NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Date 01/27/2010

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

In accordance with the Paperwork Reduction Act, OMB has taken action on your request received 10/29/2009

ACTION REQUESTED: Extension without change of a currently approved collection
TYPE OF REVIEW REQUESTED: Regular
ICR REFERENCE NUMBER: 200910-0648-009
AGENCY ICR TRACKING NUMBER:
TITLE: Northeast Region Logbook Family of Forms
LIST OF INFORMATION COLLECTIONS: See next page

OMB ACTION: Approved without change
OMB CONTROL NUMBER: 0648-0212
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: 01/31/2013 DISCONTINUE DATE:

BURDEN:	RESPONSES	HOURS	COSTS
Previous	100,938	15,089	37,377
New	87,750	12,115	47,069
Difference			
Change due to New Statute	0	0	0
Change due to Agency Discretion	0	0	0
Change due to Agency Adjustment	-13,188	-2,974	9,692
Change Due to Potential Violation of the PRA	0	0	0

TERMS OF CLEARANCE:

OMB Authorizing Official: Kevin F. Neyland
Deputy Administrator,
Office Of Information And Regulatory Affairs

List of ICs			
IC Title	Form No.	Form Name	CFR Citation
Northeast Region Logbooks	88-140, 88-30	Shellfish fishing trip report, Fishing Vessel Trip Report	50 CFR 648.90
Universal Data ID, US/Canada Areas and CA II SAPs			50 CFR 648.90(a)(2)
Universal Data ID: Combined Trips into Western U.S./Canada Area			50 CFR 648.90(a)(2)
Universal Data ID: CAI Hookgear Haddock SAP (non-sector vessels)			50 CFR 648.90(a)(2)
Universal Data ID: Category B (regular) DAS Pilot Program			50 CFR 648.90(a)(2)
CA I Hookgear Haddock SAP (sector manager daily reports)			50 CFR 648.90
Catch reports via IVR			50 CFR 648.7

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
DOC/NOAA/NMFS

2. OMB control number b. [ ] None
a. 0648 - 0212

3. Type of information collection (*check one*)
a. [ ] New Collection
b. [ ] Revision of a currently approved collection
c. [✔] Extension of a currently approved collection
d. [ ] Reinstatement, without change, of a previously approved collection for which approval has expired
e. [ ] Reinstatement, with change, of a previously approved collection for which approval has expired
f. [ ] Existing collection in use without an OMB control number
For b-f, note Item A2 of Supporting Statement instructions

4. Type of review requested (*check one*)
a. [✔] Regular submission
b. [ ] Emergency - Approval requested by ____/____/____
c. [ ] Delegated

5. Small entities
Will this information collection have a significant economic impact on a substantial number of small entities? [ ] Yes [✔] No

6. Requested expiration date
a. [✔] Three years from approval date b. [ ] Other Specify:____/____

7. Title Northeast Region Logbook Family of Forms

8. Agency form number(s) (*if applicable*) NOAA Forms 88-30 and 88-140

9. Keywords "Fishing, "Fisheries" and "Fishing Vessel"

10. Abstract

Fishing vessels permitted to participate in Federally permitted fisheries in the Northeast Region are required to submit logbooks containing catch and effort information about their fishing trips. Participants in the herring, tilefish and red crab fisheries are also required to make reports on the catch through an Interactive Voice Response (IVR) system. In addition, permitted vessels that catch halibut are asked to voluntarily provide additional information on the estimated size of the fish and the time of day caught. The information submitted is needed for the management of the fisheries. This action seeks to renew Paperwork Reduction Act (PRA) clearance for this collection.

11. Affected public (*Mark primary with "P" and all others that apply with "x"*)
a. x Individuals or households d. ___ Farms
b. p Business or other for-profit e. ___ Federal Government
c. ___ Not-for-profit institutions f. ___ State, Local or Tribal Government

12. Obligation to respond (*check one*)
a. [ ] Voluntary
b. [ ] Required to obtain or retain benefits
c. [✔] Mandatory

13. Annual recordkeeping and reporting burden
a. Number of respondents 4,346
b. Total annual responses 87,750
1. Percentage of these responses collected electronically 25 %
c. Total annual hours requested 12,115
d. Current OMB inventory 15,089
e. Difference (2,974)
f. Explanation of difference
1. Program change ____
2. Adjustment (2,974)

14. Annual reporting and recordkeeping cost burden (*in thousands of dollars*)
a. Total annualized capital/startup costs ____
b. Total annual costs (O&M) 47
c. Total annualized cost requested 47
d. Current OMB inventory 37
e. Difference 10
f. Explanation of difference
1. Program change ____
2. Adjustment 10

15. Purpose of information collection (*Mark primary with "P" and all others that apply with "X"*)
a. ___ Application for benefits e. x Program planning or management
b. x Program evaluation f. x Research
c. x General purpose statistics g. p Regulatory or compliance
d. x Audit

16. Frequency of recordkeeping or reporting (*check all that apply*)
a. [ ] Recordkeeping b. [ ] Third party disclosure
c. [✔] Reporting
1. [✔] On occasion 2. [✔] Weekly 3. [✔] Monthly
4. [ ] Quarterly 5. [ ] Semi-annually 6. [ ] Annually
7. [ ] Biennially 8. [ ] Other (describe) ____

17. Statistical methods
Does this information collection employ statistical methods
[ ] Yes [✔] No

18. Agency Contact (person who can best answer questions regarding the content of this submission)
Name: Barry Clifford
Phone: (978) 281-9148

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 signed by Emily Menashes	Date 10/22/2009
Signature of NOAA Clearance Officer	
Signature signed by Sarah Brabson	Date 10/26/2009

SUPPORTING STATEMENT
NORTHEAST REGION LOGBOOK FAMILY OF FORMS
OMB CONTROL NO. 0648-0212

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 United States (U.S.). The majority of this responsibility has been delegated to the Regional Fishery Management Councils and the National Oceanic and Atmospheric Administration (NOAA)'s National Marine Fisheries Service (NMFS). The Council develops management plans for fishery resources in New England.

The Magnuson-Stevens Act requires that conservation and management measures must prevent over fishing while achieving, on a continuing basis, the optimum yield from each fishery. These measures must be based on the best scientific information available. Section 303(a)(5) of the Magnuson-Stevens Act allows the Secretary to collect specific types of information that would identify the catch by species and other information regarding the time and location of fishing effort. This information is most often collected in the form of Vessel Trip Reports (VTR) and weekly catch reports via an Interactive Voice Response (IVR) system. These reporting mechanisms identify the participants of a fishery and monitor their activity levels and landings. Recently, however, the information collected through VTRs is also being collected electronically through Vessel Monitoring System (VMS). The use of VMS in addition to VTRs allows for real-time monitoring and enforcement of management provisions by collecting information on the time and location of fishing operations and the catch and discard of particular species on a daily basis. In general, information requirements for an effective monitoring and enforcement system include:

- Identification of the participating vessels, operators, and dealers;
- Location of the fishing activity;
- Activity levels; and
- Catch and landings information.

This information is necessary to enforce the management measures and prevent overfishing.

Currently, vessels with limited access tilefish permits, limited access red crab permits, limited access herring permits, and general category herring permits that land a minimum of 2000 pounds per week are required to submit an IVR report. IVR reporting is necessary to monitor catch levels in a timely manner, so that effort controls can be implemented before catch limits are attained. IVR reports are submitted using a toll-free telephone number. The required information for IVR weekly catch reports is a small fraction of what is required in vessel logbooks.

At present, mandatory logbook reporting requirements are applied to all vessels permitted under the Atlantic mackerel, squid, butterfish, Atlantic sea scallop, Atlantic surf clam, ocean quahog,

Northeast (NE) multispecies, monkfish, summer flounder, scup, black sea bass, Atlantic bluefish, spiny dogfish, Atlantic herring, tilefish, red crab and skate Fishery Management Plans (FMP). If a vessel is permitted in more than one of these fisheries, only one report needs to be submitted to fulfill reporting requirements for all species. Reports of fishing activity must be submitted within 15 days after the end of the reporting month. Vessels are required to submit "negative reports" if no fishing activity occurred in a reporting month. Submission of negative reports allows NMFS to accurately identify vessels that are not fishing versus those which have failed to submit required reports.

In the halibut fishery, participants are asked to make voluntary reports on the size of halibut caught and time of day caught. This information is collected on the vessel logbooks which are completed by the vessel owner/operator for each fishing trip.

One of the ways the NE Multispecies FMP controls fishing mortality is by limiting the number of days that vessels can fish. Amendment 13 (FR 0648-AN17, 69 FR 22906) assigned each limited access permit holder a number of days-at-sea (DAS) that can be used. These DAS are categorized as Category A DAS, Category B DAS, or Category C DAS. The management measures in Amendment 13 (including the allocation of Category A DAS) are designed so that the mortality objectives will be met for all stocks. The number of allocated Category A DAS was chosen so that the appropriate amount of effort would be available to achieve, but not exceed, the target total allowable catch (TAC) amounts established for all regulated groundfish species consistent with the mortality objectives of the FMP. Category A DAS could be used to target any regulated groundfish stock. Amendment 13 further defined Category B DAS as either Category B (regular) or Category B (reserve) DAS and placed limits on how each can be used.

Any Category B DAS that are used increased the amount of effort. In order to prevent these additional DAS from threatening the mortality objectives of Amendment 13, Category B DAS can only be used to target healthy groundfish stocks in an approved special management program. To ensure that the catch of stocks of concern taken while using a Category B (regular or reserve) DAS does not threaten the mortality objectives of Amendment 13, Framework (FW) 42 (FR 0648-AT24, 71 FR 62156) added two stocks to the list of stocks that need to be most carefully monitored, and implements a standardized catch report to increase accuracy of reported catch data. To link all databases related to trips into special management programs, Framework 42 also proposed a universal trip identification number. Both of these measures are described in detail below.

Amendment 13 to the NE Multispecies FMP included several programs to facilitate targeting of healthy groundfish stocks under a Category A or B (regular and reserve) DAS, but only two of these programs were approved by NMFS. Subsequent to this amendment, three additional frameworks (Framework 40A, Framework 40B, and Framework 41) were adopted to refine the management programs and provide additional opportunities for fishermen to target healthy stocks. Framework 42 amended these programs and modified the information reporting requirements to establish more uniform catch reporting requirements and improving the consistency and accuracy of data reported.

The current regulations outlining the reporting requirements, including VTRs, for vessel owners and operators are specified at 50 CFR 648.7(b). Framework 42 included new provisions that modified the reporting requirements for those vessels electing to fish in all of the special

management programs within the NE Multispecies FMP. Collecting this information is necessary to monitor the activities of vessels participating in the special access programs (SAP), the Category B (regular) DAS program, and U.S./Canada Resource Sharing Understanding Area; assess the amount of fish harvested, including bycatch of groundfish stocks of concern; and to enforce compliance with other provisions outlined in Framework 42. These data are crucial to the monitoring of fishing effort and discards to ensure compliance with the mortality objectives of Amendment 13 to the FMP, as further outlined below.

Universal Catch Report for Special Management Programs

As described above, after the implementation of Amendment 13, several special management programs were developed to facilitate the targeting of healthy groundfish stocks. Reporting and other requirements were developed separately for each program, resulting in a patchwork system of different catch reporting requirements for each program. Minor differences in requirements between the various programs complicate their administration and create confusion within the industry as vessels attempt to comply with the requirements. In addition, experience with the various programs suggested ways to streamline reporting and administrative requirements so that monitoring the programs will be easier and less time will be needed to develop future programs. For example, the need to report catch by statistical areas when making daily VMS reports, as currently required for some programs, can be eliminated, since the VMS position information can be used to assign the catch to the appropriate area. This simplifies a reporting requirement for the vessel operators.

Framework 42 created a universal catch report for all of the special management programs, including the Category B (regular) DAS Program, the U.S./Canada Resource Sharing Understanding Area, and all of the approved SAPs. The requirements of the U.S./Canada Management Area and its associated SAPs previously required that only the catch and discard of Georges Bank (GB) cod, GB haddock, and GB yellowtail flounder be reported via VMS. However, the Category B (regular) DAS Program implemented by Framework 40A required that vessels submit daily catch and discard information for additional species including American plaice, white hake, winter flounder, and witch flounder. The Closed Area I (CA I) Hook Gear Haddock SAP catch reports only contain catch and discard for cod and haddock. The universal catch report proposed by Framework 42 requires that all vessels participating in these special management programs report the catch of all groundfish stocks of concern (i.e., those previously only required for participants in the Category B (regular) DAS Pilot Program) along with haddock. The standard catch report will provide NMFS with catch and discard estimates of cod, yellowtail flounder, American plaice, white hake, winter flounder, witch flounder, and haddock for all of the special management programs. This information is necessary to accurately monitor the catch of all of the groundfish stocks caught in these special management programs, including those groundfish stocks of concern managed by small incidental catch TACs.

A vessel is required to submit a daily catch report by 9:00 AM for any fish caught for the previous day ending at midnight. However, due to the dynamic nature of vessel operations, vessels participating in the special management programs have not always provided the required daily VMS catch reports on the day they were due. For example, if a vessel begins a trip at 4:00 AM the first day and lands at 3:00 PM on the second day, two catch reports would be due: One by 9:00 AM for the first day of fishing and one by 9:00 AM on the third day for the second day of fishing. However, it is likely that the vessel would submit the second catch report when the

vessel lands at 3:00 PM on the second day of the trip, instead of waiting until after midnight on the third day. This causes difficulties in attributing the catch to the appropriate day that it was caught. To simplify matters, FW 42 proposed to require that vessels submit the date of the catch on each daily catch report.

Because the use of VMS allows NMFS to monitor time spent in particular areas, there is no longer the need to submit area information on catch reports. Therefore, Framework 42 removes the requirement that vessels fishing in the Category B (regular) DAS Program and vessels fishing inside and outside of the Western U.S./Canada Management Area report the statistical area to which the reported catch should be attributed, making these catch reports consistent with those of other special management programs.

Universal Trip Identification Number for Catch Reports

Currently, there are several databases that track specific data from a particular trip: Observer Program data, dealer reports, VTR, VMS, and DAS. There is currently no means of accurately linking each of these databases for each individual trip. Although there are some common data fields, it is nearly impossible to completely link all of the relevant data for one particular trip. Therefore, Framework 42 proposes to require that a universal trip identification number be included on each daily catch report submitted via VMS. This trip identification number will be the same number as the first page of the VTR logbook for a given trip (i.e., the VTR serial number). The identification number will allow data from VMS catch reports to be correctly linked to dealer reports, Observer Program data, VTRs, VMS, and DAS data sources. The universal trip identification number will allow NMFS to more accurately link catch data from several sources, which, in turn, will promote more efficient monitoring and management of all of the special management programs.

CA I Hook Gear Haddock SAP Sector Reporting

The CA I Hook Gear Haddock SAP was implemented by Framework 40A to allow vessels to target haddock without catching other groundfish stocks of concern. Framework 41 revised this SAP to split the open season equally between the GB Cod Hook Sector and hook gear vessels that do not participate in the sector. Framework 42 proposes to revise some of the reporting requirements for the GB Cod Hook Sector while participating in this SAP.

The CA I Hook Gear Haddock SAP allows vessels to fish for haddock within specified areas and under certain conditions. Part of the management strategy for these SAPs is the use of TACs for each of the species of concern and the target species. These TACs are used to limit the amount of cod and haddock taken by vessels fishing in these SAPs so that mortality targets established under Amendment 13 are not exceeded. As with the other special management programs, it is critical to monitor catch and discard of groundfish stocks to monitor catch rates so that these TACs are not exceeded during a particular fishing year, thereby insuring that activities within these programs do not jeopardize rebuilding efforts for particular stocks.

Vessels not participating in the GB Cod Hook Sector (i.e., non-Sector vessels) and fishing in this SAP are required to submit daily catch reports via VMS. However, because vessels participating in the GB Cod Hook Sector have different reporting requirements specific to the Sector Operations Plan, those fishing in this SAP are not required to submit daily catch reports via

VMS, but instead submit copies of VTRs for that trip to the Sector manager. The Sector manager, in turn, assembles catch data from these VTRs and reports catch from Sector vessels to NMFS on a daily basis. Such reporting requirements are necessary to effectively monitor catch from this SAP.

The current regulations outlining the reporting requirements for vessel owners and operators are specified at 50 CFR 648.7(b).

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.

Landings reports specified under the special management program provisions of Framework 42 require the owner or operator of a vessel fishing under a NE Multispecies DAS to report the total amount of haddock and groundfish species of concern, including discards, caught on a daily basis when operating under these programs via VMS. These catch reports would also include a universal trip identification number and the date of the catch. Vessels are still required to submit VTRs for all trips, including those within the special management programs, in addition to the daily electronic catch and discard reporting via VMS.

The information collected under this submission would be used by several offices of NMFS the U.S. Coast Guard (USCG), the Council, and state fishery enforcement agencies under contract to the NMFS to develop, implement, and monitor fishery management strategies, particularly vessel operations and catch rates within the special management programs. The primary purpose is to monitor catches so that the incidental catch hard TACs associated with the U.S./Canada Resource Sharing Agreement and the incidental TAC of each species of concern, are not exceeded. These types of data serve as input for a variety of uses, including biological analyses and stock assessments, regulatory impact analyses, quota allocation selections and monitoring, economic profitability profiles, trade and import tariff decisions, allocation of grant funds among states, and analysis of ecological interactions among species. NMFS would be unable to fulfill the majority of its scientific research and fishery management missions without these data. Specifically, without daily catch information for the incidental catch TACs for the species of concern, real-time monitoring of the relatively small TACs would not be possible. Timely information is necessary to ensure that these incidental TACs are not exceeded, thereby potentially threatening the mortality objectives of Amendment 13. The submission of the universal trip identification number would be used by NMFS staff to link all available data associated with that trip together to more accurately and reliably track vessel operations in these programs. The date of catch information will be used by NMFS staff to attribute catch to the appropriate date and ensure that vessels are complying with the daily catch report requirement.

Daily catch reports submitted via VMS are currently being used by the NMFS to monitor the amount of particular groundfish stocks of concern caught in each special management program. These data are used to track the rate of TAC harvest in these programs and ensure that these TACs are not exceeded. Based on these catch reports, specific management actions such as area closures and trip limit modifications are implemented according to the current regulations.

IVR and VTR data will be collected to quantify fishing effort. The landings data that the VTRs provide are critical to accurately monitor fishing mortality targets. Fishing effort information is needed to standardize differences in productivity among vessels or fishing grounds by establishing a rate of catch per unit time. This information allows comparisons over time and space of catches made by a variety of harvesters. Comparisons of catch and Catch per Unit Effort (CPUE) over time are significant indicators of the biological status of the fishery.

The two logbooks in use (NOAA Forms 88-30 and 88-140) generally collect the same information, with minor differences as shown below.

Fishing Vessel Trip Reports (VTRs) (NOAA Form 88-30)

Vessel Name And Permit Number/Documentation Number. The vessel permit number is a unique number assigned to each vessel issued a northeast Federal permit. This information is needed to accurately identify each fishing vessel for which a logbook report has been submitted. Requiring both the vessel name and permit number allows NMFS staff to cross-check both pieces of information to confirm the correct identity. Permit numbers are especially important for monitoring compliance with the reporting regulations and for matching the logbook data submitted by the vessels with the reports of fish purchases provided by dealers.

Trip Type, Number Of Crew, And Number Of Anglers. Trip type is used to differentiate between commercial, party, and charter trips. The number of crew and number of anglers is needed to assign economic values to both the commercial and recreational segments of the fishing industry. This data is also used in evaluating Catch per Unit Effort.

Date Sailed/Landed, Number Of Hauls, Duration Of Tows Or Sets, Gear Type, Units And Size Of Gear, And Mesh Size. This information is used to quantify actual fishing effort. Fishing effort is needed to standardize differences in productivity among vessels or fishing grounds by establishing a rate of catch per unit time. This information allows comparisons over time and space of catches made by a variety of harvesters. Comparisons of catch and CPUE over time are significant indicators of the biological status of the fisheries. Declining CPUE's can indicate over fishing beyond the level of harvest that is sustainable through natural growth and reproduction of the stock.

Chart Area Fished, Depth, Loran Bearings Or Latitude/Longitude. These variables are used to establish locations of fish capture, which can then be related to other biological and oceanographic information to predict species availability and likely future abundance. In addition, area fished is used to cross-reference locations where fishing is not permissible.

Landings And Discards, By Species. Such species information is the basic measure of fishing success from which fishermen, biologists, and economists draw conclusions about the status of a fishery. Landings information is also needed because controlling the quantity of fish harvested is often the means for ensuring continued harvests of renewable resources over time.

Name Of Buyer, Dealer Number, Date Sold, And Port Of Landings. These data are used in enforcing fishery regulations to cross-reference the quantity of fish appearing in the market. Enforcement officers conduct inspections at fish off-loading sites to ensure regulations are being met. These data elements are especially useful when monitoring quotas or when other constraints

on harvest are used. It allows NMFS to track the resulting quantity of transactions on land between buyers and sellers.

