response:* The biological analysis prepared for this action does specify the probability that measures will achieve the estimated reductions in F. Section 8.1.1.1 of the EA prepared for this action specifies that the estimated F reductions represent the median outcome that can be expected from the proposed measures. This means that the proposed measures have at least a 50-percent probability of achieving the specified results.

*Comment 34:* One individual requested that NMFS eliminate the haddock trip limit for the 2006 fishing year.

*Response:* The regulations at § 648.86(a)(1)(iii)(B) allow the Regional Administrator to adjust or eliminate the haddock trip limit per DAS or the maximum trip limit if it is projected that such revisions to the haddock trip limit are sufficient to allow the harvest of at least 75 percent of the target TAC, but not allow the target TAC to be exceeded during the fishing year. For FY 2006, the U.S. portion of the proposed target TAC for haddock (GB and GOM combined) for is 36,588 mt. A projection of haddock landings for FY 2006 indicated that less than 75 percent of the proposed target TAC for the 2006 fishing year would be harvested by the end of the fishing year on April 30, 2007, under the restrictive daily and maximum trip limits. This projection also concluded that elimination of the daily and maximum trip limits for haddock would not result in the 2006 target TAC for haddock being exceeded. Because eliminating the daily and maximum trip limits for haddock would facilitate the achievement of OY for the groundfish fishery, the daily and maximum trip limits for haddock are eliminated for the duration of this emergency action.

### Changes From the Proposed Rule

NMFS has made several changes to the proposed rule as a result of public comment, to correct inadvertent errors, and to further clarify specific measures. These changes are listed below in the order that they appear in the regulations.

In 648.14, additional paragraphs are suspended and others added to correct reference errors. Paragraphs (a)(179) and (180) are inserted to specify that vessels must submit an additional catch report for yellowtail flounder via VMS within 2 hours of crossing the border into or out of the Western U.S./Canada Area and are prohibited from fishing both inside and outside of this area unless this additional catch report is submitted.

In § 648.82, paragraphs (n)(2) and (s)(1)(iii) are revised to account for revisions to the way DAS are charged under this emergency interim rule. These revisions include specifying that Category A DAS will be charged at a rate of 1.4:1 for all vessels fishing outside of the U.S./Canada Management Area and not under the U.S./Canada Resource Sharing Understanding. Vessels fishing within the U.S./Canada Management Area and under the U.S./Canada Resource Sharing Understanding will be charged Category A DAS used at a rate of 1:1. Finally, language clarifying how DAS will be charged for vessels fishing within the Western U.S./Canada Area is inserted.

In § 648.85, paragraph (a)(3)(viii) is modified to clarify that a vessel intending to fish outside of either the Western or Eastern U.S./Canada Area must declare its intent to do so via VMS prior to leaving the dock and/or leaving the Eastern U.S./Canada Area, respectively.

In § 648.86, paragraphs (b)(1)(ii) and (b)(2)(ii) are revised to account for revisions to the cod running clock provision due to differential DAS counting under this action. In addition, paragraph (e) is revised, and paragraph (j) is added to implement trip limits for white hake and GB winter flounder, respectively.

In § 648.92, paragraph (b)(2)(iv) is revised to correct an inaccurate reference to § 648.92(b)(2)(ii) that should read § 648.92(b)(2)(v). In addition, language referring to the requirement that monkfish Category C or D vessels utilize their monkfish DAS, in conjunction with a NE multispecies DAS, before it can use any monkfish-only DAS is reinserted after being inadvertently omitted from the proposed rule. Finally, language clarifying how the calculation of

monkfish-only DAS is affected by differential DAS counting is inserted.

### Classification

The Regional Administrator has determined that the management measures implemented by this interim final 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 emergency interim final rule has been determined not to be significant for the purposes of Executive Order (E.O.) 12866.

This emergency interim final rule does not contain policies with Federalism or "takings" implications as defined in E.O. 13132 and E.O. 12630, respectively.

An EA was prepared for this action that analyzed the environmental impacts of the measures being implemented, as well as alternatives to such measures. An addendum to this EA was prepared which includes additional analysis describing the impacts of one other option considered by NMFS in order to implement the proposed FW 42 trip limits for GB winter flounder and white hake, and to eliminate differential DAS counting from the U.S./Canada Management Area on GB. The EA and the addendum to 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 of the proposed rule. A copy of the Finding of No Significant Impact for the EA prepared for this action is available from the Regional Administrator (see **ADDRESSES**).

Pursuant to 5 U.S.C. 553(d)(3), the Assistant Administrator finds good cause to waive the 30-day delayed effectiveness for the measures implemented by this emergency interim final rule. As detailed above, due to the delayed development of FW 42, this emergency Secretarial action is necessary to implement measures that would immediately reduce F on certain stocks by the start of the fishing year on May 1. NMFS only became aware that FW 42 would be delayed at the November 2005 Council meeting. This delay limited the ability of NMFS to develop emergency management measures and prepare the relevant analyses to implement such measures, after consideration of public comment, in time to allow delayed effectiveness before the beginning of FY 2006. In addition, because the measures



included in FW 42 were not formally adopted by the Council until its meeting in late January 2006, it was not possible to develop management measures that exactly mirrored those adopted by the Council until the preparation of this interim final rule. This caused further delay in the preparation of this interim final rule. The current regulations require that any management measures necessary to reduce F for stocks that do not achieve the Amendment 13 F objectives for FY 2006 must be implemented by the start of FY 2006. Failure to waive the 30-day delay in effectiveness would prevent such measures from being implemented on May 1, 2006, allowing existing regulations to continue. According to the analysis prepared for this action, the existing regulations are not sufficient to reduce F on several groundfish stocks to meet the F objectives of the Amendment 13 rebuilding programs for FY 2006. The existing management measures would, therefore, allow for the continuation of overfishing on specific groundfish stocks such as GOM cod, CC/GOM and SNE/MA yellowtail flounder, GB winter flounder, and white hake, stocks in need of F reductions for the start of FY 2006.

#### Public Reporting Burden

This emergency action contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) that have been previously approved by OMB under control numbers 0648-0202, 0648-0212, and 0648-0475. Public reporting burden for these collections of information are estimated as follows:

1. GB cod research set-aside TAC request, OMB# 0648-0202 (30 min/response);
2. VMS purchase and installation, OMB# 0648-0202 (1 hr/response);
3. VMS proof of installation, OMB# 0648-0202 (5 min/response);
4. Automated VMS polling of vessel position, OMB# 0648-0202 (5 sec/response);
5. Declaration of intent to participate in the Regular B DAS Program or fish in the U.S./Canada Management Areas and associated SAPs and DAS to be used via VMS prior to each trip into the Regular B DAS Program or a particular SAP, OMB#0648-0202 (5 min/response);
6. Notice requirements for observer deployment prior to every trip into the Regular B DAS Program or the U.S./Canada Management Areas and associated SAPs OMB# 0648-0202, (2 min/response);
7. Daily electronic reporting of kept and discarded catch of stocks of concern and GB cod, GB haddock, and GB

yellowtail flounder while participating in the Regular B DAS Program or fishing in the U.S./Canada Management Areas and associated SAPs, respectively, OMB# 0648-0212 (15 min/response);

8. 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 (15 min/response);

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

10. DAS Leasing Program application, OMB# 0648-0475 (10 min/response); and

11. Declaration of intent to fish inside and outside of the Eastern U.S./Canada Area on the same trip, OMB# 0648-0202 (5 min/response).

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

The information collection for the declaration of the intent to fish inside and outside of the Eastern U.S./Canada Area is a modification of the DAS "flip" notification. When a vessel "flips" its DAS declaration from Category B DAS to Category A DAS, it is informing NMFS that it is changing the type of DAS being used for that trip. In a similar manner, a vessel would "flip" its area declaration from exclusively in the Eastern U.S./Canada Area to being able to fish inside and outside of the Eastern U.S./Canada Area on the same trip. Since the original information collection submission for the DAS flipping measure overestimated the number of DAS flips that would occur during a particular fishing year, this action reduces the burden associated with that measure and adds a burden for the declaration of the intent to fish inside and outside of the Eastern U.S./Canada Area by the same amount. In this manner, the burdens of both information collections are appropriately accounted for and the information collection submissions more accurately reflect vessel practices. To document this revision, the information collection previously approved by OMB under OMB# 0648-0202 is being revised by means of a worksheet, as authorized by consultation with OMB.

#### Final Regulatory Flexibility Analysis (FRFA)

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), prepared this FRFA in support of the measures for implementation through this emergency action. The FRFA

describes the economic impacts that this emergency action will have on small entities. The FRFA incorporates the economic impacts summarized in the Initial Regulatory Flexibility Analysis (IRFA) for the proposed rule, based upon the corresponding economic analysis of the EA and the addendum to the EA prepared for this action to reflect changes from the proposed rule to the final interim rule; the comment and response section of this interim rule; and the other analyses contained in the EA for this action. For the most part, those impacts are not repeated here. A copy of the IRFA, the FRFA, the RIR, the EA, and the addendum to the EA prepared for this action are available from NMFS, Northeast Regional Office and are available on the Northeast Regional Office Web site (see **ADDRESSES**). A description of why this action was considered, the objectives of, and the legal basis for this final rule are contained in the preamble to this rule, the preamble of the proposed rule for this action, and in the EA prepared for this action and are not repeated here. In summary, this rule implements measures to immediately reduce F on particular groundfish stocks for the start of FY 2006 on May 1, 2006. This action is necessary to maintain efforts to continue the rebuilding programs established under Amendment 13 and maintain compliance with the requirements of the Magnuson-Stevens Act. The DAS Leasing Program and a modified Regular B DAS Program are continued in this action to help offset some of the economic and social impacts of continued effort reductions in the groundfish fishery and to provide some means of regulating effort shifts caused by differential DAS counting in this action. The measures implemented by this action are necessarily limited in scope because they are intended only to provide sufficient temporary reduction in F for several groundfish stocks so as not to jeopardize the rebuilding programs of several groundfish stocks while NMFS and the Council implement more permanent management measures through FW 42.

*A Summary of the Issues Raised by the Public Comments in Response to the IRFA, 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 45 comments on the proposed rule. Of these, only one related to the IRFA. A summary of the economic issues raised, and NMFS's responses, follow:



*Comment A:* One industry group claims that the EA prepared for this action ignores the biological and economic impacts of differential DAS counting on monkfish Category C and D vessels.

*Response:* NMFS acknowledges that the EA, including the IRFA, prepared for this action inadvertently failed to fully assess the biological and economic impacts of differential DAS counting on monkfish Category C, D, F, G, or H vessels. This was an oversight and has been addressed through updates to the EA included in an addendum to the original EA. However, the economic impacts analysis prepared for this action did include the affects of the proposed measures on total fishing revenue. Total fishing revenue includes impacts on revenue generated from the catch and subsequent sale of monkfish. As a result, the EA did include some assessment of the economic impacts of differential DAS counting on the monkfish fishery.

*Description of and Estimate of the Number of Small Entities to Which the Proposed Rule Would Apply*

This interim final rule implements measures that have the potential to affect any vessel currently issued a limited access NE multispecies permit or an open access NE multispecies charter/party permit. However, for the purposes of determining impacts, only vessels that actually participated in an activity during FY 2004 that would be affected by the proposed action were considered for analysis. During FY 2004, a total of 1,002 permit holders had an allocation of Category A DAS. Limited access permit holders may participate in both commercial and party/charter activity without having a party/charter permit. In FY 2004, 705 entities participated in the commercial groundfish fishery and 6 participated in the party/charter fishery for GOM cod. Four of these entities participated in both commercial and party/charter activities, leaving a total of 707 unique vessels with an allocation of Category A DAS that may be affected by this action. Based on FY 2004 data, measures implemented by this rule would have a potential impact on a total of 3,216 limited or open access groundfish permit holders, of which less than one-third (976) actually participated in either a commercial or party/charter activity that would be affected by this action. Of these, 858 commercial fishing vessels are estimated to be affected, including 132 limited access monkfish Category C or D vessels that fished in the Regular B DAS Pilot Program during FYs 2004–2005.

The Small Business Association (SBA) size standard for small commercial fishing entities is \$4 million in gross sales, and the size standard for small party/charter operators is \$6.5 million. Available data for FY 2004 gross sales show that the maximum gross for any single commercial fishing vessel was \$1.8 million, and the maximum gross sales for any affected party/charter vessel was \$1.0 million. While an entity may own multiple vessels, available data make it difficult to determine which vessels may be controlled by a single entity. For this reason, each vessel is treated as a single entity for purposes of size determination and impact assessment. This means that all commercial and party/charter fishing entities fall under the SBA size standard for small entities and, therefore, there is no differential impact between large and small entities.

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

The measures implemented by this emergency action include collection-of-information requirements subject to the PRA that have been previously approved by OMB under control numbers 0648–0202, 0648–0212, and 0648–0475. Measures implemented by this emergency action 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; (4) declaration of intent to participate in the Regular B DAS Program or fish in the U.S./Canada Management Area and associated SAPs and DAS to be used via VMS prior to each trip into the Regular B DAS Program or a particular SAP; (5) notice requirements for observer deployment prior to every trip into the Regular B DAS Program or the U.S./Canada Management Area and associated SAPs; (6) daily electronic reporting of kept and discarded catch of stocks of concern and GB cod, GB haddock, and GB yellowtail flounder while participating in the Regular B DAS Program or fishing in the U.S./Canada Management Area and associated SAPs, respectively; (7) daily electronic catch and discard reports of GB yellowtail flounder when fishing on a combined trip into the Western U.S./Canada Area; (8) DAS “flip” notification via VMS for the Regular B DAS Program; (9) DAS Leasing Program application; and (10) declaration of intent to fish inside and outside of the Eastern U.S./Canada Area on the same trip.

It is difficult to estimate accurately the total reporting and recordkeeping burden associated with this action since the frequency of participation in the Regular B DAS Program, the Eastern U.S./Canada SAP Pilot Program, the DAS Leasing Program, and fishing both inside and outside of the Eastern U.S./Canada Area on the same trip will be determined entirely by each vessel owner.

All participants in the Regular B DAS Program or the U.S./Canada Management Area and its SAPs 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 this emergency action involve the declaration of the intent to participate in these programs and the daily electronic reporting of catch and discards of fish by vessels electing to fish in the Regular B DAS Program, the Eastern U.S./Canada SAP Pilot Program, and vessels fishing both inside and outside of the Eastern U.S./Canada Area on the same trip. This information is required to be submitted via VMS. Participating vessels will pay the costs associated with such declarations. Since the costs for these submissions have previously been approved by the OMB, as specified above, there are no additional costs to the public associated with measures implemented by this emergency action. 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.

*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*

Because this action largely builds on and amends Amendment 13 and subsequent framework actions, measures for which numerous alternatives were considered, and because of the focused objectives of this action, NMFS only fully considered two main alternatives for analysis: The proposed emergency action and the No Action alternative. Two other main

alternatives (area closures and a hard TAC alternative) were considered, but were rejected because they did not meet the objectives of this action. The area closure alternative included closing portions of the GOM RMA to reduce F on GOM cod and was rejected because these alternatives could have forced fishing effort to move into other RMAs; would have prohibited a majority of the fishing industry from operating in the GOM, resulting in significant economic impacts to the fishing industry operating in the GOM; and could have caused unnecessary impacts on healthy groundfish stocks, thereby reducing opportunities for vessels to target and generate revenue from these stocks and achieve OY. The hard-TAC alternative included hard TACs for species requiring F reductions for FY 2006, but were rejected because current data collection mechanisms do not allow for the complete, real-time catch monitoring that would be necessary for a hard-TAC alternative and because such an alternative would be inconsistent with measures adopted in FW 42. In response to public comment and other concerns, two additional options to the preferred alternative were considered to remove the differential DAS counting measure on GB. These two options to revise the preferred alternative consist of all of the measures included within the original preferred alternative, with the exception that the differential DAS counting measure was eliminated from the U.S./Canada Management Area on GB and replaced with the proposed FW 42 trip limits for GB winter flounder and white hake. The two additional options to modify the differential DAS counting measure include: (1) Eliminate differential DAS counting for the entire U.S./Canada Management Area, and (2) eliminate differential DAS counting from just the Eastern U.S./Canada Area. Preliminary analysis of these two options indicated that Option 1 would provide comparable and slightly better ecological benefits as the original preferred alternative or Option 2, with substantially fewer adverse economic impacts. For example, the original preferred alternative and Option 2 would achieve the necessary F reductions for three stocks (GOM cod, SNE/MA winter flounder, and white hake) while substantially reducing F, and, therefore, yield, from other healthy groundfish stocks. In contrast, the measures in Option 1 will achieve the necessary F reductions for four stocks (GOM cod, SNE/MA winter flounder, SNE/MA yellowtail flounder, and white hake), with fewer reductions in yield

from healthy groundfish stocks. The original preferred alternative and Option 2 would have resulted in a total reduction in groundfish sales of approximately \$22.6 million and \$21.6 million, respectively. However, the measures in Option 1 will result in a total reduction in groundfish sales of only \$16.8 million. As a result, NMFS is implementing measures in Option 1 as the revised preferred alternative, as they would achieve similar, if not better, ecological benefits than the original preferred alternative, but with far fewer adverse economic impacts, consistent with the objectives of this action, national standards, and other applicable law. The remainder of this discussion will focus on the ways in which this final rule, in implementing the revised preferred alternative, will minimize the adverse economic impacts on small entities. An addendum to the original EA prepared for this action was prepared that includes the full analysis of the impacts of Option 1 as the revised preferred alternative and is available from the Regional Administrator (see **ADDRESSES**).

Analysis prepared for this emergency action examined the impacts on the fishing industry that would result from the continuation of the current management measures (*i.e.*, the set of measures currently in place for the NE multispecies fishery through the October 14, 2005, implementation of measures contained in FW 41 (70 FR 54302; September 14, 2005)), along with the measures implemented by this emergency action and described in the **SUMMARY** section of the preamble. This analysis assumed that the measures implemented by this emergency action would remain in effect for the duration of FY 2006 (*i.e.*, through April 30, 2007). The No Action alternative is defined as the current management measures, including the two default measures implemented by Amendment 13 (a change in the ratio of Category A to Category B DAS from 60:40 to 55:45, and differential DAS counting at a rate of 1.5:1 in the SNE/MA RMA). The No Action alternative would retain the current trip limits for GOM cod and CC/GOM, GB, and SNE/MA yellowtail flounder. In addition, under the No Action alternative, the DAS Leasing Program and the Regular B DAS Pilot Program would expire on April 30, 2006, and the Eastern U.S./Canada Haddock SAP would expire on November 18, 2006.

The No Action alternative would result in fewer negative economic impacts than the measures implemented by this emergency action. However, the No Action alternative would not meet

the ecological objectives of this emergency action. In addition, specific measures included in this emergency action provide additional benefits beyond the No Action alternative. This emergency action implements programs that will provide small entities with additional fishing opportunities that are intended to mitigate some of the negative economic impacts resulting from the effort reductions implemented under Amendment 13 and this emergency action. This emergency action provides these additional fishing opportunities, including delaying the start date of the Eastern U.S./Canada Haddock SAP Pilot Program and continuing the DAS Leasing Program and a modified Regular B DAS Program, without compromising the Amendment 13 rebuilding programs. In addition, this emergency action also increases opportunities for vessels to more efficiently conduct fishing operations by allowing vessels to fish inside and outside of the Eastern U.S./Canada Area on the same trip.

The Eastern U.S./Canada Haddock SAP Pilot Program allows limited access NE multispecies vessels the opportunity to use Category A or Category B (Regular and Reserve) 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. Delaying the start date of this SAP beyond the spawning period for species caught under this SAP is intended to provide further protection for GB cod and GB yellowtail flounder by eliminating bycatch of these species under this SAP from May through July and to increase ex-vessel prices for fish landed, as lower prices are often observed during that period due to the poor condition of the fish as a result of recent spawning. The implementation of additional incidental catch TACs for GB winter flounder and GB yellowtail flounder may result in these TACs being caught early in the program, resulting in the prohibition on the use of Category B (Regular and Reserve) DAS in this SAP for the duration of the season. However, these TACs provide incentives to properly configure the haddock separator trawl and avoid catching such stocks, resulting in prolonging access to this program under a Category B DAS and increasing the probability that more of the available haddock TAC will be caught. Therefore,

these incidental catch TACs, in addition to delaying the start date for this SAP, may prolong access to this SAP, resulting in potentially higher ex-vessel prices, as landings of higher quality fish are spread out throughout the season, and a higher probability that the available haddock TAC can be harvested.

Total revenues from the use of Regular B DAS over the duration of the Pilot Program were conservatively estimated at \$10.4 million. This emergency action reduces the number of allowable Regular B DAS during quarter 1 to 500 DAS, while leaving the allowable Regular B DAS for quarters 2–4 at 1,000 DAS. In addition, this action restricts the use of Regular B DAS to the U.S./Canada Management Area, requires the use of a separator trawl, and designates both GB winter flounder and GB yellowtail flounder as stocks of concern with 100 lb (45 kg) per DAS trip limits. Although it could limit participation in the program, neither restricting the area for Regular B DAS, nor the separator trawl requirement is expected to necessarily change the potential earnings from the Regular B DAS Program. However, both GB yellowtail and winter flounders were important contributors to total Regular B DAS trips. Analysis of catch data on trips taken in the Pilot Program indicate that catch rates of stocks of concern may be too high, resulting in a closure of the area for Regular B DAS before even half of the allotted B DAS are used. This analysis suggests that potential revenues from the Regular B DAS Program may be reduced by more than two-thirds, to about \$3 million. Despite this reduction in potential revenues, the modified Regular B DAS Program implemented by this emergency action will result in some additional sources of fishing revenue for FY 2006. Since the Regular B DAS Pilot Program expired on October 31, 2005, the No Action alternative would yield no economic benefits from this program. Therefore, the modified Regular B DAS Program implemented by this emergency action is favorable when compared to the No Action alternative.

This emergency action allows vessels to fish inside and outside of the Eastern U.S./Canada Area on the same trip, which increases flexibility of vessel operations and reduces the risk of an unprofitable trip into the Eastern U.S./Canada Area. Without such flexibility, if a vessel does not locate a profitable amount of fish in the Eastern U.S./Canada Area, it would not have the 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 measure implemented by this emergency action is favorable when compared to the No Action alternative, as it would increase the flexibility, and therefore profitability, of trips into the Eastern U.S./Canada Area.

Under this emergency interim rule, the DAS Leasing Program will be continued unchanged, although the differential DAS counting measure implemented by this rule will likely have an impact on the price of a leased DAS. Differential DAS counting means that a vessel that may want to lease DAS may need to lease a larger number of DAS to get in the desired actual fishing time. Despite this, the continuation of the DAS Leasing Program provides additional opportunities for vessels to fish compared to the No Action alternative, as the DAS Leasing Program would otherwise expire on April 30, 2006.

Finally, this action relieves a restriction by eliminating unnecessary daily and maximum trip limits for haddock for FY 2006. These limits were implemented to prevent the target TAC for haddock from being exceeded. The target TAC for haddock has not been exceeded since 1996. Eliminating these restrictions will allow the fishing industry to harvest at least 75 percent of the target TAC for haddock during FY 2006. Further, eliminating these restrictions will allow vessels to possess and land haddock in excess of the daily and maximum trip limits, thereby preventing biological waste and providing an opportunity to offset some of the adverse economic impacts resulting from the implementation of Amendment 13 and this emergency action.

Despite the fewer negative economic impacts likely to result from the No Action alternative, this alternative would not result in sufficient reductions in F for specific groundfish stocks necessary to maintain the rebuilding programs established under Amendment 13. As a result, the No Action alternative would not prevent overfishing, as required by the Magnuson-Stevens Act. While the measures implemented by this emergency action do not, by themselves, prevent overfishing, in conjunction with the measures adopted by the Council for implementation under FW 42, these measures will prevent overfishing and assist the fishery to meet the Amendment 13 rebuilding objectives during FY 2006, as required by the Magnuson-Stevens Act. The measures implemented by this emergency action

were selected because they meet statutory requirements, as well as the objectives of this action, and attempt to minimize the expected economic impacts as much as possible.

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. In conjunction with this rulemaking process, a small entity compliance guide was prepared. Copies of the guide will be sent to all holders of limited access NE multispecies permits. Copies of the guide can also be obtained from the Regional Administrator (see **ADDRESSES**) and is available on the Internet at <http://www.nero.noaa.gov>.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 7, 2006.

**John Oliver,**

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

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

#### PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

■ 2. In § 648.4, paragraphs (a)(1)(i)(A), (B), (E), (G), and (J); (a)(2)(i)(B), (E), (G), and (J); (a)(3)(i)(B), (E), (G), and (J); (a)(4)(i)(B), (E), (G), and (J); (a)(5)(i)(B), (E), (G), and (J); (a)(6)(i)(B), (E), (G), and (J); (a)(7)(i)(B), (E), (G), and (J); (a)(9)(i)(E), (G), and (J); (a)(12)(i)(B)(2), (E), (G), and (J); (a)(13)(i)(B) and (G); and (c)(2)(iii)(A) are suspended and paragraphs (a)(1)(i)(N) through (R); (a)(2)(i)(N), (P), and (Q); (a)(3)(i)(M) through (P); (a)(4)(i)(N) through (Q); (a)(5)(i)(M) through (P); (a)(6)(i)(M) through (P); (a)(7)(i)(M) through (P); (a)(9)(i)(O) through (Q); (a)(12)(i)(N) through (Q); (a)(13)(i)(O) and (P); and (c)(2)(iii)(C) are added to read as follows:

#### § 648.4 Vessel permits.

(a) \* \* \*  
(1) \* \* \*  
(i) \* \* \*

(N) *Eligibility.* To be eligible to apply for a limited access NE multispecies permit, as specified in § 648.82, a vessel must have been issued a limited access NE multispecies permit for the preceding year, be replacing a vessel that was issued a limited access NE multispecies permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history; unless otherwise specified in this paragraph (a)(1)(i)(N). A vessel may apply for a limited access Handgear A permit described in § 648.82(u)(6), if it meets the criteria described under paragraphs (a)(1)(i)(N)(1), (2), and (3) of this section.

(1) The vessel must have been previously issued a valid NE multispecies open access Handgear permit during at least 1 fishing year during the fishing years 1997 through 2002; and

(2) The vessel must have landed and reported to NMFS at least 500 lb (226.8 kg) of cod, haddock, or pollock, when fishing under the open access Handgear permit in at least 1 of the fishing years from 1997 through 2002, as indicated by NMFS dealer records (live weight), submitted to NMFS prior to January 29, 2004.

(O) *Application/renewal restrictions.* All limited access permits established under this section must be issued on an annual basis by the last day of the fishing year for which the permit is required, unless a Confirmation of Permit History (CPH) has been issued as specified in paragraph (a)(1)(i)(R) of this section. Application for such permits must be received no later than 30 days before the last day of the fishing year. Failure to renew a limited access permit in any fishing year bars the renewal of the permit in subsequent years.

(P) *Replacement vessels.* With the exception of vessels that have obtained a limited access Handgear A permit described in § 648.82(u)(6), to be eligible for a limited access permit under this section, the replacement vessel must meet the following criteria and any other applicable criteria under paragraph (a)(1)(i)(F) of this section:

(1) The replacement vessel's horsepower may not exceed by more than 20 percent the horsepower of the vessel's baseline specifications, as applicable; and

(2) The replacement vessel's length, GRT, and NT may not exceed by more than 10 percent the length, GRT, and NT of the vessel's baseline specifications, as applicable.

(Q) *Consolidation restriction.* Except as provided for in the NE Multispecies DAS Leasing Program, as specified in § 648.82(t), and the NE Multispecies

DAS Transfer Program, as specified in § 648.82(l), limited access permits and DAS allocations may not be combined or consolidated.

(R) *Confirmation of permit history.* Notwithstanding any other provisions of this part, a person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has sunk, been destroyed, or transferred to another person, must apply for and receive a CPH if the fishing and permit history of such vessel has been retained lawfully by the applicant. To be eligible to obtain a CPH, the applicant must show that the qualifying vessel meets the eligibility requirements, as applicable, in this part. Issuance of a valid CPH preserves the eligibility of the applicant to apply for a limited access permit for a replacement vessel based on the qualifying vessel's fishing and permit history at a subsequent time, subject to the replacement provisions specified in this section. If fishing privileges have been assigned or allocated previously under this part, based on the qualifying vessel's fishing and permit history, the CPH also preserves such fishing privileges. A CPH must be applied for in order for the applicant to preserve the fishing rights and limited access eligibility of the qualifying vessel. An application for a CPH must be received by the Regional Administrator no later than 30 days prior to the end of the first full fishing year in which a vessel permit cannot be issued. Failure to do so is considered abandonment of the permit as described in paragraph (a)(1)(i)(K) of this section. A CPH issued under this part will remain valid until the fishing and permit history preserved by the CPH is used to qualify a replacement vessel for a limited access permit. Any decision regarding the issuance of a CPH for a qualifying vessel that has applied for or been issued previously a limited access permit is a final agency action subject to judicial review under 5 U.S.C. 704. Information requirements for the CPH application are the same as those for a limited access permit. Any request for information about the vessel on the CPH application form refers to the qualifying vessel that has been sunk, destroyed, or transferred. Vessel permit applicants who have been issued a CPH and who wish to obtain a vessel permit for a replacement vessel based upon the previous vessel history may do so pursuant to paragraph (a)(1)(i)(P) of this section.

(3) \* \* \*  
(i) \* \* \*

(N) *Application/renewal restrictions.* See paragraph (a)(1)(i)(O) of this section.

(O) *Replacement vessels.* See paragraph (a)(1)(i)(P) of this section.

(P) *Consolidation restriction.* See paragraph (a)(1)(i)(Q) of this section.

(Q) *Confirmation of Permit History.* See paragraph (a)(1)(i)(R) of this section.

\* \* \* \* \*  
(3) \* \* \*  
(i) \* \* \*

(M) *Application/renewal restrictions.* See paragraph (a)(1)(i)(O) of this section.

(N) *Replacement vessels.* See paragraph (a)(1)(i)(P) of this section.

(O) *Consolidation restriction.* See paragraph (a)(1)(i)(Q) of this section.

(P) *Confirmation of Permit History.* See paragraph (a)(1)(i)(R) of this section.

\* \* \* \* \*  
(4) \* \* \*  
(i) \* \* \*

(N) *Application/renewal restrictions.* See paragraph (a)(1)(i)(O) of this section.

(O) *Replacement vessels.* See paragraph (a)(1)(i)(P) of this section.

(P) *Consolidation restriction.* See paragraph (a)(1)(i)(Q) of this section.

(Q) *Confirmation of Permit History.* See paragraph (a)(1)(i)(R) of this section.

\* \* \* \* \*  
(5) \* \* \*  
(i) \* \* \*

(M) *Application/renewal restrictions.* See paragraph (a)(1)(i)(O) of this section.

(N) *Replacement vessels.* See paragraph (a)(1)(i)(P) of this section.

(O) *Consolidation restriction.* See paragraph (a)(1)(i)(Q) of this section.

(P) *Confirmation of Permit History.* See paragraph (a)(1)(i)(R) of this section.

\* \* \* \* \*  
(6) \* \* \*  
(i) \* \* \*

(M) *Application/renewal restrictions.* See paragraph (a)(1)(i)(O) of this section.

(N) *Replacement vessels.* See paragraph (a)(1)(i)(P) of this section.

(O) *Consolidation restriction.* See paragraph (a)(1)(i)(Q) of this section.

(P) *Confirmation of Permit History.* See paragraph (a)(1)(i)(R) of this section.

\* \* \* \* \*  
(7) \* \* \*  
(i) \* \* \*

(M) *Application/renewal restrictions.* See paragraph (a)(1)(i)(O) of this section.

(N) *Replacement vessels.* See paragraph (a)(1)(i)(P) of this section.

(O) *Consolidation restriction.* See paragraph (a)(1)(i)(Q) of this section.

(P) *Confirmation of Permit History.* See paragraph (a)(1)(i)(R) of this section.

\* \* \* \* \*  
(9) \* \* \*  
(i) \* \* \*

(O) *Replacement vessels.* (1) See paragraph (a)(1)(i)(P) of this section.

(2) A vessel ≥51 GRT that lawfully replaced a vessel <51 GRT between February 27, 1995, and October 7, 1999, that meets the qualification criteria set forth in paragraph (a)(9)(i)(A) of this section, but exceeds the 51 GRT vessel size qualification criteria as stated in paragraph (a)(9)(i)(A)(2) or (4) of this section, may qualify for and fish under the permit category for which the replaced vessel qualified.

(3) A vessel that replaced a vessel that fished for and landed monkfish between February 28, 1991, and February 27, 1995, may use the replaced vessel's history in lieu of or in addition to such vessel's fishing history to meet the qualification criteria set forth in paragraphs (a)(9)(i)(A)(1), (2), (3), or (4) of this section, unless the owner of the replaced vessel retained the vessel's permit or fishing history, or such vessel no longer exists and was replaced by another vessel according to the provisions in paragraph (a)(1)(i)(D) of this section.

(4) A vessel that replaced a vessel that fished for and landed monkfish between March 15 through June 15 in the years 1995 through 1998, may use the replaced vessel's history in lieu of, or in addition to, such vessel's fishing history to meet the qualification criteria set forth in paragraphs (a)(9)(i)(A)(6) and (7) of this section, unless the owner of the replaced vessel retained the vessel's permit or fishing history, or such vessel no longer exists and was replaced by another vessel according to the provision of paragraph (a)(1)(i)(D) of this section.

(P) Consolidation restriction. See paragraph (a)(1)(i)(Q) of this section.

(Q) Confirmation of permit history. See paragraph (a)(1)(i)(R) of this section.

\* \* \* \* \*

(12) \* \* \*

(i) \* \* \*

(N) For fishing years beyond the initial application year, the provisions of paragraph (a)(1)(i)(O) of this section apply.

(O) Replacement vessels. The provisions of paragraph (a)(1)(i)(P) of this section apply.

(P) Consolidation restriction. The provisions of paragraph (a)(1)(i)(Q) of this section apply.

(Q) Confirmation of permit history. The provisions of paragraph (a)(1)(i)(R) of this section apply.

\* \* \* \* \*

(13) \* \* \*

(i) \* \* \*

(O) Fishing years 2003 and beyond. For fishing years beyond the initial year, the provisions of paragraph (a)(1)(i)(O) of this section apply.

(P) Consolidation restriction. The provisions of paragraph (a)(1)(i)(Q) of this section apply.

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(iii) \* \* \*

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

\* \* \* \* \*

■ 3. In § 648.10, paragraphs (b)(1)(vii); (b)(2)(i), (iii), and (iv); (b)(3)(i)(A) and (C); (b)(3)(ii) and (iii); (c)(1) and (3); and (f)(2) are suspended and paragraphs (b)(1)(x); (b)(2)(v) through (vii); (b)(3)(i)(E) and (F); (b)(3)(iv) and (v); (c)(6) and (7); and (f)(3) are added to read as follows:

§ 648.10 DAS notification requirements.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(x) A vessel electing to fish under the Regular B DAS Program, as specified in § 648.85(b)(10);

\* \* \* \* \*

(2) \* \* \*

(v) A vessel that has crossed the VMS Demarcation Line specified under paragraph (a) of this section is deemed to be fishing under the DAS program, unless the vessel's owner or authorized representative declares the vessel out of the scallop, NE multispecies, or monkfish fishery, as applicable, for a specific time period by notifying the Regional Administrator through the VMS prior to the vessel leaving port, or unless the vessel's owner or authorized representative declares the vessel will be fishing in the Eastern U.S./Canada

Area as described in § 648.85(a)(3)(viii) under the provisions of that program.

(vi) DAS counting for a vessel that is under the VMS notification requirements of this paragraph (b), with the exception of vessels that have elected to fish exclusively in the Eastern U.S./Canada Area on a particular trip, pursuant to § 648.85(a), begins with the first location signal received showing that the vessel crossed the VMS Demarcation Line after leaving port. DAS end with the first location signal received showing that the vessel crossed the VMS Demarcation Line upon its return to port. For those vessels that have elected to fish in the Eastern U.S./Canada Area pursuant to § 648.85(a)(2)(i), the requirements of this paragraph (b) begin with the first 30-minute location signal received showing that the vessel crossed into the Eastern U.S./Canada and end with the first location signal received showing that the vessel crossed out of the Eastern U.S./Canada Area upon beginning its return trip to port, unless the vessel elects to also fish outside the Eastern Area on the same trip, in accordance with § 648.85(a)(3)(viii)(A).

(vii) If the VMS is not available or not functional, and if authorized by the Regional Administrator, a vessel owner must provide the notifications required by paragraphs (b)(2)(ii), (v), and (vi) of this section by using the call-in notification system described under paragraph (c) of this section, instead of using the VMS specified in this paragraph (b).

\* \* \* \* \*

(3) \* \* \*

(i) \* \* \*

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

(F) Fish under the Regular B DAS Program specified at § 648.85(b)(10);

\* \* \* \* \*

(iv) Unless otherwise required by paragraph (b)(1)(v) of this section, upon recommendation by the Council, the Regional Administrator may require, by notification through a letter to affected permit holders, notification in the Federal Register, or other appropriate means, that a NE multispecies vessel issued an Individual DAS or Combination Vessel permit install on board an operational VMS unit that meets the minimum performance criteria specified in § 648.9(b), or as modified as provided under § 648.9(a). An owner of such a vessel must provide documentation to the Regional Administrator that the vessel has installed on board an operational VMS

unit that meets those criteria. If a vessel has already been issued a permit without the owner providing such documentation, the Regional Administrator shall allow at least 30 days for the vessel to install an operational VMS unit that meets the criteria and for the owner to provide documentation of such installation to the Regional Administrator. A vessel that is required to use a VMS shall be subject to the requirements and presumptions described under paragraphs (b)(2)(ii) through (vii) of this section.

(v) A vessel issued a limited access NE multispecies, monkfish, Occasional scallop, or Combination permit may be authorized by the Regional Administrator to provide the notifications required by this paragraph (b) using the VMS specified in this paragraph (b). The owner of such vessel becomes authorized by providing documentation to the Regional Administrator at the time of application for an Individual or Combination vessel limited access NE multispecies permit that the vessel has installed on board an operational VMS unit that meets the minimum performance criteria specified in § 648.9(b), or as modified as provided under § 648.9(a). Vessels that are authorized to use the VMS in lieu of the call-in requirement for DAS notification shall be subject to the requirements and presumptions described under paragraphs (b)(2)(ii) through (vii) of this section. Those who elect to use the VMS do not need to call in DAS as specified in paragraph (c) of this section. Vessels that do call in are exempt from the prohibition specified in § 648.14(c)(2).

\* \* \* \* \*

(c) \* \* \*

(6) Less than 1 hour prior to leaving port, for vessels issued a limited access NE multispecies DAS permit or, for vessels issued a limited access NE multispecies DAS permit and a limited access monkfish permit (Category C, D, F, G, or H), unless otherwise specified in this paragraph (c)(6), and, prior to leaving port for vessels issued a limited access monkfish Category A or B permit, the vessel owner or authorized representative must notify the Regional Administrator that the vessel will be participating in the DAS program by calling the Regional Administrator and providing the following information: Owner and caller name and phone number; vessel name and permit number; type of trip to be taken; port of departure; and that the vessel is beginning a trip. A DAS begins once the call has been received and a confirmation number is given by the

Regional Administrator, or when a vessel leaves port, whichever occurs first, unless otherwise specified in paragraph (b)(2)(iv) of this section. Vessels issued a limited access monkfish Category C, D, F, G, or H permit that are allowed to fish as a Category A or B vessel in accordance with the provisions of § 648.92(b)(2)(iv), are subject to the call-in notification requirements for limited access monkfish Category A or B vessels specified under this paragraph (c)(1) for those monkfish DAS where there is not a concurrent NE multispecies DAS.

(7) At the end of a vessel's trip, upon its return to port, the vessel owner or owner's representative must call the Regional Administrator and notify him/her that the trip has ended by providing the following information: Owner and caller name and phone number, vessel name, permit number, port of landing, and that the vessel has ended its trip. A DAS ends when the call has been received and confirmation has been given by the Regional Administrator, unless otherwise specified in paragraph (b)(2)(vi) of this section.

\* \* \* \* \*

(f) \* \* \*

(3) *Gillnet call-in.* Vessels subject to the gillnet restriction described in § 648.82(s)(1)(ii) must notify the Regional Administrator of the commencement date of their time out of the NE multispecies gillnet fishery using the procedure described in paragraph (f)(1) of this section.

■ 4. In § 648.14, paragraphs (a)(172), (c)(19), (c)(21) through (23), (c)(33) through (35), (c)(37), (c)(39), (c)(43), (c)(49) through (52), (c)(54) through (66), (c)(70), (c)(78), (c)(80), (y)(15), and (bb)(22) are suspended; and paragraphs (a)(173) through (178), (c)(81) through (116), (g)(4), (y)(22), and (bb)(23) are added to read as follows:

**§ 648.14 Prohibitions.**

\* \* \* \* \*

(a) \* \* \*

(173) If, upon the end of a fishing trip as specified under § 648.10(b)(2)(vi) or (c)(3), fail to offload regulated species subject to a landing limit based on a DAS fished under § 648.85 or § 648.86, as required by § 648.86(i).

(174) Fail to comply with the reporting requirements under § 648.85(a)(3)(viii)(A)(2) when fishing inside and outside of the Eastern U.S./Canada Area on a trip.

(175) Fail to notify NMFS via VMS prior to departing the Eastern U.S./Canada Area, when fishing inside and outside of the area on the same trip, in accordance with § 648.85(a)(3)(viii)(A)(1).

(176) When fishing inside and outside of the Eastern U.S./Canada Area, fail to abide by the most restrictive regulations that apply as described in § 648.85(a)(3)(viii)(A).

(177) If fishing inside the Eastern U.S./Canada Area and in possession of fish in excess of what is allowed under more restrictive regulations that apply outside of the Eastern U.S./Canada Area, fish within the CC/GOM or SNE/MA Yellowtail Flounder Areas on the same trip, as prohibited under § 648.85(a)(3)(viii)(A).

(178) Discard legal-sized yellowtail flounder prior to declaring the intent to fish inside and outside of the Eastern U.S./Canada Area on the same trip, in accordance with § 648.85(a)(3)(viii)(A).

\* \* \* \* \*

(c) \* \* \*

(81) Fail to comply with the exemption specifications as described in § 648.86(i)(4).

(82) Fail to declare, and be, out of the non-exempt gillnet fishery as required by § 648.82(s)(1)(ii), using the procedure specified in § 648.82(q).

(83) Enter port, while on a NE multispecies DAS trip, in possession of more than the allowable limit of cod specified in § 648.86(i)(1)(i), unless the vessel is fishing under the cod exemption specified in § 648.86(i)(4).

(84) Fail to remain in port for the appropriate time specified in § 648.86(i)(1)(ii)(A), except for transiting purposes, provided the vessel complies with § 648.86(i)(3).

(85) Enter port, while on a NE multispecies DAS trip, in possession of more than the allowable limit of cod specified in § 648.86(i)(2)(ii) or (iii).

(86) Fail to remain in port for the appropriate time specified in § 648.86(i)(2)(iii)(A), except for transiting purposes, provided the vessel complies with § 648.86(i)(3).

(87) Lease NE multispecies DAS or use leased DAS that have not been approved for leasing by the Regional Administrator as specified in § 648.82(t).

(88) Provide false information on the application for NE multispecies DAS leasing, as required under § 648.82(t)(3).

(89) Act as lessor or lessee of NE multispecies DAS, if the vessels are not in accordance with the size restrictions specified in § 648.82(t)(4)(ix).

(90) Lease more than the maximum number of DAS allowable under § 648.82(t)(4)(iv).

(91) Lease NE multispecies DAS in excess of the duration specified in § 648.82(t)(4)(viii).

(92) If fishing under the cod trip limit specified in § 648.86(i)(2)(ii), fail to

obtain an annual declaration, or fish north of the exemption line specified in § 648.86(i)(4).

(93) 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)(10).

(94) 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)(10)(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)(10)(iv)(D).

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

(96) If fishing in the Eastern U.S./Canada Haddock SAP Pilot Area, discard legal-sized cod, GB winter flounder, or GB yellowtail flounder while fishing under a Category B DAS, as described in § 648.85(b)(8)(vii)(F).

(97) 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)(viii)(I), if the vessel possesses more than the landing limit for cod, GB winter flounder, or GB yellowtail flounder specified in § 648.85(b)(8)(vii)(F).

(98) 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)(viii)(J).

(99) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), fail to comply with the requirements and restrictions specified in § 648.85(b)(10)(iv)(A) through (F), and (I).

(100) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), fail to comply with the VMS requirement specified in § 648.85(b)(10)(iv)(A).

(101) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), fail to comply with the observer notification requirement specified in § 648.85(b)(10)(iv)(B).

(102) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), fail to comply with the VMS declaration requirement specified in § 648.85(b)(10)(iv)(C).

(103) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), fail to comply with the landing limits specified in § 648.85(b)(10)(iv)(D).

(104) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), fail to comply with the no discard and DAS

flip requirements specified in § 648.85(b)(10)(iv)(E).

(105) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), fail to comply with the minimum Category A DAS and Category B DAS accrual requirements specified in § 648.85(b)(10)(iv)(F).

(106) Use a Regular B DAS in the Regular B DAS Program specified in § 648.85(b)(10), if the program has been closed as specified in § 648.85(b)(10)(iv)(H) or (b)(10)(vi).

(107) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), use a Regular B DAS in a stock area that has been closed, as specified in § 648.85(b)(10)(iv)(G).

(108) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), fail to comply with the reporting requirements specified in § 648.85(b)(10)(iv)(I).

(109) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), use a Regular B DAS outside the U.S./Canada Management Area specified under § 648.85(a)(1), or after the program has closed, as required under § 648.85(10)(iv)(G) or (H).

(110) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), fail to use a haddock separator trawl as required by § 648.85(b)(10)(iv)(J) and described under § 648.85(a)(3)(iii)(A).

(111) Use a Regular B DAS and a monkfish DAS on the same trip, if issued a limited access Category C, D, or F monkfish permit and fishing in the Regular B DAS Program specified in § 648.85(b)(10).

(112) If issued a limited access monkfish Category C, D, or F permit and fishing in the Regular B DAS Program specified in § 648.85(b)(10), possess more than the incidental catch amounts of monkfish, as specified at § 648.94(b)(7).

(113) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), discard legal-sized monkfish.

(114) 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)(J), and (b)(7)(v)(F) or (b)(7)(vi)(G), whichever is applicable.

(115) 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)(viii)(K) or (L).

(116) Provide false information on the application to downgrade the DAS Leasing Program baseline, as required under § 648.82(t)(4)(xi).

\* \* \* \* \* (g) \* \* \*

(4) If the vessel is a private recreational fishing vessel, fail to comply with the seasonal cod closure described in § 648.89(c)(1)(v) or, if the vessel has been issued a charter/party permit or is fishing under charter/party regulations, fail to comply with the prohibition on fishing described under § 648.89(c)(2)(vi).

\* \* \* \* \* (y) \* \* \*

(22) Fish for, possess, or land monkfish with or from a vessel that has had the length, GRT, or NT of such vessel or its replacement upgraded or increased in excess of the limitations specified in § 648.4(a)(9)(i)(O) and (F).

\* \* \* \* \* (bb) \* \* \*

(23) Possess, transfer, receive, sell, purchase, trade, or barter, or attempt to transfer, receive, purchase, trade, or barter, or sell more than 2,000 lb (907.2 kg) of Atlantic herring per trip from the GB haddock stock area defined in § 648.86(i)(6)(v)(B) following the effective date of any closure enacted pursuant to § 648.86(a)(3).

\* \* \* \* \*

■ 5. In § 648.53, paragraph (e) is suspended, and paragraph (i) is added to read as follows:

**§ 648.53 DAS allocations.**

\* \* \* \* \*

(i) *End-of-year carry-over for open area DAS.* With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(1)(i)(R) for the entire fishing year preceding the carry-over year, limited access vessels that have unused Open Area DAS on the last day of February of any year may carry over a maximum of 10 DAS, not to exceed the total Open Area DAS allocation by permit category, into the next year. DAS carried over into the next fishing year may only be used in Open Areas. DAS sanctioned vessels will be credited with unused DAS based on their unused DAS allocation, minus total DAS sanctioned.

■ 6. In § 648.80, paragraphs (a)(3)(vi), (a)(4)(i) through (iv), (b)(2)(i) through (iii) and (vi), and (c)(2)(ii) and (iii) are suspended, and paragraphs (a)(3)(viii), (a)(4)(vi) through (ix), (b)(2)(vii) through (x), and (c)(2)(vi) and (vii) are added to read as follows:

**§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.**

\* \* \* \* \*

(a) \* \* \*

(3) \* \* \*

(viii) *Other restrictions and exemptions.* Vessels are prohibited from



fishing in the GOM or GB Exemption Area as defined in paragraph (a)(17) of this section, except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (a)(5) through (7), (a)(9) through (14), (d), (e), (h), and (i) of this section; or if fishing under a NE multispecies DAS; or if fishing under the Small Vessel or Handgear A exemptions specified in § 648.82(u)(5) and (6), respectively; or if fishing under the scallop state waters exemptions specified in § 648.54 and paragraph (a)(11) of this section; or if fishing under a scallop DAS in accordance with paragraph (h) of this section; or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit, or if fishing as a charter/party or private recreational vessel in compliance with the regulations specified in § 648.89. Any gear on a vessel, or used by a vessel, in this area must be authorized under one of these exemptions or must be stowed as specified in § 648.23(b).

\* \* \* \* \*

(4) \* \* \*

(vi) *Vessels using trawls.* Except as provided in paragraph (a)(3)(viii) of this section, and this paragraph (a)(4)(vi), and unless otherwise restricted under paragraph (a)(4)(iii) of this section, the minimum mesh size for any trawl net, except midwater trawl, and the minimum mesh size for any trawl net when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the GB Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) diamond mesh or square mesh applied to the codend of the net as defined under paragraph (a)(3)(i) of this section, provided the vessel complies with the requirements of paragraph (a)(3)(vii) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(vii) *Vessels using Scottish seine, midwater trawl, and purse seine.* Except as provided in paragraph (a)(3)(viii) of this section, and this paragraph (a)(4)(vii), and unless otherwise

restricted under paragraph (a)(4)(iii) of this section, the minimum mesh size for any Scottish seine, midwater trawl, or purse seine, and the minimum mesh size for any Scottish seine, midwater trawl, or purse seine, when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the GB Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied throughout the net, or any combination thereof, provided the vessel complies with the requirements of paragraph (a)(3)(vii) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(viii) *Large-mesh vessels.* When fishing in the GB Regulated Mesh Area, the minimum mesh size for any trawl net, or sink gillnet, and the minimum mesh size for any trawl net, or sink gillnet, when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(u)(5), is 8.5-inch (21.6-cm) diamond or square mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(ix) *Gillnet vessels.* Except as provided in paragraph (a)(3)(viii) of this section and this paragraph (a)(4)(iv), for Day and Trip gillnet vessels, the minimum mesh size for any sink gillnet, and the minimum mesh size for any roundfish or flatfish gillnet when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), when fishing under a DAS in the NE multispecies DAS program in the GB Regulated Mesh Area is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft

(0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(vii) *Vessels using trawls.* Except as provided in paragraphs (b)(2)(i) and (x) of this section, and unless otherwise restricted under paragraph (b)(2)(iii) of this section, the minimum mesh size for any trawl net, not stowed and not available for immediate use in accordance with § 648.23(b), except midwater trawl, on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the SNE Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh, applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) square mesh or 7-inch (17.8-cm) diamond mesh applied to the codend of the net, as defined under paragraph (a)(3)(i) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(viii) *Vessels using Scottish seine, midwater trawl, and purse seine.* Except as provided in paragraphs (b)(2)(ii) and (x) of this section, the minimum mesh size for any Scottish seine, midwater trawl, or purse seine, not stowed and not available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the SNE Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied throughout the net, or any combination thereof. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(ix) *Large-mesh vessels.* When fishing in the SNE Regulated Mesh Area, the minimum mesh size for any trawl net vessel, or sink gillnet, not stowed and not available for immediate use in accordance with § 648.23(b) on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(u)(4), is 8.5-inch (21.6-cm) diamond or square mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m)



× 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(x) *Other restrictions and exemptions.* Vessels are prohibited from fishing in the SNE Exemption Area, as defined in paragraph (b)(10) of this section, except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (b)(3), (b)(5) through (9), (b)(11), (c), (e), (h), and (i) of this section, or if fishing under a NE multispecies DAS, if fishing under the Small Vessel or Handgear A exemptions specified in § 648.82(b)(u)(5) and (u)(6), respectively, or if fishing under a scallop state waters exemption specified in § 648.54, or if fishing under a scallop DAS in accordance with paragraph (h) of this section, or if fishing under a General Category scallop permit in accordance with paragraphs (a)(11)(i)(A) and (B) of this section, or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit, or if fishing as a charter/party or private recreational vessel in compliance with the regulations specified in § 648.89. Any gear on a vessel, or used by a vessel, in this area must be authorized under one of these exemptions or must be stowed as specified in § 648.23(b).

\* \* \* \* \*

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

(vi) *Vessels using Scottish seine, midwater trawl, and purse seine.* Except as provided in paragraph (c)(2)(vii) of this section, the minimum mesh size for any sink gillnet, Scottish seine, midwater trawl, or purse seine, not stowed and not available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the MA Regulated Mesh Area, shall be that specified in § 648.104(a). This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(vii) *Large-mesh vessels.* When fishing in the MA Regulated Mesh Area, the minimum mesh size for any trawl net vessel, or sink gillnet, not stowed and not available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(u)(4), is 7.5-inch (19.0-cm) diamond mesh or 8.0-inch (20.3-cm) square mesh, throughout the entire net. This restriction does not

apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

\* \* \* \* \*

■ 7. In § 648.82, paragraphs (a)(1), (b), (c)(1) and (2), (d) through (k), (l)(1)(iv) and (v), and (m) are suspended and paragraphs (a)(3), (c)(3) and (4), (d)(5) through (7), (l)(2)(viii) and (ix), and (n) through (w) are added to read as follows:

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

\* \* \* \* \*

(a) \* \* \*

(3) *End-of-year carry-over.* With the exception of vessels that held a Confirmation of Permit History, as described in § 648.4(a)(1)(i)(Q), for the entire fishing year preceding the carry-over year, limited access vessels that have unused DAS on the last day of April of any year may carry over a maximum of 10 DAS into the next year. Unused leased DAS may not be carried over. Vessels that have been sanctioned through enforcement proceedings will be credited with unused DAS based on their DAS allocation minus any total DAS that have been sanctioned through enforcement proceedings. For vessels with a balance of both unused Category A DAS and unused Category B DAS at the end of the previous fishing year (e.g., for the 2005 fishing year, carry-over DAS from the 2004 fishing year), Category A DAS will be carried over first, than Regular B DAS, than Reserve B DAS. Category C DAS cannot be carried over.

\* \* \* \* \*

(c) \* \* \*

(3) *Calculation of used DAS baseline.* For all valid limited access NE multispecies DAS vessels, vessels issued a valid Small Vessel category permit, and NE multispecies Confirmation of Permit Histories, a vessel's used DAS baseline shall be based on the fishing history associated with its permit and shall be determined by the highest number of reported DAS fished during a single qualifying fishing year, as specified in paragraphs (c)(3)(i) through (iv) of this section, during the 6-year period from May 1, 1996, through April 30, 2002, not to exceed the vessel's annual allocation prior to August 1, 2002. A qualifying year is one in which a vessel landed 5,000 lb (2,268 kg) or more of regulated multispecies, based upon landings reported through dealer reports (based on live weights of landings submitted to NMFS prior to

April 30, 2003). If a vessel that was originally issued a limited access NE multispecies permit was lawfully replaced in accordance with the replacement restrictions specified in § 648.4(a), then the used DAS baseline shall be defined based upon the DAS used by the original vessel and by subsequent vessel(s) associated with the permit during the qualification period specified in this paragraph (c)(3). The used DAS baseline shall be used to calculate the number and category of DAS that are allocated for use in a given fishing year, as specified in paragraph (v) of this section.

(i) Except as provided in paragraphs (c)(3)(ii) through (iv) of this section, the vessel's used DAS baseline shall be determined by calculating DAS use reported under the DAS notification requirements in § 648.10.

(ii) For a vessel exempt from, or not subject to, the DAS notification system specified in § 648.10 during the period May 1996 through June 1996, the vessel's used DAS baseline for that period will be determined by calculating DAS use from vessel trip reports submitted to NMFS prior to April 9, 2003.

(iii) For a vessel enrolled in a Large Mesh DAS category, as specified in paragraph (u)(4) of this section, the calculation of the vessel's used DAS baseline may not include any DAS allocated or used by the vessel pursuant to the provisions of the Large Mesh DAS category.

(iv) Used DAS will be counted as described under paragraph (n) of this section.

(4) *Correction of used DAS baseline.*

(i) A vessel's used DAS baseline, as determined under paragraph (c)(3) of this section, may be corrected by submitting a written request to correct the DAS baseline. The request to correct must be received by the Regional Administrator no later than August 31, 2004. The request to correct must be in writing and provide credible evidence that the information used by the Regional Administrator in making the determination of the vessel's DAS baseline was based on incorrect data. The decision on whether to correct the DAS baseline shall be determined solely on the basis of written information submitted, unless the Regional Administrator specifies otherwise. The Regional Administrator's decision on whether to correct the DAS baseline is the final decision of the Department of Commerce.

(ii) *Status of vessel's pending request for a correction of used DAS baseline.* While a vessel's request for a correction is under consideration by the Regional

Administrator, the vessel is limited to fishing the number of DAS allocated in accordance with paragraph (v) of this section.

\* \* \* \* \*

(1) \* \* \*

(2) \* \* \*

(viii) NE multispecies Category A and Category B DAS, as defined under paragraphs (v)(1) and (2) of this section, shall be reduced by 20 percent upon transfer.

(ix) Category C DAS, as defined under paragraph (v)(3) of this section, will be reduced by 90 percent upon transfer.

\* \* \* \* \*

(n) *Accrual of DAS.* (1) *Actual time.* Unless otherwise specified under this paragraph (n) and paragraph (s)(1)(iii) of this section, DAS shall accrue to the nearest minute and will be counted as actual time called, or logged into the DAS program.

(2) *Differential Category A DAS counting.* (i) *Vessels fishing outside of the U.S./Canada Management Area.* For any fishing trip, or part of a fishing trip, in which a NE multispecies declares vessel declares, pursuant to § 648.85(a)(3)(viii), that it intends to fish some or all of its trip, or fishes, some or all of its trip other than for transiting purposes, under a Category A DAS outside of the U.S./Canada Management Area defined at § 648.85(a), unless otherwise specified in paragraph (s)(1)(iii) of this section, each Category A DAS, or part thereof, shall be counted at the ratio of 1.4 to 1.0. For example, if a vessel fishes on a Category A DAS for 24 hr (1 DAS) outside of the U.S./Canada Management Area, 33.6 hr (24 hr × 1.4) will be deducted from that vessel's NE multispecies Category A DAS allocation. If a fishing trip in which a vessel fishes Category A DAS in the GOM and inside the Western U.S./Canada Area on the same trip lasts 120 hr (5 DAS), 168 hr (7 DAS) (120 hr × 1.4) will be deducted from that vessel's NE multispecies Category A DAS allocation.

(ii) *Vessels fishing in the U.S./Canada Management Area.* For any fishing trip in which a NE multispecies vessel declares, pursuant to § 648.85(a)(3)(viii), that it intends to fish, and fishes, under a Category A DAS exclusively within, other than for transiting to and from, the U.S./Canada Management Area defined at § 648.85(a), unless otherwise specified in paragraph (s)(1)(iii) of this section, each Category A DAS, or part thereof, shall be counted at the ratio of 1:1. For example, if a vessel declares its intent to fish exclusively within the Western U.S./Canada Area and the trip lasts for 120 hr (5 DAS) including

transiting time, 120 hr (5 DAS), will be deducted from that vessel's NE multispecies Category A DAS allocation. A fishing vessel that declares its intent to fish exclusively in the Eastern U.S./Canada Area and fishes a total of 24 hr exclusively in the Eastern U.S./Canada Area and, therefore, is not subject to differential DAS counting for the part of the trip used to a transit to and from the Eastern U.S./Canada Area, shall be charged NE multispecies Category A DAS at a 1:1 ratio only for that part of the trip in the Eastern U.S./Canada Area (i.e., 24 hours, or 1 DAS).

(3) *Regular B DAS Program 24-hr clock.* For any fishing trip which a NE multispecies vessel elects to fish in the Regular B DAS Program, as specified at § 648.85(b)(10), and remains 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 fishes 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 leaves on a trip at 11 p.m. on the first calendar day and returns at 10 p.m. on the next 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 may legally land.

(o) *Good Samaritan credit.* See § 648.53(f).

(p) *Spawning season restrictions.* A vessel issued a valid Small Vessel or Handgear A category permit specified under paragraphs (u)(5) or (6), respectively, of this section may not fish for, possess, or land regulated species from March 1 through March 20 of each year. Any other vessel issued a limited access NE multispecies permit must declare out and be out of the NE multispecies DAS program for a 20-day period between March 1 and May 31 of each calendar year, using the notification requirements specified in § 648.10. A vessel fishing under a Day gillnet category designation is prohibited from fishing with gillnet gear capable of catching NE multispecies during its declared 20-day spawning block, unless the vessel is fishing in an exempted fishery, as described in § 648.80. If a vessel owner has not declared and been out of the fishery for a 20-day period between March 1 and May 31 of each calendar year on or before May 12 of each year, the vessel is prohibited from fishing for,

possessing or landing any regulated species or non-exempt species during the period May 12 through May 31, inclusive.

(q) *Declaring DAS and blocks of time out.* A vessel's owner or authorized representative shall notify the Regional Administrator of a vessel's participation in the DAS program, declaration of its 120 days out of the non-exempt gillnet fishery, if designated as a Day gillnet category vessel, as specified in paragraph (s)(1)(iii) of this section, and declaration of its 20-day period out of the NE multispecies DAS program, using the notification requirements specified in § 648.10.

(r) [Reserved]

(s) *Gillnet restrictions.* A vessel issued a limited access NE multispecies permit may fish under a NE multispecies DAS with gillnet gear, provided the owner of the vessel obtains an annual designation as either a Day or Trip gillnet vessel, as described in § 648.4(c)(2)(iii), and provided the vessel complies with the gillnet vessel gear requirements and restrictions specified in § 648.80.

(1) *Day gillnet vessels.* A Day gillnet vessel fishing with gillnet gear under a NE multispecies DAS is not required to remove gear from the water upon returning to the dock and calling out of the DAS program, provided the vessel complies with the restrictions specified in paragraphs (s)(1)(i) through (iii) of this section. A vessel electing to fish under the Day gillnet designation must have on board written confirmation, issued by the Regional Administrator, that the vessel is a Day gillnet vessel.

(i) *Removal of gear.* All gillnet gear must be brought to port prior to the vessel fishing in an exempted fishery.

(ii) *Declaration of time out of the gillnet fishery.*—(A) During each fishing year, a vessel must declare, and take, a total of 120 days out of the non-exempt gillnet fishery. Each period of time declared and taken must be a minimum of 7 consecutive days. At least 21 days of this time must be taken between June 1 and September 30 of each fishing year. The spawning season time out period required by paragraph (p) of this section will be credited toward the 120 days time out of the non-exempt gillnet fishery. If a vessel owner has not declared and taken any or all of the remaining periods of time required to be out of the fishery by the last possible date to meet these requirements, the vessel is prohibited from fishing for, possessing, or landing regulated multispecies or non-exempt species harvested with gillnet gear, and from having gillnet gear on board the vessel that is not stowed in accordance with § 648.23(b), while fishing under a NE

multispecies DAS, from that date through the end of the period between June 1 and September 30, or through the end of the fishing year, as applicable.

(B) A vessel shall declare its periods of required time through the notification procedures specified in § 648.10(f)(3).

(C) During each period of time declared out, a vessel is prohibited from fishing with non-exempted gillnet gear and must remove such gear from the water. However, the vessel may fish in an exempted fishery, as described in § 648.80, or it may fish under a NE multispecies DAS, provided it fishes with gear other than non-exempted gillnet gear.

(iii) *Method of counting DAS.* Unless electing to fish in the Regular B DAS Program specified in § 648.85(a)(6), and therefore subject to the DAS accrual provisions of paragraph (n)(3) of this section; or fishing exclusively within the U.S./Canada Management Area specified at § 648.85(a)(1), and therefore subject to the DAS accrual provisions of paragraph (n)(2)(ii) of this section, a Day gillnet vessel fishing with gillnet gear under a NE multispecies Category A DAS, or under a NE multispecies Category B DAS in an approved SAP specified at § 648.85(b), shall accrue 15 hours of DAS for each trip of more than 3 hours, but less than or equal to 11 hours. For a trip less than or equal to 3 hours, or more than 11 hours, the ratio of Category A DAS used to time called into the DAS program will be 1.4 to 1.0.

(2) *Trip gillnet vessels.* When fishing under a NE multispecies DAS, a Trip gillnet vessel is required to remove all gillnet gear from the water before calling out of a NE multispecies DAS under § 648.10(c)(7). When not fishing under a NE multispecies DAS, a Trip gillnet vessel may fish in an exempted fishery with gillnet gear, as authorized under the exemptions in § 648.80. A vessel electing to fish under the Trip gillnet designation must have on board written confirmation issued by the Regional Administrator that the vessel is a Trip gillnet vessel.

(t) *NE Multispecies DAS Leasing Program—(1) Program description.* Eligible vessels, as specified in paragraph (t)(2) of this section, may lease Category A DAS to and from other eligible vessels, in accordance with the restrictions and conditions of this section. The Regional Administrator has final approval authority for all NE multispecies DAS leasing requests.

(2) *Eligible vessels.*—(i) A vessel issued a valid limited access NE multispecies permit is eligible to lease Category A DAS to or from another such vessel, subject to the conditions and requirements of this part, unless the

vessel was issued a valid Small Vessel or Handgear A permit specified under paragraphs (u)(5) and (6) of this section, respectively, or is a valid participant in an approved Sector, as described in § 648.87(a). Any NE multispecies vessel that does not require use of DAS to fish for regulated multispecies may not lease any NE multispecies DAS.

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

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

(i) *Application information requirements.* An application to lease Category A DAS must contain the following information: Lessor's owner name, vessel name, permit number and official number or state registration number; Lessee's owner name, vessel name, permit number and official number or state registration number; number of NE multispecies DAS to be leased; total priced paid for leased DAS; signatures of Lessor and Lessee; and date form was completed. Information obtained from the lease application will be held confidential, according to applicable Federal law. Aggregate data may be used in the analysis of the DAS Leasing Program.

(ii) *Approval of lease application.* Unless an application to lease Category A DAS is denied according to paragraph (t)(3)(iii) of this section, the Regional Administrator shall issue confirmation of application approval to both Lessor and Lessee within 45 days of receipt of an application.

(iii) *Denial of lease application.* The Regional Administrator may deny an application to lease Category A DAS for any of the following reasons, including, but not limited to: The application is incomplete or submitted past the March 1 deadline; the Lessor or Lessee has not been issued a valid limited access NE multispecies permit or is otherwise not

eligible; the Lessor's or Lessee's DAS are under sanction pursuant to an enforcement proceeding; the Lessor's or Lessee's vessel is prohibited from fishing; the Lessor's or Lessee's limited access NE multispecies permit is sanctioned pursuant to an enforcement proceeding; the Lessor or Lessee vessel is determined not in compliance with the conditions and restrictions of this part; or the Lessor has an insufficient number of allocated or unused DAS available to lease. Upon denial of an application to lease NE multispecies DAS, the Regional Administrator shall send a letter to the applicants describing the reason(s) for application rejection. The decision by the Regional Administrator is the final agency decision.

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

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

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

(iv) *Maximum number of DAS that can be leased.* A Lessee may lease Category A DAS in an amount up to such vessel's 2001 fishing year allocation (excluding carry-over DAS from the previous year, or additional DAS associated with obtaining a Large Mesh permit). For example, if a vessel was allocated 88 DAS in the 2001 fishing year, that vessel may lease up to 88 Category A DAS. The total number of Category A DAS that the vessel could fish would be the sum of the 88 leased DAS and the vessel's 2004 allocation of Category A DAS. Any leased DAS used are subject to differential DAS accounting as described under paragraphs (n) and (t) of this section.

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

which such leases were approved by NMFS.

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

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

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

(ix) *Size restriction of Lessee vessel.* A Lessor vessel only may lease DAS to a Lessee vessel with a baseline main engine horsepower rating that is no more than 20 percent greater than the baseline engine horsepower of the Lessor vessel. A Lessor vessel may only lease DAS to a Lessee vessel with a baseline length overall that is no more than 10 percent greater than the baseline length overall of the Lessor vessel. For the purposes of this program, the baseline horsepower and length overall specifications of vessels are those associated with the permit as of January 29, 2004, unless otherwise modified according to paragraph (t)(4)(xi) of this section.

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

(xi) *One-time downgrade of DAS Leasing Program baseline.* For the purposes of determining eligibility for leasing DAS only, a vessel owner may elect to make a one-time downgrade to the vessel's DAS Leasing Program baseline length and horsepower as specified in paragraph (t)(4)(ix) of this section to match the length overall and horsepower specifications of the vessel that is currently issued the permit.

(A) *Application for a one-time DAS Leasing Program baseline downgrade.* To downgrade the DAS Leasing Program baseline, eligible NE multispecies vessels must submit a completed application form obtained from the Regional Administrator. An application to downgrade a vessel's DAS Leasing Program baseline must contain at least the following information: Vessel owner's name, vessel name, permit number, official number or state

registration number, current vessel length overall and horsepower specifications, an indication whether additional information is included to document the vessel's current specifications, and the signature of the vessel owner.

(B) *Duration and applicability of one-time DAS Leasing Program baseline downgrade.* The downgraded DAS Leasing Program baseline remains in effect until the DAS Leasing Program expires or the permit is transferred to another vessel via a vessel replacement. Once the permit is transferred to another vessel, the DAS Leasing Program baseline reverts to the baseline horsepower and length overall specifications associated with the permit prior to the one-time downgrade. Once the DAS Leasing Program baseline is downgraded for a particular permit, no further downgrades may be authorized for that permit. The downgraded DAS Leasing Program baseline may only be used to determine eligibility for the DAS Leasing Program and does not affect or change the baseline associated with the DAS Transfer Program specified in paragraph (l)(1)(ii) of this section, or the vessel replacement or upgrade restrictions specified at § 648.4(a)(1)(i)(P) and (F), or any other provision, respectively.

(u) *Permit categories.* All limited access NE multispecies permit holders shall be assigned to one of the following permit categories, according to the criteria specified. Permit holders may request a change in permit category, as specified in § 648.4(a)(1)(i)(I)(2). Each fishing year shall begin on May 1 and extend through April 30 of the following year. Beginning May 1, 2004, with the exception of the limited access Small Vessel and Handgear A vessel categories described in paragraphs (u)(5) and (6) of this section, respectively, NE multispecies DAS available for use will be calculated pursuant to paragraphs (c) and (v) of this section.

(1) *Individual DAS category.* This category is for vessels allocated individual DAS that are not fishing under the Hook Gear, Combination, or Large-mesh individual categories. Beginning May 1, 2004, for a vessel fishing under the Individual DAS category, the baseline for determining the number of NE multispecies DAS available for use shall be calculated based upon the fishing history associated with the vessel's permit, as specified in paragraph (c)(3) of this section. The number and categories of DAS that are allocated for use in a given fishing year are specified in paragraph (v) of this section.

(2) *Hook Gear category.* To be eligible for a Hook Gear category permit, the vessel must have been issued a limited access multispecies permit for the preceding year, be replacing a vessel that was issued a Hook Gear category permit for the preceding year, or be replacing a vessel that was issued a Hook Gear category permit that was issued a Confirmation of Permit History. Beginning May 1, 2004, for a vessel fishing under the Hook Gear category, the baseline for determining the number of NE multispecies DAS available for use shall be calculated based upon the fishing history associated with the vessel's permit, as specified in paragraph (c)(3) of this section. The number and categories of DAS that are allocated for use in a given fishing year are specified in paragraph (v) of this section. A vessel fishing under this category in the DAS program must meet or comply with the gear restrictions specified under § 648.80(a)(3)(v), (a)(4)(v), (b)(2)(v) and (c)(2)(iv) when fishing in the respective regulated mesh areas.

(3) *Combination vessel category.* To be eligible for a Combination vessel category permit, a vessel must have been issued a Combination vessel category permit for the preceding year, be replacing a vessel that was issued a Combination vessel category permit for the preceding year, or be replacing a vessel that was issued a Combination vessel category permit that was also issued a Confirmation of Permit History. Beginning May 1, 2004, for a vessel fishing under the Combination vessel category, the baseline for determining the number of NE multispecies DAS available for use shall be calculated based upon the fishing history associated with the vessel's permit, as specified in paragraph (c)(3) of this section. The number and categories of DAS that are allocated for use in a given fishing year are specified in paragraph (v) of this section.

(4) *Large Mesh Individual DAS category.* This category is for vessels allocated individual DAS that are not fishing under the Hook Gear, Combination, or Individual DAS categories. Beginning May 1, 2004, for a vessel fishing under the Large Mesh Individual DAS category, the baseline for determining the number of NE multispecies DAS available for use shall be calculated based upon the fishing history associated with the vessel's permit, as specified in paragraph (c)(3) of this section. The number and categories of DAS that are allocated for use in a given fishing year are specified in paragraph (v) of this section. The number of Category A DAS shall be

increased by 36 percent. To be eligible to fish under the Large Mesh Individual DAS category, a vessel, while fishing under this category, must fish under the specific regulated mesh area minimum mesh size restrictions, as specified in paragraphs (a)(3)(iii), (a)(4)(iii), (u)(2)(iii), and (c)(4)(ii) of § 648.80.

(5) *Small Vessel category*—(i) *DAS allocation*. A vessel qualified and electing to fish under the Small Vessel category may retain up to 300 lb (136.1 kg) of cod, haddock, and yellowtail flounder, combined, and one Atlantic halibut per trip, without being subject to DAS restrictions, provided the vessel does not exceed the yellowtail flounder possession restrictions specified under § 648.86(g). Such vessel is not subject to a possession limit for other NE multispecies. Any vessel may elect to switch into this category, as provided in § 648.4(a)(1)(i)(I)(2), if the vessel meets or complies with the following:

(A) The vessel is 30 ft (9.1 m) or less in length overall, as determined by measuring along a horizontal line drawn from a perpendicular raised from the outside of the most forward portion of the stem of the vessel to a perpendicular raised from the after most portion of the stern.

(B) If construction of the vessel was begun after May 1, 1994, the vessel must be constructed such that the quotient of the length overall divided by the beam is not less than 2.5.

(C) Acceptable verification for vessels 20 ft (6.1 m) or less in length shall be USCG documentation or state registration papers. For vessels over 20 ft (6.1 m) in length overall, the measurement of length must be verified in writing by a qualified marine surveyor, or the builder, based on the vessel's construction plans, or by other means determined acceptable by the Regional Administrator. A copy of the verification must accompany an application for a NE multispecies permit.

(D) Adjustments to the Small Vessel category requirements, including changes to the length requirement, if required to meet fishing mortality goals, may be made by the Regional Administrator following framework procedures of § 648.90.

(ii) [Reserved]

(6) *Handgear A category*. A vessel qualified and electing to fish under the Handgear A category, as described in § 648.4(a)(1)(i)(N), may retain, per trip, up to 250 lb (113.4 kg) of cod, one Atlantic halibut, and the daily limit for other regulated species as specified under § 648.86. The cod trip limit will be adjusted proportionally to the trip limit for GOM cod (rounded up to the

nearest 50 lb (22.7 kg)), as specified in § 648.86(i). For example if the GOM cod trip limit specified at § 648.86(i) doubled, then the cod trip limit for the Handgear A category would double. Qualified vessels electing to fish under the Handgear A category are subject to the following restrictions:

(i) The vessel must not use or possess on board gear other than handgear while in possession of, fishing for, or landing NE multispecies, and must have at least one standard tote on board.

(ii) A vessel may not fish for, possess, or land regulated species from March 1 through March 20 of each year.

(iii) Tub-trawls must be hand-hauled only, with a maximum of 250 hooks.

(v) *DAS categories and allocations*.

For all valid limited access NE multispecies DAS permits, and NE multispecies Confirmation of Permit Histories, beginning with the 2004 fishing year, DAS shall be allocated and available for use for a given fishing year according to the following DAS Categories (unless otherwise specified, "NE multispecies DAS" refers to any authorized category of DAS):

(1) *Category A DAS*. Unless determined otherwise, as specified under paragraph (v)(4) of this section, calculation of Category A DAS for each fishing year is specified in paragraphs (v)(1)(i) through (iii) of this section. An additional 36 percent of Category A DAS will be added and available for use for participants in the Large Mesh Individual DAS permit category, as described in paragraph (u)(4) of this section, provided the participants comply with the applicable gear restrictions. Category A DAS may be used in the NE multispecies fishery to harvest and land regulated multispecies stocks, in accordance with all of the conditions and restrictions of this part.

(i) For the 2004 and 2005 fishing years, Category A DAS are defined as 60 percent of the vessel's used DAS baseline specified under paragraph (c)(3) of this section.

(ii) For the 2006 through 2008 fishing years, Category A DAS are defined as 55 percent of the vessel's used DAS baseline specified under paragraph (c)(3) of this section.

(iii) Starting in fishing year 2009, Category A DAS are defined as 45 percent of the vessel's used DAS baseline specified under paragraph (c)(3) of this section.

(2) *Category B DAS*. Category B DAS are divided into Regular B DAS and Reserve B DAS. Calculation of Category B DAS for each fishing year, and restrictions on use of Category B DAS, are specified in paragraphs (v)(2)(i) and (ii) of this section.

(i) *Regular B DAS*—(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 Program as specified in § 648.85(b)(10). Unless otherwise restricted under the Regular B DAS Program as described in § 648.85(b)(10)(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)).

(B) *Calculation*. Unless determined otherwise, as specified under paragraph (v)(4) of this section, Regular B DAS are calculated as follows:

(1) For the 2004 and 2005 fishing years, Regular B DAS are defined as 20 percent of the vessel's DAS baseline specified under paragraph (c)(3) of this section.

(2) For the 2006 through 2008 fishing years, Regular B DAS are defined as 22.5 percent of the vessel's DAS baseline specified under paragraph (c)(3) of this section.

(3) Starting in fishing year 2009, and thereafter, Regular B DAS are defined as 27.5 percent of the vessel's DAS baseline specified under paragraph (c)(3) of this section.

(ii) *Reserve B DAS*—(A) *Restrictions on use*. Reserve B DAS can only be used in an approved SAP, as specified in § 648.85.

(B) *Calculation*. Unless determined otherwise, as specified under paragraph (v)(4) of this section, Reserve B DAS are calculated as follows:

(1) For the 2004 and 2005 fishing years, Reserve B DAS are defined as 20 percent of the vessel's DAS baseline specified under paragraph (c)(3) of this section.

(2) For the 2006 through 2008 fishing years, Reserve B DAS are defined as 22.5 percent of the vessel's DAS baseline specified under paragraph (c)(3) of this section.

(3) Starting in fishing year 2009, and thereafter, Reserve B DAS are defined as 27.5 percent of the vessel's DAS baseline specified under paragraph (c)(3) of this section.

(3) *Category C DAS*—(i) *Restriction on use*. Category C DAS are reserved and may not be fished.

