

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

[Docket No. 050630174-5234-02; I.D. 062005B-X]

RIN 0648-AT08

**Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 41**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule implements Framework Adjustment 41 (FW 41) to the Northeast (NE) Multispecies Fishery Management Plan (FMP), developed by the New England Fishery Management Council (Council), which expands participation in the existing Closed Area (CA) I Hook Gear Haddock Special Access Program (SAP) to all NE multispecies limited access days-at sea (DAS) vessels fishing with hook gear. This action also modifies some of the management measures currently applicable to the Georges Bank (GB) Cod Hook Sector (Sector) vessels when declared into the CA I Hook Gear Haddock SAP by including modification of the season, haddock total allowable catch (TAC), and restricting vessels to fishing only inside the SAP area on trips declared into the SAP. In addition, NMFS clarifies regulations pertaining to fishing in the Eastern U.S./Canada Haddock SAP Pilot Program Area. Specifically, during the time the SAP is open, eligible vessels can choose to fish in the SAP, and fish outside the SAP in the open areas of the Eastern U.S./Canada Area. This action is intended to mitigate the economic and social impacts resulting from Amendment 13 to the FMP and to meet the conservation and management requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** Effective October 14, 2005.

**ADDRESSES:** Copies of FW 41, its Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), and the Environmental Assessment (EA) are available from Paul J. Howard, Executive Director, New England Fishery Management Council,

50 Water Street, The Tannery B-Mill 2, Newburyport, MA 01950.

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 final rule. Copies of the small entity compliance guide are available from Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930-2298. A copy of the EA/RIR/IRFA is accessible via the Internet at <http://www.nero.noaa.gov/nero/regs/com.html>.

Comments regarding the burden-hour estimates or other aspects of the collection of information requirements contained in this final rule may be submitted in writing to NMFS (see **ADDRESSES**), or to David Rostker, OMB, by e-mail at [David.Rostker@omb.eop.gov](mailto:David.Rostker@omb.eop.gov), or by fax at (202) 395-7285.

**FOR FURTHER INFORMATION CONTACT:** Brian Hooker, Fishery Policy Analyst, phone: (978) 281-9220, fax: (978) 281-9135.

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

In order to increase the fishing effort on, and yield from, healthy stocks, Amendment 13 to the FMP created a structure that allows for development of programs to target healthy fish stocks using Category B DAS. Amendment 13 included four specific SAPs, only two of which were approved and implemented on May 1, 2004. The regulations implementing FW 40-A (69 FR 67780, November 19, 2004) also created opportunities to use Category B DAS, including the CA I Hook Gear Haddock SAP. However, due to insufficient controls on GB cod mortality, the measures for non-Sector vessels proposed in FW 40-A were found to be inconsistent with applicable law, and were thus disapproved. The purpose of this action is to revise the CA I Hook Gear Haddock SAP rules to allow participation by non-Sector vessels. This special access program will help mitigate the economic and social impacts caused by the fishing effort reductions that resulted from implementation of Amendment 13.

**Management Measures****1. CA I Hook Gear Haddock SAP****Non-Sector Vessels**

FW 41 modifies the CA I Hook Gear Haddock SAP by allowing access to this SAP when fishing under a B DAS (either

Regular B or Reserve B) for vessels with a NE multispecies limited access DAS permit, provided the vessel fishes with demersal longline or tub trawl gear. In order to minimize the potential of a derby fishery, participation in the SAP for non-Sector vessels is restricted to a participation period of November 16 - December 31 for the 2005 fishing year, unless otherwise notified by NMFS. The participation period will alternate each year between Sector and non-Sector participants such that, in fishing year 2006, non-Sector vessels will be able to fish in this SAP during a participation period of October 1 - November 15. The currently approved haddock TAC of 1,000 mt for the SAP is divided evenly into two quota periods such that the haddock TAC for each quota period will be 500 mt. The SAP will be closed to all participants when the Administrator, Northeast Region, NMFS (Regional Administrator) projects that the haddock TAC (landings and discards) has been caught. The Regional Administrator may also adjust the start of the second participation period if the 500-mt haddock quota for the first participation period is harvested prior to November 15. Additionally, the Regional Administrator may adjust the 500-mt quota for the second participation period to account for under- or over-harvest of the 500-mt haddock quota (landings and discards) that occurred in the first participation period. Vessels fishing on a trip in which they have declared into the Regular B DAS Pilot Program are prohibited from fishing in this SAP on the same trip.