Name Of Operator/Owner. This information is used to identify the respondent and legal entity controlling the fishing practices of the vessel. Violations of quota regulations may be uncovered during an at-sea boarding and inspection, resulting in a fine, permit suspension, or catch seizure. As vessels may be owned by corporations, the identification of owner and operator on the logbook form allows NMFS to sanction the corporation as well as the operator as necessary. Information on the vessel and permit number is also used for further identification.

Signature Of Operator And Date. This is required to make an official report.

Shellfish Logbook (88-140)

Vessel Name And Permit Number. The vessel permit number is a unique number assigned to each vessel holding a Federal Permit. This information is needed to accurately identify each fishing vessel for which a logbook report has been submitted. Requiring both the vessel name and permit number allows NMFS staff to cross-check both pieces of information to confirm the correct identity. Permit numbers are especially important for monitoring compliance with the reporting regulations and for matching the logbook data submitted by the vessels with the reports of fish purchases provided by dealers.

Signature Of Captain/Operator And Date. This is required to make an official report.

Date, Area Fished, Time At Sea And Fishing. This information is all used to quantify actual fishing effort. Fishing effort is needed to standardize differences in productivity among vessels or fishing grounds by establishing a rate of catch per unit time. This information allows comparisons over time and space of catches made by a variety of harvesters. Comparisons of catch and CPUE over time are significant indicators of the biological status of the fisheries. Declining CPUEs can indicate over fishing beyond the level of harvest that is sustainable through natural growth and reproduction of the stock.

Catch And Discards. Such species information is the basic measure of fishing success from which fishermen, biologists, and economists draw conclusions about the status of a fishery.

Port Landed, Buyer, Date Of Sale. These data are used in enforcing fishery regulations to cross-reference the quantity of fish appearing on the market. Enforcement officers conduct inspection at fish off-loading sites to ensure regulations are being met. These data elements are especially useful to monitor quotas or when other constraints on harvest are used.

Ex-Vessel Prices. Prices and values are used in estimating the earnings and profitability of each fishing trip by the vessel operator and in regulatory impact reviews and economic input-output models requiring such data to estimate the economic effects of changes induced by the biology or management of the fishery. Special economic studies are conducted to obtain detailed information on specific issues or fisheries when resources are available.

Allocation Number And Tag Numbers. The allocation number is used on the shellfish log to track quota that has been harvested against the amount allocated to that vessel. The allocation

number also provides a way to cross-check the information reported by a vessel with the information reported by the dealer purchasing the product. Each vessel is assigned a range of tag numbers within their allocation number. Tag numbers are used to accurately determine the number of bushels that have been harvested by a given vessel, and provide additional confirmation of accurate reporting.

Vessel IVR

The following information will be collected through the vessel IVR system from vessels issued a limited access tilefish permit, a limited access red crab permit, a limited access Atlantic herring permit, or a general category Atlantic herring permit where in the vessel lands 2000 pounds or more in a single calendar week.

Species Code. Atlantic herring, tilefish and red crab vessels are required to report landings through the vessel IVR system. In order to differentiate between species, vessels will be required to report a species code.

Vessel Permit Number. Fishery management plans (FMP) have varying total allowable catches (TACs). In order to monitor each TAC, it is necessary to collect all vessel data. In order to ensure all IVR data is received and that vessels are meeting their reporting requirements, it is necessary to collect the federal permit numbers from vessels.

Total Landings, Week, and State. Landings data collected by week and by state are necessary in order to monitor catch levels in a timely manner. This data can be used to implement effort controls to slow effort prior to a TAC being reached.

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. NMFS 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. 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 will 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 information collection provisions associated with Framework 42 involve the electronic reporting of catch and discards of fish by vessels electing to fish in special management programs, including the SAPs, the U.S./Canada Management Area, and the Category B (regular) DAS Program. This information is required to be submitted via VMS. This incorporates the most advanced means of reporting this information to date. This information supplements other catch and effort information submitted using paper VTRs for each trip. This information is more accurately linked with the data submitted in VTRs for each trip via the implementation of the universal trip identification number.

The requirement for vessels to call in catches on a weekly basis to an IVR system uses information technology to track catches from individual vessels. A frequent report of catch locations is necessary to monitor attainment of TACs. High catch rates during some parts of the fishing year make it important that the reports be received in a timely manner. The IVR system mitigates the paperwork burden on both the fisherman and NMFS, as it makes it easier to collate the catch reports and monitor landings.

Every effort continues to be made to use additional computer technology to reduce the public burden. The Northeast Regional Office (NERO) is reviewing the electronic submission of logbook submissions as part of its Government Paperwork Elimination Act (GPEA) review. Every effort will be made in the future to utilize computer technology to reduce the public burden as the opportunity and technology allow.

4. Describe efforts to identify duplication.

The NMFS is aware of all related fishery management activities, and VMS requirements do not duplicate any in existence. Electronic daily reporting of catch and discards would only be required of NE multispecies DAS participants in the special management programs. In addition, these vessels would also be required to submit their current VTRs. The NERO is investigating the feasibility of incorporating electronic reporting into all fisheries currently requiring the submission of VTRs.

Some of the information provided in the weekly IVR reports by vessel owners or operators will be duplicated in logbooks. Landings and federal fisheries permit number will be reported in both systems. This duplication is unavoidable and is described in the logbook detail outlined in question 2. In order to monitor TACs in a timely fashion, catch information must be reported on a frequent basis. Use of the IVR system will collect this information without requiring vessel operators to submit a detailed, paper logbook report on a weekly basis. Logbooks report fishing activity in greater detail than IVR and include information on fishing effort, fishing gear, locations of fishing activity, catches and discards of other species. All of these data elements are necessary to manage the fishery.

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 all of the respondents are small businesses, separate requirements based on the size of the business have not been developed.

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

VMS catch and discard information allow the NMFS to accurately monitor fishing mortality and catch rates. Without daily catch information, the TACs associated with these programs may be exceeded, as the data from VTRs may take up to several weeks to process, even if submitted in a timely manner. Exceeding the TACs for certain groundfish species could result in closure of certain portions of the U.S./Canada Management Area for the remainder of that fishing year and

a reduction of that species' overall TAC for the following fishing year. In addition, exceeding the incidental TACs for species of concern under the Category B (regular) DAS Program or the TACs associated with SAPs could result in fishing mortality rates rising above legal limits and reaching levels that may compromise the fishing mortality objectives specified in Amendment 13. Therefore, daily catch and discard data would facilitate the effective management of the groundfish fishery. This information will be more effectively used when it can be accurately linked with other sources of fishery data, including observer data, dealer reports, and VTR data through the universal trip identification number. Failure to collect this information would prevent NMFS from monitoring vessel effort and fishing mortality, thereby compromising the potential to end overfishing and rebuild groundfish stocks and maintain compliance with the Magnuson-Stevens Act.

Without the fundamental data collected from vessel operators through logbooks and the IVR, NMFS would be unable to meet its statutory requirements under the Magnuson-Stevens Act.

Weekly IVR reporting captures catch and discard information allowing the NMFS to accurately monitor fishing mortality and catch rates on species managed with TACs. Exceeding the TACs for certain species could result in closure of certain fishery management areas for the remainder of that fishing year and a reduction of that species' overall TAC for the following fishing year. In addition, exceeding certain TACs could result in fishing mortality rates rising above legal limits and reaching levels that may compromise fishing mortality objectives.

At present, logbooks are required to be submitted by the 15 day of the month following the month in which the fishing trip occurred. Therefore, the logbook associated with a fishing trip that occurred in the first week of a month is not due at NERO for approximately 40 days. Mailing and processing of the logbooks add to the duration of time associated with these fishing trip reports. Logbooks provides confirmation of the IVR reports and provide additional information on catch locations, gear type, discards, etc., necessary to manage the fisheries. The frequency of reports has been kept to the minimum required for effective management. However, less frequent collection would jeopardize the value of the vessel logbooks as a crosscheck on the information provided by seafood dealers and would render other NERO data collection programs useless. Without this frequency of response, NMFS would be unable to accomplish in-season management of fisheries. If the collection were not conducted, more conservative management alternatives which protect the stock would have to be chosen, which would adversely affect fishermen's income and employment.

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

The requirements specified in this submission are not consistent with Office of Management and Budget (OMB) guidelines with regard to the reporting frequency. While OMB does not allow that respondents be required to report more often than quarterly, the provision requiring daily electronic catch and discard reporting requested with this submission would necessitate more frequent reports.

This information collection would be required to be submitted on a daily basis for vessels fishing in special management programs. Daily catch reporting is required in order to accurately monitor the catch and discard of groundfish species in these programs. This information would

be used to determine if and when the TAC for each species has been caught. Without daily monitoring, accurate assessments of catch rates of certain groundfish stocks from these programs, and therefore, fishing mortality, may not be possible.

8. Provide information on 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.

A Federal Register Notice published May 29, 2009 (74 FR 25702) solicited public comment on this renewal. No substantive comments were received.

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.

As stated on the forms, all data will be kept confidential as required by NOAA Administrative Order 216-100, Confidentiality of Fisheries Statistics, and will not be released for public use except in aggregate statistical form (and without identifying the source of data, i.e., vessel name, owner, etc.). Confidentiality is also required by section 402(b) of the Magnuson-Stevens Act. Logbooks are also considered confidential under the Trade Secrets 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.

Vessels required to complete and submit VTRs (Form 88-30) include those permitted in the Atlantic mackerel, squid, butterfish, Atlantic sea scallop, NE multispecies, monkfish, summer flounder, scup, black sea bass, Atlantic bluefish, spiny dogfish, Atlantic herring, red crab, tilefish or skate fisheries. According to data available through the Northeast Region Permit database, 4,243 vessels are permitted for one or more fisheries requiring mandatory reporting using Form 88-30. Since many vessels hold permits in more than one fishery, the number of respondents reflects the total number of individual vessels permitted, and not the sum of all permit holders.

The estimated response time for the reporting burden for VTRs is 5 minutes and is detailed in **Table 1** below. Some of the information being provided by the respondents, such as fishing location and catch, are already collected and recorded in the normal course of fishing activity,

therefore that time is excluded from the calculation. While the fishing vessel logbook information is collected on a trip-by-trip basis, the burden calculation is based on the required monthly submission. Vessels permitted in the NE Multispecies fishery are asked to submit information on halibut caught on a voluntary basis. It is estimated that reporting of time of day caught and size of the fish caught takes an average of 30 seconds. It is estimated that 158 respondents will submit voluntary reports of halibut catches an average of three times per year. These respondents are accounted for in the mandatory VTR collection. **Total VTR time burden is 4,246 hours.**

Vessels required to complete and submit Shellfish Logs (Form 88-140) include those permitted in the ocean quahog or surf clam fisheries. Approximately 1,700 vessels are permitted in these fisheries, however many of those are also permitted in other fisheries and fulfill their reporting requirements by submitting Form 88-30. Approximately 103 of the vessels permitted in the surf clam and ocean quahog fisheries submit Form 88-140. The estimated response time for the Shellfish Log is 12 and a half minutes. Vessels required to report purchases through the IVR system include those permitted in the Atlantic herring, tilefish or red crab fisheries. **Total burden is 1,115 hours.**

Approximately 125 vessels are permitted in one of the fisheries requiring IVR reports to be submitted. However, vessels are only required to submit IVR reports if they land the relevant species, and if they meet other criteria. Therefore, only a fraction of those vessels permitted in the herring, tilefish or red crab fisheries actually submit IVR reports. These respondents are accounted for in the mandatory VTR collection. The IVR burden in the Herring and Red Crab fisheries is estimated to be 4 minutes to complete the phone call, including one minute to summarize the information and three minutes to call-in the information. A reduced amount of data is collected with Tilefish IVR reporting and its burden is estimated to be 2 minutes to complete the phone call, including one minute to summarize the information and one minute to call-in the information. **Total burden is 385 hours.**

The burden associated with VMS catch reporting is difficult to accurately estimate since the frequency of participation in the special management programs will be determined entirely by the vessel owner. Table 1 summarizes the number of respondents, and the total burden of the reporting requirements.

VMS catch reporting burden, estimated at 15 minutes per response, is an estimate of the data collection burdens associated with universal daily electronic catch reporting, including the reporting of the universal trip identification number, for the special management programs, including the Category B (regular) DAS program, the U.S./Canada Management Area, and approved SAPs. Vessels participating in these programs and required to submit daily catch and discard information would still be required to submit VTRs according to the regulations at § 648.7(b). **Total VMS catch reporting burden is 6,279 hours.**

Vessels participating in the GB Cod Hook Sector, a total of 58 vessels, are required to submit a daily catch report of GB cod and GB haddock in the form of VTRs to the Sector Manager for the 45 days of the sector participation period. The VTRs are copies of the VTR required by NMFS and therefore pose no additional reporting burden. The Sector Manager would then, in turn, submit this information to the NMFS to monitor catch from Sector vessels. The additional

burden for the Sector Manager to submit this combined information to NMFS is estimated to be **90 hours** (2 hours/report x 1 report/day x 45 days).

Total hours are 112,115. A wage and overhead rate of $18.88 per hour is used in calculation of the labor cost associated with vessel reporting. **Total labor costs are $228,741.**

13. <u>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 Question 12 above)</u>.

The only recordkeeping/reporting cost associated with logbook collection is the cost of postage. The number of VTRs submitted monthly is variable and dependent upon the number of fishing trips made by a vessel. Logbook reports are submitted monthly, with some packages containing one form and some containing dozens of forms. Respondent costs for the VTRs are calculated based on an average mailing cost for logbooks of $0.44 per submission **Table 1** details the costs associated with VTR reporting, **totaling $24,968**.

Respondents are required to retain copies of the logbook reports for a period of three years after the date of the last entry on the report for purposes of enforcement investigations, and to serve as the official records for establishing individual vessel allocations. Enforcement investigations may take up to three years before agents interview the respondents. Retention of a copy of the records submitted removes the possible excuse for non-reporting that the original was mailed to but not received by NMFS. Records may also be used to determine historical participants, in the case of limited-entry fisheries. Business records are normally retained for 3 years and some fishermen use these forms for that purpose. Thus, there is minimal impact on public burden by this requirement.

All participants in special management programs must currently use VMS. All vessels that do not currently possess VMS must obtain one under this provision. The cost of purchasing and installing VMS, along with the associated basic operational costs, have already been considered in previous information collection submissions of the "Northeast Permit Family of Forms" (OMB Control Number 0648-0202).

Costs involved with this information collection submission include only those associated with the additional submission of daily catch and discard reports for vessels operating within these programs and the inclusion of a universal trip identification number on these catch reports and the date of catch. The estimates of the total annual cost burden to respondents or record-keepers resulting from this collection are summarized in **Table 1**.

Vessels fishing in any of the special management programs would be required to report daily catch information for each stock of concern along with a universal trip identification number on each of these daily catch reports. Framework 42 proposes a total of eight (8) stocks of concern. These eight stocks of concern involve only six (6) species (both cod and yellowtail flounder are listed for two stock areas each). In addition to the species of concern, catch of haddock is required to be reported as a target species for the SAPs, and a species managed under the U.S./Canada Resource Understanding. Therefore, the universal catch report would require catch and discard information for cod, yellowtail flounder, winter flounder, witch flounder, white hake, plaice, and haddock.

For the daily catch reports via VMS, each universal trip identification number submitted would require the entry of up to ten (10) digits. The amount of each species kept and discarded would require the submission of up to six (6) digits per field or 12 digits per species. Reports for the special management programs would involve the submission of catch data for all seven (7) species. The most expensive vendor charges a fee of $0.004 for each character in an electronic message. Each submission of these daily catch reports would cost $0.50. Using a cost of $0.004 per character, the cost for reporting the daily catch and discard data is $0.82 [79 characters [((12 characters/species x 7 species) x $0.004/character) + $0.50/submission] for the special management programs. The inclusion of the universal trip identification number would cost $0.04 (10 characters x $0.004/character) per catch report. Finally, submission of the date of the catch would cost $0.02 (6 characters x $0.004/character) per catch report. Therefore, the submission of each complete catch report would cost **$0.88**, detailed in **Table 1** below, **with a total of $22,101:**

The Category B (regular) DAS Program is allocated 3,500 DAS, plus an additional 1,500 trips allowed by the flipping of 1,500 Category B (regular) DAS Program trips. Therefore, the total annualized cost to the public for the Category B (regular) DAS Program is **$4,188** for the universal catch reports including the date of catch [($0.82/catch report submission x 5,000 catch reports) + ($0.02 x 5,000 catch reports)] plus an additional **$199** for the universal trip identification number ($0.04/addition of trip identification x 5,000 catch reports).

It is estimated that 14,000 trips will be taken into the U.S./Canada Management Area. Of these trips, approximately 2,000 trips are estimated to be taken into the Western U.S./Canada Management Area. These trips are estimated separately because vessels fishing in the Western U.S./Canada Area are permitted to fish inside and outside of the area on the same trip. A highly conservative estimate assumes that each trip into the Western U.S./Canada Area would fish inside and outside of the Western U.S./Canada Area, crossing the boundary of this area twice per trip. Vessel operators that choose to exercise this option are required to submit a catch report each time that they cross the boundary of the management area. Therefore, the total annualized cost to the public for the universal catch reports, including the submission of the date of catch for vessels operating in the U.S./Canada Management Area is **$11,760** [(14,000 catch reports x $0.82/catch report submission) + (14,000 catch reports x $0.02/catch report)] and **$3,360** for vessels operating in the Western U.S./Canada Area (4,000 catch reports x $0.82/catch report submission) + (4,000 catch reports x $0.02/catch report)]. For the trip identification number, the annualized costs are **$560** for vessels fishing in the U.S./Canada Management Area (14,000 catch reports x $0.04/addition of trip identification number) and an additional **$160** for vessels fishing in the Western U.S./Canada Area (4,000 catch reports x $0.04/addition of trip identification number).

The total annualized cost to the public for vessels in CA I Hook Gear Haddock SAP, not participating in GB Cod Hook Sector, is **$1,789** [($0.82 x 2,130 daily reports) + ($0.02 x 2,130 daily reports)]. For the trip identification number, the annualized cost is **$85** ($0.04 x 2,130 reports).

The total annualized cost to the public for vessels in the CA I Hook Gear Haddock SAP that are in the GB Hook Sector and report to NMFS through the Sector Manager is $0.00, assuming an

electronic submission of the report via email which adds no additional cost burden to the Sector Manager.

The total reporting/recordkeeping costs for submission of logbooks catch reports and the Universal Data ID are $47,069: $24,968 + $22,101. There are NO reporting/recordkeeping costs for IVR submissions or for the GB Cod Sector reports emailed by the Sector Manager.

14. <u>Provide estimates of annualized cost to the Federal government</u>.

The estimated annual costs to the NMFS associated with the VTR and IVR data collection programs are identified in **Table 2** below. The personnel and service costs consist of staff, equipment, processing and printing costs.

The NMFS Northeast Region currently operates a VMS system for several fisheries, including the NE multispecies fishery. The estimates of the annual administrative and enforcement costs to the Federal Government from this program are summarized in **Table 2**. The ongoing (recurring) costs 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. These costs are not expected to increase with the modifications to the VMS requirement for the submission of electronic catch reporting for vessels participating in the programs authorized by Framework 42.

TABLE 2 CALCULATION OF ANNUAL COST TO FEDERAL GOVERNMENT

Report		Personnel & Service Costs	Other Program Costs	Total Annual Costs
VTR (88-30)		658,374	35,000	$693,374
Shellfish Log (88-140)		18,359	1,500	$19,859
IVR		10,113	1,000	$11,113
VMS Annual costs	Salary and Benefits	230,000		$230,000
	Internet Connection		7,500	$7,500
	Equipment		20,000	$20,000
	Back-up System		38,960	$38,960
	Software Licensing		3,500	$3,500
	Supplies		11,000	$11,000
	Training and Travel		8,000	$8,000
Start-up Costs	Software Adaptations	$100,000 amortized over 3 years	33,000	$33,000
Total				$1,076,306

15. Explain the reasons for any program changes or adjustments.

The responses and burden hours have decreased due to reduced activity. However, the costs per submission have increased, mainly due to corrected calculation of VMS catch reporting costs, so that costs have increased overall.

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 NMFS 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 logbook forms will display the OMB Control number and expiration date along with information relevant to the PRA.

The VMS and IVR components of this information submission would be carried out via electronic means. As a result, no standardized data collection forms would be collected as part of this submission.

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

This collection does not employ statistical methods.