(ii) *Calculation*. Category C DAS are defined as the difference between a vessel's used DAS baseline, as described in paragraph (c)(3) of this section, and the number of DAS allocated to the vessel as of May 1, 2001.

(4) *Criteria and procedure for not reducing DAS allocations and modifying DAS accrual*. The schedule of reductions in NE multispecies DAS, and the modification of DAS accrual specified under paragraph (n)(2) of this

section, shall not occur if the Regional Administrator:

(i) Determines that one of the following criteria has been met:  
 (A) That the Amendment 13 projected target biomass levels for stocks targeted by the default measures, based on the 2005 and 2008 stock assessments, have been or are projected to be attained with at least a 50-percent probability in the 2006 and 2009 fishing years, respectively, and overfishing is not occurring on those stocks (*i.e.*, current information indicates that the stocks are rebuilt and overfishing is not occurring); or

(B) That biomass projections, based on the 2005 and 2008 stock assessments, show that rebuilding will occur by the end of the rebuilding period with at least a 50-percent probability, and the best available estimate of the fishing mortality rate for the stocks targeted by the default measures indicates that overfishing is not occurring (*i.e.*, current information indicates that rebuilding will occur by the end of the rebuilding period and the fishing mortality rate is at or below Fmsy).

(ii) Determines that all other stocks meet the fishing mortality rates specified in Amendment 13; and

(iii) Publishes such determination in the **Federal Register**, consistent with Administrative Procedure Act requirements for proposed and final rulemaking.

(w) *DAS credit for standing by entangled whales.* Limited access vessels fishing under the DAS program that report and stand by an entangled whale may request a DAS credit for the time spent standing by the whale. The following conditions and requirements must be met to receive this credit:

(1) At the time the vessel begins standing by the entangled whale, the vessel operator must notify the USCG and the Center for Coastal Studies, or another organization authorized by the Regional Administrator, of the location of the entangled whale and that the vessel is going to stand by the entangled whale until the arrival of an authorized response team;

(2) Only one vessel at a time may receive credit for standing by an entangled whale. A vessel standing by an entangled whale may transfer its stand-by status to another vessel while waiting for an authorized response team to arrive, provided it notifies the USCG and the Center for Coastal Studies, or another organization authorized by the Regional Administrator, of the transfer. The vessel to which stand-by status is transferred must also notify the USCG and the Center for Coastal Studies or another organization authorized by the

Regional Administrator of this transfer and comply with the conditions and restrictions of this part;

(3) The stand-by vessel must be available to answer questions on the condition of the animal, possible species identification, severity of entanglement, etc., and take photographs of the whale, if possible, regardless of the species of whale or whether the whale is alive or dead, during its stand-by status and after terminating its stand-by status. The stand-by vessel must remain on scene until the USCG or an authorized response team arrives, or the vessel is informed that an authorized response team will not arrive. If the vessel receives notice that a response team is not available, the vessel may discontinue standing-by the entangled whale and continue fishing operations; and

(4) To receive credit for standing by an entangled whale, a vessel must submit a written request to the Regional Administrator. This 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 date and time when the vessel terminated its stand-by status. DAS credit shall not be granted for the time a vessel fishes when standing by an entangled whale. Upon a review of the request, NMFS shall consider granting the DAS credit based on information available at the time of the request, regardless of whether an authorized response team arrives on scene or a rescue is attempted. NMFS shall notify the permit holder of any DAS adjustment that is made or explain the reasons why an adjustment will not be made.

\* \* \* \* \*

■ 8. In § 648.85, paragraphs (a)(3)(ii); (a)(3)(iv)(C)(1), (2) and (4); (a)(3)(v); (b)(5) and (6); (b)(7)(iv)(A); (b)(7)(v)(A); (b)(7)(vi)(A); and (b)(8)(i), (iv), and (v) are suspended; the introductory text of paragraph (a)(3)(iii) is revised; and paragraphs (a)(3)(iv)(C)(5) through (7), (a)(3)(viii) and (ix), (b)(7)(iv)(J), (b)(7)(v)(F), (b)(7)(vi)(G), (b)(8)(vi), (vii) and (viii), and (b)(9) and (10) are added to read as follows:

**§ 648.85 Special management programs.**

(a) \* \* \*

(3) \* \* \*

(iii) NE multispecies vessels fishing with trawl gear in the Eastern U.S./Canada Area defined in paragraph (a)(1)(ii) of this section must fish with a haddock separator trawl or a flounder trawl net, as described in paragraphs

(a)(3)(iii)(A) and (B) of this section (both nets may be onboard the fishing vessel simultaneously). Other types of fishing gear may be on the vessel during a trip to the Eastern U.S./Canada Area, provided the gear is stowed according to the regulations at § 648.23(b). The description of the haddock separator trawl and flounder trawl net in paragraph (a)(3)(iii) of this section may be further specified by the Regional Administrator through publication of such specifications in the **Federal Register**, consistent with the requirements of the Administrative Procedure Act.

\* \* \* \* \*

(iv) \* \* \*

(C) \* \* \*

(5) *Initial yellowtail flounder landing limit.* The initial yellowtail flounder possession limit for the U.S./Canada Area is 10,000 lb (4,536 kg) per trip. A separate yellowtail flounder trip limit for the Closed Area II Yellowtail Flounder SAP is specified under paragraph (b)(3)(viii) of this section. The trip limits specified under this paragraph, or paragraph (b)(3)(viii) of this section, may be adjusted by the Regional Administrator pursuant to paragraphs (a)(3)(iv)(C)(3) and (6) of this section.

(6) *Authority to further restrict yellowtail flounder landing limits.* Unless further restricted by the initial yellowtail flounder landing limit as specified by paragraph (a)(3)(iv)(C)(5) of this section, when the Regional Administrator projects that 70 percent of the TAC allocation for yellowtail flounder specified under paragraph (a)(2) of this section will be harvested, NMFS shall implement and/or adjust, through rulemaking consistent with the Administrative Procedure Act, the yellowtail flounder trip limit for vessels fishing in both the Western and Eastern U.S./Canada Area to 1,500 lb (680.4 kg) per day, and 15,000 lb (6,804.1 kg) per trip.

(7) *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)(viii)(B) of this section, must comply with the most restrictive landing limits that apply to any of the areas fished, for the entire trip.

\* \* \* \* \*

(viii) *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)(viii)(A) through (C) of this section. Vessels other than NE multispecies DAS vessels are not required to declare into the U.S./Canada Management Area.

(A) A vessel fishing under a NE multispecies DAS in the Eastern U.S./Canada Area may fish both inside and outside the Eastern U.S./Canada Area on the same trip, provided it complies with the most restrictive regulations applicable to the area fished for the entire trip and the requirements of paragraphs (a)(3)(viii)(A)(1) and (2) of this section and does not discard legal-sized yellowtail flounder. If a vessel is fishing inside the Eastern U.S./Canada Area, and possesses yellowtail flounder in excess of what is allowed in either the CC/GOM Yellowtail Flounder Area or the SNE/MA Yellowtail Flounder Area, as defined in § 648.86(g), it may not fish outside of the Eastern U.S./Canada Area on the same trip. On trips when the vessel operator elects to fish both inside and outside of the Eastern U.S./Canada Area, all cod, haddock, and yellowtail flounder caught on the trip will count toward the applicable hard TAC specified for the U.S./Canada Management Area.

(1) The vessel operator must notify NMFS via VMS that it is electing to fish outside the Eastern U.S./Canada Area either prior to leaving the dock, or prior to leaving the Eastern U.S./Canada Area. Category A DAS shall accrue for the entire duration of the trip, regardless of whether the vessel began its trip under a Category A or Category B DAS. If a vessel fishing within the Eastern U.S./Canada Area declares its intent to fish exclusively within the Eastern and Western U.S./Canada Areas on the same trip, pursuant to paragraph (a)(3)(viii) of this section, Category A DAS shall accrue in accordance with §§ 648.10(b)(2)(v) and 648.82(n)(2)(ii). If a vessel fishing within the Eastern U.S./Canada Area declares its intent to fish within the Eastern U.S./Canada Area and outside of the U.S./Canada Management Area on the same trip, Category A DAS shall accrue in accordance with §§ 648.10(b)(2)(v) and 648.82(n)(2)(i).

(2) The vessel must comply with the reporting requirements of the U.S./Canada Management Area specified

under § 648.85(a)(3)(ix) for the duration of the 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 declares its intent to do so via VMS prior to leaving the dock in accordance with instructions to be provided by the Regional Administrator, and complies with the most 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)(ix). Category A DAS shall accrue in accordance with the regulations at § 648.82(n)(2)(ii) if the vessel fishes outside of the U.S./Canada Management Area on the same trip.

(ix) *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)(ix)(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)(viii) 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)(viii) 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)(viii) 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.

\* \* \* \* \*

(b) \* \* \*

(7) \* \* \*

(iv) \* \* \*

(J) *DAS use restrictions.* A vessel fishing in the CA I Hook Gear Haddock SAP may not initiate a DAS flip. A vessel is prohibited from fishing in the CA I Hook Gear Haddock SAP while making a trip under the Regular B DAS Program described under paragraph (b)(10) of this section.

(v) \* \* \*

(F) *DAS use restrictions.* A Sector vessel fishing in the CA I Hook Gear Haddock SAP may use Category A, Regular B, or Reserve B DAS, in accordance with § 648.82(v).

(vi) \* \* \*

(G) *DAS use restrictions.* A non-Sector vessel fishing in the CA I Hook Gear Haddock SAP may use Regular B or Reserve B DAS, in accordance with § 648.82(v)(2)(i)(C) and (v)(2)(ii)(A). A non-Sector vessel is prohibited from using A DAS when declared into the SAP.

(H) *GB cod incidental catch TAC.* The maximum amount of GB cod (landings and discards) that may be cumulatively caught by a non-Sector vessel from the CA I Hook Gear Haddock Access Area in a fishing year is the amount specified under paragraph (b)(9)(ii) of this section.

(I) *Mandatory closure of CA I Hook Gear Haddock Access Area due to catch of GB cod incidental catch TAC.* When the Regional Administrator determines that the GB cod incidental catch TAC specified in paragraph (b)(7)(vi)(H) of this section has been caught, NMFS shall close, through rulemaking consistent with the Administrative Procedure Act, the CA I Hook Gear Haddock Access Area to all non-Sector fishing vessels.

(8) \* \* \*

(vi) *Eligibility.* A vessel issued a valid limited access NE multispecies DAS permit, and fishing with trawl gear as specified in paragraph (b)(8)(viii)(E) of this section, is 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 (vii) of this section, provided such vessel complies with the requirements of this section, and provided the SAP is not closed according to the provisions specified in paragraphs (b)(8)(viii)(K) or (L) of this section. Copies of a chart depicting this area are available from the Regional Administrator upon request.

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

(viii) *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(v)(2)(i)(A) and the restrictions of this paragraph (b)(8)(viii)(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)(viii)(I) of this section, and the minimum Category A DAS requirements of paragraph (b)(8)(viii)(J) of this section.

(2) A vessel that is declared into the Eastern U.S./Canada Haddock SAP Pilot Program, described in paragraph (b)(8)(vi) 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 Program 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)(viii)(D) of this section.

(4) A vessel that elects to fish in multiple areas, as described in this paragraph (b)(8)(viii)(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 Program specified under paragraph (b)(8)(vi) 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 purpose 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 hours prior to the beginning of any trip that it declares into the Eastern U.S./Canada Haddock SAP Program specified in paragraph (b)(8)(vi) of this section, as

required under paragraph (b)(8)(viii)(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)(viii)(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. Other types of fishing gear may be on the vessel when participating on a trip in the Eastern U.S./Canada Haddock SAP Program, provided the other gear is stowed in accordance with § 648.23(b).

(F) *Landing limits*. Unless otherwise restricted, 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), unless further restricted under paragraph (a)(3)(iv) of this section. A NE multispecies vessel fishing in the Eastern U.S./Canada Haddock SAP Pilot Program, and fishing under a Category B DAS, may not land more than 100 lb (45.5 kg) per DAS, or any part of a DAS, of GB yellowtail flounder or GB winter flounder, and no more than 500 lb (227 kg) of all flounder species, combined. Possession of monkfish (whole weight), and skates is limited to 500 lb (227 kg) each and possession of lobsters is prohibited.

(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)(ix) of this section.

(H) *Incidental TACs*. The maximum amount of GB cod, GB yellowtail flounder, and GB winter flounder (landings and discards) that may be caught when fishing in the Eastern U.S./Canada Haddock SAP Program in a fishing year, by a vessel fishing under a

Category B DAS, as authorized in paragraph (b)(8)(viii)(A) is the amount specified in paragraph (b)(9)(ii) and (iii), respectively.

(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, yellowtail flounder, or winter flounder. If a vessel fishing under a Category B DAS harvests and brings on board more legal-sized cod, yellowtail flounder, or winter flounder than the landing limits specified under paragraph (b)(8)(viii)(F) of this section, the vessel operator must notify NMFS immediately via VMS to initiate a DAS flip to 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, according to the regulations at § 648.82(n)(2). Once such vessel has initiated the DAS flip and is fishing under a Category A DAS, the prohibition on discarding legal-sized cod, yellowtail flounder, and winter flounder 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 that the vessel has at the start of the trip divided by 1.4.

(K) *Mandatory closure of Eastern U.S./Canada Haddock SAP Pilot Program*. When the Regional Administrator projects that one or more of the TAC allocations specified in paragraph (b)(8)(viii)(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 Pilot Program for the duration of the season, if it is determined 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.

(9) *Incidental TACs.* Unless otherwise specified in this paragraph (b)(9), incidental TACs shall be specified through the periodic adjustment process described in § 648.90, and allocated as described in paragraph (b)(9) of this section, for each of the following stocks: GOM cod, GB cod, GB yellowtail flounder, GB winter flounder, CC/GOM yellowtail flounder, American plaice, white hake, SNE/MA yellowtail flounder, SNE/MA winter flounder, and witch flounder. NMFS shall send letters to limited access NE multispecies permit holders notifying them of such TACs.

(i) *Stocks other than GB cod, GB yellowtail flounder and GB winter flounder.* With the exception of GB cod, GB yellowtail flounder and GB winter flounder, the incidental TACs specified under this paragraph (b)(9) shall be allocated to the Regular B DAS Program described in paragraph (b)(10) of this section.

(ii) *GB cod.* The incidental TAC for GB cod specified in this paragraph (b)(9), shall be subdivided as follows: 50 percent to the Regular B DAS Program, described in paragraph (b)(10) 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.

(iii) *GB yellowtail flounder and GB winter flounder.* The incidental TACs for GB yellowtail flounder and GB winter flounder specified under this paragraph (b)(9) shall be subdivided as follows: 50 percent to the Regular B DAS Program, described in paragraph (b)(10) of this section; and 50 percent to the Eastern U.S./Canada Haddock SAP Pilot Program, described in paragraph (b)(8) of this section.

(10) *Regular B DAS Program—(i) Eligibility.* A vessel issued a valid limited access NE multispecies DAS permit and allocated Regular B DAS is eligible to participate in the Regular B DAS Program in the area specified in paragraph (b)(10)(ii) of this section, and may elect to fish under a Regular B DAS, provided it complies with the requirements and restrictions of this paragraph (b)(10), and provided the use of Regular B DAS is not restricted according to paragraphs (b)(10)(iv)(G) or (H), or paragraph (b)(10)(vi) of this section. An eligible vessel is required to comply with the no discarding and DAS flip requirements specified in paragraph

(b)(10)(iv)(E) of this section, and the DAS balance and accrual requirements specified in paragraph (b)(10)(iv)(F) of this section. An eligible vessel may fish under the Regular B DAS Program and in the U.S./Canada Management Area on the same trip, but may not fish under the Regular B DAS Program and in a SAP on the same trip. A Category C, D, or F monkfish vessel may only participate in this program if fishing under a NE multispecies DAS only (*i.e.*, a Category C, D, or F monkfish vessel may not use a Regular B DAS and a monkfish DAS on the same trip under the Regular B DAS Program).

(ii) *Scope of the program.* Fishing under this program may occur only in the geographic area defined for the U.S./Canada Management Areas, described under paragraph (a)(1), of this section.

(iii) *Quarterly incidental catch TACs.* The incidental catch TACs specified in accordance with paragraph (b)(9) of this section shall be divided into quarterly catch TACs, as follows: The first quarter shall receive 13 percent of the incidental TACs and the remaining quarters shall receive 29 percent of the quarterly TACs each. NMFS shall send letters to limited access NE 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 Program described in paragraph (b)(10)(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 a vessel 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; at least 72 hr prior to the beginning of any trip that it declares into the Regular B DAS Program as required under paragraph (b)(10)(iv)(C) of this section, and in accordance with instructions provided by the Regional Administrator.

(C) *VMS declaration.* To participate in the Regular B DAS 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 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 Program described in this paragraph

(b)(10), 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, yellowtail flounder and windowpane flounder, with a maximum limit of 500 lb (227 kg) of all flatfish species (American plaice, witch flounder, winter flounder, windowpane flounder and yellowtail flounder), combined. Possession of monkfish (whole weight), and skates is limited to 500 lb (227 kg) per trip each and possession of lobsters is prohibited, unless otherwise restricted by § 648.94(b)(7).

(E) *No-discard provision and DAS flips.* A vessel fishing in the Regular B DAS Program under a Regular B DAS may not discard legal-sized regulated groundfish or monkfish. This prohibition on discarding does not apply in areas or times where the possession or landing of such groundfish or monkfish is prohibited. If such a vessel harvests and brings on board more legal-sized regulated groundfish or monkfish than the applicable maximum landing limit per trip specified under paragraph (b)(10)(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 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 it 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 and monkfish no longer applies. A vessel that has declared a DAS flip will be subject to the most restrictive landing restrictions specified under paragraph (a)(3)(iv) of this section and paragraph § 648.86. Category C, D, or F monkfish vessels that have declared a DAS flip will be subject to the monkfish possession limits at § 648.94(b)(3).

(F) *Minimum Category A DAS and B DAS accrual.* For a vessel fishing under the Regular B DAS Program, the number of Regular B DAS that can be used on a trip cannot exceed the number of Category A DAS divided by 1.4 that the

vessel has available at the start of the trip. The vessel will accrue DAS in accordance with § 648.82(n)(3).

(G) *Restrictions when 100 percent of the incidental catch TAC is harvested.* When the Regional Administrator determines, and provides notification through rulemaking consistent with the Administrative Procedure Act, that 100 percent of one or more of the quarterly incidental TACs specified under paragraph (b)(10)(iii) of this section is projected to have been harvested, Regular B DAS may not be used in the Regular B DAS Program for the duration of the calendar quarter. The closure of the Regular B DAS Program will occur even if the quarterly incidental TACs for other stocks have not been completely harvested.

(H) *Closure of Regular B DAS program and quarterly DAS limits.* Unless otherwise closed as a result of the harvest of an incidental TAC as described in paragraph (b)(10)(iv)(G) of this section, or as a result of an action by the Regional Administrator under paragraph (b)(10)(v) of this section, when the Regional Administrator determines, and provides notification through rulemaking consistent with the Administrative Procedure Act, that 500 Regular B DAS have been used during the May–July quarter, or when 1,000 Regular B DAS have been used during any other calendar quarter of the fishing year, in accordance with § 648.82(n)(3), Regular B DAS may not be used for the duration of the calendar quarter.

(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 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 Program in accordance with paragraph (b)(10)(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.

(J) *Trawl Gear Requirement.* Vessels fishing with trawl gear in the Regular B DAS Program must use a haddock separator trawl as described under paragraph (a)(3)(iii)(A) of this section.

(v) *Closure of the Regular B DAS 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 Program would undermine the achievement of the objectives of the FMP or Regular B DAS Program.

\* \* \* \* \*

■ 9. In § 648.86, paragraphs (b) and (g)(1) and (2) are suspended; paragraph (e) is revised; and paragraphs (g)(4) and (5), (i), and (j) are added to read as follows:

**§ 648.86 Multispecies possession restrictions.**

\* \* \* \* \*

(e) *White hake.* Except when fishing under the recreational and charter/party restrictions specified under § 648.89, or unless otherwise restricted as specified

in §§ 648.82(u)(5), and 648.88(c), a qualified vessel issued a NE multispecies permit and fishing with an open access Handgear B permit, or a limited access Handgear A permit, or a vessel fishing under a NE multispecies DAS, or a vessel fishing under a monkfish DAS when fishing under the limited access monkfish Category C or D permit provisions may land or possess on board only up to 500 lb (226.8 kg) per DAS, or any part of a DAS, up to a maximum possession limit of 5,000 lb (2,268.1 kg) per trip of white hake.

\* \* \* \* \*

(g) \* \* \*

(4) *Cape Cod/GOM yellowtail flounder possession limit restrictions.* Except when fishing under the recreational and charter/party restrictions specified under § 648.89, or unless otherwise restricted as specified in §§ 648.82(u)(5), and 648.88(c), a qualified vessel issued a NE multispecies permit and fishing with an open access Handgear B permit, or a vessel fishing under a limited access Handgear A permit, or a vessel fishing under a NE multispecies DAS, or a vessel fishing under a monkfish DAS when fishing under the limited access monkfish Category C or D permit provisions, may fish for, possess and land yellowtail flounder in or from the Cape Cod/GOM Yellowtail Flounder Area described in paragraph (g)(4)(i) of this section, only as provided for and allowed under the requirements and trip limits specified in paragraph (g)(4)(ii) of this section.

(i) *Cape Cod/GOM Yellowtail Flounder Area.* The Cape Cod/GOM Yellowtail Flounder Area (copies of a chart depicting the area is available from the Regional Administrator upon request), is the area defined by straight lines connecting the following points in the order stated:

**CAPE COD/GOM YELLOWTAIL FLOUNDER AREA**

Point	N. Latitude	W. Longitude
SYT13 .....	(1)	70° 00'
SYT12 .....	41° 20'	70° 00'
SYT11 .....	41° 20'	69° 50'
SYT10 .....	41° 10'	69° 50'
SYT9 .....	41° 10'	69° 30'
SYT8 .....	41° 00'	69° 30'
SYT7 .....	41° 00'	68° 50'
USCA1 .....	42° 20'	68° 50'
USCA12 .....	42° 20'	67° 40'
NYT1 .....	43° 50'	67° 40'
NYT2 .....	43° 50'	66° 50'
NYT3 .....	44° 20'	66° 50'
NYT4 .....	44° 20'	67° 00'
NYT5 .....	(2)	67° 00'

<sup>1</sup> South facing shoreline of Cape Cod, MA.

<sup>2</sup> East facing shoreline of Maine.

(ii) *Requirements.* A vessel fishing in the Cape Cod/GOM Yellowtail Flounder Area must comply with the following requirements:

(A) The vessel must possess on board a yellowtail flounder possession/landing authorization letter issued by the Regional Administrator. To obtain this exemption letter the vessel owner must make a request in writing to the Regional Administrator.

(B) The vessel may not fish inside the SNE/MA Yellowtail Flounder Area, for a minimum of 7 consecutive days (when fishing with a limited access Handgear A permit, under the NE multispecies DAS program, or under the monkfish DAS program if the vessels is fishing under the limited access monkfish Category C or D permit provisions), unless otherwise specified in paragraph (g)(3) of this section. A vessel subject to these restrictions may fish any portion of a trip in the portion of the GB, SNE, and MA Regulated Mesh Areas outside

of the SNE/MA Yellowtail Flounder Area, provided the vessel complies with the possession restrictions specified under this paragraph (g). A vessel subject to these restrictions may transit the SNE/MA Yellowtail Flounder Area, provided its fishing gear is stowed in accordance with § 648.23(b).

(C) During the periods May through June, and October through November, the vessel may land or possess on board only up to 250 lb (113.6 kg) of yellowtail flounder per trip.

(D) During the periods July through September, and December through April, the vessel may land or possess on board only up to 500 lb (226.8 kg) of yellowtail flounder per DAS, or any part of a DAS, up to a maximum possession limit of 2,000 lb (907.2 kg) per trip.

(5) *SNE/MA yellowtail flounder possession limit restrictions.* Except when fishing under the recreational and charter/party restrictions specified under § 648.89, or unless otherwise

restricted as specified in §§ 648.82(u)(3) and (u)(5), and 648.88(c), a qualified vessel issued a NE multispecies permit and fishing with an open access Handgear B permit, or a vessel fishing under a limited access Handgear A permit, or a vessel fishing under a NE multispecies DAS, or a vessel fishing under a monkfish DAS when fishing under the limited access monkfish Category C or D permit provisions, may fish for, possess and land yellowtail flounder in or from the SNE/MA Yellowtail Flounder Area described in paragraph (g)(5)(i) of this section, only as provided for and allowed under the requirements and trip limits specified in paragraph (g)(5)(ii) of this section.

(i) *SNE/MA Yellowtail Flounder Area.* The SNE/MA Yellowtail Flounder Area (copies of a chart depicting the area is available from the Regional Administrator upon request), is the area defined by straight lines connecting the following points in the order stated:

SNE/MID-ATLANTIC YELLOWTAIL FLOUNDER AREA

Point	N. Latitude	W. Longitude
SYT1 .....	38° 00'	(1)
SY2 .....	38° 00'	72° 00'
SY3 .....	39° 00'	72° 00'
SY4 .....	39° 00'	71° 40'
SY5 .....	39° 50'	71° 40'
USCA2 .....	39° 50'	68° 50'
SYT7 .....	41° 00'	68° 50'
SYT8 .....	41° 00'	69° 30'
SYT9 .....	41° 10'	69° 30'
SYT10 .....	41° 10'	69° 50'
SYT11 .....	41° 20'	69° 50'
SYT12 .....	41° 20'	70° 00'
SYT13 .....	(2)	70° 00'

<sup>1</sup> East facing shoreline of Virginia.

<sup>2</sup> South facing shoreline of Cape Cod, MA.

(ii) *Requirements.* A vessel fishing in the SNE/MA Yellowtail Flounder Area must comply with the following requirements:

(A) The vessel must possess on board a yellowtail flounder possession/landing authorization letter issued by the Regional Administrator. To obtain this exemption letter the vessel owner must make a request in writing to the Regional Administrator.

(B) The vessel may not fish in the Cape Cod/GOM Yellowtail Flounder Area for a minimum of 7 consecutive days (when fishing with a limited access Handgear A permit, under the NE multispecies DAS program, or under the monkfish DAS program if the vessel is fishing under the limited access monkfish Category C or D permit provisions), unless otherwise specified in paragraph (g)(3) of this section. A vessel subject to these restrictions may

fish any portion of the GB, SNE, and MA Regulated Mesh Areas outside of the Cape Cod/GOM Yellowtail Flounder Area, provided the vessel complies with the possession restrictions specified under this paragraph (g). A vessel subject to these restrictions may transit the Cape Cod/GOM Yellowtail Flounder Area, provided its fishing gear is stowed in accordance with § 648.23(b).

(C) During the periods May through June, and October through November, the vessel may land or possess on board only up to 250 lb (113.6 kg) of yellowtail flounder per trip.

(D) During the periods July through September, and December through April, the vessel may land or possess on board only up to 500 lb (226.8 kg) of yellowtail flounder per DAS, or any part of a DAS, up to a maximum possession limit of 2,000 lb (907.2 kg) per trip.

\* \* \* \* \*

(i) *Cod—(1) GOM cod landing limit.*

(i) Except as provided in paragraphs (i)(1)(ii) and (i)(4) of this section, or unless otherwise restricted under § 648.85, a vessel fishing under a NE multispecies DAS may land only up to 600 lb (272.2 kg) of cod during the first 24-hr period after the vessel has started a trip on which cod were landed (e.g., a vessel that starts a trip at 6 a.m. may call out of the DAS program at 11 a.m. and land up to 600 lb (272.2 kg), but the vessel cannot land any more cod on a subsequent trip until at least 6 a.m. on the following day). For each trip longer than 24-hr, a vessel may land up to an additional 600 lb (272.2 kg) for each additional 24-hr block of DAS fished, or part of an additional 24-hr block of DAS fished, up to a maximum of 4,000 lb (1,818.2 kg) per trip (e.g., a vessel that has been called into the DAS program for more than 24 hr, but less than 48 hr,

may land up to, but no more than 1,200 lb (544.4 kg) of cod). A vessel that has been called into only part of an additional 24-hr block of a DAS (e.g., a vessel that has been called into the DAS program for more than 24 hr, but less than 48 hr) may land up to an additional 600 lb (272.2 kg) of cod for that trip, provided the vessel complies with the provisions of paragraph (i)(1)(ii) of this section. Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) A vessel that has accrued only part of an additional 24 hr block on a fishing trip, may come into port with and offload cod up to an additional 600 lb (272.2 kg), provided that the vessel notifies NMFS that it has an additional day's worth of cod on board as instructed by the Regional Administrator, and, if the vessel is not using a VMS, calls out of the DAS program as described under § 648.10(c)(7). Any such vessel shall be charged DAS rounded up to the next whole DAS, based upon the beginning of the trip. Any vessel subject to differential DAS counting and returning to port on a trip greater than 34 hours in duration with an additional day's worth of cod on board shall be charged DAS pursuant to the differential DAS counting provisions specified at § 648.82(n)(2). For example, a vessel that has been called into the DAS program for 25 hr, at the time of landing, may land up to 1,200 lb (544.4 kg) of cod and would be charged 48 hours of DAS use. A vessel subject to differential DAS counting due to fishing outside of the U.S./Canada Management Area that has been called into the DAS program for 35 hr, at the time of landing, may land only up to 1,200 lb (544.4 kg) of cod and would be charged 49 hr of DAS use (35 hours x 1.4).

(2) *GB cod landing and maximum possession limits.* (i) Unless as provided under § 648.85, or under the provisions of paragraph (i)(2)(iii) of this section for vessels fishing with hook gear, for each fishing year, a vessel that is exempt, pursuant to paragraph (i)(4) of this section, from the landing limit described in paragraph (i)(1) of this section, and fishing under a NE multispecies DAS may land up to 1,000 lb (453.6 kg) of cod during the first 24-hr period after the vessel has started a trip on which cod were landed (e.g., a vessel that starts a trip at 6 a.m. may call out of the DAS program at 11 a.m. and land up to 1,000 lb (453.6 kg)), but the vessel cannot land any more cod on a subsequent trip until at least 6 a.m. on the following day). For each trip longer than 24 hr, a vessel may land up to an

additional 1,000 lb (453.6 kg) for each additional 24-hr block of DAS fished, or part of an additional 24-hr block of DAS fished, up to a maximum of 10,000 lb (4536 kg) per trip (e.g., a vessel that has been called into the DAS program for 48 hr or less, but more than 24 hr, may land up to, but no more than 2,000 lb (907.2 kg) of cod). A vessel that has called into only part of an additional 24-hr block of a DAS (e.g., a vessel that has called into the DAS program for more than 24 hr, but less than 48 hr) may land up to an additional 1,000 lb (453.6 kg) of cod for that trip of cod for that trip provided the vessel complies with paragraph (i)(2)(ii) of this section. Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) A vessel that has accrued only part of an additional 24 hr block on a fishing trip, may come into port with and offload cod up to an additional 1,000 lb (453.6 kg), provided that the vessel notifies NMFS that it has an additional day's worth of cod on board as instructed by the Regional Administrator, and, if the vessel is not using a VMS, calls out of the DAS program as described under § 648.10(c)(7). Any such vessel shall be charged DAS rounded up to the next whole DAS, based upon the beginning of the trip. Any vessel subject to differential DAS counting and returning to port on a trip greater than 34 hours in duration with an additional day's worth of cod on board shall be charged DAS pursuant to the differential DAS counting provisions specified at § 648.82(n)(2). For example, a vessel that has been called into the DAS program for 25 hr, at the time of landing, may land up to 2,000 lb (907.2 kg) of cod and would be charged 48 hours of DAS use. A vessel subject to differential DAS counting due to fishing outside of the U.S./Canada Management Area that has been called into the DAS program for 35 hr, at the time of landing, may land only up to 2,000 lb (907.2 kg) of cod and would be charged 49 hr of DAS use (35 hours x 1.4).

(iii) [Reserved]

(3) *Transiting.* A vessel that has exceeded the cod landing limit as specified in paragraphs (i)(1) and (2) of this section, and that is, therefore, subject to the requirement to remain in port for the period of time described in paragraphs (i)(1)(ii)(A) and (i)(2)(ii)(A) of this section, may transit to another port during this time, provided that the vessel operator notifies the Regional Administrator, either at the time the vessel reports its hailed weight of cod, or at a later time prior to transiting, and

provides the following information: Vessel name and permit number, destination port, time of departure, and estimated time of arrival. A vessel transiting under this provision must stow its gear in accordance with one of the methods specified in § 648.23(b) and may not have any fish on board the vessel.

(4) *Exemption.* A vessel fishing under a NE multispecies DAS is exempt from the landing limit described in paragraph (i)(1) of this section when fishing south of a line beginning at the Cape Cod, MA, coastline at 42°00' N. lat. and running eastward along 42°00' N. lat. until it intersects with 69°30' W. long., then northward along 69°30' W. long. until it intersects with 42°0' N. lat., then eastward along 42°20' N. lat. until it intersects with 67°20' W. long., then northward along 67°20' W. long. until it intersects with the U.S.-Canada maritime boundary, provided that it does not fish north of this exemption area for a minimum of 7 consecutive days (when fishing under the NE multispecies DAS program), and has on board an authorization letter issued by the Regional Administrator. Vessels exempt from the landing limit requirement may transit the GOM/GB Regulated Mesh Area north of this exemption area, provided that their gear is stowed in accordance with one of the provisions of § 648.23(b).

(j) *GB winter flounder.* Except when fishing under the recreational and charter/party restrictions specified under § 648.89, or unless otherwise restricted as specified in §§ 648.82(u)(5), and 648.88(c), a qualified vessel issued a NE multispecies permit and fishing with an open access Handgear B permit, a vessel fishing under a limited access Handgear A permit, a vessel fishing under a NE multispecies DAS, or a vessel fishing under a monkfish DAS when fishing under the limited access monkfish Category C or D permit provisions may not possess or land more than 5,000 lb (2,268.1 kg) per trip of GB winter flounder.

\* \* \* \* \*

10. In § 648.89, paragraphs (b)(1), (c)(1)(i) and (c)(2)(i) are suspended and paragraphs (b)(3) and (4), (c)(1)(v) and (vi), and (c)(2)(v) and (vi) are added to read as follows:

**§ 648.89 Recreational and charter/party vessel restrictions.**

\* \* \* \* \*

(b) \* \* \*

(3) *Minimum fish sizes.* Unless further restricted under paragraph (b)(4) of this section, persons aboard charter or party vessels permitted under this part and not fishing under the NE multispecies

DAS program, and recreational fishing vessels in or possessing fish from the EEZ, may not possess fish smaller than the minimum fish sizes, measured in total length (TL) as follows:

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

Species	Sizes
Cod .....	22 (58.4 cm)
Haddock .....	19 (48.3 cm)
Pollock .....	19 (48.3 cm)
Witch flounder (gray sole).	14 (35.6 cm)
Yellowtail flounder .....	13 (33.0 cm)
Atlantic halibut .....	36 (91.4 cm)
American plaice (dab)	14 (35.6 cm)
Winter flounder (blackback).	12 (30.5 cm)
Redfish .....	9 (22.9 cm)

(4) *GOM cod*. Private recreational vessels and charter party vessels described in paragraph (b)(3) of this section, may not possess cod smaller than 24 inches (63.7 cm) in total length when fishing in the GOM Regulated Mesh Area specified under § 648.80(a)(1).

(c) \* \* \*  
(1) \* \* \*

(v) Unless further restricted by the Seasonal GOM Cod Possession Prohibition specified under paragraph (c)(1)(vi) of this section, each person on a private recreational vessel may possess up to 10 cod per day, in, or harvested from the EEZ.

(vi) *Seasonal GOM Cod Possession Prohibition*. Persons on board private recreational fishing vessels may not fish for or possess any cod in or from the GOM Regulated Mesh Area from November 1 through March 31. Private recreational vessels in possession of cod caught outside the GOM Regulated Mesh Area may transit this area, provided all bait and hooks are removed from fishing rods and the cod has been gutted and stored.

(2) \* \* \*

(v) Unless further restricted under paragraph (c)(2)(vi) of this section, each person on the vessel may possess up to 10 cod per day.

(vi) *Seasonal GOM Cod Possession Prohibition*. Persons on board charter/party fishing vessels may not fish for or possess any cod in the GOM Regulated Mesh Area from November 1 through March 31. Charter/party vessels in or from possession of cod caught outside the GOM Regulated Mesh Area may transit this area, provided all bait and hooks are removed from fishing rods and the cod has been gutted and stored.

\* \* \* \* \*

■ 11. In § 648.91, paragraphs (c)(1)(i), (ii), and (iv) are suspended, and paragraphs (c)(1)(v) through (vii) are added to read as follows:

**§ 648.91 Monkfish regulated mesh areas and restrictions on gear and methods of fishing.**

\* \* \* \* \*

(c) \* \* \*  
(1) \* \* \*

(v) *Trawl nets while on a monkfish DAS*. Except as provided in paragraph (c)(1)(vi) of this section, the minimum mesh size for any trawl net, including beam trawl nets, used by a vessel fishing under a monkfish DAS is 10-inch (25.4-cm) square or 12-inch (30.5-cm) diamond mesh throughout the codend for at least 45 continuous meshes forward of the terminus of the net. The minimum mesh size for the remainder of the trawl net is the regulated mesh size specified under § 648.80(a)(3), (a)(4), (b)(2)(vii), or (c)(2)(I) of the Northeast multispecies regulations, depending upon, and consistent with, the NE multispecies regulated mesh area being fished.

(vi) *Trawl nets while on a monkfish and NE Multispecies DAS*. Vessels issued a Category C, D, F, G, or H limited access monkfish permit and fishing with trawl gear under both a monkfish and NE multispecies DAS are subject to the minimum mesh size allowed under regulations governing mesh size at § 648.80(a)(3), (a)(4), (b)(2)(vii), or (c)(2)(I) of the Northeast multispecies regulations, depending upon, and consistent with, the NE multispecies regulated mesh area being fished, unless otherwise specified in this paragraph (c)(1)(vi). Trawl vessels participating in the Offshore Fishery Program, as described in § 648.95, and that have been issued a Category F monkfish limited access permit, are subject to the minimum mesh size specified in paragraph (c)(1)(v) of this section.

(vii) *Authorized gear while on a monkfish and scallop DAS*. Vessels issued a Category C, D, F, G, or H limited access monkfish permit and fishing under a monkfish and scallop DAS may only fish with and use a trawl net with a mesh size no smaller than that specified in paragraph (c)(1)(v) of this section.

\* \* \* \* \*

■ 12. In § 648.92, paragraphs (a)(1), (b)(2)(i) through (iii) are suspended, and paragraphs (a)(3), (b)(2)(iv) and (v) are added to read as follows:

**§ 648.92 Effort-control program for monkfish limited access vessels.**

(a) \* \* \*

(3) *End-of-year carry-over*. With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(1)(i)(R) for the entire fishing year preceding the carry-over year, limited access vessels that have unused DAS on the last day of April of any year may carry over a maximum of 10 unused DAS into the next fishing year. Any DAS that have been forfeited due to an enforcement proceeding will be deducted from all other unused DAS in determining how many DAS may be carried over.

\* \* \* \* \*

(b) \* \* \*  
(2) \* \* \*

(iv) Unless otherwise specified in paragraph (b)(2)(v) of this section, each monkfish DAS used by a limited access NE multispecies or scallop DAS vessel holding a Category C, D, F, G, or H limited access monkfish permit shall also be counted as a NE multispecies or scallop DAS, as applicable, except when a Category C, D, F, G, or H monkfish vessel with a limited access NE multispecies DAS permit has a net annual allocation of NE multispecies Category A DAS, specified under § 648.82(d)(1), that is less than its net annual allocation of monkfish DAS. Under this circumstance, the number of monkfish-only DAS is equal to the difference between its net allocated monkfish DAS and its net allocated NE multispecies Category A DAS, unless modified by paragraphs (b)(2)(iv)(A), (B), and (C) of this section to account for differential DAS counting of NE multispecies DAS. When the total number of NE multispecies Category A DAS has been used, the vessel may utilize its monkfish-only DAS without concurrent use of a NE multispecies DAS, provided the vessel fishes under the provisions applicable to limited access monkfish Category A and B vessels. For the purposes of paragraph (b)(2)(iv) of this section, net allocated monkfish DAS is defined as the sum of the vessel's allocated monkfish DAS, plus its monkfish carry-over DAS, minus any monkfish DAS deducted from that vessel due to a DAS sanction, minus any forfeited monkfish DAS due to leasing of NE multispecies Category A DAS, pursuant to paragraph (b)(2)(v) of this section. For the purposes of paragraph (b)(2)(iv) of this section, net allocated NE multispecies Category A DAS is defined as the sum of the vessel's NE multispecies DAS allocated, pursuant to § 648.82, plus NE multispecies carry-over DAS, minus any NE multispecies DAS deducted from that vessel due to a DAS sanction, minus DAS leased to another vessel,

pursuant to § 648.82(t), plus any NE multispecies DAS leased from another vessel, pursuant to § 648.82(t).

(A) *Monkfish Category C, D, F, G, or H vessels fishing exclusively outside the U.S./Canada Management Area.* To adjust for differential DAS counting of NE multispecies DAS charged when fishing outside of the U.S./Canada Management Area, as specified at § 648.82(n)(2)(i), the number of monkfish-only DAS that may be used by a monkfish Category C, D, F, G, or H vessel that fishes all of its allocated NE multispecies DAS exclusively outside of the U.S./Canada Management Area, as defined at § 648.85(a), is calculated using the following formula: Monkfish-only DAS = Net Allocated Monkfish DAS Allocation - (Net Allocated NE Multispecies Category A DAS ÷ 1.4). For example, if a limited access monkfish Category D vessel has net allocations of 40 monkfish DAS and 30 NE multispecies Category A DAS and fishes all of its allocated NE multispecies Category A DAS exclusively outside of the U.S./Canada Management Area, the number of monkfish-only DAS that may be used by this vessel is equal to 18.57 DAS (40 monkfish DAS - (30 NE multispecies Category A DAS ÷ 1.4)).

(B) *Monkfish Category C, D, F, G, or H vessels fishing both inside and outside of the U.S./Canada Management Area.* To adjust for differential DAS counting of NE multispecies DAS on a trip in which a vessel fishes inside and outside of the U.S./Canada Management Area on the same trip, for each NE multispecies DAS charged when fishing outside of the U.S./Canada Management Area, as specified at § 648.82(n)(2)(i), limited access monkfish Category C, D, F, G, or H vessels shall be allocated an additional 0.286 monkfish-only DAS for every NE multispecies Category A DAS that vessel used outside of the U.S./Canada Management Area. For example, if a vessel has an annual allocation of 40 monkfish DAS and 30 NE multispecies Category A DAS, the vessel has an annual allocation of 10 monkfish-only DAS. If this vessel uses 2 NE multispecies Category A DAS outside of the U.S./Canada Management Area, the vessel would actually be charged 2.8 NE multispecies Category A DAS (2 × 1.4 = 2.8 DAS), and its monkfish-only DAS would be adjusted upward by 0.57 DAS (2 × 0.286 = 0.57 DAS). If this same vessel fishes the remainder of its NE multispecies Category A DAS (i.e., 28 DAS) exclusively within the U.S./Canada Management Area, the vessel would not accrue any additional monkfish-only DAS. Therefore, this vessel's total allocation of monkfish-only DAS for the fishing year would be

10.57 DAS (10 DAS + 0.57 DAS). This adjustment factor is equal to the rate at which monkfish-only DAS increase for each additional NE multispecies Category A DAS used outside of the U.S./Canada Management Area at a rate of 1.4:1, using the formula: Monkfish-only DAS = Net Monkfish DAS Allocation - (Net Groundfish DAS Allocation ÷ 1.4).

(C) *Monkfish Category C, D, F, G, or H vessels fishing exclusively within the U.S./Canada Management Area.* No adjustment of monkfish-only DAS is required for a vessel fishing exclusively within the U.S./Canada Management Area throughout the fishing year because such a vessel is not charged at a differential rate for any NE multispecies Category A DAS used. For example, if a limited access monkfish Category D vessel has net allocations of 40 monkfish DAS and 30 NE multispecies Category A DAS and fishes all of its allocated NE multispecies Category A DAS exclusively within the U.S./Canada Management Area, the number of monkfish-only DAS that could be used by this vessel is equal to 10 DAS (40 Allocated Monkfish DAS - 30 Allocated NE Multispecies Category A DAS).

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

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

\* \* \* \* \*

■ 13. In § 648.94, paragraphs (b)(3) and (c)(3)(I) are suspended, and paragraphs

(b)(7) and (c)(3)(iii) are added to read as follows:

**§ 648.94 Monkfish possession and landing restrictions.**

\* \* \* \* \*

(b) \* \* \*  
 (7) *Category C, D, F, G, and H vessels fishing under the multispecies DAS program—(i) NFMA—(A) Category C and D vessels.* There is no monkfish trip limit for a Category C or D vessel that is fishing under a NE multispecies DAS exclusively in the NFMA, except for vessels participating in the Regular B DAS Program, as specified in § 648.85(b)(10)(iv)(D). Category C and D vessels participating in the Regular B DAS Program are subject to the incidental catch limit specified in paragraph (c)(1)(i) of this section.

(B) *Category F, G, and H vessels.* Vessels issued a Category F, G, or H permit that are fishing under a NE multispecies DAS in the NFMA are subject to the incidental catch limit specified in paragraph (c)(1)(i) of this section.

(ii) *SFMA—(A) Category C, D, and F vessels.* If any portion of a trip is fished only under a NE multispecies DAS, and not under a monkfish DAS, in the SFMA, a Category C, D, or F vessel may land up to 300 lb (136 kg) tail weight or 996 lb (452 kg) whole weight of monkfish per DAS if trawl gear is used exclusively during the trip, or 50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight per DAS if gear other than trawl gear is used at any time during the trip, except for vessels participating in the Regular B DAS Program, as specified in § 648.85(b)(10)(iv)(D). Category C and D vessels participating in the Regular B DAS Program are subject to the incidental catch limit specified in paragraph (c)(1)(ii) of this section.

(B) *Category G and H vessels.* Vessels issued a Category G or H permit that are fishing under a NE multispecies DAS in the SFMA are subject to the incidental catch limit specified in paragraph (c)(1)(ii) of this section. Category G and H vessels participating in the Regular B DAS Program are subject to the incidental catch limit specified in paragraph (c)(1)(ii) of this section.

(iii) *Transiting.* A vessel that harvested monkfish in the NFMA may transit the SFMA and possess monkfish in excess of the SFMA landing limit provided such vessel complies with the provisions of § 648.94(e).

\* \* \* \* \*

(c) \* \* \*  
 (3) \* \* \*

(iii) A vessel issued a valid monkfish incidental catch (Category E) permit or a limited access monkfish permit

(Category A, B, C, D, F, G, or H) fishing in the GOM or GB RMAs, or the SNE RMA east of the MA Exemption Area boundary with mesh no smaller than specified at §§ 648.80(a)(3)(i), (a)(4)(vi), and (b)(2)(vii), respectively, while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land monkfish (whole or tails) only up to 5 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board. For the

purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 3.32.

\* \* \* \* \*

■ 14. In § 648.95, paragraph (e)(3) is suspended, and paragraph (e)(5) is added to read as follows:

**§ 648.95 Offshore Fishery Program in the SFMA.**

\* \* \* \* \*

(e) \* \* \*

(5) A vessel issued a Category F permit that is fishing on a monkfish DAS is subject to the minimum mesh size requirements applicable to limited access monkfish Category A and B vessels, as specified under § 648.91(c)(1)(v) and (c)(1)(iii), as well as the other gear requirements specified in paragraphs (c)(2) and (c)(3).

\* \* \* \* \*

[FR Doc. 06-3504 Filed 4-7-06; 3:50 pm]

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 648

[Docket No. 040112010-4114-02; 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**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS is implementing approved measures contained in Amendment 13 to the NE Multispecies Fishery Management Plan (FMP). Amendment 13 was developed by the New England Fishery Management Council (Council) to end overfishing and rebuild NE multispecies (groundfish) stocks managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and to make other changes in the management of the groundfish fishery. This rule implements the following measures: Changes in the days-at-sea (DAS) baseline for determining historical participation in the groundfish fishery; DAS reductions from the baseline; creation of new categories of DAS and criteria for their allocation and use in the fishery; changes in minimum fish size and possession limits for recreationally caught fish; a new limited access permit category for Handgear vessels; elimination of the northern shrimp fishery exemption line; access to groundfish closed areas for tuna purse seiners; an exemption program for southern New England (SNE) scallop dredge vessels; modifications to Vessel Monitoring System (VMS) requirements; changes to procedures for exempted fisheries; changes to the process for making periodic adjustments to management measures in the groundfish fishery; revisions to trip limits for cod and yellowtail flounder; changes in gear restrictions, including minimum mesh sizes and gillnet limits; a DAS Transfer Program; a DAS Leasing Program; implementing measures for the U.S./Canada Resource Sharing Understanding for cod, haddock, and yellowtail flounder on Georges Bank

(GB); a Special Access Program (SAP) to allow increased targeting of GB yellowtail flounder; revisions to overfishing definitions and control rules; measures to protect Essential Fish Habitat (EFH); new reporting requirements; sector allocation procedures; and a GB Cod Hook Gear Sector Allocation. The effort-reduction measures in Amendment 13 are intended to end overfishing on all stocks and constitute rebuilding programs for those groundfish stocks that require rebuilding. Other measures are intended to provide flexibility and business options for permit holders. Also, NMFS informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirements contained in this final rule and publishes the OMB control numbers for these collections.

**DATES:** Effective May 1, 2004, except for § 648.80(c)(2)(v)(A)(3) and (B)(3), which are effective August 1, 2004.

**ADDRESSES:** Copies of Amendment 13, its Regulatory Impact Review (RIR), and the Final Supplemental Environmental Impact Statement (FSEIS) 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 Act Analysis (FRFA), which is contained in the Classification section of this rule. The FSEIS/RIR/FRFA is also accessible via the Internet at <http://www.nero.nmfs.gov>. Copies of the Record of Decision (ROD) and the Small Entity Compliance Guide are available from the Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Street, Gloucester, MA 01930-2298.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to Patricia A. Kurkul at the above address and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or by fax to (202) 395-7285.

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

**SUPPLEMENTARY INFORMATION:****Background**

This final rule implements measures contained in Amendment 13 to the FMP, which was partially approved by NMFS on behalf of the Secretary of Commerce (Secretary) on March 18, 2004. A proposed rule for this action was published on January 29, 2004 (69 FR 4362), with public comments

accepted through February 27, 2004. The details of the development of Amendment 13 were contained in the preamble of the proposed rule and are not repeated here. In the proposed rule, NMFS requested public comment on all proposed measures, but specifically asked for comment on several proposed measures for which NMFS had concern. After reviewing further Amendment 13, its supporting analysis and public comments received on the amendment and the proposed rule, NMFS, on behalf of the Secretary, has disapproved seven measures contained in Amendment 13, as submitted, based on its determination that they are inconsistent with one or more of the national standards of the Magnuson-Stevens Act or other applicable law. The disapproved measures are: The abbreviated process to implement SAPs; the Closed Area (CA) II Haddock SAP; the CA I Hook Gear SAP; the prohibition on surfclam and ocean quahog dredge gear in portions of the Nantucket Lightship Closed Area (NLCA); the exemption to allow shrimp trawl gear in the Western Gulf of Maine (WGOM) Closed Area; the GB Hook Gear Cod Trip Limit Program; and removal of the Flexible Area Action System. Further explanation of the reasons for disapproval of those measures is contained in this rule.

**Disapproved Measures***Abbreviated Process To Implement SAPs*

An abbreviated process to implement future SAPs was proposed in Amendment 13, whereby the Administrator, Northeast Region, NMFS, (Regional Administrator) would be given the authority, upon submission and review of a proposed SAP by a member of the public, to implement the SAP, provided certain conditions are met. However, the proposed abbreviated process to implement SAPs applies only to proposed SAPs that fall within the range of impacts analyzed in Amendment 13 or "other" management actions; therefore, it is unlikely that additional proposed SAPs will meet this criterion. Furthermore, the proposed time frame for Regional Administrator approval of additional SAPs under the abbreviated process is inadequate. It is unlikely that the proposed SAP approval process would achieve the goal of expedited approval of SAPs due to the complexity of pertinent issues and analytical burdens associated with SAP development. Because this requirement would create an administrative burden, with little resulting benefit, it is not consistent with the efficiency requirements of E.O. 12866 and



National Standard 7. Therefore, NMFS has disapproved the proposed abbreviated SAP approval process in Amendment 13. As a result, the proposed procedures are not included in this final rule and proposed SAPs must be implemented through the existing FMP framework adjustment process.

#### SAPs

Four SAPs were proposed in Amendment 13; however, for two of these SAPs, the CA II Haddock SAP and the CA I Hook Gear Haddock SAP, there is insufficient analysis to determine the impacts of these programs. In addition, for the CA II Haddock SAP, the Amendment 13 analysis indicates a relatively high and consistent rate of cod bycatch in the area adjacent to CA II. Although vessels in the proposed CA II haddock access program would have been required to use a haddock separator trawl (in order to reduce bycatch of cod), this SAP could undermine the effectiveness of measures designed to prevent landings and discards of GB cod from exceeding the U.S./Canada shared TAC, and significantly reduce fishing mortality on GB cod. For these reasons, the proposed SAP is inconsistent with National Standard 1 and National Standard 2.

With regard to the CA I Hook Gear Haddock SAP, there is an experimental fishery currently occurring to determine the impacts of a directed hook-gear fishery for haddock in CA I. However, that experiment has not yet been completed and Amendment 13 does not include information on whether a directed fishery on haddock in CA I would be successful in avoiding GB cod catches throughout the year. This SAP also proposes to require 100-percent observer coverage, but does not state how this would be accomplished, nor does it justify the costs associated with such a requirement. Because there is no justification provided for the proposal to allow only hook vessels into the SAP, this proposal does not comply with applicable law. For these reasons, the proposed CA II Haddock SAP and the CA I Hook Gear Haddock SAP have been disapproved. Should additional information be forthcoming that would justify the creation of these SAPs, such as the results from the current hook gear experimental fishery in CA I, these programs could be reconsidered for approval in a future action.

#### *Prohibition on Surfclam and Ocean Quahog Dredge Gear in Groundfish Closed Areas*

This final rule implements seven habitat areas that are closed to all

bottom-tending mobile gear (a level 3 habitat closure), including surfclam/ocean quahog dredge gear. Several of these EFH Closure Areas are within portions of the currently closed groundfish areas, e.g., the Nantucket Lightship Habitat Closure Area lies within a large portion of the groundfish NLCA and extends northward of this area; the Cashes Ledge Habitat Closure Area lies within the eastern portion of the Cashes Ledge Closure Area; and the WGOM Habitat Closure Area almost fully encompasses the WGOM Closure Area. In addition to excluding surfclam/ocean quahog dredge gear from the EFH Closure Areas, Amendment 13 also proposed to exclude this gear from those portions of the NLCA, the Cashes Ledge Closure Area, and the WGOM Closure Area that lie outside of the EFH Closure Areas, to further protect EFH for groundfish. Amendment 13 analyzed the biological and economic impacts of excluding all bottom-tending mobile gear from the EFH Closure Areas, but did not analyze the impacts of excluding clam dredge gear from those portions of the groundfish closed areas that reside outside of the EFH Closure Area boundaries. Because the impacts of the proposed exclusion of clam dredge gear from these areas was not analyzed, and there is no evidence that the exclusion of this gear is necessary to protect groundfish EFH, the proposed measure to exclude this gear from the groundfish closure areas that reside outside the EFH Closure Areas is inconsistent with National Standard 2 and EFH requirements under the Magnuson-Stevens Act, and has therefore, been disapproved.

#### *Exemption To Allow Shrimp Trawl Gear in the WGOM Closure Area*

Amendment 13 proposed to exempt shrimp trawl gear from the WGOM Habitat Closure Area's prohibition on bottom-tending mobile gear. This proposed measure has been disapproved because it would compromise the effectiveness of this habitat closure and because there is inadequate justification supporting such an exemption. Exemption of shrimp trawl vessels from the WGOM Habitat Closure Area without clear justification is inconsistent with National Standard 2.

#### *GB Hook Gear Cod Trip Limit Program*

The GB Hook Gear Cod Trip Limit Program, a voluntary trip limit program, was proposed in Amendment 13 for vessels fishing with hook gear on GB. This program proposed that participants make an annual declaration into this program and fish under the following seasonal trip limits and restrictions for

GB cod: (1) July 1–September 15; 2,000 lb (907 kg)/DAS and no landings Friday and Saturday; (2) September 16–December 31; 600 lb (272 kg)/DAS; (3) January–March; 2,000 lb (970 kg)/DAS; and (4) April–June; no jig or demersal longline groundfish fishing on GB. In the absence of this program, Amendment 13 implements one uniform possession limit for GB cod: 1,000 lb (453 kg)/DAS; 10,000 lb (4533 kg)/trip.

The program is being disapproved principally because the potential benefits of the program are unknown. The FSEIS does not include a rationale or justification for this program, and the program is not included in the analysis of the impacts on bycatch. Furthermore, the Cape Cod Commercial Hook Fisherman's Association (CCCHFA), the industry organization that created this program, submitted a comment requesting disapproval. The CCCHFA stated that the program would add uncertainty to the FMP because the impacts of the program are not adequately quantified, that the program is incomplete and was not meant to be implemented without a hard TAC, and that the program will be difficult to enforce. Because there is no justification provided for the GB Hook Gear Cod Trip Limit Program, this program does not comply with applicable law and NMFS is disapproving this measure.

#### *Removal of Flexible Area Action System*

Amendment 13 proposes removal of the Flexible Area Action System (FAAS) in order to streamline the regulations. The FAAS process was originally implemented in amendment 5 (40 FR 9872, March 1, 1994) and was intended to enable the Regional Administrator and the Council to take timely action in order to alleviate discard concerns. The FAAS is not perceived by the Council to be useful because past Council attempts to use the process have not been successful due to the length of time taken to implement actions. However, one commenter requested that NMFS disapprove the proposed removal of the FAAS from the regulations because it provides the Council and NMFS with the ability to respond to seasonal and area bycatch problems in the groundfish fishery in a quicker fashion than through normal rulemaking procedures. The commenter suggested that any administrative constraints that limit the potential usefulness of the system should be corrected. NMFS agrees with the commenter that the FAAS should be retained because of its potential to address discard or bycatch issues in less time than would be required by a framework adjustment. In

light of the fact that Amendment 13 implements several novel management systems, including the use of B DAS, it is possible that unforeseen discarding or bycatch problems may occur. Therefore, NMFS is disapproving the removal of the FAAS because retention of the FAAS in the FMP increases the likelihood that the Council and the Regional Administrator can respond to discard and bycatch problems in a timely manner, and reinforces the ability of the FMP to comply with National Standard 1 and National Standard 9.

#### Approved Measures

NMFS has approved the remainder of the measures proposed in Amendment 13. In order to provide the public with the clearest information possible on the numerous changes to the groundfish regulations that result from the implementation of Amendment 13, NMFS is publishing in this final rule the entirety of the regulations in 50 CFR part 648, subpart F, that pertain to the groundfish fishery (both the existing and new regulations). A description of the new management measures resulting from Amendment 13 follows.

#### 1. Recreational Measures

The bag limit (possession limit) for cod aboard a private recreational vessel (*i.e.*, not a charter/party vessel) fishing while in the Exclusive Economic Zone (EEZ), or caught in the EEZ, is changed to 10 cod per person per day, with no possession limit for haddock, year-round.

The possession limit for cod aboard a charter/party vessel fishing in the Gulf of Maine (GOM) is changed to 10 cod per person per day, year-round.

For charter/party vessels issued a Federal multispecies permit, and for private recreational vessels, any trip in excess of 15 hours and covering 2 calendar days will be considered a 2-day trip for purposes of calculating allowable bag limits. Allowable bag limits for recreational vessels conducting trips longer than 2 consecutive calendar days will be determined by adding 24 hours for each additional day to the 15-hour minimum, 2-day trip requirement.

The minimum size for cod allowed to be possessed by persons fishing aboard private recreational and charter/party vessels subject to these regulations is reduced from 23 inches (58.4 cm) total length (TL) to 22 inches (55.9 cm) TL. The minimum size for haddock is reduced from 22 inches (55.9 cm) to 19 inches (48.2 cm) TL.

#### 2. Handgear Permit

A new limited access permit category, called Handgear A, is created for qualified vessels fishing with handgear (rod and reel, handline, or tub-trawl gear). To qualify for a Handgear A permit, a vessel must have been previously issued a NE multispecies open access Handgear permit, and must have landed at least a total of 500 lb (227 kg) of cod, haddock, or pollock, when fishing under the open access Handgear permit category, in at least one of the fishing years from 1997 through 2002 (fishing years are May 1 through April 30).

Vessels fishing under the limited access Handgear A permit are allowed to land up to 300 lb (136 kg) of cod, one Atlantic halibut, and the daily possession limit restrictions allowed for the remaining regulated groundfish species. Handgear A permits are transferrable between vessels, with the transfers not subject to vessel size and horsepower upgrade restrictions. In addition to handline and rod-and-reel gear, open access Handgear and limited access Handgear A permit holders are allowed to fish hand-hauled tub-trawl gear, with a maximum of 250 hooks.

Vessels fishing in the open access Handgear permit category may possess up to 75 lb (34.0 kg) of cod and one Atlantic halibut, and the daily possession limit restrictions allowed for the remaining regulated groundfish species. The cod trip limit for both the limited access Handgear A permit and the open access Handgear permit will be adjusted proportional (rounded up to the nearest 50 lb (22.7 kg) and 25 lb (11.4 kg), respectively) to changes in the GOM cod trip limits for groundfish DAS vessels in the future, as necessary.

#### 3. Northern Shrimp Exempted Fishery

The geographic restriction of the northern shrimp fishery is eliminated; all other restrictions for participation in the northern shrimp fishery remain in effect.

#### 4. Tuna Purse Seine Access to Groundfish Closed Areas

Tuna purse seine vessels may fish in all groundfish closed areas, including CA I, CA II, and the NLCA, subject to existing restrictions for using exempted gear in those areas. Fishing under this exemption is not allowed in the CA II Habitat Area of Particular Concern (HAPC).

#### 5. SNE Scallop Dredge Exemption Program

Unless otherwise prohibited in § 648.81, or unless prohibited under the scallop regulations, vessels with a

limited access scallop permit that have declared out of the scallop DAS program as specified in § 648.10, or that have used up their scallop DAS allocations, unless otherwise restricted, and vessels issued a General Category scallop permit, are allowed to fish in statistical areas 537, 538, 539, and 613, defined as the SNE Scallop Dredge Exemption Area, when not fishing under a groundfish DAS, with certain restrictions. A vessel meeting the above requirements and fishing in the SNE Scallop Dredge Exemption Area may not fish for, possess on board, or land any species of fish (as defined in the Magnuson-Stevens Act) other than Atlantic sea scallops.

#### 6. Modified VMS Operational Requirements

A vessel using a VMS may opt out of the VMS program for a minimum period of 1 calendar month by notifying the Regional Administrator.

#### 7. Standards for Certification of Exempted Fisheries

The following changes apply to the standards for certification of exempted fisheries:

The incidental catch standard (5 percent of the total catch, by weight) may be modified by the Council or Regional Administrator, for those groundfish stocks that are not in an overfished condition, or if overfishing is not occurring, provided that the modification would not cause a delay in a rebuilding program, would not result in overfishing of a stock, and would not result in a stock becoming overfished. Additional factors may also be considered. The incidental catch standard may be modified either through a Council action (framework adjustment) that would change the standard for all exempted fisheries, or on a case-by-case basis for specific exempted fisheries.

On a case-by-case basis, through approval by the Regional Administrator, with notification to the public through rulemaking consistent with the Administrative Procedure Act (APA), or through Council development of a framework action for NMFS's consideration, an exempted fishery in the GOM, GB, or SNE exemption areas, and a small mesh fishery in that portion of the Mid-Atlantic (MA) Regulated Mesh Area (RMA) outside of the SNE exemption area, may be authorized to possess and land certain regulated groundfish. Possession by an exempted fishery of fish from a groundfish stock under a rebuilding program may be allowed, but only if it can be determined that the catch of that stock

by the exempted fishery would not likely result in exceeding the rebuilding fishing mortality rate for that stock.

#### 8. Periodic Adjustments to the FMP

The process to make adjustments to the FMP (§ 648.90) is changed from an annual to a biennial process. Although implementation of this change decreases the frequency of the requirement that the Plan Development Team (PDT) must perform a review of each of the regulated multispecies, Atlantic halibut, and ocean pout, and submit management recommendations to the Council, the Council may still initiate a Framework Adjustment to address management concerns at any time. The first PDT review will be in 2005, to determine necessary changes for the 2006 fishing year. For the 2005 review, an updated groundfish assessment, peer reviewed by independent scientists, will be conducted. In addition to the biennial review discussed above, the PDT will meet to conduct a review of the groundfish fishery by September 2008 to determine the need for a framework action for the 2009 fishing year. For the 2008 review, a benchmark assessment, peer reviewed by independent scientists, will be completed for each of the regulated multispecies stocks and for Atlantic halibut and ocean pout. The interim biomass targets specified in Amendment 13 will be examined during this benchmark assessment to evaluate the efficacy of the rebuilding program. Based on findings from the benchmark assessment, a determination will be made as to whether the Amendment 13 biomass targets are still considered valid, given the response of the stocks to the management measures in Amendment 13 that were expected to result in certain stock levels by 2008.

The Multispecies Monitoring Committee is folded into the PDT, and will cease to exist as a separate committee.

#### 9. Rebuilding Program

Programs to rebuild all overfished groundfish stocks, primarily through effort-reduction measures that are phased in over a period of several years, are established through Amendment 13. Because several stocks are currently not overfished, others are being overfished (*i.e.*, the fishing mortality rates on these stocks are too high), and some are in need of rebuilding to the levels that can produce maximum sustainable yield (MSY) on a continuing basis, a mixture of management measures is adopted to achieve all of the objectives. The measures to accomplish this are summarized as follows:

**DAS Allocations.** DAS, which form the effort currency in the groundfish fishery, are reallocated, beginning in fishing year 2004. The allocation of DAS is based on historic participation in the groundfish DAS fishery. The number of DAS allocated to the fishery as a whole is based on the number that was determined to be appropriate and necessary to rebuild overfished stocks and end overfishing. The Amendment 13 DAS allocation is based on an expected DAS use rate, and takes into account additional DAS use that may result from implementation of a DAS Leasing Program. The DAS Leasing Program is described in more detail later in this preamble.

The allocation of a vessel's DAS is calculated from that vessel's DAS baseline, defined as the maximum DAS used by that vessel in any single fishing year from qualifying fishing years 1996 through 2001 (May 1, 1996, through April 30, 2002). Qualifying years are only those in which the vessel landed a total of 5,000 lb (2,268 kg) or more of regulated groundfish species. Landings must be documented through dealer reports submitted to NMFS prior to April 30, 2003. For fishing years 2004 and 2005, 60 percent of a vessel's DAS baseline are defined as its "Category A" DAS, and 40 percent of a vessel's DAS baseline are defined as its "Category B" DAS. Category B DAS are further categorized as "regular B" DAS and "reserve B" DAS, each representing 20 percent of the vessel's DAS baseline. The difference between a vessel's fishing year 2001 DAS allocation and its DAS baseline (the sum of Category A and Category B DAS) is the vessel's "Category C" DAS. Upon implementation of Amendment 13, either regular or reserve B DAS may be used in an approved SAP, but neither may be used outside of an approved SAP. The procedures and restrictions applying to the use of regular B DAS when fishing outside of a SAP are currently being developed by the Council in Framework Adjustment 40. Category C DAS may not be used at this time.

Because groundfish DAS vessels are allocated DAS based on their historical fishing records, the Fleet DAS permit category and the Large Mesh Fleet DAS permit category are eliminated, since these categories represented a fleet average of DAS. Vessels that fished in either the Fleet DAS or Large Mesh Fleet DAS permit categories will automatically be reissued permits in the Individual DAS and Large Mesh Individual DAS permit categories, respectively. Vessels affected by this

change will have an opportunity to reapply for a different permit category.

**DAS Use.** Beginning May 1, 2004, Category A DAS may be used to target any regulated groundfish stock. Category B DAS (*i.e.*, regular or reserve B DAS) may be utilized to fish in approved SAPs, subject to the requirements of the SAPs.

A vessel is required to declare its intent to use a Category B DAS at the start of a fishing trip, and must specify which type of (regular or reserve) B DAS will be used on that trip. Even though regular B DAS may initially be used only while fishing within a SAP, NMFS must track the usage of both types of B DAS by each vessel. This will enable NMFS and the vessels to know how many of each type of B DAS each vessel has remaining for the fishing year, should Framework Adjustment 40 implement methods for use of regular B DAS during the fishing year.

Vessel owners should be aware that, if Framework Adjustment 40 develops a program for use of regular B DAS outside of SAPs that includes a "flipping" provision, and that program is implemented in the middle of a fishing year, a vessel would need to have Category A DAS available in order to fish the regular B DAS outside of a SAP during the remainder of that fishing year.

As groundfish stocks rebuild, there may be opportunities to increase the number of available Category A DAS. In that circumstance, all Category B DAS (regular and reserve) would be converted to Category A DAS before any Category C DAS would be converted to Category A DAS. If necessary to achieve rebuilding targets, Category A DAS could be changed to Category B DAS by the Council. Any DAS carried over from the 2003 fishing year into the 2004 fishing year will be classified as regular B DAS. For any DAS carried over from the 2004 fishing year into the 2005 fishing year, and for all subsequent fishing years, the carried-over DAS will be determined as follows: If a vessel has Category A DAS remaining, these will be carried over first; if the vessel has fewer than 10 A DAS remaining, then the vessel's regular B DAS will be carried over, up to a total of 10 DAS; if the vessel has fewer than 10 A DAS and regular B DAS, combined, remaining, then the vessel's reserve B DAS will be carried over, up to a total of 10 DAS, combined. For example, if a vessel ended a fishing year with 3 A DAS, 6 regular B DAS, and 10 reserve B DAS, that vessel's carry-over DAS would be 10 DAS, comprised of the following: 3 A DAS, 6 regular B DAS, and 1 reserve B DAS. Category C DAS cannot be

carried over and cannot be fished at this time.

**Default Measures.** Amendment 13 establishes fishing mortality rate targets to end overfishing and rebuild all of the managed groundfish stocks. Some of the fishing mortality rates are immediately reduced to a level that ends overfishing. For several other stocks, reductions in fishing mortality rates will be phased in, in order to mitigate impacts of the reductions. To ensure that the scheduled fishing mortality reductions under Amendment 13 are realized by fishing year 2006, specifically for American plaice and SNE/MA yellowtail flounder, which may require an additional reduction in the fishing mortality rate to completely end overfishing, the following default measures will automatically become effective on May 1, 2006: An additional 5-percent reduction in DAS, which will allow a vessel to fish up to 55 percent of its DAS baseline allocation as A DAS, and 45 percent as B DAS; and differential DAS counting for vessels fishing in the SNE/MA RMA, where DAS will be counted at a rate of 1.5 to 1. On May 1, 2009, there will be an additional DAS reduction of 10 percent, which will allow a vessel to fish up to 45 percent of its DAS baseline allocation as A DAS, and 55 percent as B DAS, to ensure rebuilding for GB cod, GOM cod, Cape Cod (CC)/GOM yellowtail flounder, SNE/MA yellowtail flounder, American plaice, white hake, and SNE/MA winter flounder. A stock assessment update is scheduled to occur in 2005, and a benchmark assessment will be conducted in 2008 to determine whether the default measures are necessary, or whether existing measures have proven sufficient to achieve the necessary reductions in fishing mortality. The default measures will not

occur if the Regional Administrator determines: (1) That the Amendment 13 projected target biomass levels for stocks targeted by the default measures, based on the 2005 and 2008 stock assessments, have been or are projected to be attained with at least a 50-percent probability in the 2006 and 2009 fishing years, respectively, and overfishing is not occurring on those stocks (*i.e.*, current information indicates that the stocks are rebuilt and overfishing is not occurring); or (2) that biomass projections, based on the 2005 and 2008 stock assessments, show that rebuilding will occur by the end of the rebuilding period with at least a 50-percent probability, and the best available estimate of the fishing mortality rate for the stocks targeted by the default measures indicates that overfishing is not occurring (*i.e.*, current information indicates that rebuilding will occur by the end of the rebuilding period and the fishing mortality rate is at or below Fmsy). If one of the two conditions is met and all other stocks meet the fishing mortality rates specified in Amendment 13, the Regional Administrator will publish that determination in the **Federal Register**, consistent with the requirements of the APA. The criteria for avoiding default measures have been modified from the proposed rule to better reflect the intent of Amendment 13, based on comments received from the Council.

**Trip Limits.** The following modifications to the cod and yellowtail flounder trip limits are implemented:

GOM cod: The possession limit is increased to 800 lb (363 kg)/DAS, with a limit of 4,000 lb (1,814 kg)/trip.

GB cod: The possession limit is reduced to 1,000 lb (454 kg)/DAS, with a limit of 10,000 lb (4,536 kg)/trip, unless the vessel has declared into the Eastern U.S./Canada Area.

CC/GOM yellowtail flounder, when fishing in the CC/GOM Yellowtail Flounder Area:

April 1 through May 31, and October 1 through November 30: 250 lb (113 kg)/trip; and

June 1 through September 30, and December 1–March 31: 750 lb (340 kg)/DAS, with a 3,000-lb (1,361-kg)/trip possession limit.

SNE/MA yellowtail flounder, when fishing in the SNE/MA yellowtail flounder area (the SNE/MA stock area):

March 1 through June 30: 250 lb (113 kg)/trip; and

July 1 through February 28 (or 29): 750 lb (340 kg)/DAS, with a 3,000-lb (1,361-kg)/trip possession limit.

**Modifications to Gear Restrictions.** Gear restrictions are modified as follows:

For Day gillnet vessels fishing in the GOM RMA: The minimum mesh size for flatfish nets is reduced from 7-inch (17.8-cm) mesh to 6.5-inch (16.5-cm) mesh.

For Trip gillnet vessels fishing in the GB RMA: The number of gillnets that may be used is increased from 50 to 150.

For Day gillnet vessels fishing in the MA RMA: The number of roundfish gillnets that can be used is reduced from 80 to 75, and the minimum mesh size is increased from 5.5-inch (14.0-cm) diamond or 6.0-inch (15.2-cm) square to 6.5-inch mesh (16.5-cm) (square or diamond); and

The number of flatfish gillnets that can be used is reduced from 160 to 75, and the minimum mesh size is increased from 5.5-inch (14.0-cm) diamond or 6.0-inch (15.2-cm) square to 6.5-inch (16.5-cm) mesh (square or diamond).

A summary of the revised gear requirements appears in Table 1.

TABLE 1.—GEAR RESTRICTIONS BY REGULATED MESH AREAS

	Gulf of Maine	Georges Bank	SNE	Mid-Atlantic
<b>Minimum Mesh Size Restrictions for Gillnet Gear</b>				
NE Multispecies Day Gillnet Category*	Roundfish nets: 6.5" (16.5 cm) mesh; 50-net allowance; 2 tags/net Flatfish nets: 6.5" (16.5 cm) mesh; 100-net allowance; 1 tag/net	All nets: 6.5" (16.5 cm) mesh; 50-net allowance; 2 tags/net	All nets: 6.5" (16.5 cm) mesh; 75-net allowance; 2 tags/net	Roundfish nets: 6.5" (16.5 cm) mesh; 75-net allowance; 2 tags/net. Flatfish nets: 6.5" (16.5 cm) mesh; 75-net allowance; 2 tags/net.
NE Multispecies Trip Gillnet Category*	All nets 6.5" (16.5 cm) mesh; 150-net allowance; 1 tag/net	All nets 6.5" (16.5 cm) mesh; 150-net allowance; 2 tags/net	All nets 6.5" (16.5 cm) mesh; 75-net allowance; 2 tags/net	All gillnet gear 6.5" (16.5 cm) mesh; 75-net allowance; 2 tags/net.
Monkfish Vessels**	10" (25.4 cm) mesh/150-net allowance.			

TABLE 1.—GEAR RESTRICTIONS BY REGULATED MESH AREAS—Continued

	Gulf of Maine	Georges Bank	SNE	Mid-Atlantic
	1 tag/net.			
<b>Minimum Mesh Size Restrictions for Trawl Gear</b>				
Codend only mesh size*	6.5" (16.5 cm) diamond or square		7.0" (17.8 cm) diamond or 6.5" (16.5 cm) square	6.5" (16.5 cm) diamond or square.
Large Mesh Category—entire net	8.5" (21.59 cm) diamond or square			7.5" (19.0 cm) diamond or 8.0" (20.3 cm) square.
<b>Maximum Number of Hooks and Size Restrictions for Hook Gear***</b>				
Limited access multispecies vessels	2,000 hooks	3,600 hooks	2,000 hooks	4,500 hooks (Hook gear vessels only).
	No less than 6" (15.2 cm) spacing allowed between the fairlead rollers			
	12/0 circle hooks required for longline gear			N/A.

\* When fishing under a NE multispecies DAS

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

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

#### 10. DAS Transfer Program

Limited access NE multispecies permit holders may transfer DAS permanently to other limited access permit holders, subject to the following restrictions and conditions:

The length overall (LOA) and gross tonnage baseline of the buyer/transferee vessel may not be more than 10 percent greater, and its horsepower may not be more than 20 percent greater than the baseline of the seller/transferor vessel. The seller/transferor vessel must retire from all state and Federal commercial fisheries and relinquish permanently all Federal and state fishing permits.

Category A and B DAS that are transferred are reduced by 40 percent; Category C DAS that are transferred are reduced by 90 percent. Vessel permits under Confirmation of Permit History (CPH) may be transferred, but vessels fishing under a sector allocation are prohibited from transferring DAS during the fishing year in which the vessel is participating in the sector.

#### 11. DAS Leasing Program

This final rule implements a program to allow limited access NE multispecies permit holders to lease groundfish DAS to one another in fishing years 2004 and 2005, under the conditions and restrictions described below. For purposes of this program, the term "lease" refers to the transfer of the use of DAS from one limited access groundfish vessel to another, for no more than 1 fishing year.

**Eligibility.** All vessels with a valid limited access groundfish DAS permit are eligible to lease groundfish Category A DAS to or from another such vessel, subject to certain restrictions. Eligible vessels acquiring DAS through leasing

are termed lessees; eligible vessels leasing-out DAS are termed lessors. DAS associated with a CPH may not be leased. Vessels issued a Small Vessel or Handgear A permit, *i.e.*, vessels that do not require the use of groundfish DAS, are not allowed to lease DAS, and vessels participating in an approved sector under the Sector Allocation Program are not allowed to lease DAS to non-sector vessels during the fishing year in which the vessel is participating in the sector.

**Application Procedures.** An eligible vessel wanting to lease groundfish DAS must submit a complete application to the Regional Administrator at least 45 days prior to the time that the vessel intends to fish the leased DAS. Vessels with a VMS will likely be able to receive notification of an approved lease agreement sooner than 45 days. Upon approval of the application by NMFS, the lessor and lessee will be sent written confirmation of the approved application. Leased DAS will be effective only during the fishing year for which they are leased. A vessel may lease to as many qualified vessels as desired, provided that all of the restrictions and conditions are complied with.

An application to lease DAS for a given fishing year may be submitted at any time prior to the fishing year in question, or anytime throughout the fishing year in question, up until March 1. Should an application be denied, the Regional Administrator will send a letter to the applicant describing the reason(s) for the application's rejection. The decision by the Regional Administrator is the final agency decision. There is no appeal process.