In order to ensure that any catch of GB cod taken while using a Category B DAS does not threaten mortality objectives of Amendment 13, non-Sector vessels participating in the CA I Hook Gear Haddock SAP are allocated a portion of the GB cod incidental catch TAC. The GB cod incidental catch TACs are 50 percent, 34 percent, and 16 percent for the Regular B DAS Pilot Program, the Eastern U.S./Canada SAP, and the CA I Hook Gear Haddock SAP, respectively. Additionally, for the 2005 fishing year, the Regional Administrator may estimate any uncaught GB cod incidental catch TAC from the first quarter of the Regular B DAS Pilot Program and add that amount to the second quarter GB cod incidental catch TAC for the Regular B DAS Pilot Program. This action is necessary because the effective date of FW 41 (October 1, 2005) is after the start of the Eastern U.S./Canada Haddock SAP, and the first period for the Regular B DAS Pilot Program (i.e., May 1, 2005). This

action reduces the GB cod incidental catch TAC for the second period of the Regular B DAS Pilot Program by 15.5 mt, and re-allocates it to the CA I Hook Gear Haddock SAP. This figure, 15.5 mt, is equivalent to 16 percent of the GB cod incidental catch TAC at the beginning of the 2005 fishing year (97 mt). This inseason adjustment is only for the GB cod incidental catch TAC in the 2005 fishing year.

In order to enable the NMFS Observer Program to administer the deployment of observers in the SAP, any vessel intending to participate in this SAP is required to notify the NMFS Observer Program by September 1 of its intention to fish in the program that year. This information is intended to provide the NMFS Observer Program with an estimate of the total number of vessels that intend to participate in the SAP and to plan observer coverage accordingly. If a vessel does not notify the NMFS Observer Program of its intent to participate in the SAP by September 1, it will not be allowed to participate in the SAP during that fishing year. Because this is the first year of this SAP modification, and timing is not consistent with the September 1 notification date for the 2005 fishing year, all non-Sector vessels must notify the NMFS Observer Program of its intention to fish in the CA I Hook Gear Haddock SAP by October 24, 2005. In addition to this one-time annual notification, vessels are required to notify the NMFS Observer Program by telephone at least 72 hours prior to leaving on a trip to the SAP, and are required to provide the following information: Vessel name; contact name for coordination of observer deployment; telephone number of contact; and date, time and port of departure. The Regional Administrator retains the authority to close the CA I Hook Gear Haddock Access Area for the duration of the season if the level of observer coverage is insufficient to project whether continuation of the SAP would undermine the achievement of the objectives of the FMP or the CA I Hook Gear Haddock SAP.

Non-Sector vessels participating in the SAP are required to use Category B (either Regular B or Reserve B) DAS only. Like the Sector vessels, all non-Sector vessels participating in this SAP are required to be equipped with an approved Vessel Monitoring System (VMS). Vessels are required to declare into the CA I Hook Gear Haddock SAP via VMS and specify whether Regular B DAS or Reserve B DAS will be used, prior to leaving port on a trip into the SAP. All non-Sector vessels are required to report their catches (landings and

discards) of haddock and cod daily via VMS. Non-Sector vessels that have declared into the CA I Hook Gear Haddock SAP are prohibited from fishing both inside and outside the SAP area on the same trip and are exempt from the current limitation on the number of hooks fished inside the SAP area. Non-Sector vessels are subject to a cod possession and landing limit of 1,000 lb (453.6 kg) per trip. Vessels are not permitted to discard legal-sized cod prior to reaching the catch limit, and are required to end their trip if the cod trip limit is achieved or exceeded. There is no flipping provision for this SAP (i.e., vessels may not switch from using Category B to Category A DAS on a trip). For species other than cod, non-Sector vessels are required to comply with the possession and trip limit restrictions currently specified in the regulations. When the Regional Administrator projects that either the cod incidental catch TAC, or the haddock TAC (landings and discards) has been caught for the CA I Hook Gear Haddock SAP, the SAP will close for the remainder of the fishing period.