Table 1

Report	No. of Respondents	No. of Annual Responses per Respondent	Total No. of Annual Responses	Response Time (Hours)	Average Recordkeeping / Reporting (R/R) Costs	Total Burden (Hours)	Public Labor Cost ($)	Total R/R Cost Burden
FVTR (88-30) Mandatory	4243	12	50,916	0.0833	0.44	4,242	$80,089	$22,403
FVTR (88-30) Halibut-Vol	158	3	474	0.0083	0.44	4	$76	$209
Shellfish Log (88-140)	103	52	5,356	0.208	0.44	1,115	$21,052	$2,357
Herring IVR	106	52	5,512	0.067	0	370	$6,986	$0
Red Crab IVR	5	17	85	0.067	0	6	$114	$0
Tilefish IVR	13	19	247	0.033	0	9	$170	$0
VMS Catch Reports with Universal Data ID:								
VMS Regular B days	997	5	4,985	0.25	0.88	1,246	$23,600	$4,200
VMS - CAI Hookgear Haddock SAP - Vessels **Not** Participating in the GB Cod Hook Sector	142	15	2,130	0.25	0.88	533	$10,064	$1,789
VMS - Combined West U.S./Canada Area	400	10	4,000	0.25	0.88	1,000	$18,880	$3,360
VMS - US/Canada Areas and CA II SAPs	400	35	14,000	0.25	0.88	3,500	$66,080	$11,760
VMS - CAI Hookgear Haddock SAP - Vessels **Participating** in the GB Cod Hook Sector – **VTR copies**	58	(45 responses total by Sector Manager)	45	2	0	90	$1,699	$0
TOTALS	**4,346 (unduplicated)**		**87,750**			**12,115**	**$228,741**	**$47,069**

NOAA Form No. 88-30

OMB No. 0648-0212
Expires 10/31/2009

FISHING VESSEL TRIP REPORT

11453558

☐ **DID NOT FISH DURING MONTH/YEAR _____/_____**

1. VESSEL NAME	2. USCG. DOC. or STATE REG. NO.	3. VESSEL PERMIT NUMBER	
4. DATE/TIME SAILED DATE (mm/dd/yy) _____ / _____ / _____ TIME (24 hrs.) _____ : _____	5. TRIP TYPE (CHECK ONE) ☐ COMMERCIAL ☐ PARTY ☐ CHARTER	6. NO. of CREW	7. NO. of ANGLERS

FILL OUT A NEW PAGE FOR EACH CHART AREA OR GEAR OR MESH/RING SIZE FISHED

8. GEAR FISHED	9. MESH/RING SIZE	10. QUANTITY OF GEAR	11. SIZE OF GEAR
12. CHART AREA	14. LATITUDE/LONGITUDE or LORAN LATITUDE	LONGITUDE	15. NO. of HAULS
13. AVG. DEPTH IN FATHOMS _____ fa	STATION-BEARING #1 _____ - _____ - _____	STATION-BEARING #2 _____ - _____ - _____	16. AVERAGE TOW/SOAK TIME _____ hrs _____ mins

17. SPECIES CODE NAME	18. KEPT POUNDS (Comm)	18. KEPT COUNT (Rec)	19. DISCARDED POUNDS (Comm)	19. DISCARDED COUNT (Rec)	20. DEALER PERMIT NO.	21. DEALER NAME	22. DATE SOLD (mm/dd/yy)

23. PORT and STATE LANDED	24. DATE LANDED (mm/dd/yy)	TIME LANDED
	_____ / _____ / _____	_____ : _____
	_____ / _____ / _____	_____ : _____

I certify that the information provided on this form is true, complete and correct to the best of my knowledge, and made in good faith. Making a false statement on this form is punishable by law (18 U.S.C. 1001).

25. OPERATOR'S NAME (printed) and PERMIT NUMBER (If required)	26. OPERATOR'S SIGNATURE	DATE

NMFS COPY

NOAA Form
88-140

OMB Form
0648-0212
(Expires 10/31/2009)

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Northeast Region
One Blackburn Drive
Gloucester, Massachusetts 01930

FISHING TRIP RECORD
(SHELLFISH)

Pursuant to: 16 U.S.C. 1801

For the Time Period: _____ – _____

PERMIT NUMBER: _____

The National Marine Fisheries Service requires this information for the conservation and management of marine fishery resources in accordance with the Magnuson-Stevens Fishery Conservation and Management Act. The data reported will be used to develop, implement, and monitor fishery management strategies and for a variety of other uses. Submission is mandatory for those persons falling under the requirements of 50 CFR 648.7 (b). All data submitted will be handled as Confidential material in accordance with NOAA Administrative Orders. Public reporting burden for the survey is estimated to average 12 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to NMFS, One Blackburn Drive, Gloucester, MA 01930.

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.

OWNER'S SIGNATURE _____

GPO: U.S. GOVERNMENT PRINTING OFFICE: 2008-339-952/66526

34001

CATCH RECORD: Week of: _____ Vessel Name/Permit Number: _____

I certify that the information provided on this form is true, complete and correct to the best of my knowledge, and made in good faith. Making a false statement on this form is punishable by law (18 U.S.C. 1001).

Captain or Owner Signature and Date: _____

Trip No.	Date	Area Fished Longitude/Latitude or LORAN Bearing	Time at Sea --------- 0.1 hrs.	Time in Fishing --------- 0.1 hrs.	Catch in Bushels	Average Discard Percent	Port Landed	Name of Buyer and Date of Sale	Price per Bushel	Allocation Number	Tag Numbers
SURF CLAMS											
1											
2											
3											
4											
5											
6											
7											
8											
OCEAN QUAHOGS											
1											
2											
3											
4											
5											
6											
7											
8											

Comments:

NOAA Form 88-140
OMB Form 0648-0212 (Expires 10/31/2009)

NMFS COPY

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;

109-479

(5) specify the pertinent data which shall be submitted to the Secretary with respect to commercial, recreational, charter fishing, and fish processing 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, economic information necessary to meet the requirements of this Act, 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;

109-479

(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 analyze the likely effects, if any, including the cumulative conservation, economic, and social impacts, of the conservation and management measures on, and possible mitigation measures for—

(A) participants in the fisheries and fishing communities affected by the plan or amendment;

(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; and

(C) the safety of human life at sea, including whether and to what extent such measures may affect the safety of participants in the fishery;

(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;

109-479

(13) include a description of the commercial, recreational, and charter fishing sectors which participate in the fishery, including its economic impact, and, to the extent practicable, quantify trends in landings of the managed fishery resource by the commercial, recreational, and charter fishing sectors;

109-479

(14) to the extent that rebuilding plans or other conservation and management measures which reduce the overall harvest in a fishery are necessary, allocate, taking into consideration the economic impact of the harvest restrictions or recovery benefits on the fishery participants in each sector, any harvest restrictions or recovery benefits fairly and equitably among the commercial, recreational, and charter fishing sectors in the fishery and;

109-479

(15) establish a mechanism for specifying annual catch limits in the plan (including a multiyear plan), implementing regulations, or annual specifications, at a level such that overfishing does not occur in the fishery, including measures to ensure accountability.

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;

109-479

(2)(A) 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;

(B) designate such zones in areas where deep sea corals are identified under section 408, to protect deep sea corals from physical damage from fishing gear or to prevent loss or damage to such fishing gear from interactions with deep sea corals, after considering long-term sustainable uses of fishery resources in such areas; and

(C) with respect to any closure of an area under this Act that prohibits all fishing, ensure that such closure—

(i) is based on the best scientific information available;

(ii) includes criteria to assess the conservation benefit of the closed area;

(iii) establishes a timetable for review of the closed area's performance that is consistent with the purposes of the closed area; and

(iv) is based on an assessment of the benefits and impacts of the closure, including its size, in relation to other management measures (either alone or in combination with such measures), including the benefits and impacts of limiting access to: users of the area, overall fishing activity, fishery science, and fishery and marine conservation;

(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;

109-479

(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 and take into account the different circumstances affecting fisheries from different States and ports, including distances to fishing grounds and proximity to time and area closures;

109-479

(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;

(F) the fair and equitable distribution of access privileges in the fishery; and

(G) any other relevant considerations;

(7) require fish processors who first receive fish that are subject to the plan to submit 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;

109-479

(12) include management measures in the plan to conserve target and non-target species and habitats, considering the variety of ecological factors affecting fishery populations; and

(14)[sic][15] 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.

[15] So in original.

P.L. 109-479, sec. 104(b), MSA § 303 note **16 U.S.C. 1853 note**

EFFECTIVE DATES; APPLICATION TO CERTAIN SPECIES.—The amendment made by subsection (a)(10)[16]—

(1) shall, unless otherwise provided for under an international agreement in which the United States participates, take effect—

(A) in fishing year 2010 for fisheries determined by the Secretary to be subject to overfishing; and

(B) in fishing year 2011 for all other fisheries; and

(2) shall not apply to a fishery for species that have a life cycle of approximately 1 year unless the Secretary has determined the fishery is subject to overfishing of that species; and

(3) shall not limit or otherwise affect the requirements of section 301(a)(1) or 304(e) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1851(a)(1) or 1854(e), respectively).

109-479

SEC. 303A. LIMITED ACCESS PRIVILEGE PROGRAMS. **16 U.S.C. 1853a**

(a) IN GENERAL.—After the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, a Council may submit, and the Secretary may approve, for a fishery that is managed under a limited access system, a limited access privilege program to harvest fish if the program meets the requirements of this section.

(b) NO CREATION OF RIGHT, TITLE, OR INTEREST.—Limited access privilege, quota share, or other limited access system authorization established, implemented, or managed under this Act—

(1) shall be considered a permit for the purposes of sections 307, 308, and 309;

(2) may be revoked, limited, or modified at any time in accordance with this Act, including revocation if the system is found to have jeopardized the sustainability of the stock or the safety of fishermen;

(3) shall not confer any right of compensation to the holder of such limited access privilege, quota share, or other such limited access system authorization if it is revoked, limited, or modified;

(4) shall not create, or be construed to create, any right, title, or interest in or to any fish before the fish is harvested by the holder; and

(5) shall be considered a grant of permission to the holder of the limited access privilege or quota share to engage in activities permitted by such limited access privilege or quota share.

[16] Section 104(a)(10) of P.L. 109-479 added section 303(a)(15).

(c) REQUIREMENTS FOR LIMITED ACCESS PRIVILEGES.—

(1) IN GENERAL.—Any limited access privilege program to harvest fish submitted by a Council or approved by the Secretary under this section shall—

(A) if established in a fishery that is overfished or subject to a rebuilding plan, assist in its rebuilding;

(B) if established in a fishery that is determined by the Secretary or the Council to have over-capacity, contribute to reducing capacity;

(C) promote—

(i) fishing safety;

(ii) fishery conservation and management; and

(iii) social and economic benefits;

(D) prohibit any person other than a United States citizen, a corporation, partnership, or other entity established under the laws of the United States or any State, or a permanent resident alien, that meets the eligibility and participation requirements established in the program from acquiring a privilege to harvest fish, including any person that acquires a limited access privilege solely for the purpose of perfecting or realizing on a security interest in such privilege;

(E) require that all fish harvested under a limited access privilege program be processed on vessels of the United States or on United States soil (including any territory of the United States);

(F) specify the goals of the program;

(G) include provisions for the regular monitoring and review by the Council and the Secretary of the operations of the program, including determining progress in meeting the goals of the program and this Act, and any necessary modification of the program to meet those goals, with a formal and detailed review 5 years after the implementation of the program and thereafter to coincide with scheduled Council review of the relevant fishery management plan (but no less frequently than once every 7 years);

(H) include an effective system for enforcement, monitoring, and management of the program, including the use of observers or electronic monitoring systems;

(I) include an appeals process for administrative review of the Secretary's decisions regarding initial allocation of limited access privileges;

(J) provide for the establishment by the Secretary, in consultation with appropriate Federal agencies, for an information collection and review process to provide any additional information needed to determine whether any illegal acts of anti-competition, anti-trust, price collusion, or price fixing have occurred among regional fishery associations or persons receiving limited access privileges under the program; and

(K) provide for the revocation by the Secretary of limited access privileges held by any person found to have violated the antitrust laws of the United States.

(2) WAIVER.—The Secretary may waive the requirement of paragraph (1)(E) if the Secretary determines that—

(A) the fishery has historically processed the fish outside of the United States; and

(B) the United States has a seafood safety equivalency agreement with the country where processing will occur.

(3) FISHING COMMUNITIES.—

(A) IN GENERAL.—

(i) ELIGIBILITY.—To be eligible to participate in a limited access privilege program to harvest fish, a fishing community shall—

(I) be located within the management area of the relevant Council;

(II) meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;

(III) consist of residents who conduct commercial or recreational fishing, processing, or fishery-dependent support businesses within the Council's management area; and

(IV) develop and submit a community sustainability plan to the Council and the Secretary that demonstrates how the plan will address the social and economic development needs of coastal communities, including those that have not historically had the resources to participate in the fishery, for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.

(ii) FAILURE TO COMPLY WITH PLAN.—The Secretary shall deny or revoke limited access privileges granted under this section for any person who fails to comply with the requirements of the community sustainability plan. Any limited access privileges denied or revoked under this section may be reallocated to other eligible members of the fishing community.

(B) PARTICIPATION CRITERIA.—In developing participation criteria for eligible communities under this paragraph, a Council shall consider—

(i) traditional fishing or processing practices in, and dependence on, the fishery;

(ii) the cultural and social framework relevant to the fishery;

(iii) economic barriers to access to fishery;

(iv) the existence and severity of projected economic and social impacts associated with implementation of limited access privilege programs on harvesters, captains, crew, processors, and other businesses substantially dependent upon the fishery in the region or subregion;

(v) the expected effectiveness, operational transparency, and equitability of the community sustainability plan; and

(vi) the potential for improving economic conditions in remote coastal communities lacking resources to participate in harvesting or processing activities in the fishery.

(4) REGIONAL FISHERY ASSOCIATIONS.—

(A) IN GENERAL.—To be eligible to participate in a limited access privilege program to harvest fish, a regional fishery association shall—

(i) be located within the management area of the relevant Council;

(ii) meet criteria developed by the relevant Council, approved by the Secretary, and published in the Federal Register;

(iii) be a voluntary association with established by-laws and operating procedures;

(iv) consist of participants in the fishery who hold quota share that are designated for use in the specific region or subregion covered by the regional fishery association, including commercial or recreational fishing, processing, fishery-dependent support businesses, or fishing communities;

(v) not be eligible to receive an initial allocation of a limited access privilege but may acquire such privileges after the initial allocation, and may hold the annual fishing privileges of any limited access privileges it holds or the annual fishing privileges that is [sic][17] members contribute; and

(vi) develop and submit a regional fishery association plan to the Council and the Secretary for approval based on criteria developed by the Council that have been approved by the Secretary and published in the Federal Register.

(B) FAILURE TO COMPLY WITH PLAN.—The Secretary shall deny or revoke limited access privileges granted under this section to any person participating in a regional fishery association who fails to comply with the requirements of the regional fishery association plan.

[17] So in original.

(C) PARTICIPATION CRITERIA.—In developing participation criteria for eligible regional fishery associations under this paragraph, a Council shall consider—

(i) traditional fishing or processing practices in, and dependence on, the fishery;

(ii) the cultural and social framework relevant to the fishery;

(iii) economic barriers to access to fishery;

(iv) the existence and severity of projected economic and social impacts associated with implementation of limited access privilege programs on harvesters, captains, crew, processors, and other businesses substantially dependent upon the fishery in the region or subregion;

(v) the administrative and fiduciary soundness of the association; and

(vi) the expected effectiveness, operational transparency, and equitability of the fishery association plan.

(5) ALLOCATION.—In developing a limited access privilege program to harvest fish a Council or the Secretary shall—

(A) establish procedures to ensure fair and equitable initial allocations, including consideration of—

(i) current and historical harvests;

(ii) employment in the harvesting and processing sectors;

(iii) investments in, and dependence upon, the fishery; and

(iv) the current and historical participation of fishing communities;

(B) consider the basic cultural and social framework of the fishery, especially through—

(i) the development of policies to promote the sustained participation of small owner-operated fishing vessels and fishing communities that depend on the fisheries, including regional or port-specific landing or delivery requirements; and

(ii) procedures to address concerns over excessive geographic or other consolidation in the harvesting or processing sectors of the fishery;

(C) include measures to assist, when necessary and appropriate, entry-level and small vessel owner-operators, captains, crew, and fishing communities through set-asides of harvesting allocations, including providing privileges, which may include set-asides or allocations of harvesting privileges, or economic assistance in the purchase of limited access privileges;

(D) ensure that limited access privilege holders do not acquire an excessive share of the total limited access privileges in the program by—

(i) establishing a maximum share, expressed as a percentage of the total limited access privileges, that a limited access privilege holder is permitted to hold, acquire, or use; and

(ii) establishing any other limitations or measures necessary to prevent an inequitable concentration of limited access privileges; and

(E) authorize limited access privileges to harvest fish to be held, acquired, used by, or issued under the system to persons who substantially participate in the fishery, including in a specific sector of such fishery, as specified by the Council.

(6) PROGRAM INITIATION.—

(A) LIMITATION.—Except as provided in subparagraph (D), a Council may initiate a fishery management plan or amendment to establish a limited access privilege program to harvest fish on its own initiative or if the Secretary has certified an appropriate petition.

(B) PETITION.—A group of fishermen constituting more than 50 percent of the permit holders, or holding more than 50 percent of the allocation, in the fishery for which a limited access privilege program to harvest fish is sought, may submit a petition to the Secretary requesting that the relevant Council or Councils with authority over the fishery be authorized to initiate the development of the program. Any such petition shall clearly state the fishery to which the limited access privilege program would apply. For multispecies permits in the Gulf of Mexico, only those participants who have substantially fished the species proposed to be included in the limited access program shall be eligible to sign a petition for such a program and shall serve as the basis for determining the percentage described in the first sentence of this subparagraph.

(C) CERTIFICATION BY SECRETARY.—Upon the receipt of any such petition, the Secretary shall review all of the signatures on the petition and, if the Secretary determines that the signatures on the petition represent more than 50 percent of the permit holders, or holders of more than 50 percent of the allocation in the fishery, as described by subparagraph (B), the Secretary shall certify the petition to the appropriate Council or Councils.

(D) NEW ENGLAND AND GULF REFERENDUM.—

(i) Except as provided in clause (iii) for the Gulf of Mexico commercial red snapper fishery, the New England and Gulf Councils may not submit, and the Secretary may not approve or implement, a fishery management plan or amendment that creates an individual fishing quota program, including a Secretarial plan, unless such a system, as ultimately developed, has been approved by more than 2⁄3 of those voting in a referendum among eligible permit holders, or other persons described in clause (v), with respect to the New England Council, and by a majority of those voting in the referendum among eligible permit holders with respect to the Gulf Council. For multispecies permits in the Gulf of Mexico, only those participants who have substantially fished the species proposed to be included in the individual fishing quota program shall be eligible to vote in such a referendum. If an individual fishing quota program fails to be approved by the requisite number of those voting, it may be revised and submitted for approval in a subsequent referendum.

(ii) The Secretary shall conduct a referendum under this subparagraph, including notifying all persons eligible to participate in the referendum and making available to them information concerning the schedule, procedures, and eligibility requirements for the referendum process and the proposed individual fishing quota program. Within 1 year after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, the Secretary shall publish guidelines and procedures to determine procedures and voting eligibility requirements for referenda and to conduct such referenda in a fair and equitable manner.

(iii) The provisions of section 407(c) of this Act shall apply in lieu of this subparagraph for an individual fishing quota program for the Gulf of Mexico commercial red snapper fishery.

(iv) Chapter 35 of title 44, United States Code, (commonly known as the Paperwork Reduction Act) does not apply to the referenda conducted under this subparagraph.

(v) The Secretary shall promulgate criteria for determining whether additional fishery participants are eligible to vote in the New England referendum described in clause (i) in order to ensure that crew members who derive a significant percentage of their total income from the fishery under the proposed program are eligible to vote in the referendum.

(vi) In this subparagraph, the term ‘individual fishing quota’ does not include a sector allocation.

(7) TRANSFERABILITY.—In establishing a limited access privilege program, a Council shall—

(A) establish a policy and criteria for the transferability of limited access privileges (through sale or lease), that is consistent with the policies adopted by the Council for the fishery under paragraph (5); and

(B) establish, in coordination with the Secretary, a process for monitoring of transfers (including sales and leases) of limited access privileges.

(8) PREPARATION AND IMPLEMENTATION OF SECRETARIAL PLANS.—This subsection also applies to a plan prepared and implemented by the Secretary under section 304(c) or 304(g).

(9) ANTITRUST SAVINGS CLAUSE.—Nothing in this Act shall be construed to modify, impair, or supersede the operation of any of the antitrust laws. For purposes of the preceding sentence, the term ‘antitrust laws’ has the meaning given such term in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition.

(d) AUCTION AND OTHER PROGRAMS.—In establishing a limited access privilege program, a Council shall consider, and may provide, if appropriate, an auction system or other program to collect royalties for the initial, or any subsequent, distribution of allocations in a limited access privilege program if—

(1) the system or program is administered in such a way that the resulting distribution of limited access privilege shares meets the program requirements of this section; and

(2) revenues generated through such a royalty program are deposited in the Limited Access System Administration Fund established by section 305(h)(5)(B) and available subject to annual appropriations.

(e) COST RECOVERY.—In establishing a limited access privilege program, a Council shall—

(1) develop a methodology and the means to identify and assess the management, data collection and analysis, and enforcement programs that are directly related to and in support of the program; and

(2) provide, under section 304(d)(2), for a program of fees paid by limited access privilege holders that will cover the costs of management, data collection and analysis, and enforcement activities.