**Conditions and restrictions.** No subleasing of groundfish DAS is allowed. This means that, once a lease application is approved by NMFS, the leased DAS may not be leased a second time, even if the lessee was prevented from fishing the leased DAS due to circumstances beyond his/her control (*e.g.*, a vessel sinking). Vessels are not allowed to lease carry-over DAS. Only Category A DAS may be leased, and all leased DAS must be Category A DAS.

Vessels are allowed to lease as few as 1 DAS to any one vessel. The maximum number of DAS that can be leased by a lessee is the lessee's vessel's DAS allocation for the 2001 fishing year (excluding any carryover DAS). The lessee may fish that number of DAS as Category A DAS, in addition to the Category A DAS balance the vessel had prior to acquiring the leased DAS. For example, if a person wants to lease DAS for a vessel with a limited access groundfish permit, and that vessel had 88 DAS allocated to it in fishing year 2001, the maximum DAS it may lease is 88. If the same vessel has 53 Category A DAS allocated to it in fishing year 2004, that vessel may hold and fish up to 141 Category A DAS for 2004 (the 53 A DAS allocated for fishing year 2004 plus the 88 DAS allocated to that vessel in fishing year 2001).

A lessor may not lease DAS to any vessel with a baseline horsepower rating that is 20 percent or more greater than that of the horsepower baseline of the lessee vessel. A lessor also may not lease DAS to any vessel with a baseline LOA that is 10 percent or more greater than that of the baseline of the lessee vessel's LOA.

**History of DAS Use and Landings.** Because, in the future, DAS use and

landing history may be used to determine fishing rights, history of leased DAS use will be presumed to remain with the lessor vessel, and landings resulting from the use of the leased DAS will be presumed to be attributed to the lessee vessel. However, the history of used leased DAS will be presumed to remain with the lessor only if the lessee actually fishes the leased DAS in accordance with the DAS notification program. For purposes of DAS-use history, leased DAS will be considered to be the first DAS to be used, followed by the allocated DAS. For example, if a vessel has an allocation of 50 DAS, leased an additional 20 DAS, and actually fished a total of 60 DAS during the fishing year, the lessor of the 20 DAS would be attributed with 20 DAS, for purposes of its DAS-use history, because the lessee vessel will be presumed to have used its 20 leased DAS first. This same vessel will be presumed to have only fished 40 of its 50 allocated DAS for the purposes of its DAS-use history. History of fish landings will be presumed to be attributed to the vessel that actually landed the fish (lessee).

In the case of multiple lessors, the leased DAS actually used will be attributed to the lessors based on the order in which such leases are approved by NMFS. For example, if lessee Vessel A has 50 allocated DAS, leases 30 DAS from lessor Vessel B on August 1, and leases another 10 DAS from lessor Vessel C on August 5, then the first 30 DAS used by lessee Vessel A during that fishing year would be attributed to lessor Vessel B, the next 20 DAS would be attributed to lessor Vessel C, and the next 50 DAS would be attributed to lessee Vessel A, for purposes of DAS-use history.

*Monkfish Category C and D vessels.* It is possible that a vessel with both a limited access groundfish permit and a limited access monkfish permit (monkfish Category C or D vessels), because of the groundfish DAS reductions under Amendment 13, could have more allocated monkfish DAS than groundfish A DAS. Such vessels are allowed to fish under a monkfish-only DAS when groundfish DAS are no longer available, provided the vessel fishes under the provisions of the monkfish Category A or B permit, or unless otherwise noted below. Monkfish Category C and D vessels that have remaining monkfish-only DAS, and that have submitted a groundfish DAS Leasing Application that has been approved by NMFS, will be required to fish their available "monkfish-only" DAS in conjunction with their leased groundfish A DAS, to the extent that the

vessel has groundfish A DAS available. This is consistent with the original intent of the Monkfish Fishery Management Plan (Monkfish FMP).

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

#### 12. U.S./Canada Resource Sharing Understanding

This rule implements the U.S./Canada Resource Sharing Understanding (Understanding) approved in Amendment 13. Certain changes from the proposed rule have been made in this final rule to be consistent with Amendment 13. Under the Understanding, management of GB cod, GB haddock, and GB yellowtail flounder is subject to the terms of the Understanding within two specified areas on GB referred to as the U.S./Canada Management Areas (composed of the Western U.S./Canada Area and the Eastern U.S./Canada Area). The Eastern U.S./Canada Area is composed of statistical areas 561 and 562, and is the U.S./Canada management area for GB cod and GB haddock (cod/haddock management area). The Western U.S./Canada Area is composed of statistical areas 522 and 525. The U.S./Canada management area for GB yellowtail flounder is composed of both the Eastern and Western U.S./Canada Areas.

The Understanding specifies an allocation of TAC for these three stocks for each country, based on a formula that considers historical catch percentages and current resource distribution. Annual harvest levels and recommended management measures for the U.S./Canada Management Areas will be determined through a process involving the Council, the Transboundary Management Guidance Committee (TMGC), and the U.S./Canada Steering Committee. The U.S. TACs in fishing year 2004 will be as follows: 300 mt (metric tons) for GB cod; 5,100 mt for GB haddock; and 6,000 mt for GB yellowtail flounder. These TACs were recommended by the TMGC and adopted by the Council at its January

2004 meeting. Once any one of these TACs is reached, all vessels will be prohibited from harvesting, possessing, or landing the species for which the TAC has been reached. In addition, the Eastern U.S./Canada Area will be closed to all fishing by groundfish DAS vessels, with the exception of an approved SAP, provided that TAC for the target species is still available. The Western U.S./Canada Area will not be closed, but will have other restrictions imposed, such as trip limits, as necessary, as the GB yellowtail flounder TAC is approached.

Amendment 13 is intended to constrain catches of the three shared stocks by U.S. vessels to ensure that they will not exceed the U.S. allocations. The management measures to implement the Understanding are as follows: All NE multispecies DAS vessels fishing on a groundfish DAS in the U.S./Canada Management Areas are required to utilize a fully functional VMS. Vessels are required to declare, through their VMS, prior to departure on a trip, the portion of the U.S./Canada Management Area they intend to fish in. For the purposes of selecting vessels for observer deployment, a vessel fishing in the U.S./Canada Management Area must provide notice to NMFS at least 5 working days prior to the beginning of any trip on which it declares into the U.S./Canada Management Area. This notification will ensure that the desired level of observer coverage can be achieved. Once declared into a specific area, a vessel may not fish outside of that area for the remainder of that fishing trip. Vessels making a trip in the U.S./Canada Management Area are required to report their GB cod, GB haddock, and GB yellowtail flounder catches (including discards) through their VMS on a daily basis. Because these are "hard" TACs, and any overages in a given year must be paid back in a lower TAC for that stock in the next fishing year, it is essential that catches be reported in a timely manner. Groundfish vessels not under DAS are not subject to the VMS requirement. To ensure enforceability of the Understanding, all groundfish vessels fishing with a VMS will be polled at least twice per hour when fishing in one of the U.S./Canada Management Areas. As an incentive to fish on the shared stocks in the Eastern U.S./Canada Area, DAS will not be counted until the vessel crosses the boundary line into that Area. To reduce bycatch of cod and other species, all groundfish trawl vessels fishing in the Eastern U.S./Canada Area, but not the Western U.S./Canada Area as specified in the proposed rule, are also required to fish with, and have on board only, either a flatfish net and/or

a haddock separator trawl, which are defined in this final rule. After further review of Amendment 13 and the comments submitted by the Council, the intent of the gear restrictions is to ensure that the U.S./Canada TACs are not exceeded. Because both the flounder net and haddock separator trawl are designed to affect cod selectivity, and because the cod TAC is specific to the Eastern U.S./Canada Area only, application of this gear requirement to the Western U.S./Canada Area is not necessary to achieve the stated goal. The definitions of the separator trawl and flatfish nets have been revised based on public comment.

This rule implements a cod trip limit within the Eastern U.S./Canada Area of 500 lb (227 kg)/DAS, up to 5,000 lb (2,270 kg)/trip, not to exceed 5 percent of the total catch, whichever is less, for all groundfish permitted vessels, unless further restricted, to create an incentive to avoid catching cod.

Amendment 13 provides that, when specified portions of the TACs have been harvested, reduced trip limits will be imposed for all groundfish permitted vessels to slow the harvest of any stock that is approaching its TAC. When 70 percent of a specified stock is projected to be caught, and catch rates indicate that the TAC for that stock will be caught by the end of the fishing year, the following trip limits will go into place: Haddock: 1,500 lb (680 kg)/day, 15,000 lb (6,804 kg)/trip; yellowtail flounder: 1,500 lb (680 kg)/day, 15,000 lb (6,804 kg)/trip. When 100 percent of a shared stock TAC is projected to be caught, the Eastern U.S./Canada Area will be closed to all groundfish DAS vessels, unless a SAP allows some fishing in the area on a specific stock and under conditions specified for that SAP. The Western U.S./Canada Area will not be closed, but may have other restrictions imposed, such as trip limits, as necessary, as the GB yellowtail flounder TAC is approached.

The U.S./Canada Management Area measures will remain in place until altered through one of two procedures. For periodic adjustments, the Regional Administrator, through rulemaking consistent with the APA, may adjust gear requirements, modify access to fishing within the U.S./Canada Management Areas, and/or adjust trip limits to attempt to achieve, but not exceed, the annual TACs. Inseason adjustments by the Regional Administrator may be made at the points when 30 percent and 60 percent of the TACs for each of the relevant stocks are projected to have been harvested. In addition, the Regional Administrator, in consultation with the

Council, can withdraw from provisions of the Understanding if the provisions are determined by the Regional Administrator to be inconsistent with the provisions of the Magnuson-Stevens Act or other applicable law, or with the goals and objectives of the FMP. If the Regional Administrator withdraws from the Understanding, all management measures in place at that time will remain in place until changed through appropriate procedures under the FMP or the Magnuson-Stevens Act.

Other existing fisheries prosecuted in the U.S./Canada Management Areas are unaffected by the Understanding measures, except that landings of GB cod, GB haddock, and GB yellowtail flounder caught in the U.S./Canada Management Areas will be counted against the Understanding TACs, regardless of gear type used.

### 13. SAPs

A SAP represents a narrowly defined fishery that is prosecuted in such a way as to avoid or minimize impacts on groundfish stocks of concern, as well as minimize bycatch and impact on EFH. Amendment 13 implements two SAPs that allow fishing for regulated groundfish without compromising efforts to rebuild overfished stocks or end overfishing of regulated multispecies.

*CA II Yellowtail Flounder SAP.* This SAP is intended to allow harvesting of GB yellowtail flounder. Vessels may fish in the CA II Yellowtail Flounder SAP, using B DAS, under the following conditions and restrictions. From June 1 through December 31, vessels may make up to two trips per month into the CA II Yellowtail Flounder Access Area to target yellowtail flounder. Because this SAP lies within the Eastern U.S./Canada Area, vessels fishing in this SAP are subject to the VMS, reporting, observer deployment, and gear requirements of the Understanding. DAS will be counted starting when the vessel crosses the boundary into the Eastern U.S./Canada Area and will end when the vessel crosses the boundary when leaving the Eastern U.S./Canada Area. In addition, vessels are limited to 30,000 lb (13,608 kg) of yellowtail flounder per trip; the cod trip limit will be one fifth of the cod landing limit specified for the Eastern U.S./Canada Area (*i.e.*, one fifth of 500 lb (227 kg) of cod per DAS, or 100 lb (45.4 kg) per DAS), not to exceed 5 percent of the total catch on board; and the total number of trips into the SAP in a fishing year will be limited to 320. The Regional Administrator has broad authority to modify possession restrictions and trip limits under this SAP.

*SNE/MA Winter Flounder SAP.* This SAP is intended to reduce discards of SNE winter flounder in the summer flounder fishery. Under this SAP, a vessel fishing for summer flounder west of 72°30' W. long.; using mesh authorized by the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries; and not fishing on a groundfish DAS; may possess and land up to 200 lb (90.7 kg) of winter flounder, subject to the following restrictions: (1) The vessel must possess a valid Federal summer flounder permit; (2) the weight of winter flounder may not exceed the weight of summer flounder on board; (3) while in the program, the vessel may not fish on a groundfish DAS; (4) all fishing must take place west of 72°30' W. long.; and (5) possession and/or landing of other regulated groundfish species is prohibited.

### 14. EFH Measures

These measures are intended to minimize impacts of the groundfish fishery on EFH to the maximum extent practicable. Amendment 13 designates portions of the year-round closed areas, as well as new areas, as level 3 habitat closed areas. A level 3 habitat closed area is defined as an area that is closed indefinitely, on a year-round basis, to all bottom-tending mobile gear. Following are the EFH Closure Areas implemented by this final rule: The WGOM Habitat Closure Area; the Cashes Ledge Habitat Closure Area; the Jeffrey's Bank Habitat Closure Area; the CA I North Habitat Closure Area; the CA I South Habitat Closure Area; the CA II Habitat Closure Area; and the Nantucket Lightship Habitat Closure Area. Other measures not specifically designed to minimize impacts on EFH, but that would have benefits in terms of minimizing impacts on EFH, are also relied upon to meet the EFH provisions of the Magnuson-Stevens Act.

### 15. Reporting Requirements

*Dealer Reporting.* Dealers are required to report daily, once an electronic dealer reporting system is developed and implemented by NMFS. Dealers will be required to report the current set of data elements for all fish purchases; the disposition of the landings; and a trip identifier, which would be reported by all parties in the transaction. Electronic dealer reporting requirements for all dealers are anticipated to be implemented by May 1, 2004, through a separate rulemaking.

*Vessel Reporting.* Once a viable electronic system becomes available for reporting by vessels, that system will replace the current VTR system. Vessels



will be required to report all of the information currently required by the VTR, as well as a password, a trip identifier, and landings information by statistical area for each trip. Reports will be required to be submitted at least at the current statistical area level of reporting. Vessels will have the option of using any approved, viable electronic means possible to report this information. The trip identifier will be required to be reported by all parties in the transaction. Implementation of electronic vessel reporting will be accomplished through a separate, future rulemaking.

#### 16. Sector Allocation

Under Amendment 13, a sector of the groundfish fishery may develop a plan, based on an allocation of allowable catch or effort (DAS), that only members of the sector can participate in. This provides flexibility to the industry and encourages stewardship of the resource and less need for Council and NMFS involvement, so long as certain criteria are adhered to, including FMP objectives and Magnuson-Stevens Act requirements. Under this process, a self-selected group of groundfish permit holders may agree to form a sector and submit a binding plan for management of that sector's allocation of catch or effort. Allocations to a sector may be based either on catch, through TACs requiring closure of a fishery upon reaching the TAC (hard TAC); or on effort (DAS), with target TACs specified for the sector. Vessels within the sector are allowed to pool harvesting resources and consolidate operations in fewer vessels, if they desire. A primary motivation for the formation of a sector is the assurance that members of the sector will not face reductions of catch or effort as a result of the actions of vessels outside of the sector (*i.e.*, if the other vessels exceed their target TACs). The final rule is revised, based on public comment, to provide the Regional Administrator the authority to exempt members of a sector from regulations that apply to the fishery at-large, if they are in conflict with a sector's approved operations plan.

**Formation of a Sector.** Participation in a self-selecting sector is voluntary. Vessels that do not choose to join a sector remain in the common pool of vessels and fish under the regulations governing the remainder of the fishery. In order to form a sector, the sector applicant(s) must submit to the Council, at least 1 year prior to the date that it plans to begin operation, a proposal requesting that the Council initiate a framework adjustment to authorize an allocation of catch or effort, subject to

compliance with general requirements described below and any analytical documents necessary to comply with the National Environmental Policy Act (NEPA). If the Council and NMFS publish and ultimately approve the framework action, the sector is required to submit a legally binding plan of operations (operations plan) for the sector, in accordance with the provisions specified in § 648.87(b)(2), to the Council and to the Regional Administrator. Once the operations plan is deemed complete, NMFS will solicit public comment on the operations plan through publication of a notice of proposed rulemaking in the **Federal Register**. Upon consideration of the comments received, the Regional Administrator will approve or disapprove the operations plan through publication of a final determination consistent with the APA.

#### Movement Between Sectors

Each sector may set its own rules with regard to movement between sectors, which must be contained in the operations plan. Once a vessel signs a binding contract to participate in a sector, that vessel is required to remain in the sector for the remainder of the fishing year. In the situation where a sector is implemented in the middle of the fishing year, vessels that fish under the DAS program outside the sector allocation in a given fishing year may not participate in a sector during the same fishing year, unless the operations plan provides for an acceptable accounting for DAS used prior to implementation of the sector. If a permit for a vessel participating in a sector is transferred during the fishing year, the new owner must also comply with the sector regulations for the remainder of the fishing year. Vessels removed from a sector for violation of the sector rules are not eligible to fish under the NE multispecies regulations for the remainder of the fishing year.

**General Requirements for All Sector Allocation Proposals.** Allocation of fishery resources to a sector is based on documented accumulated landings for the 5-year period prior to submission of a sector allocation proposal to the Council, of each participant in the sector. Any allocations of GB cod for fishing years 2004 through 2007 must be based upon a proposed sector's documented accumulated landings during the 1996 through 2001 fishing years, but no sector may be allocated more than 20 percent of a stock's TAC. Once an allocated TAC is projected to be attained, sector operations will be terminated for the remainder of the fishing year. If, in a particular fishing

year the sector exceeds its TAC, the sector's allocation will be reduced by the amount of the overage in the following fishing year. If the sector does not exceed its TAC, but other vessels in the general pool do, the sector's quota in the following year will not be reduced as a result of such overages. Sectors may participate in SAPs in accordance with the rules of the SAP.

#### *GB Cod Hook Gear Sector.*

Amendment 13 authorizes a sector allocation for the GB Cod Hook Gear Sector. Therefore, the GB Cod Hook Gear Sector will be allocated a maximum of 20 percent of the GB cod TAC for each fishing year for which an operations plan is approved. Participating vessels will be required to use only hook gear. For each fishing year, the sector's allocation of the GB cod TAC, up to the maximum of 20 percent of the total GB cod TAC, will be determined by calculating the percentage of all landings of GB cod made by the participating vessels, based on their landings histories for the qualifying period of 1996–2001. This calculation will be performed as follows: (1) The accumulated landings of GB cod by the sector participants for the 6 fishing years 1996–2001 will be summed; (2) the accumulated landings of GB cod by all vessels (sector participants and non-participants) during the 6 fishing years 1996–2001 will be summed; (3) the accumulated landings of GB cod by the sector participants from 1996–2001 will then be divided by the accumulated landings of GB cod by all vessels for 1996–2001; this will result in the percentage of the GB cod TAC for the next fishing year that will be allocated to the sector (up to 20 percent of the total GB cod TAC). This procedure will be repeated for each fishing year, using the landings history of GB cod by the sector participants from 1996–2001, and the GB cod TAC for that fishing year. If, in a particular fishing year, the sector exceeds its TAC, the sector's allocation will be reduced by the amount of the overage in the following fishing year. When the GB cod TAC is reached, participants in the sector will be prohibited from using any fishing gear that is capable of harvesting groundfish for the remainder of the fishing year. Participating vessels may only harvest groundfish in the GB Cod Hook Sector Area (statistical areas 521, 522, 525, 526, 533, 534, 537, 538, 539, 541, 542, 543, 561, and 562). Leasing of DAS during the fishing year may occur among sector participants only. The applicant is required to submit its operations plan to the Council and NMFS for approval and public



notification prior to its implementation. Because of this process, the GB Hook Sector cannot be implemented until after May 1, 2004. In order to constrain effort in the fishery to the necessary levels, and because the sector would be based on a hard TAC allocation, any vessel that had fished a groundfish DAS during fishing year 2004, prior to the implementation of the sector, will not be allowed to participate in the sector for the first year, unless the operations plan provides for an acceptable accounting for DAS used prior to implementation of the sector. New participants may join the sector at the beginning of a new fishing year, but once in the sector, a vessel must stay in the sector for the entire duration of the sector specified in the operations plan.

17. Closed Area Rationale

When any new closed areas are adopted, the Council must define the intent and specific purpose for the closure and explicitly describe the duration of the closure, who can fish in the closed area, and who cannot fish in the closed area.

18. Frameworkable Items

The following management measures may be adjusted through a framework action, in addition to those measures previously identified as framework measures in the FMP:

Revisions to status determination criteria, including, but not limited to, changes in the target fishing mortality rates, minimum biomass thresholds, numerical estimates of parameter values, and the use of a proxy for biomass;

DAS allocations (such as the category of DAS under the DAS reserve program), DAS baselines, etc.;

Modifications to capacity measures, such as changes to the DAS transfer or DAS leasing measures;

Calculation of area-specific TACs, area management boundaries, and adoption of area-specific management measures;

Sector allocation requirements and specifications, including establishment of a new sector;

Measures to implement the U.S./Canada Resource Sharing Understanding, including any specified TACs (hard or target);

Changes to administrative measures; Additional uses for regular B DAS; Future uses for C DAS;

Reporting requirements; The GOM Inshore Conservation and Management Stewardship Plan;

GB cod gillnet sector allocation; Allowable percent of TAC available to a sector through a sector allocation;

Categorization of DAS; DAS leasing provisions; Adjustments for steaming time; Adjustments to the Handgear Only permits;

Gear requirements to improve selectivity, reduce bycatch, and/or reduce impacts of the fishery on EFH; SAP modifications; and

Anything else analyzed with respect to Amendment 13.

19. MSY Control Rules

An MSY control rule is intended to provide management advice to the Council as to what the appropriate fishing mortality rate (F) would be at a given stock size. Under Amendment 13, the MSY control rule for all stocks, with the exception of Atlantic halibut, is:  $F = \frac{B_{msy}}{B_{target}}$  until the stock is rebuilt (provisional control law). Due to insufficient information, it is not possible to develop a formal rebuilding program for Atlantic halibut; therefore, Amendment 13 contains a provisional control rule that reduces fishing mortality on halibut to as close to zero as possible. Amendment 9 (64 FR 55821; October 15, 1999) added Atlantic halibut to the species managed under the FMP and implemented a one-fish possession limit and set a minimum size of 36 inches (66 cm). This limit is intended to stop directed fishing on halibut without requiring wasteful discarding by vessels that incidentally catch an occasional halibut.

20. Overfishing Definitions

Amendment 13 clarifies and revises the overfishing definitions for groundfish stocks to be consistent with the National Standard Guidelines (National Standard 1). A stock is considered overfished when the size of the stock or stock complex in a given year falls below the minimum stock size threshold or reasonable proxy thereof, and overfishing is considered to be occurring when the fishing mortality rate exceeds the maximum fishing mortality threshold for a period of 1 year. The status determination criteria for the minimum biomass thresholds is increased to at least half of the target biomass levels.

21. Target TACs

The management measures implementing Amendment 13 are intended to achieve the target TACs shown in Table 2 for calendar years 2004, 2005, and 2006. The 2006 target TACs will remain in place through the remainder of the rebuilding program, unless otherwise modified through a future Council action.

TABLE 2.—TARGET TACs FOR CALENDAR YEARS 2004–2006, IN METRIC TONS

Species	Stock	2004	2005	2006
Cod	GB	3,949	4,830	6,361
	GOM	4,850	6,372	7,470
Haddock	GB	24,855	27,692	31,866
	GOM	4,831	4,735	4,642
Yellowtail flounder	GB	11,713	11,341	11,599
	SNE/MA	707	1,982	3,325
	CC/GOM	881	1,233	1,034
American plaice		3,695	3,625	3,015
Witch flounder		5,174	6,992	7,667
Winter flounder	GB	3,000	3,000	3,000
	GOM	3,286	2,634	2,205
	SNE/MA	2,860	3,550	4,445
Redfish		1,632	1,725	1,803
White hake		3,839	3,822	3,805
Pollock		10,584	10,584	10,584
Windowpane flounder	North	534	534	534
	South	285	273	262
Ocean pout		77	77	77

TABLE 2.—TARGET TACS FOR CALENDAR YEARS 2004–2006, IN METRIC TONS—Continued

Species	Stock	2004	2005	2006
Atlantic halibut .....	.....	NA	NA	NA

22. Change to Minimum Enrollment Requirement for Fishery Exemption Programs

Amendment 13 reduces the minimum enrollment requirement for five of the six existing fishery exemption/ authorization programs from 30 days to 7 days, and establishes a minimum enrollment requirement of 7 days for one program where a minimum enrollment period is currently not specified. The following exemption/ authorization programs previously contained a minimum enrollment requirement of 30 days: (1) The GOM Cod Landing Limit Exemption Program; (2) the Monkfish Southern Fishery Management Area Landing Limit and Minimum Fish Size Exemption Program; (3) the Skate Bait-only Possession Limit Exemption Program; (4) the yellowtail flounder landing limit north of 40°00' N. lat. in the GOM/GB RMA; and (5) the yellowtail flounder landing limit north of 40°00' N. lat. in the SNE/MA RMA. The Nantucket Lightship Party/Charter Exemption Program does not currently specify a minimum enrollment requirement. The two yellowtail flounder possession authorization programs is revised by Amendment 13 and also has a 7-day minimum enrollment requirement.

23. Policy on Cooperative Research

Because allocation of DAS is based on a vessel's historical DAS use, Amendment 13 establishes a policy that a vessel would not lose allocated DAS due to its participation in a research project or experimental fishery, if that participation can be adequately documented. If a permit holder believes that allocation of DAS under Amendment 13 has been limited by the vessel's participation in a research project or experimental fishery, the permit holder may provide to the Regional Administrator documentation to substantiate the time the vessel spent participating in a research project(s) that was not considered in the Amendment 13 DAS allocation. The Regional Administrator will consider such requests on a case-by-case basis, review the information submitted, and consider adjusting that vessel's A DAS allocation accordingly.

Comments and Responses

A total of 4,941 comments on the proposed rule and the Amendment were received by the close of business on February 27, 2004, the majority of which were two form letters drafted principally by environmental organizations, with minor modifications and signatures added by the individual commenters. A total of 162 other comments were received from individuals and organizations. This section of the final rule lists the principal comments that pertained to Amendment 13 and the proposed rule and the responses of the NMFS. An additional 1,242 comments, submitted by the Ocean Conservancy on behalf of its members and activists, were received by NMFS on March 16, 2004. In its cover letter, the Ocean Conservancy explained that these additional letters were faxed to the Agency on February 27, 2004, but were not received due to an overload of incoming faxes. All of the issues raised in these additional comment letters were raised by others and are addressed below in the response to comments.

*Comment 1:* A total of 126 commenters from the charter/party or private recreational sectors supported the proposed private recreational and party/charter bag limits of 10 cod and unrestricted haddock, as well as the proposed minimum size limits for cod and haddock (22 and 19 inches (55.9 and 48.1 cm), respectively). Commenters believe that the new limits allow the opportunity to catch reasonable amounts of cod and haddock and that the recreational catch and impact is small in comparison to the impact of the commercial sector. Two commenters did not support the private recreational and party/charter bag limits, and believe they should be reduced instead of increased. One commenter did not support the reduction in minimum size for cod.

*Response:* The principal goals of the recreational measures are to: (1) Decrease the fishing mortality on GOM cod, and (2) enable recreational fishing vessels to benefit from the rebuilding of the haddock stock. The means of achieving reductions in fishing mortality on GOM cod by the charter/party sector is imposition of a cod bag limit in the GOM. The bag limit of 10 cod per person per day for party/charter

vessels fishing in the GOM RMA is more restrictive than the no-action alternative, which would not have restricted cod catch at all for party/charter vessels. The Amendment 13 analysis indicates that the recreational measures will result in a decrease in both numbers and weight of cod landed, when compared to the no-action alternative. NMFS determined that the bag limit is appropriate because it will reduce fishing mortality on GOM cod, yet will still allow charter/party vessels to attract passengers and remain in business. Reduction of the minimum length requirements for cod and haddock to 22 inches and 19 inches (55.9 and 48.3 cm), respectively, results in the elimination of the discrepancy in minimum size restrictions applied to the commercial sector, the charter/party sector and the private recreational sector. A 10 cod/person/day limit for the charter/party sector in the GOM makes the cod limit in the GOM the same for both the charter/party and the private recreational sectors. The impact of implementing the GOM cod bag limit on a per-person-per-day basis could not be evaluated using available data. Because recreational data for haddock are minimal, recreational fishing mortality of haddock is not included in the total estimates of fishing mortality for haddock.

*Comment 2:* One commenter did not agree with the definition of multiple day trips as any trip in excess of 15 hours and covering 2 consecutive calendar days.

*Response:* NMFS considers the definition of a multiple-day trip to be appropriate because it reflects current industry practices, it includes relevant criteria (trip duration and calendar days fished), and it specifies reasonable values for those criteria, such that recreational landings will be kept within acceptable levels.

*Comment 3:* One commenter did not support the creation of the limited access Handgear A permit and two commenters supported its creation. One commenter did not support allowing limited access Handgear A permits to be transferred without size restrictions. One commenter did not support the reduction in trip limit for cod for the open access handgear category. One commenter felt that the handgear permit rules should be subject to change through a framework action.

*Response:* NMFS has concluded that the creation of the limited access Handgear A permit is justified. The objective of the creation of the limited access Handgear A permit category is to control participation in the handgear fishery in order to limit its potential expansion, and therefore limit the potential for an increase in fishing effort. Amendment 13 states that, although relatively few open access Handgear vessels landed cod, haddock, or pollock, and very few landed more than 500 lb (226.8 kg), there exists the potential for the total effort associated with such vessels to increase due to the large numbers of permits, the fact that the fishery has been open access, and the fact that the activity by open access permits has been increasing. Allowing limited access Handgear A permits to be transferred without size restrictions is not likely to increase fishing power significantly. Therefore this action would not undermine the objectives of the permit category, due to the relatively small number of vessels that are expected to qualify for a limited access Handgear A permit, and because such vessels are restricted to using handgear, for which effort is not highly correlated to the size of the vessel. The reduced cod trip limit for open access Handgear A vessels is justified due to the need to reduce fishing mortality on both the GOM and GB stocks of cod. Under Amendment 13, the trip limit restrictions for regulated multispecies (other than cod) that apply to vessels with an open access Handgear permit are the same as the restrictions that apply to vessels with a limited access Handgear A permit. The restrictions associated with the handgear permits can be changed by a framework action.

*Comment 4:* One commenter supported the elimination of the area restriction for the northern shrimp fishery, one commenter did not support elimination of the area restriction, and one commenter stated that the assessment of bycatch in the northern shrimp fishery in Amendment 13 is inadequate.

*Response:* The Amendment 13 analysis of the bycatch in the northern shrimp fishery is based on research conducted by the Maine Department of Marine Resources (which quantifies the bycatch of regulated species and whiting), and concludes that, although the impacts of eliminating the area restriction on this fishery cannot be estimated with certainty, they should be minimal. The required use of the Nordmore grate, which remains in effect, minimizes the catch of regulated multispecies in this fishery. Although the bycatch of whiting may be

significant, the northern stock of whiting is rebuilt and the removal of the area restriction on the northern whiting fishery is not likely to impair management of that species.

*Comment 5:* One commenter did not support providing access for vessels fishing with tuna purse seine gear to CA I, CA II, and the NLCA, and one commenter supported such access.

*Response:* The objective of this measure is to provide greater flexibility to tuna purse seine vessels while still protecting groundfish. The Amendment 13 analysis concludes that, although groundfish bycatch may increase very slightly, the impacts will not be significant due to the low numbers of vessels in the fishery (five), the limited fishing season, and the method of fishing. Fishing in these areas by tuna purse seine vessels may shift the location of where bycatch in this fishery is caught, but not increase bycatch over recent levels. Several years of experimental fishing by tuna purse seiners in groundfish closed areas has supported the conclusion that such access will have minimal impacts on non-target species.

*Comment 6:* Four commenters felt that the proposed addition of clam dredges to the list of gears excluded from the NLCA was not justified because of the value of the surfclam and ocean quahog resource in the NLCA, and their belief that exclusion of the gear from this area would not have positive benefits for either groundfish EFH or the rebuilding of the groundfish fisheries. The commenters support full access to the NLCA based on best scientific information. One commenter felt that the exclusion of dredge gear from the area gives preference to the groundfish fishery over the surfclam and ocean quahog industry and is therefore a violation of National Standard 4.

*Response:* The effect of the measures in the proposed rule would have been to exclude clam dredges from all portions of the NLCA. NMFS agrees that the Amendment 13 does not analyze the prohibition of clam dredges in the NLCA outside of the Nantucket Lightship Habitat Closure Area and that there is no evidence that the proposed exclusion would provide meaningful positive benefits to groundfish, and consequently has disapproved the measure excluding clam dredges in the portion of the NLCA closed exclusively to protect groundfish. However, Amendment 13 does analyze the prohibition of clam dredges in the habitat closed areas as part of a level 3 closure (closed to all bottom-tending mobile gear). This prohibition is part of

the strategy for protecting vulnerable EFH located within the habitat closed area and is not for bycatch reduction purposes. The best available science was utilized in the analysis supporting this measure. The conclusion of the Northeast Gear Effects Workshop was that hydraulic clam dredges have a high impact on physical and biological structure of benthic habitat in sandy substrates. It was determined that recovery of physical structures could range from days to months, and that recovery of biological structures could range from months to years, depending upon the background energy of the environment. These conclusions are supported by existing research, as summarized in the fishing gear effects section of Amendment 13. In terms of overall regional priorities for management of fishing impacts on EFH, it was concluded that otter trawls and scallop dredges are a higher overall priority because of their wider geographic use over a wider variety of substrate types. However, it was agreed that localized effects could be very significant if the dredged area is productive habitat for one or more managed fish resources, or if the area coincides with strong settlement of larval fish. The EFH vulnerability analysis conducted for Amendment 13 shows that 9 New England managed species, comprising 17 distinct life stages, are moderately or highly vulnerable to hydraulic clam dredges. Vulnerability was based upon the known impacts of the gear type, the potential for lost habitat function, the sensitivity of the habitat to disturbance, and the overlap of gear usage with EFH. In addition, Amendment 13 concludes that adverse and potentially adverse impacts from hydraulic clam dredges occurs primarily in the Mid-Atlantic and secondarily in southern New England, on sand substrates. The Nantucket Lightship Habitat Closed Area contains vulnerable EFH for most of these species. Prohibition of all types of bottom-tending mobile gear in this closed area is necessary to provide the most effective protection to this vulnerable EFH. Exemption of clam dredges in the habitat closed area would negate most, if not all, of the habitat benefits, rendering the closed area strategy ineffective and therefore impracticable. The environmental and socio-economic impacts of the habitat closed areas were analyzed as part of Amendment 13 and were considered in the approval decision. The exclusion of clam dredges from the Nantucket Lightship Habitat Closure Area is not a violation of National Standard 4 because

it is necessary to achieve the desired EFH protection and since other bottom-tending mobile gear is also prohibited in all of the habitat closure areas.

*Comment 7:* One commenter recommended disapproval of a portion of the Nantucket Lightship Habitat Closure Area that is subject to a level 3 habitat closure (closed to bottom-tending mobile gear). Specifically, the commenter was concerned about the trapezoid-shaped area that lies outside of the current NLCA.

*Response:* Disapproval of a portion of the proposed Nantucket Lightship Habitat Closure Area would constitute a modification to the configuration of that area and undermine the objectives of providing EFH protection. Although Amendment 13 analyzed the aggregate economic and biological impacts of various combinations of habitat closure areas, the configuration that the commenter supports was not part of the alternative adopted by the Council, analyzed in Amendment 13, and considered by the public and, therefore, there is no basis to support the commenter's claims. Therefore, the measure is consistent with applicable law.

*Comment 8:* One commenter supported the proposed exemption that would allow fishing by shrimp trawl vessels in the WGOM Habitat Closure Area.

*Response:* NMFS has disapproved the measure that would allow shrimp trawlers to fish in the WGOM Habitat Closure Area, as discussed and justified in the preamble to this final rule under "Disapproved Measures."

*Comment 9:* Five commenters supported approval of all four proposed SAPs in order to provide economic opportunity to the industry to harvest groundfish stocks at a more optimal level.

*Response:* NMFS agrees that allowing for SAPs is important for the reasons stated. However, in order for a SAP to be approved, it must comply with the objectives of the FMP, National Standards, and all applicable laws. The premise for a SAP is that, if specific fisheries for healthy stocks of groundfish can be identified that do not undermine achievement of the goals of the FMP, fishing under certain restrictions within a SAP can be allowed. Prior to NMFS approval, a SAP must be fully developed and the analysis of its impacts must demonstrate that the SAP is consistent with the objectives of the FMP, as well as enforceable. The CA II Yellowtail Flounder SAP and the SNE/MA Winter Flounder SAP meet these criteria, and were therefore approved in Amendment

13 and implemented by this final rule. The CA II Haddock SAP and the CA I Hookgear Haddock SAP, however, do not meet one or more of these criteria and were, therefore, disapproved, as discussed more fully in the preamble to this final rule under "Disapproved Measures."

*Comment 10:* The Council submitted comments of a technical nature suggesting clarifications to the proposed regulations. The U.S. Coast Guard also submitted a technical comment. These included suggested additional definitions of terms, and clarifications to or additions of additional regulatory language.

*Response:* NMFS agrees with most of the suggested clarifications and has made these changes in this final rule. The specific changes are identified in this preamble under "Changes to the Proposed Rule."

*Comment 11:* Three commenters noted that the proposed rule would alter the frequency of VMS polling to twice per hour (from once per hour) for groundfish DAS vessels, once a vessel has elected to fish in the U.S./Canada Management Areas, regardless of whether or not the vessel is fishing in the U.S./Canada Management Areas. The commenters stated that this is not an Amendment 13 requirement, and is therefore not justified. A commenter further stated that polling twice per hour in the U.S./Canada Management Areas only is unjustified, given that vessels must declare into these areas, and that the areas are large.

*Response:* NMFS agrees that groundfish DAS vessels that are required to utilize VMS should not be required to pay for being polled twice per hour when not fishing in the U.S./Canada Management Areas, and has removed this restriction in this final rule. However, the requirement that vessels must pay for polling twice per hour when fishing in the U.S./Canada Management Areas has not been removed to enhance enforcement of the Understanding. Despite the large size of the U.S./Canada Management Area, there remains the potential for vessels fishing near the perimeters of this area to fish in both portions of this area (Eastern and Western) and/or to fish outside the area. In order to monitor the TAC in the U.S./Canada Management Area, it is critical that NMFS has a system to track the location of fishing vessels. Decreasing the time interval between polls paid by vessels enhances NMFS's monitoring of the fishing activity in his area.

*Comment 12:* The Council commented that, should the cod possession limit for vessels fishing

under a limited access Handgear A permit be adjusted in proportion to a change in the GOM trip cod trip limit for DAS vessels, as allowed under this final rule, this adjustment should be rounded up to the nearest 50 lb (22.7 kg) in order to facilitate compliance with, and enforcement of, the adjusted trip limit. The Council also recommended that, if the cod possession limit for open access Handgear permits is adjusted in proportion to a change in the GOM cod trip limit for DAS vessels, this adjustment be rounded up to the nearest 25 lb (11.3 kg).

*Response:* NMFS has made these revisions to this final rule.

*Comment 13:* Two commenters did not support a provision in the proposed rule that would require DAS leasing applicants to include on the lease application the amount of money for which the DAS are being leased. The commenters felt that disclosure of such information is an infringement on the privacy of the applicants.

*Response:* Information about the value of a leased DAS is very important to future efforts to understand the impacts of the DAS Leasing Program and to evaluate whether the program is successful in providing flexibility to the industry. A more thorough understanding of the economics of the groundfish fishery will enable managers to analyze the economic impacts of fishery regulations more accurately. This requirement is consistent with Secretarial authority under the Magnuson-Stevens Act. Only aggregated information on the price paid for DAS leased will be made public. Specific information contained in an application will remain confidential.

*Comment 14:* One commenter suggested that, after a DAS lease has been approved by NMFS, a provision should be created to allow a lessee to return DAS to the lessor(s) in the event of exceptional circumstances, such as the sinking of the lessee vessel.

*Response:* Amendment 13 did not propose such a provision. Furthermore, such a provision would require NMFS to incur additional costs to develop and maintain additional data management capabilities and administrative procedures to support a DAS transaction that is expected to be relatively rare and, therefore, not justified under National Standard 7.

*Comment 15:* Four commenters did not support the requirement that vessels fishing in the U.S./Canada Management Area be prohibited from fishing outside this area on a particular trip. Some suggested that vessels be allowed to fish in both the Western and Eastern areas on the same trip, while others suggested

that the restriction apply only to the Eastern U.S./Canada Area.

*Response:* The requirement that a vessel fish in either the Eastern or Western U.S./Canada Area, and no other area on a particular trip, is necessary to monitor and enforce the catches of cod, haddock, and yellowtail flounder accurately and to attribute these catches to the particular area in which they were caught. If a vessel were allowed to fish both outside and inside one of the U.S./Canada Management Areas, it would be extremely difficult to assess the amount of each species caught in the respective areas and to enforce related measures. Catches must be accurately attributed to either the Eastern or Western U.S./Canada Area because the TACs are area-specific. In addition, because the Eastern and Western U.S./Canada Areas are subject to different trip limits and gear restrictions, allowing vessels to fish in both areas on a single trip would make enforcement of these restrictions impossible.

*Comment 16:* Five commenters noted that the requirement to use either a haddock separator trawl or a flounder net should apply only to the Eastern U.S./Canada Area and not to both the Eastern and Western U.S./Canada Areas, because the intent of the requirement is to achieve, but not exceed, the cod, haddock, and yellowtail TACs under the U.S./Canada Understanding. They noted that the cod and haddock TACs apply only to the Eastern U.S./Canada Area. One commenter noted that the requirement to utilize these gears in the Western U.S./Canada Area would result in large losses of flounders, monkfish, pollock, and other species.

*Response:* NMFS has made the suggested change in this final rule. Although Amendment 13 includes conflicting information with regard to the scope of the net requirements, it is clear from Amendment 13 and comments submitted by the Council that the intent of the gear restrictions is to ensure that the U.S./Canada TACs are not exceeded. Because both the flounder net and haddock separator trawl are designed to affect cod selectivity, and because the cod TAC is specific to the Eastern U.S./Canada Area only, application of this gear requirement to the Western U.S./Canada Area is not necessary to achieve the stated goal.

*Comment 17:* Four commenters stated that the requirement that vessels intending to fish in the U.S./Canada Area Management Area must notify the observer program of their intent to fish 5 days prior to the start of the trip is excessive and does not reflect the way vessels operate. The commenters suggested that the notification

requirement be reduced to 2 days prior to the start of the trip.

*Response:* NMFS believes that the 5-days notice is necessary for vessels that intend to fish in the U.S./Canada Management Area, in order to provide NMFS adequate time to plan and execute observer deployments, based on the level of observer coverage required in the fishery. NMFS must assess observer availability, contact observers, and allow time for the observer to travel to the port of departure. Frequently, an observer is already deployed on another vessel and is not immediately available.

*Comment 18:* Three commenters believed that the closure of the Eastern U.S./Canada Area should apply only to vessels fishing on a groundfish DAS, and not to all vessels fishing with gear capable of catching groundfish. The commenters stated that this is inconsistent with Amendment 13.

*Response:* NMFS acknowledges that the intent of Amendment 13 was to limit the scope of the Eastern U.S./Canada Area closure to vessels fishing on a groundfish DAS. This final rule reflects that change. This change alleviates an unintended impact on non-groundfish fisheries.

*Comment 19:* One commenter stated that the Sector Allocation regulations that authorize the Council to allocate DAS to a Sector is not consistent with Amendment 13 and should be removed.

*Response:* Although the Amendment 13 document does not include specific criteria related to the allocation of DAS to a Sector, in section 3.4.16.1.2 (where criteria for allocation of TAC is described), the discussion of Sector allocation in Amendment 13 includes numerous references to the concept of DAS allocations to a Sector. The regulations include a reference to DAS allocations in order to be consistent with the Amendment and to make clear that the Council has the authority to allocate DAS and/or develop criteria for the allocation of DAS to a Sector. No such allocation is being proposed in the final rule and any future allocation of DAS to a sector would have to be analyzed and justified in the action authorizing such future allocations.

*Comment 20:* One commenter believed that the 500 lb (226.8 kg) GB cod trip limit was inconsistent with the intent of Amendment 13 and should apply only to the Eastern U.S./Canada Area, and not to the Western U.S./Canada Area as the proposed rule states.

*Response:* NMFS agrees that Amendment 13 intended that the GB cod trip limit should apply only to the Eastern U.S./Canada Area and has made this change to the final rule. This proposed restrictive cod trip limit is

consistent with Amendment 13, as it is applicable to the U.S./Canada Area specific to cod, *i.e.*, the Eastern U.S./Canada Area.

*Comment 21:* One commenter noted that, according to the proposed rule, when the U.S. TAC for GB yellowtail flounder is attained, the prohibition on possession applies only to the Western U.S./Canada Area, but felt that this is inconsistent with the intent of the Council and Amendment 13. The commenter suggested that the prohibition instead apply both to the Western and the Eastern U.S./Canada Area, in order to be consistent with Council intent.

*Response:* NMFS agrees that the intent of Amendment 13 and the Understanding was to prohibit retention of GB yellowtail flounder in both the Western and Eastern U.S./Canada Areas. Upon attainment of the U.S. yellowtail flounder TAC, the Eastern U.S./Canada area will close to vessels fishing under a groundfish DAS, except if fishing in an open SAP. For all other vessels, prohibition of retention of yellowtail flounder in the Eastern U.S./Canada Area, as well as the Western U.S./Canada Area, is necessary to comply with the Understanding.

*Comment 22:* One commenter felt that vessels fishing under an A DAS in the U.S./Canada Management Area should be subject to less restrictive measures.

*Response:* The suggested measure is not consistent with or included in Amendment 13, and therefore cannot be considered for inclusion in this final rule.

*Comment 23:* One commenter stated that he believed that there were too many restrictions associated with fishing in the U.S./Canada Management Areas, and that vessels would refocus their fishing efforts in the near shore waters instead.

*Response:* The restrictions associated with fishing in the U.S./Canada Management Area result primarily from the management strategy chosen to implement and ensure compliance with the Understanding and Amendment 13 objectives. The strategy selected was a system of hard TACs associated with specific geographic areas. In order to implement this hard-TAC system, there must be a means to monitor the amount of catch by species and by area, as well as a means to curtail catch when the TACs are attained. The measures associated with the U.S./Canada Management Area provide a means to monitor the TACs and curtail fishing, as necessary to ensure that the TACs are not exceeded. As an incentive to fish in the Eastern U.S./Canada Area, vessels will not be charged DAS while steaming

to and from that area. The Council may consider recommending additional incentives in a framework action as provided for Amendment 13.

*Comment 24:* The Mid-Atlantic Council commented that it does not support the reductions in Category A DAS, and expressed concern that there may be increased participation in Mid-Atlantic fisheries, such as the squid fishery, as a result of groundfish vessels that attempt to recover lost groundfish revenue (as a result of the DAS reductions). The Mid-Atlantic Council indicated that the Amendment 13 analysis is inadequate because it does not include specific information on the increased landings that result in Mid-Atlantic fisheries, or the species composition of such landings. Because of the perceived shortcomings in the Amendment 13 analysis, the Mid-Atlantic Council concluded that the proposed DAS measures are inconsistent with National Standard 8.

*Response:* The DAS measures are not inconsistent with National Standard 8. The quantitative analysis in sections 4.6 and 4.7 of Amendment 13 provides extensive discussions and considerations of impacts on fishing communities as required by National Standard 8. Further, section 5.4.13.1.3 of the Amendment provides information on the number of permits in other fisheries held by NE multispecies limited access permit holders, their reliance on groundfish revenue, and the level of participation of such permit holders in other fisheries. Although the analysis does not predict landings, it provides useful information that describes the relative scope and nature of the potential effort shift relating to different ports and communities. The economic analysis indicates that the vessels that will be most affected by Amendment 13 are those that are dependent on groundfish for 75 percent or more of their gross revenue. A large number of these vessels have monkfish, spiny dogfish, General category scallop, or bluefish permits, and less than 10 percent have limited access squid permits. Much of the ability to shift into other fisheries is limited to trawl gear. Therefore, Amendment 13 has taken into account impacts of measures and ways to minimize such impacts consistent with National Standard 8.

*Comment 25:* A total of 3,236 commenters, consisting mostly of form comments did not support the phased reduction rebuilding strategy, which, for some stocks, implements a rebuilding program that begins with a fishing mortality rate that is above the threshold rate, and further reduces the target fishing mortality rate in the future. The

principal concerns were that, under this strategy, overfishing for some stocks is not being ended immediately; the rebuilding of the stocks would take an excessive amount of time, and requiring additional time to rebuild stocks, is more risky, and therefore a threat to the health of the stocks and the ecosystem; and overall, the Amendment 13 rebuilding plan is not consistent with the Magnuson-Stevens Act and National Standard guidelines issued by NMFS. Approximately half of these commenters felt that the proposed rebuilding plans were not adequately evaluated, and that Amendment 13 should set rebuilding schedules and rebuilding targets on a species-by-species basis. One commenter supported implementing a phased reduction strategy for all stocks. One commenter supported the rebuilding strategy and noted that combining the adaptive and phased mortality reduction strategies mitigates the economic impacts of the high biomass targets.

*Response:* NMFS has concluded that the proposed phased strategy in fishing mortality reduction is consistent with the Magnuson-Stevens Act and the National Standards. The Magnuson-Stevens Act sets out requirements for preventing or ending overfishing and rebuilding fish stocks at 16 U.S.C. 1851(a)(1) (National Standard 1), 1853(a)(1) and (10), and 1854(e). NMFS promulgated National Standard guidelines relating to these requirements specifically at 50 CFR 600.310. Although the Magnuson-Stevens Act, at 16 U.S.C. 1854(e)(3), requires a management plan to be prepared by the council within a year after stocks are identified as being overfished, there is nothing in the Act or the guidelines that require that overfishing be ended immediately upon implementation of such a plan, as argued by commenters. The only timing requirement in the Magnuson-Stevens Act and guidelines, regarding the time necessary to end overfishing and rebuild fish stocks, is that rebuilding must be achieved as soon as possible, not to exceed 10 years, after taking into account various factors, including the status and biology of the stock and the needs of fishing communities. See 16 U.S.C. 1854(e)(4). To require the ending of overfishing immediately would establish a rigid standard that could result in an unnecessarily short rebuilding time frame, without consideration being given to the factors mentioned above. This result would be inconsistent with 16 U.S.C. 1854(e)(4), because it would undermine the ability

of the Secretary to exercise his discretion in determining how long a rebuilding schedule should be, in consideration of the factors that the Magnuson-Stevens Act deems important. It is entirely consistent, therefore, with the Magnuson-Stevens Act that the ending of overfishing can be achieved at any time during the prescribed rebuilding schedule, as long as the ability to rebuild is not jeopardized.

To put Amendment 13 in perspective, only 8 of the 19 groundfish stocks are experiencing overfishing. Overfishing will continue to occur for only 5 of the stocks being managed under the phased approach. Nevertheless, severe decreases in current fishing mortality are scheduled for the first year of the rebuilding plan, and overfishing on all stocks is expected to end by year 5. Amendment 13 also contains provisions (e.g., default measures to reduce DAS in 2006 and 2009) designed to ensure that further reductions in fishing mortality will take place if, after future assessments, stocks are not projected to rebuild within their specified rebuilding periods.

NMFS has concluded that it is unlikely this strategy will jeopardize the rebuilding of any stock. The NE multispecies fishery is comprised of 19 stocks, many of which co-occur in the same geographic areas, and are subject to fishing by a great diversity of commercial and recreational fishers. The complexity of the fishery and the co-occurrence of stocks of concern and stocks that are not overfished is one of the reasons Amendment 13 utilizes both the adaptive and phased strategies to reduce fishing mortality to rebuild stocks. Immediate cessation of overfishing on all stocks does not adequately take into account and allow for variations among, and contingencies in the fishery, and would cause more severe economic consequences than those projected under the selected fishing mortality reduction strategy. The selection of a phased mortality reduction strategy for some stocks, and an adaptive approach for the remainder of stocks, represents a balancing of the objectives of reducing fishing mortality and minimizing economic impacts, while achieving the goal of rebuilding all overfished stocks of groundfish.

For two of the five groundfish stocks being rebuilt under the phased approach, fishing mortality will be immediately reduced by 49 percent and 59 percent (American plaice and SNE/MA yellowtail flounder, respectively), and will subsequently be reduced to Fmsy, thus ending overfishing completely in 2 years. For three of the

five stocks being rebuilt under the phased approach, fishing mortality will be immediately reduced by 45 percent, 65 percent, and 37 percent. (GB cod, CC/GOM yellowtail flounder, and white hake, respectively), and subsequently reduced to at or below Fmsy in 5 years. These reductions in fishing mortality assume that 85 percent of allocated DAS will be used. In all cases, Amendment 13 contains management measures designed to rebuild the 12 overfished stocks. The time periods required to rebuild the 12 overfished stocks described in Amendment 13 do not exceed the criteria described in the National Standards guidelines and are in accordance with the "Constraints on Council action" in § 600.310(e)(4).

NMFS disagrees that the rebuilding plan was not adequately analyzed. The Amendment 13 analysis of the rebuilding strategies includes expected trajectories of the spawning stock biomass of overfished stocks for both the proposed and the alternative rebuilding strategies. The analysis shows the increase in biomass over time, and in relation to the target biomass (*i.e.*, rebuilt biomass), and is, therefore, sufficient to determine the adequacy of the rebuilding strategy with respect to both the magnitude of rebuilding and the amount of time rebuilding will take. The three rebuilding strategies (constant fishing mortality, phased reduction fishing mortality, and the adaptive approach), which are compared in section 5.2.1.8 of Amendment 13, are all designed to achieve the target biomass within the rebuilding period with a 50 percent probability.

*Comment 26:* A total of 4,779 commenters, consisting of mostly form comments, felt that Amendment 13 needs to include stock specific catch limits to control fishing mortality.

*Response:* Stock-specific catch limits (hard TACs) were among those alternatives that were analyzed in Amendment 13 and considered by the Council, but they were not recommended in Amendment 13. The Amendment 13 states, and NMFS concurs with, the following rationale for this decision: "The Council is concerned that this alternative would lead to a derby fishery, and either excessive discards (if possession of a species is prohibited when a TAC is reached) or a sacrifice in yield from healthy stocks (if groundfish fishing is prohibited when a TAC is reached). In addition, managing 19 stocks, with overlapping geographic ranges, would be administratively difficult. A past Council attempt to manage the fishery with a hard TAC was an abject failure."

Although the Council determined that stock-specific catch limits are not an appropriate management tool to be applied to all stocks, Amendment 13 implements such limits for the GB stocks that are shared with Canada (cod, haddock, and yellowtail flounder).

In addition, Amendment 13 contains various measures to reduce fishing mortality. The implementation of DAS reductions, trip limits and closed areas are all designed to achieve the majority of the fishing mortality reduction. Furthermore, gear restrictions serve as an additional means of controlling fishing effort, as well as enhancing stock structure.

*Comment 27:* A total of 1,549 commenters, consisting mostly of form comments, felt that Amendment 13 represents an important opportunity to reform the FMP, and should therefore incorporate the commenters' suggested revisions.

*Response:* Amendment 13 represents an important opportunity to improve the FMP and contains various conservation and management measures for the Northeast groundfish fishery. A partial list of the novel types of management programs that Amendment 13 implements includes the following: Control of latent effort and refinement of the use of DAS through the DAS baseline and categorization of DAS; coordination of management of shared GB stocks with Canada in order to maximize benefits from shared stocks; real-time dealer electronic reporting, habitat closure areas to protect EFH, DAS leasing and transfer to programs provide flexibility under reduced DAS allocations, and selective use of hard TACs.

*Comment 28:* One commenter requested clarification of justification for the starting date of the rebuilding periods.

*Response:* The rebuilding periods begin in 2004 because the Amendment 13 management measures are expected to be implemented in 2004. The National Standard Guidelines state: "A rebuilding program undertaken after May 1, 1998, commences as soon as the first measures to rebuild the stock or stock complex are implemented." Prior to implementation of Amendment 13, there were no formal rebuilding programs for the overfished stocks. In 1999, Amendment 9 to the FMP implemented status determination criteria, but did not implement rebuilding programs. An amendment to the FMP was necessary to develop and implement a comprehensive rebuilding strategy for the FMP. To retroactively impose a 1999 start date 5 years later would make it virtually impossible for

the agency to reasonably take into account all of the National Standards and other required provisions of the Magnuson-Stevens Act, because rebuilding would have to be accomplished for all stocks in a truncated time period. The measures in Amendment 13, beginning in 2004, will rebuild the groundfish stocks, while at the same time ensuring that other considerations required by the law regarding impacts on the industry are fully considered and accounted for. NMFS has concluded, therefore, that its decision to start the rebuilding clock in 2004 is more consistent with the applicable law and is more appropriate than starting it in 1999.

*Comment 29:* One commenter felt that the GB stock of yellowtail flounder should be under a rebuilding program.

*Response:* The GB stock of yellowtail flounder is neither overfished, nor has the stock previously been declared overfished. Therefore, there is no requirement for a rebuilding program. Amendment 13 measures are designed to maintain the GB stock of yellowtail flounder at a level consistent with optimum yield.

*Comment 30:* One commenter believed that Alternative 1B in Amendment 13 should have been selected because this alternative would have the least economic impacts. The commenter compared the estimates of numbers of jobs affected, the amount of lost revenue, and the loss in personal income associated with the proposed alternative and those associated with Alternative 1B and concluded that the proposed alternative would produce the same long-term results, yet at a much larger first-year cost.

*Response:* NMFS recognizes that Alternative 1B is a significant alternative that would yield a lesser economic impact to the New England region in the first year of the rebuilding plan. In terms of the economic impact to vessels, Alternative 1B would yield a reduction of \$28 million in first year revenues compared to \$40 million for the selected alternative. However, analysis of Alternative 1B did not substantiate that it would result in higher economic benefits over the long-term. Alternative 1B consists of a series of increasing DAS reductions of 35 percent in 2004, 45 percent in 2005, 55 percent in 2006, and 65 percent in 2007. The full schedule of reductions was not evaluated because the area closure model used to evaluate all other alternatives is not a dynamic model. In other words, the model used to evaluate both biological and economic impacts only produces a short-term, one year forecast. DAS reductions for years 2005–



2007 could not be estimated given the limitations in the modeling. Even assuming projections were made for these years, the projections would likely be overestimated, and would not be representative of likely impacts. Presumably, at least part of the economic impact of the 2005 DAS reduction would be offset by a change in productivity; similarly for the DAS reduction in 2006 and 2007. Applying the area closure model to the full 65 percent reduction in DAS would have misrepresented the year 4 impacts. Alternative 1B also contains the 2:1 DAS counting in SNE/MA and the raised footrope trawl in the CC/GOM stock area. It is important to note that, in order for Alternative 1B to have no additional cumulative negative economic impacts after the first year, the relative change in productivity must be proportional to the change in DAS. In other words, an annual productivity increase of 10 percent would be required to offset the 10 percent reduction in DAS. NMFS believes that it is more likely that the negative cumulative impacts of 4 years of DAS reductions would exceed that of the selected alternative, especially since the difference between the two alternatives in 2004 is only about \$12 million in revenues. This gap begins to narrow rather quickly when one considers that, while revenues would likely increase in 2005 under the preferred alternative, they would be declining under Alternative 1B as DAS continue to be reduced. In addition, Amendment 13 notes that the negative impacts attributable to the selected alternative were overestimated because of the inability to formally include the positive effects of harvest under B DAS. Alternative 1B contains no such opportunities. Therefore, NMFS concludes that the gap between these two alternatives narrows in 2004 with the addition of the harvest using B DAS and very much favors the selected alternative in 2005 through 2007. While Alternative 1B was considered, it was apparent that the risk of not achieving required productivity gains after year 1 was very high and could do irreparable economic harm to the NE multispecies fleet in the final 3 years of the stepped reduction. A thorough breakdown of economic impacts by industry and by port is provided in Volume 1, section 5.4.6, of Amendment 13. Results of that analysis fulfill the requirements of E.O. 12866, which requires the Agency to take into account all economic impacts to the Nation resulting from the proposed rulemaking.

*Comment 31:* One commenter felt that NMFS must revise the recovery rate analysis in the fishing gear habitat impact assessment because there are contradictions in certain sections that do not comply with National Standard 2.

*Response:* Amendment 13, in Section 9.3.1.8.4.2, Potential Adverse Impacts of Bottom Trawls and Dredges, states that the recovery rate for damaged sponges and soft corals is 12 months, based upon the literature that was reviewed in section 9.3.1.2.4.2. Forty-four relevant peer-reviewed and non-peer-reviewed publications were included in the literature review and comprise the best available science on the subject. Recovery rates were provided when reported by the authors of the scientific studies. Discrepancies between recovery rates listed in tables 453–455 and those reported by the 2001 Gear Effects Workshop are due to the subjective nature of the responses provided by the Workshop participants compared to the research results published by various authors. NMFS is confident that the best available science was utilized in the fishing gear effects analysis and that the document is in compliance with National Standard 2.

*Comment 32:* One commenter felt that NMFS range of habitat closure alternatives is inadequate.

*Response:* The Amendment 13 considers a wide range of reasonable alternatives to minimize the adverse effects of fishing on EFH to the extent practicable. The alternatives range in terms of the type of management tool used, and are analyzed in terms of the practicability standard prescribed by the Magnuson-Stevens Act and implementing regulations. There are several alternatives considered representing each of the three identified management tools (effort reduction, gear modification, and closed areas). There are 11 distinct alternatives described using the closed area tool. These alternatives range from use of existing area management scenarios to expansion of existing area management scenarios, to development of new closed areas not dependent upon any previous area closures. Specifically, the National Research Council (NRC), as well as an international panel of experts convened for the 2001 Northeast U.S. Fishing Gear Effects Workshop, have recognized that there are three fishery management tools available to mitigate the effects of trawls and dredges on seafloor habitats: Fishing effort reduction, gear modifications, and area closures. The NRC stated that effort reduction is the cornerstone of managing the effects of fishing on habitat, but typically some

combination of these three measures will be most effective. Amendment 13 utilizes this concept and analyzes a range of reasonable alternatives under each one of the tools listed below in the context of practicability of the measures.

*Effort Reductions:* The major goals of Amendment 13, as described in section 2.2, Purpose and Need for Action, is to rebuild overfished fisheries, end overfishing where it occurs, minimize bycatch to the extent practicable, and to provide options for reducing harvesting capacity. Approximately 35 management measures will be implemented to achieve these goals. These non-habitat measures are described and analyzed in sections 5.3.6.7 and 5.3.8.2 as Habitat Alternative 2 (Benefits to EFH of Other Amendment 13 Measures). The analysis concludes that the net effect of these measures are positive or provide a benefit to habitat.

*Gear Modifications:* Several alternatives have been developed related to otter trawl gear or fishery modifications to mitigate impacts to bottom habitats to the extent practicable. Habitat Alternative 8 (Restrictions on the use of rockhopper and/or roller gear) provides five specific alternatives (Alternatives 8a–8e) to minimize potential adverse effects of otter trawls on habitat. Habitat Alternative 9 would require the use of VMS on all groundfish vessels to provide high resolution data on the distribution of fishing effort.

*Area Closures:* The majority of the alternatives developed to minimize or mitigate adverse impacts of fishing on habitat to the extent practicable revolve around closed areas. Eleven distinct closed area alternatives were developed and analyzed. Three alternatives were developed specifically to protect hard-bottom areas (Habitat Alternatives 3a, 3b, and 4). Four alternatives were developed to balance EFH protection with fishery productivity (Habitat Alternatives 5a, 5b, 5c, and 5d). Three alternatives were developed to utilize existing groundfish mortality closure areas to gain additional habitat protections (Habitat Alternatives 6, 10a, and 10b), and one alternative (Habitat Alternative 7) was developed to prohibit additional fishing gear in the groundfish mortality closure areas.

*Comment 33:* A total of 1,550 commenters, consisting mostly of form comments, stated that Amendment 13 fails to protect sensitive cod nursery grounds from trawling and weakens protection for juvenile cod (no action protects 22.9 percent of juvenile cod EFH, and the proposed action (Alternative 10b) protects 15.3 percent of juvenile cod EFH).



*Response:* NMFS disagrees. The Magnuson-Stevens Act requirement is to minimize, to the extent practicable, the adverse effects of fishing on EFH. The Amendment 13 FSEIS concludes (section 9.3.1) that there are 23 managed species, comprising 42 distinct life stages, that have EFH that is vulnerable to the effects of bottom-tending mobile gear. Therefore, the Magnuson-Stevens Act requirement is to minimize, to the extent practicable, the adverse effects of fishing on the EFH of these 42 species/life stages, not all of which utilize or require the same habitat type (FSEIS Table 161). Amendment 13 undertook an approach to balance EFH protections among all 42 species/life stages, instead of targeting minimization measures on one species/life stage. Amendment 13 implements a series of management measures that represent several major strategies for providing direct and indirect protection to a wide variety of vulnerable EFH. Implementation of Habitat Alternative 10b establishes a series of habitat closed areas within the GOM, GB, and SNE, which prohibit the use of bottom-tending mobile gear (otter trawls and dredges). These closed areas total 2,811 sq nm and, with regard to juvenile cod, encompass 15.3 percent of the entire juvenile cod EFH (see Table 143 in Amendment 13). Therefore, a significant amount of juvenile cod EFH, as well as the EFH of 38 other species/life stages is, afforded direct protection against the adverse impacts from bottom-tending mobile gear. In addition to these closed areas, Amendment 13 implements many management measures aimed at achieving major reductions in the overall fishing effort within the groundfish complex (See section 5.3.6.7 and 5.3.8.2 describing Habitat Alternative 2). These fishing effort reductions relate to reduced impacts on benthic habitats, thereby providing more indirect protections to vulnerable EFH.

In comparison to the No Action Alternative, Habitat Alternative 10b provides direct protection to 15.3 percent of the juvenile cod EFH and to the EFH of 38 other species/life stages, compared to the temporary and intermittent protections afforded under the No Action Alternative (section 5.3.6.1.2.1). Although the No Action Alternative is listed in various tables in section 5.3.8 as a point of reference for closed area alternatives, it is not directly comparable because of the type of closure it represents. The values provided under the No Action Alternative represent the existing groundfish mortality closures, which are not closed for habitat protection

purposes and are available to access by various bottom-tending mobile gears. This is why section 5.3.8.3.2, Summary of EFH Benefits of Area Closure Options, does not compare the No Action Alternative to the 10 closed-area alternatives. Amendment 13 shows that Habitat Alternative 10b is superior and practicable, providing permanent or indefinite protection to 15.3 percent of the juvenile cod EFH, compared to no permanent or indefinite protection provided by the No Action Alternative. Alternative 10b does not weaken EFH protections for any species. In considering these alternatives, the Council and NMFS also determined that Alternative 10b met the practicability standard of 50 CFR 600.815(a)(2)(iii) (See section 5.3.10 of Amendment 13).

*Comment 34:* One commenter felt that the majority of the habitat alternatives were developed in 2000 and 2001, prior to the reinitiation of scoping in 2001, and over a year before the completion of the gear impacts assessment in the fall of 2002. Thus, the commenter stated the record shows that these alternatives were not based on the best available scientific information and violate National Standard 2.

*Response:* The scoping for the EFH components of Amendment 13 commenced on February 1, 2001 (66 FR 8568) and continued through April 4, 2001 (66 FR 13281). At the conclusion of the scoping period, the public comments, including all recommended alternatives, were compiled and discussed by the Council's Habitat Technical Team in April 2001, with recommendations forwarded to the Habitat Committee and the Council. It was not until after the conclusion of the public scoping period that alternatives were considered for analysis by the Council. In fact, reasonable alternatives were considered by the Council through 2003. Recommended alternatives that were not analyzed were classified as considered but rejected, and can be found in section 4.2 of Amendment 13.

In terms of the gear impacts assessment, the 1998 EFH Omnibus Amendment concluded that bottom-tending mobile gear may adversely affect EFH, particularly complex bottom habitats. This conclusion has not changed over time, but has been further supported by more recent scientific studies. Therefore the basis for development and selection of alternatives to minimize adverse effects of fishing on EFH has not changed since 1998. The Gear Effects Evaluation provided in Amendment 13 (Section 9.3.1.2) reflects this newest science and therefore complies with National Standard 2.

*Comment 35:* One commenter stated that Amendment 13 fails to separate EFH protections for GOM juvenile cod EFH and GB juvenile cod EFH, since these stocks are managed separately.

*Response:* EFH is designated by species and by life stage over the entire range of the species. There is no requirement to designate EFH by species, by life stage, and by stock. Presently, EFH is not described by stock, and analysis of habitat impacts by stock would create significant managerial and scientific difficulties, without concomitant benefit to the species. NMFS has determined, therefore, based upon the best available science, that the EFH of both GOM and GB cod stocks are protected to the extent practicable under current management practices.

*Comment 36:* One commenter felt that NMFS must develop alternatives to designate habitat areas of particular concern (HAPC) to comply with the *AOC v Evans* Court Order (Civ. No. 99-00982 GK (D.D.C)).

*Response:* Amendment 13 meets legal requirements of the Magnuson-Stevens Act and the AOC Joint Stipulation. The groundfish FMP already has established one HAPC in Closed Area 2. The Council has established a process for further consideration of HAPCs and is currently seeking public comment on this issue as part of the development of EFH Omnibus Amendment 2.

*Comment 37:* One commenter felt that NMFS should reject Habitat Alternative 2.

*Response:* Habitat Alternative 2 includes approximately 35 measures to achieve the non-habitat-related goals of Amendment 13, and provides indirect net benefits to EFH (see analysis in section 5.3.8.2 of Amendment 13). Habitat Alternative 2 is not the only alternative that is being relied upon to minimize the adverse effects of fishing on EFH. The EFH final rule (67 FR 2343) specifically requires that the evaluation of fishing effects must list management actions that minimize potential adverse effects on EFH and describe the benefits of those actions to EFH. The response to Comment 32 also contains pertinent information in response to this comment.

*Comment 38:* Two commenters suggested that NMFS partially reject Habitat Alternative 10b, and instead select Alternative 3a, because they felt it protects more gravel habitats.

*Response:* While Habitat Alternative 10b is an industry-developed alternative, it was subjected to the same environmental analysis as all the other closed area alternatives. The analysis shows that it ranked relatively high for

EFH protection and protection of other ecosystem properties when compared to the other closed area alternatives, including Habitat Alternative 3a, and that it represents the most practicable alternative. Habitat Alternative 10b was shown to be the most effective in protecting EFH that is highly vulnerable to the effects of bottom-tending mobile gear (section 5.3.8.3.2.2 of Amendment 13). As stated in Response 33, the Magnuson-Stevens Act requirement is to minimize, to the extent practicable, the adverse effects of fishing on EFH, not just the EFH of one species or life stage. Habitat Alternative 10b establishes a series of habitat closed areas within the GOM, GB, and SNE, which prohibits the use of bottom-tending mobile gear (otter trawls and dredges). These closed areas total 2,811 sq nm and, with regard to juvenile cod, encompass 15.3 percent of the entire juvenile cod EFH, (see Table 143 in Amendment 13). Therefore, a significant amount of juvenile cod EFH, as well as the EFH of 38 other species/life stages, is afforded direct protection against the adverse impacts from bottom-tending mobile gear. In addition, because the EFH protections are more effective than most of the other alternatives, and since this alternative has a relatively low economic cost to the fishing industry and port communities, Alternative 10b was shown to be the most practicable alternative to implement (Amendment 13 Section 5.3.10.3.4.10). In comparison, Alternative 3a, while providing a good degree of EFH protection, has high economic costs to the industry and disproportional community impacts. Alternative 3a was shown not to be practicable. The Magnuson-Stevens Act and EFH Final Rule require that actions to minimize the adverse effects of fishing on EFH be practicable. The practicability analysis considered the costs and benefits of the alternative on EFH, associated fisheries, and the Nation, as required by § 600.815(a)(2)(iii) and is consistent with National Standard 7.

*Comment 39:* Three commenters felt that the habitat closed areas protect mainly sand habitats instead of more valuable complex gravel habitats.

*Response:* Amendment 13 concludes that complex hard bottom (gravel) habitats are vulnerable to the adverse effects of bottom-tending mobile gear. However, Amendment 13 also shows that hard bottom sediments are not the only vulnerable EFH. The EFH for other species described as sand, soft sediments, silt, mud, and soft mud have also been determined to be highly vulnerable to the adverse effects of bottom-tending mobile gear (Table 161

of Amendment 13). Amendment 13 provides a balanced approach to EFH protection and protection of these substrate types.

The substrate analysis provided in Amendment 13 (section 5.3.8.3.1.2) shows the percent composition within each closed area based upon six sediment characteristics: Bedrock, gravel, gravelly sand, sand, muddy sand, and mud. Table 141 in Amendment 13 shows that, out of the 83,550 sq nm included in the Northwest Atlantic analysis area, 53,856 sq nm are composed of sand/gravelly sand, representing 64 percent of the entire area. Less than 1 percent of the Northwest Atlantic analysis area has been mapped as gravel or bedrock. These complex hard bottom areas of bedrock and gravel are not uniformly distributed (see Figures 160 and 162 of Amendment 13) and are difficult to encompass in closed areas without including large amounts of sand and other substrates. The closed area alternatives analyzed in Amendment 13 encompass anywhere from 3 to 32 percent of the mapped gravel areas. Habitat Alternative 10b includes all substrate types representing vulnerable EFH. Compared to the Northwest Atlantic analysis area, Alternative 10b includes 2 percent of the bedrock, 19 percent of the gravel, 11 percent of the gravelly sand, 3 percent of the sand, 2 percent of the muddy sand, and 2 percent of the mud (Table 141 of Amendment 13).

*Comment 40:* One commenter felt that NMFS should implement Habitat Alternative 8d in Amendment 13, which prohibits the use of rock hopper and roller gear.

*Response:* The analysis in Amendment 13 is inconclusive as to whether this alternative provides additional habitat protections, and as to the costs to the industry (section 5.3.10.3.4.8) in implementing this alternative. Direct benefits to EFH under this alternative would have to be demonstrated and better understood before it could be adopted. NMFS has concluded that implementation of habitat closed areas (Alternative 10b) is a more effective way of protecting vulnerable EFH based on best available science.

*Comment 41:* One commenter was concerned that Amendment 13 contains no measures specifically designed to protect deep water corals.

*Response:* Amendment 13 does not contain any measures specifically designed to protect deep-water corals because the use of bottom-tending mobile gear associated with the NE multispecies fisheries has not been

identified as having an adverse effect on deep-water corals. NE multispecies fisheries are not typically conducted in these deep waters (section 9.3.1.2.3.4.4 of Amendment 13).

*Comment 42:* An industry group strongly opposed the measures in Amendment 13 and the proposed rule that would exclusively preclude access by bottom-tending mobile gear to specific geographical areas of the fishing grounds. The commenter felt this represents an unacceptably disproportionate measure and inequitable allocation of access to the groundfish resource among sectors of the fishery.

*Response:* The Magnuson-Stevens Act and the EFH Final Rule require that the adverse effects of fishing on EFH be minimized to the extent practicable. An evaluation of the potential adverse effects of each fishing activity on EFH was conducted as part of Amendment 13 (section 9.3.1). This evaluation concluded that bottom-tending mobile gears can have a potential adverse effect on the EFH of 42 species/life stages within the geographic bounds of the NE multispecies fishery. Amendment 13 must minimize, to the extent practicable, those adverse effects on EFH that are occurring as a direct result of the use of bottom-tending mobile gears in that fishery. Habitat closed areas, or areas where bottom-tending mobile gear are prohibited, are the most effective way of minimizing those adverse effects. The areas selected as habitat closures (Habitat Alternative 10b) are 81 percent within the existing groundfish mortality closures where the harvest of groundfish is currently prohibited. The practicability analysis (section 5.3.10.3.4.10) shows that Habitat Alternative 10b results in the least economic cost to the industry (except for Habitat Alternative 6). In addition, this alternative provides the most effective protection to EFH, making Habitat Alternative 10b the most practicable alternative to implement. Alternatives that provided equally as much protection to EFH, but that would be more costly to the industry, were determined not to be practicable and, therefore, are not being implemented.

*Comment 43:* One commenter suggested that the final rule make it clear that EFH closures are frameworkable.

*Response:* The 1998 EFH Omnibus Amendment added frameworkable actions for the conservation and protection of EFH, which includes changes to the boundaries of EFH and HAPC designations, gear restrictions, area closures, and establishment of special management areas or zones. In

addition, this final rule includes gear requirements or gear changes in order to reduce impacts on EFH.

*Comment 44:* One commenter expressed support for exclusion of trawlers from sensitive habitats.

*Response:* Although the scope and exact meaning of the term "sensitive" is unclear, Amendment 13 does address the concept being supported by the commenter. Specifically, Amendment 13 and this final rule implement a series of habitat closed areas (Habitat Alternative 10b) as level 3 closures (closed to all bottom-tending mobile gear) to protect EFH that is vulnerable to the effects of bottom-tending mobile gear.

*Comment 45:* Three commenters did not support the default measures that will make further reductions to fishing mortality in 2006 and 2009, unless certain criteria are met. One commenter believed that the default measures are not consistent with National Standard 6, another commented that the proposed measures were not approved by the Council, and a third was concerned that the impacts of the default measures were not adequately analyzed.

*Response:* The default management measures were developed because the phased and adaptive rebuilding strategies implemented by Amendment 13 require future reductions in fishing mortality beyond the levels of fishing mortality reductions that will be implemented in 2004. Both the phased and adaptive rebuilding approaches use a strategy where a higher rate of fishing mortality (landings and discards) are permitted during the initial years of the rebuilding program, but lower fishing mortality rates are therefore required in subsequent years in order to rebuild to the appropriate level (Bmsy) within the required timeframe.

The default criteria were developed because it is possible that, at the time the default measures are scheduled to be implemented (2006 and 2009), the stock status situation will have improved such that the scheduled default mortality reductions (*i.e.*, management restrictions) will not be necessary. The goal of the default criteria is to implement measures of success and have a relatively swift means to avoid the default measures if they are not necessary. More specifically, if in 2006 the stock assessment indicates that either the fishing mortality rates and/or the stock sizes are more favorable than currently predicted, and the default criteria are met, the default management measures would not need to be implemented. Full regulatory action would not be necessary in order to prevent the default management

measures from being implemented, and therefore, both time and work would be saved. If however, there were no default criteria in Amendment 13, and the situation is favorable at the time the default measures are scheduled to be implemented, the Council would have to develop, and NMFS would have to implement new regulations to prevent the default measures from being implemented.

The default measures and criteria are consistent with National Standard 6, which requires "Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches." These default criteria are specifically designed to allow for the contingency that the default measures are not necessary.

With respect to the commenter's concern about the adoption and analysis of the default measures, the Council approved the default measures at its meeting on November 6, 2003, and both the default measures and the default criteria are included and analyzed in Amendment 13. The amount of DAS reductions specified by the default measures is proportional to the percentage reduction in fishing mortality necessary for the targeted stocks, and was calculated by the Plan Development Team based upon the analyses of DAS reductions associated with Alternative 1B, in the DSEIS. The full schedule of DAS reductions was not evaluated because the area closure model used to evaluate the alternatives is not a dynamic model. Applying the area closure model to the 2006 and 2009 DAS reductions would have misrepresented the impacts, so it was not done.