#### Sector Vessels

There are two changes to the current provisions for Sector vessels participating in the CA I Hook Gear Haddock SAP. Under this action, Sector vessels that have declared into the CA I Hook Gear Haddock SAP are prohibited from fishing both inside and outside the SAP area on the same trip, and Sector vessels are restricted to a participation period of October 1 - November 15 in the 2005 fishing year. For subsequent fishing years, starting in fishing year 2006, the participation period will alternate each year between Sector and non-Sector participants so that, in fishing year 2006, for example, Sector vessels may fish during a participation period of November 16 - December 31. The current haddock TAC of 1,000 mt for the SAP is divided evenly into two quota periods such that the haddock TAC for each quota period is 500 mt. This action also removes the requirement that Sector vessels shall be required to pay for observer coverage if the Regional Administrator determines that funding for observers is inadequate to provide sufficient coverage. The Regional Administrator may adjust the start of the second quota period if the 500-mt haddock quota for the first quota period is harvested prior to November 15. Additionally, the Regional Administrator may adjust the 500-mt quota for the second quota period to account for under- or over-harvest of the 500-mt haddock quota (landings and discards) that occurred in

the first quota period. Other provisions for Sector vessels fishing in the SAP remain unchanged.

#### 2. Clarification of Regulations Pertaining to Fishing in the Eastern U.S./Canada Haddock SAP Pilot Program Area

Regulations pertaining to access to the Eastern U.S./Canada Haddock SAP Pilot Program and the Eastern U.S./Canada Management Area are clarified through this rule. Regulations at § 648.85(a)(1) and (b)(8) allow fishing in the Eastern U.S./Canada Management Area, and allow fishing in the Eastern U.S./Canada Haddock SAP Area, respectively, and specify rules that pertain to each area. According to these regulations, during the time the SAP is open, eligible vessels may choose to fish in the SAP, and to fish outside the SAP in the open areas of the Eastern U.S./Canada Area. In contrast to these regulations, the regulations at § 648.14(a)(143) and (a)(148) could be broadly interpreted to prohibit fishing in any part of the SAP unless fishing under the SAP rules. These prohibitions were inadvertently written in a broad way that is inconsistent with § 648.85(a)(1) and (b)(8) and the intent of NE Multispecies Framework Adjustment 40-A. These regulations are amended and clarified through this final rule.

#### Comments and Responses

Four letters were received regarding the proposed rule (July 18, 2005; 70 FR 41189) to implement FW 41, including two letters from industry groups, one letter from the State of Maine, and one letter that was not germane to the proposed action. NMFS has not responded to the comments that were not specific to the proposed management measures. Both industry groups expressed overall support for expanding the CA I Hook Gear Haddock SAP to non-Sector vessels.

#### Retention of Catch History from the CA I Hook Gear Haddock SAP

*Comment 1:* One industry group expressed support of the Council's stated intent to not use the catch history from the CA I Hook Gear Haddock SAP for any future allocation decisions. The industry group expressed its desire to have the Council's intent codified in the Code of Federal Regulations. Their belief is that the equal division of the haddock TAC between the two participation periods for the SAP is arbitrary and may unjustly give Sector vessels a 500-mt allocation of haddock that could be used as the basis for future haddock allocations. The State of Maine also expressed concern that the equal

division of haddock between the two participation periods is unfair.

*Response 1:* The overall haddock TAC is divided equally between the participation periods since the catch rates of haddock were similar over the course of the experimental fishery. By dividing the haddock TAC in half, each group (Sector and non-Sector) has an equal opportunity to catch haddock. In the absence of any historic basis to assign an allocation, the Council viewed this division as the most equitable. Because the SAP is a new program, and non-Sector vessels have not had the opportunity to fish in the SAP, the alternative of basing the split on recent catch histories could not be used. The Council is a dynamic organization that must base its decisions on the best information available at the time each decision is being made. To restrict the Council's future decision-making ability by codifying the intent of the current Council members would not be in the best interest of the fishery, or the Council in the long term.

*Comment 2:* One industry group opposed the Council's intent to not use catch history from the CA I Hook Gear Haddock SAP in future allocation decisions and asked NMFS to reject this statement by the Council.

*Response 2:* The Council's stated intent regarding use of catch history is not binding on NMFS or the Council. Therefore, there is no need to reject (or accept) the Council's current stated intent regarding the use of catch data for a hypothetical, future allocation program, because the Council is not bound by the statement now or in the future.