(f) CHARACTERISTICS.—A limited access privilege established after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 is a permit issued for a period of not more than 10 years that—

(1) will be renewed before the end of that period, unless it has been revoked, limited, or modified as provided in this subsection;

(2) will be revoked, limited, or modified if the holder is found by the Secretary, after notice and an opportunity for a hearing under section 554 of title 5, United States Code, to have failed to comply with any term of the plan identified in the plan as cause for revocation, limitation, or modification of a permit, which may include conservation requirements established under the plan;

(3) may be revoked, limited, or modified if the holder is found by the Secretary, after notice and an opportunity for a hearing under section 554 of title 5, United States Code, to have committed an act prohibited by section 307 of this Act; and

(4) may be acquired, or reacquired, by participants in the program under a mechanism established by the Council if it has been revoked, limited, or modified under paragraph (2) or (3).

(g) LIMITED ACCESS PRIVILEGE ASSISTED PURCHASE PROGRAM.—

(1) IN GENERAL.—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 53706(a)(7) of title 46, United States Code, to issue obligations that aid in financing—

(A) the purchase of limited access privileges in that fishery by fishermen who fish from small vessels; and

(B) the first-time purchase of limited access privileges in that fishery by entry level fishermen.

(2) ELIGIBILITY CRITERIA.—A Council making a submission under paragraph (1) shall recommend criteria, consistent with the provisions of this Act, that a fisherman must meet to qualify for guarantees under subparagraphs (A) and (B) of paragraph (1) and the portion of funds to be allocated for guarantees under each subparagraph.

(h) EFFECT ON CERTAIN EXISTING SHARES AND PROGRAMS.—Nothing in this Act, or the amendments made by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, shall be construed to require a reallocation or a reevaluation of individual quota shares, processor quota shares, cooperative programs, or other quota programs, including sector allocation in effect before the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006.

(i) TRANSITION RULES.—

(1) IN GENERAL.—The requirements of this section shall not apply to any quota program, including any individual quota program, cooperative program, or sector allocation for which a Council has taken final action or which has been submitted by a Council to the Secretary, or approved by the Secretary, within 6 months after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, except that—

(A) the requirements of section 303(d) of this Act in effect on the day before the date of enactment of that Act shall apply to any such program;

(B) the program shall be subject to review under subsection (c)(1)(G) of this section not later than 5 years after the program implementation; and

(C) nothing in this subsection precludes a Council from incorporating criteria contained in this section into any such plans.

(2) PACIFIC GROUNDFISH PROPOSALS.—The requirements of this section, other than subparagraphs (A) and (B) of subsection (c)(1) and subparagraphs (A), (B), and (C) of paragraph (1) of this subsection, shall not apply to any proposal authorized under section 302(f) of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 that is submitted within the timeframe prescribed by that section.

P.L. 109-479, sec. 106(e), MSA § 303A note **16 U.S.C. 1853a note**
APPLICATION WITH AMERICAN FISHERIES ACT.—Nothing in section 303A of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), as added by subsection (a) [P.L. 109-479], shall be construed to modify or supersede any provision of the American Fisheries Act (46 U.S.C. 12102 note; 16 U.S.C. 1851 note; et alia).

P.L. 104-297, sec. 108(i), MSA § 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.

104-297
SEC. 402. INFORMATION COLLECTION **16 U.S.C. 1881a**

109-479
(a) COLLECTION PROGRAMS.—

(1) COUNCIL REQUESTS.—If a Council determines that additional information would be beneficial for developing, implementing, or revising a fishery management plan or for determining whether a fishery is in need of management, the Council may request that the Secretary implement an information collection program for the fishery which would provide the types of information specified by the Council. The Secretary shall undertake such an information collection program if he determines that the need is justified, and shall promulgate regulations to implement the program within 60 days after such determination is made. If the Secretary determines that the need for an information collection program is not justified, the Secretary shall inform the Council of the reasons for such determination in writing. The determinations of the Secretary under this paragraph regarding a Council request shall be made within a reasonable period of time after receipt of that request.

(2) SECRETARIAL INITIATION.—If the Secretary determines that additional information is necessary for developing, implementing, revising, or monitoring a fishery management plan, or for determining whether a fishery is in need of management, the Secretary may, by regulation, implement an information collection or observer program requiring submission of such additional information for the fishery.

109-479
(b) CONFIDENTIALITY OF INFORMATION.—
(1) Any information submitted to the Secretary, a State fishery management agency, or a marine fisheries commission by any person in compliance with the requirements of this Act shall be confidential and shall not be disclosed except—
(A) to Federal employees and Council employees who are responsible for fishery management plan development, monitoring, or enforcement;
(B) to State or Marine Fisheries Commission employees as necessary to further the Department's mission, subject to a confidentiality agreement that prohibits public disclosure of the identity of business of any person;
(C) to State employees who are responsible for fishery management plan enforcement, if the States employing those employees have entered into a fishery enforcement agreement with the Secretary and the agreement is in effect;
(D) when required by court order;
(E) when such information is used by State, Council, or Marine Fisheries Commission employees to verify catch under a limited access program, but only to the extent that such use is consistent with subparagraph (B);
(F) when the Secretary has obtained written authorization from the person submitting such information to release such information to persons for reasons not otherwise provided for in this subsection, and such release does not violate other requirements of this Act;
(G) when such information is required to be submitted to the Secretary for any determination under a limited access program; or

(H) in support of homeland and national security activities, including the Coast Guard's homeland security missions as defined in section 888(a)(2) of the Homeland Security Act of 2002 (6 U.S.C. 468(a)(2)).

(2) Any observer information shall be confidential and shall not be disclosed, except in accordance with the requirements of subparagraphs (A) through (H) of paragraph (1), or—

(A) as authorized by a fishery management plan or regulations under the authority of the North Pacific Council to allow disclosure to the public of weekly summary bycatch information identified by vessel or for haul-specific bycatch information without vessel identification;

(B) when such information is necessary in proceedings to adjudicate observer certifications; or

(C) as authorized by any regulations issued under paragraph (3) allowing the collection of observer information, pursuant to a confidentiality agreement between the observers, observer employers, and the Secretary prohibiting disclosure of the information by the observers or observer employers, in order—

(i) to allow the sharing of observer information among observers and between observers and observer employers as necessary to train and prepare observers for deployments on specific vessels; or

(ii) to validate the accuracy of the observer information collected.

(3) The Secretary shall, by regulation, prescribe such procedures as may be necessary to preserve the confidentiality of information submitted in compliance with any requirement or regulation under this Act, except that the Secretary may release or make public any such information in any aggregate or summary form which does not directly or indirectly disclose the identity or business of any person who submits such information. Nothing in this subsection shall be interpreted or construed to prevent the use for conservation and management purposes by the Secretary, or with the approval of the Secretary, the Council, of any information submitted in compliance with any requirement or regulation under this Act or the use, release, or publication of bycatch information pursuant to paragraph (2)(A).

(c) RESTRICTION ON USE OF CERTAIN INFORMATION.—

(1) The Secretary shall promulgate regulations to restrict the use, in civil enforcement or criminal proceedings under this Act, the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.), and the Endangered Species Act (16 U.S.C. 1531 et seq.), of information collected by voluntary fishery data collectors, including sea samplers, while aboard any vessel for conservation and management purposes if the presence of such a fishery data collector aboard is not required by any of such Acts or regulations thereunder.

(2) The Secretary may not require the submission of a Federal or State income tax return or statement as a prerequisite for issuance of a permit until such time as the Secretary has promulgated regulations to ensure the confidentiality of information contained in such return or statement, to limit the information submitted to that necessary to achieve a demonstrated conservation and management purpose, and to provide appropriate penalties for violation of such regulations.

(d) CONTRACTING AUTHORITY.—Notwithstanding any other provision of law, the Secretary may provide a grant, contract, or other financial assistance on a sole-source basis to a State, Council, or Marine Fisheries Commission for the purpose of carrying out information collection or other programs if—

(1) the recipient of such a grant, contract, or other financial assistance is specified by statute to be, or has customarily been, such State, Council, or Marine Fisheries Commission; or

(2) the Secretary has entered into a cooperative agreement with such State, Council, or Marine Fisheries Commission.

(e) RESOURCE ASSESSMENTS.—

(1) The Secretary may use the private sector to provide vessels, equipment, and services necessary to survey the fishery resources of the United States when the arrangement will yield statistically reliable results.

(2) The Secretary, in consultation with the appropriate Council and the fishing industry--

(A) may structure competitive solicitations under paragraph (1) so as to compensate a contractor for a fishery resources survey by allowing the contractor to retain for sale fish harvested during the survey voyage;

(B) in the case of a survey during which the quantity or quality of fish harvested is not expected to be adequately compensatory, may structure those solicitations so as to provide that compensation by permitting the contractor to harvest on a subsequent voyage and retain for sale a portion of the allowable catch of the surveyed fishery; and

(C) may permit fish harvested during such survey to count toward a vessel's catch history under a fishery management plan if such survey was conducted in a manner that precluded a vessel's participation in a fishery that counted under the plan for purposes of determining catch history.

(3) The Secretary shall undertake efforts to expand annual fishery resource assessments in all regions of the Nation.

104-297
SEC. 403. OBSERVERS **16 U.S.C. 1881b**

(a) GUIDELINES FOR CARRYING OBSERVERS.—Within one year after the date of enactment of the Sustainable Fisheries Act, the Secretary shall promulgate regulations, after notice and opportunity for public comment, for fishing vessels that carry observers. The regulations shall include guidelines for determining—

(1) when a vessel is not required to carry an observer on board because the facilities of such 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; and

(2) actions which vessel owners or operators may reasonably be required to take to render such facilities adequate and safe.

e-CFR Data is current as of October 20, 2009

Title 5: Administrative Personnel
PART 1320—CONTROLLING PAPERWORK BURDENS ON THE PUBLIC

§ 1320.9 Agency certifications for proposed collections of information.

As part of the agency submission to OMB of a proposed collection of information, the agency (through the head of the agency, the Senior Official, or their designee) shall certify (and provide a record supporting such certification) that the proposed collection of information—

(a) Is necessary for the proper performance of the functions of the agency, including that the information to be collected will have practical utility;

(b) Is not unnecessarily duplicative of information otherwise reasonably accessible to the agency;

(c) Reduces to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency, including with respect to small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601(6)), the use of such techniques as:

(1) Establishing differing compliance or reporting requirements or timetables that take into account the resources available to those who are to respond;

(2) The clarification, consolidation, or simplification of compliance and reporting requirements; or

(3) An exemption from coverage of the collection of information, or any part thereof;

(d) Is written using plain, coherent, and unambiguous terminology and is understandable to those who are to respond;

(e) Is to be implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of those who are to respond;

(f) Indicates for each recordkeeping requirement the length of time persons are required to maintain the records specified;

(g) Informs potential respondents of the information called for under §1320.8(b)(3);

(h) Has been developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected, including the processing of the information in a manner which shall enhance, where appropriate, the utility of the information to agencies and the public;

(i) Uses effective and efficient statistical survey methodology appropriate to the purpose for which the information is to be collected; and

(j) To the maximum extent practicable, uses appropriate information technology to reduce burden and improve data quality, agency efficiency and responsiveness to the public.

Title 50: Wildlife and Fisheries
PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES
Subpart A—General Provisions

§ 648.7 Recordkeeping and reporting requirements.

Link to an amendment published at 74 FR 42598, Aug. 24, 2009.

(a) *Dealers* - (1) *Detailed report.* Federally permitted dealers, and any individual acting in the capacity of a dealer, must submit to the Regional Administrator or to the official designee a detailed report of all fish purchased or received for a commercial purpose, other than solely for transport on land, within the time period specified in paragraph (f) of this section, by one of the available electronic reporting mechanisms approved by NMFS, unless otherwise directed by the Regional Administrator. The following information, and any other information required by the Regional Administrator, must be provided in each report:

(i) *Required information.* All dealers issued a dealer permit under this part must provide: Dealer name; dealer permit number; name and permit number or name and hull number (USCG documentation number or state registration number, whichever is applicable) of vessel(s) from which fish are purchased or received; trip identifier for each trip from which fish are purchased or received from a commercial fishing vessel permitted under this part; date(s) of purchases and receipts; units of measure and amount by species (by market category, if applicable); price per unit by species (by market category, if applicable) or total value by species (by market category, if applicable); port landed; cage tag numbers for surfclams and ocean quahogs, if applicable; disposition of the seafood product; and any other information deemed necessary by the Regional Administrator. If no fish are purchased or received during a reporting week, a report so stating must be submitted.

(ii) *Exceptions.* The following exceptions apply to reporting requirements for dealers permitted under this part:

(A) Inshore Exempted Species, as defined in §648.2, are not required to be reported under this part;

(B) When purchasing or receiving fish from a vessel landing in a port located outside of the Northeast Region (Maine, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Delaware, Virginia and North Carolina), only purchases or receipts of species managed by the Northeast Region under this part, and American lobster, managed under part 697 of this chapter, must be reported. Other reporting requirements may apply to those species not managed by the Northeast Region, which are not affected by this provision; and

(C) Dealers issued a permit for Atlantic bluefin tuna under part 635 of this chapter are not required to report their purchases or receipts of Atlantic bluefin tuna under this part. Other reporting requirements, as specified in §635.5 of this chapter, apply to the receipt of Atlantic bluefin tuna.

(iii) *Dealer reporting requirements for skates.* In addition to the requirements under paragraph (a)(1)(i) of this section, dealers shall report the species of skates received. Species of skates shall be identified according to the following categories: Winter skate, little skate, little/winter skate, barndoor skate, smooth skate, thorny skate, clearnose skate, rosette skate, and unclassified skate. NMFS will provide dealers with a skate species identification guide.

(2) *System requirements.* All persons required to submit reports under paragraph (a)(1) of this section are required to have the capability to transmit data via the Internet. To ensure compatibility with the reporting system and database, dealers are required to utilize a personal computer, in working condition that meets the minimum specifications identified by NMFS. The affected public will be notified of the minimum specifications via a letter to all Federal dealer permit holders.

(3) *Annual report.* All persons issued a permit under this part are required to submit the following information on an annual basis, on forms supplied by the Regional Administrator:

(i) All dealers and processors issued a permit under this part must complete all sections of the Annual Processed Products Report for all species that were processed during the previous year. Reports must be submitted to the address supplied by the Regional Administrator.

(ii) Surfclam and ocean quahog processors and dealers whose plant processing capacities change more than 10 percent during any year shall notify the Regional Administrator in writing within 10 days after the change.

(iii) Atlantic herring processors, including processing vessels, must complete and submit all sections of the Annual Processed Products Report.

(iv) Atlantic hagfish processors must complete and submit all sections of the Annual Processed Products Report.

(b) *Vessel owners or operators* —(1) *Fishing Vessel Trip Reports* —(i) The owner or operator of any vessel issued a valid permit or eligible to renew a limited access 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. As stated in paragraph (f)(2)(i) of this section, if no fishing trip is made during a month, a report stating so must be submitted for each month. If authorized in writing by the Regional Administrator, a vessel owner or operator may submit reports electronically, for example by using a VMS or other media. 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 (58.42 cm), total length) or “large” (i.e., 23 inches (58.42 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).

(ii) *Surf clam and ocean quahog vessel owners and operators.* The owner or operator of any vessel conducting any surf clam and ocean quahog fishing operations, except those conducted exclusively in waters of a state that requires cage tags or when he/she has surrendered the surf clam and ocean quahog fishing vessel permit, shall maintain, on board the vessel, an accurate daily fishing log for each fishing trip, on forms supplied by the Regional Administrator, showing at least: Name and permit number of the vessel, total amount in bushels of each species taken, date(s) caught, time at sea, duration of fishing time, locality fished, crew size, crew share by percentage, landing port, date sold, price per bushel, buyer, tag numbers from cages used, quantity of surf clams and ocean quahogs discarded, and allocation permit number.

(iii) *Vessel reporting requirements for skates.* In addition to the requirements under paragraph (b)(1)(i) of this section, the owner or operator of any vessel issued a skate permit shall report the species of all skates landed. Species of skates shall be identified according to the following categories: Winter skate, little skate, little/winter skate, barndoor skate, smooth skate, thorny skate, clearnose skate, rosette skate, and unclassified skate. Discards of skates shall be reported according to two size classes, large skates (greater than or equal to 23 inches (58.42 cm) in total length) and small skates (less than 23 inches (58.42 cm) in total length). All other vessel reporting requirements remain unchanged. NOAA Fisheries will provide vessel owners or operators that intend to land skates with a skate identification guide to assist in this data collection program.

(2) *IVR system reports* - (i) *Atlantic herring owners or operators* . The owner or operator of a vessel issued a permit to fish for Atlantic herring must report catches (retained and discarded) of herring each week to an IVR system, as specified in paragraphs (b)(2)(i)(A) and (B) of this section. The report shall include at least the following information, and any other information required by the Regional Administrator: Vessel identification, week in which species are caught, pounds retained, pounds discarded, management areas fished, and pounds of herring caught in each management area for the week. The IVR reporting week begins on Sunday at 0001 hrs (12:01 AM) local time and ends Saturday at 2400 hrs (12 midnight). Weekly Atlantic herring catch reports must be submitted via the IVR system by midnight, Eastern Time, each Tuesday for the previous week. Reports are required even if herring caught during the week has not yet been landed. This report does not exempt the owner or operator from other applicable reporting requirements of this section.

(A) The owner or operator of any vessel issued a limited access herring permit must submit an Atlantic herring catch report via the IVR system each week, regardless of how much herring is caught (including weeks when no herring is caught), unless exempted from this requirement by the Regional Administrator.

(B) An owner or operator of any vessel issued an open access permit for Atlantic herring that catches ≥ 2,000 lb (907.2 kg) of Atlantic herring on any trip in a week must submit an Atlantic herring catch report via the IVR system for that week as required by the Regional Administrator.

(C) Atlantic herring IVR reports are not required from Atlantic herring carrier vessels.

(D) *Reporting requirements for vessels transferring herring at sea.* A vessel that transfers herring at sea must comply with these requirements in addition to those specified at §648.13(f).

(*1*) A vessel that transfers herring at sea to a vessel that receives it for personal use at bait must report all transfers on the Fishing Vessel Trip Report.

(*2*) A vessel that transfers herring at sea to an authorized carrier vessel must report all transfers weekly via the IVR system and must report all transfers on the Fishing Vessel Trip Report. Each time the vessel offloads to the carrier vessel is defined as a trip for the purposes of reporting requirements and possession allowances.

(*3*) A vessel that transfers herring at sea to an at-sea processor must report all transfers weekly via the IVR system and must report all transfers on the Fishing Vessel Trip Report. Each time the vessel offloads to the at-sea processing vessel is defined as a trip for the purposes of the reporting requirements and possession allowances. For each trip, the vessel must submit a Fishing Vessel Trip Report and the at-sea processing vessel must submit the detailed dealer report specified in paragraph (a)(1) of this section.

(*4*) A transfer between two vessels issued valid Atlantic herring permits requires each vessel to submit a Fishing Vessel Trip Report, filled out as required by the LOA to transfer herring at sea, and a weekly IVR report for the amount of herring each vessel lands.

(ii) *Tilefish vessel owners or operators.* The owner or operator of any vessel issued a limited access permit for tilefish must submit a tilefish catch report via the IVR system within 24 hours after returning to port and offloading as required by the Regional Administrator. The report shall include at least the following information, and any other information required by the Regional Administrator: Vessel identification, trip during which species are caught, and pounds landed. IVR reporting does not exempt the owner or operator from other applicable reporting requirements of this section.

(iii) *Red crab vessel owners and operators.* The owner or operator of any vessel issued a limited access permit for red crab must submit a red crab catch report via the IVR system within 24 hours after returning to port and offloading as required by the Regional Administrator. The report shall include at least the following information, and any other information required by the Regional Administrator: Vessel identification, DAS confirmation number, trip during which species are caught, date landed, condition (whole, half sections with gills, half sections without gills), and pounds landed. IVR reporting does not exempt the owner or operator from other applicable reporting requirements of this section.

(c) *When to fill out a log report.* Log reports required by paragraph (b)(1)(i) of this section must be filled out with all required information, except for information not yet ascertainable, prior to entering port with fish. Information that may be considered unascertainable prior to entering port with fish includes dealer name, dealer permit number, and date sold. Log reports must be completed as soon as the information becomes available. Log reports required by paragraph (b)(1)(ii) of this section must be filled out before landing any surfclams or ocean quahogs.

(d) *Inspection.* Upon the request of an authorized officer or an employee of NMFS designated by the Regional Administrator to make such inspections, all persons required to submit reports under this part must make immediately available for inspection copies of reports, and all records upon which those reports are or will be based, that are required to be submitted or kept under this part.

(e) *Record retention.* Any record, as defined at §648.2, related to fish possessed, received, or purchased by a dealer that is required to be reported, must be retained and be available for immediate review for a total of 3 years after the date the fish were first possessed, received, or purchased. Dealers must retain the required records and reports at their principal place of business. Copies of fishing log reports must be kept on board the vessel and available for review for at least 1 year, and must be retained for a total of 3 years after the date the fish were last possessed, landed, and sold.