*Comment 46:* Four commenters noted that the criteria in the proposed rule that specify the conditions under which the default management measures would not be implemented, which are contained in 50 CFR 648.82(d)(4), are inconsistent with Amendment 13 and Council intent. One commenter stated that the default criteria should be different for the 2006 and the 2009, and that the criteria should only contain references to fishing mortality.

*Response:* NMFS agrees that the criteria in the proposed rule do not completely reflect those proposed in Amendment 13. NMFS abridged the criteria in the proposed rule in an attempt to make them more succinct, but will modify the criteria in the final rule in order to more precisely reflect the intent of those listed in Amendment 13. NMFS disagrees that the 2006 and 2009 default criteria should be different, and disagrees that the criteria should

include only references to fishing mortality. As described in the response to comment number 45, the default criteria are intended to describe potential conditions under which the default measures would not be necessary. If the stock is rebuilding well and existing management measures are achieving the required fishing mortality rate (or the stocks are not overfished), additional management measures to further reduce the fishing mortality would not be necessary.

*Comment 47:* One commenter felt that the amendment fails to address potential impacts to the infrastructure of ports.

*Response:* The economic analysis in Amendment 13 makes it possible to identify economic impacts on specific industrial sectors on a regional and subregional level. However, data were not available on fishing and fishing-related infrastructure, either in terms of physical features or business entities at a port level. The aggregation of data by region makes it difficult to trace impacts to specific ports within a specific region. Furthermore, defined industrial sectors contain aggregations or combinations of distinct businesses based on the primary product. Thus, while seafood processing is identified as a distinct sector, a distributor of commercial fishing gear would be included in a wholesale trade sector; along with a myriad of other wholesalers, most of which have nothing to do with fishing. Similarly, a trucking company that specializes in seafood would be grouped in with other trucking companies so the impact on the one or more businesses that transport seafood could not be identified.

*Comment 48:* One commenter noted that the analysis of impacts on vessels is incomplete due to a lack of comprehensive data on the fleet, most notably costs.

*Response:* NMFS concurs that a comprehensive fishing vessel cost database would improve economic analysis of Amendment 13, or any other management action, but such a data base was not available at the time analysis of vessel-level impacts were estimated. Vessel break-even analysis was consistent with similar analyses prepared for prior groundfish actions, and impacts based on vessel-level changes in gross revenues is also standard practice in the absence of reliable cost data. The limitations of this approach are acknowledged in Amendment 13.

*Comment 49:* One commenter stated that the amendment does not address community impacts beyond vessels.

*Response:* Amendment 13 does provide information on revenue impacts on vessels with homeports from selected ports (*i.e.*, the port groups identified in the Affected Human Environment as being primary groundfish ports) and provides more aggregated regional impacts for sub-regions that contain multiple ports. The commenter is correct in the sense that neither of these analyses provide detailed information at a community level. Data were available, and analyses prepared, that would have made it possible to report revenue changes at a port-level. Such analyses have been a staple of economic analyses prepared for other management actions. However, without additional information on the composition of the shore-side economies of each affected community, merely reporting revenue changes by port provides only limited information on community impacts. Reporting impacts at a larger, sub-regional level permits full exposition of directly and indirectly affected economic sectors, but does so at the expense of losing specificity at the community level. Future reporting of management impacts would provide more information at a community level if both port-level revenue changes and sub-regional impacts on coastal economies are developed. More detailed community impact assessments will require systematic data collection, as well as additional research to identify the key components of community impacts.

*Comment 50:* The Council's social science advisory committee expressed concern about the adequacy of social and economic analysis in Amendment 13.

*Response:* Adequacy addresses whether the analyses provided for Amendment 13 were based on the best available data and whether these data were used in a manner consistent with professional standards. The panel of experts that reviewed the social and economic analyses concluded that they were adequate both in terms of the use of available data and the choice of the analytical methods applied to evaluate the impacts of specific management decisions.

*Comment 51:* A total of four commenters did not support the definitions of gear required for vessels fishing in the U.S./Canada Area. Some suggested minor revisions to the haddock separator trawl, as well as alternative definitions to the flatfish net, that would more closely resemble nets used in experimental research within the area. All commenters indicated that the flatfish net, as defined in the proposed rule, was impracticable.

*Response:* NMFS has made the necessary changes to the haddock separator trawl measure in this final rule. The definition has been changed to require that the mesh in the separator panel be composed of 6-inch (15.2-cm) diamond mesh, rather than 6.5-inch (16.5-cm) square or diamond mesh. This mesh would maintain consistency with the regulations at § 648.80(a)(4) and would minimize the retention of cod in the upper portion of the net compared to square mesh. Little guidance was provided in Amendment 13 defining flatfish gear. Accordingly, the proposed flatfish net was defined using available scientific research and consultations with gear experts. NMFS maintains that the proposed flatfish net definition would reduce cod bycatch while allowing vessels to target flatfish. Based upon suggestions from the public and additional available research, NMFS has included an alternative flatfish net definition that more closely resembles nets used in experimental research within the US/Canada Management Area.

*Comment 52:* A total of 11 commenters stated that management measures implemented by Amendment 13 will fail to achieve the desired fishing mortality rates. Their principal concerns are that categorization of DAS into A, B, and C days will not reduce DAS fished, that the overall DAS allocation is excessive and will not end overfishing, and the B and C DAS categories will increase opportunity in the fishery. Two of these commenters stated that the analysis of fishing mortality includes A DAS only and, therefore, fails to account for all sources of fishing mortality. One commenter stated that the stocks of GOM cod, white hake, and witch flounder will not meet the mortality goals. One commenter believes that the rules do not serve the public interest, but instead serve the commercial fishing industry because they are too lenient.

*Response:* Category A DAS are the principal effort control mechanism in the FMP, that, in combination with the other management measures (*e.g.*, closed areas, gear restrictions, and trip limits), will reduce the fishing mortality in the fishery in order to rebuild the groundfish stocks. However, because DAS are a non-specific management tool, they limit fishing effort on both overfished stocks and those stocks that are not overfished. The concept of Category B DAS was developed in order to address the fact that non-specific cuts in DAS, based upon the most severely depleted stocks, unnecessarily limits the ability of fishers to fish for stocks that are not overfished. The purpose of

allocating Category B DAS is to provide limited potential to target stocks that are not overfished.

Category C DAS may not be used upon implementation of Amendment 13, and their future use will depend upon both the rebuilding of stocks and capacity of the fishery.

Upon implementation of Amendment 13, the only DAS that may be used in the fishery unrestricted are Category A DAS. Table 81 in Amendment 13 indicates that the total number of DAS used will be decreased by between 39 and 50 percent when compared with the no action alternative (depending upon the rate of DAS use). Such a decrease in DAS use does not represent an increase in fishing opportunity. Table 81 also provides a summary of the anticipated fishing mortality reductions that the management measures will achieve, based upon the allocation of A DAS in combination with other management measures, and assuming 3 rates of DAS use. With few exceptions, the calculations indicate that the management measures are sufficient to achieve the necessary reductions in fishing mortality.

Based upon the information contained in Table 81, the commenter's concern about the achievement of the mortality goals for the stocks of GOM cod and witch flounder (two of the "exceptions" noted above) are justified, because the table indicates that the expected reduction in fishing mortality may be less than the needed reduction in fishing mortality for these stocks. NMFS' determination that the management measures have been demonstrated to be sufficient to meet the mortality objectives is based on both Table 81, and other information contained in Amendment 13. The pertinent information in Amendment 13 includes not only the results of the data analysis, but also the limitation of the model. According to Section 5.1.1, the closed area model, the principal analytical component of the fishing mortality calculations, has the following limitations: "The model is a simulation of behavioral responses to changes in fishery regulations. It should not be interpreted as a precise calculation of future fishing mortality. While the model output results in apparently precise numerical estimates, it is better to interpret these as broad indicators of relative changes, rather than as precise prediction of mortality impacts. Small percentage changes, for example, should be viewed as less likely relative outcomes than large percentage changes. For stocks where the Council is implementing measures to make large reductions in fishing mortality, it

should be clear that the results of the measures will have to be carefully monitored to make sure the objectives are achieved. The model may not capture the exact response of fishermen to the regulations and as a result may over or under estimate the realized impacts." In light of the limitations of the model, the determination of the sufficiency of the rebuilding program should not be based solely upon small percentage differences between the desired and the achieved mortality reductions in stocks such as GOM cod. With respect to witch flounder, the management measures achieve approximately 75 percent of the necessary mortality reductions. If necessary, the default measures in 2006 will further reduce fishing mortality. NMFS will carefully monitor the results of the management measures through daily dealer reporting, and other means to ensure that the model did not overestimate the predicted impacts.

In contrast to Category A DAS, Category B DAS may only be used in approved SAPs upon implementation of Amendment 13. Amendment 13 provides for an allocation of B regular and B reserve DAS in order to allow limited opportunity in SAPs, and enable the Council to develop additional opportunities to utilize B DAS. Only two SAPs are being approved in Amendment 13, both of which are projected to have insignificant impacts on species of concern. NMFS agrees that the analysis of fishing mortality does not include B DAS in a global way, and that B DAS represent an additional source of fishing mortality. However, NMFS disagrees that the allocation of B DAS, their use in SAPs, and their potential use outside SAPs, necessarily mean that the fishing mortality on stocks of concern will be excessive. Amendment 13 demonstrates that the SAPs implemented by Amendment 13 will not undermine the fishing mortality objectives, based upon the status of the stocks that will be harvested and the restrictions to strictly limit bycatch of species of concern. Approval by NMFS of additional opportunities to utilize B DAS, in addition to those opportunities provided by Amendment 13, will be contingent upon B DAS targeting appropriate stocks and the development of measures that carefully consider bycatch of species of concern.

Since only two SAPs, only one of which utilizes B DAS, are being approved in Amendment 13, with insignificant impact on species of concern, NMFS has determined that allocating B DAS is consistent with the objectives of the FMP and the Magnuson-Stevens Act.

*Comment 53:* A total of 7 commenters did not agree with the various trip limits as proposed. One stated that low trip limits and inadequate gear restrictions promote discards. Two commenters stated that the GB cod trip limit is too high, creating an incentive to target cod. One commenter suggested that the GB cod trip limit mirror the GOM cod trip limit. One commenter stated that the 250-lb (113-kg) seasonal trip limit for yellowtail flounder in the SNE/MA RMA should be implemented on a year-round basis. One commenter supported possession limits for American plaice, white hake, and SNE/MA winter flounder. Finally, one commenter stated that the GOM cod trip limit should be reduced by 50 percent.

*Response:* NMFS agrees that trip limits may promote discards if set at a low level in relation to the amount of fish encountered, and discards may be exacerbated by non-selective gear. The cod and yellowtail trip limits are set at levels in order to optimize the effect on fishing mortality. The GB cod trip limit may be more successful in achieving this objective than the SNE/MA yellowtail flounder trip limit. The analysis in Amendment 13 indicates that the GB cod trip limit is set at a level that minimizes the potential for regulatory discards, as well as reduces fishing mortality. The reduction of the trip limit from 2,000 lb (907 kg) per DAS to 1,000 lb (454 kg) per DAS decreases the incentive to target GB cod. With respect to GOM cod, NMFS disagrees that the trip limit should be reduced. The higher trip limit for GOM cod is designed to reduce bycatch during the period that cod aggregate for spawning. The analysis concludes that the change in trip limit to 800 lb (363 kg) per DAS will significantly reduce the ratio of fish discarded to fish kept, without jeopardizing mortality goals. Imposition of the SNE/MA yellowtail flounder trip limits will likely increase discards when compared with the no action alternative; however, this is justified given the low biomass of the stock and the fact that overall mortality on this stock should be significantly reduced compared to the no action alternative. The fact that the SNE/MA yellowtail flounder trip limit varies on a seasonal basis (250 lb (113 kg) per trip to 750 lb (340 kg) per trip) may mitigate the amount of discarding by limiting fishing on aggregations of flounder. Imposition of the 250 lb (113 kg) trip limit for the entire year would increase discards. In the future, as the stock rebuilds, this trip limit should be raised. The Council chose not to implement trip limits in order to reduce fishing mortality for American plaice,

white hake, and SNE/MA winter flounder, but instead decided to rely solely on the combined effects of DAS reductions and closed areas and gear (see Response to Comment 83 for further discussion). The continuation of a least 5 percent observer coverage on groundfish vessels should provide adequate monitoring of whether the trip limits are effective regarding reducing fishing mortality and bycatch. If data indicate that the trip limits are not effective, the Council can recommend necessary adjustments.

*Comment 54:* One commenter objected to the fact that the alternative being implemented was developed relatively late in the regulatory process.

*Response:* NMFS agrees that Alternative 5 was developed after the other 4 alternatives were developed, but believes that the development of Amendment 13 was consistent with applicable laws. The selected alternative was based largely on components that were contained in the DSEIS and discussed during the public hearing process, and the full alternative is contained in Amendment 13.

Furthermore, pursuant to the Magnuson-Stevens Act, the public had an additional 60-day comment period on Amendment 13 and all of the alternatives presented, including the selected alternative. Finally, the proposed rule allowed for a 30-day public comment period on the proposed Amendment 13 measures. In view of the numerous opportunities for comment, NMFS believes that the public was informed of, and could comment on each of the proposed alternatives in Amendment 13, including the selected alternative. All appropriate comments received on the Amendment, the NEPA document and the proposed rule have been evaluated by NMFS in order to make a decision whether to approve, disapprove or partially approve Amendment 13.

*Comment 55:* One commenter objected to the continuing use of "rolling" closure areas in the FMP because of the belief that a derby fishery is created when the closed areas are opened.

*Response:* The GOM Rolling Closure Areas provide important protection to spawning aggregations of the GOM cod stock. Although there may be the potential for a derby fishery upon opening of these areas, there are no data indicating that this has been a problem. In any event, the derby affect is likely limited in duration and scope. The impact of the rolling closure areas on GOM cod remains positive.

*Comment 56:* Three commenters did not support the restriction that DAS

carried over from the 2003 fishing year into the 2004 fishing year will be available only as Category B DAS, due to the belief that this creates a safety concern.

*Response:* The classification of fishing year 2003 carry-over DAS as Category B DAS in fishing year 2004 does not represent a safety concern. Although this restriction may provide additional incentive for vessels to fish their DAS in the 2003 fishing year prior to implementation of Amendment 13, due to the different restrictions associated with a Category A DAS and a Category B DAS (as discussed in the response to comment number 52), the regulations do not require a vessel owner to make an unsafe decision regarding whether or not to fish on a particular day.

*Comment 57:* One commenter noted that the concept of B DAS are missing from Amendment 13.

*Response:* Amendment 13 explains the concept of B DAS in section 3.6.1.1. The final rule provides for an allocation of B DAS (both Regular and Reserve), and implements, in a limited fashion, opportunity for their use within SAPs, as well as some associated restrictions (e.g., carry over, leasing of, etc.). Although Amendment 13 describes the concept of B DAS, and anticipates the possible future use of Regular B DAS outside of an approved SAP, the amendment only partially describes the conditions under which the Reserve B DAS may be used. The final rule, therefore, does not include the restrictions associated with Regular B DAS that are discussed in the amendment. The Council is currently developing such restrictions through a framework adjustment.

*Comment 58:* One commenter was opposed to inclusion of the 2001 fishing year in the calculation of the DAS baseline. The commenter believed that this results in a higher total number of DAS defined by the baseline, due to the inclusion of DAS that are not associated with any landings. One commenter supported the inclusion of the 2001 fishing year in the DAS baseline calculation for the following reasons: (1) Allows all fishing effort predating the Settlement Agreement to be treated fairly; (2) broadens the total qualified pool, which is reduced by the minimum landing requirement associated with the baseline DAS allocation; and (3) yields the desirable economic result of higher DAS allocations to all qualified permit holders.

*Response:* The Amendment 13 proposed DAS baseline alternative was selected because it is the alternative that most fairly distributed DAS based on recent groundfish fishing activity.

NMFS disagrees that inclusion of the 2001 fishing year results in a higher DAS baseline. Amendment 13 indicates that the selected baseline results in a lower total number of DAS than does the baseline alternative that does not include the 2001 fishing year. The selected alternative, which includes the 2001 fishing year, also includes a requirement that a qualifying year is one in which the vessel landed 5,000 lb (2,268 kg) or more of regulated multispecies. NMFS agrees with the reasons stated in support of the baseline that includes the 2001 fishing year.

*Comment 59:* One commenter stated that Amendment 13 should include information on the closed area model.

*Response:* NMFS believes that Amendment 13 provides adequate information on the closed area model. The closed area model, which was utilized to estimate the biological impacts of the closed areas, trip limits, and DAS reductions, is described in Section 5.1.1. of Amendment 13. This section describes the inputs to the model, its weaknesses, its advantages, and well as advice to the reader regarding interpretation of the results of the model (see Response to Comment 52). The model itself is an analytical computer program that has been discussed in public fora, and is not appropriate for inclusion in Amendment 13.

*Comment 60:* One commenter suggested that the GB Hook Gear Cod Trip Limit Program be disapproved because it adds uncertainty to the management regime, is incomplete, and difficult to enforce.

*Response:* NMFS has disapproved this program as further described in the preamble of this final rule under the section called "Disapproved Measures."

*Comment 61:* One commenter stated that NMFS should reconsider Amendment 13 if scientific information becomes available that indicates the stocks are in better shape. One commenter supported the biennial adjustment process described in the amendment.

*Response:* Pursuant to the Magnuson-Stevens Act, conservation and management measures established for the Northeast groundfish FMP should be based on the best available scientific information available. The process outlined in the NE multispecies regulations under § 648.90 will be the method utilized to incorporate new information into the FMP. The biennial adjustment extends the duration of time between each required periodic review and adjustment, but does not limit the ability of the Council to develop

management measures at any time necessary.

*Comment 62:* Two commenters expressed support for the biological reference points. One commenter opposed setting the biomass threshold at 50 percent of Bmsy and thought the appropriate level should be 25 percent of Bmsy. One commenter believes that, for certain stocks (e.g., Acadian redfish), the biomass threshold should be set at greater than 50 percent of Bmsy. One commenter stated that the biological reference points should not be modified through framework action.

*Response:* NMFS believes that the amendment sets the biological reference points (status determination criteria) at appropriate values, based upon the National Standard guidelines (NSGs) and the best available scientific information. The NSGs require that the biomass threshold be set at no lower than 50 percent of Bmsy, therefore, setting the threshold at 25 percent of Bmsy would be inconsistent with the NSGs. Although the National Standard guidelines allow for the biomass threshold to be set at a level greater than 50 percent of Bmsy based upon the biological characteristics of a stock, the NEFSC has certified that the Amendment 13 overfishing definitions comply with the National Standard 1 Guidelines. With regard to the process of making changes to the status determination criteria, Amendment 13 differentiates between the process of making changes to the parameters, and the process of making changes to the values of such parameters. Amendment 13 notes that it is the Council's responsibility to recommend status determination criteria, and states that changes to the parameters require Council action, whereas changes to the values do not. Finally, status determination criteria may be adjusted through the use of a framework so that the best available science can be incorporated into the FMP in a timely manner. This process will ensure that NMFS is satisfying its Magnuson-Stevens Act mandates, specifically, National Standard 2.

*Comment 63:* One commenter did not support the sector allocation requirement that allocations of TAC be based upon the catch history during a specific 5 year period, because the requirement would not allow for development of a sector if vessels did not have recent catch history. Another commenter did not support the approval of sectors unless the sectors are subject to a hard TAC.

*Response:* NMFS agrees that, under the sector regulations, those vessels without recent fishing history would not

be able to form a sector. This restriction is consistent with the Goals and Objectives of Amendment 13 (Goal 2): "Create a management system so that fleet capacity will be commensurate with resource status so as to achieve goals of economic efficiency and biological conservation and that encourages diversity within the fleet." Allowing vessels that have not been active in the fishery recently may have the effect of increasing fishing capacity, which would be inconsistent with this goal. As NE multispecies stocks rebuild, the Council may consider removing such restrictions on sector allocations. NMFS agrees that the amendment specifies allocation of a hard TAC or DAS to sectors.

*Comment 64:* Three commenters supported the GB Cod Hook Sector allocation. Two of these commenters believe that participants in the GB Cod Hook Sector should not be regulated by many of the requirements of the FMP, and that the final rule should allow the Regional Administrator to waive specific measures for sector vessels. One commenter stated that the reference in the preamble to the proposed rule regarding the 5-year enrollment period in the GB Cod Hook Sector was incorrect. One commenter stated that the cod TAC for the GB Cod Hook Sector should be allocated based upon an amount of GB cod that includes the Canadian share of the stock. One commenter stated that the DAS for sector vessels should be considered fully utilized (in the event that the sector did not fish under the DAS system).

*Response:* Amendment 13 discusses the potential for a sector to be exempt from specific regulations that would still apply to non-sector vessels and that the Regional Administrator should have the authority to exempt sectors from specific regulations, if the sector's Operating Plan justifies such exemption and the regulation being exempted is not necessary for the achievement of FMP objectives in light of sector measures. The final rule is corrected to reflect this authority. NMFS will consider granting such exemptions through the procedure defined under § 648.87(d), that describes the process for approval of a sector by the Regional Administrator. The approval process includes solicitation of public comment and consultation with the Council. With regard to the requirement that participating vessels stay in the sector until the end of the five year period, NMFS agrees with the commenter that this requirement in the preamble of the proposed rule is incorrect and removes this language from the preamble.

Although Amendment 13 includes a requirement to remain in a sector for the duration of a particular fishing year, the amendment does not discuss the requirement to participate for a five year period. NMFS disagrees that the cod TAC for the GB Cod Hook Sector should be based upon a total amount of cod that includes the Canadian share. Allocation of the hook sector's GB cod TAC in the manner suggested by the commenter could result in allocating an amount of cod that exceeds the sector's historic share of the U.S. fishery, and would therefore be inconsistent with Council intent. Lastly, Amendment 13 did not include a provision that the DAS for vessels participating in a sector be considered fully used. The discussion of such a provision should be included in a sector's Operations Plan.

*Comment 65:* Two commenters stated that the Regional Administrator should have the authority to implement other restrictions at the time the default measures are scheduled to be implemented. One commenter believed that the Regional Administrator should have the authority to adjust management measures in the middle of the fishing year in order to decrease fishing mortality.

*Response:* Neither the Amendment nor the proposed rule included provisions to grant such authority to the Regional Administrator. Without specific criteria in Amendment 13 for making such adjustments, this final rule cannot provide this authority. The Council, however, may develop and recommend an adjustment to management measures at any time through the framework adjustment process.

*Comment 66:* One commenter stated that the final rule should contain the status determination criteria, including definitions of OY, as well as Table 10 from Amendment 13, (proposed rebuilding trajectories; fishing mortality rates for the rebuilding program).

*Response:* The Magnuson-Stevens Act and the National Standard Guidelines require that every fishery management plan contain certain components, such as an identification of OY and stock status determination criteria. However, there is no requirement that all of these items be codified by a regulation. NMFS typically does not include every measure in a fishery management plan or its amendments in codified regulations because it adds to the complexity, length, and costs of publication and such inclusion is not necessary for enforcement or compliance purposes. NMFS has included in this final rule regulatory language for all of the approved

measures in Amendment 13 that require public compliance, as opposed to measures in the amendment that guide or constrain Council action.

*Comment 67:* One commenter supported the provision that allows vessels with VMS to opt out of the VMS program for a minimum period of 1 calendar month.

*Response:* NMFS agrees and is implementing that measure in this final rule.

*Comment 68:* One commenter suggested that NMFS disapprove the proposed removal of the FAAS from the regulations. The commenter stated that the FAAS was implemented to provide the Council and NMFS with the ability to quickly respond to seasonal and area bycatch problems in the groundfish fishery. Furthermore, the commenter suggested that any administrative constraints that limit the potential usefulness of the system should be corrected.

*Response:* NMFS agrees with the commenter and disapproved the proposed removal of the FAAS, as explained in the preamble to this final rule under "Disapproved Measures." NMFS will continue to seek ways to expedite implementation of regulatory actions.

*Comment 69:* One commenter requested clarification on whether the target TACs listed in Table 11 of Amendment 13 are in relation to the calendar year or fishing year.

*Response:* The targets TACs are for the calendar year. The preamble of this final rule has been revised to make this clear.

*Comment 70:* One commenter requested explanation on how the control rules will govern management measures.

*Response:* Section 3.1.8 of Amendment 13 explains how control rules will be applied to the FMP. The control rules are meant to be consistent with fishing mortality thresholds that define when overfishing is occurring.

*Comment 71:* One commenter was opposed to the implementation of any of the Amendment 13 SAPs, stating that there are no stocks that could support an increase in effort.

*Response:* NMFS has approved two Amendment 13 SAPs and disapproved two SAPs. Regarding the approved CA II Yellowtail Flounder SAP, the target species, GB yellowtail flounder, is currently not overfished, nor is overfishing occurring. Since the Amendment 13 DAS reductions are intended to reduce fishing mortality to appropriate levels for the stocks of greatest concern, additional effort directed on GB yellowtail flounder,



through the use of B DAS as well as steaming time deduction, is not likely to undermine the fishing mortality objectives for this stock. Furthermore, GB yellowtail flounder is one of the three shared stocks managed under the U.S./Canada Resource Sharing Understanding and, therefore, is subject to a hard TAC, *i.e.*, a quota specified for a stock, whereby, once attained, the possession limit would be zero. In addition, the Regional Administrator has authority to reduce the GB yellowtail flounder trip limit to ensure that this TAC is not exceeded. Should the TAC be exceeded, the overage would be deducted from the next fishing year's TAC. (For further information, see Comment 77 below.) Vessels electing to fish in the CA II Yellowtail Flounder SAP are required to fish with either a haddock separator trawl or flatfish net to mitigate bycatch of cod. In addition, a cod trip limit of 100 lb (45.4 kg) is proposed when fishing in this area to prevent vessels from circumventing the regulations.

The approved SNE/MA Winter Flounder SAP, which allows vessels directing on summer flounder to retain up to 200 lb (90.7 kg) of winter flounder is intended as a measure to reduce bycatch. Currently, vessels in the summer flounder fishery that catch small amounts of winter flounder are required to discard this species at sea when they are fishing outside of the groundfish DAS program. The SNE/MA Winter Flounder SAP allows these vessels to keep the winter flounder that they would normally be discarding. The fishing mortality on the SNE/MA winter flounder stock will, consequently, not likely be affected, since overall effort is not expected to increase. Winter flounder that otherwise would have been discarded can, instead, be landed.

*Comment 72:* One commenter expressed support for the abbreviated SAP approval process.

*Response:* The proposed abbreviated SAP process has been disapproved, as explained in to the preamble of this final rule under "Disapproved Measures."

*Comment 73:* One commenter noted that there are no proposed SAPs in the near-shore waters of Maine and noted that small vessels from Maine would be unable to physically access the SAPs proposed in offshore waters.

*Response:* Although there are no Amendment 13 proposed SAPs within the near-shore waters of Maine, the Council may develop and recommend an inshore GOM SAP to NMFS through the framework adjustment process. Small vessels from Maine that are unable to physically access the CA II

Yellowtail Flounder SAP may indirectly benefit from this approved SAP should larger vessels that fish Maine's inshore waters redirect their fishing efforts in the CA II Yellowtail Flounder SAP. Because SAPs are designed to target fishing on the healthiest stocks of groundfish, their locations necessarily must reflect the distributions of those stocks. As more stocks rebuild, there will be more opportunities for SAPs.

*Comment 74:* One commenter expressed opposition to the two trip per month restriction in the CA II Yellowtail Flounder SAP, stating that this would create a derby fishery and concentrate landings in the summer months when prices are low.

*Response:* The two-trip-per-month restriction is designed to avoid a derby fishery. In 2002, 117 vessels reported fishing for yellowtail flounder in the waters adjacent to CA II. If this same number of vessels participate in the CA II Yellowtail Flounder SAP, this fishery would be expected to last 4 to 6 weeks into its June through December season before the 320 maximum number of trips were taken. However, there are many new restrictions in the U.S./Canada Management Area where the CA II SAP resides (such as VMS, and reporting requirements, and gear restrictions) and it is, therefore, difficult to predict how many vessels will actually participate. However, the two-trip-per-month restriction in the CA II Yellowtail Flounder SAP should help avoid a derby fishery.

*Comment 75:* Two commenters suggested that the trip limits for stocks within the SAPs be under the Regional Administrator's authority to adjust.

*Response:* This final rule implements a maximum 30,000 lb (13,608 kg) yellowtail flounder trip limit for the CA II Yellowtail Flounder SAP and a restriction on retaining more than one-fifth of the daily GB cod possession limit specified for the Eastern U.S./Canada Area, which would equate to 100 lb (45.4 kg). In addition, because this SAP is located within the U.S./Canada Management Area, the Regional Administrator has the authority, under the regulations implementing the Understanding (§ 648.85(a)(3)(iv)(D)), to further adjust the trip limit to prevent over-harvesting or under-harvesting of the shared U.S./Canada stocks of GB cod, GB haddock, and GB yellowtail flounder. The regulations implementing the SNE/MA Winter Flounder SAP restrict vessels from landing more than 200-lb (90.7-kg) of winter flounder. Although the Regional Administrator does not have the authority to modify the 200 lb (90.7 kg) trip limit, there is little need for the Regional

Administrator to have adjustment authority because the limit is already set very low.

*Comment 76:* One commenter noted that the cod trip limit within the SAPs needs to be clarified.

*Response:* In response to this comment, NMFS has modified the regulations under § 648.85(b)(3)(viii) to specify that the cod trip limit within the approved CA II Yellowtail Flounder SAP is one-fifth of the daily cod possession limit specified for the Eastern U.S./Canada Area, as intended in Amendment 13. Because the Eastern U.S./Canada Area trip limit is 500 lb (226.8 kg) of cod per DAS, the cod trip limit in the CA II Yellowtail Flounder SAP is 100 lb (45.4 kg), until such time that daily cod trip limit for the Eastern U.S./Canada Area is revised through another action.

*Comment 77:* One commenter opposed providing steaming time credit to and from the Eastern U.S./Canada Area, stating that it was unwarranted due to the proposed allowance of B DAS use within the proposed SAPs.

*Response:* Steaming time to and from the Eastern U.S./Canada Area, as well as the allowance of B DAS in this fishery, is provided as an incentive for vessels to fish on the relatively healthy stock of GB yellowtail flounder. Landings of yellowtail flounder have recently leveled off to approximately 3,000–4,000 mt. Because of the large effort reductions implemented through this final rule, landings of GB yellowtail flounder are expected to decline further from this level. However, because this stock is estimated to be able to support a harvest of approximately 12,000 mt, the steaming time incentive has been provided as a mechanism to allow vessels to redirect onto this stock, while removing effort directed at groundfish stocks of concern.

*Comment 78:* One commenter suggested that the CA II Yellowtail Flounder SAP should include hard TACs to control the catch.

*Response:* This final rule implements the U.S./Canada Resource Sharing Understanding, which incorporates the CA II Yellowtail Flounder SAP, including hard TACs for the three shared U.S./Canada stocks of GB cod, GB haddock, and GB yellowtail flounder.

*Comment 79:* One commenter stated that NMFS should control bycatch of non-groundfish species and account for mortality of these species within the SAPs.

*Response:* The Council and NMFS must consider minimizing bycatch for all non-targeted groundfish and non-groundfish species, to the extent



practicable, when developing and approving a SAP. NMFS recognizes that bycatch of skate, in particular, may be of concern in the CA II Yellowtail Flounder SAP; however, it is not clear that bycatch of skate will be any greater for vessels fishing in CA II than when they are fishing outside of this area. Overall, bycatch is likely to be greatly reduced by amendment 13 due to the large reductions in fishing mortality and the required gear modifications when fishing within the Eastern U.S./Canada Area, which incorporates the CA II Yellowtail Flounder SAP.

*Comment 80:* Three commenters opposed the CA II Haddock SAP, stating that cod and haddock are caught in equal amounts in this area, and that the document does not contain any information on bycatch for this SAP.

*Response:* NMFS agrees that the analysis for the CA II Haddock SAP is insufficient and has disapproved this SAP, as explained in the preamble to this final rule under "Disapproved Measures."

*Comment 81:* One commenter stated that NMFS should not rely on historical information to determine access for the CA II Yellowtail Flounder SAP because of its uncertainty.

*Response:* The Amendment 13 document analyzes this measure in light of the best scientific information available, including the most recently available observer data for both experimental trips within, and commercial fishing trips adjacent to, the southern portion of CA II, as well as preliminary information from the recent CA II yellowtail flounder experimental fishery conducted in September through December 2002. Therefore, this measure is consistent with National Standard 2, which requires all measures to be based on the best scientific information available.

*Comment 82:* One commenter stated that access to the CA I Haddock Hookgear SAP should be provided only to the GB Cod Hookgear Sector, and that the coordinates for this SAP should be those coordinates reflected in the experimental fishery that has been approved by NMFS.

*Response:* NMFS disapproved the CA I Haddock Hookgear SAP for the reasons stated in the preamble to this final rule under "Disapproved Measures." In any case, NMFS does not have the authority to change the management measures proposed by the Council in Amendment 13. Bycatch

*Comment 83:* Approximately 3,230 commenters, consisting mostly of form comments stated that Amendment 13 should adopt enforceable measures to minimize bycatch and waste.

*Response:* National Standard 9 requires bycatch and bycatch mortality to be minimized to the extent practicable. NMFS has determined that bycatch and the unavoidable mortality of bycatch in the NE multispecies fishery are being addressed adequately and consistent with applicable law. The minimum mesh size restrictions, gillnet gear reductions, running DAS clock to account for cod overages, and the exempted fishery program are the primary bycatch reduction measures in the FMP. Other measures such as DAS reductions, and other gear modifications, such as the rockhopper gear restrictions in the GOM, also contribute to bycatch reduction. The exempted fishery program, implemented in Framework 9 and expanded in Amendment 7, virtually eliminated all fisheries in the GOM, GB, and SNE RMAs when fishing outside of the NE multispecies and scallop DAS programs, unless it can be determined that the fishery can operate with less than a 5 percent bycatch of regulated species. Amendment 13 contains several additional management measures that will likely reduce bycatch. These include: An increased reduction in fishing effort; mesh size increases; additional gillnet gear reductions; hookgear reductions that include a restriction on the number of allowable hooks; a requirement to fish with circle hooks only; and a prohibition on the use of de-hookers with less than 6-inch (15.2-cm) spacing between the fairlead rollers; an increase in the GOM cod daily trip limit; the allowance of 200 lb (90.7-kg) of winter flounder in the SNE/MA Winter Flounder SAP; an expansion of the exempted fisheries program; and the requirement to use either a flounder net or haddock separator trawl are designed to affect cod selectivity while fishing in the Eastern U.S./Canada Management Area. In light of the substantial reductions in fishing effort and consequent costs to fishermen resulting from Amendment 13, the Council and NMFS have determined that, on balance, the measures in the FMP, as amended by Amendment 13, have reduced bycatch and bycatch mortality to the extent practicable.

*Comment 84:* Four commenters fault Amendment 13 for not promoting selective fishing gear that is consistent with the groundfish trip limits.

*Response:* Because of the relatively low hard TAC specified for GB cod within the Eastern U.S./Canada Area, this final rule implements a 500-lb (226.8-kg) trip limit for GB cod when fishing in this area and requires that vessels fish with either a haddock separator net or a flatfish net; fishing

gears are designed to reduce bycatch of cod. Although there are no specific gear requirements that would ensure that vessels do not exceed the GOM cod daily trip limit of 800 lb (362.9 kg), or the GB cod daily trip limit of 1,000 lb (453.6 kg), vessels would be allowed to retain an additional day's worth of fish, should they exceed the trip limit, provided the vessel operator does not call out of the DAS program until the additional time equating to this overage has elapsed (this is referred to as the "running clock"). This measure is intended to reduce discards of cod. There are no selective fishing gears proposed for the SNE/MA yellowtail flounder trip limit; however, because some of the seasonal trip limits are so low (250 lb (113.4 kg) per trip), many vessels will likely choose to direct on other stocks, at least during the seasons with these very low trip limits.

*Comment 85:* One commenter stated that Amendment 13 does not contain an adequate assessment of bycatch, since it uses fishing year 2001 as the baseline for evaluating bycatch effects of the proposed measures, and that the proposed measures should be evaluated against a baseline of no fishing. The commenter further stated that fishing year 2002 provides the most recent and reliable bycatch data and those data should be incorporated into Amendment 13.

*Response:* All the proposed measures were evaluated based on a comparison to the no action alternative, *i.e.*, the management measures in place in 2001, prior to the Court-ordered measures implementing the Settlement Agreement (Interim Action). Amendment 13 uses bycatch information from the most recent completed assessments. Although additional bycatch information has been collected since the most recent assessments were completed (2002 fishing year), it has not been analyzed or reviewed through the stock assessment process and therefore is not considered the best scientific information available.

*Comment 86:* One commenter stated that there should be scheduled bycatch reviews required for all exempted fisheries.

*Response:* The regulations under the exempted fishery program (§ 648.80(a)(8)) provide for additions as well as deletions of exempted fisheries, should there be concern that an exempted fishery is jeopardizing fishing mortality objectives. In addition, should there be concern regarding bycatch in an exempted fishery, the Council, at any time, may consider developing a framework adjustment to address this.

### Observers

*Comment 87:* Approximately 4,780 commenters, consisting mostly of form comments, stated that Amendment 13 should provide adequate observer coverage to monitor target and non-target species. Some of these commenters suggested that 10 percent coverage would be adequate; others suggested 20 percent coverage for all groundfish fisheries (including SAPs), with as much as 50 percent coverage for fisheries encountering protected species.

*Response:* NMFS intends to maintain its observer coverage in the groundfish fishery at a minimum level of 5 percent. NMFS has conducted an analysis of the relative precision of discard estimates using observer coverage and landings data for the year 2000 for all stocks of regulated species in the NE multispecies fishery. This analysis focused on vessels fishing under the NE multispecies DAS program. Based on this analysis, NMFS has determined that 5 percent observer coverage on all trips fished under a NE multispecies DAS would provide sufficiently robust statistical data to assess and estimate the amount and type of bycatch of regulated species in the NE multispecies fishery. The criteria for statistical robustness include comparability with similar studies worldwide, consistency with Atlantic Coastal Cooperative Statistical Program (ACCSPP) standards, and comparability with other variance components in the stock assessments. A 5-percent observer level represents a 5.6-fold increase in the number of trips observed in 2000. Additional coverage, although not required for statistical adequacy in the groundfish fishery, could be implemented if dedicated resources are available, e.g., an allowance for 10-percent coverage as provided for in the Omnibus Bill for fishing year 2004. Additional coverage would exceed levels considered statistically adequate for the groundfish fishery, but may allow expanded coverage of other fisheries where it may not be possible to achieve a particular target coverage level but where some possibility of groundfish bycatch exists, e.g., the Atlantic herring midwater fishery. It would also allow flexibility to cover some potentially new components of the fishery, such as the use of B DAS, at higher rates as part of a pilot program. The Northeast Fisheries Science Center receives separate funding annually to place observers on vessels in fisheries that have the potential to take protected species. This coverage is directed annually by staff of the Northeast Regional Office's Protected Resources

Division to address species of concern. Coverage levels are determined by computing the sample size needed for a specific degree of precision in the estimate of take, not by percentage coverage.

For Fiscal Year (FY) 2004, NMFS intends to provide 10 percent level of observer coverage to estimate the amount and type of discards for the Northeast multispecies fishery as mandated by Congress in the FY 04 budget appropriation. As stated above, NMFS has determined that 5 percent observer coverage on all trips fished under a NE multispecies DAS would provide sufficiently robust statistical data to assess and estimate the amount and type of bycatch of regulated species in the NE multispecies fishery. This 5 percent level of observer coverage will resume in FY 05 and beyond, absent a similar appropriation requiring a greater level of observer coverage.

*Comment 88:* Four commenters stated that there is no standard methodology to account for and minimize bycatch.

*Response:* In accordance with the Magnuson-Stevens Act, NMFS is developing a bycatch protocol that describes common elements of a standardized bycatch reporting methodology (SBRM) for fisheries under the jurisdiction of the agency. Consistent with this protocol, the NE Multispecies FMP and Amendment 13 have measures in place that satisfy the elements of an SBRM being developed by NMFS. These include comprehensive reporting requirements on dealers and fishermen. In addition, Amendment 13 requires daily electronic dealer reporting when such a program is available. NMFS intends to implement such a program through a separate rulemaking anticipated to be in place on May 1, 2004. Amendment 13 also requires that, once a viable electronic system becomes available, vessels will be subject to electronic reporting on a trip-by-trip basis. As stated in the response to Comment 86, NMFS intends to maintain its observer coverage in the groundfish fishery at no less than 5 percent. This coverage will be provided through the appropriate statistical design for each of the major gear types used in the NE multispecies fishery and will be distributed throughout the geographic range of the fishery. For groundfish DAS vessels fishing within the proposed U.S./Canada Management Area, real-time information on bycatch for the GB stocks of cod, haddock, and yellowtail flounder will be corroborated through the observer program. Should funds become available, NMFS also intends to increase observer coverage on

non-groundfish vessels to better assess bycatch of groundfish.

*Comment 89:* One commenter stated that NMFS should revise Amendment 13 to provide for a reasonable range of alternatives for adequate observer coverage.

*Response:* As the Amendment 13 document points out, the Council does not manage the observer program and, therefore, did not consider a range of alternatives for observer coverage in this program. NMFS has determined through statistical analysis what level of coverage is adequate, as explained in the response to Comment 86. This analysis also considered other levels of observer coverage.

### DAS Transfers

*Comment 90:* Two commenters stated that they support the DAS Transfer Program because it will allow some vessels to survive.

*Response:* NMFS agrees and has approved this program.

*Comment 91:* Three commenters opposed the 40-percent conservation tax specified in the DAS Transfer Program, stating that it was excessive, provided little incentive to participate in the program, and that the program should have controls similar to the DAS Leasing Program. Two commenters believe that the requirement to surrender all permits is too punitive.

*Response:* The intent of the proposed DAS Transfer Program is to provide the fishing industry with greater economic opportunity and flexibility by allowing vessels to permanently transfer their DAS, albeit at a cost in the form of a conservation tax (i.e., Category A and B DAS would be reduced by 40 percent and Category C DAS would be reduced by 90 percent). This "tax" is intended to provide a means to achieve some long-term reduction in fishing effort through the removal of active and inactive DAS from the groundfish fishery. Although the Council is currently considering modifying the conservation tax through a separate framework action, NMFS has determined that Amendment 13 sufficiently analyzes the conservation tax and has approved this measure.

### U.S./Canada

*Comment 92:* Six commenters spoke in support of the Understanding, stating that this program will help mitigate the economic impacts of Amendment 13. One commenter specifically supported the gear requirements in the Eastern and Western U.S./Canada Areas.

*Response:* NMFS supports the Understanding, as it will allow the U.S. and Canada to better coordinate

management of the U.S./Canada shared stocks of cod, haddock, and yellowtail flounder on GB. Upon reviewing the Amendment 13 document and the Council's intent in adopting the gear requirements (haddock separator trawl and flatfish net) included in the Understanding, NMFS has modified the final rule such that vessels would be subject to the gear modifications only when fishing in the Eastern U.S./Canada Area. Additional information on this issue may be found in the Response to Comment 16.

*Comment 93:* One commenter opposed the use of hard TACs proposed for the U.S./Canada shared resources of cod, haddock, and yellowtail flounder, stating that hard TACs do not work.

*Response:* NMFS believes that the hard TACs proposed for the shared U.S./Canada stocks of cod, haddock, and yellowtail flounder on GB are necessary to ensure compliance with the Understanding. Under the measures implementing the Understanding, groundfish DAS vessels fishing on a groundfish DAS within the U.S./Canada Management Areas are required to fish with a VMS and report their daily catches (both landings and discards) of cod, haddock, and yellowtail flounder. This real-time monitoring will provide timely information to make needed adjustments to ensure that these TACs are not exceeded.

*Comment 94:* One commenter requested that both the haddock separator trawl and the flatfish net be allowed on board when fishing in the U.S./Canada Management Areas.

*Response:* NMFS has modified the final rule to reflect this change.

#### *Electronic Reporting*

*Comment 95:* A total of 4,779 commenters, consisting mostly of form comments, supported daily electronic dealer reporting.

*Response:* NMFS has approved this measure and is currently developing a rule to implement the daily electronic dealer reporting requirement.

*Comment 96:* A total of 4,779 commenters, consisting mostly of form comments, supported a mandatory VMS requirement.

*Response:* Amendment 13 requires that groundfish DAS vessels that have opted to fish under a groundfish DAS in the U.S./Canada Management Area be required to fish with a VMS for the remainder of the fishing year, regardless of where they are fishing. This is anticipated to affect approximately 400 vessels, which makes up a large percentage of the groundfish DAS fleet. Implementing a mandatory VMS program for all groundfish vessels at

this time was not considered as a management option in Amendment 13, largely because of the costs to smaller vessels. As costs come down for VMS units, NMFS and the Council intend to reconsider a universal VMS requirement.

*Comment 97:* Seven commenters either supported or opposed the DAS Leasing Program. Four commenters supported the program, with two suggesting extending the program for a total of 5 years, instead of the proposed 2 year duration. Supporters indicated that the program would enable some vessels to continue to fish, maintain shoreside infrastructure, and prevent increases in fishing effort and large-scale effort shifts. One supporter of the program commented that the 120-day block out of the fishery requirement for day gillnet vessels prevents these vessels from participating in the program. One commenter opposed the program, stating that there was insufficient analysis of the impacts of the program on fishing mortality. Three commenters suggested that NMFS should disapprove the program if it results in increased DAS use rates and prevents the attainment of mortality goals. Finally, three commenters suggested implementing a leasing conservation tax, while an additional commenter suggested that NMFS closely monitor the leasing program for consolidation of effort.

*Response:* The DAS Leasing Program will enable some vessels to continue fishing, despite reductions in allocated DAS, as well as help maintain shoreside infrastructure by ensuring a continuous supply of groundfish. NMFS also agrees that the DAS Leasing Program may increase the use rate of DAS. The allocation of A DAS took this fact into consideration. The DAS Leasing Program is one of many factors in the Amendment that may either increase or decrease the DAS use rate. The Amendment 13 analysis assumes that the rate of DAS use will increase over recent levels; however, it is not possible to determine precisely the affect of individual management measures or programs on the rate of use of DAS. NMFS agrees with commenters that support a 2-year duration of the program. Reevaluation of the effects of the DAS Leasing Program on fishing mortality and industry consolidation in 2005 will allow the Council to propose changes, as necessary, to address concerns and maintain the rebuilding schedule. Amendment 13 does not change the regulations governing Day gillnet vessels. While the 120 DAS block requirements limit the time available to participate in the DAS Leasing Program,

these regulations do not prohibit participation in the program. Amendment 13 does not contain a DAS leasing tax. However, the Council is considering such a tax in Framework Adjustment 40.

*Comment 98:* Two commenters supported the proposed size restrictions of lessee vessels, with one commenter preferring a horsepower conversion factor proposed in the April 24, 2003, proposed emergency rule (68 FR 20096) instead of the upgrade provisions proposed under Amendment 13.

*Response:* The size restrictions for lessee vessels are intended to ensure that any increase in the DAS use rate resulting from a leasing program will not also result in an increase in fishing capacity. These size restrictions are consistent with the vessel upgrade provisions specified at § 648.4. Therefore, the size restrictions maintain fishing capacity within the limits assessed in Amendment 13. The horsepower conversion factor preferred by one commenter and specified in the proposed emergency rule was withdrawn on July 14, 2003 (68 FR 41549) based upon public comments.

*Comment 99:* Two commenters opposed the proposed method for assigning DAS leasing history. One commenter suggested that the DAS use and landings history should be assigned as determined by the lease participants, while the other commenter suggested that both the DAS use and the landings history should accrue to the lessor.

*Response:* The attribution of DAS use and landings history is necessary to account for DAS usage and landings and is consistent with the provisions governing DAS use and landings outside of the DAS Leasing Program. This method is also consistent with current data tracking methods and more accurately reflects vessel activity within the program. Further, at this time, the NMFS data tracking programs are not capable of assigning DAS use and landings history based upon an agreement between lease participants. Because the method for accounting for DAS is based on a presumption of what information the Council may require later, the Council may recommend other accounting methods in future actions, provided such methods are adequately justified and consistent with applicable law.

*Comment 100:* Two commenters addressed the ability to lease DAS from permits held in Confirmation of Permit History (CPH). One commenter indicated there is no justification to disallow the leasing of CPH DAS, while the other commenter supported the

proposed prohibition of leasing CPH DAS.

*Response:* Restrictions prohibiting permits held in CPH from leasing DAS were proposed to reduce the amount of latent effort entering the fishery resulting from the leasing program. Currently, there are 68 permits held in CPH that would qualify for a total of 1,482 Category A DAS under Amendment 13. Under the DAS Leasing Program, these DAS will be unavailable for leasing and represent a reduction in potential effort increases. However, these DAS may be leased if permits are taken out of CPH and placed upon another vessel. The DAS associated with such vessels were included in the analysis of biological impacts in Amendment 13. This is consistent with the CPH regulations specified at § 648.4(a)(1)(i)(J).

*Comment 101:* One commenter suggested that the procedure for correcting a DAS baseline specified in the regulations should include a reference to consideration of requests for DAS baseline corrections that result from participation in a cooperative research project.

*Response:* NMFS disagrees that additional regulatory language is required. The procedure to correct an incorrect DAS baseline addresses a separate issue than the Council's policy statement on the loss of DAS due to participation in a cooperative research project. The Regional Administrator has the authority to implement the Council's policy if appropriate.

*Comment 102:* One commenter suggested additional regulatory text that would clarify the time period when DAS leasing applicants could submit applications for the following fishing year, and suggested that NMFS accept applications as of March 15.

*Response:* NMFS has clarified the pertinent regulations in this final rule, although NMFS did not restrict the time period that an applicant may submit an application for the following fishing year.

*Comment 103:* One commenter supported defining OY as 75 percent of Fmsy, but was concerned that the management measures allow F to exceed OY. The commenter questioned how such measures comply with the requirements of the Magnuson-Stevens Act that OY be achieved on a continuing basis.

*Response:* The Magnuson-Stevens Act defines OY as the yield from a fishery that provides the greatest overall benefit to Nation, is prescribed based on MSY and, for an overfished fishery, provides for rebuilding to a level consistent with producing MSY. The management

measures contained in Amendment 13 have been designed to meet all these requirements and, in NMFS's opinion, have at least a 50 percent probability of doing so.

*Comment 104:* An environmental organization expressed concern regarding bycatch of migratory striped bass in the groundfish fishery, particularly by trawl vessels, and requested that the final rule implementing Amendment 13 take action to reduce seasonal bycatch of striped bass. The commenter also requested that at-sea observer coverage be used to closely monitor and report striped bass bycatch.

*Response:* The measures to reduce bycatch in the groundfish fishery that were proposed in Amendment 13 were approved; NMFS does not have the authority to implement measures that were not proposed in Amendment 13 in this final rule. An initial examination of information on striped bass bycatch in the NMFS at-sea observer database indicates that, while striped bass bycatch in the groundfish trawl fishery has been observed, significant catches appear to be infrequent and limited in time and area. NMFS will continue to collect and analyze data on all species caught in the groundfish fishery through the at-sea observer program, which will provide information on bycatch that could be used by the Council to develop future measures to further reduce bycatch.

#### 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 several management measures proposed in Amendment 13. Other changes are technical or administrative in nature and clarify or otherwise enhance enforcement and administration of the fishery management program. These changes are listed below in the order that they appear in the regulations.

In § 648.2, definitions are added for: "Circle hook," "Stocks targeted by the default measures," "Transboundary Management Guidance Committee," "Transboundary Resource Advisory Committee," and "U.S./Canada Steering Committee," to clarify these terms in the regulations.

In § 648.4(a)(1)(i)(A)(2), the date until which reported landings to qualify for the limited access Handgear A permit will be accepted is corrected to be consistent with the date described in the preamble of the proposed rule.

In § 648.4, paragraph (a)(1)(i)(A)(3) is added to further define the application

criteria for the limited access Handgear A permit.

In § 648.4, paragraph (a)(1)(ii) is added to further define what types of vessels may qualify for open access multispecies, hand gear or charter/party permits.

In § 648.4, paragraph (c)(2)(iii)(B) is modified to reflect the disapproval of the GB Hook Gear Cod Trip Limit Program.

In § 648.9, paragraph (c)(1)(ii) is revised to clarify that double polling of the VMS unit for groundfish DAS vessels will occur only when the vessel is fishing under a groundfish DAS within the U.S./Canada Management Areas.

In § 648.10(b)(2)(i), the reference to § 648.85(a)(2)(iii) is corrected to read § 648.85(a)(3)(ii).

In § 648.10(b)(2)(v), the inadvertent reference to paragraph (b)(2)(v) is removed.

In § 648.14, paragraph (a)(132) is revised to reflect the application of the gear requirement to the Eastern U.S./Canada Area.

In § 648.14, paragraph (a)(134), and paragraphs (a)(142) through (152) are revised as a result of the disapproval of the CA II Haddock SAP and the CA I Hook Gear SAP.

§ 648.14, paragraph (c)(24) is revised to reflect disapproval of the GB Hook Gear Trip Limit Program.

In § 648.14, paragraph (c)(30) is revised to reflect disapproval of the exemption of shrimp trawls from the WGOM Habitat Closure Area.

In § 648.14, paragraph (c)(50) is removed to reflect disapproval of the GB Hook Gear Trip Limit Program.

In § 648.80, paragraphs (a)(8)(i), (ii), and (iv) are revised to replace the word "bycatch," with "incidental catch," to reflect the definition of bycatch used in the Magnuson-Stevens Act.

In § 648.80, paragraph (a)(8)(iii) is revised to correct an omission in the proposed rule regulatory text, but referred to in the preamble to the proposed rule, by including language that provides the Council with the ability to recommend to the Regional Administrator, through a framework adjustment, an exemption that would allow vessels to retain and land regulated multispecies.

In § 648.80, paragraph (b)(11) is revised to include language referencing 50 CFR part 648, subpart D.

In § 648.80, paragraph (i)(4) is revised to clarify that the requirement to send a letter to the Regional Administrator is annual.

In § 648.81, paragraph (c)(2)(iii) is added to reflect the disapproval of the provision that would have excluded

surfclam and ocean quahog dredge gear from those portions of the NLCA that reside outside the Nantucket Lightship Habitat Closure Area.

In § 648.81(d)(2), the reference to paragraphs (b)(2)(ii) and (iii) is corrected to read paragraphs (f)(2)(ii) and (iii).

In § 648.81, paragraph (h)(1)(i) is revised to reflect the disapproval of the shrimp trawl exemption from the WGOM Habitat Closure Area.

In § 648.82, paragraph (b)(6) is revised, as requested by the Council, to include language to round up to the nearest 50 lb (22.7 kg) an adjustment to the cod trip limit for limited access Handgear A permitted vessels for ease of administration and enforcement. This paragraph is also revised to reflect that the cod trip limit adjustment is dependent on changes to the GOM cod trip limit, rather than the cod trip limit.

In § 648.82(c)(1), the date for reported landings to determine a vessel's baseline DAS allocation is corrected to be consistent with the date in the preamble of the proposed rule.

In § 648.82, paragraphs (c)(1) and (d) are revised to clarify the permit categories for which a DAS baseline shall be defined and a DAS allocation made available, respectively.

In § 648.82, paragraph (c)(1) is revised to clarify that a vessel's Amendment 13 used DAS baseline should never exceed the vessel's annual DAS allocation prior to August 1, 2002.

In § 648.82, paragraph (d)(4) is revised, as requested by the Council, to more accurately reflect the criteria and procedure for not reducing DAS allocations and modifying DAS accrual.

In § 648.82, paragraph (e) is respecified as paragraphs (e)(1) and (e)(2) for clarification.

In § 648.82, paragraph (k)(3) is revised to be consistent with Amendment 13, as requested by the Council, to reflect that vessels may submit a DAS lease application prior to the start of a fishing year.

In § 648.82, paragraph (k)(3)(i) is revised, as requested by the Council, to include the following language: "Aggregate data may be used in the analysis of the DAS Leasing Program."

In § 648.82, paragraph (k)(3)(iv) is revised, as requested by the Council, to clarify that additional DAS associated with a limited access Large Mesh permit may not be counted towards a vessel's 2001 fishing year allocation when determining how many DAS a vessel may lease.

In § 648.82, paragraph (l)(1)(ii) is revised to include a restriction on gross tonnage that was omitted from the proposed rule in error. This change

makes the regulations consistent with the intent of the Council.

In § 648.85, paragraph (a)(3)(i) is revised to clarify that VMS double polling per hour would occur in the U.S./Canada Management Areas only for groundfish DAS vessels declaring a groundfish DAS in this area.

In § 648.85, paragraph (a)(3)(ii) is revised to clarify that groundfish DAS vessels must declare into the U.S./Canada Management Areas only when intending to fish under a groundfish DAS.

In § 648.85(a)(3)(ii), the incorrect reference to paragraph (b)(4) is removed.

In § 648.85, paragraph (a)(3)(iii) is revised to be consistent with Amendment 13, as requested by the Council, to indicate that the gear requirements under the Understanding are specific to the Eastern U.S./Canada Area only. In addition, a reference to paragraph (a)(1) is corrected to read paragraph (a)(1)(i), and a reference to paragraphs (a)(6)(i) and (ii) is corrected to read paragraphs (a)(3)(iii)(A) and (B).

In § 648.85, paragraphs (a)(3)(iii) and (b)(3)(x) are clarified to read that a vessel fishing in the Eastern U.S./Canada Area may fish with both a haddock separator trawl and a flatfish net on the same trip.

In § 648.85, paragraphs (a)(3)(iii)(A) and (B) are revised to reflect changes made to the gear requirements under the Understanding based on public comment received.

In § 648.85, paragraph (a)(3)(iv)(A) is revised to be consistent with Amendment 13, as requested by the Council, to reflect that the 500-6lb (227-kg) daily cod limit is a landing limit rather than a possession limit and includes a maximum trip limit of 5,000 lb (2,270 kg). This paragraph further clarifies that this trip limit is specific to the Eastern U.S./Canada Area only.

In § 648.85, paragraphs (a)(3)(iv)(A)(1) and (2) are added to include language that the Eastern U.S./Canada Area will close upon attainment of 100 percent of the cod TAC.

In § 648.85, paragraphs (a)(3)(iv)(A)(1), (B)(3), and (C)(3) are revised to reflect that all vessels will be prohibited from retaining cod, haddock, and yellowtail flounder, respectively, once 100 percent of the respective TACs are projected to be attained.

In § 648.85, paragraph (a)(3)(iv)(B) is revised to reflect that the haddock limit is a landing limit rather than a possession limit.

In § 648.85, paragraphs (a)(3)(iv)(B)(3) and (C)(3) are corrected, as requested by the Council, to indicate that the closure of the Eastern U.S./Canada Area is specific to groundfish DAS vessels only.

In § 648.85, paragraphs (a)(3)(iv)(C)(1) and (2) are revised to reflect that the only yellowtail flounder trip limit in the U.S./Canada Management Areas, prior to any adjustment, is within the CA II Yellowtail Flounder SAP.

In § 648.85, paragraph (a)(3)(iv)(E) is corrected to be consistent with Amendment 13, as requested by the Council, to indicate that the closure of the Eastern U.S./Canada Area is specific to groundfish DAS vessels only.

In § 648.85, paragraph (a)(3)(v) is revised to clarify the daily reporting requirements for cod, haddock, and yellowtail flounder for vessels declared in the U.S./Canada Area.

In § 648.85, paragraphs (b)(1) and (2) are revised to reflect the disapproval of the abbreviated SAP process proposed in Amendment 13.

In § 648.85, paragraph (b)(3)(v) is revised and paragraphs (b)(3)(v)(A) and (B) are removed to reflect a change to the VMS declaration regulations resulting from disapproval of the CA II Haddock SAP.

In § 648.85, paragraph (b)(3)(viii) is revised to clarify that the cod trip limit in the CA II Yellowtail Flounder SAP is one-fifth of the daily cod possession specified for the Eastern U.S./Canada Area.

In § 648.85, paragraph (b)(4) is revised and paragraph (b)(6) is removed to reflect disapproval of the Closed Area II Haddock SAP. In addition, paragraph (b)(4) has been clarified to indicate that only limited access NE multispecies vessels are allowed to fish in the SNE/MA Winter Flounder SAP. Also, paragraph (b)(4)(iv) is modified to replace phrase "NE multispecies" with "regulated species."

In § 648.85, paragraph (b)(5) is removed to reflect disapproval of the CA I Hook Gear SAP.

In § 648.85, paragraph (c)(2)(iii)(C) is revised, as requested by the Council, to specify that the GB TAC referred to is the GB cod TAC.

In § 648.86, paragraph (b)(2)(iii) is modified to reflect the disapproval of the GB Hook Gear Cod Trip Limit Program.

In § 648.87, paragraph (b)(1)(i) is corrected to refer to a sector allocation instead of a framework adjustment.

In § 648.87, paragraphs (b)(1)(vii), (b)(1)(ix), (b)(2)(x), (c)(1), (c)(2), (c)(3), and (d)(1) were modified, and a new paragraph (b)(1)(xv) was added in order to ensure effective administration and enforcement of the sector allocation program. These changes, edits and additions clarify what requirements sector participants must comply with, that sector participants may be charged jointly and severally pursuant to 15 CFR

Part 904, and that sector participants must possess a Letter of Authorization issued by NMFS which authorizes participation in the sector and exempts them from certain fishery regulations necessary to fish in accordance with an Operations Plan.

In § 648.87, paragraph (b)(1)(xvi) was added, consistent with Amendment 13, to specify the NE multispecies management measures that all Sectors, fishing under a TAC allocation, must abide by.

In § 648.87, paragraph (b)(2) is revised to clarify that both an Operations Plan and a Sector Contract must be submitted to the Regional Administrator.

In § 648.87, paragraph (c) is modified to add Regional Administrator authority to exempt members of an approved sector from Federal fishing regulations.

In § 648.87(c)(1), the reference to paragraph (c)(1) is corrected to read paragraph (b)(2).

In § 648.87, paragraph (c)(4) was added in order to ensure effective administration and enforcement of the sector allocation program. This change indicates that the Regional Administrator may withdraw approval of a Sector, after consultation with the Council based on a Sector participants noncompliance with the Sector's Operation Plan or if the Operations Plan undermines the achievement of fishing mortality objectives of the NE Multispecies FMP.

In § 648.87(d)(1), the reference to paragraphs (e)(1)(ii) and (d) are corrected to read paragraphs (d)(1)(ii) and (c), respectively.

In § 648.87, paragraph (d)(1)(i) is revised to correct the definition of the GBCHSA to include the Eastern U.S./Canada Area, which was incorrectly omitted from the definition in the proposed rule.

In § 648.87(d)(1)(iii)(A), paragraph (b)(1)(i) is corrected to read (b)(2).

In § 648.88, paragraph (a)(1) is revised, as requested by the Council, to include language to round up to the nearest 25 lb (11.4 kg) an adjustment to the cod trip limit for open access Handgear permitted vessels for ease of administration and enforcement.

In § 648.89, paragraph (e)(3)(ii) is corrected to be consistent with the letter of authorization requirements of the other closed areas.

In § 648.90, paragraph (d) is revised and paragraph (e) is added to reflect disapproval of the removal of the Flexible Area Access Program.

#### Classification

The Regional Administrator determined that the FMP amendment implemented by this rule is necessary

for the conservation and management of the NE multispecies fishery and is consistent with the Magnuson-Stevens Act and other applicable laws.

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

A notice of availability of the FSEIS, which analyzed the impacts of all of the measures under consideration in Amendment 13, was published on February 6, 2004 (68 FR 5856). Through the FSEIS, NMFS has analyzed project alternatives, associated environmental impacts, the extent to which the impacts could be mitigated, and has considered the objectives of the proposed action in light of statutory mandates, including the Magnuson-Stevens Act. NMFS has also considered public and agency comments received during the EIS review periods. In balancing the analysis and public interest, NMFS has decided to partially approve the Council's preferred alternative. NMFS also concludes that all practical means to avoid, minimize, or compensate for environmental harm from the proposed action have been adopted. A copy of the ROD for Amendment 13 is available from the Regional Administrator (see ADDRESSES).

As described in the preamble to the proposed rule, this action is being taken consistent with the Court Order issued in *CLF v. Evans*, which requires implementation of Amendment 13 no later than May 1, 2004. NMFS has been developing the implementing regulations for Amendment 13 since January 2004 with goal of implementing Amendment 13 on May 1, 2004. However, a provision (Div. H, section 105) in the Consolidated Appropriations Act of 2004 precluded NMFS from expending any funds authorized for Fiscal Year 2004 to "implement any measures to reduce overfishing and promote rebuilding of fish stocks managed under the Management Plan [Northeast Multispecies FMP] other than such measures set out in the final rule." This language prevented NMFS from implementing Amendment 13 as a final rule on time to be in compliance with the *CLF* court order unless it was repealed before May 1, 2004. However, on April 13, 2004, President Bush signed into law H.R. 2584, which contains a provision repealing Section 105 of division H of the Consolidated Appropriations Act of 2004, thus enabling NMFS to implement Amendment 13.

To comply with the Court-ordered May 1, 2004 implementation of Amendment 13, the Assistant Administrator for NMFS, under 5 U.S.C. 553(d)(3) finds good cause to waive the

30-day delayed effectiveness for the management measures contained in Amendment 13. Although NMFS is waiving the 30-day delay in effectiveness, the implementing regulations for Amendment 13 will not take effect until May 1, 2004, or as otherwise stated in the "Dates" section above.

This rule contains 21 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 time for a response are as follows:

1. Initial vessel application for a limited access Handgear A permit, OMB Control Number 0648-0202, (10 min/response);
2. Limited access Handgear A permit appeals, OMB Control Number 0648-0202, (2 hr/response);
3. DAS baseline appeal, OMB Control Number 0648-0202, (2 hr/response);
4. DAS Transfer Program application, OMB Control Number 0648-0202, (5 min/response);
5. VMS purchase and installation, OMB Control Number 0648-0202, (1 hr/response);
6. Automated VMS polling of vessel position twice per hour while fishing within the U.S./Canada Area, OMB Control Number 0648-0202, (5 sec/response);
7. VMS proof of installation, OMB Control Number 0648-0202, (5 min/response);
8. SAP area and DAS use declaration via VMS prior to each trip into a SAP, OMB Control Number 0648-0202, (5 min/response);
9. Notice requirements for observer deployment prior to every trip into the CA I Hook Gear SAP, OMB Control Number 0648-0202, (2 min/response);
10. Expedited submission of a proposed SAP, OMB Control Number 0648-0202, (20 hr/response);
11. Request to power down VMS for at least 1 month, OMB Control Number 0648-0202, (5 min/response);
12. Request for an LOA to participate in the GOM Cod Landing Exemption, OMB Control Number 0648-0202, (5 min/response);
13. Request for an LOA to participate in the Yellowtail Flounder Possession/Landing Exemption for the Northern

Yellowtail Trip Limit Area, OMB Control Number 0648-0202, (5 min/response);

14. Request for an LOA to participate in the Yellowtail Flounder Possession/Landing Exemption in SNE and MA RMAs, OMB Control Number 0648-0202, (5 min/response);

15. Request for an LOA to participate in the Monkfish Southern Fishery Management Area Landing Limit and Minimum Fish Size Exemption, OMB Control Number 0648-0202, (5 min/response);

16. Request for an LOA to participate in the Skate Bait-only Possession Limit Exemption, OMB Control Number 0648-0202, (5 min/response);

17. Submission of a sector allocation proposal, OMB Control Number 0648-0202, (50 hr/response);

18. Submission of a plan of operations for an approved sector allocation, OMB Control Number 0648-0202, (50 hr/response);

19. Daily electronic catch and discard reports of GB cod, GB haddock, and GB yellowtail flounder when fishing within the U.S./Canada Area and/or the associated SAPs, OMB Control Number 0648-0212, (0.25 hr/response);

20. Annual reporting requirement for sectors, OMB Control Number 0648-0202, (6 hours/response); and

21. Trip notification for vessels participating in the Eastern U.S./Canada Area for the purpose of observer coverage, OMB Control Number 0648-0202, (5 min/response). Public comment is sought regarding: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS (see ADDRESSES) and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington DC 20503 (Attn: NOAA Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the 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), has prepared this FRFA in support of Amendment 13 to the Fishery Management Plan for Northeast Multispecies (Amendment 13). The FRFA describes the economic impact that this final rule will have on small entities.

The FRFA incorporates the economic impacts summarized in the initial RFA (IRFA) for the proposed rule to implement Amendment 13 (69 FR 4362, January 29, 2004) and the corresponding economic analyses prepared for Amendment 13 (e.g., the FSEIS and the Regulatory Impact Review (RIR)). For the most part, those impacts are not repeated here. A copy of the IRFA, the FRFA, the RIR and the FSEIS are available from NMFS, Northeast Regional Office and on the Northeast Regional Office Website (see ADDRESSES). A description of the reasons why this action is being considered, the objectives of, and legal basis for, the final rule is found in the preamble to the final rule.

### Description of and Estimate of the Number of Small Entities to Which the Final Rule Will Apply

The final rule implements changes affecting any vessel holding a limited access groundfish permit, an open access handgear-only permit, and vessels that hold an open access Party/Charter permit. Based on fishing year 2002 (FY 2002) data, the total number of small entities that may be affected would be 1,442 limited access permit holders, 1,994 Handgear permit holders, and 685 Party/Charter permit holders. However, since an open access permit holder may hold more than one permit, the total number of unique entities holding either a Handgear or a Party/Charter permit was 2,250 of which 1,565 held only a Handgear permit, 306 held only a Party/Charter permit, and 379 held both a Handgear and a Party/Charter permits. The Small Business Administration size standard for small commercial fishing entities is \$3.5 million in gross receipts, while the size standard for small Party/Charter is \$5.0 million in gross receipts. The commercial fishing size standard would apply to limited access permit holders, as well as open access Handgear only permits. Available data based on 1998-2001 average gross receipts show that the maximum gross receipts for any single commercial fishing vessel was \$1.3 million. For this reason, each vessel is treated as a single entity for purposes of size determination and

impact assessment. This means that all commercial fishing entities would fall under the SBA size standard. In addition, since all Party/Charter vessels have gross receipts of under \$5.0 million, these also fall under the SBA size standard. Since all entities were deemed to fall under the SBA size standard for small commercial and recreational fishing entities, there will be no disproportionate impacts between small and large entities.

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

#### Reporting and Recordkeeping Requirements

The measures approved under Amendment 13 include the following provisions requiring either new or revised reporting and recordkeeping requirements: (1) Initial vessel application for a limited access Handgear A permit; (2) limited access Handgear A permit appeals; (3) DAS baseline appeals; (4) DAS Transfer Program application; (5) VMS purchase and installation; (6) automated VMS polling of vessel position twice per hour while fishing within the U.S./Canada Management Area; (7) VMS proof of installation; (8) SAP area and DAS use declaration via VMS prior to each trip into a SAP; (9) expedited submission of a proposed SAP; (10) request to power down VMS for at least 1 month; (11) request for an LOA to participate in the GOM Cod Landing Exemption; (12) request for an LOA to participate in the Yellowtail Flounder Possession/Landing Exemption for the Northern Yellowtail Trip Limit Area; (13) request for an LOA to participate in the Yellowtail Flounder Possession/Landing Exemption in SNE and MA RMAs; (14) request for an LOA to participate in the Monkfish Southern Fishery Management Area Landing Limit and Minimum Fish Size Exemption; (15) request for an LOA to participate in the Skate Bait-only Possession Limit Exemption; (16) submission of a sector allocation proposal; (17) submission of a plan of operations for an approved sector allocation; (18) daily electronic catch and discard reports of GB cod, GB haddock, and GB yellowtail flounder when fishing within the U.S./Canada Management Area and/or the associated SAPs; and (19) annual reporting requirement for sectors. The compliance costs associated with most of these new reporting and recordkeeping requirements are minimal, consisting only of postage and copying costs. Individual vessel owners or groups of vessel owners will be impacted by these



requirements. There will not be a need for professional skills to comply with these requirements, although groups of vessel owners applying for a sector allocation may be advised to seek outside consulting services in preparing and submitting a plan for a sector allocation. Additional information regarding the projected reporting or recordkeeping costs associated with this action was made available for review in NMFS's PRA submission to OMB on or about February 10, 2004.

#### *Other Compliance Requirements*

All groundfish DAS vessels participating in the U.S./Canada Understanding, including all participants in the CA II Yellowtail Flounder SAP, with the exception of the SNE/MA Winter Flounder SAP, must use VMS within these programs. Any vessel that does not currently possess a VMS must obtain one prior to fishing in the U.S./Canada Management Area. The cost of purchasing and installing VMS, along with the associated operational costs is currently estimated at \$3,600 per vessel.

The required changes to mesh size relative to the no-action 2001 baseline (pre-court order and settlement agreement fishery) were estimated to affect 424 trawl vessels fishing in the GOM or GB area, and 221 trawl vessels fishing in the SNE area. The average cost to replace a codend was estimated to be \$1,250. The mesh changes were estimated to affect 18 Day gillnet vessels that use tie-down nets in the GOM. The average cost to these vessels to replace their nets is estimated to be \$7,794. The mesh changes were estimated to affect 31 Day gillnet vessels that use stand-up nets in the GOM. The average cost to these vessels to replace their nets was \$9,300. The mesh changes were estimated to affect 25 Trip gillnet vessels that fish in the GOM. The average cost to these vessels to replace their nets was estimated to be \$18,352. The mesh changes were estimated to affect 32 gillnet vessels that fished in either GB or SNE. The average cost to these vessels to replace their nets was estimated to be \$8,800. However, most requirements to purchase new nets to be in compliance with mesh regulations implemented by this final rule also have appeared in a series of emergency rules to implement the Court Order and subsequent Settlement Agreement. Therefore, for the majority of vessels that have continued in the fishery, these compliance costs have already been met.

The average cost for vessels fishing in the eastern US/Canada Management Area to replace their nets with a flatfish

net was estimated to be \$7500, and the average cost associated with purchasing and installing a separator panel, for the purposes of being in compliance with the haddock separator trawl net requirement, was estimated to be approximately \$747. The modification of an existing flatfish net to meet the requirements of the final rule is estimated to be \$550.

#### **A Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA, 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 forty-nine hundred and forty-one comments on the proposed rule. Of these, there were eleven comments on the IRFA and several comments that directly or indirectly dealt with economic impacts to small entities (vessels) resulting from the management measures presented in the proposed rule to implement Amendment 13.

One commercial fishing group submitted a number of comments on the IRFA. Those comments and NMFS's responses follow:

*Comment A:* The Agency's economic analysis (referring to the IRFA) focuses exclusively on fishing vessels, neglecting a review of the impacts on shoreside infrastructure, accessory businesses, and most importantly, the consumer. The analysis fails to address the magnitude of the effects on port infrastructure, including but not limited to dock owners, processors, gear, fuel and ice suppliers. Without this data and analysis, the review lends itself to more commentary about the analysis that is missing as opposed to the analysis that is present.

*Response:* The IRFA contained in the proposed rule fulfills the requirements of the RFA which directs Federal agencies to analyze economic impacts to small business entities resulting from implementing regulations. Neither the RFA, nor Federal caselaw require Federal agencies to analyze the expected economic impacts resulting from their regulations on small entities *indirectly* affected by the agency's actions. Instead, the RFA analysis is limited to small entities which will be *directly* regulated by a Federal agency. In this case, the analysis is focused on vessels that comprise the affected NE multispecies fleet. The Council's economic analysis contained in Amendment 13 and the RIR address the commenter's concerns. A thorough breakdown of economic impacts by industry, by port, is provided in Volume 1, Section 5.4.6 of

Amendment 13. Results of that analysis fulfills the requirements of E.O. 12866 which requires the Agency to take into account all economic impacts to the Nation resulting from rulemaking. See also response to comment 47.

*Comment B:* The Agency's analysis of the economic impacts is incomplete and not entirely helpful. The Agency itself writes, regarding its primary evaluation for vessels, "Change in gross revenues provides an *incomplete picture* of the impact of the proposed action on vessel profitability making it difficult to determine whether any given vessel may cease business operations." Without knowing the complete impact on fishing vessels how can one attempt to realize the full effect of the proposed rule?

*Response:* The economic analysis for evaluation of vessels in Amendment 13 is not incomplete. In the section cited by the commenter, the analyst is explaining why the Council did *not* use changes in gross revenue as a proxy for profitability, although it is not unusual to use this technique for fishery management actions where cost data is incomplete or unavailable. Instead, the Council estimated a relative measure of profitability change and percent of possible business failures by simulating vessel costs and returns using a combination of the cost data developed for the break-even DAS analysis, available data, and the estimated reduction in effective effort. Specifically, empirical data were used to fit theoretical probability distributions for fixed costs, costs per day, annual revenue on groundfish trips, annual revenue on trips where groundfish were not landed, days absent on groundfish trips, and days absent on trips where groundfish were not landed.

*Comment C:* NMFS states that no data collection system exists to collect cost data comparable to the permit database which collects information on landings and revenues, and there are no means to directly provide a reliable numerical estimate of current profit levels or how many vessels may be able to remain profitable once the proposed action is implemented. The commenter states that these statements only reinforce our frustration regarding economic impacts to communities.

*Response:* NMFS concurs that a comprehensive fishing vessel cost database would improve economic analysis of Amendment 13, or any other management action but such a data base was not available at the time analysis of vessel-level impacts were estimated. Vessel break-even analysis was consistent with similar analyses prepared for prior groundfish actions,



and impacts based on vessel-level changes in gross revenues is also standard practice in the absence of reliable cost data. The limitations of this approach are acknowledged in the FSEIS. See also response to comment 48.

*Comment D:* We are troubled by NMFS's admission that the DAS leasing model is incomplete. Incomplete analysis and modeling does not give a clear picture of the socio-economic effects of leasing, making it difficult to comment effectively on the impact to the industry and fishing communities.

*Response:* NMFS does not believe the mathematical programming model used to determine the profitability of DAS leasing is incomplete. There is no admission of an incomplete analysis found in the IRFA accompanying the proposed rule. Rather, NMFS has described the likely socio-economic impacts resulting from a DAS leasing program in the section entitled "Steps Taken to Minimize Economic Impacts." The Office of Advocacy, U.S. Small Business Administration (Advocacy) submitted the following comments on the IRFA:

*Comment E:* Advocacy notes that NMFS discusses the economic impacts of the various proposed rule requirements individually, and there is no discussion on what the final overall impact of all of the actions and compliance requirements will be on small fishers. Advocacy believes that the transparency and usability of the impact assessment would be improved for use by interested small entities if the costs were presented in a summary table. It is difficult to discern the total cost of the rule on any particular vessel even if one knows all of the data regarding the vessels size and operation location. Advocacy would like to see an introductory statement regarding total impacts to the industry.

*Response:* NMFS has concluded that the approach used in the analysis does not lend itself easily to a broad interpretation of total impacts or impacts to a typical or average multispecies vessel. In many analyses, profitability is assumed to be shared equally among vessels regardless of different geographic areas, gear type, vessel size, etc. In the Amendment 13 economic analysis, the Council was able to specify a more exact estimate of profitability depending upon the socio-economic description of vessels, specifically in regard to vessel size, gear, and port of landing in terms of profitability. This allows a vessel owner of a specific sized vessel, from a specific geographic area, using a specific gear type, to ascertain the impact of the final

rule on a particular vessel. However, in response to Advocacy's request, NMFS has produced a summary table of economic impacts to small vessels resulting from this rule. This table appears as an appendix to the FRFA, which can be obtained from NMFS, Northeast Regional Office and on the Northeast Regional Office Web site (see ADDRESSES).