#### *Division of CA I Hook Gear Haddock SAP into Two Participation Periods*

*Comment 1:* The State of Maine expressed concern that the division of the SAP into two participation periods between Sector and non-Sector vessels promotes fragmentation in an already fragmented fishery and believes that it does not address the potential for a derby fishery in the non-Sector participation period. As an alternative, the State of Maine recommended that Sector and non-Sector vessels should be permitted to fish during whichever participation period they desire, provided that they declare their intent to do so prior to the start of the SAP fishing season. The Regional Administrator would then adjust the TAC of GB cod and GB haddock allocated to each participation period based on the number of vessels that declare their intent to fish in each participation period.

*Response 1:* The Council considered adopting trip limits for controlling the derby fishery rather than divide the SAP season between Sector and non-Sector participation periods. However, this option was rejected as it did not adequately address derby effects and because it was believed that it could increase safety problems in the fishery. The Council's recommended alternative to split the SAP season into two participation periods was based on a solution offered by the industry. Although the number of non-Sector vessels that will participate in the CA I Hook Gear Haddock SAP is not known, it is not expected to be large. This suggests that the State's concerns about a potential derby amongst non-Sector vessels may be over-stated.

The State of Maine's proposal to alter the SAP raises several questions. If all the vessels sign up for just one of the participation periods, then the State's proposal does nothing to address a potential derby fishery. Additionally, there is no guarantee that non-Sector vessels that want to participate in the second participation period would be able to do so if the cod TAC for the first participation period is over-harvested. Moreover, NMFS can only disapprove or approve measures specified in FW 41 and cannot adjust measures as recommended by this commenter.

#### **Classification**

The Regional Administrator has determined that the framework adjustment (FW 41) that this rule implements is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. The Regional Administrator, in making that determination, took into account the data, views, and comments received during the comment period for the proposed rule phase of this final rule.

For the purposes of Executive Order 12866, the action is not considered significant. The annual effect on the economy will not meet the threshold criteria of \$100 million and it will not have an adverse material effect on any sector of the economy, productivity, jobs, the environment, public health, or safety, or state, local, or tribal governments or communities.

This final rule does not contain policies with Federalism implications as defined in Executive Order 13132.

#### **Final Regulatory Flexibility Analysis (FRFA)**

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), prepared this FRFA in support of the approved measures in FW 41. The FRFA incorporates the economic impacts

summarized in the IRFA and the corresponding RIR, as well as those contained in the EA, all of which were prepared for this action. The IRFA was published in the proposed rule (70 FR 41189, July 18, 2005) and is thus not repeated here. Copies of the IRFA, FRFA, RIR, and the EA prepared for FW 41 are available from the Northeast Regional Office (see ADDRESSES). A description of why this action was considered, the objectives of, and the legal basis for this rule are contained in the preamble to this final rule and in the FW 41 document and are thus not repeated here.

#### *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 from the Proposed Rule as a Result of Such Comments*

No comments were received in response to the IRFA. Four general comments were received which are addressed in the preamble of this final rule.

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

This action implements changes with the potential to affect any vessel holding a NE multispecies limited access permit with an allocation of DAS (approximately 1,000 vessels). It is very likely, however, that the measures will impact substantially fewer than the total number of such permit holders, because the SAP requires participants to use only hook gear, there are relatively few vessels that fish with hook gear, and it is not likely that many vessel owners will switch from using another type of fishing gear to hook gear. Based on this, the EA estimates that there will be about 60 vessels in total (Sector and non-Sector) that will participate in this SAP.

The Small Business Administration (SBA) size standard for small commercial fishing entities is \$ 3.5 million in gross receipts. Data analyzed for Amendment 13 to the FMP indicated that the maximum annual gross receipts for any single commercial fishing vessel in the NE multispecies fishery 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 fall under the SBA size standard for small commercial fishing entities, and there are no disproportionate impacts between small and large entities.

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

The reporting requirements for this final rule are as follows: (1) VMS purchase and installation; (2) VMS proof of installation; (3) automated VMS polling of vessel position once per hour when fishing in the CA I Hook Gear Haddock SAP; (4) SAP area and DAS use declaration via VMS prior to each trip into the SAP; (5) annual notification of intention to participate in the SAP; (6) notification for observer deployment prior to every trip into the CA I Hook Gear Haddock SAP; and (7) daily electronic catch and discard reports of stocks of concern when fishing in the CA I Hook Gear Haddock SAP.