(f) *Submitting reports* —(1) *Dealer or processor reports.* (i) Detailed reports required by paragraph (a)(1)(i) of this section must be received by midnight of the first Tuesday following the end of the reporting week. If no fish are purchased or received during a reporting week, the report so stating required under paragraph (a)(1)(i) of this section must be received by midnight of the first Tuesday following the end of the reporting week.

(ii) [Reserved]

(iii) Dealers who want to make corrections to their trip-level reports via the electronic editing features may do so for up to 3 business days following submission of the initial report. If a correction is needed more than 3 business days following the submission of the initial trip-level report, the dealer must contact NMFS directly to request an extension of time to make the correction.

(iv) Through April 30, 2005, to accommodate the potential lag in availability of some required data, the trip identifier, price and disposition information required under paragraph (a)(1) may be submitted after the detailed weekly report, but must be received within 16 days of the end of the reporting week or the end of the calendar month, whichever is later. Dealers will be able to access and update previously submitted trip identifier, price, and disposition data.

(v) Effective May 1, 2005, the trip identifier required under paragraph (a)(1) of this section must be submitted with the detailed report, as required under paragraphs (f)(1)(i) of this section. Price and disposition information may be submitted after the initial detailed report, but must be received within 16 days of the end of the reporting week.

(vi) Annual reports for a calendar year must be postmarked or received by February 10 of the following year. Contact the Regional Administrator (see Table 1 to §600.502) for the address of NMFS Statistics.

(2) *Fishing vessel log reports.* (i) Fishing vessel log reports, required by paragraph (b)(1)(i) of this section, must be postmarked or received within 15 days after the end of the reporting month. Each owner will be sent forms and instructions, including the address to which reports are to be submitted, shortly after receipt of a Federal fisheries permit. If no fishing trip is made during a month, a report stating so must be submitted.

(ii) Surfclam and ocean quahog log reports, required by paragraph (b)(1)(ii) of this section, must be postmarked or received within 3 days after the end of each reporting week.

(3) *At-sea purchasers and processors.* With the exception of the owner or operator of an Atlantic herring carrier vessel, the owner or operator of an at-sea purchaser or processor that purchases or processes any Atlantic herring, Atlantic mackerel, squid, butterfish, scup, or black sea bass at sea must submit information identical to that required by paragraph (a)(1) of this section and provide those reports to the Regional Administrator or designee by the same mechanism and on the same frequency basis.

(g) *Additional data and sampling.* Federally permitted dealers must allow access to their premises and make available to an official designee of the Regional Administrator any fish purchased from vessels for the collection of biological data. Such data include, but are not limited to, length measurements of fish and the collection of age structures such as otoliths or scales.

[61 FR 34968, July 3, 1996]

Editorial Note: For Federal Register citations affecting §648.7, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

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*, 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*.

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, (RegionalAdministrator) 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 un-likely 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
Minimum Mesh Size Restrictions for Gillnet Gear				
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.			
Minimum Mesh Size Restrictions for Trawl Gear				
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.
Maximum Number of Hooks and Size Restrictions for Hook Gear* **				
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: The F calculated to rebuild the stock to Bmsy in 10 years, when ½ Bmsy<B<Btarget. For Atlantic halibut, the MSY control rule is: F = 0 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 on 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 effect 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 3rates 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 of 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 (ACCSP) 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 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, 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 then 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) * * *

(*1*) 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 mulitspecies 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(i).

(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′
CII3	42°22′	67°20′ [2]

[1] The intersection of the shoreline and the U.S.-Canada Maritime Boundary.
[2] 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.
CII3	42°22′	67°20′ [1]
G6	42°20′	67°20′
G7	42°20′	69°30′
G8	42°00′	69°30′
G9	42°00′	(2)

[1] The U.S.-Canada Maritime Boundary.
[2] 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
CII3	42°22′	67°20′	(1)
SNE1	40°24′	65°43′	(2)

[1] The U.S.-Canada Maritime Boundary.
[2] 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′

[1] South facing shoreline of Cape Cod.
[2] 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)

[1] Massachusetts shoreline.
[2] Cape Cod shoreline on Cape Cod Bay.
[3] Cape Cod shoreline on the Atlantic Ocean.
[4] 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′
CI4	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 ½-inch (1.2-cm) for the top leg, not larger than ⅝-inch (1.6-cm) for the bottom leg, and not larger than ¾-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 ⅜-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′
Cl1	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)

[1] 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′
42°49.5′	70°00′
42°49.5′	69°40′
43°12′	69°00′
(1)	69°00′

[1] 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 ⅜-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	(1)	(1)
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′

[1]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 loran 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′ [1]	

[1]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′ [1]

[1] 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	(1)	73°00′
Sc2	40°00′	73°00′
Sc3	40°00′	71°40′
Sc4	39°50′	71°40′
Sc5	39°50′	70°00′
Sc6	(2)	70°00′
Sc7	(3)	70°00′
Sc8	(4)	70°00′

[1] South facing shoreline of Long Island, NY.
[2] South facing shoreline of Nantucket, MA.
[3] North facing shoreline of Nantucket, MA.
[4] 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′	(1)
Sc10	41°00′	71°40′
Sc11	(2)	71°40′

[1] East facing shoreline of the south fork of Long Island, NY.
[2] South facing shoreline of RI.

(ii) *Exemption program requirements.* (A) A vessel fishing in the Scallop Dredge Exemption Area may not fish for, posses 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 gear 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.
C1I1	41°00′	67°20′
C1I2	41°00′	66°35.8′
G5	41°18.6′	66°24.8′ [1]
C1I3	42°22′	67°20′ [1]
C1I1	41°00′	67°20′ [1]

[1] 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°5O′	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 [1]

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′

[1] 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′

1 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)

1 Massachusetts shoreline.
2 Cape Cod shoreline on Cape Cod Bay.
3 Cape Cod shoreline on the Atlantic Ocean.
4 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)

1 Massachusetts shoreline.
2 Cape Cod shoreline on Cape Cod Bay.
3 Cape Cod shoreline on the Atlantic Ocean.
4 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′

1 Massachusetts shoreline.
2 U.S.-Canada maritime boundary.
3 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)

1 Massachusetts shoreline.
2 Cape Cod shoreline on Cape Cod Bay.
3 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′

[1] 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.
CIIH1	42°00′	67°20′
CIIH2	42°00′	67°00′
CIIH3	41°40′	66°43′
CIIH4	41°40′	67°20′
CIIH1	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 CLOSED 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
Inshore Boundary		
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		
Offshore Boundary		
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.
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
Inshore Boundary		
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		
Offshore Boundary		
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
Inshore Boundary		
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		
Offshore Boundary		
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
Inshore Boundary		
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		
Offshore Boundary		
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.
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 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)(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.

(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)(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 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.

(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 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 (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/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 selvedges 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′ [1]
CII 2	41°00′	66°35.8′
CII 1	41°00′	67°20′
Ytail 1	41°30′	67°20′

[1] 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 72o 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′

[1] South facing shoreline of Cape Cod, MA.
[2] 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′
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′

[1] East facing shoreline of Virginia.
[2] 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 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 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′ [3]
Follow the U.S. EEZ boundary south to HS3.		
HS3	66°45.5′	39°00′
HS4	71°40′	39°00′
HS5	71°40′	(2)

[1] The east facing shoreline of Cape Cod, MA.
[2] The south facing shoreline of Rhode Island.
[3] (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

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

This action does not involve special considerations of environmental justice-related issues pursuant to Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

VI. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a major rule as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Parts 712 and 716

Environmental protection, Chemicals, Hazardous substances, Health and safety, Reporting and recordkeeping requirements.

Dated: April 23, 2007.

Charles M. Auer,

Director, Office of Pollution Prevention and Toxics.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 712—[AMENDED]

■ 1. The authority citation for part 712 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

§ 712.30 [Amended]

■ 2. In § 712.30, in the table under the heading ''Voluntary HPV Challenge Program orphan (unsponsored) chemicals'' in paragraph (e), remove the entries CAS No. 150–50–5, Phosphorotrithious acid, tributyl ester and CAS No. 3338–24–7, Phosphorodithioic acid, O,O–diethyl ester, sodium salt.

PART 716—[AMENDED]

■ 3. The authority citation for part 716 continues to read as follows:

Authority: 15 U.S.C. 2607(d).

§ 716.120 [Amended]

■ 4. In § 716.120, in the table under the heading ''Voluntary HPV Challenge Program orphan (unsponsored) chemicals in paragraph (d), remove the entries Phosphorotrithious acid, tributyl ester, CAS No. 150–50–5 and Phosphorodithioic acid, O,O-diethyl ester, sodium salt, CAS No. 3338–24–7.

[FR Doc. 07–2104 Filed 4–27–07; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 04011–2010–4114–02; I.D. 042407B]

RIN 0648–AN17

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Closure of the Eastern U.S./Canada Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces the closure of the Eastern U.S./Canada Area to limited access NE multispecies days-at-sea (DAS) vessels for the remainder of the 2006 fishing year (i.e., through April 30, 2007). Based upon Vessel Monitoring System (VMS) reports and other available information, the Administrator, Northeast Region, NMFS (Regional Administrator) has determined that 100 percent of the total allowable catch (TAC) of Georges Bank (GB) cod allocated to be harvested from the Eastern U.S./Canada Area will be harvested by April 25, 2007. This action is being taken to prevent the 2006 TAC for GB cod in the Eastern U.S./Canada Area from being exceeded during the 2006 fishing year in accordance with the regulations implemented under Amendment 13 to the NE Multispecies Fishery Management Plan and the Magnuson-Stevens Fishery Conservation and Management Act.

DATES: The closure of the Eastern U.S./Canada Area to all limited access NE multispecies DAS vessels is effective 0001 hr local time, April 25, 2007, through 2400 hr local time, April 30, 2007.

FOR FURTHER INFORMATION CONTACT: Mark Grant, Fishery Management Specialist, (978) 281–9145, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: Regulations governing fishing activity in the U.S./Canada Management Area are found at § 648.85. These regulations authorize vessels issued a valid limited access NE multispecies permit and fishing under a NE multispecies DAS to fish in the Eastern U.S./Canada Area under specific conditions. The final GB cod TAC allocation for the 2006 fishing year was specified at 374 mt (April 28, 2006; 71 FR 25095). Once 100 percent of the GB cod TAC allocation specified for the U.S./Canada Management Area is projected to have been harvested, the regulations at § 648.85(a)(3)(iv)(E) require the Regional Administrator to close access to the Eastern U.S./Canada Area for all limited access NE multispecies DAS vessels to prevent over-harvesting the TAC allocations for the U.S./Canada Management Area.

Based upon VMS daily catch reports, dealer reports, and other available information, the Regional Administrator has determined that 100 percent of the 2006 GB cod TAC of 374 mt will have been harvested on April 25, 2007. Therefore, based on the available information described above, to ensure that the TAC for GB cod will not be exceeded, the Eastern U.S./Canada Area is closed to all limited access NE multispecies DAS vessels for the remainder of the 2006 fishing year, effective April 25, 2007, pursuant to § 648.85(a)(3)(iv)(E). Vessels that have made a correct VMS declaration indicating the intention to fish in the Eastern U.S./Canada Area (VMS U.S./Canada Area Code 2), and crossed the demarcation line prior to 0001 hours on April 25, 2007, may continue their trip and fish in the Eastern U.S./Canada Area. Vessels that are currently declared into the Eastern U.S./Canada Area, and have already ''flexed out'' or ''flexed west'', may not reenter the Eastern U.S./Canada Area after 0001 hours on April 25, 2007. Any vessel that leaves the Eastern U.S./Canada Area after 0001 hours on April 25, 2007, is prohibited from reentering the Eastern U.S./Canada Area for the remainder of the fishing year.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B) and (d)(3), the Assistant Administrator finds good cause to waive prior notice and opportunity for public comment, as well as the delayed effectiveness for this

action, because notice, comment, and a delayed effectiveness would be impracticable and contrary to the public interest. This action will close the Eastern U.S./Canada Area to groundfish DAS vessels. This action is required by the regulations at § 648.85(a)(3)(iv)(E) and is non-discretionary. In addition, since 100 percent of the GB cod is projected to be harvested by April 25, 2007, there is insufficient time to allow for public notice, comment, and delayed effectiveness before 100 percent of the TAC will be harvested.

Given the increasing harvest rate and the small GB cod TAC specified for 2006, the time necessary to provide for prior notice, opportunity for public comment, or delayed effectiveness would prevent the agency from ensuring that the 2006 TAC for GB cod is not exceeded during the 2006 fishing year. It was not possible to take this action earlier to provide more time for public comment because of the increasing GB cod harvest rate, the small GB cod TAC, and the ability of NMFS to monitor the harvest (the projection that 100 percent of the GB cod TAC would be harvested by April 25, 2007, was not available until April 23, 2007). Exceeding the 2006 TAC for GB cod would increase mortality of this overfished stock beyond that evaluated during the development of Amendment 13, resulting in decreased revenue for the NE multispecies fishery, increased economic impacts to vessels operating in the Eastern U.S./Canada Area, a reduced chance of achieving optimum yield in the groundfish fishery, and unnecessary delays to the rebuilding of this overfished stock.

The public has been able to obtain information on the rate of harvest of the GB cod TAC via the Northeast Regional Office website (*http://www.nero.noaa.gov*) to provide at least some advanced notice of the harvest totals and potential action to prevent the TAC for GB cod from being exceeded during the 2006 fishing year. Further, the potential for this action was considered and open to public comment during the development of Amendment 13. Therefore, any negative effect the waiving of public comment and delayed effectiveness may have on the public is mitigated by these factors.

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

Dated: April 24, 2007.

James P. Burgess,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 07–2083 Filed 4–24–07; 2:49 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.; ID 080204G]

RIN 0648–AS34

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

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

ACTION: Interim final rule; request for comments.

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

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

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

- E-mail: *FW40A@NOAA.gov*. Include in the subject line the following: ''Comments on the Proposed Rule for Groundfish Framework 40–A.''
- Federal E–Rulemaking Portal: *http://www.regulations.gov*.
- Mail: Paper, disk, or CD-ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on the Interim Rule for Groundfish Framework 40–A.''
- Fax: (978) 281–9135.

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

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

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

SUPPLEMENTARY INFORMATION:

Background

The Council developed Amendment 13 to bring the FMP into compliance with all Magnuson-Stevens Act requirements, including ending overfishing and rebuilding all overfished groundfish stocks. Amendment 13 was partially approved by the Secretary of Commerce on March 18, 2004. A final rule implementing the approved measures was published April 27, 2004 (69 FR 22906), and most measures became effective on May 1, 2004. Amendment 13 adopted a suite of management measures to reduce fishing mortality on groundfish stocks that are either overfished, or where overfishing is occurring. For several stocks, the fishing mortality targets adopted in Amendment 13 represented substantial reductions from previous levels. For other stocks, the fishing mortality targets were set at or above previous levels, and fishing mortality could remain the same or potentially increase without causing overfishing. Because most fishing trips in this fishery catch a wide range of species, and the principal management tool used in the FMP to reduce fishing effort is DAS, the reduction in DAS implemented by Amendment 13 impacts numerous species. It is difficult to design management measures that selectively change fishing mortality for individual species. Because the management measures in Amendment 13 were designed to reduce fishing mortality where necessary, they may also reduce fishing mortality more than is necessary for other, healthier stocks due to the multispecies nature of the fishery. As a result, yield from healthier stocks may have been reduced and the ability of the FMP to ensure OY from these stocks may be diminished. OY is the amount of fish that will provide the greatest overall benefit to the nation. Because of the complexity of Amendment13, 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 in 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 in 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 CAI SAP from having either a gillnet or trawl onboard.

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

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

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

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

Response: The commenters' concerns should be resolved by the fact that non-Sector vessels will not be allowed to participate in the SAP. A full explanation of the reasons for the disapproval of the management measures that pertain to the non-Sector vessels in 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 Adminstrator 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 different 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 in 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 US./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 flexbility 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 begining 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:

GULF OF MAINE COD STOCK AREA

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

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.
CAII3	42° 22′	67° 20′ (1)
SAP1	42° 20′	67° 20′
SAP2	42° 20′	67° 40′
SAP3	41° 10′	67° 40′
SAP4	41° 10′	67° 20′
SAP5	42° 10′	67° 20′
SAP6	42° 10′	67° 10′
CAII3	42° 22′	67° 20′ (1)

(1) U.S./Canada maritime boundary.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(I) *No discard provision and DAS flips.* A vessel fishing in the Eastern U.S./Canada Haddock SAP Pilot Program under a Category B DAS may not discard legal-sized cod. If a vessel fishing under a Category B DAS harvests and brings on board more legal-sized cod than the landing limit specified under paragraph (b)(8)(v)(F) of this section, the vessel operator must notify NMFS prior to crossing the demarcation line via VMS on its return trip to port to initiate a DAS flip to Category A DAS. Once this notification has been received by NMFS, the vessel will automatically be switched to fishing under a Category A DAS. For a vessel that notifies NMFS of a DAS flip, the Category B DAS that have accrued between the time the vessel started accruing Category B DAS at the beginning of the trip (i.e., at the time the vessel crossed into the Eastern U.S./Canada Area at the beginning of the trip) and the time the vessel declared its DAS flip will be accrued as Category A DAS, and not Category B DAS. Once such vessel has initiated the DAS flip and is fishing under a Category A DAS, the prohibition on discarding legal-sized cod no longer applies.

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

(K) *Mandatory closure of Eastern U.S./Canada Haddock SAP Pilot Program.* When the Regional Administrator projects that the TAC allocation specified in paragraph (b)(8)(v)(H) of this section has been caught by vessels fishing under Category B DAS, NMFS shall prohibit the use of Category B DAS in the Eastern U.S./Canada Haddock SAP Pilot Program, through notice in the **Federal Register**, consistent with the Administrative Procedure Act. In addition, the closure regulations described in paragraph (a)(3)(iv)(E) of this section shall apply to the Eastern U.S./Canada Haddock SAP Pilot Program.

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

* * * * *

[FR Doc. 04–25722 Filed 11–17–04; 10:42 am]

BILLING CODE 3510–22–S

both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is May 26, 2005.

DATES: The regulation amending 12 CFR part 617, published on April 12, 2005 (70 FR 18965), is effective May 26, 2005.

FOR FURTHER INFORMATION CONTACT: Mark Johansen, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TTY (703) 883–4434; or Howard Rubin, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

(12 U.S.C. 2252(a)(9) and (10))

Dated: May 26, 2005.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 05–10874 Filed 5–31–05; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 648

[Docket No. 050314072–5126–02; I.D. 030705D]

RIN 0648–AS33

Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Framework Adjustment 40B

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

ACTION: Final rule.

SUMMARY: NMFS is implementing approved measures contained in Framework Adjustment 40B (FW 40B) to the NE Multispecies Fishery Management Plan (FMP). FW 40B was developed by the New England Fishery Management Council (Council) to modify existing effort control programs implemented under Amendment 13 to the FMP to improve the effectiveness of these programs, to create additional opportunities for commercial fishing vessels in the fishery to target healthy groundfish stocks, and to increase the information available to assess groundfish bycatch in the herring fishery. This final rule implements several revisions to the Days-at-Sea (DAS) Leasing and Transfer Programs, modifies provisions for the Closed Area (CA) II Yellowtail Flounder Special Access Program (SAP), revises the allocation criteria for the Georges Bank (GB) Cod Hook Sector (Sector), establishes a DAS credit for vessels standing by an entangled whale, implements new notification requirements for Category 1 herring vessels, and removes the net limit for Trip gillnet vessels.

DATES: Effective June 1, 2005.

ADDRESSES: Copies of FW 40B, 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 final rule. The EA/RIR/FRFA are also accessible via the Internet at *http://www.nero.nmfs.gov.* 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 the burden-hour estimates or other aspects of the collection-of-information requirements contained in this 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 *drostker@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

The Council developed Amendment 13 in order to bring the FMP into conformance with all Magnuson-Stevens Fishery Conservation and Management Act (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 in the amendment was published April 27, 2004 (69 FR 22906) and became effective May 1, 2004. Because of the mixed-stock nature of the NE multispecies fishery, management measures to reduce mortality on overfished stocks adopted in Amendment 13, including effort reductions, are expected to reduce fishing mortality more than is necessary on other, healthy stocks. As a result, yield from healthy stocks may be sacrificed and the FMP may not provide for the fishery to harvest the optimum yield (OY), the amount of fish that will provide the greatest overall benefit to the Nation, from all stocks managed under the FMP for a given year.

Amendment 13 categorized the DAS allocated to each NE multispecies permit as Category A, B (Regular), B (Reserve), or 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. Category C DAS cannot be used unless authorized at some time in the future. The regulations implementing Amendment 13 created one opportunity to use Category B DAS: A SAP designed to target GB yellowtail flounder in CA II. Framework Adjustment 40A (FW 40A), implemented November 19, 2004 (69 FR 67780), provided additional opportunities to use Category B DAS by creating two SAP's to target GB haddock and a pilot program designed for using Category B (Regular) DAS outside of a SAP (*i.e.*, the Regular B DAS Pilot Program). These programs are intended to allow vessels to target healthy groundfish stocks without compromising the rebuilding programs of other groundfish stocks, thus enabling the industry to harvest OY from the healthy stocks.