*Comment F:* An additional change to the presentation of costs that would improve transparency of the analysis would be a detailed description of which compliance requirements are included in the revenue loss and business closure analysis described on pages 4377 to 4379.

*Response:* The Council estimated a relative measure of profitability change and percent of possible business failures by simulating vessel costs and returns using a combination of the cost data developed for the break-even DAS analysis, available data, and the estimated reduction in effective effort. Specifically, empirical data were used to fit theoretical probability distributions for fixed costs, costs per day, annual revenue on groundfish trips, annual revenue on trips where groundfish were not landed, days absent on groundfish trips, and days absent on trips where groundfish were not landed. Specific compliance costs, such as required gear changes, cannot be gleaned from this model. Therefore, the contribution of these costs in determining profitability cannot be accounted for because they are implicit to the economic model. In addition, it is important to note that the replacement of nets occurs on a regular basis regardless of required replacements due to changes in regulated mesh size, and these costs are captured by the economic model.

*Comment G:* NMFS distinguishes between small vessels, medium size vessels, and large vessels in terms of expected economic impact. With the exception of an explanation of what would be classified as a small trawl vessel, there is no information about how NMFS has determined what is a small vessel, medium vessel, or large vessel.

*Response:* In the economic analysis accompanying Amendment 13, large vessels are defined as greater than 70 ft (21.35 m) in total length, medium vessels as 50 ft (15.25 m) to 70 ft (21.35), and small vessels less than 50 ft (15.25 m).

*Comment H:* NMFS states that the costs associated with the reporting and recordkeeping requirements are minimal and consist only of postage and copying costs without providing an

estimate of those costs. Moreover, the estimated time for completing the paperwork is approximately 82 hours. There is no indication that the level of expertise for completing forms has been considered. If these forms require the professional services, complying with the paperwork requirements of the rule would be costly. Even if the forms can be filled out by the business owner, it is time that is being spent that the business owner could spend concentrating on something else. Were these things considered when NMFS concluded that the cost would be minimal? Advocacy encourages NMFS to provide an estimate of what the additional costs may be, as well as a better explanation of its conclusion that the costs will be minimal.

*Response:* The analysis of costs of recordkeeping and reporting contained in the IRFA is consistent with OMB guidance on burden estimates under the PRA. NMFS recognizes that, in the past, burden hours were costed out a certain rate suggested by OMB. However, recent OMB guidance requires that only costs of postage and copying should be considered. Postage costs are assumed to be \$0.37 per submission and copying costs are assumed to be \$0.10 per page.

*Comment I:* In the description and estimate of the number of small entities subject to the proposed rule, NMFS gives a thorough discussion of the commercial fishing industry. However, in terms of recreational Party/Charter vessels, NMFS merely states the size standard for a small Party/Charter vessel and the number of Party/Charter permits that it has issued in the past. There is no information about how many of the recreational vessels would qualify as small business under the 100 employee size standard.

*Response:* Advocacy is correct. NMFS assumed that the public was aware that Party/Charter vessels have relatively small crews, usually 3 to 4 persons. None of the 685 Party/Charter vessels cited in the IRFA have a crew size greater than 100 employees. In addition, the SBA definition of a small Party/Charter vessel is one which has gross receipts under \$5M. Under this definition, none of the Party/Charter vessels affected by this rule are considered small entities under the RFA.

*Comment J:* NMFS asserts that the majority of the Party/Charter vessels earn at least 75 percent of fishing income from passenger fees. However, no basis is provided for that statement. There is also no information regarding average vessel income.

*Response:* The percentage of fishing income from passenger fees for vessels

with a Charter/Party permit, whether they fish exclusively Party/Charter or fish commercially part of the year, is derived directly from the NMFS dealer database. Average income per vessel was not estimated since this would have most likely required a unique survey of Party/Charter vessels to account for refreshment, rental of fishing gear, etc. However, NMFS maintains that the relaxation of the bag limit will increase profitability in the Party/Charter business because it is likely to lead to greater passenger demand and increased frequency of party/charter trips.

*Comment K:* Advocacy states that some members of the fishing industry maintain that the proposed rule includes provisions that were not intended by Amendment 13, including fishing area closures that were not intended by the Council. Specifically, they contend that the closure of the GB Eastern U.S./Canada Management Area when the cod quota is reached may jeopardize Amendment 10 to the Sea Scallop FMP, and they are concerned about the extension of cod trip limits and gear requirements to the Western U.S./Canada Management Area. Advocacy is concerned that these inconsistencies may increase the burden on small entities and that they may not have been considered fully in determining the economic impact of the rule, as required by the RFA.

*Response:* NMFS has fully responded to industry comments regarding inconsistencies with Amendment 13 in the final rule. (see responses to Comments 16 through 18 and 20 through 23 in the preamble to this rule). NMFS, in responding to these comments, has modified the proposed rule as it applies to the U.S./Canada Management Area. Specific changes made in this final rule and their economic impacts to vessels are discussed in the following section, *Economic Impacts Resulting from Disapproved Measures and Changes to the Proposed Rule*.

*Comment L:* One commenter noted that, under the proposed alternative, there would be an impact in New England ports of \$135 million in lost revenue, \$54 million in lost personal income, and 1,900 affected jobs, contrasted with \$95 million in lost revenue, \$38 million in lost personal income, and 1,300 affected jobs associated with the stepped reduction alternative (Alternative 1B) and questioned why NMFS chose to implement an alternative that would produce the same long-term goals, yet at a much larger first-year cost.

*Response:* NMFS recognizes that Alternative 1B is a significant

alternative that would yield a lesser economic impact to the New England region in the first year of the rebuilding plan. In terms of the economic impact to vessels, Alternative 1B is estimated to yield a reduction of \$28 million in first year revenues compared to \$10-40 million for the preferred alternative. However, Alternative 1B consists of a series of increasing DAS reductions of 35 percent in 2004, 45 percent in 2005, 55 percent in 2006, and 65 percent in 2007. The full schedule of reductions was not evaluated because the area closure model used to evaluate all other alternatives is not a dynamic model. Therefore, profitability losses and gains could not be compounded, but only considered on a year-to-year basis.

Applying the area closure model to the full 65-percent reduction in DAS would have misrepresented the year-4 impacts, so it was not done. Alternative 1B also contains the 2:1 DAS counting in SNE and the raised footrope trawl in the CC/GOM stock area. Presumably, at least part of the negative economic impact of the 2005 DAS reduction would be offset by a change in productivity; similarly for the DAS reduction in 2006 and 2007. It is important to note that in order for Alternative 1B to have no additional cumulative negative economic impacts after the first year, the relative change in productivity must be proportional to the change in DAS. In other words, an annual productivity increase of 10 percent would be required to offset the 10-percent reduction in DAS. NMFS believes that it is more likely that cumulative negative economic impacts of 4 years of DAS reductions under Alternative 1B would exceed that of the preferred alternative, especially since the difference between the two alternatives in 2004 is only about \$12 million in gross sales. This gap begins to narrow rather quickly when one considers that, while revenues would likely increase in 2005 under the preferred alternative, they would be declining under Alternative 1B as DAS continue to be reduced. In addition, the FSEIS notes that the negative impacts attributable to the preferred alternative were overestimated because of the inability to formally include the positive effects of harvest under B DAS. Alternative 1B contains no such opportunities. Therefore, NMFS concludes that the gap between these two alternatives narrows in 2004 with the addition of the harvest using B DAS and very much favors the preferred alternative in 2005 through 2007. While Alternative 1B was considered, it was apparent that the risk of not achieving required productivity gains after year 1

was very high and could do irreparable economic harm to the NE multispecies fleet in the final 3 years of the stepped reduction.

While much of the discussion above focuses on impacts to vessels, it is important to note that changes in impacts on revenues earned by the NE multispecies fleet would mirror impacts to the general economy, e.g., revenues earned by non-fishing sectors, personal income, job growth, etc. The Council estimated impacts to the general economy by observing changes in harvest rates and utilizing an input-output model (IMPLAN).

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

As discussed in the preamble of this final rule, NMFS has disapproved seven proposed management measures in Amendment 13, including: An abbreviated application process for SAPs; the CA II Haddock SAP; the CA I Hookgear Haddock SAP; a prohibition on the use of surfclam and ocean quahog dredges in the NLCA; the exemption to allow shrimp trawl gear in the WGOM Closure Area; the GB hookgear cod trip limit program; and the removal of the FAAS. In addition, as discussed in the preamble, NMFS has modified proposed measures regarding the U.S./Canada Management Area of GB, on the basis of public comments received.

The disapprovals of the proposed SAPs in CA I and II will reduce economic benefits vis-a-vis the proposed rule. However, since these SAPs were not implemented during the 2001 baseline period, these disapprovals will have no economic impact on NE multispecies vessels resulting from the final rule, as would be expected under a no action alternative. In the IRFA, under the Category B DAS discussion, NMFS noted that fishing under Category B DAS in these programs will enhance the profitability of participating vessels. However, the management of the SAPs must also meet the requirements of NEPA, the Magnuson-Stevens Act, and other applicable laws, as explained in the preamble of this final rule. It was concluded that the CA II haddock access program could undermine the effectiveness of measures designed to prevent landings and discards of GB cod from exceeding the U.S./Canada shared TAC, and significantly reduce fishing mortality on GB cod. For these reasons the proposed SAP is inconsistent with National Standard 1 and National Standard 2. Amendment 13 does not include information on whether a directed fishery on haddock in CA I

would be successful in avoiding GB cod catches throughout the year. This SAP also proposes to require 100-percent observer coverage, but does not state how this would be accomplished, nor does it justify the costs associated with such a requirement. Because there is no justification provided for the proposal to allow only hook vessels into the SAP, this proposal does not comply with applicable law. For these reasons, the proposed CA II Haddock SAP and the CA I Hook Gear Haddock SAP have been disapproved.

The disapproval of the expedited process for issuance of SAPs is administrative in nature and should not affect the profitability of any particular SAP.

Amendment 13 analyzed the biological and economic impacts of excluding all bottom-tending mobile gear from the EFH Closure Areas, but did not analyze the impacts of excluding clam dredge gear from those portions of the groundfish closure areas that reside outside of the EFH Closure Area boundaries. Because the impacts of the proposed exclusion of clam dredge gear from these areas was not analyzed, the proposed measure to exclude this gear from the groundfish closure areas that reside outside the EFH Closure Areas is inconsistent with National Standard 2 and EFH requirements under the Magnuson-Stevens Act, and has therefore, been disapproved.

The disapproval of the prohibition of surfclam and ocean quahog dredges in portions of the NLCA that are not contained in the Nantucket Lightship Closed Habitat Area will increase economic benefits to vessels participating in these fisheries vis-a-vis the proposed rule. However, when compared to the 2001 baseline, the disapproval will have no economic impact to these vessels resulting from the final rule, since they are already engaged in fishing in the NLCA, tantamount to a no action alternative. Nevertheless, as discussed in the IRFA, surfclam and ocean quahog vessels currently utilizing the NLCHA are expected to undergo a decrease in revenues of 0.9 percent resulting from the prohibition on fishing in that area. See the response to Comment 6.

The disapproval of an exemption for shrimp trawlers to fish in the WGOM Closed Area will reduce economic benefits vis-a-vis the proposed rule. However, the exemption in all other areas outside the small mesh exemption line will allow shrimp trawlers to expand their harvest, and thus, the net economic impact of the exemption will increase profitability of individual vessels relative to the 2001 baseline.

This proposed measure has been disapproved because it would compromise the effectiveness of this habitat closure and because there is inadequate justification supporting such an exemption. Exemption of shrimp trawl vessels from the WGOM Habitat Closure Area without clear justification is inconsistent with National Standard 2.

The disapproval of the GB hookgear cod trip limit program is likely to have a negative economic impact on individual vessels relative to the proposed rule, since this would have allowed for a higher trip limit under certain spatial and temporal conditions. However, when compared to the 2001 baseline, there is no economic impact from disapproving this measure because it is identical to a no action alternative.

The disapproval of the Council's recommendation to eliminate the FAAS will have no economic impact to vessels. The FAAS represents a rarely used administrative procedure to implement rules quickly.

The changes to the proposed rule regarding the U.S./Canada Management Area are an allowance for vessels other than groundfish DAS vessels to continue to fish in the Eastern U.S./Canada Management Area, and the relaxation of the cod limit and gear restrictions, as described in the preamble of this final rule, for groundfish DAS vessels fishing in the Western U.S./Canada Management Area. Removing the prohibition on fishing by other gears in the Eastern U.S./Canada Management Area will increase economic benefits to those vessels relative to the proposed rule, in which all gears capable of catching groundfish would have been prohibited. However, since those vessels cannot retain NE multispecies when the TACs are reached, as they could in 2001, there will be a negative impact on revenues compared to the 2001 baseline period, but limited by the fact that NE multispecies is a limited incidental catch associated with a relatively large catch of scallops or monkfish by category A and B vessels. Relaxation of the cod limit and the removal of the restriction to use flatfish nets or separator trawls in the Western U.S./Canada Management Area will yield positive economic impacts to affected DAS groundfish vessels vis-a-vis the proposed rule. The cod trip limit would increase from 500 lb (1,102 kg) to 1,000 lb (2,204 kg) and cost savings will be realized because gear modification will not be required in the Western U.S./Canada Management Area. However, when compared to the 2001 baseline, the reduction in the cod limit from

2,000 lb (4,408 kg) to 1,000 lb (2,204 kg) would continue to negatively impact revenues of individual vessels participating in the Western U.S./Canada Management Area. The removal of the requirement to use a haddock separator trawl or flatfish net when fishing in the Western U.S./Canada Management Area represents a decrease in compliance costs and concomitant increase in profitability for certain vessels, relative to the proposed rule, that would otherwise have had to obtain a new flatfish net or modify existing haddock or flatfish nets at costs estimated to be \$7,500, \$747, and \$550, respectively. Relative to the 2001 baseline, however, this represents no change in fishing requirements and, hence, there is no economic impact to vessels fishing this area. In response to public comment, this final rule will also allow a modification of existing flatfish nets for use in the Eastern U.S./Canada Management Area. The cost of this modification is estimated to be \$550 (see compliance costs).

**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 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 final rule contains a number of measures that will provide small entities with some degree of flexibility to be able to offset at least some portion of the estimated losses in profit. The major offsetting measures include the opportunity to use additional B DAS, leasing of DAS, DAS transfer, and sector allocation. This final rule is expected to achieve target fishing mortality rates for stocks that are most adversely affected.

**Category B DAS**

Category B DAS will be subdivided into two categories, one which would be used in SAPs (reserve B DAS), while the use of the remaining B DAS (regular B DAS) will be determined in a future framework action. The primary purpose of B DAS is to provide access to and increased yield from stocks that may be fished at higher levels. These opportunities would enhance profitability for vessels that may be able to participate in any one or more of these special fisheries.

### DAS Leasing or Transfer

Particularly for vessels with few alternative fisheries, reductions in profit may be offset by the ability to acquire more DAS either through leasing or DAS transfer. The former would make DAS available to a vessel for a single fishing season whereas the latter would be a permanent transfer of DAS from one vessel to another. Transferred DAS would be subject to a 40-percent conservation tax on the transfer of active DAS, and a 90-percent conservation tax on inactive (Category C) DAS, but vessels would be able to acquire both Category A and Category B DAS. By contrast, a DAS lease would not be subject to a conservation tax, but vessels would be only allowed to acquire Category A DAS. It is not known which option any given vessels may choose to pursue, but analysis clearly suggests that making DAS available in some form of exchange can improve overall profitability for both buyer and seller. The following describes this analysis.

The economic impact of a DAS leasing program was estimated by simulating a quota market using a math programming model. The model maximized industry profits by choosing the days each vessel will fish (if any) of their own allocation, days they will lease from other vessels, and the number of their days they will lease to other vessels. Each vessel can only fish a maximum number of DAS, which is the sum of their Amendment 13 Category A DAS allocation and their FY 2001 allocation. Days fished above their allocation of days must be leased from other vessels. In the model, vessels were constrained to be either a lessee or lessor, although in a real-world situation a vessel could be a lessee and a lessor simultaneously. Restrictions were placed on the model, which did not allow days to be leased by larger vessels from smaller vessels, consistent with the restrictions of this program. Results from the model yielded a very efficient outcome in terms of maximizing industry profit with as few vessels as possible. In reality, the actual leasing of DAS among industry participants may not be as profitable as projected by the math programming model. An individual vessel's activity level chosen by the model is determined by its productivity, the maximum allowable days it can fish, the lease price for DAS, daily fishing costs, and the prices of each species, and a restriction that prohibits leasing of days from smaller vessels by bigger vessels. The model doesn't differentiate between areas fished, where vessels land their fish, and a variety of other factors that will

influence the amount of DAS leased, including other fisheries in which the vessel can participate, and it assumes perfect information among participants.

Vessels were grouped together, regardless of gear type, and then stratified into fleets of 100 vessels. Each fleet was then paired with itself, and then with every other fleet to simulate trades between all 1,345 vessels that could potentially lease quota. For each sector pair, the model was run 50 times in order to incorporate a stochastic lease price, which was generated based on results from a previous linear programming model. Lease prices used in the model ranged from \$218 to \$2,093, with a mean of \$1,029. Results from the simulations were used to examine changes in profitability which would occur from allowing DAS leasing.

Results from the simulation runs were stratified by gear type and length of vessel. Class 1 vessels were less than 50 ft (15.25 m); class 2 vessels were between 50 ft (15.25 m) and 69 ft (21.04 m), and class 3 vessels were 70 ft (21.35 m) and greater. The three gear types examined were hook (50 vessels), trawl (1,126 vessels) and gillnet (169 vessels). There were more vessels in the model than had Category A DAS in the proposed action. Because vessels can fish up to the total of their Category A DAS and their FY 2001 allocation, vessels with zero Category A DAS can still lease DAS, and therefore need to be included in the model. Because the model is attempting to maximize industry profit, under a DAS leasing scheme, fewer vessels will fish. However, mean profits for all vessels will be higher than if DAS trading were not allowed, and all vessels fished their allocation. Mean profits are also higher than those generated by actual fishing during calendar year 2002 by vessels actually fishing. Vessels that choose to lease all their DAS can greatly enhance their profit, since the owner is getting all the revenue from the lease without incurring any costs, and in particular by not having to pay labor costs. The decision from a vessel perspective on whether to lease DAS to other vessels is based on whether they can lease their DAS for more than they would earn after paying expenses, including payments to the crew. If a vessel decides to lease DAS from other vessels, it is based on whether it can earn more from a leased DAS than what it will pay for the lease, plus what it will pay to the crew and to cover other expenses.

Model results generally showed the flow of lease days going from larger vessels to smaller vessels. Trawl and gillnet vessels less than 50 ft (15.25 m) in length were projected to use more

DAS than in 2002 under a DAS leasing scheme. Trawl and gillnet vessels greater than 50 ft (15.25 m) were projected to have their DAS usage decline from 2002 levels. Hook vessels were projected to see their DAS increase. Restrictions on DAS trading make it difficult for larger vessels to lease from smaller vessels, but the opposite does not hold. Small vessels have a large potential number of vessels that they can lease from, which is what model results show. The analysis concludes that larger vessels can profit by leasing their days to smaller vessels. For example, length class 2 trawl vessels average profit was \$68,387 using an average of 36.92 days of effort under a DAS leasing scheme, while their average profit was \$31,428 using 46.13 days of effort in 2002. Small trawl vessels average profit was \$41,111 using 31.9 days of effort under DAS leasing, while their 2002 average profit was \$12,271, and their average DAS was 25.13. This demonstrates that both sectors would be better off with a DAS leasing program than fishing at their calendar year 2002 effort levels.

Additionally, the average profit levels were projected to be higher under DAS leasing than if the vessels fished at their allocated 2004 levels. This demonstrates DAS leasing could provide substantial regulatory relief to these vessels compared with no leasing (no action alternative).

### Handgear A Permit

The final rule converts the existing open access handgear permit into a limited access category and creates an open access category for Handgear A permits. Vessels that qualify for a limited access Handgear A permit will benefit from a relaxation of the cod trip limit and will not be subject to trip limits on any other species. Vessels that do not qualify for limited access Handgear A permit will still be able to obtain an open access permit, but the cod trip limit will be much lower than current Handgear only permit holders may retain. Available data show that, even though a large number of open access handgear permits have been issued in the past, less than 10 percent of these permits actually report landings of any amount of either cod or haddock. A preliminary assessment of qualification indicates that approximately 150 vessels will qualify for a limited access Handgear A permit. Thus, the conversion to a limited access permit with the potential to achieve higher landings and higher incomes overall also may permit the majority of small entities currently participating in the fishery to continue operating. The

no action alternative would yield no economic benefits as compared to the proposed action. Therefore, the proposed alternative is favorable when compared to the no action.

#### **Elimination of the Area Restriction for the Northern Shrimp Exempted Fishery**

The northern shrimp fishery will no longer be restricted to the area shoreward to the small mesh fishery exemption line. However, vessels will continue to be prohibited from fishing in the WGOM Habitat Closure Area. While this prohibition will reduce economic benefits vis-a-vis the proposed management measure, which would have allowed fishing in a much larger area, the lifting of the restriction to fish shoreward of the small fishery exemption line will yield an increase in the profitability of shrimp vessels, albeit smaller than originally proposed. The no action alternative would have yielded no economic benefits and would not have changed the economic conditions in the shrimp fishery. Therefore, this management measure is favorable when compared to the no action alternative.

#### **Tuna Purse Seine Vessel Access to Groundfish Closed Areas**

Tuna purse seine gear is defined as exempted gear for the purposes of the FMP. Tuna purse seine vessels will be allowed into all groundfish closed areas, subject only to the normal restrictions for using an exempted gear in the area. This will benefit the purse seiners by expanding groundfish areas available for fishing and, thus, allow those vessels to increase profitability. The Council recognizes that part of the seine contains mesh less than the regulated mesh size for the NE multispecies fisheries.

#### **SNE General Category Scallop Vessel Exemption Program**

Unless otherwise prohibited in 50 CFR 648.81, vessels with a limited access scallop permit that have declared out of the DAS program as specified in § 648.10, or that have used up their DAS allocations, and vessels issued a General Category scallop permit, may fish in statistical areas 537, 538, 539, and 613—defined as the SNE General Category Scallop Exemption Area—when not under a NE multispecies DAS. This relieves a restriction and allows scallop vessels to enter expanded areas for the harvest of scallops, allowing those vessels to increase profits, if available. The no action alternative would yield no economic benefits, because vessels would be precluded from participating in this program. Therefore, the proposed

alternative is favorable when compared to the no action alternative.

#### **Modified VMS Operation Requirement**

A vessel using a VMS can opt out of the fishery for a minimum period of 1 calendar month by notifying the Regional Administrator. Notification must include the date a vessel will resume transmitting VMS reports. After receiving confirmation from the Regional Administrator, the vessel operator can stop sending VMS reports. During the period out of the VMS program, the vessel cannot engage in any fisheries until the VMS is turned back on. This will reduce operating costs associated with VMS operation (see section 3.4.11 of Amendment 13). The no action alternative would yield no economic benefits. Therefore, the proposed alternative is favorable when compared to the no action alternative.

#### **Revised Standards for Certification for Incidental Catch/Exempted Fisheries**

The standards for certification of a incidental catch/exempted fishery that were implemented through Amendment 7 would continue to be used. However, this measure allows the Regional Administrator to modify the 5-percent incidental catch rule and make additional modifications on a one-to-one basis under an accepted set of conditions. The economic benefits or costs of this measure are uncertain, since the Regional Administrator could decrease the percentage used in the incidental catch rule, as well as increase it. However, the measure is intended to allow a very controlled expansion of fishing areas, thus, benefitting vessels economically while conserving species of concern. The effect of the no action alternative would depend on the Regional Administrator's determination on a case-by-case basis, *e.g.*, if the Regional Administrator lowered the acceptable incidental catch percentage, the no action alternative would have a beneficial impact, but if the acceptable incidental catch percentage were increased, the no action alternative would have a negative impact.

#### **Periodic Adjustment Process**

The annual adjustment process is revised to be a biennial adjustment, with the PDT performing a review and submitting management recommendations to the Council every 2 years. This will tend to have a positive effect on profitability of individual vessels, since it expands their planning horizon, making their fishing operations more efficient and profitable. The no action alternative would yield no economic benefits. Therefore, the

proposed alternative is favorable when compared to the no action alternative.

#### **U.S./Canada Resource Sharing Understanding**

Management of GB cod, haddock, and yellowtail flounder is subject to the terms of the Understanding. The Understanding specifies an allocation of GB cod, haddock, and yellowtail flounder for each country. The management objective is for the U.S. fishery to harvest the shared stocks of cod, haddock, and yellowtail flounder at, but not above, the U.S. allocation. This allocation would be based on a formula, which includes historical catch percentage and present resource distribution. The economic implications of this agreement would depend on the specific allocation, the reduction in DAS attributable to steaming time, and other economic considerations such as fuel prices and Canadian and U.S. fish prices. This measure would most likely benefit larger vessels who traditionally fish GB. It would also allow each country to plan its fishing activities in advance which could result in a more efficient use of the limited resources found on GB, thus, increasing the profitability of individual vessels engaged in the fishery. The no-action alternative would yield no economic benefits as this system would not be established and fishermen would not be in a position to benefit from management measures established through this Understanding. Therefore, the proposed alternative is favorable when compared to the no-action.

#### **Sector Allocation**

Under this measure, sector allocation may be used to apportion part or all of groundfish fishery resources to various industry sectors. A self-selected group of permit holders may agree to form a sector and submit a binding plan for management of that sector's allocation of catch or effort. Allocations to each sector may be based on catch (hard TACs) or effort (DAS), with target TACs specified for each sector. Vessels within the sector are allowed to pool harvesting resources and consolidate operations in fewer vessels if they desire. One of the major benefits of self-selecting sectors is that they provide incentives to self-govern, therefore, reducing the need for Council-mandated measures. A primary motivation for the formation of a sector is assurance that members of the sector will not face reductions of catch or effort as a result of the actions of vessels outside the sector (*i.e.*, if the other vessels exceed their target TACs). This measure could benefit vessels within a sector, since they would be able to

better plan and control their fishing operations. However, as sector plans evolve, each plan would need to include an economic analysis to determine the extent, if any, that vessels outside the sector are negatively impacted. By creating a process for the formation of self-selecting sectors, Amendment 13 creates an opportunity for groups of vessels to adapt their fishing behavior so that they remain economically viable in the face of increasing restrictions imposed to rebuild groundfish stocks. The ability to form a sector could be an important component of providing flexibility to small commercial fishing entities to mitigate the economic impacts of the Amendment. Further, depending on the geographic location of the membership of a given sector, sector allocation could also provide an opportunity for fishing communities to reduce economic impacts. The no action alternative would yield no economic benefits. Therefore, the proposed alternative is favorable when compared to the no-action alternative.

#### GB Hook Sector

The final rule creates a voluntary sector for longline/hook vessels on GB. This provides an opportunity for vessels to mitigate the impacts of the management alternatives. By organizing into a cooperative, vessels may be able to develop more efficient ways to harvest groundfish and minimize the inefficiencies that result from the regulations. While it is not possible to estimate the economic impacts of a sector until the actual participants are known, the pool of participants will probably be the vessels that have used longline gear to fish on GB in the past.

The are significant alternatives included in this final rule associated with the choice of the rebuilding measures and the disapproval of SAPs and other mitigating factors. In addition to the No-Action alternative which leaves the fishery unchanged, the phased-reduction alternatives 1B and 1D would have a lesser negative impact on multispecies vessels than the proposed alternative in the first year of the rebuilding period; \$28.3M and \$33M, respectively, compared to \$40M for the proposed alternative. All other rebuilding alternatives would have a higher negative economic impact on vessels during the first year. The non-selection of the No-Action alternative results from a Court Order which required the agency to pursue a rebuilding plan for overfished stocks in the Northeast multispecies complex. The rationale for not selecting Alternative 1B is discussed above and in the response to Comment 30 in the

preamble. Both 1B and 1D are phased-reduction alternatives; the difference being a hook limit for cod on Georges Bank for Alternative 1D yielding a greater economic impact than 1B. However, the point is that both phased-reduction strategies could yield greater rewards in the first year but at a much higher economic risk in the following three year period. It is this risk that the Council considered when deliberating on a preferred alternative. In addition, the preferred alternative consists of a B DAS program for fishing in the SAPs, which will potentially yield greater economic benefits for those fishers able to participate in this program. The phased-reduction alternatives do not include B DAS. The mitigating alternatives would all yield a higher economic benefit, primarily because they represent either the removal of current fishing restrictions or opportunities for expanded fishing. Therefore, the disapproval of 2 SAPs and the exemption for shrimp trawlers in habitat closed areas, specifically the WGOM habitat closed areas, actually constitute the non-selection of significant alternative since the proposed alternatives for these management measures would have yielded higher economic impacts to fishing vessels. A discussion of the rationale for these disapprovals appears in this final rule under "Disapproved Measures".

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide was prepared. The guide will be sent to all holders of permits issued for the NE multispecies fishery. In addition, copies of this final rule and guide (*i.e.*, permit holder letter) are available from the Regional Administrator and are also available at NMFS, Northeast Region (see ADDRESSES).

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 15, 2004.

**John Oliver,**

*Acting Assistant Administrator for Fisheries, 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 "Bottom tending mobile gear," "Circle hook," "DAS Lease," "DAS Lessee," "DAS Lessor," "Handgear," "Sector," "Static gear," "Stock of concern," "Stocks targeted by the default measures," "Sub-lease," "Transboundary Management Guidance Committee," "Transboundary Resource Advisory Committee," "Tub-trawl," "Tuna purse seine gear," and "U.S./Canada Steering Committee," are added in alphabetical order, to read as follows:

#### § 648.2 Definitions.

\* \* \* \* \*

*Bottom-tending mobile gear*, with respect to the NE multispecies fishery, means gear in contact with the ocean bottom, and towed from a vessel, which is moved through the water during fishing in order to capture fish, and includes otter trawls, beam trawls, hydraulic dredges, non-hydraulic dredges, and seines (with the exception of a purse seine).

\* \* \* \* \*

*Circle hook*, with respect to the NE multispecies fishery, means a fishing hook with the point turned perpendicularly back to the shank, or an offset circle hook where the barbed end of the hook is displaced relative to the parallel plane of the eyed-end, or shank, of the hook when laid on its side.

\* \* \* \* \*

*DAS Lease*, with respect to the NE multispecies limited access fishery, means the transfer of the use of DAS from one limited access NE multispecies vessel to another limited access NE multispecies vessel for a period not to exceed a single fishing year.

*DAS Lessee*, with respect to the NE multispecies limited access fishery, means the NE multispecies limited access vessel owner and/or the associated vessel that acquires the use of DAS from another NE multispecies limited access vessel.

*DAS Lessor*, with respect to the NE multispecies limited access fishery, means the NE multispecies limited access vessel owner and/or the associated vessel that transfers the use

of DAS to another NE multispecies limited access vessel.

\* \* \* \* \*

*Handgear*, with respect to the NE multispecies fishery, means handline gear, rod and reel gear, and tub-trawl gear.

\* \* \* \* \*

*Sector*, with respect to the NE multispecies fishery, means a group of vessels that have voluntarily signed a contract and agree to certain fishing restrictions, and that have been allocated a portion of the TAC of a species, or an allocation of DAS.

\* \* \* \* \*

*Static gear*, with respect to the NE multispecies fishery, means stationary gear, usually left for a period of time in one place, that depends on fish moving to the gear, and includes gillnets, longlines, handgear, traps, and pots.

*Stock of concern*, with respect to the NE multispecies fishery, means a stock that is in an overfished condition, or that is subject to overfishing.

*Stocks targeted by the default measures*, with respect to the NE multispecies fishery, are: American plaice, and SNE/MA yellowtail flounder for the 2006 fishing year; and American plaice, GB cod, GOM cod, CC/GOM yellowtail flounder, SNE/MA yellowtail flounder, white hake and SNE/MA winter flounder for the 2009 fishing year.

*Sub-lease*, with respect to the NE multispecies fishery, means the leasing of DAS that have already been leased to another vessel.

\* \* \* \* \*

*Transboundary Management Guidance Committee (TMGC)*, with respect to the NE multispecies fishery, means the technical sub-committee that provides non-binding guidance to the U.S./Canada Steering Committee, comprised of government and industry representatives from U.S. and Canada.

*Transboundary Resource Advisory Committee (TRAC)*, with respect to the NE multispecies fishery, means a committee consisting of scientific staff from NMFS and Canada's Department of Fisheries and Oceans that jointly assess the status of the shared U.S./Canada stocks of cod, haddock, and yellowtail flounder.

\* \* \* \* \*

*Tub-trawl*, with respect to the NE multispecies fishery, means gear designed to be set horizontally on the bottom, with an anchored mainline to which are attached three or more gangions and hooks. Tub-trawls are retrieved only by hand, not by mechanical means.

*Tuna purse seine gear*, with respect to the NE multispecies fishery, means encircling gear designed and utilized to harvest pelagic tuna.

\* \* \* \* \*

*U.S./Canada Steering Committee*, with respect to the NE multispecies fishery, means the joint U.S./Canada committee consisting of staff from NMFS and Canada's Department of Fisheries and Oceans that has overall responsibility for the U.S./Canada Resource Sharing Understanding.

\* \* \* \* \*

■ 3. In § 648.4, paragraph (a)(1)(i)(A), paragraph (a)(1)(i)(E) introductory text, paragraphs (a)(1)(i)(G), (a)(1)(i)(I)(1) and (a)(1)(i)(M), (a)(1)(ii) and paragraph (c)(2)(iii) are revised to read as follows:

**§ 648.4 Vessel permits.**

(a) \* \* \*

(1) \* \* \*

(i) \* \* \*

(A) *Eligibility*. To be eligible to apply for a limited access NE multispecies permit, as specified in § 648.82, a vessel must have been issued a limited access NE multispecies permit for the preceding year, be replacing a vessel that was issued a limited access NE multispecies permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history; unless otherwise specified in this paragraph (a)(1)(i)(A). For the fishing year beginning May 1, 2004, a vessel may apply for a limited access Handgear A permit described in § 648.82(b)(6), if it meets the criteria described under paragraphs (a)(1)(i)(A)(1) and (2) of this section.

(1) The vessel must have been previously issued a valid NE multispecies open access Handgear permit during at least 1 fishing year during the fishing years 1997 through 2002; and

(2) The vessel must have landed and reported to NMFS at least 500 lb (226.8 kg) of cod, haddock, or pollock, when fishing under the open access Handgear permit in at least 1 of the fishing years from 1997 through 2002, as indicated by NMFS dealer records (live weight), submitted to NMFS prior to January 29, 2004.

(3) *Application/renewal restrictions*. The vessel owner must submit a complete application for an initial limited access handgear permit before May 1, 2005. For fishing years beyond the 2004 fishing year, the provisions of paragraph (a)(1)(i)(B) of this section apply.

\* \* \* \* \*

(E) *Replacement vessels*. With the exception of vessels that have obtained

a limited access Handgear A permit described in § 648.82(b)(6), to be eligible for a limited access permit under this section, the replacement vessel must meet the following criteria and any other applicable criteria under paragraph (a)(1)(i)(F) of this section:

\* \* \* \* \*

(G) *Consolidation restriction*. Except as provided for in the NE Multispecies DAS Leasing Program, as specified in § 648.82(k), and the NE Multispecies DAS Transfer Program as specified in § 648.82(l), limited access permits and DAS allocations may not be combined or consolidated.

\* \* \* \* \*

(I) \* \* \*  
(I) A vessel may be issued a limited access NE multispecies permit in only one category during a fishing year. Vessels may not change limited access NE multispecies permit categories during the fishing year, except as provided in paragraph (a)(1)(i)(I)(2) of this section. A vessel issued a limited access NE multispecies Hook-gear permit or a limited access Handgear A permit may not change its limited access permit category at any time.

\* \* \* \* \*

(M) *Appeal of denial of permit—(1) Eligibility*. Any applicant eligible to apply for a limited access multispecies Handgear A permit who is denied such permit may appeal the denial to the Regional Administrator within 30 days of the notice of denial. Any such appeal must be based on the grounds that the information used by the Regional Administrator was based on incorrect data, must be in writing, and must state the grounds for the appeal.

(2) *Appeal review*. The Regional Administrator will appoint a designee who will make the initial decision on the appeal. The appellant may request a review of the initial decision by the Regional Administrator by so requesting in writing within 30 days of the notice of the initial decision. If the appellant does not request a review of the initial decision within 30 days, the initial decision is the final administrative action of the Department of Commerce. Such review will be conducted by a hearing officer appointed by the Regional Administrator. The hearing officer shall make findings and a recommendation to the Regional Administrator, which shall be advisory only. Upon receiving the findings and the recommendation, the Regional Administrator will issue a final decision on the appeal. The Regional Administrator's decision is the final administrative action of the Department of Commerce.



(3) *Status of vessels pending appeal.* A vessel denied a limited access Handgear A multispecies permit may fish under the limited access multispecies Handgear A category, provided that the denial has been appealed, the appeal is pending, and the vessel has on board a letter from the Regional Administrator authorizing the vessel to fish under the limited access category. The Regional Administrator will issue such a letter for the pendency of any appeal. Any such decision is the final administrative action of the Department of Commerce on allowable fishing activity, pending a final decision on the appeal. The letter of authorization must be carried on board the vessel. If the appeal is finally denied, the Regional Administrator shall send a notice of final denial to the vessel owner; the authorizing letter becomes invalid 5 days after receipt of the notice of denial.

(ii) *Open access permits.* A vessel of the United States that has not been issued and is not eligible to be issued a limited access multispecies permit is eligible for and may be issued an "open access multispecies", "handgear", or "charter/party" permit, and may fish for, possess on board, and land multispecies finfish subject to the restrictions in § 648.88. A vessel that has been issued a valid limited access scallop permit, but that has not been issued a limited access multispecies permit, is eligible for and may be issued an open access scallop multispecies possession limit permit and may fish for, possess on board, and land multispecies finfish subject to the restrictions in § 648.88. The owner of a vessel issued an open access permit may request a different open access permit category by submitting an application to the Regional Administrator at any time.

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(iii) An application for a limited access NE multispecies permit must also contain the following information:

(A) For vessels fishing for NE multispecies with gillnet gear, with the exception of vessels fishing under the Small Vessel permit category, an annual declaration as either a Day or Trip gillnet vessel designation as described in § 648.82(k). A vessel owner electing a Day or Trip gillnet designation must indicate the number of gillnet tags that he/she is requesting, and must include a check for the cost of the tags. A permit holder letter will be sent to the owner of each eligible gillnet vessel, informing him/her of the costs associated with this tagging requirement and providing

directions for obtaining tags. Once a vessel owner has elected this designation, he/she may not change the designation or fish under the other gillnet category for the remainder of the fishing year. Incomplete applications, as described in paragraph (e) of this section, will be considered incomplete for the purpose of obtaining authorization to fish in the NE multispecies gillnet fishery and will be processed without a gillnet authorization.

(B) [Reserved]

\* \* \* \* \*

■ 4. In § 648.7, paragraphs (a)(1) introductory text, (a) (1)(i), and (b)(1)(i) are revised to read as follows:

**§ 648.7 Recordkeeping and reporting requirements.**

(a) \* \* \*

(1) *Detailed weekly report.* Until otherwise required by the Regional Administrator, federally permitted dealers must submit to the Regional Administrator, or official designee, a detailed weekly report, within the time periods specified in paragraph (f) of this section, on forms supplied by or approved by the Regional Administrator, and a report of all fish purchases, except for surfclam and ocean quahog dealers or processors, who are required to report only surfclam and ocean quahog purchases. Once authorized in writing by the Regional Administrator, all dealers must submit daily reports electronically or through other media. The following information, and any other information required by the Regional Administrator, must be provided in the report:

(i) All dealers issued a dealer permit under this part, with the exception of those utilizing the surfclam or ocean quahog dealer permit, must provide: Dealer name and mailing address; dealer permit number; name and permit number or name and hull number (USCG documentation number or state registration number, whichever is applicable) of vessels from which fish are landed or received; trip identifier for a trip from which fish are landed or received; dates of purchases; pounds by species (by market category, if applicable); price per pound by species (by market category, if applicable) or total value by species (by market category, if applicable); port landed; signature of person supplying the information; and any other information deemed necessary by the Regional Administrator. The dealer or other authorized individual must sign all report forms. If no fish are purchased during a reporting week, no written report is required to be submitted. If no

fish are purchased during an entire reporting month, a report so stating on the required form must be submitted.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) Unless otherwise required under § 648.85(a), the owner or operator of any valid permit under this part must maintain on board the vessel, and submit, an accurate fishing log report for each fishing trip, regardless of species fished for or taken, on forms supplied by or approved by the Regional Administrator. Once authorized in writing by the Regional Administrator, a vessel owner or operator must submit trip reports electronically, for example by using a VMS or other media. At that time electronic trip reports would replace the Fishing Vessel Trip Report. With the exception of those vessel owners or operators fishing under a surfclam or ocean quahog permit, at least the following information and any other information required by the Regional Administrator must be provided: Vessel name; USCG documentation number (or state registration number, if undocumented); permit number; date/time sailed; date/time landed; trip type; number of crew; number of anglers (if a charter or party boat); gear fished; quantity and size of gear; mesh/ring size; chart area fished; average depth; latitude/longitude (or loran station and bearings); total hauls per area fished; average tow time duration; hail weight, in pounds (or count of individual fish, if a party or charter vessel), by species, of all species, or parts of species, such as monkfish livers, landed or discarded; and, in the case of skate discards, "small" (*i.e.*, less than 23 inches (58.4 cm), total length) or "large" (*i.e.*, 23 inches (58.4 cm) or greater, total length) skates; dealer permit number; dealer name; date sold, port and state landed; and vessel operator's name, signature, and operator's permit number (if applicable).

\* \* \* \* \*

■ 5. In § 648.9, paragraphs (b)(5) and (c) are revised to read as follows:

**§ 648.9 VMS requirements.**

\* \* \* \* \*

(b) \* \* \*

(5) The VMS shall provide accurate hourly position transmissions every day of the year unless otherwise required under paragraph (c)(1)(ii) of this section, or unless exempted under paragraph (c)(2) of this section. In addition, the VMS shall allow polling of individual vessels or any set of vessels at any time, and receive position reports in real time. For the purposes of this specification,



“real time” shall constitute data that reflect a delay of 15 minutes or less between the displayed information and the vessel’s actual position.

\* \* \* \* \*

(c) *Operating requirements for all vessels.* (1) Except as provided in paragraph (c)(2) of this section, or unless otherwise required by § 648.58(h) or paragraph (c)(1)(ii) of this section, all required VMS units must transmit a signal indicating the vessel’s accurate position, as specified under paragraph (c)(1)(i) of this section.

(i) At least every hour, 24 hours a day, throughout the year.

(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.

(2) *Power down exemption.* (i) Any vessel required to transmit the vessel’s location at all times, as required in paragraph (c)(1) of this section, is exempt from this requirement if it meets one or more of the following conditions and requirements:

(A) The vessel will be continuously out of the water for more than 72 consecutive hours, the vessel signs out of the VMS program by obtaining a valid letter of exemption pursuant to paragraph (c)(2)(ii) of this section, and the vessel complies with all conditions and requirements of said letter;

(B) For vessels fishing with a valid NE multispecies limited access permit, the vessel owner signs out of the VMS program for a minimum period of 1 calendar month by obtaining a valid letter of exemption pursuant to paragraph (c)(2)(ii) of this section, the vessel does not engage in any fisheries until the VMS unit is turned back on, and the vessel complies with all conditions and requirements of said letter; or

(C) The vessel has been issued an Atlantic herring permit, and is in port, unless required by other permit requirements for other fisheries to transmit the vessel’s location at all times.

(ii) *Letter of exemption—(A) Application.* A vessel owner may apply for a letter of exemption from the VMS transmitting requirements specified in paragraph (c)(1) of this section for his/her vessel by sending a written request to the Regional Administrator and providing the following: The location of the vessel during the time an exemption is sought; and the exact time period for which an exemption is needed (*i.e.*, the

time the VMS signal will be turned off and turned on again); and, in the case of a vessel meeting the conditions of paragraph (c)(2)(i)(A) of this section, sufficient information to determine that the vessel will be out of the water for more than 72 continuous hours. The letter of exemption must be on board the vessel at all times, and the vessel may not turn off the VMS signal until the letter of exemption has been received.

(B) *Issuance.* Upon receipt of an application, the Regional Administrator may issue a letter of exemption to the vessel if it is determined that the vessel owner provided sufficient information as required under paragraph (c)(2) of this section, and that the issuance of the letter of exemption will not jeopardize accurate monitoring of the vessel’s DAS. Upon written request, the Regional Administrator may change the time period for which the exemption is granted.

\* \* \* \* \*

■ 6. In § 648.10, paragraphs (b), (c), and (f) are revised to read as follows:

**§ 648.10 DAS notification requirements.**

\* \* \* \* \*

(b) *VMS Notification.* (1) The following vessels must have installed on board an operational VMS unit that meets the minimum performance criteria specified in § 648.9(b), or as modified pursuant to § 648.9(a):

(i) A scallop vessel issued a Full-time or Part-time limited access scallop permit;

(ii) A scallop vessel issued an Occasional limited access permit when fishing under the Sea Scallop Area Access Program specified in § 648.58;

(iii) A scallop vessel fishing under the Small Dredge program specified in § 648.51(e);

(iv) A vessel issued a limited access NE multispecies, monkfish, Occasional scallop, or Combination permit, whose owner elects to provide the notifications required by this paragraph (b), unless otherwise authorized or required by the Regional Administrator under paragraph (d) of this section.

(v) A vessel issued a limited access NE multispecies permit electing to fish under the U.S./Canada Resource Sharing Understanding, as specified in § 648.85(a).

(2) The owner of such a vessel specified in paragraph (b)(1) of this section must provide documentation to the Regional Administrator at the time of application for a limited access permit that the vessel has an operational VMS unit installed on board that meets those criteria, unless otherwise allowed under this paragraph (b). If a vessel has

already been issued a limited access permit without the owner providing such documentation, the Regional Administrator shall allow at least 30 days for the vessel to install an operational VMS unit that meets the criteria and for the owner to provide documentation of such installation to the Regional Administrator. A vessel that is required to, or whose owner has elected to, use a VMS unit is subject to the following requirements and presumptions:

(i) A vessel that has crossed the VMS Demarcation Line specified under paragraph (a) of this section is deemed to be fishing under the DAS program, unless the vessel’s owner or authorized representative declares the vessel out of the scallop, NE multispecies, or monkfish fishery, as applicable, for a specific time period by notifying the Regional Administrator through the VMS prior to the vessel leaving port, or unless the vessel’s owner or authorized representative declares the vessel will be fishing in the Eastern U.S./Canada Area as described in § 648.85(a)(3)(ii) under the provisions of that program.

(ii) A Part-time scallop vessel may not fish in the DAS allocation program unless it declares into the scallop fishery for a specific time period by notifying the Regional Administrator through the VMS.

(iii) Notification that the vessel is not under the DAS program must be received prior to the vessel leaving port. A vessel may not change its status after the vessel leaves port or before it returns to port on any fishing trip.

(iv) DAS for a vessel that is under the VMS notification requirements of this paragraph (b), with the exception of vessels that have elected to fish in the Eastern U.S./Canada Area, pursuant to § 648.85(a), begin with the first hourly location signal received showing that the vessel crossed the VMS Demarcation Line leaving port. DAS end with the first hourly location signal received showing that the vessel crossed the VMS Demarcation Line upon its return to port. For those vessels that have elected to fish in the Eastern U.S./Canada Area pursuant to § 648.85(a)(2)(i), the requirements of this paragraph (b) begin with the first 30-minute location signal received showing that the vessel crossed into the Eastern U.S./Canada Area and end with the first location signal received showing that the vessel crossed out of the Eastern U.S./Canada Area upon beginning its return trip to port.

(v) If the VMS is not available or not functional, and if authorized by the Regional Administrator, a vessel owner must provide the notifications required

by paragraphs (b)(2)(i), (ii), and (iii) of this section by using the call-in notification system described under paragraph (c) of this section, instead of using the VMS specified in this paragraph (b).

(3)(i) A vessel issued a limited access NE multispecies, monkfish, Occasional scallop, or Combination permit must use the call-in notification system specified in paragraph (c) of this section, unless the owner of such vessel has elected, under paragraph (b)(3)(iii) of this section, to provide the notifications required by this paragraph (b), or unless the vessel has elected to fish in the Eastern U.S./Canada Area or Western U.S./Canada Area, as described under § 648.85(a)(2)(i), unless otherwise authorized under paragraph (b)(2)(v) of this section.

(ii) Unless otherwise required by paragraph (b)(1)(v) of this section, upon recommendation by the Council, the Regional Administrator may require, by notification through a letter to affected permit holders, notification in the **Federal Register**, or other appropriate means, that a NE multispecies vessel issued an Individual DAS or Combination Vessel permit install on board an operational VMS unit that meets the minimum performance criteria specified in § 648.9(b), or as modified as provided under § 648.9(a). An owner of such a vessel must provide documentation to the Regional Administrator that the vessel has installed on board an operational VMS unit that meets those criteria. If a vessel has already been issued a permit without the owner providing such documentation, the Regional Administrator shall allow at least 30 days for the vessel to install an operational VMS unit that meets the criteria and for the owner to provide documentation of such installation to the Regional Administrator. A vessel that is required to use a VMS shall be subject to the requirements and presumptions described under paragraphs (b)(2)(i) through (v) of this section.

(iii) A vessel issued a limited access NE multispecies, monkfish, Occasional scallop, or Combination permit may be authorized by the Regional Administrator to provide the notifications required by this paragraph (b) using the VMS specified in this paragraph (b). The owner of such vessel becomes authorized by providing documentation to the Regional Administrator at the time of application for an Individual or Combination vessel limited access NE multispecies permit that the vessel has installed on board an operational VMS unit that meets the

minimum performance criteria specified in § 648.9(b), or as modified as provided under § 648.9(a). Vessels that are authorized to use the VMS in lieu of the call-in requirement for DAS notification shall be subject to the requirements and presumptions described under paragraphs (b)(2)(i) through (v) of this section. Those who elect to use the VMS do not need to call in DAS as specified in paragraph (c) of this section. Vessels that do call in are exempt from the prohibition specified in § 648.14(c)(2).

(c) *Call-in notification.* Owners of vessels issued limited access NE multispecies, monkfish or red crab permits who are participating in a DAS program and who are not required to provide notification using a VMS, and scallop vessels qualifying for a DAS allocation under the Occasional category and who have not elected to fish under the VMS notification requirements of paragraph (b) of this section, are subject to the following requirements:

(1) Less than 1 hour prior to leaving port, for vessels issued a limited access NE multispecies DAS permit or, for vessels issued a limited access NE multispecies DAS permit and a limited access monkfish Category C or D permit, unless otherwise specified in this paragraph (c)(1), and, prior to leaving port for vessels issued a limited access monkfish Category A or B permit, the vessel owner or authorized representative must notify the Regional Administrator that the vessel will be participating in the DAS program by calling the Regional Administrator and providing the following information: Owner and caller name and phone number, vessel's name and permit number, type of trip to be taken, port of departure, and that the vessel is beginning a trip. A DAS begins once the call has been received and a confirmation number is given by the Regional Administrator, or when a vessel leaves port, whichever occurs first, unless otherwise specified in paragraph (c)(6) of this section. Vessels issued a limited access monkfish Category C or D permit that are allowed to fish as a Category A or B vessel in accordance with the provisions of § 648.92(b)(2)(ii), are subject to the call-in notification requirements for limited access monkfish Category A or B vessels specified under this paragraph (c)(1) for those monkfish DAS where there is not a concurrent NE multispecies DAS.

(2) The vessel's confirmation numbers for the current and immediately prior NE multispecies, monkfish or red crab fishing trip must be maintained on board the vessel and provided to an authorized officer upon request.

(3) At the end of a vessel's trip, upon its return to port, the vessel owner or owner's representative must call the Regional Administrator and notify him/her that the trip has ended by providing the following information: Owner and caller name and phone number, vessel name, port of landing and permit number, and that the vessel has ended a trip. A DAS ends when the call has been received and confirmation has been given by the Regional Administrator, unless otherwise specified in paragraph (b)(2)(iv) of this section.

(4) The Regional Administrator will furnish a phone number for DAS notification call-ins upon request.

(5) Any vessel that possesses or lands per trip more than 400 lb (181 kg) of scallops, and any vessel issued a limited access NE multispecies permit subject to the NE multispecies DAS program and call-in requirement that possesses or lands regulated species, except as provided in §§ 648.17 and 648.89, any vessel issued a limited access monkfish permit subject to the monkfish DAS program and call-in requirement that possesses or lands monkfish above the incidental catch trip limits specified in § 648.94(c), and any vessel issued a limited access red crab permit subject to the red crab DAS program and call-in requirement that possesses or lands red crab above the incidental catch trip limits specified in § 648.263(b)(1), shall be deemed in its respective DAS program for purposes of counting DAS, regardless of whether the vessel's owner or authorized representative provided adequate notification as required by paragraph (c) of this section.

\* \* \* \* \*

(f) *Additional NE multispecies call-in requirements*—(1) *Spawning season call-in.* With the exception of vessels issued a valid Small Vessel category permit, or the Handgear A permit category, vessels subject to the spawning season restriction described in § 648.82 must notify the Regional Administrator of the commencement date of their 20-day period out of the NE multispecies fishery through either the VMS system or by calling and providing the following information: Vessel name and permit number, owner and caller name and phone number, and the commencement date of the 20-day period.

(2) *Gillnet call-in.* Vessels subject to the gillnet restriction described in § 648.82(j)(1)(ii) must notify the Regional Administrator of the commencement date of their time out of the NE multispecies gillnet fishery using

the procedure described in paragraph (f)(1) of this section.

■ 7. In § 648.14, paragraphs (a)(39), (40), (43), (47), (52), (55), (90), (104), (116), (126); (b)(1) through (4); (c)(1), (c)(3), (c)(7), (c)(10) through (c)(15), (c)(21), (c)(24), (c)(26), (c)(29) through (c)(31), and (c)(33); the introductory text to paragraph (d); and paragraph (d)(2) are revised; paragraphs (c)(18), (c)(23), and (c)(32) are removed and reserved; and paragraphs (a)(128) through (162) and (c)(34) through (50) 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).

(40) Enter or be in the area described in § 648.81(c)(1) on a fishing vessel, except as allowed under § 648.81(c)(2) and (i).

\* \* \* \* \*

(43) Violate any of the provisions of § 648.80, including paragraphs (a)(5), the small-mesh northern shrimp fishery exemption area; (a)(6), the Cultivator Shoal whiting fishery exemption area; (a)(9), Small-mesh Area 1/Small-mesh Area 2; (a)(10), the Nantucket Shoals dogfish fishery exemption area; (a)(12), the Nantucket Shoals mussel and sea urchin dredge exemption area; (a)(13), the GOM/GB monkfish gillnet exemption area; (a)(14), the GOM/GB dogfish gillnet exemption area; (a)(15), the Raised Footrope Trawl Exempted Whiting Fishery; (b)(3), exemptions (small mesh); (b)(5), the SNE monkfish and skate trawl exemption area; (b)(6), the SNE monkfish and skate gillnet exemption area; (b)(8), the SNE mussel and sea urchin dredge exemption area; (b)(9), the SNE little tunny gillnet exemption area; and (b)(11), the SNE Scallop Dredge Exemption Area. Each violation of any provision in § 648.80 constitutes a separate violation.

\* \* \* \* \*

(47) Fish for the species specified in § 648.80(d) or (e) with a net of mesh size smaller than the applicable mesh size specified in § 648.80(a)(3) or (4), (b)(2), or (c)(2), or possess or land such species, unless the vessel is in compliance with the requirements specified in § 648.80(d) or (e), or unless the vessel has not been issued a NE multispecies permit and fishes for NE multispecies exclusively in state waters, or unless otherwise specified in § 648.17.

\* \* \* \* \*

(52) Enter, be on a fishing vessel in, or fail to remove gear from the EEZ portion of the areas described in

§ 648.81(d)(1) through (g)(1), except as provided in § 648.81(d)(2), (e)(2), (f)(2), (g)(2), and (i).

\* \* \* \* \*

(55) Purchase, possess, or receive as a dealer, or in the capacity of a dealer, regulated species in excess of the possession limits specified in § 648.85 or § 648.86 applicable to a vessel issued a NE multispecies permit, unless otherwise specified in § 648.17.

\* \* \* \* \*

(90) Use, set, haul back, fish with, possess on board a vessel, unless stowed in accordance with § 648.23(b), or fail to remove, sink gillnet gear and other gillnet gear capable of catching NE multispecies, with the exception of single pelagic gillnets (as described in § 648.81(f)(2)(ii)), in the areas and for the times specified in § 648.80(g)(6)(i) and (ii), except as provided in §§ 648.80(g)(6)(i) and (ii) and 648.81(f)(2)(ii), or unless otherwise authorized in writing by the Regional Administrator.

\* \* \* \* \*

(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), or (f)(2)(iii).

\* \* \* \* \*

(116) Fish for, harvest, possess, or land any species of fish in or from the GOM/GB Inshore Restricted Roller Gear Area described in § 648.80(a)(3)(vii) with trawl gear where the diameter of any part of the trawl footrope, including discs, rollers or rockhoppers, is greater than 12 inches (30.5 cm).

\* \* \* \* \*

(126) Call in DAS in excess of that allocated, leased, or permanently transferred, in accordance with the restrictions and conditions of § 648.82.

\* \* \* \* \*

(128) Fish for, harvest, possess or land any regulated NE multispecies from the areas specified in § 648.85(a)(1), unless in compliance with the restrictions and conditions specified in § 648.85(a)(3).

(129) Enter or fish in the Western U.S./Canada Area or Eastern U.S./Canada Area specified in § 648.85(a)(1), unless declared into the area in accordance with § 648.85(a)(3)(ii).

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

(131) If the vessel has been issued a limited access NE multispecies DAS permit, and is in the area specified in § 648.85(a), fail to comply with the VMS requirements in § 648.85(a)(3)(i).

(132) If fishing with trawl gear under a NE multispecies DAS in the Eastern U.S./Canada Area defined in § 648.85(a)(1)(ii), fail to fish with a haddock separator trawl or a flounder trawl net, as specified in § 648.85(a)(3)(iii).

(133) If fishing under a NE multispecies DAS in the Western U.S./Canada Area or Eastern U.S./Canada Area specified in § 648.85(a)(1), exceed the trip limits specified in § 648.85(a)(3)(iv), unless further restricted under § 648.85(b).

(134) If fishing under a NE multispecies DAS, enter or fish in the Eastern U.S./Canada Area specified in § 648.85(a)(1), if the area is closed as described in § 648.85(a)(3)(iv)(E), unless fishing in the Closed Area II Yellowtail Flounder SAP specified in § 648.85(b)(3).

(135) If fishing under a NE multispecies DAS in the Western U.S./Canada Area or Eastern U.S./Canada Area specified in § 648.85(a)(1), fail to report landings in accordance with § 648.85(a)(3)(v).

(136) If fishing under the Closed Area II Yellowtail Flounder SAP, fish for, harvest, possess or land any regulated NE multispecies from the area specified in § 648.85(b)(3)(ii), unless in compliance with the restrictions and conditions specified in § 648.85(b)(3)(i) through (x).

(137) Enter or fish in Closed Area II as specified in § 648.81(b), unless declared into the area in accordance with § 648.85(b)(3)(v).

(138) Enter or fish in Closed Area II under the Closed Area II Yellowtail Flounder SAP outside of the season specified in § 648.85(b)(3)(iii).

(139) If fishing in the Closed Area II Yellowtail Flounder SAP specified in § 648.85(b)(3), exceed the number of trips specified under § 648.85(b)(3)(vii).

(140) If fishing in the Closed Area II Yellowtail Flounder SAP specified in § 648.85(b)(3), exceed the trip limits specified in § 648.85(b)(3)(viii).

(141) If declared into the areas specified in § 648.85(b), enter or exit the declared areas more than once per trip.

(142) [Reserved]

(143) [Reserved]

(144) [Reserved]

(145) [Reserved]

(146) [Reserved]

(147) [Reserved]

(148) [Reserved]

(149) [Reserved]

(150) [Reserved]

(151) [Reserved]

(152) [Reserved]

(153) If fishing under the SNE/MA Winter Flounder SAP, described in § 648.85(b)(6), fail to comply with the

restrictions and conditions under § 648.85(b)(6)(i) through (iv).

(154) If fishing under an approved Sector, as authorized under § 648.87, fail to abide by the restrictions specified in § 648.87(b)(1).

(155) If fishing under an approved Sector, as authorized under § 648.87, fail to remain in the sector for the remainder of the fishing year as required under § 648.87(b)(1).

(156) If fishing under the Georges Bank (GB) Cod Hook Sector, as authorized under § 648.87, fish in the NE multispecies DAS program in a given fishing year, or if fishing under a NE multispecies DAS, fish under the GB Cod Hook Sector in a given fishing year, unless as otherwise provided under § 648.87(b)(1)(xii).

(157) If a vessel has agreed to participate in a Sector, fail to remain in the Sector for the entire fishing year, as required under § 648.87(b)(1)(xi).

(158) If a vessel is removed from a Sector for violation of the Sector rules, fish under the NE Multispecies regulations for non-Sector vessels.

(159) If fishing under the GB Cod Hook Sector, fish with gear other than jigs, demersal longline, or handgear.

(160) Land or possess on board a vessel, more than the possession or landing limits specified in § 648.88(a)(1), if fishing under an open access Handgear permit.

(161) Possess on board gear other than that specified under § 648.88(a)(2)(i), or fish with hooks greater than the number specified under § 648.88(a)(2)(iii), if fishing under an open access Handgear permit.

(162) Fish for, possess, or land regulated multispecies from March 1 to March 20, if issued an open access Handgear permit.

(b) \* \* \*

(1) Land, or possess on board a vessel, more than the possession or landing limits specified in § 648.86 (a), (b), (c), (d), (g), and (h), or to violate any of the other provisions of § 648.86, unless otherwise specified in § 648.17.

(2) [Reserved]

(3) While fishing in the areas specified in § 648.86(g)(1)(i) or (g)(2)(i), with a NE multispecies Handgear A permit, or under the NE multispecies DAS program, or under the limited access monkfish Category C or D permit provisions, possess yellowtail flounder in excess of the limits specified under § 648.86(g)(1)(ii) or (g)(2)(ii), respectively, unless fishing under the recreational or charter/party regulations, or transiting in accordance with § 648.23(b).

(4) If fishing in the areas specified in § 648.86(g)(1)(i) or (g)(2)(i), with a NE

multispecies Handgear A permit, or under the NE multispecies DAS program, or under the limited access monkfish Category C or D permit provisions, fail to comply with the requirements specified in § 648.81(g)(1)(ii) or (g)(2)(ii), respectively.

(c) \* \* \*

(1) Fish for, possess at any time during a trip, or land per trip more than the possession limit of NE multispecies specified in § 648.86(d) after using up the vessel's annual DAS allocation or when not participating in the DAS program pursuant to § 648.82, unless otherwise exempted under § 648.82(b)(5) or § 648.89.

(3) Combine, transfer, or consolidate DAS allocations, except as provided for under the DAS Leasing Program or the DAS Transfer Program, as specified under § 648.82(k) and (l), respectively.

(7) Possess or land per trip more than the possession or landing limits specified under § 648.86(a), (b), (c), (d), (g), and (h), and under § 648.82(b)(5) or (6), if the vessel has been issued a limited access NE multispecies permit.

(10) Enter, fail to remove sink gillnet gear or gillnet gear capable of catching NE multispecies from, or be in the areas, and for the times, described in § 648.80(g)(6)(i) and (ii), except as provided in §§ 648.80(g)(6)(i) and 648.81(j).

(11) If the vessel has been issued a limited access NE multispecies permit and fishes under a NE multispecies DAS, fail to comply with gillnet requirements and restrictions specified in § 648.82(j).

(12) If the vessel has been issued a limited access Day gillnet category designation, fail to comply with the restriction and requirements specified in § 648.82(j)(1).

(13) If the vessel has been issued a limited access Trip gillnet category designation, fail to comply with the restrictions and requirements specified in § 648.82(j)(2).

(14) If the vessel has been issued a limited access NE multispecies permit and fishes under a NE multispecies DAS will gillnet gear, fail to comply with gillnet tagging requirements specified in § 648.80(a)(3)(iv)(A)(4), (a)(3)(iv)(B)(4), (a)(3)(iv)(C), (a)(4)(iv)(A)(3), (a)(4)(iv)(B)(3), (b)(2)(iv)(C), (b)(2)(iv)(F), (c)(2)(v)(A)(2), and (c)(2)(v)(B)(2), or fail to produce, or cause to be produced, gillnet tags when requested by an authorized officer.

(15) Produce, or cause to be produced, gillnet tags under § 648.80(a)(3)(iv)(C),

without the written confirmation from the Regional Administrator described in § 648.80(a)(3)(iv)(C).

\* \* \* \* \*

(18) [Reserved]

\* \* \* \* \*

(21) Fail to declare, and be, out of the non-exempt gillnet fishery as required by § 648.82(j)(1)(ii), using the procedure specified in § 648.82(h).

\* \* \* \* \*

(23) [Reserved]

(24) Enter port, while on a NE multispecies DAS trip, in possession of more than the allowable limit of cod specified in § 648.86(b)(1)(i), unless the vessel is fishing under the cod exemption specified in § 648.86(b)(4).

\* \* \* \* \*

(26) Enter port, while on a NE multispecies DAS trip, in possession of more than the allowable limit of cod specified in § 648.86(b)(2)(ii) or (iii).

\* \* \* \* \*

(29) Enter, be on a fishing vessel in, or fail to remove gear from the areas described in § 648.81(d)(1), (e)(1), (f)(1), and (g)(1) during the time periods specified, except as provided in § 648.81(d)(2), (e)(2), (f)(2), (g)(2), and (i).

(30) If fishing with bottom tending mobile gear, fish in, enter, be on a fishing vessel in, the Essential Fish Habitat (EFH) Closure Areas described in § 648.81(h)(1)(i) through (vi).

(31) If the vessel has been issued a Charter/party permit or is fishing under charter/party regulations, fail to comply with the requirements specified in § 648.81(f)(2)(iii) when fishing in the areas described in § 648.81(d)(1) through (f)(1) during the time periods specified in those sections.

(32) [Reserved]

(33) Fail to remain in port for the appropriate time specified in § 648.86(b)(2)(iii)(A), except for transiting purposes, provided the vessel complies with § 648.86(b)(3).

(34) Lease NE multispecies DAS or use leased DAS that have not been approved for leasing by the Regional Administrator as specified in § 648.82(k).

(35) Provide false information on the application for NE multispecies DAS leasing, as required under § 648.82(k)(3).

(36) Act as lessor or lessee of a NE multispecies Category B DAS, or Category C DAS.

(37) Act as lessor or lessee of NE multispecies DAS, if the vessels are not in accordance with the size restrictions specified in § 648.82(k)(4)(ix).

(38) Sub-lease NE multispecies DAS.

(39) Lease more than the maximum number of DAS allowable under § 648.82(k)(4)(iv).

(40) Lease NE multispecies DAS to a vessel that does not have a valid limited access multispecies permit.

(41) Lease NE multispecies DAS associated with a Confirmation of Permit History.

(42) Lease NE multispecies DAS if the number of unused allocated DAS is less than the number of DAS requested to be leased.

(43) Lease NE multispecies DAS in excess of the duration specified in § 648.82(k)(4)(viii).

(44) Transfer NE multispecies DAS or use transferred DAS that have not been approved for transfer by the Regional Administrator as specified under § 648.82(l).

(45) Provide false information on the application for NE multispecies DAS Transfer, as required under § 648.82(l)(2).

(46) Permanently transfer only a portion of a vessels total allocation of DAS.

(47) Permanently transfer NE multispecies DAS between vessels, if such vessels are not in accordance with the size restrictions specified in § 648.82(l)(1)(ii).

(48) If permanently transferring NE multispecies DAS to another vessel, fail to forfeit all state and Federal fishing permits, or fish in any state or Federal commercial fishery indefinitely.

(49) If fishing under the cod trip limit specified in § 648.86(b)(2)(ii), fail to obtain an annual declaration, or fish north of the exemption line specified in § 648.86(b)(4).

(50) [Reserved]

(d) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a), (b), and (c) of this section, it is unlawful for any person owning or operating a vessel

issued an open access multispecies handgear permit to do any of the following, unless otherwise specified in § 648.17:

\* \* \* \* \*

(2) Use or possess on board, gear capable of harvesting NE multispecies, other than rod and reel, or handline gear, or tub-trawls, while in possession of, or fishing for, NE multispecies.

\* \* \* \* \*

■ 8. In § 648.23, paragraphs (b)(1)(iii)(A) and (b)(1)(iv)(A) are revised to read as follows:

**§ 648.23 Gear restrictions.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(iii) \* \* \*

(A) The net is on a reel, its entire surface is covered with canvas or other similar opaque material, and the canvas or other material is securely bound;

\* \* \* \* \*

(iv) \* \* \*

(A) The net is on a reel, its entire surface is covered with canvas or other similar opaque material, and the canvas or other material is securely bound;

\* \* \* \* \*

■ 9. Section 648.80 is revised to read as follows:

**§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.**

Except as provided in § 648.17, all vessels must comply with the following minimum mesh size, gear and methods of fishing requirements, unless otherwise exempted or prohibited.

(a) *Gulf of Maine (GOM) and GB Regulated Mesh Areas—(1) GOM Regulated Mesh Area.* The GOM

Regulated Mesh Area (copies of a map depicting the area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the east by the U.S.-Canada maritime boundary, defined by straight lines connecting the following points in the order stated:

Point	N. lat.	W. long.
G1 .....	(1)	(1)
G2 .....	43°58'	67°22'
G3 .....	42°53.1'	67°44.4'
G4 .....	42°31'	67°28.1'
CI13 .....	42°22'	67°20' <sup>2</sup>

<sup>1</sup> The intersection of the shoreline and the U.S.-Canada Maritime Boundary.

<sup>2</sup> The U.S.-Canada Maritime Boundary.

(ii) Bounded on the south by straight lines connecting the following points in the order stated:

Point	N. lat.	W. long.
CI13 .....	42°22'	67°20' <sup>1</sup>
G6 .....	42°20'	67°20'
G7 .....	42°20'	69°30'
G8 .....	42°00'	69°30'
G9 .....	42°00'	(2)

<sup>1</sup> The U.S.-Canada Maritime Boundary.

<sup>2</sup> The intersection of the Cape Cod, MA, coastline and 42°00' N. lat.

(2) *GB Regulated Mesh Area.* The GB Regulated Mesh Area (copies of a map depicting the area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the north by the southern boundary of the GOM Regulated Mesh Area as defined in paragraph (a)(1)(ii) of this section; and

(ii) Bounded on the east by straight lines connecting the following points in the order stated:

Point	N. lat.	W. long.	Approximate loran C bearings
CI13 .....	42°22'	67°20'	(1)
SNE1 .....	40°24'	65°43'	(2)

<sup>1</sup> The U.S.-Canada Maritime Boundary.

<sup>2</sup> The U.S.-Canada Maritime Boundary as it intersects with the EEZ.

(iii) Bounded on the west by straight lines connecting the following points in the order stated:

Point	N. lat.	W. long.
G12 .....	(1)	70°00'
G11 .....	40°50'	70°00'
NL1 .....	40°50'	69°40'
NL2 .....	40°18.7'	69°40'
NL3 .....	40°22.7'	69°00'
.....	(2)	69°00'

<sup>1</sup> South facing shoreline of Cape Cod.

<sup>2</sup> Southward to its intersection with the EEZ.

(3) *GOM Regulated Mesh Area minimum mesh size and gear restrictions—(i) Vessels using trawls.*

Except as provided in paragraphs (a)(3)(i) and (vi) of this section, and unless otherwise restricted under paragraph (a)(3)(iii) of this section, the minimum mesh size for any trawl net, except midwater trawl, on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the

GOM Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh, applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) diamond mesh or square mesh applied to the codend of the net as defined in paragraphs (a)(3)(i)(A) and (B) of this section, provided the vessel complies with the requirements of paragraph (a)(3)(vii) of this section. This restriction does not apply to nets or pieces of nets smaller

than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(A) For vessels greater than 45 ft (13.7 m) in length overall, a diamond mesh codend is defined as the first 50 meshes counting from the terminus of the net, and a square mesh codend is defined as the first 100 bars counting from the terminus of the net.

(B) For vessels 45 ft (13.7 m) or less in length overall, a diamond mesh codend is defined as the first 25 meshes counting from the terminus of the net, and a square mesh codend is defined as the first 50 bars counting from the terminus of the net.

(ii) *Vessels using Scottish seine, midwater trawl, and purse seine.* Except as provided in paragraphs (a)(3)(ii) and (vi) of this section, and unless otherwise restricted under paragraph (a)(3)(iii) of this section, the minimum mesh size for any Scottish seine, midwater trawl, or purse seine on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the GOM Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied throughout the net, or any combination thereof, provided the vessel complies with the requirements of paragraph (a)(3)(vii) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iii) *Large-mesh vessels.* When fishing in the GOM Regulated Mesh Area, the minimum mesh size for any trawl net vessel, or sink gillnet, on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(b)(4), is 8.5-inch (21.6-cm) diamond or square mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iv) *Gillnet vessels—(A) Trip gillnet vessels—(1) Mesh size.* Except as provided in paragraphs (a)(3)(iv) and (vi) of this section, and unless otherwise restricted under paragraph (a)(3)(iii) of this section, for vessels that obtain an annual designation as a Trip gillnet vessel, the minimum mesh size for any sink gillnet when fishing under a DAS in the NE multispecies DAS program in the GOM Regulated Mesh Area is 6.5 inches (16.5 cm) throughout the entire

net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(2) *Number of nets.* A Trip gillnet vessel fishing under a NE multispecies DAS and fishing in the GOM Regulated Mesh Area may not fish with, haul, possess, or deploy more than 150 gillnets, except as provided in § 648.92(b)(8)(i). Vessels may fish any combination of roundfish and flatfish gillnets up to 150 nets, and may stow nets in excess of 150.

(3) *Net size requirements.* Nets may not be longer than 300 ft (91.4 m), or 50 fathoms (91.4 m) in length.

(4) *Tags.* Roundfish or flatfish nets must be tagged with one tag per net, secured to every other bridle of every net within a string of nets.

(B) *Day gillnet vessels—(1) Mesh size.* Except as provided in paragraphs (a)(3)(iv) and (vi) of this section, and unless otherwise restricted under paragraph (a)(3)(iii) of this section, for vessels that obtain an annual designation as a Day gillnet vessel, the minimum mesh size for any sink gillnet when fishing under a DAS in the NE multispecies DAS program in the GOM Regulated Mesh Area is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(2) *Number of nets.* A day gillnet vessel fishing under a NE multispecies DAS and fishing in the GOM Regulated Mesh Area may not fish with, haul, possess, or deploy more than 50 roundfish sink gillnets or 100 flatfish (tie-down) sink gillnets, each of which must be tagged pursuant to paragraph (a)(3)(iv)(C) of this section, except as provided in § 648.92(b)(8)(i). Vessels may fish any combination of roundfish and flatfish gillnets up to 100 nets, and may stow additional nets not to exceed 160 nets, counting deployed nets.

(3) *Net size requirements.* Nets may not be longer than 300 ft (91.4 m), or 50 fathoms (91.4 m) in length.

(4) *Tags.* Roundfish nets must be tagged with two tags per net, with one tag secured to each bridle of every net, within a string of nets, and flatfish nets must have one tag per net, with one tag secured to every other bridle of every net within a string of nets. Gillnet vessels must also abide by the tagging requirements in paragraph (a)(3)(iv)(C) of this section.

(C) *Obtaining and replacing tags.* Tags must be obtained as described in § 648.4(c)(2)(iii), and vessels must have on board written confirmation issued by the Regional Administrator, indicating that the vessel is a Day gillnet vessel or a Trip gillnet vessel. The vessel operator must produce all net tags upon request by an authorized officer. A vessel may have tags on board in excess of the number of tags corresponding to the allowable number of nets, provided such tags are onboard the vessel and can be made available for inspection.

(1) *Lost tags.* Vessel owners or operators are required to report lost, destroyed, and missing tag numbers as soon as feasible after tags have been discovered lost, destroyed or missing, by letter or fax to the Regional Administrator.

(2) *Replacement tags.* Vessel owners or operators seeking replacement of lost, destroyed, or missing tags must request replacement of tags by letter or fax to the Regional Administrator. A check for the cost of the replacement tags must be received by the Regional Administrator before tags will be re-issued.

(v) *Hook gear restrictions.* Unless otherwise specified in paragraph (a)(3)(v) of this section, vessels fishing with a valid NE multispecies limited access permit and fishing under a NE multispecies DAS, and vessels fishing with a valid NE multispecies limited access Small-Vessel permit, in the GOM Regulated Mesh Area, and persons on such vessels, are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 2,000 rigged hooks. All longline gear hooks must be circle hooks, of a minimum size of 12/0. An unabated hook and gangions that has not been secured to the ground line of the trawl on board a vessel is deemed to be a replacement hook and is not counted toward the 2,000-hook limit. A "snap-on" hook is deemed to be a replacement hook if it is not rigged or baited. The use of de-hookers ("crucifer") with less than 6-inch (15.2-cm) spacing between the fairlead rollers is prohibited. Vessels fishing with a valid NE multispecies limited access Hook Gear permit and fishing under a multispecies DAS in the GOM Regulated Mesh Area, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel. Vessels fishing with a valid NE multispecies limited access Handgear A permit are prohibited from fishing, or possessing on board the vessel, gear other than handgear. Vessels fishing with tub-trawl gear are prohibited from fishing, setting, or

hauling back, per day, or possessing on board the vessel more than 250 hooks.

(vi) *Other restrictions and exemptions.* Vessels are prohibited from fishing in the GOM or GB Exemption Area as defined in paragraph (a)(17) of this section, except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (a)(5) through (7), (a)(9) through (14), (d), (e), (h), and (i) of this section; or if fishing under a NE multispecies DAS; or if fishing under the Small Vessel or Handgear A exemptions specified in § 648.82(b)(5) and (6), respectively; or if fishing under the scallop state waters exemptions specified in § 648.54 and paragraph (a)(11) of this section; or if fishing under a scallop DAS in accordance with paragraph (h) of this section; or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit, or if fishing as a charter/party or private recreational vessel in compliance with the regulations specified in § 648.89. Any gear on a vessel, or used by a vessel, in this area must be authorized under one of these exemptions or must be stowed as specified in § 648.23(b).

(vii) *Rockhopper and roller gear restrictions.* For all trawl vessels fishing in the GOM/GB Inshore Restricted Roller Gear Area, the diameter of any part of the trawl footrope, including discs, rollers, or rockhoppers, must not exceed 12 inches (30.5 cm). The GOM/GB Inshore Restricted Roller Gear Area is defined by straight lines connecting the following points in the order stated:

INSHORE RESTRICTED ROLLER GEAR AREA

Point	N. lat.	W. long.
GM1 .....	42°00'	(1)
GM2 .....	42°00'	(2)
GM3 .....	42°00'	(3)
GM23 .....	42°00'	69°50'
GM24 .....	43°00'	69°50'
GM11 .....	43°00'	70°00'
GM17 .....	43°30'	70°00'
GM18 .....	43°30'	(4)

<sup>1</sup> Massachusetts shoreline.

<sup>2</sup> Cape Cod shoreline on Cape Cod Bay.

<sup>3</sup> Cape Cod shoreline on the Atlantic Ocean.