The VMS purchase and installation, and proof of VMS installation, are one-time cost and reporting requirements. Many vessels have already complied with this requirement, as it is required for other fisheries, including other groundfish special access programs. The automated VMS polling requires no additional effort on the part of the vessel operator. These requirements allow enforcement personnel and managers to monitor access to an area that is otherwise closed to certain fishing activities. Part of the management strategy for this SAP includes the use of quotas for species of concern and the target species. These quotas ensure that mortality targets established under Amendment 13 are not exceeded. In order to monitor the catches of cod and haddock within the SAP, vessels are required to report catches (kept and discarded) on a daily basis through VMS. The 72-hour observer notification allows the Observer Program to place an at-sea observer with the vessel in order to meet the programs sampling needs. At-sea observers perform a valuable role in collecting and validating fisheries data. No professional skills are necessary to report this data beyond those already possessed by vessel owners and operators.

*Description of 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 Adapted 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*

The primary purpose of this action is to revise the CA I Hook Gear Haddock SAP rules to allow participation by non-Sector vessels. Additional access to this SAP will help mitigate the economic and social impacts caused by the fishing effort reductions that resulted from implementation of Amendment 13.

Management measures to modify the GB cod incidental TACs and provide non-Sector vessel access to the SAP was compared to a No Action alternative. The management measure to minimize derby fishing behavior was compared with both a No Action alternative and an alternative that would have limited vessels to starting only two trips into the SAP per week. The No Action alternative would have resulted in the continuation of the management measures implemented by FW 40-A. Only Sector vessels would have been eligible to fish in the SAP, no incidental GB cod TAC would have been allocated to the SAP, and there would have been no measures to minimize derby fishing behavior. By dividing the season into two periods and thereby reducing the number of vessels eligible to participate during each period, the potential for a derby fishery was greatly reduced allowing the vessels to better plan their fishing activities. An option to allow vessels to start only two trips per week was rejected because it would only partially address the derby effects and, based on industry comment, could have caused safety problems for the fishery.

This action reduces the allocation of GB cod to the Regular B DAS Pilot Program in order to establish a GB cod incidental catch TAC for non-Sector vessels fishing in the CA I Hook Gear Haddock SAP. This reallocation of incidental TAC could result in increased economic benefits if activities in the SAP results in a higher yield at lower cost than the Regular B DAS Pilot Program. However, unless the same vessels are the beneficiaries of the reallocation, participation by non-Sector vessels in this SAP could result in a transfer of benefits from one group of vessels to another (e.g., Regular B DAS Pilot Program vessels to CA I Hook Gear

Haddock SAP vessels). The magnitude of the impacts will depend upon the amount of GB cod incidental TAC that is harvested under the Regular B DAS Pilot Program and the timing of the implementation of the SAP measures. There are minimal data to determine the specific impacts of the reallocation on the Regular B DAS Pilot Program or the fishery as a whole. During the first quarter of the 2005 fishing year, the Regular B DAS Pilot Program caught a substantial portion of the GB cod incidental catch TAC. This suggests that such a reallocation may limit the Regular B DAS Pilot Program; however, the level of incidental catch of GB cod during the CA I Hook Gear Haddock SAP season (October - December) may be different from that realized earlier in the fishing year.

This action implements measures that allow non-Sector vessels to use hook gear to target haddock in the SAP. In the short term, this opportunity may be important to the profitability of participating vessels and provides mitigation of the short-term adverse effects of the DAS reductions implemented by Amendment 13. The beneficiaries of the action are limited to individuals that already use bottom longline gear and individuals that could profitably convert to the use of bottom longline gear. Based upon an estimate of the number of vessels that would join the Sector in 2005, and empirical information, the EA estimates that 40 Sector vessels and 20 non-Sector vessels will participate in the SAP.

Estimated total revenue for Sector and non-Sector participants is \$ 1.3 million and \$ 0.6 million, respectively. Estimated surplus per vessel for Sector and non-Sector participants is \$19,300 and \$ 16,600, respectively. These returns are based upon the assumptions of 5,000 lb (2,268 kg) of haddock kept per trip, an incidental cod catch TAC of 14 mt, a total of 441 total trips into the SAP, and the implementation of measures to mitigate derby fishing behavior.