Since the implementation of Amendment 13 and submission of FW 40A, several issues have been raised concerning the overall approach to controlling effort. FW 40B proposes to address these new issues by improving the effectiveness of the Amendment 13 effort control program, including the opportunities developed to target healthy stocks and other measures to facilitate adaptation to the Amendment 13 effort reductions, as well as collect additional information regarding the bycatch of regulated species in the herring fishery.

Comments and Responses

Thirteen letters were received regarding the proposed rule (March 29, 2005; 70 FR 15803) to implement FW 40B, including five letters from groups representing the fishing industry. Two letters were received that were not relevant to the proposed action, including one comment that was directed towards the recent closure of the Eastern U.S./Canada Area on April 1, 2005 (70 FR 16758). Since these comments were not directed at the proposed measures under FW 40B, NMFS has not responded to these comments.

DAS Transfer Program Modifications

Comment 1: Four commenters supported eliminating the tonnage criterion and reducing the conservation tax on DAS exchanged through the DAS Transfer Program. One industry group indicated that these revisions would improve the practical utility of the program. Another industry group supported this provision because it would also bring the DAS Transfer Program more in line with the DAS Leasing Program and would make this program more accessible to larger numbers of potential users.

Response: NMFS agrees that these modifications will facilitate and encourage the use of the DAS Transfer Program and implements these modifications through this final rule.

Comment 2: One industry group was concerned that the DAS Transfer Program has the potential to create distinct classes of vessel owners based on the allocation of DAS and the potential for vessels with excess capital to consolidate many DAS allocations onto one vessel. Because vessels that have consolidated DAS onto fewer vessels have a greater potential to continue fishing if future effort reductions are necessary, this group urged NMFS to evaluate the implications of the DAS Transfer Program for socio-economic affects.

Response: An evaluation of the economic and social impacts of the DAS Transfer Program was conducted during the development of Amendment 13. Sections 5.4 and 5.6 of the Final Supplemental Environmental Impact Statement (FSEIS) for Amendment 13 acknowledged that some vessels would be allocated more DAS under Amendment 13 than others. This analysis indicates that the DAS Leasing or Transfer Programs could help offset some of the impacts from the effort reductions. While some vessels have been allocated more DAS under Amendment 13 than others, access to sufficient capital to consolidate DAS allocations onto one vessel is independent of a vessel's DAS allocation. For example, a vessel with few NE multispecies DAS may have relied upon income generated from other fisheries instead of the NE multispecies fishery. A vessel's NE multispecies DAS allocation is not the only source of revenue for a particular vessel. Access to capital is dependent upon several factors, including the fixed costs of a business, assets of the vessel owner, and potential sources of revenue. Information specifying a vessel's fixed costs, the assets of the vessel owner, or sources of revenue outside of the NE multispecies fishery are currently not available. As a result, the analysis conducted for Amendment 13 and FW 40B, based on the best scientific information available, was not able to fully assess an individual's access to capital. Further, this analysis indicates that the benefits of the DAS Transfer Program would likely outweigh the costs associated with this program. Finally, the information available indicates that the DAS Transfer Program is consistent with applicable law. The Council is considering modifications to the DAS Transfer and Leasing Programs as part of FW 42 to the FMP for possible implementation during the 2006 fishing year. An evaluation of the DAS Transfer and Leasing Programs to address the industry group's concerns about the effect of DAS consolidation may be undertaken during the development of FW 42 if sufficient information capable of documenting a vessel's ability to access capital is available.

Comment 3: One commenter believed that the 20-percent conservation tax on DAS exchanged through the DAS Transfer Program was still too high to encourage vessel participation.

Response: Since no vessels have elected to participate in the DAS Transfer Program to date, there is no precise method to accurately determine whether the conservation tax or the other requirements (i.e., the transferring vessel must forfeit all state and Federal fishing permits) of the DAS Transfer Program are impeding vessel participation in this program. Based on Council deliberation and telephone conversations with members of the fishing industry, NMFS believes that reducing the conservation tax to 20 percent may be sufficient to encourage at least some vessels to participate in the DAS Transfer Program. Revisions to the other requirements of the DAS Transfer Program to encourage participation in the program were considered, including allowing vessels receiving DAS to obtain other non-groundfish permits and allowing the removal of a proxy vessel instead of the transferring vessel. However, these other measures were rejected by the Council during the development of FW 40B.

DAS Leasing Program Modifications

Comment 4: Four commenters supported the proposed one-time opportunity to downgrade a vessel's baseline for the purposes of participating in the DAS Leasing Program. However, the State of Maine Department of Marine Resources (State of Maine) expressed concerns that the downgraded baseline would cause confusion as to the baseline that applies when vessels are sold or replaced.

Response: NMFS supports measures that would facilitate participation in the DAS Leasing Program and implements this measure through this final rule. While the downgraded DAS Leasing Program baseline may be somewhat confusing at first, NMFS believes that this change is fairly straightforward and can be sufficiently explained in the Small Entity Compliance Guide permit holder letter it will mail to permit holder letters in conjunction with the publication of this final rule.

Changes to Incidental Total Allowable Catches (TAC's)

Comment 5: One commenter expressed general support for modifying the incidental catch TAC's for the purposes of allocating GOM cod and GOM haddock TAC to the Western Gulf of Maine (WGOM) Closure Area Rod/Reel Haddock SAP.

Response: NMFS has determined that the WGOM Closure Area Rod/Reel Haddock SAP as currently analyzed and recommended in FW 40B is inconsistent with National Standard 2 of the Magnuson-Stevens Act, as well as the objectives of the FMP. NMFS has therefore disapproved this provision and is not implementing it in this final rule. A full explanation of the reasons for the disapproval of the WGOM Rod/Reel Haddock SAP is contained in the preamble of this final rule under ''Disapproved Measures.''

Research Set-Aside TAC

Comment 6: One industry group opposed the measure to set aside 10 percent of the GB cod incidental catch TAC to facilitate research, despite recognizing the need to account for the mortality associated with research activities. This commenter acknowledged the deficiencies in the proposed measure highlighted by NMFS in the proposed rule (*i.e.*, insufficient detail to implement this measure) and recommended disapproving this measure in FW 40B and remanding it to the Council to consider in a future action.

Response: NMFS concurs that the details necessary to implement this provision were not adequately described in the FW 40B document. The FW 40B document did not establish criteria to evaluate which research projects should be allocated research set-aside TAC for GB cod. As a result, it is not possible to assess whether this measure would pose equity concerns under National Standard 4. Because this proposed provision would not set aside research TAC for other species, it could also

undermine the conservation measures of the FMP. Therefore, NMFS has determined that this provision is not consistent with National Standards 1, 2, or 4, has disapproved this measure, and is not implementing this measure through this final rule. A full explanation of the reasons for the disapproval of the research set-aside TAC is contained in the preamble of this final rule under ''Disapproved Measures.'' Noting the proposed measure's deficiencies, NMFS has provided recommendations to the Council to specify criteria to evaluate applications to utilize GB cod research set-aside TAC as well as a mechanism to allocate this TAC during future fishing years. Additionally, NMFS has recommended that the Council specify research TAC's for other groundfish stocks to fully account for the mortality associated with research activities. The Council could clarify the noted deficiencies in this provision and implement these revisions through a future management action.

Comment 7: One industry group and the State of Maine supported the research set-aside TAC for GB cod. However, the industry group suggested that there is limited information provided in the proposed measure to evaluate the equity of this measure. This group noted that this measure would take away TAC available to all vessels through the Regular B DAS Pilot Program and allocate it to a limited pool of vessels conducting research. Further, this group was concerned that the benefits of this allocation may not accrue to the entire fishery, as research would likely be directed at establishing SAP's benefitting specific participants instead of measures that would benefit the fishery as a whole.

Response: NMFS agrees that there is limited information available to adequately assess the impacts of this proposed measure and to determine consistency with the Magnuson-Stevens Act, including National Standards 1 and 4. As specified in the proposed rule, there are no criteria to evaluate which research projects should be allocated research set-aside TAC for GB cod under this proposed measure. For these reasons, as well as those specified in the preamble of this final rule under ''Disapproved Measures,'' NMFS has disapproved this provision and is not implementing this measure in this final rule. NMFS supports research that would provide benefits to the entire fishery, but acknowledges that the Council's Research Steering Committee reviews research priorities for the NE multispecies fishery on a yearly basis.

WGOM Rod/Reel Haddock SAP

Comment 8: Six commenters expressed general support for the WGOM Rod/Reel Haddock SAP, with one industry group expressing strong support for this SAP. Four commenters believed that there are sufficient controls on participation and mortality to minimize any adverse impacts resulting from this SAP.

Response: NMFS has determined that the information available to support this SAP was not representative of the action proposed and is of limited use in evaluating the potential impacts of the proposed measures. In addition, while this SAP includes measures that would limit the mortality of non-target species, including establishing a cap on the amount of GOM cod that may be caught and incentives to encourage vessels to avoid catching GOM cod, this SAP, as recommended by the Council and analyzed in FW 40B, fails to adequately justify that the amount of bycatch of GOM cod would be minimized to the extent practicable. Therefore, this proposed measure is inconsistent with National Standard 9 and section 303(a)(11) of the Magnuson-Stevens Act. Furthermore, this proposed SAP is not consistent with the suggested minimum criteria for the development and approval of a SAP as specified in the Amendment 13 FSEIS because the limited information available to support this SAP is not based on an experimental fishery and does not indicate that vessels could effectively minimize bycatch of GOM cod. Therefore, NMFS has disapproved this provision because the proposed SAP is not consistent with National Standard 2, National Standard 9, and section 303(a)(11) of the Magnuson-Stevens Act as well as the objectives of the proposed SAP and the FMP. A full explanation of the reasons for the disapproval of the WGOM Rod/Reel Haddock SAP is contained in the preamble of this final rule under ''Disapproved Measures.''

Comment 9: Two commenters indicated that this SAP represents the only opportunity for vessels to use Category B DAS in the GOM and the only SAP allowing access to the WGOM Closure Area.

Response: NMFS disagrees that this SAP provides the only means of targeting healthy groundfish stocks in the GOM using a Category B DAS. While this proposed SAP would represent the only opportunity for limited access NE multispecies vessels to access a closed area to target groundfish in the GOM, the Regular B DAS Pilot Program implemented under FW 40A allows groundfish vessels to target healthy groundfish stocks throughout the GOM using Category B DAS.

Comment 10: Two commenters stated that NMFS should only allow limited access NE multispecies vessels to access this SAP due to concerns over the potential impact of open access Handgear B vessels fishing in this area.

Response: As recommended by the Council and approved by NMFS, only limited access NE multispecies vessels are allowed access to this SAP.

Comment 11: Two industry groups indicated that the information available to support this SAP is not the best scientific information available and is not sufficient to accurately estimate cod catch resulting from this SAP. The State of Maine acknowledged the limited data available to support this SAP, but suggested, along with one industry group, that NMFS consider the positive results of an ongoing experimental fishery in the WGOM Closure Area that preliminary data indicate is capable of targeting haddock without catching cod.

Response: NMFS is aware of the experimental fishery currently being conducted in the WGOM Closure Area. However, to date, no final reports documenting the results of the early experimental activities have been submitted to NMFS. In addition, NMFS is required to evaluate proposed measures based on the best scientific information available. Information from the experimental fishery is not considered the best scientific information available because it is currently not available for review and was not integrated into the EA to analyze the biological, social, and economic impacts of the proposed SAP. Therefore, at this time, the best scientific information available to assess the impacts of the proposed fishing activity for the WGOM Closure Area Rod/Reel Haddock SAP is contained in the FW 40B document. NMFS cannot use preliminary data from an ongoing experimental fishery to evaluate the impacts of this proposed SAP.

Comment 12: One industry group believed that the requirement to use a vessel monitoring system (VMS) in the WGOM Closure Area Rod/Reel Haddock SAP is inconsistent with National Standard 7 because VMS requirements do not minimize costs and duplicate information submitted via vessel trip reports (VTR's). This commenter was concerned that the yearly operational costs associated with VMS usage exceed the value of the expected catch of haddock and suggested that the SAP be approved without the VMS requirement.

Response: NMFS believes that the use of VMS is critical to the successful monitoring and enforcement of the

provisions of recently approved SAP's. Without VMS, real-time monitoring of TAC's associated with SAP's, access to areas, and vessel activity for the purposes of enforcement would not be possible. Real-time monitoring of TAC's is not possible using VTR's alone due to the delay in obtaining and entering information from VTR's. VMS catch reports only require vessels to submit the amount of target species and specific stocks of concern anticipated to be caught in the SAP, unlike VTR's which require vessels to submit the amount of all species caught and discarded. Therefore, VMS catch reports do not duplicate the information submitted via VTR's, but augment this data to provide more real-time monitoring of SAP TAC's. Without such real-time monitoring, tracking catch rates of stocks of concern managed by small TAC's would not be possible, thereby increasing the likelihood of exceeding these TAC's and compromising the rebuilding objectives of the FMP. NMFS also disagrees that the costs associated with this SAP were not minimized. NMFS has certified two vendors to provide VMS services for the Northeast region. With the addition of this second vendor, a wider range of VMS units of varying costs are available to vessels, allowing vessels to choose the more economical vendor and unit. Furthermore, without adequate information to assess the expected catch of regulated species from operations proposed in this SAP, it is impossible to accurately predict expected revenues resulting from this SAP. Available information indicates that catch would primarily be composed of cod and haddock, though vessels would not be allowed to land cod. However, vessels would not be limited by a haddock possession limit. Therefore, it is possible that the catch of haddock alone could cover at least the operational costs of VMS.

Comment 13: One industry group suggested that NMFS change the regulations to allow Handgear A vessels to fish in the WGOM Closure Area Rod/Reel Haddock SAP between March 1 and March 20.

Response: As explained in the response to Comment 8, NMFS has disapproved the proposed WGOM Closure Area Rod/Reel Haddock SAP. Since NMFS has disapproved this SAP for the reasons specified in the ''Disapproved Measures'' section of the preamble of this final rule, no changes to this measure of the SAP were made.

Comment 14: One industry group indicated that it would not be fair and equitable under National Standard 4 if NMFS disapproved the WGOM Closure Area Rod/Reel Haddock SAP because hook fishermen would not have access to inshore areas where haddock could be profitably targeted, resulting in an unfair allocation of the haddock catch among all fishermen.

Response: The National Standard Guidelines indicate that management measures may have different effects on persons of different geographic locations, provided they are reasonably calculated to promote conservation. The WGOM Closure Area was implemented by Framework 25 on March 31, 1998 (63 FR 15326) to reduce fishing mortality on GOM cod. GOM cod are still considered overfished and overfishing is still occurring. Therefore, there is still a need to maintain the WGOM Closure Area to limit mortality on GOM cod and continue rebuilding this stock. Accordingly, NMFS believes that the disapproval of the WGOM Closure Area Rod/Reel Haddock SAP through this final rule would not constitute an unfair or inequitable allocation of the haddock catch among fishery participants, as specified in National Standard 4, because it is reasonably calculated to promote conservation as required by the Magnuson-Stevens Act. Despite the disapproval of the WGOM Closure Area Rod/Reel Haddock SAP through this final rule, vessels are still able to target GOM haddock throughout the GOM to help achieve OY for this stock.

Comment 15: The Council commented that the expected economic returns from the WGOM Closure Area Rod/Reel Haddock SAP would help mitigate revenue reductions to hook vessels and would justify administrative costs associated with this SAP.

Response: In their comment, the Council used the expected revenue returns resulting from the GOM haddock TAC being fully harvested. However, the SAP is also regulated by an incidental catch TAC for GOM cod. As proposed, the SAP would be closed if either of these TAC's are harvested. Based on information used to support this SAP, it is highly unlikely that vessels would be able to fully harvest the available haddock TAC without first catching the incidental catch TAC for GOM cod. Therefore, the economic benefits of this SAP could likely be less than the $140,000 used by the Council in support of this SAP. Due to limited data accurately depicting catch rates by commercial vessels operating within the SAP as proposed, it is difficult to accurately predict the expected economic revenues from this provision. The administrative costs associated with this SAP are not described in the FW 40B document. Therefore, based on the information available as provided in FW 40B, it is not possible to reliably estimate if the economic benefits of this SAP as recommended by the Council would justify the administrative costs associated with implementing this measure.

Comment 16: The Council noted that the proposed regulations regarding catch reports for this SAP were inconsistent with those specified in the FW 40B document.

Response: As explained in the response to Comment 8 and in the ''Disapproved Measures'' section of the preamble to this final rule, NMFS has disapproved the proposed WGOM Closure Area Rod/Reel Haddock SAP. Therefore, the proposed reporting requirements for this SAP are not revised by this final rule.

Comment 17: One industry group recommended that NMFS should approve the WGOM Closure Area Rod/Reel Haddock SAP and use data from this 2-year pilot program to evaluate the impacts of this SAP.

Response: For the reasons specified in the ''Disapproved Measures'' section of the preamble of this final rule, NMFS has determined that the information available to support this SAP indicates that this proposed measure is not consistent with the FMP, National Standard 9, and section 303(a)(11) of the Magnuson-Stevens Act. Therefore, it would be inappropriate to approve this SAP simply to provide more data on the efficacy of its proposed measures.

CA II Yellowtail Flounder SAP

Comment 18: Three commenters expressed general support for the proposed measures to revise the CA II Yellowtail Flounder SAP. One industry group supported the proposed mechanism to adjust the number of trips into the CA II Yellowtail Flounder SAP based on the available GB yellowtail flounder TAC. Another industry group indicated that this mechanism, in allowing the Regional Administrator to authorize zero trips into this SAP for a particular fishing year, would increase vessel safety, enable vessels to utilize more of the GB haddock TAC, and maximize the benefit from the GB yellowtail flounder TAC.

Response: NMFS agrees that revising the CA II Yellowtail Flounder SAP as proposed would offer a suite of benefits to the fishing industry. During the 2004 fishing year, the rapid harvest of the GB yellowtail flounder TAC from the CA II Yellowtail Flounder SAP and the Regular B DAS Pilot Program implemented by FW 40A prompted NMFS to close and later reopen the Eastern U.S./Canada Area under reduced GB yellowtail flounder

possession limits to ensure that the TAC remained available throughout the fishing year. However, these actions also limited the ability of vessels to harvest the available GB cod and GB haddock TAC from the Eastern U.S./Canada Area. The proposed measure to allow for the modification of the number of trips into the CA II Yellowtail Flounder SAP enables the Regional Administrator to adjust the number of trips more efficiently and effectively in response to changing stock conditions. In addition, this provision would help ensure that the GB yellowtail flounder TAC is not harvested prior to the end of the fishing year, thereby increasing the likelihood that the Eastern U.S./Canada Area will remain open as long as possible to allow vessels full opportunity to harvest the available GB cod and GB haddock TAC's and achieve OY from the fishery. Therefore, NMFS has approved this provision and is implementing it through this final rule.

Comment 19: The provision to reduce the GB yellowtail flounder trip limit from 30,000 lb (13,605 kg) to 10,000 lb (4,536 kg) per trip was opposed by one industry group. This group felt that this trip limit is insufficient to cover costs associated with trips into this SAP. Further, the State of Maine recommended that NMFS calculate the GB yellowtail flounder trip limits for vessels fishing under a Category A or B DAS based on projected effort using a Category A DAS effort and other uses of GB yellowtail flounder TAC.

Response: The reduction of the GB yellowtail flounder trip limit in FW 40B is intended to reduce the possibility that GB yellowtail flounder landings from the CA II Yellowtail Flounder SAP would result in the premature closure of the Eastern U.S./Canada Area that occurred during the 2004 fishing year. This reduction will also help ensure that the GB yellowtail flounder TAC is not exceeded in future fishing years. The analysis prepared for FW 40B indicates that, unless vessels are able to harvest greater amounts of species other than GB yellowtail flounder inside of the CA II Yellowtail Flounder SAP, or to redirect effort inside and outside of the SAP on the same trip, potential economic returns from a 10,000-lb (4,536-kg) GB yellowtail flounder trip limit may be insufficient to encourage participation in this SAP. Under the current regulations, vessels are able to fish inside the CA II Yellowtail Flounder SAP, in the Eastern U.S./Canada Haddock SAP Pilot Program, and in the Eastern U.S./Canada Area outside of these two SAP's on the same trip. Therefore, the current regulations enable vessels the flexibility to target other species in other areas during trips into the CA II Yellowtail Flounder SAP. This flexibility in operations could, as indicated in the EA prepared for FW 40B, increase the potential revenue available to vessels fishing in this SAP and may be sufficient to at least cover costs associated with trips into this SAP. In addition, while this final rule changes the GB yellowtail flounder trip limit to 10,000 lb (4,536 kg), the Regional Administrator has the authority to adjust this trip limit to a maximum of 30,000 lb (13,608 kg) after considering several factors related to TAC availability and fishery performance similar to those recommended by the State of Maine. Outside of the CA II Yellowtail Flounder SAP, there is no specified trip limit for GB yellowtail flounder, however. Under the current regulations, the Regional Administrator is authorized to modify the trip limits throughout the U.S./Canada Management Area, including implementing a trip limit for vessels fishing outside of the CA II Yellowtail Flounder SAP, once 30 percent and/or 60 percent of the U.S./Canada Management Area TAC allocations for GB cod, GB haddock, or GB yellowtail flounder are projected to be harvested. Therefore, the Regional Administrator can establish a GB yellowtail flounder trip limit as recommended by the State of Maine, but only when at least 30 percent of the TAC for GB cod, GB haddock, or GB yellowtail flounder has been harvested.