<sup>4</sup> Maine shoreline.

(4) *GB regulated mesh area minimum mesh size and gear restrictions—(i) Vessels using trawls.* Except as provided in paragraph (a)(3)(vi) of this section, and this paragraph (a)(4)(i), and unless otherwise restricted under paragraph (a)(4)(iii) of this section, the minimum mesh size for any trawl net, except midwater trawl, and the minimum mesh size for any trawl net when fishing in

that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the GB Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) diamond mesh or square mesh applied to the codend of the net as defined under paragraph (a)(3)(i) of this section, provided the vessel complies with the requirements of paragraph (a)(3)(vii) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(ii) *Vessels using Scottish seine, midwater trawl, and purse seine.* Except as provided in paragraph (a)(3)(vi) of this section, and this paragraph (a)(4)(ii), and unless otherwise restricted under paragraph (a)(4)(iii) of this section, the minimum mesh size for any Scottish seine, midwater trawl, or purse seine, and the minimum mesh size for any Scottish seine, midwater trawl, or purse seine, when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the GB Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied throughout the net, or any combination thereof, provided the vessel complies with the requirements of paragraph (a)(3)(vii) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iii) *Large-mesh vessels.* When fishing in the GB Regulated Mesh Area, the minimum mesh size for any trawl net, or sink gillnet, and the minimum mesh size for any trawl net, or sink gillnet, when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with

§ 648.23(b), on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(b)(5), is 8.5-inch (21.6-cm) diamond or square mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iv) *Gillnet vessels.* Except as provided in paragraph (a)(3)(vi) of this section and this paragraph (a)(4)(iv), for Day and Trip gillnet vessels, the minimum mesh size for any sink gillnet, and the minimum mesh size for any roundfish or flatfish gillnet when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), when fishing under a DAS in the NE multispecies DAS program in the GB Regulated Mesh Area is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(A) *Trip gillnet vessels—(1) Number of nets.* A Trip gillnet vessel fishing under a NE multispecies DAS and fishing in the GB Regulated Mesh Area may not fish with, haul, possess, or deploy more than 150 nets, except as provided in § 648.92(b)(8)(i). Vessels may fish any combination of roundfish and flatfish gillnets, up to 150 nets, and may stow nets in excess of 150 in accordance with § 648.23(b).

(2) *Net size requirements.* Nets may not be longer than 300 ft (91.4 m), or 50 fathoms (91.4 m) in length.

(3) *Tags.* Roundfish or flatfish nets must be tagged with two tags per net, with one tag secured to each bridle of every net within a string of nets.

(B) *Day gillnet vessels—(1) Number of nets.* A Day gillnet vessel fishing under a NE multispecies DAS and fishing in the GB Regulated Mesh Area may not fish with, haul, possess, or deploy more than 50 nets, except as provided in § 648.92(b)(8)(i).

(2) *Net size requirements.* Vessels may fish any combination of roundfish and flatfish gillnets, up to 50 nets. Such vessels, in accordance with § 648.23(b), may stow additional nets not to exceed 150, counting the deployed net. Nets may not be longer than 300 ft (91.4 m).



(3) *Tags.* Roundfish or flatfish nets must be tagged with two tags per net, with one tag secured to each bridle of every net within a string of nets.

(4) *Obtaining and replacing tags.* See paragraph (a)(3)(iv)(C) of this section.

(v) *Hook gear restrictions.* Unless otherwise specified in this paragraph (a)(4)(v), vessels fishing with a valid NE multispecies limited access permit and fishing under a NE multispecies DAS, and vessels fishing with a valid NE multispecies limited access Small-Vessel permit, in the GB Regulated Mesh Area, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel and prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 3,600 rigged hooks. All longline gear hooks must be circle hooks, of a minimum size of 12/0. An unabated hook and gangions that has not been secured to the ground line of the trawl on board a vessel is deemed to be a replacement hook and is not counted toward the 3,600-hook limit. A “snap-on” hook is deemed to be a replacement hook if it is not rigged or baited. The use of de-hookers (“crucifer”) with less than 6-inch (15.2-cm) spacing between the fairlead rollers is prohibited. Vessels fishing with a valid NE multispecies limited access Hook gear permit and fishing under a multispecies DAS in the GB Regulated Mesh Area, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel. Vessels fishing with a valid NE multispecies limited access Handgear A permit are prohibited from fishing or possessing on board the vessel, gear other than hand gear. Vessels fishing with tub-trawl gear are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel more than 250 hooks.

(5) *Small Mesh Northern Shrimp Fishery Exemption.* Vessels subject to the minimum mesh size restrictions specified in this paragraph (a) may fish for, harvest, possess, or land northern shrimp in the GOM, GB, SNE, and MA Regulated Mesh Areas, as described under paragraphs (a)(1), (a)(2), (b)(1), and (c)(1) of this section, respectively, with nets with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements of paragraphs (a)(5)(i) through (iii) of this section.

(i) *Restrictions on fishing for, possessing, or landing fish other than shrimp.* An owner or operator of a vessel fishing in the northern shrimp fishery under the exemption described in this paragraph (a)(5) may not fish for, possess on board, or land any species of

fish other than shrimp, except for the following, with the restrictions noted, as allowable incidental species: Longhorn sculpin; combined silver hake and offshore hake—up to an amount equal to the total weight of shrimp possessed on board or landed, not to exceed 3,500 lb (1,588 kg); and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) *Requirement to use a finfish excluder device (FED).* A vessel must have a rigid or semi-rigid grate consisting of parallel bars of not more than 1-inch (2.54-cm) spacing that excludes all fish and other objects, except those that are small enough to pass between its bars into the codend of the trawl, secured in the trawl, forward of the codend, in such a manner that it precludes the passage of fish or other objects into the codend without the fish or objects having to first pass between the bars of the grate, in any net with mesh smaller than the minimum size specified in paragraphs (a)(3) and (4) of this section. The net must have an outlet or hole to allow fish or other objects that are too large to pass between the bars of the grate to exit the net. The aftermost edge of this outlet or hole must be at least as wide as the grate at the point of attachment. The outlet or hole must extend forward from the grate toward the mouth of the net. A funnel of net material is allowed in the lengthening piece of the net forward of the grate to direct catch towards the grate. (Copies of a schematic example of a properly configured and installed FED are available from the Regional Administrator upon request.)

(iii) *Time restrictions.* A vessel may only fish under this exemption during the northern shrimp season, as established by the Commission and announced in the Commission’s letter to participants.

(6) *Cultivator Shoal Whiting Fishery Exemption Area.* Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) and (4) of this section may fish with, use, or possess nets in the Cultivator Shoal Whiting Fishery Exemption Area with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements specified in paragraph (a)(6)(i) of this section. The Cultivator Shoal Whiting Fishery Exemption Area (copies of a map

depicting the area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

CULTIVATOR SHOAL WHITING FISHERY EXEMPTION AREA

Point	N. lat.	W. long.
C1 .....	42°10’	68°10’
C2 .....	41°30’	68°41’
C14 .....	41°30’	68°30’
C3 .....	41°12.8’	68°30’
C4 .....	41°05’	68°20’
C5 .....	41°55’	67°40’
C1 .....	42°10’	68°10’

(i) *Requirements.* (A) A vessel fishing in the Cultivator Shoal Whiting Fishery Exemption Area under this exemption must have on board a valid letter of authorization issued by the Regional Administrator.

(B) An owner or operator of a vessel fishing in this area may not fish for, possess on board, or land any species of fish other than whiting and offshore hake combined—up to a maximum of 30,000 lb (13,608 kg), except for the following, with the restrictions noted, as allowable incidental species: Herring; longhorn sculpin; squid; butterfish; Atlantic mackerel; dogfish; red hake; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter.

(C) Counting from the terminus of the net, all nets must have a minimum mesh size of 3-inch (7.6-cm) square or diamond mesh applied to the first 100 meshes (200 bars in the case of square mesh) for vessels greater than 60 ft (18.3 m) in length and applied to the first 50 meshes (100 bars in the case of square mesh) for vessels less than or equal to 60 ft (18.3 m) in length.

(D) Fishing is confined to a season of June 15 through October 31, unless otherwise specified by notification in the **Federal Register**.

(E) When a vessel is transiting through the GOM or GB Regulated Mesh Areas specified under paragraphs (a)(1) and (2) of this section, any nets with a mesh size smaller than the minimum mesh specified in paragraphs (a)(3) or (4) of this section must be stowed in accordance with one of the methods specified in § 648.23(b), unless the vessel is fishing for small-mesh



multispecies under another exempted fishery specified in this paragraph (a).

(F) A vessel fishing in the Cultivator Shoal Whiting Fishery Exemption Area may fish for small-mesh multispecies in exempted fisheries outside of the Cultivator Shoal Whiting Fishery Exemption Area, provided that the vessel complies with the more restrictive gear, possession limit, and other requirements specified in the regulations of that exempted fishery for the entire participation period specified on the vessel's letter of authorization and consistent with paragraph (a)(15)(i)(G) of this section.

(ii) *Sea sampling.* The Regional Administrator shall conduct periodic sea sampling to determine if there is a need to change the area or season designation, and to evaluate the bycatch of regulated species, especially haddock.

(iii) *Annual review.* The NEFMC shall conduct an annual review of data to determine if there are any changes in area or season designation necessary, and to make appropriate recommendations to the Regional Administrator following the procedures specified in § 648.90.

(7) *Transiting.* (i) Vessels fishing in the Small Mesh Area 1/Small Mesh Area 2 fishery, as specified in paragraph (a)(9) of this section, may transit through the Scallop Dredge Fishery Exemption Area as specified in paragraph (a)(11) of this section with nets of mesh size smaller than the minimum mesh size specified in paragraphs (a)(3) or (4) of this section, provided that the nets are stowed and not available for immediate use in accordance with one of the methods specified in § 648.23(b). Vessels fishing in the Small Mesh Northern Shrimp Fishery, as specified in paragraph (a)(3) of this section, may transit through the GOM, GB, SNE, and MA Regulated Mesh Areas, as described in paragraphs (a)(1), (a)(2), (b)(1), and (c)(1) of this section, respectively, with nets of mesh size smaller than the minimum mesh size specified in paragraphs (a)(3), (a)(4), (b)(2), and (c)(2) of this section, provided the nets are stowed and not available for immediate use in accordance with one of the methods specified in § 648.23(b).

(ii) Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may transit through the Scallop Dredge Fishery Exemption Area defined in paragraph (a)(11) of this section with nets on board with a mesh size smaller than the minimum size specified, provided that the nets are stowed in accordance with one of the methods

specified in § 648.23(b), and provided the vessel has no fish on board.

(iii) Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may transit through the GOM and GB Regulated Mesh Areas defined in paragraphs (a)(1) and (2) of this section with nets on board with a mesh size smaller than the minimum mesh size specified and with small mesh exempted species on board, provided that the following conditions are met:

(A) All nets with a mesh size smaller than the minimum mesh size specified in paragraphs (a)(3) or (4) of this section are stowed in accordance with one of the methods specified in § 648.23(b).

(B) A letter of authorization issued by the Regional Administrator is on board.

(C) Vessels do not fish for, possess on board, or land any fish, except when fishing in the areas specified in paragraphs (a)(6), (a)(10), (a)(15), (b), and (c) of this section. Vessels may retain exempted small-mesh species as provided in paragraphs (a)(6)(i), (a)(10)(i), (a)(15)(i), (b)(3), and (c)(3) of this section.

(8) *Addition or deletion of exemptions—(i) Exemption allowing no incidental catch of regulated multispecies.* An exemption may be added in an existing fishery for which there are sufficient data or information to ascertain the amount of incidental catch of regulated species, if the Regional Administrator, after consultation with the NEFMC, determines that the percentage of regulated species caught as incidental catch is, or can be reduced to, less than 5 percent, by weight, of total catch, unless otherwise specified in this paragraph (a)(8)(i), and that such exemption will not jeopardize fishing mortality objectives. The 5-percent regulated species incidental catch standard could be modified for a stock that is not in an overfished condition, or if overfishing is not occurring on that stock. When considering modifications of the standard, it must be shown that the change will not delay a rebuilding program, or result in overfishing or an overfished condition. In determining whether exempting a fishery may jeopardize meeting fishing mortality objectives, the Regional Administrator may take into consideration various factors including, but not limited to, juvenile mortality, sacrifices in yield that will result from that mortality, the ratio of target species to regulated species, status of stock rebuilding, and recent recruitment of regulated species. A fishery can be defined, restricted, or allowed by area, gear, season, or other means determined to be appropriate to

reduce incidental catch of regulated species. Notification of additions, deletions, or modifications will be made through issuance of a rule in the **Federal Register**.

(ii) *Exemption allowing incidental catch of regulated species.* An exemption may be added in an existing fishery that would allow vessels to retain and land regulated multispecies, under the restrictions specified in paragraphs (a)(8)(ii)(A) through (C) of this section, if the Regional Administrator, after consultation with the NEFMC, considers the status of the regulated species stock or stocks caught in the fishery, the risk that this exemption would result in a targeted regulated species fishery, the extent of the fishery in terms of time and area, and the possibility of expansion in the fishery. Incidental catch in exempted fisheries under this paragraph (a)(8)(ii) are subject, at a minimum, to the following restrictions:

(A) A prohibition on the possession of regulated multispecies that are overfished or where overfishing is occurring;

(B) A prohibition on the possession of regulated species in NE multispecies closure areas; and

(C) A prohibition on allowing an exempted fishery to occur that would allow retention of a regulated multispecies stock under an ongoing rebuilding program, unless it can be determined that the catch of the stock in the exempted fishery is not likely to result in exceeding the rebuilding mortality rate.

(iii) For exemptions allowing no incidental catch of regulated species, as defined under paragraph (a)(8)(i) of this section, the NEFMC may recommend to the Regional Administrator, through the framework procedure specified in § 648.90(b), additions or deletions to exemptions for fisheries, either existing or proposed, for which there may be insufficient data or information for the Regional Administrator to determine, without public comment, percentage catch of regulated species. For exemptions allowing incidental catch of regulated species, as defined under paragraph (a)(8)(ii) of this section, the NEFMC may recommend to the Regional Administrator, through the framework procedure specified in § 648.90(b), additions or deletions to exemptions for fisheries, either existing or proposed, for which there may be insufficient data or information for the Regional Administrator to determine, without public comment, the risk that this exemption would result in a targeted regulated species fishery, the extent of the fishery in terms of time

and area, and the possibility of expansion in the fishery.

(iv) Incidental catch in exempted fisheries authorized under this paragraph (a)(8) are subject, at a minimum, to the following restrictions:

(A) With the exception of fisheries authorized under paragraph (a)(8)(ii) of this section, a prohibition on the possession of regulated species;

(B) A limit on the possession of monkfish or monkfish parts of 10 percent, by weight, of all other species on board or as specified by § 648.94(c)(3), (4), (5) or (6), as applicable, whichever is less;

(C) A limit on the possession of lobsters of 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less; and

(D) A limit on the possession of skate or skate parts in the SNE Exemption Area described in paragraph (b)(10) of this section of 10 percent, by weight, of all other species on board.

(9) *Small Mesh Area 1/Small Mesh Area 2*—(i) *Description.* (A) Unless otherwise prohibited in § 648.81, a vessel subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may fish with or possess nets with a mesh size smaller than the minimum size, provided the vessel complies with the requirements of paragraphs (a)(5)(ii) or (a)(9)(ii) of this section, and § 648.86(d), from July 15 through November 15, when fishing in Small Mesh Area 1; and from January 1 through June 30, when fishing in Small Mesh Area 2. While lawfully fishing in these areas with mesh smaller than the minimum size, an owner or operator of any vessel may not fish for, possess on board, or land any species of fish other than: Silver hake and offshore hake—up to the amounts specified in § 648.86(d), butterfish, dogfish, herring, Atlantic mackerel, scup, squid, and red hake.

(B) Small-mesh Areas 1 and 2 are defined by straight lines connecting the following points in the order stated (copies of a chart depicting these areas are available from the Regional Administrator upon request):

SMALL MESH AREA I

Point	N. lat.	W. long.
SM1 .....	43°03'	70°27'
SM2 .....	42°57'	70°22'
SM3 .....	42°47'	70°32'
SM4 .....	42°45'	70°29'
SM5 .....	42°43'	70°32'
SM6 .....	42°44'	70°39'
SM7 .....	42°49'	70°43'
SM8 .....	42°50'	70°41'
SM9 .....	42°53'	70°43'
SM10 .....	42°55'	70°40'
SM11 .....	42°59'	70°32'

SMALL MESH AREA I—Continued

Point	N. lat.	W. long.
SM1 .....	43°03'	70°27'

SMALL MESH AREA II

Point	N. lat.	W. long.
SM13 .....	43°05.6'	69°55'
SM14 .....	43°10.1'	69°43.3'
SM15 .....	42°49.5'	69°40'
SM16 .....	42°41.5'	69°40'
SM17 .....	42°36.6'	69°55'
SM13 .....	43°05.6'	69°55'

(ii) *Raised footrope trawl.* Vessels fishing with trawl gear must configure it in such a way that, when towed, the gear is not in contact with the ocean bottom. Vessels are presumed to be fishing in such a manner if their trawl gear is designed as specified in paragraphs (a)(9)(ii)(A) through (D) of this section and is towed so that it does not come into contact with the ocean bottom.

(A) Eight-inch (20.3-cm) diameter floats must be attached to the entire length of the headrope, with a maximum spacing of 4 ft (122.0 cm) between floats.

(B) The ground gear must all be bare wire not larger than 1/2-inch (1.2-cm) for the top leg, not larger than 5/8-inch (1.6-cm) for the bottom leg, and not larger than 3/4-inch (1.9-cm) for the ground cables. The top and bottom legs must be equal in length, with no extensions. The total length of ground cables and legs must not be greater than 40 fathoms (73 m) from the doors to wingends.

(C) The footrope must be longer than the length of the headrope, but not more than 20 ft (6.1 m) longer than the length of the headrope. The footrope must be rigged so that it does not contact the ocean bottom while fishing.

(D) The raised footrope trawl may be used with or without a chain sweep. If used without a chain sweep, the drop chains must be a maximum of 3/8-inch (0.95-cm) diameter bare chain and must be hung from the center of the footrope and each corner (the quarter, or the junction of the bottom wing to the belly at the footrope). Drop chains must be hung at intervals of 8 ft (2.4 m) along the footrope from the corners to the wing ends. If used with a chain sweep, the sweep must be rigged so it is behind and below the footrope, and the footrope is off the bottom. This is accomplished by having the sweep longer than the footrope and having long drop chains attaching the sweep to the footrope at regular intervals. The forward end of the sweep and footrope must be connected

to the bottom leg at the same point. This attachment, in conjunction with the headrope flotation, keeps the footrope off the bottom. The sweep and its rigging, including drop chains, must be made entirely of bare chain with a maximum diameter of 5/16 inches (0.8 cm). No wrapping or cookies are allowed on the drop chains or sweep. The total length of the sweep must be at least 7 ft (2.1 m) longer than the total length of the footrope, or 3.5 ft (1.1 m) longer on each side. Drop chains must connect the footrope to the sweep chain, and the length of each drop chain must be at least 42 inches (106.7 cm). One drop chain must be hung from the center of the footrope to the center of the sweep, and one drop chain must be hung from each corner. The attachment points of each drop chain on the sweep and the footrope must be the same distance from the center drop chain attachments. Drop chains must be hung at intervals of 8 ft (2.4 m) from the corners toward the wing ends. The distance of the drop chain that is nearest the wing end to the end of the footrope may differ from net to net. However, the sweep must be at least 3.5 ft (1.1 m) longer than the footrope between the drop chain closest to the wing ends and the end of the sweep that attaches to the wing end.

(10) *Nantucket Shoals Dogfish Fishery Exemption Area.* Vessels subject to the minimum mesh size restrictions specified in paragraph (a)(3) or paragraph (a)(4) of this section may fish with, use, or possess nets of mesh smaller than the minimum size specified in the Nantucket Shoals Dogfish Fishery Exemption Area, if the vessel complies with the requirements specified in paragraph (a)(10)(i) of this section. The Nantucket Shoals Dogfish Fishery Exemption Area (copies of a map depicting this area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

NANTUCKET SHOALS DOGFISH EXEMPTION AREA

Point	N. lat.	W. long.
NS1 .....	41°45'	70°00'
NS2 .....	41°45'	69°20'
NS3 .....	41°30'	69°20'
CI1 .....	41°30'	69°23'
NS5 .....	41°26.5'	69°20'
NS6 .....	40°50'	69°20'
NS7 .....	40°50'	70°00'
NS1 .....	41°45'	70°00'

(i) *Requirements.* (A) A vessel fishing in the Nantucket Shoals Dogfish Fishery Exemption Area, under the exemption,

must have on board a letter of authorization issued by the Regional Administrator and may not fish for, possess on board, or land any species of fish other than dogfish, except as provided under paragraph (a)(10)(i)(D) of this section.

(B) Fishing is confined to June 1 through October 15.

(C) When transiting the GOM or GB Regulated Mesh Areas, specified under paragraphs (a)(1) and (2) of this section, any nets with a mesh size smaller than the minimum mesh size specified in paragraphs (a)(3) and (4) of this section must be stowed and unavailable for immediate use in accordance with § 648.23(b).

(D) *Incidental species provisions.* The following species may be possessed and landed, with the restrictions noted, as allowable incidental species in the Nantucket Shoals Dogfish Fishery Exemption Area: Longhorn sculpin; silver hake—up to 200 lb (90.7 kg); monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter; and skate or skate parts—up to 10 percent, by weight, of all other species on board.

(E) A vessel fishing in the Nantucket Shoals Dogfish Fishery Exemption Area, under the exemption, must comply with any additional gear restrictions specified in the letter of authorization issued by the Regional Administrator.

(ii) *Sea sampling.* The Regional Administrator may conduct periodic sea sampling to determine if there is a need to change the area or season designation, and to evaluate the bycatch of regulated species.

(11) *GOM Scallop Dredge Exemption Area.* Unless otherwise prohibited in § 648.81, vessels with a limited access scallop permit that have declared out of the DAS program as specified in § 648.10, or that have used up their DAS allocations, and vessels issued a General Category scallop permit, may fish in the GOM Scallop Dredge Fishery Exemption Area when not under a NE multispecies DAS, providing the vessel complies with the requirements specified in paragraph (a)(11)(i) of this section. The GOM Scallop Dredge Fishery Exemption Area is defined by the straight lines connecting the following points in the order stated (copies of a map depicting the area are available from the Regional Administrator upon request):

GOM SCALLOP DREDGE EXEMPTION AREA

Point	N. lat.	W. long.
SM1 .....	41°35'	70°00'
SM2 .....	41°35'	69°40'
SM3 .....	42°49.5'	69°40'
SM4 .....	43°12'	69°00'
SM5 .....	43°41'	68°00'
G2 .....	43°58'	67°22'
G1 .....	(1)	(1)

<sup>1</sup> Northward along the irregular U.S.-Canada maritime boundary to the shoreline.

(i) *Requirements.* (A) A vessel fishing in the GOM Scallop Dredge Fishery Exemption Area specified in this paragraph (a)(11) may not fish for, possess on board, or land any species of fish other than Atlantic sea scallops.

(B) The combined dredge width in use by, or in possession on board, vessels fishing in the GOM Scallop Dredge Fishery Exemption Area may not exceed 10.5 ft (3.2 m), measured at the widest point in the bail of the dredge.

(C) The exemption does not apply to the Cashes Ledge Closure Area or the Western GOM Area Closure specified in § 648.81(d) and (e).

(ii) [Reserved]

(12) *Nantucket Shoals Mussel and Sea Urchin Dredge Exemption Area.* A vessel may fish with a dredge in the Nantucket Shoals Mussel and Sea Urchin Dredge Exemption Area, provided that any dredge on board the vessel does not exceed 8 ft (2.4 m), measured at the widest point in the bail of the dredge, and the vessel does not fish for, harvest, possess, or land any species of fish other than mussels and sea urchins. The area coordinates of the Nantucket Shoals Mussel and Sea Urchin Dredge Exemption Area are the same coordinates as those of the Nantucket Shoals Dogfish Fishery Exemption Area specified in paragraph (a)(10) of this section.

(13) *GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area.* Unless otherwise prohibited in § 648.81, a vessel may fish with gillnets in the GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area when not under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (a)(13)(i) of this section. The GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area is defined by straight lines connecting the following points in the order stated:

N. lat.	W. long.
41°35' .....	70°00'

N. lat.	W. long.
42°49.5' .....	70°00'
42°49.5' .....	69°40'
43°12' .....	69°00'
(1) .....	69°00'

<sup>1</sup> Due north to Maine shoreline.

(i) *Requirements.* (A) A vessel fishing under this exemption may not fish for, possess on board, or land any species of fish other than monkfish, or lobsters in an amount not to exceed 10 percent by weight of the total catch on board, or 200 lobsters, whichever is less.

(B) All gillnets must have a minimum mesh size of 10-inch (25.4-cm) diamond mesh throughout the net.

(C) Fishing is confined to July 1 through September 14.

(ii) [Reserved]

(14) *GOM/GB Dogfish Gillnet Exemption.* Unless otherwise prohibited in § 648.81, a vessel may fish with gillnets in the GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area when not under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (a)(14)(i) of this section. The area coordinates of the GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area are specified in paragraph (a)(13) of this section.

(i) *Requirements.* (A) A vessel fishing under this exemption may not fish for, possess on board, or land any species of fish other than dogfish, or lobsters in an amount not to exceed 10 percent by weight of the total catch on board, or 200 lobsters, whichever is less.

(B) All gillnets must have a minimum mesh size of 6.5-inch (16.5-cm) diamond mesh throughout the net.

(C) Fishing is confined to July 1 through August 31.

(ii) [Reserved]

(15) *Raised Footrope Trawl Exempted Whiting Fishery.* Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may fish with, use, or possess nets in the Raised Footrope Trawl Whiting Fishery area with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements specified in paragraph (a)(15)(i) of this section. This exemption does not apply to the Cashes Ledge Closure Areas or the Western GOM Area Closure specified in § 648.81(d) and (e). The Raised Footrope Trawl Whiting Fishery Area (copies of a chart depicting the area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

RAISED FOOTROPE TRAWL WHITING FISHERY EXEMPTION AREA  
[September 1 through November 20]

Point	N. lat.	W. long.
RF 1 .....	42°14.05'	70°08.8'
RF 2 .....	42°09.2'	69°47.8'
RF 3 .....	41°54.85'	69°35.2'
RF 4 .....	41°41.5'	69°32.85'
RF 5 .....	41°39'	69°44.3'
RF 6 .....	41°45.6'	69°51.8'
RF 7 .....	41°52.3'	69°52.55'
RF 8 .....	41°55.5'	69°53.45'
RF 9 .....	42°08.35'	70°04.05'
RF 10 .....	42°04.75'	70°16.95'
RF 11 .....	42°00'	70°13.2'
RF 12 .....	42°00'	70°24.1'
RF 13 .....	42°07.85'	70°30.1'
RF 1 .....	42°14.05'	70°08.8'

RAISED FOOTROPE TRAWL WHITING FISHERY EXEMPTION AREA  
[November 21 through December 31]

Point	N. lat.	W. long.
RF 1 .....	42°14.05'	70°08.8'
RF 2 .....	42°09.2'	69°47.8'
RF 3 .....	41°54.85'	69°35.2'
RF 4 .....	41°41.5'	69°32.85'
RF 5 .....	41°39'	69°44.3'
RF 6 .....	41°45.6'	69°51.8'
RF 7 .....	41°52.3'	69°52.55'
RF 8 .....	41°55.5'	69°53.45'
RF 9 .....	42°08.35'	70°04.05'
RF 1 .....	42°14.05'	70°08.8'

(i) *Requirements.* (A) A vessel fishing in the Raised Footrope Trawl Whiting Fishery under this exemption must have on board a valid letter of authorization issued by the Regional Administrator. To obtain a letter of authorization, vessel owners must write to or call during normal business hours the Northeast Region Permit Office and provide the vessel name, owner name, permit number, and the desired period of time that the vessel will be enrolled. Since letters of authorization are effective the day after they are requested, vessel owners should allow appropriate processing and mailing time. To withdraw from a category, vessel owners must write to or call the Northeast Region Permit Office. Withdrawals are effective the day after the date of request. Withdrawals may occur after a minimum of 7 days of enrollment.

(B) All nets must be no smaller than a minimum mesh size of 2.5-inch (6.35-cm) square or diamond mesh, subject to the restrictions as specified in paragraph (a)(15)(i)(D) of this section. An owner or operator of a vessel enrolled in the raised footrope whiting fishery may not fish for, possess on board, or land any species of fish other than whiting and

offshore hake, subject to the applicable possession limits as specified in § 648.86, except for the following allowable incidental species: Red hake, butterfish, dogfish, herring, mackerel, scup, and squid.

(C) [Reserved]

(D) All nets must comply with the minimum mesh sizes specified in paragraphs (a)(15)(i)(B) of this section. Counting from the terminus of the net, the minimum mesh size is applied to the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.3 m) in length and is applied to the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.3 m) in length.

(E) Raised footrope trawl gear is required and must be configured as specified in paragraphs (a)(9)(ii)(A) through (D) of this section.

(F) Fishing may only occur from September 1 through November 20 of each fishing year, except that it may occur in the eastern portion only of the Raised Footrope Trawl Whiting Fishery Exemption Area from November 21 through December 31 of each fishing year.

(G) A vessel enrolled in the Raised Footrope Trawl Whiting Fishery may fish for small-mesh multispecies in exempted fisheries outside of the Raised Footrope Trawl Whiting Fishery exemption area, provided that the vessel complies with the more restrictive gear, possession limit and other requirements specified in the regulations of that exempted fishery for the entire participation period specified on the vessel's letter of authorization. For example, a vessel may fish in both the Raised Footrope Trawl Whiting Fishery and the Cultivator Shoal Whiting Fishery Exemption Area, and would be restricted to a minimum mesh size of 3 inches (7.6 cm), as required in the Cultivator Shoal Whiting Fishery Exemption Area; the use of the raised footrope trawl; and the catch and bycatch restrictions of the Raised Footrope Trawl Whiting Fishery, except for scup.

(ii) *Sea sampling.* The Regional Administrator shall conduct periodic sea sampling to evaluate the bycatch of regulated species.

(16) *GOM Grate Raised Footrope Trawl Exempted Whiting Fishery.* Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may fish with, use, and possess in the GOM Grate Raised Footrope Trawl Whiting Fishery area from July 1 through November 30 of each year, nets with a mesh size

smaller than the minimum size specified, if the vessel complies with the requirements specified in paragraphs (a)(16)(i) and (ii) of this section. The GOM Grate Raised Footrope Trawl Whiting Fishery Area (copies of a chart depicting the area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

GOM GRATE RAISED FOOTROPE TRAWL WHITING FISHERY EXEMPTION AREA

[July 1 through November 30]

Point	N. lat.	W. long.
GRF1 .....	43°15'	70°35.4'
GRF2 .....	43°15'	70°00'
GRF3 .....	43°25.2'	70°00'
GRF4 .....	43°41.8'	69°20'
GRF5 .....	43°58.8'	69°20'

(i) *Mesh requirements and possession restrictions.* (A) All nets must comply with a minimum mesh size of 2.5-inch (6.35-cm) square or diamond mesh, subject to the restrictions specified in paragraph (a)(16)(i)(B) of this section. An owner or operator of a vessel participating in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery may not fish for, possess on board, or land any species of fish, other than whiting and offshore hake, subject to the applicable possession limits as specified in paragraph (a)(16)(i)(C) of this section, except for the following allowable incidental species: Red hake, butterfish, herring, mackerel, squid, and alewife.

(B) All nets must comply with the minimum mesh size specified in paragraph (a)(16)(i)(A) of this section. Counting from the terminus of the net, the minimum mesh size is applied to the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.3 m) in length and is applied to the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.3 m) in length.

(C) An owner or operator of a vessel participating in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery may fish for, possess, and land combined silver hake and offshore hake only up to 7,500 lb (3,402 kg). An owner or operator fishing with mesh larger than the minimum mesh size specified in paragraph (a)(16)(i)(A) of this section may not fish for, possess, or land silver hake or offshore hake in quantities larger than 7,500 lb (3,402 kg).

(ii) *Gear specifications.* In addition to the requirements specified in paragraph (a)(16)(i) of this section, an owner or operator of a vessel fishing in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery must configure the vessel's trawl gear as specified in paragraphs (a)(16)(ii)(A) through (C) of this section.

(A) An owner or operator of a vessel fishing in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery must configure the vessel's trawl gear with a raised footrope trawl as specified in paragraphs (a)(9)(ii)(A) through (C) of this section. In addition, the restrictions specified in paragraphs (a)(16)(ii)(B) and (C) of this section apply to vessels fishing in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery.

(B) The raised footrope trawl must be used without a sweep of any kind (chain, roller frame, or rockhopper). The drop chains must be a maximum of 3/8-inch (0.95 cm) diameter bare chain and must be hung from the center of the footrope and each corner (the quarter, or the junction of the bottom wing to the belly at the footrope). Drop chains must be at least 42 inches (106.7 cm) in length and must be hung at intervals of 8 ft (2.4 m) along the footrope from the corners to the wing ends.

(C) The raised footrope trawl net must have a rigid or semi-rigid grate consisting of parallel bars of not more than 50 mm (1.97 inches) spacing that excludes all fish and other objects, except those that are small enough to pass between its bars into the codend of the trawl. The grate must be secured in the trawl, forward of the codend, in such a manner that it precludes the passage of fish or other objects into the codend without the fish or objects having to first pass between the bars of the grate. The net must have an outlet or hole to allow fish or other objects that are too large to pass between the bars of the grate to exit the net. The aftermost edge of this outlet or hole must be at least as wide as the grate at the point of attachment. The outlet or hole must extend forward from the grate toward the mouth of the net. A funnel of net material is allowed in the lengthening piece of the net forward of the grate to direct catch towards the grate.

(iii) *Annual review.* On an annual basis, the Groundfish PDT will review data from this fishery, including sea sampling data, to determine whether adjustments are necessary to ensure that regulated species bycatch remains at a minimum. If the Groundfish PDT recommends adjustments to ensure that regulated species bycatch remains at a

minimum, the Council may take action prior to the next fishing year through the framework adjustment process specified in § 648.90(b), and in accordance with the Administrative Procedure Act.

(17) *GOM/GB Exemption Area—Area definition.* The GOM/GB Exemption Area (copies of a map depicting this area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the east by the U.S.-Canada maritime boundary, defined by straight lines connecting the following points in the order stated:

GULF OF MAINE GEORGES BANK EXEMPTION AREA

Point	N. lat.	W. long.
G1 .....	( <sup>1</sup> )	( <sup>1</sup> )
G2 .....	43°58'	67°22'
G3 .....	42°53.1'	67°44.4'
G4 .....	42°31'	67°28.1'
G5 .....	41°18.6'	66°24.8'

<sup>1</sup>The intersection of the shoreline and the U.S.-Canada Maritime Boundary

(ii) Bounded on the south by straight lines connecting the following points in the order stated:

Point	N. lat.	W. long.	Approximate Ioran C bearings
G6 .....	40°55.5'	66°38'	5930-Y-30750 and 9960-Y-43500.
G7 .....	40°45.5'	68°00'	9960-Y-43500 and 68°00' W. lat.
G8 .....	40°37'	68°00'	9960-Y-43450 and 68°00' W. lat.
G9 .....	40°30'	69°00'	
NL3 .....	40°22.7'	69°00'	
NL2 .....	40°18.7'	69°40'	
NL1 .....	40°50'	69°40'	
G11 .....	40°50'	70°00'	
G12 .....		70°00' <sup>1</sup>	

<sup>1</sup>Northward to its intersection with the shoreline of mainland Massachusetts.

(b) *Southern New England (SNE) Regulated Mesh Area—(1) Area definition.* The SNE Regulated Mesh Area (copies of a map depicting this area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the east by the western boundary of the GB Regulated Mesh Area described under paragraph (a)(2)(iii) of this section; and

(ii) Bounded on the west by a line beginning at the intersection of 74°00' W. long. and the south facing shoreline of Long Island, NY, and then running southward along the 74°00' W. long. line.

(2) *Gear restrictions—(i) Vessels using trawls.* Except as provided in paragraphs (b)(2)(i) and (vi) of this section, and unless otherwise restricted under

paragraph (b)(2)(iii) of this section, the minimum mesh size for any trawl net, not stowed and not available for immediate use in accordance with § 648.23(b), except midwater trawl, on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the SNE Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh, applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) square mesh or, 7-inch (17.8-cm) diamond mesh applied to the codend of the net, as defined under paragraph (a)(3)(i) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not

been issued a NE multispecies permit and that are fishing exclusively in state waters.

(ii) *Vessels using Scottish seine, midwater trawl, and purse seine.* Except as provided in paragraphs (b)(2)(ii) and (vi) of this section, the minimum mesh size for any Scottish seine, midwater trawl, or purse seine, not stowed and not available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the SNE Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied throughout the net, or any combination thereof. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81

sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iii) *Large-mesh vessels.* When fishing in the SNE Regulated Mesh Area, the minimum mesh size for any trawl net vessel, or sink gillnet, not stowed and not available for immediate use in accordance with § 648.23(b) on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(b)(4), is 8.5-inch (21.6-cm) diamond or square mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iv) *Gillnet vessels.* For Day and Trip gillnet vessels, the minimum mesh size for any sink gillnet not stowed and not available for immediate use in accordance with § 648.23(b), when fishing under a DAS in the NE multispecies DAS program in the SNE Regulated Mesh Area, is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters. Gillnet vessels must also abide by the tagging requirements in paragraph (a)(3)(iv)(C) of this section.

(A) *Trip gillnet vessels—(1) Number of nets.* A Trip gillnet vessel fishing under a NE multispecies DAS and fishing in the SNE Regulated Mesh Area, may not fish with, haul, possess, or deploy more than 75 nets, except as provided in § 648.92(b)(8)(i). Vessels may fish any combination of roundfish and flatfish gillnets up to 75 nets. Such vessels, in accordance with § 648.23(b), may stow nets in excess of 75 nets.

(2) *Net size requirements.* Nets may not be longer than 300 ft (91.4 m), or 50 fathoms (91.4 m) in length.

(3) *Tags.* Roundfish or flatfish gillnets must be tagged with two tags per net, with one tag secured to each bridle of every net within a string of gillnets.

(B) *Day gillnet vessels—(1) Number of nets.* A Day gillnet vessel fishing under a NE multispecies DAS and fishing in the SNE Regulated Mesh Area may not fish with, haul, possess, or deploy more than 75 nets, except as provided in § 648.92(b)(8)(i). Such vessels, in accordance with § 648.23(b), may stow additional nets not to exceed 160, counting deployed nets.

(2) *Net size requirements.* Nets may not be longer than 300 ft (91.4 m), or 50 fathoms (91.4 m), in length.

(3) *Tags.* Roundfish or flatfish gillnets must be tagged with two tags per net, with one tag secured to each bridle of every net within a string of nets.

(C) *Obtaining and replacing tags.* See paragraph (a)(3)(iv)(C) of this section.

(v) *Hook gear restrictions.* Unless otherwise specified in this paragraph (b)(2)(v), vessels fishing with a valid NE multispecies limited access permit and fishing under a NE multispecies DAS, and vessels fishing with a valid NE multispecies limited access Small-Vessel permit, in the SNE Regulated Mesh Area, and persons on such vessels, are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 2,000 rigged hooks. All longline gear hooks must be circle hooks, of a minimum size of 12/0. An unabated hook and gangions that has not been secured to the ground line of the trawl on board a vessel is deemed to be a replacement hook and is not counted toward the 2,000-hook limit. A “snap-on” hook is deemed to be a replacement hook if it is not rigged or baited. The use of de-hookers (“crucifer”) with less than 6-inch (15.2-cm) spacing between the fairlead rollers is prohibited. Vessels fishing with a valid NE multispecies limited access Hook Gear permit and fishing under a multispecies DAS in the SNE Regulated Mesh Area, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel. Vessels fishing with a valid NE multispecies limited access Handgear A permit are prohibited from fishing, or possessing on board the vessel, gears other than handgear. Vessels fishing with tub-trawl gear are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel more than 250 hooks.

(vi) *Other restrictions and exemptions.* Vessels are prohibited from fishing in the SNE Exemption Area, as defined in paragraph (b)(10) of this section, except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (b)(3), (b)(5) through (9), (b)(11), (c), (e), (h) and (i) of this section, or if fishing under a NE multispecies DAS, if fishing under the Small Vessel or Handgear A exemptions specified in § 648.82(b)(5) and (b)(6), respectively, or if fishing under a scallop state waters exemption specified in § 648.54, or if fishing under a scallop DAS in accordance with paragraph (h) of this section, or if fishing under a General Category scallop permit in accordance with paragraphs (a)(11)(i)(A) and (B) of

this section, or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit, or if fishing as a charter/party or private recreational vessel in compliance with the regulations specified in § 648.89. Any gear on a vessel, or used by a vessel, in this area must be authorized under one of these exemptions or must be stowed as specified in § 648.23(b).

(3) *Exemptions—(i) Species exemptions.* Owners and operators of vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(4) and (b)(2) of this section, may fish for, harvest, possess, or land butterfish, dogfish (trawl only), herring, Atlantic mackerel, ocean pout, scup, shrimp, squid, summer flounder, silver hake and offshore hake, and weakfish with nets of a mesh size smaller than the minimum size specified in the GB and SNE Regulated Mesh Areas when fishing in the SNE Exemption Area defined in paragraph (b)(10) of this section, provided such vessels comply with requirements specified in paragraph (b)(3)(ii) of this section and with the mesh size and possession limit restrictions specified under § 648.86(d).

(ii) *Possession and net stowage requirements.* Vessels may possess regulated species while in possession of nets with mesh smaller than the minimum size specified in paragraphs (a)(4) and (b)(2) of this section when fishing in the SNE Exemption Area defined in paragraph (b)(10) of this section, provided that such nets are stowed and are not available for immediate use in accordance with § 648.23(b), and provided that regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in paragraphs (a)(4) and (b)(2) of this section. Vessels fishing for the exempted species identified in paragraph (b)(3)(i) of this section may also possess and retain the following species, with the restrictions noted, as incidental take to these exempted fisheries: Conger eels; sea robins; black sea bass; red hake; tautog (blackfish); blowfish; cunner; John Dory; mullet; bluefish; tilefish; longhorn sculpin; fourspot flounder; alewife; hickory shad; American shad; blueback herring; sea raven; Atlantic croaker; spot; swordfish; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less; and skate and skate parts—up to 10

percent, by weight, of all other species on board.

(4) *Addition or deletion of exemptions.* Same as in paragraph (a)(8) of this section.

(5) *SNE Monkfish and Skate Trawl Exemption Area.* Unless otherwise required or prohibited by monkfish or skate regulations under this part, a vessel may fish with trawl gear in the SNE Monkfish and Skate Trawl Fishery Exemption Area when not operating under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (b)(5)(i) of this section, and the monkfish and skate regulations, as applicable, under this part. The SNE Monkfish and Skate Trawl Fishery Exemption Area is defined as the area bounded on the north by a line extending eastward along 40°10' N. lat., and bounded on the west by the western boundary of the SNE Exemption Area as defined in paragraph (b)(10)(ii) of this section.

(i) *Requirements.* (A) A vessel fishing under this exemption may only fish for, possess on board, or land monkfish and incidentally caught species up to the amounts specified in paragraph (b)(3) of this section.

(B) All trawl nets must have a minimum mesh size of 8-inch (20.3-cm) square or diamond mesh throughout the codend for at least 45 continuous meshes forward of the terminus of the net.

(C) A vessel not operating under a multispecies DAS may fish for, possess on board, or land skates, provided:

(1) The vessel is called into the monkfish DAS program (§ 648.92) and complies with the skate possession limit restrictions at § 648.322;

(2) The vessel has an LOA on board to fish for skates as bait only, and complies with the requirements specified at § 648.322(b); or

(3) The vessel possesses and/or lands skates or skate parts in an amount not to exceed 10 percent by weight of all other species on board as specified at paragraph (b)(3) of this section.

(ii) [Reserved]

(6) *SNE Monkfish and Skate Gillnet Exemption Area.* Unless otherwise required by monkfish regulations under this part, a vessel may fish with gillnet gear in the SNE Monkfish and Skate Gillnet Fishery Exemption Area when not operating under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (b)(6)(i) of this section; the monkfish regulations, as applicable, under §§ 648.91 through 648.94; and the skate regulations, as applicable, under §§ 648.4 and 648.322. The SNE Monkfish and Skate Gillnet Fishery

Exemption Area is defined by a line running from the Massachusetts shoreline at 41°35' N. lat. and 70°00' W. long., south to its intersection with the outer boundary of the EEZ, southwesterly along the outer boundary of the EEZ, and bounded on the west by the western boundary of the SNE Exemption Area, as defined in paragraph (b)(10)(ii) of this section.

(i) *Requirements.* (A) A vessel fishing under this exemption may only fish for, possess on board, or land monkfish and incidentally caught species up to the amounts specified in paragraph (b)(3) of this section.

(B) All gillnets must have a minimum mesh size of 10-inch (25.4-cm) diamond mesh throughout the net.

(C) All nets with a mesh size smaller than the minimum mesh size specified in paragraph (b)(6)(i)(B) of this section must be stowed as specified in § 648.23(b).

(D) A vessel not operating under a NE multispecies DAS may fish for, possess on board, or land skates, provided:

(1) The vessel is called into the monkfish DAS program (§ 648.92) and complies with the skate possession limit restrictions at § 648.322;

(2) The vessel has an Letter of Authorization on board to fish for skates as bait only, and complies with the requirements specified at § 648.322(b); or

(3) The vessel possesses and/or lands skates or skate parts in an amount not to exceed 10 percent, by weight, of all other species on board as specified at paragraph (b)(3) of this section.

(ii) [Reserved]

(7) *SNE Dogfish Gillnet Exemption Area.* Unless otherwise required by monkfish regulations under this part, a gillnet vessel may fish in the SNE Dogfish Gillnet Fishery Exemption Area when not operating under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (b)(7)(i) of this section and the applicable dogfish regulations under subpart L of this part. The SNE Dogfish Gillnet Fishery Exemption Area is defined by a line running from the Massachusetts shoreline at 41°35' N. lat. and 70°00' W. long., south to its intersection with the outer boundary of the EEZ, southwesterly along the outer boundary of the EEZ, and bounded on the west by the western boundary of the SNE Exemption Area as defined in paragraph (b)(10)(ii) of this section.

(i) *Requirements.* (A) A vessel fishing under this exemption may only fish for, possess on board, or land dogfish and the bycatch species and amounts specified in paragraph (b)(3) of this section.

(B) All gillnets must have a minimum mesh size of 6-inch (15.2-cm) diamond mesh throughout the net.

(C) Fishing is confined to May 1 through October 31.

(ii) [Reserved]

(8) *SNE Mussel and Sea Urchin Dredge Exemption.* A vessel may fish with a dredge in the SNE Exemption Area, as defined in paragraph (b)(10) of this section, provided that any dredge on board the vessel does not exceed 8 ft (2.4 m), measured at the widest point in the bail of the dredge, and the vessel does not fish for, harvest, possess, or land any species of fish other than mussels and sea urchins.

(9) *SNE Little Tunny Gillnet Exemption Area.* A vessel may fish with gillnet gear in the SNE Little Tunny Gillnet Exemption Area when not operating under a NE multispecies DAS with mesh size smaller than the minimum required in the SNE Regulated Mesh Area, if the vessel complies with the requirements specified in paragraph (b)(9)(i) of this section. The SNE Little Tunny Gillnet Exemption Area is defined by a line running from the Rhode Island shoreline at 41°18.2' N. lat. and 71°51.5' W. long. (Watch Hill, RI), southwesterly through Fishers Island, NY, to Race Point, Fishers Island, NY; and from Race Point, Fishers Island, NY, southeasterly to 41°06.5' N. lat. and 71°50.2' W. long.; east-northeastly through Block Island, RI, to 41°15' N. lat. and 71°07' W. long.; then due north to the intersection of the RI-MA shoreline.

(i) *Requirements.* (A) A vessel fishing under this exemption may fish only for, possess on board, or land little tunny and the allowable incidental species and amounts specified in paragraph (b)(3) of this section and, if applicable, paragraph (b)(9)(i)(B) of this section. Vessels fishing under this exemption may not possess regulated species.

(B) A vessel may possess bonito as an allowable incidental species.

(C) The vessel must have a letter of authorization issued by the Regional Administrator on board.

(D) All gillnets must have a minimum mesh size of 5.5-inch (14.0-cm) diamond mesh throughout the net.

(E) All nets with a mesh size smaller than the minimum mesh size specified in paragraph (b)(9)(i)(D) of this section must be stowed in accordance with one of the methods described under § 648.23(b) while fishing under this exemption.

(F) Fishing is confined to September 1 through October 31.

(ii) The Regional Administrator shall conduct periodic sea sampling to



evaluate the likelihood of gear interactions with protected resources.

(10) *SNE Exemption Area—Area definition.* The SNE Exemption Area (copies of a map depicting this area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the east by straight lines connecting the following points in the order stated:

**SOUTHERN NEW ENGLAND EXEMPTION AREA**

Point	N. lat.	W. long.
G5 .....	41°18.6'	66°24.8'
G6 .....	40°55.5'	66°38'
G7 .....	40°45.5'	68°00'
G8 .....	40°37'	68°00'
G9 .....	40°30.5'	69°00'
NL3 .....	40°22.7'	69°00'
NL2 .....	40°18.7'	69°40'
NL1 .....	40°50'	69°40'
G11 .....	40°50'	70°00'
G12 .....		70°00' <sup>1</sup>

<sup>1</sup>Northward to its intersection with the shoreline of mainland Massachusetts.

(ii) Bounded on the west by a line running from the Rhode Island shoreline at 41°18.2' N. lat. and 71°51.5' W. long. (Watch Hill, RI), southwesterly through Fishers Island, NY, to Race Point, Fishers Island, NY; and from Race Point, Fishers Island, NY; southeasterly to the intersection of the 3-nautical mile line east of Montauk Point; southwesterly along the 3-nautical mile line to the intersection of 72°30' W. long.; and south along that line to the intersection of the outer boundary of the EEZ.

(11) *SNE Scallop Dredge Exemption Area.* Unless otherwise prohibited in § 648.81, or 50 CFR part 648, subpart D, vessels with a limited access scallop permit that have declared out of the DAS program as specified in § 648.10, or that have used up their DAS allocation, and vessels issued a General Category scallop permit, may fish in the SNE Scallop Dredge Exemption Area when not under a NE multispecies DAS, provided the vessel complies with the requirements specified in paragraph (b)(11)(ii) of this section.

(i) The SNE Scallop Dredge Exemption Area is that area (copies of a chart depicting this area are available from the Regional Administrator upon request):

(A) Bounded on the west, south, and east by straight lines connecting the following points in the order stated:

Point	N. lat.	W. long.
Sc1 .....	( <sup>1</sup> )	73°00'
Sc2 .....	40°00'	73°00'
Sc3 .....	40°00'	71°40'

Point	N. lat.	W. long.
Sc4 .....	39°50'	71°40'
Sc5 .....	39°50'	70°00'
Sc6 .....	( <sup>2</sup> )	70°00'
Sc7 .....	( <sup>3</sup> )	70°00'
Sc8 .....	( <sup>4</sup> )	70°00'

<sup>1</sup> South facing shoreline of Long Island, NY.  
<sup>2</sup> South facing shoreline of Nantucket, MA.  
<sup>3</sup> North facing shoreline of Nantucket, MA.  
<sup>4</sup> South facing shoreline of Cape Cod, MA.

(B) Bounded on the northwest by straight lines connecting the following points in the order stated:

Point	N. lat.	W. long.
Sc9 .....	41°00'	( <sup>1</sup> )
Sc10 .....	41°00'	71°40'
Sc11 .....	( <sup>2</sup> )	71°40'

<sup>1</sup> East facing shoreline of the south fork of Long Island, NY.  
<sup>2</sup> South facing shoreline of RI.

(ii) *Exemption program requirements.* (A) A vessel fishing in the Scallop Dredge Exemption Area may not fish for, possess on board, or land any species of fish other than Atlantic sea scallops.

(B) The combined dredge width in use by or in possession on board vessels fishing in the SNE Scallop Dredge Exemption Area shall not exceed 10.5 ft (3.2 m), measured at the widest point in the bail of the dredge.

(C) Dredges must use a minimum of an 8-inch (20.3 cm) twine top.

(D) The exemption does not apply to the Nantucket Lightship Closed Area specified under § 648.81(c).

(c) *Mid-Atlantic (MA) Regulated Mesh Area—(1) Area definition.* The MA Regulated Mesh Area is that area bounded on the east by the western boundary of the SNE Regulated Mesh Area, described under paragraph (b)(1)(ii) of this section.

(2) *Gear restrictions—(i) Vessels using trawls.* Except as provided in paragraph (c)(2)(iii) of this section, the minimum mesh size for any trawl net not stowed and not available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the MA Regulated Mesh Area shall be that specified by § 648.104(a), applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) diamond or square mesh applied to the codend of the net, as defined in paragraph (a)(3)(i) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(ii) *Vessels using Scottish seine, midwater trawl, and purse seine.* Except as provided in paragraph (c)(2)(iii) of this section, the minimum mesh size for any sink gillnet, Scottish seine, midwater trawl, or purse seine, not stowed and not available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the MA Regulated Mesh Area, shall be that specified in § 648.104(a). This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iii) *Large-mesh vessels.* When fishing in the MA Regulated Mesh Area, the minimum mesh size for any trawl net vessel, or sink gillnet, not stowed and not available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(b)(4), is 7.5-inch (19.0-cm) diamond mesh or 8.0-inch (20.3-cm) square mesh, throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iv) *Hook gear restrictions.* Unless otherwise specified in this paragraph (c)(2)(iv), vessels fishing with a valid NE multispecies limited access permit and fishing under a NE multispecies DAS, and vessels fishing with a valid NE multispecies limited access Small Vessel permit, in the MA Regulated Mesh Area, and persons on such vessels, are prohibited from using de-hookers (“crucifer”) with less than 6-inch (15.2-cm) spacing between the fairlead rollers. Vessels fishing with a valid NE multispecies limited access Hook gear permit and fishing under a NE multispecies DAS in the MA Regulated Mesh Area, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel and are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 4,500 rigged hooks. An unabated hook and gangions that has not been secured to the ground line of the trawl on board a vessel is deemed to be a replacement hook and is not counted toward the 4,500-hook limit. A “snap-on” hook is deemed to be a replacement hook if it is not rigged or baited. Vessels fishing with a valid NE multispecies limited access Handgear



permit are prohibited from fishing, or possessing on board the vessel gears other than handgear. Vessels fishing with tub-trawl gear are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 250 hooks.

(v) *Gillnet vessels.* For Day and Trip gillnet vessels, the minimum mesh size for any sink gillnet, not stowed and not available for immediate use in accordance with § 648.23(b), when fishing under a DAS in the NE multispecies DAS program in the MA Regulated Mesh Area, is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(A) *Trip gillnet vessels—(1) Number of nets.* A Trip gillnet vessel fishing under a NE multispecies DAS and fishing in the MA Regulated Mesh Area, may not fish with, haul, possess, or deploy more than 75 nets, except as provided in § 648.92(b)(8)(i). Vessels may fish any combination of roundfish and flatfish gillnets up to 75 nets. Such vessels, in accordance with § 648.23(b), may stow nets in excess of 75 nets.

(2) *Net size requirement.* Nets may not be longer than 300 ft (91.4 m), or 50 fathoms in length.

(3) *Tags.* Roundfish or flatfish gillnets must be tagged with two tags per net, with one tag secured to each bridle of every net within a string of gillnets.

(B) *Day gillnet vessels—(1) Number of nets.* A Day gillnet vessel fishing under a NE multispecies DAS and fishing in the MA Regulated Mesh Area, may not fish with, haul, possess, or deploy more than 75 nets, except as provided in § 648.92(b)(8)(i). Such vessels, in accordance with § 648.23(b), may stow additional nets not to exceed 160, counting deployed nets.

(2) *Net size requirement.* Nets may not be longer than 300 ft (91.4 m), or 50 fathoms (91.4 m), in length.

(3) *Tags.* Roundfish or flatfish gillnets must be tagged with two tags per net, with one tag secured to each bridle of every net within a string of nets.

(C) *Obtaining and replacing tags.* See paragraph (a)(3)(iv)(C) of this section.

(3) *Net stowage exemption.* Vessels may possess regulated species while in possession of nets with mesh smaller than the minimum size specified in paragraph (c)(2)(i) of this section, provided that such nets are stowed and are not available for immediate use in accordance with § 648.23(b), and provided that regulated species were not harvested by nets of mesh size smaller

than the minimum mesh size specified in paragraph (c)(2)(i) of this section.

(4) *Addition or deletion of exemptions.* See paragraph (a)(8)(ii) of this section.

(5) *MA Exemption Area.* The MA Exemption Area is that area that lies west of the SNE Exemption Area defined in paragraph (b)(10) of this section.

(d) *Midwater trawl gear exemption.* Fishing may take place throughout the fishing year with midwater trawl gear of mesh size less than the applicable minimum size specified in this section, provided that:

(1) Midwater trawl gear is used exclusively;

(2) When fishing under this exemption in the GOM/GB Exemption Area, as defined in paragraph (a)(16) of this section, and in the area described in § 648.81(c)(1), the vessel has on board a letter of authorization issued by the Regional Administrator, and complies with all restrictions and conditions thereof;

(3) The vessel only fishes for, possesses, or lands Atlantic herring, blueback herring, or mackerel in areas north of 42°20' N. lat. and in the areas described in § 648.81(a)(1), (b)(1), and (c)(1); and Atlantic herring, blueback herring, mackerel, or squid in all other areas south of 42°20' N. lat.;

(4) The vessel does not fish for, possess, or land NE multispecies; and

(5) The vessel must carry a NMFS-approved sea sampler/observer, if requested by the Regional Administrator.

(e) *Purse seine gear exemption.* Fishing may take place throughout the fishing year with purse seine gear of mesh size smaller than the applicable minimum size specified in this section, provided that:

(1) The vessel uses purse seine gear exclusively;

(2) When fishing under this exemption in the GOM/GB Exemption Area, as defined in paragraph (a)(16) of this section, the vessel has on board a letter of authorization issued by the Regional Administrator;

(3) The vessel only fishes for, possesses, or lands Atlantic herring, blueback herring, mackerel, or menhaden; and

(4) The vessel does not fish for, possess, or land NE multispecies.

(f) *Mesh measurements—(1) Gillnets.* Mesh size of gillnet gear shall be measured by lining up 5 consecutive knots perpendicular to the float line and, with a ruler or tape measure, measuring 10 consecutive measures on the diamond, inside knot to inside knot. The mesh shall be the average of the

measurements of 10 consecutive measures.

(2) *All other nets.* With the exception of gillnets, mesh size shall be measured by a wedged-shaped gauge having a taper of 2 cm in 8 cm, and a thickness of 2.3 mm, inserted into the meshes under a pressure or pull of 5 kg.

(i) *Square-mesh measurement.* Square mesh in the regulated portion of the net is measured by placing the net gauge along the diagonal line that connects the largest opening between opposite corners of the square. The square-mesh size is the average of the measurements of 20 consecutive adjacent meshes from the terminus forward along the long axis of the net. The square mesh is measured at least five meshes away from the lacings of the net.

(ii) *Diamond-mesh measurement.* Diamond mesh in the regulated portion of the net is measured running parallel to the long axis of the net. The diamond-mesh size is the average of the measurements of any series of 20 consecutive meshes. The mesh is measured at least five meshes away from the lacings of the net.

(g) *Restrictions on gear and methods of fishing—(1) Net obstruction or constriction.* Except as provided in paragraph (g)(5) of this section, a fishing vessel subject to minimum mesh size restrictions shall not use any device or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of a trawl net, except that one splitting strap and one bull rope (if present), consisting of line and rope no more than 3 in (7.6 cm) in diameter, may be used if such splitting strap and/or bull rope does not constrict, in any manner, the top of the trawl net. "The top of the trawl net" means the 50 percent of the net that (in a hypothetical situation) would not be in contact with the ocean bottom during a tow if the net were laid flat on the ocean floor. For the purpose of this paragraph, head ropes are not considered part of the top of the trawl net.

(2) *Net obstruction or constriction.* (i) Except as provided in paragraph (g)(5) of this section, a fishing vessel may not use any mesh configuration, mesh construction, or other means on or in the top of the net subject to minimum mesh size restrictions, as defined in paragraph (g)(1) of this section, if it obstructs the meshes of the net in any manner.

(ii) A fishing vessel may not use a net capable of catching NE multispecies if the bars entering or exiting the knots twist around each other.

(3) *Pair trawl prohibition.* No vessel may fish for NE multispecies while pair

trawling, or possess or land NE multispecies that have been harvested by means of pair trawling.

(4) *Brush-sweep trawl prohibition.* No vessel may fish for, possess, or land NE multispecies while fishing with, or while in possession of, brush-sweep trawl gear.

(5) *Net strengthener restrictions when fishing for or possessing small-mesh multispecies—* (i) *Nets of mesh size less than 2.5 inches (6.4 cm).* A vessel lawfully fishing for small-mesh multispecies in the GOM/GB, SNE, or MA Regulated Mesh Areas, as defined in paragraphs (a), (b), and (c) of this section, with nets of mesh size smaller than 2.5 inches (6.4-cm), as measured by methods specified in paragraph (f) of this section, may use net strengtheners (covers, as described at § 648.23(d)), provided that the net strengthener for nets of mesh size smaller than 2.5 inches (6.4 cm) complies with the provisions specified under § 648.23(d).

(ii) *Nets of mesh size equal to or greater than 2.5 inches (6.4 cm) but less than 3 inches (7.6 cm).* A vessel lawfully fishing for small-mesh multispecies in the GOM/GB, SNE, or MA Regulated Mesh Areas, as defined in paragraphs (a), (b), and (c) of this section, with nets with mesh size equal to or greater than 2.5 inches (6.4 cm) but less than 3 inches (7.6 cm) (as measured by methods specified in paragraph (f) of this section, and as applied to the part of the net specified in paragraph (d)(1)(iv) of this section) may use a net strengthener (*i.e.*, outside net), provided the net strengthener does not have an effective mesh opening of less than 6 inches (15.2 cm), diamond or square mesh, as measured by methods specified in paragraph (f) of this section. The inside net (as applied to the part of the net specified in paragraph (d)(1)(iv) of this section) must not be more than 2 ft (61 cm) longer than the outside net, must be the same circumference or smaller than the smallest circumference of the outside net, and must be the same mesh configuration (*i.e.*, both square or both diamond mesh) as the outside net.

(6) *Gillnet requirements to reduce or prevent marine mammal takes—*(i) *Requirements for gillnet gear capable of catching NE multispecies to reduce harbor porpoise takes.* In addition to the requirements for gillnet fishing identified in this section, all persons owning or operating vessels in the EEZ that fish with sink gillnet gear and other gillnet gear capable of catching NE multispecies, with the exception of single pelagic gillnets (as described in § 648.81(f)(2)(ii)), must comply with the applicable provisions of the Harbor

Porpoise Take Reduction Plan found in § 229.33 of this title.

(ii) *Requirements for gillnet gear capable of catching NE multispecies to prevent large whale takes.* In addition to the requirements for gillnet fishing identified in this section, all persons owning or operating vessels in the EEZ that fish with sink gillnet gear and other gillnet gear capable of catching NE multispecies, with the exception of single pelagic gillnets (as described in § 648.81(f)(2)(ii)), must comply with the applicable provisions of the Atlantic Large Whale Take Reduction Plan found in § 229.32 of this title.

(h) *Scallop vessels.* (1) Except as provided in paragraph (h)(2) of this section, a scallop vessel that possesses a limited access scallop permit and either a NE multispecies Combination vessel permit or a scallop/multispecies possession limit permit, and that is fishing under a scallop DAS allocated under § 648.53, may possess and land up to 300 lb (136.1 kg) of regulated species per trip, provided that the amount of regulated species on board the vessel does not exceed the trip limits specified in § 648.86, and provided the vessel has at least one standard tote on board, unless otherwise restricted by § 648.86(a)(2).

(2) Combination vessels fishing under a NE multispecies DAS are subject to the gear restrictions specified in this section and may possess and land unlimited amounts of regulated species, unless otherwise restricted by § 648.86. Such vessels may simultaneously fish under a scallop DAS.

(i) *State waters winter flounder exemption.* Any vessel issued a NE multispecies permit may fish for, possess, or land winter flounder while fishing with nets of mesh smaller than the minimum size specified in paragraphs (a)(2), (b)(2), and (c)(2) of this section, provided that:

(1) The vessel has on board a certificate approved by the Regional Administrator and issued by the state agency authorizing the vessel's participation in the state's winter flounder fishing program and is in compliance with the applicable state laws pertaining to minimum mesh size for winter flounder.

(2) Fishing is conducted exclusively in the waters of the state from which the certificate was obtained.

(3) The state's winter flounder plan has been approved by the Commission as being in compliance with the Commission's winter flounder fishery management plan.

(4) The state elects, by a letter to the Regional Administrator, to participate in the exemption program described by

this section (for a particular fishing year).

(5) The vessel does not enter or transit the EEZ.

(6) The vessel does not enter or transit the waters of another state, unless such other state is participating in the exemption program described by this section and the vessel is enrolled in that state's program.

(7) The vessel, when not fishing under the DAS program, does not fish for, possess, or land more than 500 lb (226.8 kg) of winter flounder, and has at least one standard tote on board.

(8) The vessel does not fish for, possess, or land any species of fish other than winter flounder and the exempted small-mesh species specified under paragraphs (a)(5)(i), (a)(9)(i), (b)(3), and (c)(4) of this section when fishing in the areas specified under paragraphs (a)(5), (a)(9), (b)(10), and (c)(5) of this section, respectively. Vessels fishing under this exemption in New York and Connecticut state waters and permitted to fish for skates may also possess and land skates in amounts not to exceed 10 percent, by weight, of all other species on board.

■ 10. Section 648.81 is revised to read as follows:

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

(a) *Closed Area I.* (1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Closed Area I (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (a)(2) and (i) of this section:

CLOSED AREA I

Point	N. lat.	W. long.
CI1 .....	41°30'	69°23'
CI2 .....	40°45'	68°45'
CI3 .....	40°45'	68°30'
CI4 .....	41°30'	68°30'
CI1 .....	41°30'	69°23'

(2) Unless otherwise restricted under the EFH Closure(s) specified in paragraph (h) of this section, paragraph (a)(1) of this section does not apply to persons on fishing vessels or fishing vessels:

(i) Fishing with or using pot gear designed and used to take lobsters, or pot gear designed and used to take hagfish, provided that there is no retention of regulated species and no other gear on board capable of catching NE multispecies;

(ii) Fishing with or using pelagic longline gear or pelagic hook-and-line gear, or harpoon gear, provided that there is no retention of regulated species, and provided that there is no other gear on board capable of catching NE multispecies;

(iii) Fishing with pelagic midwater trawl gear, consistent with § 648.80(d), provided that the Regional Administrator shall review information pertaining to the bycatch of regulated NE multispecies and, if the Regional Administrator determines, on the basis of sea sampling data or other credible information for this fishery, that the bycatch of regulated multispecies exceeds, or is likely to exceed, 1 percent of herring and mackerel harvested, by weight, in the fishery or by any individual fishing operation, the Regional Administrator may place restrictions and conditions in the letter of authorization for any or all individual fishing operations or, after consulting with the Council, suspend or prohibit any or all midwater trawl activities in the closed areas;

(iv) Fishing with tuna purse seine gear, provided that there is no retention of NE multispecies, and provided there is no other gear on board capable of catching NE multispecies. If the Regional Administrator determines through credible information, that tuna purse seine vessels are adversely affecting habitat or NE multispecies stocks, the Regional Administrator may, through notice action, consistent with the Administrative Procedure Act, prohibit individual purse seine vessels or all purse seine vessels from the area; or

(v) Fishing in a SAP, in accordance with the provisions of § 648.85(b).

(b) *Closed Area II.* (1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Closed Area II (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraph (b)(2) of this section:

**CLOSED AREA II**

Point	N. lat.	W. long.
C111 .....	41°00'	67°20'
C112 .....	41°00'	66°35.8'
G5 .....	41°18.6'	66°24.8' <sup>1</sup>
C113 .....	42°22'	67°20' <sup>1</sup>
C111 .....	41°00'	67°20' <sup>1</sup>

<sup>1</sup> The U.S.-Canada Maritime Boundary.

(2) Unless otherwise restricted under the EFH Closure(s) specified in paragraph (h) of this section, paragraph

(b)(1) of this section does not apply to persons on fishing vessels or fishing vessels—

(i) Fishing with gears as described in paragraphs (a)(2)(i) through (iii), and (a)(2)(v) of this section;

(ii) Fishing with tuna purse seine gear outside of the portion of CA II known as the Habitat Area of Particular Concern, as described in paragraph (h)(v) of this section;

(iii) The vessel is fishing in the CA II Yellowtail Flounder SAP or the Closed Area II Haddock SAP as specified under paragraphs (b)(3) and (b)(4) of this section, respectively; or

(iv) Transiting the area, provided:

(A) The operator has determined that there is a compelling safety reason; and

(B) The vessel's fishing gear is stowed in accordance with the provisions of § 648.23(b).

(c) *Nantucket Lightship Closed Area.*

(1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as the Nantucket Lightship Closed Area (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (c)(2) and (i) of this section:

**NANTUCKET LIGHTSHIP CLOSED AREA**

Point	N. lat.	W. long.
G10 .....	40°50'	69°00'
CN1 .....	40°20'	69°00'
CN2 .....	40°20'	70°20'
CN3 .....	40°50'	70°20'
G10 .....	40°50'	69°00'

(2) Unless otherwise restricted under the EFH Closure(s) specified in paragraph (h) of this section, paragraph (c)(1) of this section does not apply to persons on fishing vessels or fishing vessels:

(i) Fishing with gears as described in paragraph (a)(2) of this section; or

(ii) Classified as charter, party or recreational vessel, provided that:

(A) If the vessel is a party or charter vessel, it has a letter of authorization issued by the Regional Administrator on board, which is valid from the date of issuance through a minimum duration of 7 days;

(B) With the exception of tuna, fish harvested or possessed by the vessel are not sold or intended for trade, barter or sale, regardless of where the regulated species are caught; and

(C) The vessel has no gear other than rod and reel or handline gear on board.

(D) The vessel does not fish outside the Nantucket Lightship Closed Area

during the period specified by the letter of authorization; or

(iii) Fishing with or using dredge gear designed and used to take surfclams or ocean quahogs, provided that there is no retention of regulated species and no other gear on board capable of catching NE multispecies.

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

**CASHES LEDGE CLOSURE AREA**

Point	N. lat.	W. long.
CL1 .....	43°07'	69°02'
CL2 .....	42°49.5'	68°46'
CL3 .....	42°46.5'	68°50.5'
CL4 .....	42°43.5'	68°58.5'
CL5 .....	42°42.5'	69°17.5'
CL6 .....	42°49.5'	69°26'
CL1 .....	43°07'	69°02'

(2) Unless otherwise restricted under the EFH Closure(s) specified in paragraph (h) of this section, paragraph (d)(1) of this section does not apply to persons on fishing vessels or fishing vessels that meet the criteria in paragraphs (f)(2)(ii) and (iii) of this section.

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

**WESTERN GOM CLOSURE AREA<sup>1</sup>**

Point	N. lat.	W. long.
WGM1 .....	42°15'	70°15'
WGM2 .....	42°15'	69°55'
WGM3 .....	43°15'	69°55'
WGM4 .....	43°15'	70°15'
WGM1 .....	42°15'	70°15'

<sup>1</sup> A chart depicting this area is available from the Regional Administrator upon request.

(2) Unless otherwise restricted under paragraph (h) of this section, paragraph (e)(1) of this section does not apply to

persons on fishing vessels or fishing vessels that meet the criteria in paragraphs (f)(2)(ii) and (iii) of this section consistent with the requirements specified under § 648.80(a)(5).

(f) *GOM Rolling Closure Areas.* (1) No fishing vessel or person on a fishing vessel may enter, fish in, or be in; and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in, or on board a vessel in GOM Rolling Closure Areas I through V, as described in paragraphs (f)(1)(i) through (v) of this section, for the times specified in paragraphs (f)(1)(i) through (v) of this section, except as specified in paragraphs (f)(2) and (i) of this section. A chart depicting these areas is available from the Regional Administrator upon request.

(i) *Rolling Closure Area I.* From March 1 through March 31, the restrictions specified in this paragraph (f)(1) apply to Rolling Closure Area I, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA I  
[March 1–March 31]

Point	N. lat.	W. long.
GM3 .....	42°00'	(1)
GM5 .....	42°00'	68°30'
GM6 .....	42°30'	68°30'
GM23 .....	42°30'	70°00'

<sup>1</sup> Cape Cod shoreline on the Atlantic Ocean.

(ii) *Rolling Closure Area II.* From April 1 through April 30, the restrictions specified in this paragraph (f)(1)(ii) apply to Rolling Closure Area II, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA II  
[April 1–April 30]

Point	N. lat.	W. long.
GM1 .....	42°00'	(1)
GM2 .....	42°00'	(2)
GM3 .....	42°00'	(3)
GM5 .....	42°00'	68°30'
GM13 .....	43°00'	68°30'
GM9 .....	43°00'	(4)

<sup>1</sup> Massachusetts shoreline.

<sup>2</sup> Cape Cod shoreline on Cape Cod Bay.

<sup>3</sup> Cape Cod shoreline on the Atlantic Ocean.

<sup>4</sup> New Hampshire Shoreline.

(iii) *Rolling Closure Area III.* From May 1 through May 31, the restrictions specified in this paragraph (f)(1) apply to Rolling Closure Area III, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA III  
[May 1–May 31]

Point	N. lat.	W. long.
GM1 .....	42°00'	(1)
GM2 .....	42°00'	(2)
GM3 .....	42°00'	(3)
GM4 .....	42°00'	70°00'
GM23 .....	42°30'	70°00'
GM6 .....	42°30'	68°30'
GM14 .....	43°30'	68°30'
GM10 .....	43°30'	(4)

<sup>1</sup> Massachusetts shoreline.

<sup>2</sup> Cape Cod shoreline on Cape Cod Bay.

<sup>3</sup> Cape Cod shoreline on the Atlantic Ocean.

<sup>4</sup> Maine shoreline.

(iv) *Rolling Closure Area IV.* From June 1 through June 30, the restrictions specified in this paragraph (f)(1) apply to Rolling Closure Area IV, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA IV  
[June 1–June 30]

Point	N. lat.	W. long.
GM9 .....	42°30'	(1)
GM23 .....	42°30'	70°00'
GM17 .....	43°30'	70°00'
GM19 .....	43°30'	67°32' or (2)
GM20 .....	44°00'	67°21' or (2)
GM21 .....	44°00'	69°00'
GM22 .....	(3)	69°00'

<sup>1</sup> Massachusetts shoreline.

<sup>2</sup> U.S.-Canada maritime boundary.

<sup>3</sup> Maine shoreline.

(v) *Rolling Closure Area V.* From October 1 through November 30, the restrictions specified in this paragraph (f)(1) apply to Rolling Closure Area V, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA V  
[October 1–November 30]

Point	N. lat.	W. long.
GM1 .....	42°00'	(1)
GM2 .....	42°00'	(2)
GM3 .....	42°00'	(3)
GM4 .....	42°00'	70°00'
GM8 .....	42°30'	70°00'
GM9 .....	42°30'	(1)

<sup>1</sup> Massachusetts shoreline.

<sup>2</sup> Cape Cod shoreline on Cape Cod Bay.

<sup>3</sup> Cape Cod shoreline on the Atlantic Ocean.

(2) Paragraph (f)(1) of this section does not apply to persons aboard fishing vessels or fishing vessels:

(i) That have not been issued a multispecies permit and that are fishing exclusively in state waters;

(ii) That are fishing with or using exempted gear as defined under this part, subject to the restrictions on midwater trawl gear in paragraph (a)(2)(iii) of this section, and excluding pelagic gillnet gear capable of catching multispecies, except for vessels fishing with a single pelagic gillnet not longer than 300 ft (91.4 m) and not greater than 6 ft (1.83 m) deep, with a maximum mesh size of 3 inches (7.6 cm), provided:

(A) The net is attached to the boat and fished in the upper two-thirds of the water column;

(B) The net is marked with the owner's name and vessel identification number;

(C) There is no retention of regulated species; and

(D) There is no other gear on board capable of catching NE multispecies;

(iii) That are fishing under charter/party or recreational regulations, provided that:

(A) For vessels fishing under charter/party regulations in a Rolling Closure Area described under paragraph (f)(1) of this section, it has on board a letter of authorization issued by the Regional Administrator, which is valid from the date of enrollment through the duration of the closure or 3 months duration, whichever is greater; for vessels fishing under charter/party regulations in the Cashes Ledge Closure Area or Western GOM Area Closure, as described under paragraph (d) and (e) of this section, respectively, it has on board a letter of authorization issued by the Regional Administrator, which is valid from the date of enrollment until the end of the fishing year;

(B) With the exception of tuna, fish harvested or possessed by the vessel are not sold or intended for trade, barter or sale, regardless of where the regulated species are caught;

(C) The vessel has no gear other than rod and reel or handline on board; and

(D) The vessel does not use any NE multispecies DAS during the entire period for which the letter of authorization is valid;

(iv) That are fishing with or using scallop dredge gear when fishing under a scallop DAS or when lawfully fishing in the Scallop Dredge Fishery Exemption Area as described in § 648.80(a)(11), provided the vessel does not retain any regulated NE multispecies during a trip, or on any part of a trip; or

(v) That are fishing in the Raised Footrope Trawl Exempted Whiting Fishery, as specified in § 648.80(a)(15), and in the GOM Rolling Closure Area V, as specified in paragraph (f)(1)(v) of this section.

(g) *GB Seasonal Closure Area.* (1) From May 1 through May 31, no fishing vessel or person on a fishing vessel may enter, fish in, or be in, and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in the area known as the GB Seasonal Closure Area, as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (g)(2) and (i) of this section:

**GEORGES BANK SEASONAL CLOSURE AREA**  
[May 1–May 31]

Point	N. lat.	W. long.
GB1	42°00'	(1)
GB2	42°00'	68°30'
GB3	42°20'	68°30'
GB4	42°20'	67°20'
GB5	41°30'	67°20'
CI1	41°30'	69°23'
CI2	40°45'	68°45'
CI3	40°45'	68°30'
GB6	40°30'	68°30'
GB7	40°30'	69°00'
G10	40°50'	69°00'
GB8	40°50'	69°30'
GB9	41°00'	69°30'
GB10	41°00'	70°00'
G12	(1)	70° 00'

<sup>1</sup>Northward to its intersection with the shoreline of mainland MA.

(2) Paragraph (g)(1) of this section does not apply to persons on fishing vessels or to fishing vessels:

- (i) That meet the criteria in paragraphs (f)(2)(i) or (ii) of this section;
- (ii) That are fishing as charter/party or recreational vessels; or
- (iii) That are fishing with or using scallop dredge gear when fishing under a scallop DAS or when lawfully fishing in the Scallop Dredge Fishery Exemption Area, as described in § 648.80(a)(11), provided the vessel uses an 8-inch (20.3-cm) twine top and complies with the NE multispecies possession restrictions for scallop vessels specified at § 648.80(h).