The benefits that would accrue to Sector and non-Sector vessels depend in part on whether measures to prevent a derby are implemented. Dividing the SAP into two time periods and limiting fishing in each period to either Sector or non-Sector vessels reduces benefits to Sector vessels, but provides benefits to non-Sector vessels at the same level. Without measures to minimize the potential of derby fishing, the estimated surplus per participating Sector vessel would be \$29,300, because the Sector vessels would not be limited to a maximum haddock catch of 500 mt. Sector participants would be foregoing

potential economic gains in order to minimize derby fishing behavior and competition for the haddock TAC. The economic analysis also noted that there are potential costs of derby fishing, such as price depression, loss of gear through gear conflicts, and the costs of unsafe fishing practices.

In contrast, the non-Sector vessels may be limited by the GB cod incidental catch TAC, with or without measures to address derby fishing. In other words, the constraining factor on the catch of non-Sector vessels may be the GB cod incidental catch TAC, and not the haddock TAC. If non-Sector participants are able to reduce incidental catches of cod and take all of the haddock available to them, the estimated net return per vessel would double.

Dividing the season into two periods has other implications due to the seasonal variations in the availability and price of haddock. Based upon experimental data, catch rates of haddock may be highest in the beginning of the SAP season and subsequently decline, while average haddock prices may increase over the SAP season. The increase in average price may mitigate the effect of a reduced catch rate in the latter part of the SAP season.

It is likely that most or all participating vessels will experience positive economic results. The potential economic benefits of the measures would represent only a small increase in the total value of the NE region groundfish sales, however it is unknown where the economic benefits that result from the participation of non-Sector vessels will accrue.

#### Public Reporting Burden

This rule contains collection of information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) that have been approved by OMB under OMB control numbers 0648-0501 and 0648-0502. The current expiration date for the reporting requirements under this collection is June 30, 2008. Public comment on this collection of information was solicited in the proposed rule to Framework Adjustment 40-A (69 FR 55388, September 14, 2004) and in the renewal of the collection of information for OMB control number 0648-0501 (69 FR 61344, October 18, 2004) and OMB control number 0648-0502 (69 FR 61346, October 18, 2004). 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 approved reporting requirements for this rule and the estimated average time for a response are as follows:

1. VMS purchase and installation, OMB control number 0648-0501 (1 hr/response);
2. VMS proof of installation, OMB control number 0648-0501 (5 min/response);
3. Automated VMS polling of vessel position once per hour when fishing in the Regular B DAS pilot program, OMB control number 0648-0501 (5 sec/response);
4. Automated VMS polling of vessel position once per hour when fishing in the CA I Hook Gear Haddock SAP, OMB control number 0648-0501 (5 sec/response);
5. SAP area and DAS use declaration via VMS prior to each trip into a SAP, OMB control number 0648-0501 (5 min/response);
6. Revised estimate of the area and DAS use declaration via VMS prior to each trip into the CA I Hook Gear Haddock SAP, OMB control number 0648-0501 (5 min/response);
7. Revised estimate of the notice requirements for observer deployment prior to every trip into the CA I Hook Gear Haddock SAP, OMB control number 0648-0202 (2 min/response);
8. Annual declaration of participation in the CA I Hook Gear Haddock SAP, OMB control number 0648-0501 (2 min/response);
9. Daily electronic catch and discard reports of stocks of concern when fishing in the CA I Hook Gear Haddock SAP, OMB control number 0648-0502 (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.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 8, 2005.

**James W. Balsiger,**

*Acting 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 § 648.10, paragraphs (b)(3)(i)(C) and (D) are revised to read as follows:

#### § 648.10 DAS notification requirements.

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(i) \* \* \*

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

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

\* \* \* \* \*

■ 3. In § 648.14, paragraphs (a)(143), (a)(148), (c)(67), (c)(68), (c)(70), and (c)(73) through (c)(77) are revised to read as follows:

#### § 648.14 Prohibitions.

(a) \* \* \*

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

\* \* \* \* \*

(148) If fishing under a NE multispecies DAS in the Eastern U.S./Canada Haddock SAP Pilot Program specified in § 648.85(b)(8), in the 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).