Comment 20: The State of Maine expressed concern that the proposed 4,000-mt TAC for GB yellowtail flounder for the 2005 fishing year may be insufficient to maintain a yellowtail flounder fishery outside of the CA II Yellowtail Flounder SAP, resulting in the premature closure of the Eastern U.S./Canada Area during the 2005 fishing year. The State of Maine was also concerned that premature closure of this area could lead to underharvesting the U.S./Canada Management Area TAC's, leading to future reductions in TAC allocations for the Area based upon this underharvest.

Response: The information used to support the proposed TAC of 4,260 mt for GB yellowtail flounder for the 2005 fishing year indicates that the current fishing mortality on GB yellowtail flounder is still higher the appropriate level of fishing mortality required to rebuild the stock. NMFS concurs that the proposed GB yellowtail flounder TAC of 4,260 mt in the U.S./Canada Management Area may be insufficient to support both the CA II Yellowtail Flounder SAP and a yellowtail flounder fishery outside of the SAP without likelihood of an early closure of the Eastern U.S./Canada Area. Therefore, NMFS has approved the proposed revisions to the measures regulating the CA II Yellowtail Flounder SAP and is implementing these revisions through this final rule. Further, based on the authority granted the Regional Administrator in this final rule and specified in the ''Approved Measures'' section of this final rule, it may be appropriate for the Regional Administrator to authorize zero trips into the CA II Yellowtail Flounder SAP for the 2005 fishing year, after consulting with the Council at its June meeting. A final notification of such a determination would be published in the **Federal Register**, consistent with the Administrative Procedure Act. This determination would help to ensure that the entire GB yellowtail flounder TAC would be available for vessels fishing outside of the CA II Yellowtail Flounder SAP, increasing the likelihood that the TAC would not be harvested during the 2005 fishing year and reducing the chance that the Eastern U.S./Canada Area would be prematurely closed.

Minimum Effective Effort Allocation

Comment 21: Four commenters, including Senator Collins, the State of Maine, the Council, and one industry group supported allocating 10 Category B Reserve DAS to vessels allocated zero Category A and B DAS under Amendment 13. Addressing the equity concerns expressed by NMFS in the proposed rule for FW 40B, Senator Collins indicated that it is unfair that vessels were not allocated DAS under Amendment 13. Both Senator Collins and the Council noted that Category A DAS are more valuable and allow more opportunities to fish than only Category B Reserve DAS. The Council suggested that vessels issued any Category A DAS under Amendment 13 have more opportunities to fish for groundfish or benefit from their limited DAS allocation through leasing DAS than those who did not receive any DAS under Amendment 13. The Council further contended that Amendment 13 anticipated different allocations among individual vessels.

Response: Amendment 13 did anticipate that DAS allocations would be different among vessels based upon the qualification criteria implemented. These criteria were implemented to eliminate latent effort and ensure that vessels recently active in the fishery would be able to continue to participate in the fishery. All vessels issued a limited access NE multispecies permit were subject to the same qualification

criteria under Amendment 13. However, the proposed measure would allocate 10 Category B Reserve DAS only to the 448 vessels that did not receive any Category A or B (Regular or Reserve) DAS under Amendment 13. These vessels did not qualify for DAS under Amendment 13 because they have not recently participated in the fishery and therefore failed to meet the qualification criteria approved by the Council and implemented under Amendment 13. Under Amendment 13, only vessels that were recently active in the fishery received a DAS allocation. Nineteen vessels were allocated fewer than 10 Category A and B (Regular and Reserve) DAS in total under Amendment 13. Although these vessels have recently participated in the fishery and therefore met the qualification criteria for continued participation in the fishery under Amendment 13, under the proposed measure they would receive fewer DAS than those who have not been recently active in the fishery and did not qualify for DAS under Amendment 13. As a result, these 19 vessels would potentially bear more of the burden for the effort reductions under Amendment 13 than vessels receiving additional DAS under this proposed measure, without any conservation justification. NMFS acknowledges that vessels allocated at least some Category A DAS have the flexibility to fish these DAS and could lease these DAS to another vessel, thereby gaining at least some benefit from these DAS. However, vessels that were not allocated any DAS under Amendment 13 could still participate in the fishery by leasing DAS from another vessel. Since this measure would not ensure that all vessels are allocated the same minimum level of DAS, NMFS interprets this measure to be inconsistent with National Standard 4 of the Magnuson-Stevens Act because it allocates DAS to a particular group of vessels without providing any conservation justification. Therefore, for these reasons and the reasons presented in the ''Disapproved Measures'' section of the preamble of this final rule, NMFS has disapproved this measure and is not implementing this measure in this final rule.

Comment 22: The Council indicated that some Council members believed the proposed measure to allocate 10 Category B Reserve DAS to vessels allocated zero DAS under Amendment 13 was an implicit promise when Amendment 13 was voted on.

Response: Notwithstanding the Council's intent to address the minimum effective effort issue in a future management action, the measure proposed in FW 40B to allocate a minimum amount of DAS to vessels allocated zero DAS under Amendment 13 is not fair and equitable to all limited access NE multispecies permit holders as described in the ''Disapproved Measures'' section of this final rule. For this reason and the reasons described in the ''Disapproved Measures'' section of this final rule, NMFS has disapproved this measure.

Comment 23: One industry group supported allocating 10 Category B Reserve DAS to vessels allocated zero Category A and B DAS under Amendment 13, but suggested that NMFS expand this measure to ensure that all vessels are allocated a minimum of 10 B Reserve DAS. This group indicated that the proposed measure would not be fair and equitable to vessels allocated fewer than 10 DAS total under Amendment 13, stating that these vessels would be disadvantaged by the proposed measure.

Response: NMFS agrees that this measure, as proposed, is not fair and equitable to all vessels participating in the NE multispecies fishery. The potential solution proposed by the industry group to ensure that all vessels are allocated a minimum amount of DAS might be fair and equitable to all vessels under the Magnuson-Stevens Act. However, since NMFS does not have the authority to add substantial measures to the provisions recommended by the Council, NMFS had disapproved this proposed measure for the reasons specified in the ''Disapproved Measures'' section of the preamble of this final rule.

GB Cod Hook Sector Revisions

Comment 24: One industry group supported revisions to the GB Cod Hook Sector provisions that would allow all vessels, regardless of fishing history, to join the GB Cod Hook Sector and apply their landings of GB cod, regardless of gear used, towards the GB Cod Hook Sector's GB cod TAC. This group indicated that these revisions properly address fairness and equity issues and are consistent with the Council intent when approving the GB Cod Hook Sector.

Response: NMFS has approved the new GB Cod Hook Sector provisions.

Comment 25: The State of Maine expressed concern that the GB Cod Hook Sector TAC allocation could result in other groups seeking similar TAC allocations resulting in the entire GB cod TAC being allocated to such groups. The State of Maine recommended that the proposed revisions should not be considered a precedent for future allocations.

Response: The current regulations allow any person to submit a Sector allocation proposal. These regulations limit any Sector's allocation to 20 percent of a stock's TAC. If additional Sectors are approved, these Sectors could, taken together, be allocated the majority of a stock's TAC. However, it is highly unlikely that several Sectors could be allocated the entire TAC for a particular stock because a Sector's TAC allocation is based upon the fishing history of all NE multispecies vessels that have landed that particular stock. Therefore, unless approved Sectors incorporate every individual vessel that landed a particular stock during the 5-year period prior to submission of the Sectors' allocation proposals, these Sectors would not be able to capture the entire TAC for a particular stock. The general requirements applicable to all Sector allocations adopted by Amendment 13 specify that members of the Sector bring all of their catch history into the Sector, regardless of how it was caught. Therefore, while the original requirements specifying the allocation for the GB Cod Hook Sector were based on the landings by hook gear, the proposed measure revises these regulations consistent with the intent of Amendment 13. Therefore, no mandatory precedent is set by this revision as any future Sector would be able to bring all of its catch history into the Sector, regardless of how it was caught. Based on the above rationale, NMFS has approved this measure.

Comment 26: Responding to a statement in the proposed rule that a higher Sector GB cod TAC would result in a small increase in the probability that the GB cod target TAC would be exceeded, one industry group suggested that increased participation in the GB Cod Hook Sector would actually decrease the chance that the non-Sector portion of the GB cod TAC would be exceeded. The group reasoned that a larger GB Cod Hook Sector TAC would correspond to more vessels in the GB Cod Hook Sector and fewer non-Sector vessels available to catch the GB cod target TAC. Based on the performance of the Sector during the 2004 fishing year, in which only 50 percent of the GB Cod Hook Sector's GB cod allocation was harvested (although the GB Cod Hook Sector was unable to start fishing until July 21, 2004 (69 FR 43535), a higher Sector GB cod TAC in the future would increase the likelihood that GB Cod Hook Sector vessels would not be able to harvest their full GB cod TAC allocation.

Response: NMFS maintains that an increased Sector TAC on GB cod could potentially increase the chance that the

GB cod target TAC could be exceeded by non-Sector vessels. However, this contention assumes that the GB Cod Hook Sector is capable of catching its entire allocation of GB cod. If the GB Cod Hook Sector is unable to catch its entire allocation, there is less of a chance that the GB cod target TAC would be exceeded.

DAS Credit for Standing by Entangled Whales

Comment 27: Three commenters expressed general support for DAS credit for vessels standing by an entangled whale.

Response: This provision would provide incentives through a DAS credit for vessels to report entangled whales and track the locations of such whales so that rescue teams could attempt to disentangle the animal. NMFS has approved this provision and is implementing it through this final rule.

Herring Vessel Interactions With Regulated Groundfish

Comment 28: Three commenters expressed general support for measures requiring Category 1 herring vessels to notify the NMFS Observer Program and the NMFS Office of Law Enforcement when fishing in the GOM or GB Regulated Mesh Area (RMA). One industry group supported increased observer coverage for herring vessels and requested that NMFS provide the Council with annual reports on the amount of regulated species caught and discarded by the herring fishery.

Response: Several herring vessel offloading operations were observed by NMFS Office of Law Enforcement during the 2004 fishing year, indicating some level of groundfish bycatch by herring vessels. This proposed measure would facilitate the observation of herring vessel offloading operations by providing the date, time, and port of landing by these vessels. Increased observation of herring catches would increase the amount of information available to assess the amount of regulated species bycatch in the herring fishery. For these reasons, NMFS has approved this measure and is implementing it through this final rule. Information obtained through this measure will be made available to the Council.

Comment 29: One individual and one industry group suggested that Observer Program notification measures for Category 1 herring vessels should be implemented on an interim basis.

Response: As explained in the response to Comment 27, NMFS has approved this measure because it facilitates acquiring additional information necessary to assess the amount of regulated species caught and discarded in the herring fishery. The Council, in developing this measure, did not specify a sunset date for this provision. It is anticipated that further action to address groundfish bycatch in the herring fishery on a more permanent basis is necessary. A future action could modify or eliminate the requirements implemented by this final rule.

Comment 30: One individual indicated that purse seine vessels do not catch regulated species and suggested that the proposed notification requirements should not apply to purse seine vessels.

Response: During the development of FW 40B, the Council considered specifying different measures for the different gear types in the herring fishery. However, the information available was insufficient to support such differential regulations in this action. Accordingly, NMFS has approved the Council's recommendation to collect bycatch information from the entire herring fishery to more accurately understand the problem so that future management actions could effectively address this issue.

Comment 31: One individual and one industry group indicated that the 72-hour Observer Program notice requirement for Category 1 herring vessels is inconsistent with the sporadic operations of the herring fishery and suggested that NMFS find alternative means of accomplishing the intent of this measure.

Response: The 72-hour Observer Program notice is necessary to effectively identify the herring vessels that intend to fish in the GOM or GB RMA's to ensure that sufficient observers are placed on these vessels and that the fishery is adequately monitored to achieve the objectives of the Observer Program. Currently, the NMFS Observer Program needs a minimum of 72 hours to determine whether an observer is required for a particular trip and to coordinate the deployment of an observer, if necessary. NMFS recognizes that this requirement may not coincide with the normal fishing operations of the herring fishery and will encourage the herring fishing industry to work with the NMFS Observer Program to comply with the requirements implemented by this final rule without compromising vessel operations.

Comment 32: One industry group indicated that some Category 1 herring vessels fish shoreward of the VMS demarcation line and suggested that NMFS clarify the reporting requirements for these vessels.

Response: Based upon the information provided by this industry group, NMFS has clarified the regulations at § 648.80(d)(7) and (e)(6) to allow vessels fishing landward of the VMS demarcation line to notify NMFS Office of Law Enforcement of the time and place of offloading at least 12 hours before landing.

Comment 33: The Council commented that while the proposed regulations for the Category 1 herring vessel notification requirements are consistent with the draft proposed rule submitted by the Council, the proposed regulations are not consistent with the FW 40B document because the proposed rule specified that the Observer Program and NMFS notification requirements for herring vessels apply to the GOM/GB Exemption Area. The Council suggested NMFS revise these regulations to refer to the GOM/GB RMA's as specified in the FW 40B document.

Response: The current regulations specify that herring vessels are only exempt from the minimum mesh size requirements of the GOM or GB RMA's when fishing in the GOM/GB Exemption Area specified at § 648.80(a)(17), which is a slightly smaller area than the GOM or GB RMA. Accordingly, in order to use small mesh necessary to pursue the herring fishery in the GOM or GB RMA's, herring vessels are required fish in the GOM/GB Exemption Area. While FW 40B does specify that the proposed notification requirements would apply to herring vessels intending to fish in the GOM or GB RMA's, it would be inconsistent with the current regulations governing the fishery and confusing to the industry to include this provision because it adds a requirement to fish in an area where herring vessels are not permitted to fish. Therefore, NMFS declines to revise the regulations as suggested by the Council. Because herring vessels could not fish outside the GOM/GB Exemption Area anyway, retaining the language of the proposed rule will not meaningfully affect herring vessel activities subject to these regulations.

Trip Gillnet Net Limitations

Comment 34: Four commenters, including Senator Collins, the State of Maine, and two industry groups, expressed support for removing the net limit for Trip gillnet vessels. The State of Maine and one industry group indicated that the net limit is unnecessary and the gillnet tag requirements used to enforce this net

limit pose operational difficulties to vessels.

Response: NMFS concurs that the net limit for Trip gillnet vessels is unnecessary because Trip gillnet vessels are required to remove all gear from the water prior to returning to port. Unlike Day gillnet vessels, gear fished by Trip gillnet vessels is not left in the water upon returning to port. Trip gillnet vessels must remove gillnet gear from the water before returning to port, thereby greatly dissipating the advantage of fishing unlimited amounts of gillnets. The capacity of the vessel to carry additional gillnets often limits the number of nets that are fished by a vessel. In addition, the analysis prepared for this action indicates that, while the number of nets used by vessels may increase by removing the net limit for Trip gillnet vessels, the expected increase in mortality will be minor. For these reasons, NMFS approved the removal of the net limits and the associated gillnet tagging requirements for Trip gillnet vessels.

Dumping Prohibition for Vessels Under a Category B DAS

Comment 35: Two industry groups expressed support for the principle behind prohibiting discard in management programs allowing the use of Category B DAS. One group strongly supported the proposed dumping prohibition for vessels fishing under a Category B DAS, indicating that prohibiting discards is fundamental to the ability of these programs to achieve their stated objectives. The other group cautioned that this dumping prohibition seems to apply only to trawl gear and could increase mortality of bycatch.

Response: NMFS agrees that prohibiting the discarding of legal-sized regulated species in programs that allow the use of Category B DAS is critical to accurately monitoring catch of regulated species and accounting for additional mortality resulting from the use of Category B DAS. According to the regulations at 50 CFR 600.10, ''discarding'' means to return fish to the sea, whether or not such fish are brought fully on board a fishing vessel. This prohibition on removing any fish caught before the gear is brought on board the vessel clarifies that this practice constitutes discarding and is therefore prohibited. Because vessels may use longline gear (*i.e.*, gear other than nets) to fish in the Regular B DAS Pilot Program, NMFS has revised the proposed prohibition to further clarify that removing any fish caught using any gear, including the dumping of nets before the gear is brought on board the vessel, is prohibited. In addition, prohibiting the removal of fish caught before the gear is brought on board the vessel is necessary to ensure an accurate accounting of the amount of fish caught in these programs. While releasing the fish in the water may increase their chance of survival, there is no way to accurately determine the amount of fish that was released unless the gear is hauled aboard. Without accurate accounting of discards, the effectiveness of catch monitoring in these programs is undermined.

General Comments

Comment 36: One commenter supported a general provision to prohibit the discard of legal-sized regulated species of concern when fishing on a Category B (regular or reserve) DAS (*i.e.*, when fishing in the Regular B DAS Pilot Program or any approved SAP).

Response: The regulations currently prohibit the discard of legal-sized regulated groundfish in the Regular B DAS Pilot Program and cod in the CA II Yellowtail Flounder SAP and the Eastern U.S./Canada Haddock SAP Pilot Program. Expansion of this prohibition would have to be addressed through a future Council action.

Comment 37: One commenter supported monitoring catches of stocks of concern though VTR, VMS, and by dealer reporting.

Response: Currently, regulations require the reporting of all species through VTR and dealer reporting. Regulations specific to approved SAP's and the U.S./Canada Management Area require vessels to declare through the VMS the amount of species kept and discarded based on which stocks are expected to be caught in a particular SAP and which stocks are managed under hard TAC's, respectively. NMFS and the Council are currently investigating the feasibility of pursuing the commenter's suggestion of expanding the VMS reporting requirements for approved SAP's and the U.S./Canada Management Area to collect information on additional species caught under a Category B (regular or reserve) DAS for possible implementation in a future Council action.

Comment 38: Responding to a request for comments by NMFS in the proposed rule, two commenters, including one industry group, opposed publishing the DAS allocations of NE multispecies vessels on the Northeast Regional Office website. Both commenters felt that posting DAS allocations online should be voluntary. One individual felt that posting DAS allocations online would be an invasion of privacy.

Response: NMFS will take these comments into consideration when determining whether to publish this information online.

Disapproved Measures

GB Cod Research Set-Aside TAC

FW 40B proposed to set aside up to 10 percent of the GB cod incidental catch TAC to facilitate research. As proposed, this TAC would be distributed to research proposals submitted to NMFS by May 1 of every year. However, the FW 40B document does not specify criteria for determining which proposals should be allocated this set-aside research TAC. Further, the document does not describe a mechanism by which this TAC should be distributed to researchers. NMFS supports setting aside TAC to facilitate fisheries research. Such research set-aside TAC's in the NE multispecies fishery would account for mortality associated with this research, while supporting vessel participation in this research without the use of DAS. However, FW 40B proposes to set aside research TAC for only one species. Given the nature of the NE multispecies fishery, this provision would only account for the mortality of GB cod during research activities. The mortality of other species in the conduct of research set-aside projects would not be accounted for, potentially undermining the conservation measures of the FMP. Further, without sufficient detail about how to administer this provision, including the process and mechanism by which proposals to use the GB incidental cod TAC research set-aside would be considered and TAC distributed, there is insufficient information to implement this provision. Without such details, there is no way to assess the likely costs and benefits of this provision. Further, as highlighted in the response to Comments 6 and 7, there is insufficient information to determine whether this provision would be equitable. The proposed measure would potentially take away a portion of the GB cod TAC available to all vessels through the Regular B DAS Pilot Program, resulting in a possible disproportionate impact on the fleet. Accordingly, there is insufficient information to make a determination that this provision is consistent with applicable law. Thus, NMFS has determined that this provision is not consistent with National Standards 1, 2, or 4 and has disapproved this provision.

WGOM Closure Area Rod/Reel SAP

Amendment 13 established a process to provide vessels the opportunity to target healthy groundfish stocks without undermining efforts to rebuild overfished stocks. According to Section 3.4.5.1 of the FSEIS prepared for Amendment 13, a SAP should avoid or minimize impacts on stocks of concern, as well as minimize bycatch. In addition, for a SAP to be approved, sufficient information should be available to indicate that the SAP would minimize bycatch of non-target species and minimize the mortality of such bycatch. If such information is not available, an experimental fishery should be conducted before a SAP could be approved.