(h) *Essential Fish Habitat Closure Areas.* (1) In addition to the restrictions under paragraphs (a) through (e) of this section, no fishing vessel or person on a fishing vessel with bottom tending mobile gear on board the vessel may enter, fish in, or be in the EFH Closure Areas described in paragraphs (h)(1)(i) through (vi) of this section, unless otherwise specified. A chart depicting these areas is available from the Regional Administrator upon request.

(i) *Western GOM Habitat Closure Area.* The restrictions specified in paragraph (h)(1) of this section apply to the Western GOM Habitat Closure Area,

which is the area bound by straight lines connecting the following points in the order stated:

**WESTERN GOM HABITAT CLOSURE AREA**

Point	N. lat.	W. long.
WGM4	43°15'	70°15'
WGM1	42°15'	70°15'
WGM5	42°15'	70°00'
WGM6	43°15'	70°00'
WGM4	43°15'	70°15'

(ii) *Cashes Ledge Habitat Closure Area.* The restrictions specified in paragraph (h)(1) of this section apply to the Cashes Ledge Habitat Closure Area, which is the area defined by straight lines connecting the following points in the order stated:

**CASHES LEDGE HABITAT CLOSURE AREA**

Point	N. lat.	W. long.
CLH1	43°01'	69°03'
CLH2	43°01'	68°52'
CLH3	42°45'	68°52'
CLH4	42°45'	69°03'
CLH1	43°01'	69°03'

(iii) *Jeffrey's Bank Habitat Closure Area.* The restrictions specified in paragraph (h)(1) of this section apply to the Jeffrey's Bank Habitat Closure Area, which is the area bound by straight lines connecting the following points in the order stated:

**JEFFREY'S BANK HABITAT CLOSURE AREA**

Point	N. lat.	W. long.
JB1	43°40'	68°50'
JB2	43°40'	68°40'
JB3	43°20'	68°40'
JB4	43°20'	68°50'
JB1	43°40'	68°50'

(iv) *Closed Area I Habitat Closure Areas.* The restrictions specified in paragraph (h)(1) of this section apply to the Closed Area I Habitat Closure Areas, Closed Area I-North and Closed Area I-South, which are the areas bound by straight lines connecting the following points in the order stated:

**CLOSED AREA I—NORTH HABITAT CLOSURE AREA**

Point	N. lat.	W. long.
CI1	41°30'	69°23'
CI4	41°30'	68°30'
CIH1	41°26'	68°30'
CIH2	41°04'	69°01'

**CLOSED AREA I—NORTH HABITAT CLOSURE AREA—Continued**

Point	N. lat.	W. long.
CI1	41°30'	69°23'

**CLOSED AREA I—SOUTH HABITAT CLOSURE AREA**

Point	N. lat.	W. long.
CIH3	40°55'	68°53'
CIH4	40°58'	68°30'
CI3	40°45'	68°30'
CI2	40°45'	68°45'
CIH3	40°55'	68°53'

(v) *Closed Area II Habitat Closure Area.* The restrictions specified in paragraph (h)(1) of this section apply to the Closed Area II Habitat Closure Area (also referred to as the Habitat Area of Particular Concern), which is the area bound by straight lines connecting the following points in the order stated:

**CLOSED AREA II HABITAT CLOSURE AREA**

Point	N. lat.	W. long.
CIH1	42°00'	67°20'
CIH2	42°00'	67°00'
CIH3	41°40'	66°43'
CIH4	41°40'	67°20'
CIH1	42°00'	67°20'

(vi) *Nantucket Lightship Habitat Closure Area.* The restrictions specified in paragraph (h)(1) of this section apply to the Nantucket Lightship Habitat Closure Area, which is the area bound by straight lines connecting the following points in the order stated:

**NANTUCKET LIGHTSHIP HABITAT CLOSURE AREA**

Point	N. lat.	W. long.
NLH1	41°10'	70°00'
NLH2	41°10'	69°50'
NLH3	40°50'	69°30'
NLH4	40°20'	69°30'
NLH5	40°20'	70°00'
NLH1	41°10'	70°00'

(2) [Reserved]

(i) *Transiting.* A vessel may transit Closed Area I, the Nantucket Lightship Closed Area, the Cashes Ledge Closure 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, provided that its gear is stowed in

accordance with the provisions of § 648.23(b).

(j) *Restricted Gear Area I.* (1) Restricted Gear Area I is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
<b>Inshore Boundary</b>		
to 120		
69	40°07.9' N.	68°36.0' W.
70	40°07.2' N.	68°38.4' W.
71	40°06.9' N.	68°46.5' W.
73	40°08.1' N.	68°51.0' W.
74	40°05.7' N.	68°52.4' W.
75	40°03.6' N.	68°57.2' W.
76	40°03.65' N.	69°00.0' W.
77	40°04.35' N.	69°00.5' W.
78	40°05.2' N.	69°00.5' W.
79	40°05.3' N.	69°01.1' W.
80	40°08.9' N.	69°01.75' W.
81	40°11.0' N.	69°03.8' W.
82	40°11.6' N.	69°05.4' W.
83	40°10.25' N.	69°04.4' W.
84	40°09.75' N.	69°04.15' W.
85	40°08.45' N.	69°03.6' W.
86	40°05.65' N.	69°03.55' W.
87	40°04.1' N.	69°03.9' W.
88	40°02.65' N.	69°05.6' W.
89	40°02.00' N.	69°08.35' W.
90	40°02.65' N.	69°11.15' W.
91	40°00.05' N.	69°14.6' W.
92	39°57.8' N.	69°20.35' W.
93	39°56.65' N.	69°24.4' W.
94	39°56.1' N.	69°26.35' W.
95	39°56.55' N.	69°34.1' W.
96	39°57.85' N.	69°35.5' W.
97	40°00.65' N.	69°36.5' W.
98	40°00.9' N.	69°37.3' W.
99	39°59.15' N.	69°37.3' W.
100	39°58.8' N.	69°38.45' W.
102	39°56.2' N.	69°40.2' W.
103	39°55.75' N.	69°41.4' W.
104	39°56.7' N.	69°53.6' W.
105	39°57.55' N.	69°54.05' W.
106	39°57.4' N.	69°55.9' W.
107	39°56.9' N.	69°57.45' W.
108	39°58.25' N.	70°03.0' W.
110	39°59.2' N.	70°04.9' W.
111	40°00.7' N.	70°08.7' W.
112	40°03.75' N.	70°10.15' W.
115	40°05.2' N.	70°10.9' W.
116	40°02.45' N.	70°14.1' W.
119	40°02.75' N.	70°16.1' W.
to 181		
<b>Offshore Boundary</b>		
to 69		
120	40°06.4' N.	68°35.8' W.
121	40°05.25' N.	68°39.3' W.
122	40°05.4' N.	68°44.5' W.
123	40°06.0' N.	68°46.5' W.
124	40°07.4' N.	68°49.6' W.
125	40°05.55' N.	68°49.8' W.
126	40°03.9' N.	68°51.7' W.
127	40°02.25' N.	68°55.4' W.
128	40°02.6' N.	69°00.0' W.
129	40°02.75' N.	69°00.75' W.
130	40°04.2' N.	69°01.75' W.
131	40°06.15' N.	69°01.95' W.
132	40°07.25' N.	69°02.0' W.
133	40°08.5' N.	69°02.25' W.
134	40°09.2' N.	69°02.95' W.

Point	Latitude	Longitude
135	40°09.75' N.	69°03.3' W.
136	40°09.55' N.	69°03.85' W.
137	40°08.4' N.	69°03.4' W.
138	40°07.2' N.	69°03.3' W.
139	40°06.0' N.	69°03.1' W.
140	40°05.4' N.	69°03.05' W.
141	40°04.8' N.	69°03.05' W.
142	40°03.55' N.	69°03.55' W.
143	40°01.9' N.	69°03.95' W.
144	40°01.0' N.	69°04.4' W.
146	39°59.9' N.	69°06.25' W.
147	40°00.6' N.	69°10.05' W.
148	39°59.25' N.	69°11.15' W.
149	39°57.45' N.	69°16.05' W.
150	39°56.1' N.	69°20.1' W.
151	39°54.6' N.	69°25.65' W.
152	39°54.65' N.	69°26.9' W.
153	39°54.8' W.	69°30.95' W.
154	39°54.35' N.	69°33.4' W.
155	39°55.0' N.	69°34.9' W.
156	39°56.55' N.	69°36.0' W.
157	39°57.95' N.	69°36.45' W.
158	39°58.75' N.	69°36.3' W.
159	39°58.8' N.	69°36.95' W.
160	39°57.95' N.	69°38.1' W.
161	39°54.5' N.	69°38.25' W.
162	39°53.6' N.	69°46.5' W.
163	39°54.7' N.	69°50.0' W.
164	39°55.25' N.	69°51.4' W.
165	39°55.2' N.	69°53.1' W.
166	39°54.85' N.	69°53.9' W.
167	39°55.7' N.	69°54.9' W.
168	39°56.15' N.	69°55.35' W.
169	39°56.05' N.	69°56.25' W.
170	39°55.3' N.	69°57.1' W.
171	39°54.8' N.	69°58.6' W.
172	39°56.05' N.	70°00.65' W.
173	39°55.3' N.	70°02.95' W.
174	39°56.9' N.	70°11.3' W.
175	39°58.9' N.	70°11.5' W.
176	39°59.6' N.	70°11.1' W.
177	40°01.35' N.	70°11.2' W.
178	40°02.6' N.	70°12.0' W.
179	40°00.4' N.	70°12.3' W.
180	39°59.75' N.	70°13.05' W.
181	39°59.3' N.	70°14.0' W.
to 119		

(2) *Restricted Period*—(i) *Mobile gear.* From October 1 through June 15, no fishing vessel with mobile gear or person on a fishing vessel with mobile gear may fish or be in Restricted Gear Area I, unless transiting. Vessels may transit this area provided that mobile gear is on board the vessel while inside the area, provided that its gear is stowed in accordance with the provisions of § 648.23(b).

(ii) *Lobster pot gear.* From June 16 through September 30, no fishing vessel with lobster pot gear aboard, or person on a fishing vessel with lobster pot gear aboard may fish in, and no lobster pot gear may be deployed or remain in, Restricted Gear Area I.

(k) *Restricted Gear Area II.* (1) Restricted Gear Area II is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
<b>Inshore Boundary</b>		
to 1		
49	40°02.75' N.	70°16.1' W.
50	40°00.7' N.	70°18.6' W.
51	39°59.8' N.	70°21.75' W.
52	39°59.75' N.	70°25.5' W.
53	40°03.85' N.	70°28.75' W.
54	40°00.55' N.	70°32.1' W.
55	39°59.15' N.	70°34.45' W.
56	39°58.9' N.	70°38.65' W.
57	40°00.1' N.	70°45.1' W.
58	40°00.5' N.	70°57.6' W.
59	40°02.0' N.	71°01.3' W.
60	39°59.3' N.	71°18.4' W.
61	40°00.7' N.	71°19.8' W.
62	39°57.5' N.	71°20.6' W.
63	39°53.1' N.	71°36.1' W.
64	39°52.6' N.	71°40.35' W.
65	39°53.1' N.	71°42.7' W.
66	39°46.95' N.	71°49.0' W.
67	39°41.15' N.	71°57.1' W.
68	39°35.45' N.	72°02.0' W.
69	39°32.65' N.	72°06.1' W.
70	39°29.75' N.	72°09.8' W.
to 48		
<b>Offshore Boundary</b>		
to 49		
1	39°59.3' N.	70°14.0' W.
2	39°58.85' N.	70°15.2' W.
3	39°59.3' N.	70°18.4' W.
4	39°58.1' N.	70°19.4' W.
5	39°57.0' N.	70°19.85' W.
6	39°57.55' N.	70°21.25' W.
7	39°57.5' N.	70°22.8' W.
8	39°57.1' N.	70°25.4' W.
9	39°57.65' N.	70°27.05' W.
10	39°58.58' N.	70°27.7' W.
11	40°00.65' N.	70°28.8' W.
12	40°02.2' N.	70°29.15' W.
13	40°01.0' N.	70°30.2' W.
14	39°58.58' N.	70°31.85' W.
15	39°57.05' N.	70°34.35' W.
16	39°56.42' N.	70°36.8' W.
21	39°58.15' N.	70°48.0' W.
24	39°58.3' N.	70°51.1' W.
25	39°58.1' N.	70°52.25' W.
26	39°58.05' N.	70°53.55' W.
27	39°58.4' N.	70°59.6' W.
28	39°59.8' N.	71°01.05' W.
29	39°58.2' N.	71°05.85' W.
30	39°57.45' N.	71°12.15' W.
31	39°57.2' N.	71°15.0' W.
32	39°56.3' N.	71°18.95' W.
33	39°51.4' N.	71°36.1' W.
34	39°51.75' N.	71°41.5' W.
35	39°50.05' N.	71°42.5' W.
36	39°50.0' N.	71°45.0' W.
37	39°48.95' N.	71°46.05' W.
38	39°46.6' N.	71°46.1' W.
39	39°43.5' N.	71°49.4' W.
40	39°41.3' N.	71°55.0' W.
41	39°39.0' N.	71°55.6' W.
42	39°36.72' N.	71°58.25' W.
43	39°35.15' N.	71°58.55' W.
44	39°34.5' N.	72°00.75' W.
45	39°32.2' N.	72°02.25' W.
46	39°32.15' N.	72°04.1' W.
47	39°28.5' N.	72°06.5' W.
48	39°29.0' N.	72°09.25' W.
to 70		

(2) *Restricted period*—(i) *Mobile gear*. From November 27 through June 15, no fishing vessel with mobile gear aboard, or person on a fishing vessel with mobile gear aboard, may fish or be in Restricted Gear Area II, unless transiting. Vessels may transit this area, provided that all mobile gear is on board the vessel while inside the area, and stowed in accordance with the provisions of § 648.23(b).

(ii) *Lobster pot gear*. From June 16 through November 26, no fishing vessel with lobster pot gear aboard, or person on a fishing vessel with lobster pot gear aboard, may fish in, and no lobster pot gear may be deployed or remain in, Restricted Gear Area II.

(l) *Restricted Gear Area III*. (1) Restricted Gear Area III is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
<b>Inshore Boundary</b>		
to 49		
182 .....	40°05.6' N.	70°17.7' W.
183 .....	40°06.5' N.	70°40.05' W.
184 .....	40°11.05' N.	70°45.8' W.
185 .....	40°12.75' N.	70°55.05' W.
186 .....	40°10.7' N.	71°10.25' W.
187 .....	39°57.9' N.	71°28.7' W.
188 .....	39°55.6' N.	71°41.2' W.
189 .....	39°55.85' N.	71°45.0' W.
190 .....	39°53.75' N.	71°52.25' W.
191 .....	39°47.2' N.	72°01.6' W.
192 .....	39°33.65' N.	72°15.0' W.
to 70		

Point	Latitude	Longitude
<b>Offshore Boundary</b>		
to 182		
49 .....	40°02.75' N.	70°16.1' W.
50 .....	40°00.7' N.	70°18.6' W.
51 .....	39°59.8' N.	70°21.75' W.
52 .....	39°59.75' N.	70°25.5' W.
53 .....	40°03.85' N.	70°28.75' W.
54 .....	40°00.55' N.	70°32.1' W.
55 .....	39°59.15' N.	70°34.45' W.
56 .....	39°58.9' N.	70°38.65' W.
57 .....	40°00.1' N.	70°45.1' W.
58 .....	40°00.5' N.	70°57.6' W.
59 .....	40°02.0' N.	71°01.3' W.
60 .....	39°59.3' N.	71°18.4' W.
61 .....	40°00.7' N.	71°19.8' W.
62 .....	39°57.5' N.	71°20.6' W.
63 .....	39°53.1' N.	71°36.1' W.
64 .....	39°52.6' N.	71°40.35' W.
65 .....	39°53.1' N.	71°42.7' W.
66 .....	39°46.95' N.	71°49.0' W.
67 .....	39°41.15' N.	71°57.1' W.
68 .....	39°35.45' N.	72°02.0' W.
69 .....	39°32.65' N.	72°06.1' W.
70 .....	39°29.75' N.	72°09.8' W.
to 192		

(2) *Restricted period*—(i) *Mobile gear*. From June 16 through November 26, no fishing vessel with mobile gear aboard, or person on a fishing vessel with mobile gear aboard, may fish or be in

Restricted Gear Area III, unless transiting. Vessels may transit this area provided that all mobile gear is on board the vessel while inside the area, and is stowed in accordance with the provisions of § 648.23(b).

(ii) *Lobster pot gear*. From January 1 through April 30, no fishing vessel with lobster pot gear aboard, or person on a fishing vessel with lobster pot gear aboard, may fish in, and no lobster pot gear may be deployed or remain in, Restricted Gear Area III.

(m) *Restricted Gear Area IV*. (1) Restricted Gear Area IV is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
<b>Inshore Boundary</b>		
193 .....	40°13.60' N.	68°40.60' W.
194 .....	40°11.60' N.	68°53.00' W.
195 .....	40°14.00' N.	69°04.70' W.
196 .....	40°14.30' N.	69°05.80' W.
197 .....	40°05.50' N.	69°09.00' W.
198 .....	39°57.30' N.	69°25.10' W.
199 .....	40°00.40' N.	69°35.20' W.
200 .....	40°01.70' N.	69°35.40' W.
201 .....	40°01.70' N.	69°37.40' W.
202 .....	40°00.50' N.	69°38.80' W.
203 .....	40°01.30' N.	69°45.00' W.
204 .....	40°02.10' N.	69°45.00' W.
205 .....	40°07.60' N.	70°04.50' W.
206 .....	40°07.80' N.	70°09.20' W.
to 119		

Point	Latitude	Longitude
<b>Offshore Boundary</b>		
69 .....	40°07.90' N.	68°36.00' W.
70 .....	40°07.20' N.	68°38.40' W.
71 .....	40°06.90' N.	68°46.50' W.
72 .....	40°08.70' N.	68°49.60' W.
73 .....	40°08.10' N.	68°51.00' W.
74 .....	40°05.70' N.	68°52.40' W.
75 .....	40°03.60' N.	68°57.20' W.
76 .....	40°03.65' N.	69°00.00' W.
77 .....	40°04.35' N.	69°00.50' W.
78 .....	40°05.20' N.	69°00.50' W.
79 .....	40°05.30' N.	69°01.10' W.
80 .....	40°08.90' N.	69°01.75' W.
81 .....	40°11.00' N.	69°03.80' W.
82 .....	40°11.60' N.	69°05.40' W.
83 .....	40°10.25' N.	69°04.40' W.
84 .....	40°09.75' N.	69°04.15' W.
85 .....	40°08.45' N.	69°03.60' W.
86 .....	40°05.65' N.	69°03.55' W.
87 .....	40°04.10' N.	69°03.90' W.
88 .....	40°02.65' N.	69°05.60' W.
89 .....	40°02.00' N.	69°08.35' W.
90 .....	40°02.65' N.	69°11.15' W.
91 .....	40°00.05' N.	69°14.60' W.
92 .....	39°57.8' N.	69°20.35' W.
93 .....	39°56.75' N.	69°24.40' W.
94 .....	39°56.50' N.	69°26.35' W.
95 .....	39°56.80' N.	69°34.10' W.
96 .....	39°57.85' N.	69°35.05' W.
97 .....	40°00.65' N.	69°36.50' W.
98 .....	40°00.90' N.	69°37.30' W.
99 .....	39°59.15' N.	69°37.30' W.
100 .....	39°58.80' N.	69°38.45' W.
102 .....	39°56.20' N.	69°40.20' W.
103 .....	39°55.75' N.	69°41.40' W.

Point	Latitude	Longitude
104 .....	39°56.70' N.	69°53.60' W.
105 .....	39°57.55' N.	69°54.05' W.
106 .....	39°57.40' N.	69°55.90' W.
107 .....	39°56.90' N.	69°57.45' W.
108 .....	39°58.25' N.	70°03.00' W.
110 .....	39°59.20' N.	70°04.90' W.
111 .....	40°00.70' N.	70°08.70' W.
112 .....	40°03.75' N.	70°10.15' W.
115 .....	40°05.20' N.	70°10.90' W.
116 .....	40°02.45' N.	70°14.1' W.
119 .....	40°02.75' N.	70°16.1' W.
to 206		

(2) *Restricted period*—(i) *Mobile gear*. From June 16 through September 30, no fishing vessel with mobile gear aboard, or person on a fishing vessel with mobile gear aboard may fish or be in Restricted Gear Area IV, unless transiting. Vessels may transit this area, provided that all mobile gear is on board the vessel while inside the area, and is stowed in accordance with the provisions of § 648.23(b).

(ii) [Reserved]

■ 11. Section 648.82 is revised to read as follows:

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

(a) Except as provided in §§ 648.17 and 648.82(a)(2), a vessel issued a limited access NE multispecies permit may not fish for, possess, or land regulated species, except during a DAS, as allocated under, and in accordance with, the applicable DAS program described in this section, unless otherwise provided elsewhere in this part.

(1) *End-of-year carry-over*. With the exception of vessels that held a Confirmation of Permit History, as described in § 648.4(a)(1)(i)(J), for the entire fishing year preceding the carry-over year, limited access vessels that have unused DAS on the last day of April of any year may carry over a maximum of 10 DAS into the next year. Unused leased DAS may not be carried over. Vessels that have been sanctioned through enforcement proceedings will be credited with unused DAS based on their DAS allocation minus any total DAS that have been sanctioned through enforcement proceedings. For the 2004 fishing year only, DAS carried over from the 2003 fishing year will be classified as Regular B DAS, as specified under paragraph (d)(2) of this section. Beginning with the 2005 fishing year, for vessels with a balance of both unused Category A DAS and unused Category B DAS at the end of the previous fishing year (e.g., for the 2005 fishing year, carry-over DAS from the 2004 fishing year), Category A DAS will be carried over first, than Regular B



DAS, than Reserve B DAS. Category C DAS cannot be carried over.

(2) Notwithstanding any other provision of this part, any vessel issued a NE multispecies limited access permit may not call into the DAS program or fish under a DAS, if such vessel carries passengers for hire for any portion of a fishing trip.

(b) *Permit categories.* All limited access NE multispecies permit holders shall be assigned to one of the following permit categories, according to the criteria specified. Permit holders may request a change in permit category, as specified in § 648.4(a)(1)(i)(I)(2). Each fishing year shall begin on May 1 and extend through April 30 of the following year. Beginning May 1, 2004, with the exception of the limited access Small Vessel and Handgear A vessel categories described in paragraphs (b)(5) and (6) of this section, respectively, NE multispecies DAS available for use will be calculated pursuant to paragraphs (c) and (d) of this section.

(1) *Individual DAS category.* This category is for vessels allocated individual DAS that are not fishing under the Hook Gear, Combination, or Large-mesh individual categories. Beginning May 1, 2004, for a vessel fishing under the Individual DAS category, the baseline for determining the number of NE multispecies DAS available for use shall be calculated based upon the fishing history associated with the vessel's permit, as specified in paragraph (c)(1) of this section. The number and categories of DAS that are allocated for use in a given fishing year are specified in paragraph (d) of this section.

(2) *Hook Gear category.* To be eligible for a Hook Gear category permit, the vessel must have been issued a limited access multispecies permit for the preceding year, be replacing a vessel that was issued a Hook Gear category permit for the preceding year, or be replacing a vessel that was issued a Hook Gear category permit that was issued a Confirmation of Permit History. Beginning May 1, 2004, for a vessel fishing under the Hook Gear category, the baseline for determining the number of NE multispecies DAS available for use shall be calculated based upon the fishing history associated with the vessel's permit, as specified in paragraph (c)(1) of this section. The number and categories of DAS that are allocated for use in a given fishing year are specified in paragraph (d) of this section. A vessel fishing under this category in the DAS program must meet or comply with the gear restrictions specified under § 648.80(a)(3)(v), (a)(4)(v), (b)(2)(v) and (c)(2)(iv) when

fishing in the respective regulated mesh areas.

(3) *Combination vessel category.* To be eligible for a Combination vessel category permit, a vessel must have been issued a Combination vessel category permit for the preceding year, be replacing a vessel that was issued a Combination vessel category permit for the preceding year, or be replacing a vessel that was issued a Confirmation of Permit History. Beginning May 1, 2004, for a vessel fishing under the Combination vessel category, the baseline for determining the number of NE multispecies DAS available for use shall be calculated based upon the fishing history associated with the vessel's permit, as specified in paragraph (c)(1) of this section. The number and categories of DAS that are allocated for use in a given fishing year are specified in paragraph (d) of this section.

(4) *Large Mesh Individual DAS category.* This category is for vessels allocated individual DAS that area not fishing under the Hook Gear, Combination, or Individual DAS categories. Beginning May 1, 2004, for a vessel fishing under the Large Mesh Individual DAS category, the baseline for determining the number of NE multispecies DAS available for use shall be calculated based upon the fishing history associated with the vessel's permit, as specified in paragraph (c)(1) of this section. The number and categories of DAS that are allocated for use in a given fishing year are specified in paragraph (d) of this section. The number of Category A DAS shall be increased by 36 percent. To be eligible to fish under the Large Mesh Individual DAS category, a vessel, while fishing under this category, must fish under the specific regulated mesh area minimum mesh size restrictions, as specified in paragraphs (a)(3)(iii), (a)(4)(iii), (b)(2)(iii), and (c)(2)(ii) of this section.

(5) *Small Vessel category—(i) DAS allocation.* A vessel qualified and electing to fish under the Small Vessel category may retain up to 300 lb (136.1 kg) of cod, haddock, and yellowtail flounder, combined, and one Atlantic halibut per trip, without being subject to DAS restrictions, provided the vessel does not exceed the yellowtail flounder possession restrictions specified under § 648.86(g). Such vessel is not subject to a possession limit for other NE multispecies. Any vessel may elect to switch into this category, as provided in § 648.4(a)(1)(i)(I)(2), if the vessel meets or complies with the following:

(A) The vessel is 30 ft (9.1 m) or less in length overall, as determined by

measuring along a horizontal line drawn from a perpendicular raised from the outside of the most forward portion of the stem of the vessel to a perpendicular raised from the after most portion of the stern.

(B) If construction of the vessel was begun after May 1, 1994, the vessel must be constructed such that the quotient of the length overall divided by the beam is not less than 2.5.

(C) Acceptable verification for vessels 20 ft (6.1 m) or less in length shall be USCG documentation or state registration papers. For vessels over 20 ft (6.1 m) in length overall, the measurement of length must be verified in writing by a qualified marine surveyor, or the builder, based on the vessel's construction plans, or by other means determined acceptable by the Regional Administrator. A copy of the verification must accompany an application for a NE multispecies permit.

(D) Adjustments to the Small Vessel category requirements, including changes to the length requirement, if required to meet fishing mortality goals, may be made by the Regional Administrator following framework procedures of § 648.90.

(i) [Reserved]

(6) *Handgear A category.* A vessel qualified and electing to fish under the Handgear A category, as described in § 648.4(a)(1)(i)(A), may retain, per trip, up to 300 lb (136.1 kg) of cod, one Atlantic halibut, and the daily possession limit for other regulated species as specified under § 648.86. The cod trip limit will be adjusted proportionally to the trip limit for GOM cod (rounded up to the nearest 50 lb (22.7 kg)), as specified in § 648.86(b)). For example if the GOM cod trip limit specified at § 648.86(b) doubled, then the cod trip limit for the Handgear A category would double. Qualified vessels electing to fish under the Handgear A category are subject to the following restrictions:

(i) The vessel must not use or possess on board gear other than handgear while in possession of, fishing for, or landing NE multispecies, and must have at least one standard tote on board.

(ii) A vessel may not fish for, possess, or land regulated species from March 1 through March 20 of each year.

(iii) Tub-trawls must be hand-hauled only, with a maximum of 250 hooks.

(c) *Used DAS baseline—(1) Calculation of used DAS baseline.* For all valid limited access NE multispecies DAS vessels, vessels issued a valid small vessel category permit, and NE multispecies Confirmation of Permit Histories, beginning with the 2004



fishing year, a vessel's used DAS baseline shall be based on the fishing history associated with its permit and shall be determined by the highest number of reported DAS fished during a single qualifying fishing year, as specified in paragraphs (c)(1)(i) through (iv) of this section, during the 6-year period from May 1, 1996, through April 30, 2002, not to exceed the vessel's annual allocation prior to August 1, 2002. A qualifying year is one in which a vessel landed 5,000 lb (2,268 kg) or more of regulated multispecies, based upon landings reported through dealer reports (based on live weights of landings submitted to NMFS prior to April 30, 2003). If a vessel that was originally issued a limited access NE multispecies permit was lawfully replaced in accordance with the replacement restrictions specified in § 648.4(a), then the used DAS baseline shall be defined based upon the DAS used by the original vessel and by subsequent vessel(s) associated with the permit during the qualification period specified in this paragraph (c)(1). The used DAS baseline shall be used to calculate the number and category of DAS that are allocated for use in a given fishing year, as specified in paragraph (d) of this section.

(i) Except as provided in paragraphs (c)(1)(ii) through (iv) of this section, the vessel's used DAS baseline shall be determined by calculating DAS use reported under the DAS notification requirements in § 648.10.

(ii) For a vessel exempt from, or not subject to, the DAS notification system specified in § 648.10 during the period May 1996 through June 1996, the vessel's used DAS baseline for that period will be determined by calculating DAS use from vessel trip reports submitted to NMFS prior to April 9, 2003.

(iii) For a vessel enrolled in a Large Mesh DAS category, as specified in paragraph (b)(4) of this section, the calculation of the vessel's used DAS baseline may not include any DAS allocated or used by the vessel pursuant to the provisions of the Large Mesh DAS category.

(iv) For vessels fishing under the Day gillnet designation, as specified under paragraph (j)(1) of this section, used DAS, for trips of more than 3 hours, but less than or equal to 15 hours, will be counted as 15 hours. Trips less than or equal to 3 hours, or more than 15 hours, will be counted as actual time.

(2) *Correction of used DAS baseline.* (i) A vessel's used DAS baseline, as determined under paragraph (c)(1) of this section, may be corrected by submitting a written request to correct

the DAS baseline. The request to correct must be received by the Regional Administrator no later than August 31, 2004. The request to correct must be in writing and provide credible evidence that the information used by the Regional Administrator in making the determination of the vessel's DAS baseline was based on incorrect data. The decision on whether to correct the DAS baseline shall be determined solely on the basis of written information submitted, unless the Regional Administrator specifies otherwise. The Regional Administrator's decision on whether to correct the DAS baseline is the final decision of the Department of Commerce.

(ii) *Status of vessel's pending request for a correction of used DAS baseline.* While a vessel's request for a correction is under consideration by the Regional Administrator, the vessel is limited to fishing the number of DAS allocated in accordance with paragraph (d) of this section.

(d) *DAS categories and allocations.* For all valid limited access NE multispecies DAS permits, and NE multispecies Confirmation of Permit Histories, beginning with the 2004 fishing year, DAS shall be allocated and available for use for a given fishing year according to the following DAS Categories (unless otherwise specified, "NE multispecies DAS" refers to any authorized category of DAS):

(1) *Category A DAS.* Unless determined otherwise, as specified under paragraph (d)(4) of this section, calculation of Category A DAS for each fishing year is specified in paragraphs (d)(1)(i) through (iii) of this section. An additional 36 percent of Category A DAS will be added and available for use for participants in the Large Mesh Individual DAS permit category, as described in paragraph (b)(4) of this section, provided the participants comply with the applicable gear restrictions. Category A DAS may be used in the NE multispecies fishery to harvest and land regulated multispecies stocks, in accordance with all of the conditions and restrictions of this part.

(i) For the 2004 and 2005 fishing years, Category A DAS are defined as 60 percent of the vessel's used DAS baseline specified under paragraph (c)(1) of this section.

(ii) For the 2006 through 2008 fishing years, Category A DAS are defined as 55 percent of the vessel's used DAS baseline specified under paragraph (c)(1) of this section.

(iii) Starting in fishing year 2009, Category A DAS are defined as 45 percent of the vessel's used DAS

baseline specified under paragraph (c)(1) of this section.

(2) *Category B DAS.* Category B DAS are divided into Regular B DAS and Reserve B DAS. Calculation of Category B DAS for each fishing year, and restrictions on use of Category B DAS, are specified in paragraphs (d)(2)(i) and (ii) of this section.

(i) *Regular B DAS—(A) Restrictions on use.* Beginning May 1, 2004, Regular B DAS can only be used in an approved SAP, as specified in § 648.85.

(B) *Calculation.* Unless determined otherwise, as specified under paragraph (d)(4) of this section, Regular B DAS are calculated as follows:

(1) For the 2004 and 2005 fishing years, Regular B DAS are defined as 20 percent of the vessel's DAS baseline specified under paragraph (c)(1) of this section.

(2) For the 2006 through 2008 fishing years, Regular B DAS are defined as 22.5 percent of the vessel's DAS baseline specified under paragraph (c)(1) of this section.

(3) Starting in fishing year 2009, and thereafter, Regular B DAS are defined as 27.5 percent of the vessel's DAS baseline specified under paragraph (c)(1) of this section.

(ii) *Reserve B DAS—(A) Restrictions on use.* Reserve B DAS can only be used in an approved SAP, as specified in § 648.85.

(B) *Calculation.* Unless determined otherwise, as specified under paragraph (d)(4) of this section, Reserve B DAS are calculated as follows:

(1) For the 2004 and 2005 fishing years, Reserve B DAS are defined as 20 percent of the vessel's DAS baseline specified under paragraph (c)(1) of this section.

(2) For the 2006 through 2008 fishing years, Reserve B DAS are defined as 22.5 percent of the vessel's DAS baseline specified under paragraph (c)(1) of this section.

(3) Starting in fishing year 2009, and thereafter, Reserve B DAS are defined as 27.5 percent of the vessel's DAS baseline specified under paragraph (c)(1) of this section.

(3) *Category C DAS—(i) Restriction on use.* Category C DAS are reserved and may not be fished.

(ii) *Calculation.* Category C DAS are defined as the difference between a vessel's used DAS baseline, as described in paragraph (c)(1) of this section, and the number of DAS allocated to the vessel as of May 1, 2001.

(4) *Criteria and procedure for not reducing DAS allocations and modifying DAS accrual.* The schedule of reductions in NE multispecies DAS, and the modification of DAS accrual

specified under paragraph (e)(2) of this section, shall not occur if the Regional Administrator:

(i) Determines that one of the following criteria has been met:

(A) That the Amendment 13 projected target biomass levels for stocks targeted by the default measures, based on the 2005 and 2008 stock assessments, have been or are projected to be attained with at least a 50-percent probability in the 2006 and 2009 fishing years, respectively, and overfishing is not occurring on those stocks (*i.e.*, current information indicates that the stocks are rebuilt and overfishing is not occurring); or

(B) That biomass projections, based on the 2005 and 2008 stock assessments, show that rebuilding will occur by the end of the rebuilding period with at least a 50-percent probability, and the best available estimate of the fishing mortality rate for the stocks targeted by the default measures indicates that overfishing is not occurring (*i.e.*, current information indicates that rebuilding will occur by the end of the rebuilding period and the fishing mortality rate is at or below *F<sub>msy</sub>*).

(ii) Determines that all other stocks meet the fishing mortality rates specified in Amendment 13; and

(iii) Publishes such determination in the **Federal Register**, consistent with Administrative Procedure Act requirements for proposed and final rulemaking.

(e) *Accrual of DAS.* (1) DAS shall accrue to the nearest minute and, with the exceptions described under this paragraph (e) and paragraph (j)(1)(iii) of this section, will be counted as actual time called into the DAS program.

(2) Starting in fishing year 2006, unless otherwise determined in accordance with paragraph (d)(4) of this section, for NE multispecies vessels fishing under a DAS in the SNE or MA Regulated Mesh Areas, as described in § 648.80(b)(1) and (c)(1), respectively, the ratio of DAS used to time called into the DAS program will be 1.5 to 1.0.

(f) *Good Samaritan credit.* See § 648.53(f).

(g) *Spawning season restrictions.* A vessel issued a valid Small Vessel or Handgear A category permit specified under paragraphs (b)(5) or (b)(6), respectively, of this section may not fish for, possess, or land regulated species from March 1 through March 20 of each year. Any other vessel issued a limited access NE multispecies permit must declare out and be out of the NE multispecies DAS program for a 20-day period between March 1 and May 31 of each calendar year, using the notification requirements specified in

§ 648.10. A vessel fishing under a Day gillnet category designation is prohibited from fishing with gillnet gear capable of catching NE multispecies during its declared 20-day spawning block, unless the vessel is fishing in an exempted fishery, as described in § 648.80. If a vessel owner has not declared and been out of the fishery for a 20-day period between March 1 and May 31 of each calendar year on or before May 12 of each year, the vessel is prohibited from fishing for, possessing or landing any regulated species or non-exempt species during the period May 12 through May 31, inclusive.

(h) *Declaring DAS and blocks of time out.* A vessel's owner or authorized representative shall notify the Regional Administrator of a vessel's participation in the DAS program, declaration of its 120 days out of the non-exempt gillnet fishery, if designated as a Day gillnet category vessel, as specified in paragraph (j)(1)(iii) of this section, and declaration of its 20-day period out of the NE multispecies DAS program, using the notification requirements specified in § 648.10.

(i) [Reserved]

(j) *Gillnet restrictions.* Vessels issued a limited access NE multispecies permit may fish under a NE multispecies DAS with gillnet gear, provided the owner of the vessel obtains an annual designation as either a Day or Trip gillnet vessel, as described in § 648.4(c)(2)(iii), and provided the vessel complies with the gillnet vessel gear requirements and restrictions specified in § 648.80.

(1) *Day gillnet vessels.* A Day gillnet vessel fishing with gillnet gear under a NE multispecies DAS is not required to remove gear from the water upon returning to the dock and calling out of the DAS program, provided the vessel complies with the restrictions specified in paragraphs (j)(1)(i) through (iii) of this section. Vessels electing to fish under the Day gillnet designation must have on board written confirmation, issued by the Regional Administrator, that the vessel is a Day gillnet vessel.

(i) *Removal of gear.* All gillnet gear must be brought to port prior to the vessel fishing in an exempted fishery.

(ii) *Declaration of time out of the gillnet fishery.* (A) During each fishing year, vessels must declare, and take, a total of 120 days out of the non-exempt gillnet fishery. Each period of time declared and taken must be a minimum of 7 consecutive days. At least 21 days of this time must be taken between June 1 and September 30 of each fishing year. The spawning season time out period required by paragraph (g) of this section will be credited toward the 120 days

time out of the non-exempt gillnet fishery. If a vessel owner has not declared and taken any or all of the remaining periods of time required to be out of the fishery by the last possible date to meet these requirements, the vessel is prohibited from fishing for, possessing, or landing regulated multispecies or non-exempt species harvested with gillnet gear, and from having gillnet gear on board the vessel that is not stowed in accordance with § 648.23(b), while fishing under a NE multispecies DAS, from that date through the end of the period between June 1 and September 30, or through the end of the fishing year, as applicable.

(B) Vessels shall declare their periods of required time through the notification procedures specified in § 648.10(f)(2).

(C) During each period of time declared out, a vessel is prohibited from fishing with non-exempted gillnet gear and must remove such gear from the water. However, the vessel may fish in an exempted fishery, as described in § 648.80, or it may fish under a NE multispecies DAS, provided it fishes with gear other than non-exempted gillnet gear.

(iii) *Method of counting DAS.* Day gillnet vessels fishing with gillnet gear under a NE multispecies DAS will accrue 15 hours 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.

(2) *Trip gillnet vessels.* When fishing under a NE multispecies DAS, a Trip gillnet vessel is required to remove all gillnet gear from the water before calling out of a NE multispecies DAS under § 648.10(c)(3). When not fishing under a NE multispecies DAS, Trip gillnet vessels may fish in an exempted fishery with gillnet gear, as authorized under the exemptions in § 648.80. Vessels electing to fish under the Trip gillnet designation must have on board written confirmation issued by the Regional Administrator that the vessel is a Trip gillnet vessel.

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

(2) *Eligible vessels.* (i) A vessel issued a valid limited access NE multispecies permit is eligible to lease Category A DAS to or from another such vessel,

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

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

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

(i) *Application information requirements.* An application to lease Category A DAS must contain the following information: Lessor's owner name, vessel name, permit number and official number or state registration number; Lessee's owner name, vessel name, permit number and official number or state registration number; number of NE multispecies DAS to be leased; total price paid for leased DAS; signatures of Lessor and Lessee; and date form was completed. Information obtained from the lease application will be held confidential, according to applicable Federal law. Aggregate data may be used in the analysis of the DAS Leasing Program.

(ii) *Approval of lease application.* Unless an application to lease Category A DAS is denied according to paragraph (k)(3)(iii) of this section, the Regional Administrator shall issue confirmation of application approval to both Lessor and Lessee within 45 days of receipt of an application.

(iii) *Denial of lease application.* The Regional Administrator may deny an application to lease Category A DAS for any of the following reasons, including, but not limited to: The application is incomplete or submitted past the March 1 deadline; the Lessor or Lessee has not

been issued a valid limited access NE multispecies permit or is otherwise not eligible; the Lessor's or Lessee's DAS are under sanction pursuant to an enforcement proceeding; the Lessor's or Lessee's vessel is prohibited from fishing; the Lessor's or Lessee's limited access NE multispecies permit is sanctioned pursuant to an enforcement proceeding; the Lessor or Lessee vessel is determined not in compliance with the conditions and restrictions of this part; or the Lessor has an insufficient number of allocated or unused DAS available to lease. Upon denial of an application to lease NE multispecies DAS, the Regional Administrator shall send a letter to the applicants describing the reason(s) for application rejection. The decision by the Regional Administrator is the final agency decision.

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

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

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

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

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

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

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

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

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

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

(l) *DAS Transfer Program.* Except for vessels fishing under a Sector allocation, as specified in § 648.87, a vessel issued a valid limited access NE multispecies permit may transfer all of its NE multispecies DAS for an indefinite time to another vessel with a valid NE multispecies permit, in accordance with the conditions and restrictions described under this section. The Regional Administrator has final approval authority for all NE multispecies DAS transfer requests.

(1) *DAS transfer conditions and restrictions.* (i) The transferor vessel must transfer all of its DAS.

(ii) NE multispecies DAS may be transferred only to a vessel with a baseline main engine horsepower rating that is no greater than 20 percent of the baseline engine horsepower of the transferor vessel. NE multispecies DAS may be transferred only to a vessel with a baseline length overall or a baseline gross registered tonnage that is no greater than 10 percent of the baseline length overall or the baseline gross registered tonnage, respectively, of the transferor vessel. For the purposes of this program, the baseline horsepower, length overall, and gross registered

tonnage specifications are those associated with the permit as of January 29, 2004.

(iii) The transferor vessel must forfeit all of its state and Federal fishing permits, and may not fish in any state or Federal commercial fishery.

(iv) NE multispecies Category A and Category B DAS, as defined under paragraphs (d)(1) and (2) of this section, will be reduced by 40 percent upon transfer.

(v) Category C DAS, as defined under paragraph (d)(3) of this section, will be reduced by 90 percent upon transfer.

(vi) NE multispecies DAS associated with a Confirmation of Permit History may not be transferred.

(vii) *Transfer by vessels fishing under a Sector allocation.* A vessel fishing under the restrictions and conditions of an approved Sector allocation as specified under § 648.87(b), may not transfer DAS to another vessel that is not participating in such Sector during the fishing year in which the vessel is a member of that Sector.

(2) *Application to transfer DAS.* Owners of the vessels applying to transfer and receive DAS must submit a completed application form obtained from the Regional Administrator. The application must be signed by both seller/transferor and buyer/transferee of the DAS, and submitted to the Regional Office at least 45 days before the date on which the applicant desires to have the DAS effective on the buying vessel. The Regional Administrator will notify the applicants of any deficiency in the application pursuant to this section. Applications may be submitted at any time during the fishing year, up until March 1.

(i) *Application information requirements.* An application to transfer NE multispecies DAS must contain the following information: Seller's/transferor's name, vessel name, permit number and official number or state registration number; buyer's/transferee's name, vessel name, permit number and official number or state registration number; total price paid for purchased DAS; signatures of seller and buyer; and date the form was completed.

Information obtained from the transfer application will be held confidential, and will be used only in summarized form for management of the fishery. The application must be accompanied by verification, in writing, that the seller/transferor has requested cancellation of all state and Federal fishing permits from the appropriate agency or agencies.

(ii) *Approval of transfer application.* Unless an application to transfer NE multispecies DAS is denied according to paragraph (l)(2)(iii) of this section, the

Regional Administrator shall issue confirmation of application approval to both seller/transferor and buyer/transferee within 45 days of receipt of an application.

(iii) *Denial of transfer application.* The Regional Administrator may reject an application to transfer NE multispecies DAS for the following reasons: The application is incomplete or submitted past the March 1 deadline; the seller/transferor or buyer/transferee does not possess a valid limited access NE multispecies permit; the seller's/transferor's or buyer's/transferee's DAS is sanctioned, pursuant to an enforcement proceeding; the seller's/transferor's or buyer's/transferee's vessel is prohibited from fishing; the seller's/transferor's or buyer's/transferee's limited access NE multispecies permit is sanctioned pursuant to enforcement proceedings; or the seller/transferor has a DAS baseline of zero. Upon denial of an application to transfer NE multispecies DAS, the Regional Administrator shall send a letter to the applicants describing the reason(s) for application rejection. The decision by the Regional Administrator is the final agency decision and there is no opportunity to appeal the Regional Administrator's decision.

■ 12. Section 648.83 is revised to read as follows:

**§ 648.83 Multispecies minimum fish sizes.**

(a) *Minimum fish sizes.* (1) Minimum fish sizes for recreational vessels and charter/party vessels that are not fishing under a NE multispecies DAS are specified in § 648.89. Except as provided in § 648.17, all other vessels are subject to the following minimum fish sizes, determined by total length (TL):

MINIMUM FISH SIZES (TL) FOR COMMERCIAL VESSELS

Species	Sizes (inches)
Cod .....	22 (55.9 cm)
Haddock .....	19 (48.3 cm)
Pollock .....	19 (48.3 cm)
Witch flounder (gray sole) .....	14 (35.6 cm)
Yellowtail flounder .....	13 (33.0 cm)
American plaice (dab) .....	14 (35.6 cm)
Atlantic halibut .....	36 (91.4 cm)
Winter flounder (blackback) ....	12 (30.5 cm)
Redfish .....	9 (22.9 cm)

(2) The minimum fish size applies to whole fish or to any part of a fish while possessed on board a vessel, except as provided in paragraph (b) of this section, and to whole, whole-gutted or gilled fish only, after landing. For purposes of determining compliance

with the possession limits in § 648.86, the weight of fillets and parts of fish, other than whole-gutted or gilled fish, will be multiplied by 3. Fish fillets, or parts of fish, must have skin on while possessed on board a vessel and at the time of landing in order to meet minimum size requirements. "Skin on" means the entire portion of the skin normally attached to the portion of the fish or to fish parts possessed is still attached.

(b) *Exceptions.* (1) Each person aboard a vessel issued a NE multispecies limited access permit and fishing under the DAS program may possess up to 25 lb (11.3 kg) of fillets that measure less than the minimum size, if such fillets are from legal-sized fish and are not offered or intended for sale, trade, or barter. For purposes of determining compliance with the possession limits specified in § 648.86, the weight of fillets and parts of fish, other than whole-gutted or gilled fish, will be multiplied by 3.

(2) Recreational, party, and charter vessels may possess fillets less than the minimum size specified, if the fillets are taken from legal-sized fish and are not offered or intended for sale, trade or barter.

(3) Vessels fishing exclusively with pot gear may possess NE multispecies frames used, or to be used, as bait, that measure less than the minimum fish size, if there is a receipt for purchase of those frames on board the vessel.

(c) *Adjustments.* (1) At any time when information is available, the NEFMC will review the best available mesh selectivity information to determine the appropriate minimum size for the species listed in paragraph (a) of this section, except winter flounder, according to the length at which 25 percent of the regulated species would be retained by the applicable minimum mesh size.

(2) Upon determination of the appropriate minimum sizes, the NEFMC shall propose the minimum fish sizes to be implemented following the procedures specified in § 648.90.

(3) Additional adjustments or changes to the minimum fish sizes specified in paragraph (a) of this section, and exemptions specified in paragraph (b) of this section, may be made at any time after implementation of the final rule as specified under § 648.90.

■ 13. Section 648.84 is revised to read as follows:

**§ 648.84 Gear-marking requirements and gear restrictions.**

(a) Bottom-tending fixed gear, including, but not limited to, gillnets and longlines designed for, capable of,

or fishing for NE multispecies or monkfish, must have the name of the owner or vessel or the official number of that vessel permanently affixed to any buoys, gillnets, longlines, or other appropriate gear so that the name of the owner or vessel or the official number of the vessel is visible on the surface of the water.

(b) Bottom-tending fixed gear, including, but not limited to gillnets or longline gear, must be marked so that the westernmost end (measuring the half compass circle from magnetic south through west to, and including, north) of the gear displays a standard 12-inch (30.5-cm) tetrahedral corner radar reflector and a pennant positioned on a staff at least 6 ft (1.8 m) above the buoy. The easternmost end (meaning the half compass circle from magnetic north through east to, and including, south) of the gear need display only the standard 12-inch (30.5-cm) tetrahedral radar reflector positioned in the same way.

(c) Continuous gillnets must not exceed 6,600 ft (2,011.7 m) between the end buoys.

(d) In the GOM and GB regulated mesh area specified in § 648.80(a), gillnet gear set in an irregular pattern or in any way that deviates more than 30° from the original course of the set must be marked at the extremity of the deviation with an additional marker, which must display two or more visible streamers and may either be attached to or independent of the gear.

■ 14. Section 648.85 is revised to read as follows:

**§ 648.85 Special management programs.**

(a) *U.S./Canada Resource Sharing Understanding.* No NE multispecies fishing vessel, or person on such vessel, may enter, fish in, or be in the U.S./Canada Resource Sharing Understanding Management Areas (U.S./Canada Management Areas), as defined in paragraph (a)(1) of this section, unless the vessel is fishing in accordance with the restrictions and conditions of this section.

(1) *U.S./Canada Management Areas.* A NE multispecies DAS vessel that meets the requirements of paragraph (a)(3) of this section, may fish in the U.S./Canada Management Areas described in paragraphs (a)(1)(i) and (ii) of this section.

(i) *Western U.S./Canada Area.* The Western U.S./Canada Area is the area defined by straight lines connecting the following points in the order stated (a chart depicting this area is available from the Regional Administrator upon request):

**WESTERN U.S./CANADA AREA**

Point	N. lat.	W. long.
USCA 1 .....	42° 20'	68° 50'
USCA 2 .....	39° 50'	68° 50'
USCA 3 .....	39° 50'	66° 40'
USCA 4 .....	40° 40'	66° 40'
USCA 5 .....	40° 40'	66° 50'
USCA 6 .....	40° 50'	66° 50'
USCA 7 .....	40° 50'	67° 00'
USCA 8 .....	41° 00'	67° 00'
USCA 9 .....	41° 00'	67° 20'
USCA 10 .....	41° 10'	67° 20'
USCA 11 .....	41° 10'	67° 40'
USCA 12 .....	42° 20'	67° 40'
USCA 1 .....	42° 20'	68° 50'

(ii) *Eastern U.S./Canada Area.* The Eastern U.S./Canada Area is the area defined by straight lines connecting the following points in the order stated (a chart depicting this area is available from the Regional Administrator upon request):

**EASTERN U.S./CANADA AREA**

Point	N. lat.	W. long.
USCA 12 .....	42° 20'	67° 40'
USCA 11 .....	41° 10'	67° 40'
USCA 10 .....	41° 10'	67° 20'
USCA 9 .....	41° 00'	67° 20'
USCA 8 .....	41° 00'	67° 00'
USCA 7 .....	41° 50'	67° 00'
USCA 6 .....	41° 50'	66° 50'
USCA 5 .....	41° 40'	66° 50'
USCA 4 .....	41° 40'	66° 40'
USCA 15 .....	41° 30'	66° 40'
USCA 14 .....	41° 30'	65° 44.3'
USCA 13 .....	42° 20'	67° 18.4'
USCA 12 .....	42° 20'	67° 40'

(2) *TAC allocation.* (i) Except for the 2004 fishing year, the amount of GB cod and haddock TAC that may be harvested from the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) of this section, and the amount of GB yellowtail flounder TAC that may be harvested from the Western U.S./Canada Area and the Eastern U.S./Canada Area, as described in paragraphs (a)(1)(i) and (ii) of this section, combined, shall be determined by the process specified in paragraphs (a)(2)(i)(A) through (E) of this section.

(A) By June 30 of each year, the Terms of Reference for the U.S./Canada shared resources for GB cod, haddock and yellowtail flounder shall be established by the Steering Committee and the Transboundary Management Guidance Committee (TMGC).

(B) By July 31 of each year, a Transboundary Resource Assessment Committee (TRAC) joint assessment of the U.S./Canada shared resources for GB cod, haddock and yellowtail flounder shall occur.

(C) By August 31 of each year, the TMGC shall recommend TACs for the U.S./Canada shared resources for GB cod, haddock and yellowtail flounder. Prior to October 31 of each year, the Council may refer any or all recommended TACs back to the TMGC and request changes to any or all TACs. The TMGC shall consider such recommendations and respond to the Council prior to October 31.

(D) By October 31 of each year, the Council shall review the TMGC recommended TACs for the U.S. portion of the U.S./Canada Management Area resources for GB cod, haddock and yellowtail flounder. Based on the TMGC recommendations, the Council shall recommend to the Regional Administrator the U.S. TACs for the shared stocks for the subsequent fishing year. If the recommendation of the Council is not consistent with the recommendation of the TMGC, the Regional Administrator may select either the recommendation of the TMGC, or the Council. NMFS shall review the Council's recommendations and shall publish in the **Federal Register** the proposed TACs and provide a 30-day public comment period. NMFS shall make a final determination concerning the TACs and will publish notification of the approved TACs and responses to public comments in the **Federal Register**. The Council, at this time, may also consider modification of management measures in order to ensure compliance with the U.S./Canada Resource Sharing Understanding. Any changes to management measures will be modified pursuant to § 648.90.

(E) For fishing year 2004, the amount of GB cod, haddock and yellowtail flounder TAC that may be harvested under this section will be published in the preamble of the proposed and final rules for Amendment 13.

(ii) *Adjustments to TACs.* Any overages of the GB cod, haddock, or yellowtail flounder TACs that occur in a given fishing year will be subtracted from the respective TAC in the following fishing year.

(3) *Requirements for vessels in U.S./Canada Management Areas.* Any NE multispecies vessel may fish in the U.S./Canada Management Areas, provided it complies with conditions and restrictions of this section. Vessels other than NE multispecies vessels may fish in the U.S./Canada Management Area, subject to the restrictions specified in paragraph (a)(3)(iv)(E) of this section and all other applicable regulations for such vessels.

(i) *VMS requirement.* A NE multispecies DAS vessel in the U.S./

Canada Management Areas described in paragraph (a)(1) 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. The VMS unit will be polled at least twice per hour in the U.S./Canada Management Areas, when the vessel has declared into the U.S./Canada Management Areas under a groundfish DAS, as specified in paragraph (a)(3)(ii) of this section.

(ii) *Declaration.* All NE multispecies DAS vessels that intend 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)(3) of this section, within the U.S./Canada Management Area, through the VMS, in accordance with instructions to be provided by the Regional Administrator. A vessel fishing under a NE multispecies DAS in the U.S./Canada Management Area may not fish, during that same trip, outside of the declared area, and may not enter or exit the declared area more than once per trip. Vessels other than NE multispecies DAS vessels are not required to declare into the U.S./Canada Management Areas. For the purposes of selecting vessels for observer deployment, a vessel fishing in either of the U.S./Canada 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 5 working days prior to the beginning of any trip which it declares into the U.S./Canada Area as required under this paragraph (a)(3)(ii).

(iii) *Gear requirements.* NE multispecies vessels fishing with trawl gear in the Eastern U.S./Canada Area defined in paragraph (a)(1)(ii) of this section must fish with a haddock separator trawl or a flounder trawl net, as described in paragraphs (a)(3)(iii)(A) and (B) of this section (both nets may be onboard the fishing vessel simultaneously). No other type of fishing gear may be on the vessel during a trip to the Eastern U.S./Canada Area. The description of the haddock separator trawl and flounder trawl net in paragraph (a)(3)(iii) of this section may be further specified by the Regional Administrator through publication of such specifications in the **Federal Register**, consistent with the requirements of the Administrative Procedure Act.

(A) *Haddock Separator Trawl.* A haddock separator trawl is defined as a

groundfish trawl modified to a vertically oriented trouser trawl configuration, with two extensions arranged one over the other, where a codend shall be attached only to the upper extension, and the bottom extension shall be left open and have no codend attached. A horizontal large mesh separating panel constructed with a minimum of 6.0 inch (15.2 cm) diamond mesh must be installed between the selvages joining the upper and lower panels, as described in paragraph (a)(3)(iii)(A) and (B) of this section, extending forward from the front of the trouser junction to the aft edge of the first belly behind the fishing circle.

(1) *Two-seam bottom trawl nets*—For two seam nets, the separator panel will be constructed such that the width of the forward edge of the panel is 80–85 percent of the width of the after edge of the first belly of the net where the panel is attached. For example, if the belly is 200 meshes wide (from selvedge to selvedge), the separator panel must be no wider than 160–170 meshes wide.

(2) *Four-seam bottom trawl nets*—For four seam nets, the separator panel will be constructed such that the width of the forward edge of the panel is 90–95 percent of the width of the after edge of the first belly of the net where the panel is attached. For example, if the belly is 200 meshes wide (from selvedge to selvedge), the separator panel must be no wider than 180–190 meshes wide. The separator panel will be attached to both of the side panels of the net along the midpoint of the side panels. For example, if the side panel is 100 meshes tall, the separator panel must be attached at the 50th mesh.

(B) *Flounder Trawl Net.* A flounder trawl net is defined as bottom trawl gear meeting one of the following two net descriptions:

(1) A two seam low-rise net constructed with mesh size in compliance with § 648.80(a)(4) where the maximum footrope length is not greater than 105 ft (32.0 m) and the headrope is at least 30 percent longer than the footrope. The footrope and headrope lengths shall be measured from the forward wing end, so that the vertical dimension of the forward wing end measures 3.0 ft (0.9 m) or less in height. Floats are prohibited in the center 50 percent of the headrope.

(2) A two seam low-rise net constructed with mesh size in compliance with § 648.80(a)(4) with the exception that the mesh size in the square of the top panel of the net, identified as the area located from the headrope to the beginning of the first belly, shall not be smaller than 12.0-in (30.5-cm) square mesh. The vertical

dimension of the forward wing end may not measure more than 3.0 ft (0.9 m) in height.

(iv) *Harvest controls.* Vessels fishing in the U.S./Canada Management Areas are subject to the following restrictions, in addition to any other possession or landing limits applicable to vessels not fishing in the U.S./Canada Management Areas.

(A) *Cod landing limit restrictions.* Notwithstanding other applicable possession and landing restrictions under this part, NE multispecies vessels 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.

(1) *Possession restriction when 100 percent of TAC is harvested.* When the Regional Administrator projects that 100 percent of the TAC allocation for cod specified in paragraph (a)(2) of this section will be harvested, NMFS shall, through rulemaking consistent with the Administrative Procedure Act, close the Eastern U.S./Canada Area as specified in paragraph (a)(3)(iv)(E) of this section and prohibit all vessels from harvesting, possessing, or landing cod in or from the Eastern U.S./Canada Area.

(2) [Reserved]

(B) *Haddock landing limit*—(1) *Initial haddock landing limit.* The initial haddock landing limit is specified in § 648.86(a), unless adjusted pursuant to paragraph (a)(3)(iv)(B)(2) and (3) of this section.

(2) *Implementation of haddock landing limit for Eastern U.S./Canada Area.* When the Regional Administrator projects that 70 percent of the TAC allocation for haddock specified under paragraph (a)(2) of this section will be harvested, NMFS shall implement, through rulemaking consistent with the Administrative Procedure Act, a haddock trip limit for vessels fishing in the Eastern U.S./Canada Area of 1,500 lb (680.4 kg) per day, and 15,000 lb (6,804.1 kg) per trip.

(3) *Possession restriction when 100 percent of TAC is harvested.* When the Regional Administrator projects that 100 percent of the TAC allocation for haddock specified in paragraph (a)(2) of this section will be harvested, NMFS shall, through rulemaking consistent with the Administrative Procedure Act, close the Eastern U.S./Canada Area to groundfish DAS vessels as specified in paragraph (a)(3)(iv)(E) of this section and prohibit all vessels from harvesting,

possessing, or landing haddock in or from the Eastern U.S./Canada Area.

(C) *Yellowtail flounder landing limit*—(1) *Initial yellowtail flounder landing limit*. The initial yellowtail flounder possession limit is specific to the CA II Yellowtail Flounder SAP as specified in paragraph (b)(3)(viii) if this section, unless adjusted pursuant to paragraph (a)(3)(iv)(C)(2) and (3) of this section.

(2) *Implementation of yellowtail flounder landing limit for Western and Eastern U.S./Canada Areas*. When the Regional Administrator projects that 70 percent of the TAC allocation for yellowtail flounder specified under paragraph (a)(2) of this section will be harvested, NMFS shall impose and/or adjust, through rulemaking consistent with the Administrative Procedure Act, the yellowtail flounder trip limit for vessels fishing in both the Western U.S./Canada Area and the Eastern U.S./Canada Area to 1,500 lb (680.4 kg) per day, and 15,000 lb (6,804.1 kg) per trip.

(3) *Possession restriction when 100 percent of TAC is harvested*. When the Regional Administrator projects that 100 percent of the TAC allocation for yellowtail flounder specified under paragraph (a)(2) of this section will be harvested, NMFS shall, through rulemaking consistent with the Administrative Procedure Act, close the Eastern U.S./Canada Area to groundfish DAS vessels as specified under paragraph (a)(3)(iv)(E) of this section and prohibit all vessels from harvesting, possessing, or landing yellowtail flounder from the U.S./Canada Management Area.

(D) *Other restrictions or in-season adjustments*. In addition to the possession restrictions specified in paragraph (a)(3)(iv) of this section, when 30 percent and/or 60 percent of the TAC allocations specified under paragraph (a)(2) of this section are projected to be harvested, the Regional Administrator, through rulemaking consistent with the Administrative Procedure Act, may modify the gear requirements, modify or close access to the U.S./Canada Management Areas, increase or decrease the trip limits specified under paragraphs (a)(3)(iv)(A) through (C) of this section, or limit the total number of trips into the U.S./Canada Management Area, to prevent over-harvesting or under-harvesting the TAC allocations.

(E) *Closure of Eastern U.S./Canada Area*. When the Regional Administrator projects that the TAC allocations specified under paragraph (a)(2) of this section will be caught, NMFS shall close, through rulemaking consistent with the Administrative Procedure Act, the Eastern U.S./Canada Area to all

groundfish DAS vessels, unless otherwise allowed under this paragraph (a)(3)(iv)(E). Should the Eastern U.S./Canada Area close as described in this paragraph (a)(3)(iv)(E), groundfish DAS vessels may continue to fish in a SAP within the Eastern U.S./Canada Area, provided that the TAC for the target stock identified for that particular SAP has not been fully harvested. For example, should the TAC allocation for GB cod specified under paragraph (a)(2) of this section be attained, and the Eastern U.S./Canada Area closure implemented, vessels could continue to fish for yellowtail flounder within the SAP identified as the Closed Area II Yellowtail Flounder SAP, described in paragraph (b)(3) of this section, in accordance with the requirements of that program. Upon closure of the Eastern U.S./Canada Area, vessels may transit through this area as described in paragraph (a)(1)(ii) of this section, provided that its gear is stowed in accordance with the provisions of § 648.23(b), unless otherwise restricted under this part.

(v) *Reporting*. The owner or operator of an NE multispecies DAS vessel must submit reports through 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 be submitted in 24-hr intervals for each day beginning at 0000 hours and ending at 2400 hours. The reports must be submitted by 0900 hours of the following day. For vessels that have 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 lb/kg of cod, haddock and yellowtail flounder kept and total lb of cod, haddock, and yellowtail flounder discarded. For vessels that have 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 lb/kg of yellowtail flounder kept and total lb of yellowtail flounder discarded.

(vi) *Withdrawal from U.S./Canada Resource Sharing Understanding*. At any time, the Regional Administrator, in consultation with the Council, may withdraw from the provisions of the U.S./Canada Resource Sharing Understanding described in this section, if the Understanding is determined to be inconsistent with the goals and objectives of the FMP, the Magnuson-Stevens Act, or other applicable law. If the United States withdraws from the Understanding, the implementing measures, including TACs, remain in

place until changed through the framework or FMP amendment process.

(b) *Special Access Programs*. A SAP is a narrowly defined fishery that results in increased access to a stock that, in the absence of such authorization, would not be allowed due to broadly applied regulations. A SAP authorizes specific fisheries targeting either NE multispecies stocks or non-multispecies stocks in order to allow an increased yield of the target stock(s) without undermining the achievement of the goals of the NE Multispecies FMP. A SAP should result in a harvest level that more closely approaches OY, without compromising efforts to rebuild overfished stocks, end overfishing, minimize bycatch, or minimize impact on EFH. Development of a SAP requires a relatively high level of fishery dependent and fishery independent information in order to be consistent with this rationale.

(1) *SAPs harvesting NE multispecies*. A SAP to harvest NE multispecies may be proposed by the Council and approved by NMFS through the framework process described under § 648.90.

(2) *SAPs harvesting stocks other than NE multispecies*. A SAP to harvest stocks of fish other than NE multispecies (non-multispecies SAP) may be proposed by the Council and approved by NMFS through the framework process described under § 648.90.

(3) *Closed Area II Yellowtail Flounder SAP*—(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 an 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. Copies of a chart depicting this area are available from the Regional Administrator upon request.

(ii) *Closed Area II Yellowtail Flounder Access Area*. The Closed Area II Yellowtail Flounder Access Area is the area defined by straight lines connecting the following points in the order stated:



CLOSED AREA II YELLOWTAIL  
FLOUNDER ACCESS AREA

Point	N. lat.	W. long.
Ytail 1 .....	41°30'	67°20'
Ytail 2 .....	41°30'	66°34.8'
G5 .....	41°18.6'	66°24.8' <sup>1</sup>
CII 2 .....	41°00'	66°35.8'
CII 1 .....	41°00'	67°20'
Ytail 1 .....	41°30'	67°20'

<sup>1</sup> The U.S.-Canada Maritime Boundary.

(iii) *Season.* Eligible vessels may fish in the Closed Area II Yellowtail Flounder SAP during the period June 1 through December 31.

(iv) *VMS requirement.* All NE multispecies DAS vessels in the U.S./Canada Management Areas described in paragraph (a)(1) 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.

(v) *Declaration.* 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, date, time and port of departure, and special access program to be fished, at least 5 working days prior to the beginning of any trip which it declares into the Special Access Program as required under this paragraph (b)(3)(v). Prior to departure from port, a vessel intending to participate in the Closed Area II Yellowtail Flounder SAP must declare into this area through the VMS, in accordance with instructions provided by the Regional Administrator. In addition to fishing in the Closed Area II Yellowtail Flounder SAP, a vessel, on the same trip, may also declare its intent to fish in the area outside of the Closed Area II that resides within the Eastern U.S./Canada Area, as defined in paragraph (a)(1)(ii) of this section, provided the vessel fishes in this area under the most restrictive provisions of either the Closed Area II Yellowtail Flounder SAP, or the Eastern U.S./Canada Area.

(vi) *Number of trips per vessel.* Unless otherwise authorized by the Regional Administrator as specified in paragraph (a)(3)(iv)(D) of this section, eligible vessels are restricted to two trips per month, during the season described in paragraph (b)(3)(iii) of this section.

(vii) *Maximum number of trips.* Unless otherwise authorized by the Regional Administrator as specified in paragraph (a)(3)(iv)(D) of this section, the total number of trips by all vessels combined that may be declared into the

Closed Area II Yellowtail Flounder SAP is 320 trips per fishing year.

(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 Closed Area II Yellowtail Flounder SAP may fish for, possess and land up to 30,000 lb (13,608.2 kg) of yellowtail flounder per trip, and may not possess more than one-fifth of the daily cod possession limit specified for the Eastern U.S./Canada Area under paragraph (a)(3)(iv)(A) of this section.

(ix) *Area fished.* Eligible vessels that have declared a trip into the Closed Area II Yellowtail Flounder SAP, and other areas as specified under paragraph (b)(3)(v) of this section, may not fish, during the same trip, outside of the declared area, and may not enter or exit the area more than once per trip.

(x) *Gear requirements.* Vessels fishing with trawl gear under an NE multispecies DAS in the U.S./Canada Management Areas defined in paragraph (a)(1) of this section, may not fish with, or possess on board, any fishing gear other than a haddock separator trawl or flounder trawl net (both nets may be onboard the fishing vessel simultaneously).

(4) *SNE/MA Winter Flounder SAP.* A limited access NE multispecies vessel fishing for summer flounder west of 72° 30' W. lat., using mesh required under § 648.104(a), may retain and land up to 200 lb (90.7 kg) of winter flounder while not under an NE multispecies DAS, provided the vessel complies with the following restrictions:

(i) The vessel must possess a valid summer flounder permit as required under § 648.4(a)(3), and be in compliance with the restrictions of subpart G of this part;

(ii) The total amount of winter flounder on board must not exceed the amount of summer flounder on board;

(iii) The vessel must not be fishing under an NE multispecies DAS; and

(iv) Fishing for, retention, and possession of regulated species other than winter flounder is prohibited.

■ 15. Section 648.86 is revised to read as follows:

**§ 648.86 Multispecies possession restrictions.**

Except as provided in § 648.17, the following possession restrictions apply:

(a) *Haddock—* (1) *NE multispecies DAS vessels.* (i) From May 1 through September 30, except as provided in paragraph (a)(1)(iii) of this section, or unless otherwise restricted under § 648.85, a vessel that fishes under an NE multispecies DAS may land up to 3,000 lb (1,360.8 kg) of haddock per

DAS fished, or any part of a DAS fished, up to 30,000 lb (13,608 kg) per trip, provided it has at least one standard tote on board. Haddock on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) From October 1 through April 30, except as provided in paragraph (a)(1)(iii) of this section, or unless otherwise restricted under § 648.85, a vessel that fishes under an NE multispecies DAS may land up to 5,000 lb (2,268 kg) of haddock per DAS fished, or any part of a DAS fished, up to 50,000 lb (22,680 kg) per trip, provided it has at least one standard tote on board. Haddock on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(iii) *Adjustments—*(A) *Adjustment to the haddock trip limit to prevent exceeding the target TAC.* At any time during the fishing year, if the Regional Administrator projects that the target TAC for haddock will be exceeded, NMFS may adjust, through publication of a notification in the **Federal Register**, the trip limit per DAS and/or the maximum trip limit to an amount that the Regional Administrator determines will prevent exceeding the target TAC.

(B) *Adjustment of the haddock trip limit to allow harvesting of up to 75 percent of the target TAC.* At any time during the fishing year, if the Regional Administrator projects that less than 75 percent of the target TAC for haddock will be harvested by the end of the fishing year, NMFS may adjust or eliminate, through publication of a notification in the **Federal Register**, the trip limit per DAS and/or the maximum trip limit to an amount, including elimination of the per day and/or per trip limit, that is determined to be sufficient to allow harvesting of at least 75 percent of the target TAC, but not to exceed the target TAC.

(2) *Scallop dredge vessels.* (i) No person owning or operating a scallop dredge vessel issued a NE multispecies permit may land haddock from, or possess haddock on board, a scallop dredge vessel from January 1 through June 30.

(ii) No person owning or operating a scallop dredge vessel without an NE multispecies permit may possess haddock in, or harvested from, the EEZ from January 1 through June 30.

(iii) Unless otherwise authorized by the Regional Administrator as specified in paragraph (f) of this section, scallop dredge vessels or persons owning or operating a scallop dredge vessel that is



fishing under a scallop DAS allocated under § 648.53 may land or possess on board up to 300 lb (136.1 kg) of haddock, except as specified in § 648.88(c), provided that the vessel has at least one standard tote on board. This restriction does not apply to vessels issued NE multispecies Combination Vessel permits that are fishing under a multispecies DAS. Haddock on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(b) *Cod*— (1) *GOM cod landing limit.*  
 (i) Except as provided in paragraphs (b)(1)(ii) and (b)(4) of this section, or unless otherwise restricted under § 648.85, a vessel fishing under a NE multispecies DAS may land only up to 800 lb (362.9 kg) of cod during the first 24-hr period after the vessel has started a trip on which cod were landed (e.g., a vessel that starts a trip at 6 a.m. may call out of the DAS program at 11 a.m. and land up to 800 lb (362.9 kg), but the vessel cannot land any more cod on a subsequent trip until at least 6 a.m. on the following day). For each trip longer than 24 hr, a vessel may land up to an additional 800 lb (362.9 kg) for each additional 24-hr block of DAS fished, or part of an additional 24-hr block of DAS fished, up to a maximum of 4,000 lb (1,818.2 kg) per trip (e.g., a vessel that has been called into the DAS program for more than 24 hr, but less than 48 hr, may land up to, but no more than, 1,600 lb (725.7 kg) of cod). A vessel that has been called into only part of an additional 24-hr block of a DAS (e.g., a vessel that has been called into the DAS program for more than 24 hr, but less than 48 hr) may land up to an additional 800 lb (362.9 kg) of cod for that trip, provided the vessel complies with the provisions of paragraph (b)(1)(ii) of this section. Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) A vessel that has been called into only part of an additional 24-hr block may come into port with and offload cod up to an additional 800 lb (362.9 kg), provided that the vessel operator does not call out of the DAS program as described under § 648.10(c)(3) and does not depart from a dock or mooring in port, unless transiting, as allowed in paragraph (b)(3) of this section, until the rest of the additional 24-hr block of the DAS has elapsed, regardless of whether all of the cod on board is offloaded (e.g., a vessel that has been called into the DAS program for 25 hr, at the time of landing, may land only up to 1,600 lb (725.6 kg) of cod, provided the vessel does not call out of the DAS program or

leave port until 48 hr have elapsed from the beginning of the trip).

(2) *GB cod landing and maximum possession limits.* (i) Unless as provided under § 648.85, or under the provisions of paragraph (b)(2)(iii) of this section for vessels fishing with hook gear, for each fishing year, a vessel that is exempt from the landing limit described in paragraph (b)(1) of this section, and fishing under a NE multispecies DAS may land up to 1,000 lb (453.6 kg) of cod during the first 24-hr period after the vessel has started a trip on which cod were landed (e.g., a vessel that starts a trip at 6 a.m. may call out of the DAS program at 11 a.m. and land up to 1,000 lb (453.6 kg)), but the vessel cannot land any more cod on a subsequent trip until at least 6 a.m. on the following day). For each trip longer than 24 hr, a vessel may land up to an additional 1,000 lb (453.6 kg) for each additional 24-hr block of DAS fished, or part of an additional 24-hr block of DAS fished, up to a maximum of 10,000 lb (4536 kg) per trip (e.g., a vessel that has been called into the DAS program for 48 hr or less, but more than 24 hr, may land up to, but no more than 2,000 lb (907.2 kg) of cod). A vessel that has called into only part of an additional 24-hr block of a DAS (e.g., a vessel that has called into the DAS program for more than 24 hr, but less than 48 hr) may land up to an additional 1,000 lb (453.6 kg) of cod for that trip of cod for that trip provided the vessel complies with paragraph (b)(2)(ii) of this section. Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) A vessel that has been called into only part of an additional 24 hr block, may come into port with and offload cod up to an additional 1,000 lb (453.6 kg), provided that the vessel operator does not call-out of the DAS program as described under § 648.10(c)(3) and does not depart from a dock or mooring in port, unless transiting as allowed in paragraph (b)(3) of this section, until the rest of the additional 24-hr block of the DAS has elapsed regardless of whether all of the cod on board is offloaded (e.g., a vessel that has been called into the DAS program for 25 hr, at the time of landing, may land only up to 2,000 lb (907.2 kg) of cod, provided the vessel does not call out of the DAS program or leave port until 48 hr have elapsed from the beginning of the trip).

(iii) [Reserved]

(3) *Transiting.* A vessel that has exceeded the cod landing limit as specified in paragraphs (b)(1) and (2) of this section, and that is, therefore, subject to the requirement to remain in port for the period of time described in

paragraphs (b)(1)(ii)(A) and (b)(2)(ii)(A) of this section, may transit to another port during this time, provided that the vessel operator notifies the Regional Administrator, either at the time the vessel reports its hailed weight of cod, or at a later time prior to transiting, and provides the following information: Vessel name and permit number, destination port, time of departure, and estimated time of arrival. A vessel transiting under this provision must stow its gear in accordance with one of the methods specified in § 648.23(b) and may not have any fish on board the vessel.

(4) *Exemption.* A vessel fishing under a NE multispecies DAS is exempt from the landing limit described in paragraph (b)(1) of this section when fishing south of a line beginning at the Cape Cod, MA, coastline at 42°00' N. lat. and running eastward along 42°00' N. lat. until it intersects with 69°30' W. long., then northward along 69°30' W. long. until it intersects with 42°20' N. lat., then eastward along 42°20' N. lat. until it intersects with 67°20' W. long., then northward along 67°20' W. long. until it intersects with the U.S.-Canada maritime boundary, provided that it does not fish north of this exemption area for a minimum of 7 consecutive days (when fishing under the multispecies DAS program), and has on board an authorization letter issued by the Regional Administrator. Vessels exempt from the landing limit requirement may transit the GOM/GB Regulated Mesh Area north of this exemption area, provided that their gear is stowed in accordance with one of the provisions of § 648.23(b).

(c) *Atlantic halibut.* A vessel issued a NE multispecies permit under § 648.4(a)(1) may land or possess on board no more than one Atlantic halibut per trip, provided the vessel complies with other applicable provisions of this part.

(d) *Small-mesh multispecies.* (1) Vessels issued a valid Federal NE multispecies permit specified in § 648.4(a)(1) are subject to the following possession limits for small-mesh multispecies, which are based on the mesh size used by, or on board, vessels fishing for, in possession of, or landing small-mesh multispecies.

(i) *Vessels using mesh size smaller than 2.5 inches (6.35 cm) and vessels without a letter of authorization.* Owners or operators of vessels fishing for, in possession of, or landing small-mesh multispecies with, or having on board except as provided in this section, nets of mesh size smaller than 2.5 inches (6.35 cm) (as applied to the part of the net specified in paragraph

(d)(1)(iv) of this section), and vessels that have not been issued a letter of authorization pursuant to paragraphs (d)(1)(ii) or (iii) of this section, may possess on board and land up to 3,500 lb (1,588 kg) of combined silver hake and offshore hake. This possession limit on small-mesh multispecies does not apply if all nets with mesh size smaller than 2.5 inches (6.35 cm) have not been used to catch fish for the entire fishing trip and the nets have been properly stowed pursuant to § 648.23(b), and the vessel is fishing with a mesh size and a letter of authorization as specified in paragraphs (d)(1)(ii), (d)(1)(iii), and (d)(2) of this section. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection. The vessel is subject to applicable restrictions on gear, area, and time of fishing specified in § 648.80 and any other applicable provision of this part.

(ii) *Vessels authorized to use nets of mesh size 2.5 inches (6.35 cm) or greater.* Except as provided in paragraph (d)(3) of this section, owners and operators of vessels issued a valid letter of authorization pursuant to paragraph (d)(2) of this section authorizing the use of nets of mesh size 2.5 inches (6.35 cm) or greater, may fish for, possess, and land small-mesh multispecies up to 7,500 lb (3,402 kg) of combined silver hake and offshore hake when fishing with nets of a minimum mesh size of 2.5 inches (6.35 cm) (as applied to the part of the net specified in paragraph (d)(1)(iv) of this section), provided that any nets of mesh size smaller than 2.5 inches (6.35 cm) have not been used to catch such fish and are properly stowed pursuant to § 648.23(b) for the entire trip. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection. The vessel is subject to applicable restrictions on gear, area, and time of fishing specified in § 648.80 and any other applicable provision of this part.