\* \* \* \* \*

(c) \* \* \*

(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), and (b)(7)(v) or (b)(7)(vi), whichever is applicable.

(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)(iv), and (b)(7)(v) or (b)(7)(vi), whichever is applicable.

\* \* \* \* \*

(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), and (b)(7)(v)(A) or (b)(7)(vi)(A), whichever is applicable.

\* \* \* \* \*

(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)(D).

(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)(E), and (b)(7)(v)(B) or (b)(7)(vi)(B), whichever is applicable.

(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)(H), and (b)(7)(v)(C) or (b)(7)(vi)(C), whichever is applicable.

(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)(v)(D) or (b)(7)(vi)(D), whichever is applicable.

(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)(I) or (b)(7)(vi)(F).

\* \* \* \* \*

■ 4. In § 648.85, paragraph (a) introductory text and paragraphs (b)(5)(ii), (b)(7)(i), (b)(7)(iii), (b)(7)(iv), (b)(7)(v), (b)(8)(v)(A)(2), (b)(8)(v)(A)(3), (b)(8)(v)(B), (b)(8)(v)(C), (b)(8)(v)(E), (b)(8)(v)(H), and (b)(8)(v)(L) are revised, and paragraph (b)(7)(vi) is added 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. These restrictions do not preclude fishing under an approved Special Access Program specified under paragraph (b) of this section.

\* \* \* \* \*

- (b) \* \* \*
- (5) \* \* \*

(ii) *GB cod.* The incidental TAC for GB cod specified in this paragraph (b)(5), shall be subdivided as follows: 50 percent to the Regular B DAS Pilot Program, described in paragraph (b)(6) of this section; 16 percent to the CA I Hook Gear Haddock SAP, described in paragraph (b)(7) of this section; and 34 percent to the Eastern U.S./Canada Haddock SAP Pilot Program, described in paragraph (b)(8) of this section.

\* \* \* \* \*

- (7) \* \* \*

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

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

\* \* \* \* \*

(iii) *Season.* The overall season for the CA I Hook Gear Haddock SAP is October 1 through December 31, which is divided into two participation periods, one for Sector and one for non-Sector vessels. For the 2005 fishing year, the only participation period in which eligible Sector vessels may fish in the CA I Hook Gear Haddock SAP is from October 1 through November 15. For the 2005 fishing year, the only participation period in which eligible non-Sector vessels may fish in the SAP is from November 16 through December 31. For the 2006 fishing year and beyond, these participation periods shall alternate between Sector and non-Sector vessels such that, in fishing year 2006, the participation period for non-Sector vessels is October 1 through November 15, and the participation period for Sector vessels is November 16 through December 31. The Regional Administrator may adjust the start date of the second participation period prior to November 16 if the haddock TAC for the first participation period specified in paragraph (b)(7)(iv)(G) of this section is harvested prior to November 15.

(iv) *General program restrictions.* General program restrictions specified in this paragraph (b)(7)(iv) apply to all eligible vessels as specified in paragraph (b)(7)(i) of this section. Further program restrictions specific to Sector and non-Sector vessels are specified in paragraphs (b)(7)(iii), (v), and (vi) of this section.

(A) *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 Pilot Program described under paragraph (b)(6) of this section.

(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.* Starting in the 2006 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 in that year. For the 2005 fishing year, for non-Sector vessels to be eligible to participate, non-Sector vessels must notify the NMFS Observer Program by October 24. This notification need not include specific information about the date of the trip. 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; and date, time, and port of departure at least 72 hours 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)(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 CA I Hook Gear Haddock SAP must declare into the SAP via VMS, and indicate the type of DAS that it intends to fish. A vessel declared into the CA I Hook Gear Haddock SAP may fish only on a declared trip in the CA I Hook Gear Haddock Special Access Area described under paragraph (b)(7)(ii) of this section.

(E) *Gear restrictions.* A vessel declared into and fishing in the CA I Hook Gear Haddock SAP may fish with and possess on board demersal longline gear or tub trawl gear only, unless further restricted as specified under paragraph (b)(7)(v)(B) of this section.

(F) *Haddock TAC.* The maximum total amount of haddock that may be caught (landings and discards) in the CA I Hook Gear Haddock SAP Area in any fishing year is 1,000 mt. The maximum amount of haddock that may be caught is divided between the two participation periods as follows: 500 mt for the October 1 - November 15 participation period, and 500 mt for the November 16 - December 31 participation period, as specified in paragraph (b)(7)(iii) of this section. The Regional Administrator may adjust the 500-mt quota for the second participation period to account for under- or over-harvest of the 500-mt haddock quota (landings and discards) that occurred in the first participation period, not to exceed the overall haddock TAC specified in this paragraph (b)(7)(iv)(F).

(G) *Trip restrictions.* A vessel is prohibited from deploying fishing gear outside of the CA I Hook Gear Haddock SAP Area on the same fishing trip on which it is declared into the CA I Hook Gear Haddock SAP.

(H) *Landing limits.* For all eligible vessels declared into the CA I Hook Gear Haddock SAP described in paragraph (b)(7)(i) of this section, landing limits for NE multispecies other than cod, which are specified at paragraphs (b)(7)(v)(C) and (b)(7)(vi)(C) of this section, are as specified at § 648.86.

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

(v) *Sector vessel program restrictions.* In addition to the general program restrictions specified at paragraph (b)(7)(iv) of this section, the restrictions specified in this paragraph (b)(7)(v) apply only to Sector vessels declared into the CA I Hook Gear Haddock SAP.

(A) *DAS use restrictions.* Sector 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).

(B) *Gear restrictions.* A vessel enrolled in the Sector is subject to the gear requirements of the Sector Operations Plan as approved under § 648.87(d).

(C) *Landing limits.* A Sector vessel declared into the CA I Hook Gear Haddock SAP described in paragraph (b)(7)(i) of this section is subject to the cod landing limit in effect under the Sector's Operations Plan as approved under § 648.87(d).

(D) *Reporting requirements.* The owner or operator of a Sector vessel declared into the CA I Hook Gear Haddock SAP must submit reports to the Sector Manager, with instructions to be provided by the Sector Manager, for each day fished in the CA I Hook Gear Haddock SAP Area. The Sector Manager will provide daily reports to NMFS, 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.

(E) *GB cod incidental catch TAC.* There is no GB cod incidental catch TAC specified for Sector vessels declared into 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).

(vi) *Non-Sector vessel program restrictions.* In addition to the general program restrictions specified in paragraph (b)(7)(iv) of this section, the restrictions specified in this paragraph (b)(7)(vi) apply only to non-Sector vessels declared into the CA I Hook Gear Haddock SAP.

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

(B) *Gear restrictions.* A non-Sector vessel declared into the CA I Hook Gear Haddock SAP is exempt from the maximum number of hooks restriction specified in § 648.80(a)(4)(v).

(C) *Landing limits.* A non-Sector vessel declared into the CA I Hook Gear Haddock SAP described in paragraph (b)(7)(i) of this section may not land, fish for, or possess on board more than 1,000 lb (453.6 kg) of cod per trip. A non-Sector vessel is not permitted to discard legal-sized cod prior to reaching the landing limit, and is required to end its trip if the cod trip limit is achieved or exceeded.

(D) *Reporting requirements.* The owner or operator of a non-Sector vessel declared into the CA I Hook Gear Haddock SAP must submit reports via VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished in the CA I Hook Gear Haddock SAP Area. The reports must be submitted in 24-hr intervals for each day fished, beginning at 0000 hr and ending at 2400 hr. The reports must be submitted by 0900 hr of the day following fishing. 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.

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

(F) *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)(E) 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) \* \* \*  
(v) \* \* \*  
(A) \* \* \*

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

\* \* \* \* \*

(B) *VMS requirement.* A NE multispecies DAS vessel fishing in the Eastern U.S./Canada Haddock SAP Program specified under paragraph (b)(8)(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.

(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)(i) of this section, as required under paragraph (b)(8)(v)(D) of this section, and in accordance with 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 when participating on a trip in the Eastern U.S./Canada Haddock SAP Program, 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).

\* \* \* \* \*

(H) *Incidental cod TAC.* The maximum amount of GB cod (landings and discards) that may be caught when fishing in the Eastern U.S./Canada Haddock SAP Program 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)(ii) of this section.

\* \* \* \* \*

(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.

\* \* \* \* \*

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