(iii) *Vessels authorized to use nets of mesh size 3 inches (7.62 cm) or greater.* Except as provided in paragraph (d)(3) of this section, owners and operators of vessels issued a valid letter of authorization pursuant to paragraph (d)(2) of this section authorizing the use of nets of mesh size 3 inches (7.62 cm) or greater, may fish for, possess, and land small-mesh multispecies up to only 30,000 lb (13,608 kg) combined silver hake and offshore hake when fishing with nets of a minimum mesh size of 3 inches (7.62 cm) (as applied to

the part of the net specified in paragraph (d)(1)(iv) of this section), provided that any nets of mesh size smaller than 3 inches (7.62 cm) have not been used to catch such fish and are properly stowed pursuant to § 648.23(b) for the entire trip. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection. The vessel is subject to applicable restrictions on gear, area, and time of fishing specified in § 648.80 and any other applicable provision of this part.

(iv) *Application of mesh size.* Counting from the terminus of the net, the mesh size restrictions specified in paragraphs (d)(1)(i), (ii), and (iii) of this section are only applicable to the first 100 meshes (200 bars in the case of square mesh) for vessels greater than 60 ft (18.3 m) in length, and to the first 50 meshes (100 bars in the case of square mesh) for vessels 60 ft (18.3 m) or less in length. Notwithstanding any other provision of this section, the restrictions and conditions pertaining to mesh size do not apply to nets or pieces of net smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)).

(2) *Possession limit for vessels participating in the northern shrimp fishery.* Owners and operators of vessels participating in the Small-Mesh Northern Shrimp Fishery Exemption, as described in § 648.80(a)(5), with a vessel issued a valid Federal NE multispecies permit specified under § 648.4(a)(1), may possess and land silver hake and offshore hake, combined, up to an amount equal to the weight of shrimp on board, not to exceed 3,500 lb (1,588 kg). Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(3) *Possession restriction for vessels electing to transfer small-mesh NE multispecies at sea.* Owners and operators of vessels issued a valid Federal NE multispecies permit and issued a letter of authorization to transfer small-mesh NE multispecies at sea according to the provisions specified in § 648.13(b) are subject to a combined silver hake and offshore hake possession limit that is 500 lb (226.8 kg) less than the possession limit the vessel otherwise receives. This deduction shall be noted on the transferring vessel's letter of authorization from the Regional Administrator.

(e) [Reserved]

(f) *Calculation of weight of fillets or parts of fish.* The possession limits described under this part are based on

the weight of whole, whole-gutted, or gilled fish. For purposes of determining compliance with the possession limits specified in paragraphs (a), (b), or (c) of this section, the weight of fillets and parts of fish, other than whole-gutted or gilled fish, as allowed under § 648.83(a) and (b), will be multiplied by 3.

(g) *Yellowtail flounder—(1) Cape Cod/GOM yellowtail flounder possession limit restrictions.* Except when fishing under the recreational and charter/party restrictions specified under § 648.89, unless otherwise restricted as specified in §§ 648.82(b)(5), and 648.88(c), a qualified vessel issued a NE multispecies permit and fishing with a limited access Handgear A permit, under a NE multispecies DAS, or under a monkfish DAS when fishing under the limited access monkfish Category C or D permit provisions, may fish for, possess and land yellowtail flounder in or from the Cape Cod/GOM Yellowtail Flounder Area described in paragraph (g)(1)(i) of this section, subject to the requirements and trip limits specified in paragraph (g)(1)(ii) of this section.

(i) *Cape Cod/GOM Yellowtail Flounder Area.* The Cape Cod/GOM Yellowtail Flounder Area (copies of a chart depicting the area is available from the Regional Administrator upon request), is the area defined by straight lines connecting the following points in the order stated:

CAPE COD/GOM YELLOWTAIL FLOUNDER AREA

Point	N. lat.	W. long.
SYT13 .....	(1)	70° 00'
SYT12 .....	41° 20'	70° 00'
SYT11 .....	41° 20'	69° 50'
SYT10 .....	41° 10'	69° 50'
SYT9 .....	41° 10'	69° 30'
SYT8 .....	41° 00'	69° 30'
SYT7 .....	41° 00'	68° 50'
USCA1 .....	42° 20'	68° 50'
USCA12 .....	42° 20'	67° 40'
NYT1 .....	43° 50'	67° 40'
NYT2 .....	43° 50'	66° 50'
NYT3 .....	44° 20'	66° 50'
NYT4 .....	44° 20'	67° 00'
NYT5 .....	(2)	67° 00'

<sup>1</sup> South facing shoreline of Cape Cod, MA.  
<sup>2</sup> East facing shoreline of Maine.

(ii) *Requirements.* Vessels fishing in the Cape Cod/GOM Yellowtail Flounder Area are bound by the following requirements:

(A) The vessel must possess on board a yellowtail flounder possession/landing authorization letter issued by the Regional Administrator. To obtain this exemption letter the vessel owner must make a request in writing to the Regional Administrator.

(B) The vessel may not fish inside the SNE/MA Yellowtail Flounder Area, for a minimum of 7 consecutive days (when fishing with a limited access Handgear A permit, under the NE multispecies DAS program, or under the monkfish DAS program if the vessels is fishing under the limited access monkfish Category C or D permit provisions), unless otherwise specified in paragraph (g)(3) of this section. Vessels subject to these restrictions may fish any portion of a trip in the portion of the GB, SNE, and MA Regulated Mesh Areas outside of the SNE/MA Yellowtail Flounder Area, provided the vessel complies with the possession restrictions specified under this paragraph (g). Vessels subject to these restrictions may transit the SNE/MA Yellowtail Flounder Area, provided the gear is stowed in accordance with § 648.23(b).

(C) During the periods April through May, and October through November, the vessel may land or possess on board only up to 250 lb (113.6 kg) of yellowtail flounder per trip.

(D) During the periods June through September, and December through March, the vessel may land or possess on board only up to 750 lb (340.2 kg) of yellowtail flounder per DAS, or any part of a DAS, up to a maximum possession limit of 3,000 lb (1,364.0 kg) per trip.

(2) *SNE/MA yellowtail flounder possession limit restrictions.* Except when fishing under the recreational and charter/party restrictions specified in § 648.89, unless otherwise restricted as specified in § 648.82(b)(3) and (b)(5), and § 648.88(c), a vessel issued a NE multispecies permit and fishing with a limited access Handgear A permit, under a NE multispecies DAS, or under a monkfish DAS when fishing under the limited access monkfish Category C or D permit provisions, in the SNE/MA Yellowtail Flounder Area, described in paragraph (g)(2)(i) of this section, is subject to the requirements and trip limits specified in paragraph (g)(2)(ii) of this section, in order to fish for, possess, or land yellowtail flounder.

(i) *SNE/MA Yellowtail Flounder Area.* The SNE/MA Yellowtail Flounder Area (copies of a chart depicting the area is available from the Regional Administrator upon request), is the area defined by straight lines connecting the following points in the order stated:

SNE/MID-ATLANTIC YELLOWTAIL FLOUNDER AREA

Point	N. lat.	W. long.
SYT1 .....	38°00'	(1)
SY2 .....	38°00'	72°00'

SNE/MID-ATLANTIC YELLOWTAIL FLOUNDER AREA—Continued

Point	N. lat.	W. long.
SY3 .....	39°00'	72°00'
SY4 .....	39°00'	71°40'
SY5 .....	39°50'	71°40'
USCA2 .....	39°50'	68°50'
SYT7 .....	41°00'	68°50'
SYT8 .....	41°00'	69°30'
SYT9 .....	41°10'	69°30'
SYT10 .....	41°10'	69°50'
SYT11 .....	41°20'	69°50'
SYT12 .....	41°20'	70°00'
SYT13 .....	(2)	70°00'

<sup>1</sup> East facing shoreline of Virginia.  
<sup>2</sup> South facing shoreline of Cape Cod, MA.

(ii) *Requirements.* Vessels fishing in the SNE/MA Yellowtail Flounder Area are bound by the following requirements:

(A) The vessel must possess on board a yellowtail flounder possession/landing authorization letter issued by the Regional Administrator. To obtain this exemption letter the vessel owner must make a request in writing to the Regional Administrator.

(B) The vessel may not fish in the Cape Cod/GOM Yellowtail Flounder Area for a minimum of 7 consecutive days (when fishing with a limited access Handgear A permit, under the NE multispecies DAS program, or under the monkfish DAS program if the vessels is fishing under the limited access monkfish Category C or D permit provisions), unless otherwise specified in paragraph (g)(3) of this section. Vessels subject to these restrictions may fish any portion of the GB, SNE, and MA Regulated Mesh Areas outside of the Cape Cod/GOM Yellowtail Flounder Area, provided the vessel complies with the possession restrictions specified under this paragraph (g). Vessels subject to these restrictions may transit the Cape Cod/GOM Yellowtail Flounder Area, provided gear is stowed in accordance with § 648.23(b).

(C) During the period March through June, vessels may land or possess on board only up to 250 lb (113.6 kg) of yellowtail flounder per trip.

(D) During the period July through February, vessels may land or possess on board only up to 750 lb (340.2 kg) of yellowtail flounder per DAS, or any part of a DAS, up to a maximum possession limit of 3,000 lb (1,364.0 kg) per trip.

(3) During the months of January, February, April, May, July through September, and December, when the yellowtail flounder trip limit requirements for the Cape Cod/GOM and SNE/MA Yellowtail Flounder Areas are the same, vessels that obtain a

yellowtail flounder possession/landing letter of authorization as specified under paragraphs (g)(1)(ii)(A) and (g)(2)(ii)(A) of this section are not subject to the requirements specified under paragraphs (g)(1)(ii)(B) and (g)(2)(ii)(B) of this section.

(h) *Other possession restrictions.* Vessels are subject to any other applicable possession limit restrictions of this part.

■ 16. Section 648.87 is revised to read as follows:

§ 648.87 Sector allocation.

(a) *Procedure for implementing Sector allocation proposal.* (1) Any person may submit a Sector allocation proposal for a group of limited access NE multispecies vessels to the Council, at least 1 year in advance of the start of a sector, and request that the Sector be implemented through a framework procedure specified at § 648.90(a)(2), in accordance with the conditions and restrictions of this section.

(2) Upon receipt of a Sector allocation proposal, the Council must decide whether to initiate such framework. Should a framework adjustment to authorize a Sector allocation proposal be initiated, the Council should follow the framework adjustment provisions of § 648.90(a)(2). Any framework adjustment developed to implement a Sector allocation proposal must be in compliance with the general requirements specified in paragraphs (b) and (c) of this section. Vessels that do not join a Sector would remain subject to the NE multispecies regulations for non-Sector vessels specified under this part.

(b) *General requirements applicable to all Sector allocations.* (1) All Sectors approved under the provisions of paragraph (a) of this section must submit the documents specified under paragraphs (a)(1) and (b)(2) of this section, and comply with the conditions and restrictions of this paragraph (b)(1).

(i) The sector allocation must be based on either a TAC limit (hard TAC), or a maximum DAS usage limit for all vessels with a target TAC.

(ii) A Sector shall be allocated no more than 20 percent of a stock's TAC, unless otherwise authorized by the Council.

(iii) Allocation of catch or effort shall be based upon documented accumulated catch histories of the harvested stock(s) for each vessel electing to fish in a Sector, for the 5-year period prior to submission of a Sector allocation proposal to the Council. Documented catch shall be based on dealer landings reported to NMFS.

(iv) Landings histories for Sectors formed to harvest GB cod during the period 2004 through 2007 shall be based on fishing years 1996 through 2001.

(v) The Sector allocation proposal must contain an appropriate analysis that assesses the impact of the proposed Sector, in compliance with the National Environmental Policy Act.

(vi) Once a hard TAC allocated to a Sector is projected to be exceeded, Sector operations will be terminated for the remainder of the fishing year.

(vii) Should a hard TAC allocated to a Sector be exceeded in a given fishing year, the Sector's allocation will be reduced by the overage in the following fishing year, and the Sector, each vessel, and vessel operator and/or vessel owner participating in the Sector may be charged jointly and severally for civil penalties and permit sanctions pursuant to 15 CFR part 904. If the Sector exceeds its TAC in more than 1 fishing year, the Sector's share may be permanently reduced, or the Sector's authorization to operate may be withdrawn.

(viii) If a hard or target TAC allocated to a Sector is not exceeded in a given fishing year, the Sector's allocation of TAC or DAS will not be reduced for the following fishing year as a result of an overage of a hard or target TAC by non-compliant Sectors or by non-Sector vessels.

(ix) Unless exempted through a Letter of Authorization specified in paragraph (c)(3) of this section, each vessel operator and/or vessel owner fishing under an approved Sector must comply with all NE multispecies management measures of this part and other applicable law. Each vessel and vessel operator and/or vessel owner participating in a Sector must also comply with all applicable requirements and conditions of the Operating Plan specified in paragraph (b)(2) of this section and the Letter of Authorization issued pursuant to paragraph (c)(3) of this section. It shall be unlawful to violate any such conditions and requirements and each Sector, vessel, and vessel operator and/or vessel owner participating in the Sector may be charged jointly and severally for civil penalties and permit sanctions pursuant to 15 CFR part 904.

(x) Approved Sectors must submit an annual year-end report to NMFS and the Council, within 60 days of the end of the fishing year, that summarizes the fishing activities of its members, including harvest levels of all federally managed species by Sector vessels, enforcement actions, and other relevant information required to evaluate the performance of the Sector.

(xi) Once a vessel operator and/or vessel owner signs a binding contract to participate in a Sector, that vessel must remain in the Sector for the remainder of the fishing year.

(xii) Vessels that fish under the DAS program outside the Sector allocation in a given fishing year may not participate in a Sector during that same fishing year, unless the Operations Plan provides an acceptable method for accounting for DAS used prior to implementation of the Sector.

(xiii) Once a vessel operator and/or vessel owner has agreed to participate in a Sector as specified in paragraph (b)(1)(xi) of this section, that vessel must remain in the Sector for the entire fishing year. If a permit is transferred by a Sector participant during the fishing year, the new owner must also comply with the Sector regulations for the remainder of the fishing year.

(xiv) Vessels and vessel operators and/or vessel owners removed from a Sector for violation of the Sector rules will not be eligible to fish under the NE multispecies regulations for non-Sector vessels specified under this part.

(xv) All vessel operators and/or vessel owners fishing in an approved Sector must be issued and have on board the vessel, a Letter of Authorization (LOA) issued by the National Marine Fisheries Service pursuant to paragraph (c)(3) of this section.

(xvi) The Regional Administrator may exempt participants in the Sector, pursuant to paragraph (c)(3) of this section, from any Federal fishing regulations necessary to allow such participants to fish in accordance with the Operations Plan, with the exception of regulations addressing the following measures for Sectors based on a hard TAC: Year-round closure areas, permitting restrictions (e.g., vessel upgrades, etc.), gear restrictions designed to minimize habitat impacts (e.g., roller gear restrictions, etc.), and reporting requirements (not including DAS reporting requirements). A framework adjustment, as specified in § 648.90, may be submitted to exempt Sector participants from regulations not authorized to be exempted pursuant to paragraph (c)(2) of this section.

(2) *Operations Plan and Sector Contract.* Each Sector must submit an Operations Plan and Sector Contract to the Regional Administrator at least 3 months prior to the beginning of each fishing year. The following elements must be contained in either the Operations Plan or Sector Contract:

(i) A list of all parties, vessels, and vessel owners who will participate in the Sector;

(ii) A contract signed by all Sector participants indicating their agreement to abide by the Operations Plan;

(iii) The name of a designated representative or agent for service of process;

(iv) If applicable, a plan for consolidation or redistribution of catch or effort, detailing the quantity and duration of such consolidation or redistribution of catch or effort within the Sector;

(v) Historic information on the catch or effort history of the Sector participants, consistent with the requirements specified in paragraph (b) of this section, and any additional historic information specified in the framework adjustment;

(vi) A plan and analysis of the specific management rules the Sector participants will agree to abide by in order to avoid exceeding the allocated TAC (or target TAC under a DAS allocation), including detailed plans for enforcement of the Sector rules, as well as detailed plans for the monitoring and reporting of landings and discards;

(vii) A plan that defines the procedures by which members of the Sector that do not abide by the rules of the Sector will be disciplined or removed from the Sector, and a procedure for notifying NMFS of such expulsions from the Sector;

(viii) If applicable, a plan of how the TAC or DAS allocated to the Sector is assigned to each vessel;

(ix) If the Operations Plan is inconsistent with, or outside the scope of the NEPA analysis associated with the Sector proposal/framework adjustment as specified in paragraph (b)(2)(v) of this section, a supplemental NEPA analysis may be required with the Operations Plan.

(x) Each vessel and vessel operator and/or vessel owner participating in a Sector must comply with all applicable requirements and conditions of the Operating Plan specified in paragraph (b)(2) of this section and the Letter of Authorization issued pursuant to paragraph (c)(3) of this section. It shall be unlawful to violate any such conditions and requirements and each Sector, vessel, and vessel operator and/or vessel owner participating in the Sector may be charged jointly and severally for civil penalties and permit sanctions pursuant to 15 CFR part 904.

(c) *Approval of a Sector and granting of exemptions by the Regional Administrator.* (1) Once the submission documents specified under paragraphs (a)(1) and (b)(2) of this section have been determined to comply with the requirements of this section, NMFS may consult with the Council and will solicit

public comment on the Operations Plan for at least 15 days, through notification of a proposed rulemaking in the **Federal Register**.

(2) Upon review of the public comments, the Regional Administrator may approve or disapprove Sector operations, through a final determination consistent with the Administrative Procedure Act.

(3) If a Sector is approved, the Regional Administrator shall issue a Letter of Authorization to each vessel operator and/or vessel owner belonging to the Sector. The Letter of Authorization shall authorize participation in the Sector operations and may exempt participating vessels from any Federal fishing regulation, except those specified in paragraph (b)(1)(xvi) of this section, in order to allow vessels to fish in accordance with an approved Operations Plan, provided such exemptions are consistent with the goals and objectives of the NE multispecies FMP. The Letter of Authorization may also include requirements and conditions deemed necessary to ensure effective administration of an compliance with the Operations Plan and the Sector allocation. Solicitation of public comment on, and NMFS final determination on such exemptions shall be consistent with paragraphs (c)(1) and (2) of this section.

(4) The Regional Administrator may withdraw approval of a Sector, after consultation with the Council, at anytime if it is determined that Sector participants are not complying with the requirements of an approved Operations Plan or that the continuation of the Operations Plan will undermine achievement of fishing mortality objectives of the NE Multispecies FMP. Withdrawal of approval of a Sector may only be done after notice and comment rulemaking as prescribed by the Administrative Procedure Act.

(d) *Approved Sector allocation proposals*—(1) *GB Cod Hook Sector*. Eligible NE multispecies DAS vessels, as specified in paragraph (d)(1)(ii) of this section, may participate in the GB Cod Hook Sector within the GB Cod Hook Sector Area, under the Sector's Operations Plan, provided the Operations Plan is approved by the Regional Administrator in accordance with paragraph (c) of this section, and provided that each participating vessel and vessel operator and/or vessel owner comply with the requirements of the Operations Plan, the requirements and conditions specified in the Letter of Authorization issued pursuant to paragraph (c) of this section, and all

other requirements specified in this section.

(i) *GB Cod Hook Sector Area (GBCHSA)*. The GBCHSA is defined by straight lines connecting the following points in the order stated (copies of a map depicting the area are available from the Regional Administrator upon request):

GEORGES BANK COD HOOK SECTOR AREA

Point	N. lat.	W. long.
HS1 .....	70°00'	(1)
HS2 .....	70°00'	42°20'
HS3 .....	67°18.4'	42°20' <sup>3</sup>
Follow the U.S. EEZ boundary south to HS3.		
HS3 .....	66°45.5'	39°00'
HS4 .....	71°40'	39°00'
HS5 .....	71°40'	(2)

<sup>1</sup>The east facing shoreline of Cape Cod, MA.

<sup>2</sup>The south facing shoreline of Rhode Island.

<sup>3</sup>(the U.S. Canada Maritime Boundary).

(ii) *Eligibility*. All vessels with a valid limited access NE multispecies DAS permit are eligible to participate in the GB Cod Hook Sector, provided they have documented landings through valid dealer reports submitted to NMFS of GB cod during the fishing years 1996 to 2001 when fishing with jigs, demersal longline, or handgear.

(iii) *TAC allocation*. For each fishing year, the Sector's allocation of that fishing year's GB cod TAC, up to a maximum of 20 percent of the GB cod TAC, will be determined as follows:

(A) Sum of the total accumulated landings of GB cod by vessels identified in the Sector's Operation Plan specified under paragraph (b)(2) of this section, for the fishing years 1996 through 2001, when fishing with jigs, demersal longline, or handgear, as reported in the NMFS dealer database.

(B) Sum of total accumulated landings of GB cod made by all NE multispecies vessels for the fishing years 1996 through 2001, as reported in the NMFS dealer database.

(C) Divide the sum of total landings of Sector participants calculated in paragraph (d)(1)(iii)(A) of this section by the sum of total landings by all vessels calculated in paragraph (d)(1)(iii)(B) of this section. The resulting number represents the percentage of the total GB cod TAC allocated to the GB Cod Hook Sector for the fishing year in question.

(iv) *Requirements*. A vessel fishing under the GB Cod Hook Sector may not fish with gear other than jigs, demersal longline, or handgear.

(2) [Reserved]

■ 17. Section 648.88 is revised to read as follows:

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

(a) *Handgear permit*. A vessel issued a valid open access NE multispecies Handgear permit is subject to the following restrictions:

(1) The vessel may possess and land up to 75 lb (34 kg) of cod and up to the landing and possession limit restrictions for other NE multispecies specified in § 648.86, provided the vessel complies with the restrictions specified under paragraph (a)(2) of this section. Should the GOM cod trip limit specified under § 648.86(b)(1) be adjusted in the future, the cod trip limit specified under this paragraph (a)(1) will be adjusted proportionally (rounded up to the nearest 25 lb (11.3 kg)).

(2) *Restrictions*: (i) The vessel may not use or possess on board gear other than handgear while in possession of, fishing for, or landing NE multispecies, and must have at least one standard tote on board;

(ii) The vessel may not fish for, possess, or land regulated species from March 1 through March 20 of each year; and

(iii) The vessel, if fishing with tub-trawl gear, may not fish with more than a maximum of 250 hooks.

(b) *Charter/party permit*. A vessel that has been issued a valid open access NE multispecies charter/party permit is subject to the additional restrictions on gear, recreational minimum fish sizes, possession limits, and prohibitions on sale specified in § 648.89, and any other applicable provisions of this part.

(c) *Scallop NE multispecies possession limit permit*. A vessel that has been issued a valid open access scallop NE multispecies possession limit permit may possess and land up to 300 lb (136.1 kg) of regulated species when fishing under a scallop DAS allocated under § 648.53, provided the vessel does not fish for, possess, or land haddock from January 1 through June 30, as specified under § 648.86(a)(2)(i), and provided that the amount of yellowtail flounder on board the vessel does not exceed the trip limitations specified in § 648.86(g), and provided the vessel has at least one standard tote on board.

(d) *Non-regulated NE multispecies permit*. A vessel issued a valid open access non-regulated NE multispecies permit may possess and land one Atlantic halibut and unlimited amounts of the other non-regulated NE multispecies. The vessel is subject to restrictions on gear, area, and time of

fishing specified in § 648.80 and any other applicable provisions of this part.  
 ■ 18. Section 648.89 is revised to read as follows:

**§ 648.89 Recreational and charter/party vessel restrictions.**

(a) *Recreational gear restrictions.* Persons aboard charter or party vessels permitted under this part and not fishing under the DAS program, and recreational fishing vessels in the EEZ, are prohibited from fishing with more than two hooks per line, and one line per angler, and must stow all other fishing gear on board the vessel as specified under § 648.23(b).

(b) *Recreational minimum fish sizes—*  
 (1) *Minimum fish sizes.* Persons aboard charter or party vessels permitted under this part and not fishing under the NE multispecies DAS program, and recreational fishing vessels in or possessing fish from the EEZ, may not possess fish smaller than the minimum fish sizes, measured in total length (TL) as follows:

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

Species	Sizes (inches)
Cod .....	22 (58.4 cm)
Haddock .....	19 (48.3 cm)
Pollock .....	19 (48.3 cm)
Witch flounder (gray sole) .....	14 (35.6 cm)
Yellowtail flounder .....	13 (33.0 cm)
Atlantic halibut .....	36 (91.4 cm)
American plaice (dab) .....	14 (35.6 cm)
Winter flounder (blackback) ....	12 (30.5 cm)
Redfish .....	9 (22.9 cm)

(2) *Exception.* Vessels may possess fillets less than the minimum size specified, if the fillets are taken from legal-sized fish and are not offered or intended for sale, trade or barter.

(c) *Cod possession restrictions—*(1) *Recreational fishing vessels.* (i) Each person on a private recreational vessel may possess no more than 10 cod per day, in, or harvested from, the EEZ.

(ii) For purposes of counting fish, fillets will be converted to whole fish at the place of landing by dividing the number of fillets by two. If fish are filleted into a single (butterfly) fillet, such fillet shall be deemed to be from one whole fish.

(iii) Cod harvested by recreational fishing vessels in or from the EEZ with more than one person aboard may be pooled in one or more containers. Compliance with the possession limit will be determined by dividing the number of fish on board by the number of persons on board. If there is a

violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner or operator of the vessel.

(iv) Cod must be stored so as to be readily available for inspection.

(2) *Charter/party vessels.* Charter/party vessels fishing any part of a trip in the GOM Regulated Mesh Area, as defined in § 648.80(a)(1), are subject to the following possession limit restrictions:

(i) Each person on the vessel may possess no more than 10 cod per day.

(ii) For purposes of counting fish, fillets will be converted to whole fish at the place of landing by dividing the number of fillets by two. If fish are filleted into a single (butterfly) fillet, such fillet shall be deemed to be from one whole fish.

(iii) Cod harvested by charter/party vessels with more than one person aboard may be pooled in one or more containers. Compliance with the possession limits will be determined by dividing the number of fish on board by the number of persons on board. If there is a violation of the possession limits on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner or operator of the vessel.

(iv) Cod must be stored so as to be readily available for inspection.

(3) *Atlantic halibut.* Charter and party vessels permitted under this part, and recreational fishing vessels fishing in the EEZ, may not possess, on board, more than one Atlantic halibut.

(4) *Accounting of daily trip limit.* For the purposes of determining the per day trip limit for cod for recreational fishing vessels and party/charter vessels, any trip in excess of 15 hours and covering 2 consecutive calendar days will be considered more than 1 day. Similarly, any trip in excess of 39 hours and covering 3 consecutive calendar days will be considered more than 2 days and, so on, in a similar fashion.

(d) *Restrictions on sale.* It is unlawful to sell, barter, trade, or otherwise transfer for a commercial purpose, or to attempt to sell, barter, trade, or otherwise transfer for a commercial purpose, NE multispecies caught or landed by charter or party vessels permitted under this part not fishing under a DAS or recreational fishing vessels fishing in the EEZ.

(e) *Charter/party vessel restrictions on fishing in GOM closed areas and the Nantucket Lightship Closed Area—*(1) *GOM Closed Areas.* A vessel fishing under charter/party regulations may not fish in the GOM closed areas specified in § 648.81(d)(1) through (f)(1) during

the time periods specified in those paragraphs, unless the vessel has on board a letter of authorization issued by the Regional Administrator pursuant to § 648.81(f)(2)(iii) and paragraph (e)(3) of this section. The letter of authorization is required for a minimum of 3 months, if the vessel intends to fish in the seasonal GOM closure areas, or is required for the rest of the fishing year, beginning with the start of the participation period of the letter of authorization, if the vessel intends to fish in the year-round GOM closure areas.

(2) *Nantucket Lightship Closed Area.* A vessel fishing under charter/party regulations may not fish in the Nantucket Lightship Closed Area specified in § 648.81(c)(1) unless the vessel has on board a letter of authorization issued by the Regional Administrator pursuant to § 648.81(c)(2)(iii) and paragraph (e)(3) of this section.

(3) *Letters of authorization.* To obtain either of the letters of authorization specified in paragraphs (e)(1) and (2) of this section, a vessel owner must request a letter from the Northeast Regional Office of NMFS, either in writing or by phone (see Table 1 to 50 CFR 600.502). As a condition of these letters of authorization, the vessel owner must agree to the following:

(i) The letter of authorization must be carried on board the vessel during the period of participation;

(ii) With the exception of tuna, fish harvested or possessed by the vessel may not be sold or intended for trade, barter or sale, regardless of where the regulated species are caught;

(iii) The vessel has no gear other than rod and reel or handline gear on board; and

(iv) For the GOM charter/party closed area exemption only, the vessel may not use any NE multispecies DAS during the period of participation.

■ 19. Section 648.90 is revised to read as follows:

**§ 648.90 NE multispecies assessment, framework procedures and specifications, and flexible area action system.**

For the NE multispecies framework specification process described in this section, starting in fishing year 2004, the large-mesh species, halibut and ocean pout biennial review (referred to as NE multispecies) is considered a separate process from the small-mesh species annual review, as described under paragraphs (a)(2) and (b), respectively, of this section.

(a) NE multispecies—(1) *NE Multispecies annual SAFE Report.* The NE Multispecies Plan Development

Team (PDT) shall prepare an annual Stock Assessment and Fishery Evaluation (SAFE) Report for the NE multispecies fishery. The SAFE Report shall be the primary vehicle for the presentation of all updated biological and socio-economic information regarding the NE multispecies complex and its associated fisheries. The SAFE report shall provide source data for any adjustments to the management measures that may be needed to continue to meet the goals and objectives of the FMP.

(2) *Biennial review.* (i) Beginning in 2005, the NE Multispecies PDT shall meet on or before September 30 every other year, unless otherwise specified in paragraph (a)(3) of this section, under the conditions specified in that paragraph, to perform a review of the fishery, using the most current scientific information available provided primarily from the NEFSC. Data provided by states, ASMFC, the USCG, and other sources may also be considered by the PDT. Based on this review, the PDT will develop target TACs for the upcoming fishing year(s) and develop options for Council consideration, if necessary, on any changes, adjustments, or additions to DAS allocations, closed areas, or on other measures necessary to achieve the FMP goals and objectives. For the 2005 biennial review, an updated groundfish assessment, peer-reviewed by independent scientists, will be conducted to facilitate the PDT review for the biennial adjustment, if needed, for the 2006 fishing year. Amendment 13 biomass and fishing mortality targets may not be modified by the 2006 biennial adjustment unless review of all valid pertinent scientific work during the 2005 review process justifies consideration.

(ii) The PDT shall review available data pertaining to: Catch and landings, discards, DAS, DAS use, and other measures of fishing effort, survey results, stock status, current estimates of fishing mortality, social and economic impacts, enforcement issues, and any other relevant information.

(iii) Based on this review, the PDT shall recommend target TACs and develop options necessary to achieve the FMP goals and objectives, which may include a preferred option. The PDT must demonstrate through analyses and documentation that the options they develop are expected to meet the FMP goals and objectives. The PDT may review the performance of different user groups or fleet Sectors in developing options. The range of options developed by the PDT may include any of the management measures in the FMP,

including, but not limited to: Target TACs, which must be based on the projected fishing mortality levels required to meet the goals and objectives outlined in the FMP for the 10 regulated species, Atlantic halibut (if able to be determined), and ocean pout; DAS changes; possession limits; gear restrictions; closed areas; permitting restrictions; minimum fish sizes; recreational fishing measures; description and identification of EFH; fishing gear management measures to protect EFH; and designation of habitat areas of particular concern within EFH. In addition, the following conditions and measures may be adjusted through future framework adjustments: Revisions to status determination criteria, including, but not limited to, changes in the target fishing mortality rates, minimum biomass thresholds, numerical estimates of parameter values, and the use of a proxy for biomass; DAS allocations (such as the category of DAS under the DAS reserve program, etc.) and DAS baselines, etc.; modifications to capacity measures, such as changes to the DAS transfer or DAS leasing measures; calculation of area-specific TACs, area management boundaries, and adoption of area-specific management measures; Sector allocation requirements and specifications, including establishment of a new Sector; measures to implement the U.S./Canada Resource Sharing Understanding, including any specified TACs (hard or target); changes to administrative measures; additional uses for Regular B DAS; future uses for C DAS; reporting requirements; the GOM Inshore Conservation and Management Stewardship Plan; GB Cod Gillnet Sector allocation; allowable percent of TAC available to a Sector through a Sector allocation; categorization of DAS; DAS leasing provisions; adjustments for steaming time; adjustments to the Handgear A permit; gear requirements to improve selectivity, reduce bycatch, and/or reduce impacts of the fishery on EFH; SAP modifications; and any other measures currently included in the FMP.

(iv) The Council shall review the recommended target TACs recommended by the PDT and all of the options developed by the PDT, and other relevant information, consider public comment, and develop a recommendation to meet the FMP objective pertaining to regulated species, Atlantic halibut and ocean pout that is consistent with other applicable law. If the Council does not submit a recommendation that meets the FMP

objectives and is consistent with other applicable law, the Regional Administrator may adopt any option developed by the PDT, unless rejected by the Council, as specified in paragraph (a)(1)(vii) of this section, provided the option meets the FMP objectives and is consistent with other applicable law.

(v) Based on this review, the Council shall submit a recommendation to the Regional Administrator of any changes, adjustments or additions to DAS allocations, closed areas or other measures necessary to achieve the FMP's goals and objectives. The Council shall include in its recommendation supporting documents, as appropriate, concerning the environmental and economic impacts of the proposed action and the other options considered by the Council.

(vi) If the Council submits, on or before December 1, a recommendation to the Regional Administrator after one Council meeting, and the Regional Administrator concurs with the recommendation, the Regional Administrator shall publish the Council's recommendation in the **Federal Register** as a proposed rule with a 30-day public comment period. The Council may instead submit its recommendation on or before February 1, if it chooses to follow the framework process outlined in paragraph (c) of this section, and requests that the Regional Administrator publish the recommendation as a final rule, consistent with the Administrative Procedure Act. If the Regional Administrator concurs that the Council's recommendation meets the FMP objectives and is consistent with other applicable law, and determines that the recommended management measures should be published as a final rule, the action will be published as a final rule in the **Federal Register**, consistent with the Administrative Procedure Act. If the Regional Administrator concurs that the recommendation meets the FMP objectives and is consistent with other applicable law and determines that a proposed rule is warranted, and, as a result, the effective date of a final rule falls after the start of the fishing year on May 1, fishing may continue. However, DAS used by a vessel on or after May 1 will be counted against any DAS allocation the vessel ultimately receives for that year.

(vii) If the Regional Administrator concurs in the Council's recommendation, a final rule shall be published in the **Federal Register** on or about April 1 of each year, with the exception noted in paragraph (a)(2)(vi)



of this section. If the Council fails to submit a recommendation to the Regional Administrator by February 1 that meets the FMP goals and objectives, the Regional Administrator may publish as a proposed rule one of the options reviewed and not rejected by the Council, provided that the option meets the FMP objectives and is consistent with other applicable law. If, after considering public comment, the Regional Administrator decides to approve the option published as a proposed rule, the action will be published as a final rule in the **Federal Register**.

(3) *Review in 2008 for the 2009 fishing year.* In addition to the biennial review specified in paragraph (a)(2) of this section, the PDT shall meet to conduct a review of the groundfish fishery by September 2008 for the purposes of determining the need for a framework action for the 2009 fishing year. For the 2008 review, a benchmark assessment, peer-reviewed by independent scientists, will be completed for each of the regulated multispecies stocks and for Atlantic halibut and ocean pout. The interim biomass targets specified in the FMP will be evaluated during this benchmark assessment to evaluate the efficacy of the rebuilding program. Based on findings from the benchmark assessment, a determination will be made as to whether the FMP biomass targets appear to be appropriate, or whether they should be increased or decreased, in conformance with the best scientific information available.

(b) *Small mesh species.*—(1) *Annual review.* The Whiting Monitoring Committee (WMC) shall meet separately on or before November 15 of each year to develop options for Council consideration on any changes, adjustments, closed areas, or other measures necessary to achieve the NE Multispecies FMP goals and objectives.

(i) The WMC shall review available data pertaining to: Catch and landings, discards, and other measures of fishing effort, survey results, stock status, current estimates of fishing mortality, and any other relevant information.

(ii) The WMC shall recommend management options necessary to achieve FMP goals and objectives pertaining to small-mesh multispecies, which may include a preferred option. The WMC must demonstrate through analyses and documentation that the options it develops are expected to meet the FMP goals and objectives. The WMC may review the performance of different user groups or fleet Sectors in developing options. The range of options developed by the WMC may include any of the management

measures in the FMP, including, but not limited to: Annual target TACs, which must be based on the projected fishing mortality levels required to meet the goals and objectives outlined in the FMP for the small-mesh multispecies; possession limits; gear restrictions; closed areas; permitting restrictions; minimum fish sizes; recreational fishing measures; description and identification of EFH; fishing gear management measures to protect EFH; designation of habitat areas of particular concern within EFH; and any other management measures currently included in the FMP.

(iii) The Council shall review the recommended target TACs recommended by the PDT and all of the options developed by the WMC, and other relevant information, consider public comment, and develop a recommendation to meet the FMP objectives pertaining to small-mesh multispecies that is consistent with other applicable law. If the Council does not submit a recommendation that meets the FMP objectives and that is consistent with other applicable law, the Regional Administrator may adopt any option developed by the WMC, unless rejected by the Council, as specified in paragraph (b)(1)(vi) of this section, provided the option meets the FMP objectives and is consistent with other applicable law.

(iv) Based on this review, the Council shall submit a recommendation to the Regional Administrator of any changes, adjustments or additions to closed areas or other measures necessary to achieve the FMP's goals and objectives. The Council shall include in its recommendation supporting documents, as appropriate, concerning the environmental and economic impacts of the proposed action and the other options considered by the Council.

(v) If the Council submits, on or before January 7, a recommendation to the Regional Administrator after one Council meeting, and the Regional Administrator concurs with the recommendation, the Regional Administrator shall publish the Council's recommendation in the **Federal Register** as a proposed rule with a 30-day public comment period. The Council may instead submit its recommendation on or before February 1, if it chooses to follow the framework process outlined in paragraph (b)(2) of this section and requests that the Regional Administrator publish the recommendation as a final rule, consistent with the Administrative Procedure Act. If the Regional Administrator concurs that the Council's recommendation meets the

FMP objective and is consistent with other applicable law, and determines that the recommended management measures should be published as a final rule, the action will be published as a final rule in the **Federal Register**, consistent with the Administrative Procedure Act. If the Regional Administrator concurs that the recommendation meets the FMP objective and is consistent with other applicable law and determines that a proposed rule is warranted, and, as a result, the effective date of a final rule falls after the start of the fishing year on May 1, fishing may continue.

(vi) If the Regional Administrator concurs in the Council's recommendation, a final rule shall be published in the **Federal Register** on or about April 1 of each year, with the exception noted in paragraph (b)(1)(vi) of this section. If the Council fails to submit a recommendation to the Regional Administrator by February 1 that meets the FMP goals and objectives, the Regional Administrator may publish as a proposed rule one of the options reviewed and not rejected by the Council, provided that the option meets the FMP objectives and is consistent with other applicable law. If, after considering public comment, the Regional Administrator decides to approve the option published as a proposed rule, the action will be published as a final rule in the **Federal Register**.

(2) [Reserved]

(c) *Within season management action for NE multispecies, including small-mesh NE multispecies.* The Council may, at any time, initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the NE Multispecies FMP, to address gear conflicts, or to facilitate the development of aquaculture projects in the EEZ. This procedure may also be used to modify FMP overfishing definitions and fishing mortality targets that form the basis for selecting specific management measures.

(1) *Adjustment process.* (i) After a management action has been initiated, the Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of both the proposals and the analyses and opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures, other than to address gear conflicts, must come from one or more of the



following categories: DAS changes, effort monitoring, data reporting, possession limits, gear restrictions, closed areas, permitting restrictions, crew limits, minimum fish sizes, onboard observers, minimum hook size and hook style, the use of crucifer in the hook-gear fishery, fleet Sector shares, recreational fishing measures, area closures and other appropriate measures to mitigate marine mammal entanglements and interactions, description and identification of EFH, fishing gear management measures to protect EFH, designation of habitat areas of particular concern within EFH, and any other management measures currently included in the FMP. In addition, the Council's recommendation on adjustments or additions to management measures pertaining to small-mesh NE multispecies, other than to address gear conflicts, must come from one or more of the following categories: Quotas and appropriate seasonal adjustments for vessels fishing in experimental or exempted fisheries that use small mesh in combination with a separator trawl/grate (if applicable), modifications to separator grate (if applicable) and mesh configurations for fishing for small-mesh NE multispecies, adjustments to whiting stock boundaries for management purposes, adjustments for fisheries exempted from minimum mesh requirements to fish for small-mesh NE multispecies (if applicable), season adjustments, declarations, and participation requirements for the Cultivator Shoal Whiting Fishery Exemption Area.

(ii) *Adjustment process for whiting TACs and DAS.* The Council may develop recommendations for a whiting DAS effort reduction program or a whiting TAC through the framework process outlined in paragraph (c) of this section only if these options are accompanied by a full set of public hearings that span the area affected by the proposed measures in order to provide adequate opportunity for public comment.

(2) *Adjustment process for gear conflicts.* The Council may develop a recommendation on measures to address gear conflicts as defined under 50 CFR 600.10, in accordance with the procedures specified in § 648.55 (d) and (e).

(3) *Council recommendation.* After developing management actions and receiving public testimony, the Council shall make a recommendation to the Regional Administrator. The Council's recommendation must include supporting rationale and, if management measures are recommended, an analysis

of impacts and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule, consistent with the Administrative Procedure Act. If the Council recommends that the management measures should be issued as a final rule, the Council must consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season.

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures.

(iii) Whether there is an immediate need to protect the resource.

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(4) *Regional Administrator action.* If the Council's recommendation includes adjustments or additions to management measures, after reviewing the Council's recommendation and supporting information:

(i) If the Regional Administrator concurs with the Council's recommended management measures and determines that the recommended management measures should be issued as a final rule, based on the factors specified in paragraph (c)(3) of this section, the measures will be issued as a final rule in the **Federal Register**, consistent with the Administrative Procedure Act.

(ii) If the Regional Administrator concurs with the Council's recommendation and determines that the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the **Federal Register**. After additional public comment, if the Regional Administrator concurs with the Council's recommendation, the measures will be issued as a final rule in the **Federal Register**.

(iii) If the Regional Administrator does not concur, the Council will be notified in writing of the reasons for the non-concurrence.

(d) *Flexible Area Action System.* (1) The Chair of the Multispecies Oversight Committee, upon learning of the presence of discard problems associated with large concentrations of juvenile, sublegal, or spawning multispecies,

shall determine if the situation warrants further investigation and possible action. In making this determination, the Committee Chair shall consider the amount of discard of regulated species, the species targeted, the number and types of vessels operating in the area, the location and size of the area, and the resource condition of the impacted species. If he/she determines it is necessary, the Committee Chair will request the Regional Administrator to initiate a fact finding investigation to verify the situation and publish notification in the **Federal Register** requesting public comments in accordance with the procedures therefore in Amendment 3 to the NE Multispecies FMP.

(2) After examining the facts, the Regional Administrator shall, within the deadlines specified in Amendment 3, provide the technical analysis required by Amendment 3.

(3) The NEFMC shall prepare an economic impact analysis of the potential management options under consideration within the deadlines specified in Amendment 3.

(4) Copies of the analysis and reports prepared by the Regional Administrator and the NEFMC shall be made available for public review at the NEFMC's office and the Committee shall hold a meeting/public hearing, at which time it shall review the analysis and reports and request public comments. Upon review of all available sources of information, the Committee shall determine what course of action is warranted by the facts and make a recommendation, consistent with the provisions of Amendment 3 to the Regional Administrator.

(5) By the deadline set in Amendment 3 the Regional Administrator shall either accept or reject the Committee's recommendation. If the recommended action is consistent with the record established by the fact-finding report, impact analysis, and comments received at the public hearing, he/she shall accept the Committee's recommendation and implement it through notification in the **Federal Register** and by notice sent to all vessel owners holding multispecies permits. The Regional Administrator shall also use other appropriate media, including, but not limited to, mailings to the news media, fishing industry associations and radio broadcasts, to disseminate information on the action to be implemented.

(6) Once implemented, the Regional Administrator shall monitor the affected area to determine if the action is still warranted. If the Regional Administrator determines that the circumstances

under which the action was taken, based on the Regional Administrator's report, the NEFMC's report, and the public comments, are no longer in existence, he/she shall terminate the action by notification in the **Federal Register**.

(7) Actions taken under this section will ordinarily become effective upon the date of filing with the Office of the **Federal Register**. The Regional Administrator may determine that facts warrant a delayed effective date.

(e) Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action and interim measures under section 305(c) of the Magnuson-Stevens Act.

■ 20. In § 648.92, paragraph (b)(2)(ii) is revised and paragraph (b)(2)(iii) is added to read as follows:

**§ 648.92 Effort-control program for monkfish limited access vessels.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(ii) Unless otherwise specified in paragraph (b)(2)(iii) of this section, each monkfish DAS used by a limited access NE multispecies or scallop vessel holding a Category C or D limited access monkfish permit shall also be counted as a NE multispecies or scallop DAS, as applicable, except when a Category C or D vessel that has an allocation of NE multispecies DAS under § 648.82(d) that is less than the number of monkfish DAS allocated for the fishing year May 1 through April 30, that vessel may fish under the monkfish limited access Category A or B provisions, as applicable, for the number of DAS that equal the difference between the number of its allocated monkfish DAS and the number of its allocated NE multispecies DAS. For such vessels, when the total allocation of NE multispecies DAS has been used, a

monkfish DAS may be used without concurrent use of a NE multispecies DAS. (For example, if a monkfish Category D vessel's NE multispecies DAS allocation is 30, and the vessel fished 30 monkfish DAS, 30 NE multispecies DAS would also be used. However, after all 30 NE multispecies DAS are used, the vessel may utilize its remaining 10 monkfish DAS to fish on monkfish, without a NE multispecies DAS being used, provided that the vessel fishes under the regulations pertaining to a Category B vessel and does not retain any regulated NE multispecies.)

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

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

\* \* \* \* \*

■ 21. In § 648.94, paragraph (f) is revised to read as follows:

**§ 648.94 Monkfish possession and landing restrictions.**

\* \* \* \* \*

(f) *Area declaration requirement for vessels fishing exclusively in the NFMA.* Vessels fishing under a multispecies, scallop, or monkfish DAS under the less restrictive management measures of the NFMA, must fish for monkfish exclusively in the NFMA and declare into the NFMA for a period of not less than 7 days by obtaining a letter of authorization from the Regional Administrator. A vessel that has not declared into the NFMA under this paragraph (f) shall be presumed to have fished in the SFMA and shall be subject to the more restrictive requirements of that area. A vessel that has declared into the NFMA may transit the SFMA, providing that it complies with the transiting and gear storage provision described in paragraph (e) of this section, and provided that it does not fish for or catch monkfish, or any other fish, in the SFMA.

\* \* \* \* \*

■ 22. In § 648.322, paragraph (b)(6) is revised to read as follows:

**§ 648.322 Skate possession and landing restrictions.**

\* \* \* \* \*

(b) \* \* \*

(6) Skate bait-only possession limit LOA—The vessel owner or operator possesses and lands skates in compliance with this subpart for a minimum of 7 days.

\* \* \* \* \*

[FR Doc. 04-8884 Filed 4-16-04; 12:08 pm]

BILLING CODE 3510-22-P

**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](mailto: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](mailto:David_Rostker@omb.eop.gov) or fax to (202) 395-7285.

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

**SUPPLEMENTARY INFORMATION:****Background**

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

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

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

## Comments and Responses

### Regular B DAS Pilot Program

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

the vessels with both limited access multispecies and monkfish permits.

#### CA I Hook Gear Haddock SAP

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### *Eastern U.S./Canada Haddock SAP Pilot Program*

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

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

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

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

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

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



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

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

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

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

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

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

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

#### *Combined Trips to Western U.S./Canada Area*

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

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

#### *General Comments*

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

## Disapproved Measures

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

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

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

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

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

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

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

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

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

#### **Approved Measures**

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

##### *1. Regular B DAS Pilot Program*

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

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

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

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

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

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

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

INCIDENTAL TACS FOR B REGULAR DAS PILOT PROGRAM (MT)

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

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

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

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

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

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

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

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

## 2. CA I Hook Gear Haddock SAP

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

##### 5. NMFS Modification to Administrative Measures

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

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

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

##### Changes from the Proposed Rule

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

response to Comment 5 in this preamble.

### Classification

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

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

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

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

### Public Reporting Burden

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



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

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

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

#### Final Regulatory Flexibility Analysis

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This interim final rule contains programs that will provide small

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

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

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

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

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

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

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

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

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

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) states that for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides". The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rule making process, a small entity compliance guide was prepared. Copies of the guide will be sent to all holders of limited access DAS multispecies permits. The guide will be available on the Internet at <http://www.nero.noaa.gov>. Copies of the guide can also be obtained from the Regional Administrator (see ADDRESSES).

**List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 16, 2004.

**Rebecca Lent,**

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

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

**PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES**

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

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

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

**§ 648.2 Definitions.**

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

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

**§ 648.9 VMS requirements.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

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

\* \* \* \* \*

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

**§ 648.10 DAS notification requirements.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

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

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

\* \* \* \* \*

(3) \* \* \*

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

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

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

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

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

\* \* \* \* \*

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

**§ 648.14 Prohibitions.**

(a) \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

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

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

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

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

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

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

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

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

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

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

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

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

\* \* \* \* \*

(c) \* \* \*

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

\* \* \* \* \*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

\* \* \* \* \*

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

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

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

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

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

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

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

\* \* \* \* \*

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

\* \* \* \* \*

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

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

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(i) \* \* \*

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

\* \* \* \* \*

(e) \* \* \*

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

\* \* \* \* \*

(j) \* \* \*

(1) \* \* \*

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

\* \* \* \* \*

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

**§ 648.85 Special management programs.**

(a) \* \* \*

(3) \* \* \*

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

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

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

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

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

\* \* \* \* \*

(iv) \* \* \*

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

\* \* \* \* \*

(C) \* \* \*

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

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

\* \* \* \* \*

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

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

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

\* \* \* \* \*

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

(b) \* \* \*

(3) \* \* \*

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

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

\* \* \* \* \*

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

\* \* \* \* \*

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

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

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

\* \* \* \* \*

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

**GULF OF MAINE COD STOCK AREA—Continued**

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

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

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

**GEORGES BANK COD STOCK AREA**

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

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

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

**CAPE COD/GULF OF MAINE YELLOWTAIL FLOUNDER STOCK AREA**

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

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

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

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

**AMERICAN PLAICE STOCK AREA**

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

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

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

**SOUTHERN NEW ENGLAND/MID-ATLANTIC YELLOWTAIL FLOUNDER STOCK AREA**

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

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

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

**SOUTHERN NEW ENGLAND/MID-ATLANTIC WINTER FLOUNDER STOCK AREA**

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

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

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

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

**WITCH FLOUNDER STOCK AREA**

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

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

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

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

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

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

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

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

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

**CLOSED AREA I HOOK GEAR HADDOCK ACCESS AREA**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

area are available from the Regional Administrator upon request.

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

#### EASTERN U.S./CANADA HADDOCK SAP AREA

Point	N. Lat.	W. Long.
CAI13 .....	42° 22'	67° 20' <sup>(1)</sup>
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' <sup>(1)</sup>

<sup>(1)</sup> 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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**Magnuson-Stevens  
Fishery Conservation and Management Act  
Public Law 94-265**

**As amended through October 11, 1996**

**AN ACT**

**To provide for the conservation and management of the fisheries,  
and for other purposes.**

**J.Feder version (12/19/96)**

**SEC. 303. CONTENTS OF FISHERY MANAGEMENT PLANS 16 U.S.C. 1853**

**95-354, 99-659, 101-627, 104-297**

**(a) REQUIRED PROVISIONS.**--Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, shall--

(1) contain the conservation and management measures, applicable to foreign fishing and fishing by vessels of the United States, which are--

(A) necessary and appropriate for the conservation and management of the fishery to prevent overfishing and rebuild overfished stocks, and to protect, restore, and promote the long-term health and stability of the fishery;

(B) described in this subsection or subsection (b), or both; and

(C) consistent with the national standards, the other provisions of this Act, regulations implementing recommendations by international organizations in which the United States participates (including but not limited to closed areas, quotas, and size limits), and any other applicable law;

(2) contain a description of the fishery, including, but not limited to, the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the cost likely to be incurred in management, actual and potential revenues from the fishery, any recreational interest in the fishery, and the nature and extent of foreign fishing and Indian treaty fishing rights, if any;

(3) assess and specify the present and probable future condition of, and the maximum sustainable yield and optimum yield from, the fishery, and include a summary of the information utilized in making such specification;

(4) assess and specify-- (A) the capacity and the extent to which fishing vessels of the United States, on an annual basis, will harvest the optimum yield specified under paragraph (3),

(B) the portion of such optimum yield which, on an annual basis, will not be harvested by fishing vessels of the United States and can be made available for foreign fishing, and

(C) the capacity and extent to which United States fish processors, on an annual basis, will process that portion of such optimum yield that will be harvested by fishing vessels of the United States;

(5) specify the pertinent data which shall be submitted to the Secretary with respect to commercial, recreational, and charter fishing in the fishery, including, but not limited to, information regarding the type and quantity of fishing gear used, catch by species in numbers of fish or weight thereof, areas in which fishing was engaged in, time of fishing, number of hauls, and the estimated processing capacity of, and the actual processing capacity utilized by, United States fish processors;

(6) consider and provide for temporary adjustments, after consultation with the Coast Guard and persons utilizing the fishery, regarding access to the fishery for vessels otherwise prevented from harvesting because of weather or other ocean conditions affecting the safe conduct of the fishery; except that the adjustment shall not adversely affect conservation efforts in other fisheries or discriminate among participants in the affected fishery;

(7) describe and identify essential fish habitat for the fishery based on the guidelines established by the Secretary under section 305(b)(1)(A), minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat;

(8) in the case of a fishery management plan that, after January 1, 1991, is submitted to the Secretary for review under section 304(a) (including any plan for which an amendment is submitted to the Secretary for such review) or is prepared by the Secretary, assess and specify the nature and extent of scientific data which is needed for effective implementation of the plan;

(9) include a fishery impact statement for the plan or amendment (in the case of a plan or amendment thereto submitted to or prepared by the Secretary after October 1, 1990) which shall assess, specify, and describe the likely effects, if any, of the conservation and management measures on--

(A) participants in the fisheries and fishing communities affected by the plan or amendment; and

(B) participants in the fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council and representatives of those participants;

(10) specify objective and measurable criteria for identifying when the fishery to which the plan applies is overfished (with an analysis of how the criteria were determined and the relationship of the criteria to the reproductive potential of stocks of fish in that fishery) and, in the case of a fishery which the Council or the Secretary has determined is approaching an overfished condition or is overfished, contain conservation and management measures to prevent overfishing or end overfishing and rebuild the fishery;

(11) establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable and in the following priority--

(A) minimize bycatch; and

(B) minimize the mortality of bycatch which cannot be avoided;

(12) assess the type and amount of fish caught and released alive during recreational fishing under catch and release fishery management programs and the mortality of such fish, and include conservation and management measures that, to the extent practicable, minimize mortality and ensure the extended survival of such fish;

(13) include a description of the commercial, recreational, and charter fishing sectors which participate in the fishery and, to the extent practicable, quantify trends in landings of the managed fishery resource by the commercial, recreational, and charter fishing sectors; and

(14) to the extent that rebuilding plans or other conservation and management measures which reduce the overall harvest in a fishery are necessary, allocate any harvest restrictions or recovery benefits fairly and equitably among the commercial, recreational, and charter fishing sectors in the fishery.

**97-453, 99-659, 101-627, 102-251, 104-297**

**(b) DISCRETIONARY PROVISIONS.--**Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, may--

(1) require a permit to be obtained from, and fees to be paid to, the Secretary, with respect to--

(A) any fishing vessel of the United States fishing, or wishing to fish, in the exclusive economic zone [or special areas,]\* or for anadromous species or Continental Shelf fishery resources beyond such zone [or areas]\*;

(B) the operator of any such vessel; or

(C) any United States fish processor who first receives fish that are subject to the plan;

(2) designate zones where, and periods when, fishing shall be limited, or shall not be permitted, or shall be permitted only by specified types of fishing vessels or with specified types and quantities of fishing gear;

(3) establish specified limitations which are necessary and appropriate for the conservation and management of the fishery on the--

(A) catch of fish (based on area, species, size, number, weight, sex, bycatch, total biomass, or other factors);

(B) sale of fish caught during commercial, recreational, or charter fishing, consistent with any applicable Federal and State safety and quality requirements; and

(C) transshipment or transportation of fish or fish products under permits issued pursuant to section 204;



(4) prohibit, limit, condition, or require the use of specified types and quantities of fishing gear, fishing vessels, or equipment for such vessels, including devices which may be required to facilitate enforcement of the provisions of this Act;

(5) incorporate (consistent with the national standards, the other provisions of this Act, and any other applicable law) the relevant fishery conservation and management measures of the coastal States nearest to the fishery;

(6) establish a limited access system for the fishery in order to achieve optimum yield if, in developing such system, the Council and the Secretary take into account--

(A) present participation in the fishery,

(B) historical fishing practices in, and dependence on, the fishery,

(C) the economics of the fishery,

(D) the capability of fishing vessels used in the fishery to engage in other fisheries,

(E) the cultural and social framework relevant to the fishery and any affected fishing communities, and

(F) any other relevant considerations;

(7) require fish processors who first receive fish that are subject to the plan to submit data (other than economic data) which are necessary for the conservation and management of the fishery;

(8) require that one or more observers be carried on board a vessel of the United States engaged in fishing for species that are subject to the plan, for the purpose of collecting data necessary for the conservation and management of the fishery; except that such a vessel shall not be required to carry an observer on board if the facilities of the vessel for the quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized;

(9) assess and specify the effect which the conservation and management measures of the plan will have on the stocks of naturally spawning anadromous fish in the region;

(10) include, consistent with the other provisions of this Act, conservation and management measures that provide harvest incentives for participants within each gear group to employ fishing practices that result in lower levels of bycatch or in lower levels of the mortality of bycatch;

(11) reserve a portion of the allowable biological catch of the fishery for use in scientific research; and

(12) prescribe such other measures, requirements, or conditions and restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery.

**97-453, 104-297**

**(c) PROPOSED REGULATIONS.**--Proposed regulations which the Council deems necessary or appropriate for the purposes of--

(1) implementing a fishery management plan or plan amendment shall be submitted to the Secretary simultaneously with the plan or amendment under section 304; and

(2) making modifications to regulations implementing a fishery management plan or plan amendment may be submitted to the Secretary at any time after the plan or amendment is approved under section 304.

#### **104-297**

**(d) INDIVIDUAL FISHING QUOTAS.**--

(1) (A) A Council may not submit and the Secretary may not approve or implement before October 1, 2000, any fishery management plan, plan amendment, or regulation under this Act which creates a new individual fishing quota program.

(B) Any fishery management plan, plan amendment, or regulation approved by the Secretary on or after January 4, 1995, which creates any new individual fishing quota program shall be repealed and immediately returned by the Secretary to the appropriate Council and shall not be resubmitted, reapproved, or implemented during the moratorium set forth in subparagraph (A).

(2) (A) No provision of law shall be construed to limit the authority of a Council to submit and the Secretary to approve the termination or limitation, without compensation to holders of any limited access system permits, of a fishery management plan, plan amendment, or regulation that provides for a limited access system, including an individual fishing quota program.

(B) This subsection shall not be construed to prohibit a Council from submitting, or the Secretary from approving and implementing, amendments to the North Pacific halibut and sablefish, South Atlantic wreckfish, or Mid-Atlantic surf clam and ocean (including mahogany) quahog individual fishing quota programs.

(3) An individual fishing quota or other limited access system authorization--

(A) shall be considered a permit for the purposes of sections 307, 308, and 309;

(B) may be revoked or limited at any time in accordance with this Act;

(C) shall not confer any right of compensation to the holder of such individual fishing quota or other such limited access system authorization if it is revoked or limited; and

(D) shall not create, or be construed to create, any right, title, or interest in or to any fish before the fish is harvested.

(4) (A) A Council may submit, and the Secretary may approve and implement, a program which reserves up to 25 percent of any fees collected from a fishery under section 304(d)(2) to be used, pursuant to section 1104A(a)(7) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1274(a)(7)), to issue obligations that aid in financing the--

(i) purchase of individual fishing quotas in that fishery by fishermen who fish from small vessels; and

(ii) first-time purchase of individual fishing quotas in that fishery by entry level fishermen.

(B) A Council making a submission under subparagraph (A) shall recommend criteria, consistent with the provisions of this Act, that a fisherman must meet to qualify for guarantees under clauses (i) and (ii) of subparagraph (A) and the portion of funds to be allocated for guarantees under each clause.

(5) In submitting and approving any new individual fishing quota program on or after October 1, 2000, the Councils and the Secretary shall consider the report of the National Academy of Sciences required under section 108(f) of the Sustainable Fisheries Act, and any recommendations contained in such report, and shall ensure that any such program--

(A) establishes procedures and requirements for the review and revision of the terms of any such program (including any revisions that may be necessary once a national policy with respect to individual fishing quota programs is implemented), and, if appropriate, for the renewal, reallocation, or reissuance of individual fishing quotas;

(B) provides for the effective enforcement and management of any such program, including adequate observer coverage, and for fees under section 304(d)(2) to recover actual costs directly related to such enforcement and management; and

(C) provides for a fair and equitable initial allocation of individual fishing quotas, prevents any person from acquiring an excessive share of the individual fishing quotas issued, and considers the allocation of a portion of the annual harvest in the fishery for entry-level fishermen, small vessel owners, and crew members who do not hold or qualify for individual fishing quotas.

**104-297, sec. 108(b), M-S Act SS 303 note**

**IMPLEMENTATION.**--Not later than 24 months after the date of enactment of this Act [P.L. 104-297], each Regional Fishery Management Council shall submit to the Secretary of Commerce amendments to each fishery management plan under its authority to comply with the amendments made in subsection (a) of this section [i.e., the P.L. 104-297 revisions to SS 303(a)(1), (5), (7), and (9), and the addition of SS 303(a)(10)-(14)].

**104-297, sec. 108(i), M-S Act SS 303 note**

**EXISTING QUOTA PLANS.**--Nothing in this Act [P.L.104-297] or the amendments made by this Act shall be construed to require a reallocation of individual fishing quotas under any individual fishing quota program approved by the Secretary before January 4, 1995.

**SEC. 304. ACTION BY THE SECRETARY 16 U.S.C. 1854**

**104-297**

**(a) REVIEW OF PLANS.--**

(1) Upon transmittal by the Council to the Secretary of a fishery management plan or plan amendment, the Secretary shall--

(A) immediately commence a review of the plan or amendment to determine whether it is consistent with the national standards, the other provisions of this Act, and any other applicable law; and

(B) immediately publish in the Federal Register a notice stating that the plan or amendment is available and that written information, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 60-day period beginning on the date the notice is published.

(2) In undertaking the review required under paragraph (1), the Secretary shall--

(A) take into account the information, views, and comments received from interested persons;

(B) consult with the Secretary of State with respect to foreign fishing; and

(C) consult with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea and to fishery access adjustments referred to in section 303(a)(6).

(3) The Secretary shall approve, disapprove, or partially approve a plan or amendment within 30 days of the end of the comment period under paragraph (1) by written notice to the Council. A notice of disapproval or partial approval shall specify--

(A) the applicable law with which the plan or amendment is inconsistent;

(B) the nature of such inconsistencies; and

(C) recommendations concerning the actions that could be taken by the Council to conform such plan or amendment to the requirements of applicable law.

If the Secretary does not notify a Council within 30 days of the end of the comment period of the approval, disapproval, or partial approval of a plan or amendment, then such plan or amendment shall take effect as if approved.

(4) If the Secretary disapproves or partially approves a plan or amendment, the Council may submit a revised plan or amendment to the Secretary for review under this subsection.

(5) For purposes of this subsection and subsection (b), the term "immediately" means on or before the 5th day after the day on which a Council transmits to the Secretary a fishery management plan, plan amendment, or proposed regulation that the Council characterizes as final.

#### **104-297**

#### **(b) REVIEW OF REGULATIONS.--**

(1) Upon transmittal by the Council to the Secretary of proposed regulations prepared under section 303(c), the Secretary shall immediately initiate an evaluation of the proposed regulations

to determine whether they are consistent with the fishery management plan, plan amendment, this Act and other applicable law. Within 15 days of initiating such evaluation the Secretary shall make a determination and--

(A) if that determination is affirmative, the Secretary shall publish such regulations in the Federal Register, with such technical changes as may be necessary for clarity and an explanation of those changes, for a public comment period of 15 to 60 days; or

(B) if that determination is negative, the Secretary shall notify the Council in writing of the inconsistencies and provide recommendations on revisions that would make the proposed regulations consistent with the fishery management plan, plan amendment, this Act, and other applicable law.

(2) Upon receiving a notification under paragraph (1)(B), the Council may revise the proposed regulations and submit them to the Secretary for reevaluation under paragraph (1).

(3) The Secretary shall promulgate final regulations within 30 days after the end of the comment period under paragraph (1)(A). The Secretary shall consult with the Council before making any revisions to the proposed regulations, and must publish in the Federal Register an explanation of any differences between the proposed and final regulations.

**97-453, 99-659, 104-297**

**(c) PREPARATION AND REVIEW OF SECRETARIAL PLANS.--**

(1) The Secretary may prepare a fishery management plan, with respect to any fishery, or any amendment to any such plan, in accordance with the national standards, the other provisions of this Act, and any other applicable law, if--

(A) the appropriate Council fails to develop and submit to the Secretary, after a reasonable period of time, a fishery management plan for such fishery, or any necessary amendment to such a plan, if such fishery requires conservation and management;

(B) the Secretary disapproves or partially disapproves any such plan or amendment, or disapproves a revised plan or amendment, and the Council involved fails to submit a revised or further revised plan or amendment; or

(C) the Secretary is given authority to prepare such plan or amendment under this section.

In preparing any such plan or amendment, the Secretary shall consult with the Secretary of State with respect to foreign fishing and with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea. The Secretary shall also prepare such proposed regulations as he deems necessary or appropriate to carry out each plan or amendment prepared by him under this paragraph.

(2) In preparing any plan or amendment under this subsection, the Secretary shall--

(A) conduct public hearings, at appropriate times and locations in the geographical areas concerned, so as to allow interested persons an opportunity to be heard in the preparation and amendment of the plan and any regulations implementing the plan; and

(B) consult with the Secretary of State with respect to foreign fishing and with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea.

(3) Notwithstanding paragraph (1) for a fishery under the authority of a Council, the Secretary may not include in any fishery management plan, or any amendment to any such plan, prepared by him, a provision establishing a limited access system, including any individual fishing quota program unless such system is first approved by a majority of the voting members, present and voting, of each appropriate Council.

(4) Whenever the Secretary prepares a fishery management plan or plan amendment under this section, the Secretary shall immediately--

(A) for a plan or amendment for a fishery under the authority of a Council, submit such plan or amendment to the appropriate Council for consideration and comment; and

(B) publish in the Federal Register a notice stating that the plan or amendment is available and that written information, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 60-day period beginning on the date the notice is published.

(5) Whenever a plan or amendment is submitted under paragraph (4)(A), the appropriate Council must submit its comments and recommendations, if any, regarding the plan or amendment to the Secretary before the close of the 60-day period referred to in paragraph (4)(B). After the close of such 60-day period, the Secretary, after taking into account any such comments and recommendations, as well as any views, information, or comments submitted under paragraph (4)(B), may adopt such plan or amendment.

(6) The Secretary may propose regulations in the Federal Register to implement any plan or amendment prepared by the Secretary. In the case of a plan or amendment to which paragraph (4)(A) applies, such regulations shall be submitted to the Council with such plan or amendment. The comment period on proposed regulations shall be 60 days, except that the Secretary may shorten the comment period on minor revisions to existing regulations.

(7) The Secretary shall promulgate final regulations within 30 days after the end of the comment period under paragraph (6). The Secretary must publish in the Federal Register an explanation of any substantive differences between the proposed and final rules. All final regulations must be consistent with the fishery management plan, with the national standards and other provisions of this Act, and with any other applicable law.

#### **97-453, 104-297**

#### **(d) ESTABLISHMENT OF FEES.--**

(1) The Secretary shall by regulation establish the level of any fees which are authorized to be charged pursuant to section 303(b)(1). The Secretary may enter into a cooperative agreement

with the States concerned under which the States administer the permit system and the agreement may provide that all or part of the fees collected under the system shall accrue to the States. The level of fees charged under this subsection shall not exceed the administrative costs incurred in issuing the permits.

(2)(A) Notwithstanding paragraph (1), the Secretary is authorized and shall collect a fee to recover the actual costs directly related to the management and enforcement of any--

(i) individual fishing quota program; and

(ii) community development quota program that allocates a percentage of the total allowable catch of a fishery to such program.

(B) Such fee shall not exceed 3 percent of the ex-vessel value of fish harvested under any such program, and shall be collected at either the time of the landing, filing of a landing report, or sale of such fish during a fishing season or in the last quarter of the calendar year in which the fish is harvested.

(C) (i) Fees collected under this paragraph shall be in addition to any other fees charged under this Act and shall be deposited in the Limited Access System Administration Fund established under section 305(h)(5)(B), except that the portion of any such fees reserved under section 303(d)(4)(A) shall be deposited in the Treasury and available, subject to annual appropriations, to cover the costs of new direct loan obligations and new loan guarantee commitments as required by section 504(b)(1) of the Federal Credit Reform Act (2 U.S.C. 661c(b)(1)).

(ii) Upon application by a State, the Secretary shall transfer to such State up to 33 percent of any fee collected pursuant to subparagraph (A) under a community development quota program and deposited in the Limited Access System Administration Fund in order to reimburse such State for actual costs directly incurred in the management and enforcement of such program.

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#### **(e) REBUILDING OVERFISHED FISHERIES.--**

(1) The Secretary shall report annually to the Congress and the Councils on the status of fisheries within each Council's geographical area of authority and identify those fisheries that are overfished or are approaching a condition of being overfished. For those fisheries managed under a fishery management plan or international agreement, the status shall be determined using the criteria for overfishing specified in such plan or agreement. A fishery shall be classified as approaching a condition of being overfished if, based on trends in fishing effort, fishery resource size, and other appropriate factors, the Secretary estimates that the fishery will become overfished within two years.

(2) If the Secretary determines at any time that a fishery is overfished, the Secretary shall immediately notify the appropriate Council and request that action be taken to end overfishing in the fishery and to implement conservation and management measures to rebuild affected stocks of fish. The Secretary shall publish each notice under this paragraph in the Federal Register.



(3) Within one year of an identification under paragraph (1) or notification under paragraphs (2) or (7), the appropriate Council (or the Secretary, for fisheries under section 302(a)(3)) shall prepare a fishery management plan, plan amendment, or proposed regulations for the fishery to which the identification or notice applies--

(A) to end overfishing in the fishery and to rebuild affected stocks of fish; or

(B) to prevent overfishing from occurring in the fishery whenever such fishery is identified as approaching an overfished condition.

(4) For a fishery that is overfished, any fishery management plan, amendment, or proposed regulations prepared pursuant to paragraph (3) or paragraph (5) for such fishery shall--

(A) specify a time period for ending overfishing and rebuilding the fishery that shall--

(i) be as short as possible, taking into account the status and biology of any overfished stocks of fish, the needs of fishing communities, recommendations by international organizations in which the United States participates, and the interaction of the overfished stock of fish within the marine ecosystem; and

(ii) not exceed 10 years, except in cases where the biology of the stock of fish, other environmental conditions, or management measures under an international agreement in which the United States participates dictate otherwise;

(B) allocate both overfishing restrictions and recovery benefits fairly and equitably among sectors of the fishery; and

(C) for fisheries managed under an international agreement, reflect traditional participation in the fishery, relative to other nations, by fishermen of the United States.

(5) If, within the one-year period beginning on the date of identification or notification that a fishery is overfished, the Council does not submit to the Secretary a fishery management plan, plan amendment, or proposed regulations required by paragraph (3)(A), the Secretary shall prepare a fishery management plan or plan amendment and any accompanying regulations to stop overfishing and rebuild affected stocks of fish within 9 months under subsection (c).

(6) During the development of a fishery management plan, a plan amendment, or proposed regulations required by this subsection, the Council may request the Secretary to implement interim measures to reduce overfishing under section 305(c) until such measures can be replaced by such plan, amendment, or regulations. Such measures, if otherwise in compliance with the provisions of this Act, may be implemented even though they are not sufficient by themselves to stop overfishing of a fishery.

(7) The Secretary shall review any fishery management plan, plan amendment, or regulations required by this subsection at routine intervals that may not exceed two years. If the Secretary finds as a result of the review that such plan, amendment, or regulations have not resulted in adequate progress toward ending overfishing and rebuilding affected fish stocks, the Secretary shall--

(A) in the case of a fishery to which section 302(a)(3) applies, immediately make revisions necessary to achieve adequate progress; or

(B) for all other fisheries, immediately notify the appropriate Council. Such notification shall recommend further conservation and management measures which the Council should consider under paragraph (3) to achieve adequate progress.

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**(f) FISHERIES UNDER AUTHORITY OF MORE THAN ONE COUNCIL.--**

(1) Except as provided in paragraph (3)[\[3\]](#), if any fishery extends beyond the geographical area of authority of any one Council, the Secretary may--

(A) designate which Council shall prepare the fishery management plan for such fishery and any amendment to such plan; or

(B) may require that the plan and amendment be prepared jointly by the Councils concerned.

No jointly prepared plan or amendment may be submitted to the Secretary unless it is approved by a majority of the voting members, present and voting, of each Council concerned.

(2) The Secretary shall establish the boundaries between the geographical areas of authority of adjacent Councils.

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**(g) ATLANTIC HIGHLY MIGRATORY SPECIES.--**

**(1) PREPARATION AND IMPLEMENTATION OF PLAN OR PLAN AMENDMENT.--**

The Secretary shall prepare a fishery management plan or plan amendment under subsection (c) with respect to any highly migratory species fishery to which section 302(a)(3) applies. In preparing and implementing any such plan or amendment, the Secretary shall--

(A) consult with and consider the comments and views of affected Councils, commissioners and advisory groups appointed under Acts implementing relevant international fishery agreements pertaining to highly migratory species, and the advisory panel established under section 302(g);

(B) establish an advisory panel under section 302(g) for each fishery management plan to be prepared under this paragraph;

(C) evaluate the likely effects, if any, of conservation and management measures on participants in the affected fisheries and minimize, to the extent practicable, any disadvantage to United States fishermen in relation to foreign competitors;

(D) with respect to a highly migratory species for which the United States is authorized to harvest an allocation, quota, or at a fishing mortality level under a relevant international fishery agreement, provide fishing vessels of the United States with a reasonable opportunity to harvest such allocation, quota, or at such fishing mortality level;

(E) review, on a continuing basis (and promptly whenever a recommendation pertaining to fishing for highly migratory species has been made under a relevant international fishery agreement), and revise as appropriate, the conservation and management measures included in the plan;

(F) diligently pursue, through international entities (such as the International Commission for the Conservation of Atlantic Tunas), comparable international fishery management measures with respect to fishing for highly migratory species; and

(G) ensure that conservation and management measures under this subsection--

(i) promote international conservation of the affected fishery;

(ii) take into consideration traditional fishing patterns of fishing vessels of the United States and the operating requirements of the fisheries;

(iii) are fair and equitable in allocating fishing privileges among United States fishermen and do not have economic allocation as the sole purpose; and

(iv) promote, to the extent practicable, implementation of scientific research programs that include the tagging and release of Atlantic highly migratory species.

**(2) CERTAIN FISH EXCLUDED FROM "BYCATCH" DEFINITION.--**

Notwithstanding section 3(2), fish harvested in a commercial fishery managed by the Secretary under this subsection or the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971d) that are not regulatory discards and that are tagged and released alive under a scientific tagging and release program established by the Secretary shall not be considered bycatch for purposes of this Act.

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**(h) REPEAL OR REVOCATION OF A FISHERY MANAGEMENT PLAN.--**The Secretary may repeal or revoke a fishery management plan for a fishery under the authority of a Council only if the Council approves the repeal or revocation by a three-quarters majority of the voting members of the Council.

**101-627, sec. 108(k), M-S Act SS 304 note**

**Interim Management of Highly Migratory Species Fisheries.--**Notwithstanding the amendments made by subsections (a) and (g) [of section 108 of Pub. L. 101-627], any fishery management plan or amendment which--

(1) addresses a highly migratory species fishery to which section 304(f)(3) of the Magnuson Fishery Conservation and Management Act (as amended by this Act [101-627]) applies,

(2) was prepared by one or more Regional Fishery Management Councils, and

(3) was in force and effect on January 1, 1990,

shall remain in force and effect until superseded by a fishery management plan prepared by the Secretary, and regulations implementing that plan.

**104-297, sec. 109(d), M-S Act SS 304 note**

**DELAY OF FEES.**--Notwithstanding any other provision of law, the Secretary shall not begin the collection of fees under section 304(d)(2) of the Magnuson Fishery Conservation and Management Act, as amended by this Act [104-297], in the surf clam and ocean (including mahogany) quahog fishery or in the wreckfish fishery until after January 1, 2000.

**104-297, sec. 109(h), M-S Act SS 304 note**

**COMPREHENSIVE MANAGEMENT SYSTEM FOR ATLANTIC PELAGIC  
LONGLINE FISHERY.**--(1) The Secretary of Commerce shall--

(A) establish an advisory panel under section 302(g)(4) of the Magnuson Fishery Conservation and Management Act, as amended by this Act, for pelagic longline fishing vessels that participate in fisheries for Atlantic highly migratory species;

(B) conduct surveys and workshops with affected fishery participants to provide information and identify options for future management programs;

(C) to the extent practicable and necessary for the evaluation of options for a comprehensive management system, recover vessel production records; and

(D) complete by January 1, 1998, a comprehensive study on the feasibility of implementing a comprehensive management system for pelagic longline fishing vessels that participate in fisheries for Atlantic highly migratory species, including, but not limited to, individual fishing quota programs and other limited access systems.

(2) Based on the study under paragraph (1)(D) and consistent with the requirements of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), in cooperation with affected participants in the fishery, the United States Commissioners on the International Commission for the Conservation of Atlantic Tunas, and the advisory panel established under paragraph (1)(A), the Secretary of Commerce may, after October 1, 1998, implement a comprehensive management system pursuant to section 304 of such Act (16 U.S.C. 1854) for pelagic longline fishing vessels that participate in fisheries for Atlantic highly migratory species. Such a system may not implement an individual fishing quota program until after October 1, 2000.

**104-297, sec. 109(j), M-S Act 304 note**

**AMERICAN LOBSTER FISHERY.**--Section 304(h) of the Magnuson Fishery Conservation and Management Act, as amended by this Act [Public Law 104-297], shall not apply to the American Lobster Fishery Management Plan.