The WGOM Closure Area Rod/Reel Haddock SAP proposes to allow rod/reel vessels to target GOM haddock in the WGOM Closure Area while minimizing the bycatch of GOM cod (GOM cod is considered a stock of concern because it is currently overfished). No experimental fishery was conducted that would support the proposed SAP. Instead, the analysis in the EA relied upon VTR's from party/charter vessels in the WGOM Closure Area. This information is not indicative of the proposed vessel operations for this SAP as party/charter vessels target cod instead of haddock and the possession limits for these trips were based on the party/charter regulations and are substantially different from commercial possession limits. Despite these limitations, this information indicated that more cod was caught than haddock when fishing in the WGOM Closure Area. VTR's for commercial handline trips within the GOM, but outside of the WGOM Closure Area were also examined, but they too indicated that more cod would be caught than haddock. The proposed SAP included a provision where the Regional Administrator could close this SAP if the catch of cod to haddock exceeds a ratio of 1:2, by weight. The data in the EA suggests that the amount of cod and haddock caught under this proposed SAP would likely exceed a ratio of 1:2.

While NMFS supports the creation of SAP's within the GOM to allow vessels to target healthy groundfish stocks and mitigate some of the economic and social impacts resulting from Amendment 13 effort reductions, NMFS must ensure that the provisions of the FMP are consistent with the Magnuson-Stevens Act and appropriate law. Based on the best available information, vessel operations under this SAP would be inconsistent with the purpose and intent of this SAP. The information available indicates that vessel operations would likely exceed the required ratio of cod to haddock, requiring the Regional Administrator to close access to this SAP. In addition, the fact that no experiment was conducted to document whether non-target species could be avoided in this SAP and that the information available to support this SAP indicates that this SAP would likely catch more cod (a stock of concern) than haddock demonstrate that this SAP is not consistent with the intent and principles behind the establishment of SAP's as described in section 3.4.5.1 of the FSEIS for Amendment 13. Further, this SAP is not consistent with Objective 10 of the FMP, as specified in Amendment 13, in that this SAP would not minimize regulatory discards. Instead, this SAP would facilitate regulatory discards by prohibiting vessels from retaining any GOM cod caught while fishing in this SAP. Furthermore, while this proposed SAP includes measures that would minimize the mortality of non-target species and encourage vessels to avoid catching cod, the analysis of this SAP in FW 40B fails to sufficiently justify that the amount of bycatch of GOM cod would be minimized to the extent practicable, and, therefore, the measure is inconsistent with National Standard 9 and section 303(a)(11) of the Magnuson-Stevens Act. Therefore, based on the above, NMFS has disapproved this measure and is implementing it through this final rule.

Minimum Effective Effort Allocation

FW 40B proposes to re-categorize 10 Category C DAS to Category B Reserve DAS for any vessel allocated zero Category A or B (Regular and Reserve) DAS under Amendment 13. These DAS could only be used in a SAP that does not contain a DAS flipping requirement. Currently, the only SAP that does not have a DAS flipping requirement is the CA I Hook Gear Haddock SAP, which is currently limited to members of the GB Cod Hook Sector as discussed below, because the WGOM Closure Area Rod/Reel Haddock SAP was disapproved in this final rule. This proposed action would grant approximately 448 vessels a DAS allocation of 10 Category B Reserve DAS. However, based on DAS allocation data from February 9, 2005, 277 vessels were allocated fewer than 10 Category B Reserve DAS under Amendment 13. Of these vessels, fully 121 vessels were allocated fewer than 10 Category B (Regular and Reserve) combined. Furthermore, there are 19 vessels that qualified for Category A and B (Regular and Reserve) DAS, but were allocated fewer than 10 Category A and B (Regular and Reserve) DAS combined under Amendment 13. These vessels would receive fewer Category A and B (Regular and Reserve) DAS than the 448 vessels that did not qualify for any Category A or B (Regular and Reserve) DAS under Amendment 13. As a result, an inequitable situation would be created in this fishery, because vessels that actually have a recent history in the fishery and initially qualified for some Category A or B (Regular or Reserve) DAS, could have less of an opportunity to fish than vessels that do not have a recent history in the fishery. Further, FW 40B did not provide any justification for this disproportionate allocation of DAS based on conservation purposes. The National Standard Guidelines indicate that any allocation shall be reasonably calculated to promote conservation. While the information used to support this measure indicates that the proposed measure would control the catch of target and non-target species through the measures of approved SAP's and would therefore not increase impacts on groundfish, the FW 40B document does not provide any information how this measure promotes conservation within the fishery. In fact, this measure may lead to the TAC's for species regulated by the SAP's to be caught more quickly, thereby limiting opportunities to fish in this area by vessels currently qualifying for Category A and B (Regular and Reserve) DAS. Furthermore, this additional allocation of DAS may have other unanalyzed negative consequences due to the potential of this measure to increase effective effort in the fishery. Based on this disparity being created without promoting conservation and the absence of an adequate analysis of the effects of this measure, NMFS has determined that this measure is not consistent with National Standard 4.

The 448 vessels that would benefit under this proposed measure (*i.e.*, vessels that were allocated zero Category A or B DAS under Amendment 13) would be allocated 4,480 Category B DAS to use in specific SAP's. However, it is estimated that only 50 percent of these vessels would actually use these DAS to participate in an approved SAP based on fishing activity during the 2003 fishing year in which these vessels were allocated a minimum of 10 DAS (reduced to 8 DAS) under the August 1, 2002, interim final rule (67 FR 50292). During this time, only 26 vessels relied on groundfish for a majority of fishing revenue, indicating that most of these vessels were heavily engaged in

fisheries other than groundfish. Opportunities to use DAS allocated under the proposed measure in FW 40B would be limited to the CA I Hook Gear Haddock SAP during the 2005 fishing year because this is the only currently approved SAP that does not contain a DAS flipping provision. However, participation in this SAP is limited to vessels participating in the GB Cod Hook Sector, unless modified by FW 41. FW 41, which has recently been submitted to NMFS, proposes to allow non-Sector vessels to fish in the CA I Hook Gear Haddock SAP. Because none of the 448 vessels that would benefit from this measure are members of the GB Cod Hook Sector, unless FW 41 is approved, these 448 vessels would not be able to use these 10 Category B Reserve DAS at all during the 2005 fishing year. If approved, however, FW 41 would limit non-Sector participation in this SAP to November 16, 2005 through December 31, 2005. Therefore, any benefits from this proposed measure would be minimal during the 2005 fishing year.

Finally, NMFS believes that the FW 40B document fails to adequately justify the purpose of this measure other than for economic reasons, since neither conservation nor social benefits were cited to support this measure. The economic analysis concludes that, while this proposed measure would be positive for vessels receiving DAS, this measure would also result in possible negative economic impacts to vessels that would not receive DAS under this measure. Further, the economic benefits of SAP's would be dissipated among more vessels, resulting in decreased economic returns to individual vessels. Moreover, this proposed measure represents a potential transfer of income opportunities from vessels with a recent history in the fishery to vessels without a recent history in the fishery. Based on the above, NMFS has concluded that the sole purpose for this measure appears to be an allocation for economic purposes only that would benefit vessels that do not have a recent history in the NE multispecies fishery. For this reason, this measure is not consistent with National Standard 5. Therefore, NMFS has disapproved this measure and is not implementing it in this final rule.

Approved Measures

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

1. DAS Transfer Program Modifications

The DAS Transfer Program allows for the permanent exchange of DAS between vessels with limited access NE multispecies permits for the purpose of reducing fishing capacity and mitigating some of the adverse economic impacts of effort reductions under Amendment 13. FW 40B modifies the current DAS Transfer Program to provide additional incentive for vessels to participate in this Program. Under FW 40B, Category A and B DAS that are permanently exchanged through the DAS Transfer Program are reduced by 20 percent. As implemented under Amendment 13, Category C DAS will continue to be reduced by 90 percent.

Under the DAS Transfer Program, the baseline characteristics of the vessel receiving DAS must be within 10 percent of the baseline length overall and within 20 percent of the baseline horsepower of the transferring vessel. This action makes the size restrictions for the DAS Transfer Program consistent with the DAS Leasing Program, which requires vessels to meet size restrictions for only length overall and horsepower.

2. DAS Leasing Program Modifications

The DAS Leasing Program allows vessels to temporarily exchange DAS on a yearly basis. Vessels involved in leasing DAS under the DAS Leasing Program must have permit baseline characteristics for length and horsepower that fall within the current size restrictions of the DAS Leasing Program. The vessel baseline characteristics used for the DAS Leasing Program are the vessel baseline characteristics on file with NMFS as of January 29, 2004, the date of publication of the proposed rule for Amendment 13 (January 29, 2004; 69 FR 4362).

Under FW 40B, vessels participating in this program have a one-time opportunity to downgrade the permit baseline characteristics for the DAS Leasing Program to the physical characteristics of the vessel currently using the permit. This one-time downgrade only applies to the DAS Leasing Program permit baseline and does not affect any other permit baselines currently specified for the permit (*i.e.*, the baseline used for vessel upgrades or replacements). In effect, if a permit holder were to exercise this option, the permit would have two NE multispecies permit baselines: One for the DAS Leasing Program and another that applies to all other permit transactions (vessel upgrades or replacements or the DAS Transfer Program). If the permit is moved to another vessel during a vessel replacement, the downgraded DAS Leasing Program baseline reverts to the original DAS Leasing Program baseline established on January 29, 2004, and could not be downgraded again for the purposes of the DAS Leasing Program. This downgraded DAS Leasing Program baseline remains valid until the permit is placed on a replacement vessel as specified above, or until the DAS Leasing Program expires.

3. CA II Yellowtail Flounder SAP Modifications

FW 40B modifies the start date of the CA II Yellowtail Flounder SAP to enable vessels to target GB yellowtail flounder in CA II outside of the spawning period of GB yellowtail flounder. Thus, the season for the CA II Yellowtail Flounder SAP is revised to July 1 through December 31. In addition, FW 40B revises the limit on trips into this SAP by specifying that vessels participating in this SAP are limited to only one trip per month. Also, the possession limit for GB yellowtail flounder is reduced to 10,000 lb (4,536 kg), unless adjusted by the Regional Administrator.

This SAP is regulated by the maximum number of trips allowed into the SAP and by the availability of the GB yellowtail flounder TAC allocated to the U.S./Canada Management Area. FW 40B provides the Regional Administrator with the authority to adjust the trip limit and the total number of trips allowed into this SAP every fishing year to adapt to changing stock and fishery conditions. Under FW 40B, the Regional Administrator will consider specific criteria and may use a formula based on the available TAC and recent catch rates of GB yellowtail flounder to determine the number of trips into this SAP and the appropriate trip limit for a particular fishing year. The formula suggested to determine the number of trips into this SAP was specified in the FW 40B proposed rule. If the Regional Administrator determines that the available catch is not sufficient to support 150 trips per year with a GB yellowtail flounder trip limit of 15,000 lb (6,803 kg), the Regional Administrator may choose not to authorize any trips into this SAP for the fishing year. One hundred fifty trips at 15,000 lb (6,803 kg) per trip amounts to 1,020 mt of GB yellowtail flounder necessary to support the CA II Yellowtail Flounder SAP. Based on the proposed TAC of GB yellowtail flounder for the 2005 fishing year (4,260 mt) and using the formula specified in FW 40B, only 260 mt of GB yellowtail flounder would be estimated to be available to allow for the CA II Yellowtail Flounder SAP. Therefore, because the available GB yellowtail flounder TAC is less than the 1,020 mt that may be necessary to allow for this SAP, the Regional Administrator will consult with the

Council at its June meeting to determine whether to set the number of trips into the CA II Yellowtail Flounder SAP at zero for the 2005 fishing year.

4. GB Cod Hook Sector Revisions

Amendment 13 established the GB Cod Hook Sector and allocated GB cod to the Sector based on the history of the Sector participants. FW 40B modifies the regulations implementing the GB cod Hook Sector by allowing any vessel, regardless of gear used in previous fishing years, to join the Sector. All landings of GB cod by Sector participants, regardless of gear previously used, will be used to determine the Sector's GB cod allocation for a particular fishing year. All Sector participants are required to use hook gear once in the Sector. The maximum share of the GB cod TAC that the Sector could obtain remains capped at 20 percent of the overall GB cod TAC.

5. DAS Credit for Standing by Entangled Whales

In order to encourage fishing vessels to report entangled whales, FW 40B provides a mechanism for a limited access groundfish vessel to obtain DAS credit for the time spent standing by an entangled whale. A vessel requesting such a credit must notify the USCG and the appropriate organization of the entangled whale (currently, the Center for Coastal Studies); remain in contact with the Center for Coastal Studies; and be available to answer questions on the condition of the animal, including, but not limited to, possible species identification, severity of entanglement, and gear entangling the animal. To receive credit for time standing by an entangled whale, a vessel must submit a written request to the Regional Administrator.

6. Herring Vessel Interactions With Regulated Groundfish

To more accurately document and monitor groundfish bycatch from the herring fishery, FW 40B requires vessels with a Category I herring permit that intend to fish in the GOM or GB RMA's to notify the NMFS Observer Program at least 72 hours before beginning a trip. In addition, if an observer is not provided for the trip, the vessel must notify NMFS Office of Law Enforcement via VMS of the time and place of landing at least 12 hours prior to crossing the VMS demarcation line on returning to port, or 12 hours before landing if the vessel fishes landward of the VMS demarcation line for the entire trip. This requirement to notify NMFS Office of Law Enforcement at least 12 hours prior to crossing the VMS demarcation line or landing was determined to be necessary to allow sufficient time for NMFS Office of Law Enforcement personnel to coordinate efforts to observe herring vessel landings and to accommodate Category 1 herring vessels fishing inshore of the VMS demarcation line.

7. Trip Gillnet Net Limitations

FW 40B removes the limit on the number of nets that can be carried onboard Trip gillnet vessels. By doing so, FW 40B also eliminates the gillnet tagging requirements for Trip gillnet vessels.

8. Dumping Prohibition for Vessels Under a Category B DAS

To minimize the mortality on stocks of concern from vessel activities in programs designed to target healthy groundfish stocks, (*i.e.*, the Eastern U.S./Canada Haddock SAP Pilot Program, the Regular B DAS Pilot Program, and the CA II Yellowtail Flounder SAP), FW 40A implemented measures that prohibit vessels from discarding legal-sized cod and other regulated groundfish when fishing under a Category B DAS. These measures also require vessels to initiate a DAS flip (*i.e.*, change the category of DAS used on that trip to Category A DAS) if vessels harvest more legal-sized cod or other regulated groundfish than the applicable maximum landing limits per trip under a Category B DAS. FW 40B clarifies that the prohibition on discarding of fish also includes the removal of any fish caught using any gear, including the dumping of nets, before the gear is brought on board when operating under a Category B DAS in the CA II Yellowtail Flounder SAP, the Eastern U.S./Canada Haddock SAP Pilot Program, or the Regular B DAS Pilot Program because it is considered to be discarding as defined at 50 CFR 600.10.

9. Corrections

In addition to the approved measures described here, the following revisions to existing regulations are made to correct inaccurate references in the regulations. The changes listed below are in the order in which they currently appear in the regulations.

In 15 CFR 902.1(b), the inventory of OMB control numbers for NOAA actions is updated to include approved control numbers and the corresponding regulatory citations for the information collections related to the measures approved in Amendment 13 and FW 40A to the FMP. This inventory was inadvertently not updated in the final rule and interim final rule implementing these actions, respectively.

In 50 CFR 648.10, the periods ending paragraphs (b)(1)(vi) and (b)(1)(vii) are corrected to semicolons.

In § 648.14, the reference to the restrictions and conditions for the CA II Yellowtail Flounder SAP in paragraph (a)(136) is expanded to include § 648.85(b)(3)(xi).

In § 648.14, under paragraph (a)(139), the reference to the number of trips specified under § 648.85(b)(3)(vii) is expanded to include the monthly trip limits for vessels specified in § 648.85(b)(3)(vi).

In § 648.82, paragraphs (k)(4)(ix) and (l)(1)(ii) are revised to clarify that vessels can lease or transfer DAS to a vessel with a baseline length overall and horsepower that is no more than 10 percent and 20 percent greater than the baseline length overall and horsepower of the lessor or transferor vessel, respectively. This revision corrects the regulations to maintain consistency with the intent of Amendment 13 as outlined in the FSEIS.

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 FW 40B. Other changes are technical or administrative in nature and clarify or otherwise enhance enforcement and administration of the FMP. These changes are listed below in the order that they appear in the regulations.

In § 648.2, a new definition for a Category 1 herring vessel is inserted to clarify which vessels are affected by the regulations specified at §§ 648.80(d) and (e).

In § 648.14, paragraph (a)(165) is revised to clarify that vessels are prohibited from removing any fish caught using any gear, including the dumping of nets, before the gear is brought on board the vessel.

In § 648.14, the reference to the GOM/GB Exemption area specified at § 648.80(a)(17) in paragraphs (bb)(19) and (bb)(20) is revised to read the GOM or GB Regulated Mesh Areas specified at § 648.80(a)(1) and (2).

In § 648.80, paragraphs (d)(6) and (e)(5) are revised to correct an inaccurate reference to § 648.4(a)(10) that should accurately read § 648.205(b). In addition, language referring to the intent of a vessel to fish in the GOM or GB RMA's was removed.

In § 648.80, to facilitate the monitoring of herring offloading operations by NMFS Office of Law Enforcement personnel and to

accommodate herring vessels fishing inshore of the VMS demarcation line, the language in paragraphs (d)(7) and (e)(6) is revised to require that vessels ''must notify NMFS Office of Law Enforcement through VMS of the time and place of offloading at least 12 hours prior to crossing the VMS demarcation line on its return trip to port, or, for vessels that have not fished seaward of the VMS demarcation line, at least 12 hours prior to landing.'' This 12-hour notice is required to provide the NMFS Office of Law Enforcement with sufficient time to meet vessels at the dock prior to offloading. These regulations are revised under the authority provided in section 305(d) of the Magnuson-Stevens Act.

In § 648.82(k)(4)(ix), the word ''vessel'' is added after the word ''Lessor'' to clarify that a Lessor vessel may only lease DAS to a Lessee vessel consistent with the size restrictions of the DAS Leasing Program.

In § 648.82, the title of paragraph (k)(4)(xi) is revised to read ''One-time downgrade of DAS Leasing Program Baseline'' to clarify the intent of this paragraph and maintain consistency with paragraphs (k)(4)(xi)(A) and (B) of this section. Further, language is added to the introductory text to specify that the intent of this measure is to determine eligibility for leasing DAS only.

In § 648.82, the title of paragraph (k)(4)(xi)(B) is revised to read ''Duration and applicability of the one-time DAS Leasing Program baseline downgrade'' to clarify the intent of this paragraph. In addition, the phrase ''or any other provision'' is added to the last sentence of this paragraph to specify that the DAS Leasing Program baseline downgrade would not affect any other provision in Subpart F.

In § 648.85, the title of paragraph (b)(3)(vii) is revised to specify that this paragraph describes the maximum number of trips into the CA II Yellowtail Flounder SAP per fishing year. Further, paragraphs (b)(3)(vii)(A) and (B) are combined into one paragraph. Finally, language is inserted into this paragraph to clarify that the available catch of GB yellowtail flounder is determined by subtracting the potential catch of GB yellowtail flounder by all vessels outside of the SAP from the GB yellowtail flounder TAC specified for the U.S./Canada Management Area at § 648.85(a)(2).

In § 648.87, the word ''with'' is replaced by the word ''issued'' in paragraph (d)(1)(ii) to clarify that all vessels issued a valid limited access NE multispecies DAS permit may participate in the GB Cod Hook Sector.

Under NOAA Administrative Order 205–11, 07/01, dated December 17, 1990, the under Secretary for Oceans and Atmosphere has delegated authority to sign material for publication in the **Federal Register** to the Assistant Administrator for Fisheries, NOAA.

Classification

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

This 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. 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 FW 40B is available from the Regional Administrator (*see* **ADDRESSES**).

Pursuant to 5. U.S.C. 553(b)(A), the Assistant Administrator waives prior notice and opportunity for public comment for the revisions to 15 CFR 902.1(b) because this portion of this final rule specifies actions of agency organization, procedure, or practice. Revisions to 15 CFR 902.1(b) in this action are necessary to maintain an accurate inventory of valid OMB control numbers for NOAA actions. This inventory was inadvertently not updated based upon the information collections approved by the OMB for the measures contained in Amendment 13 and FW 40A to the FMP. The public has already been provided opportunity to comment on these information collections through the publication of the proposed and final rules for Amendment 13 and the proposed and interim final rules for FW 40A. Further, because this final rule makes only minor, non-substantive changes and does not affect the operating practices of the NE multispecies fishery, it is unnecessary to provide for additional notice and opportunity for public comment. Further, pursuant to 5 U.S.C. 553(d)(3), the Assistant Administrator finds good cause to waive the 30-day delayed effectiveness for revisions to 15 CFR 902.1(b) in this final rule because these revisions are necessary for the purposes of agency procedure and practice to comply with the requirements of the PRA. These non-substantive revisions are necessary to ensure that the public is informed of the accurate OMB control number associated with particular regulatory citations. These revisions do not affect vessel operations.

The Assistant Administrator finds good cause, under 5 U.S.C. 553(d)(3), to waive the 30-day delayed effectiveness of the rest of the measures in this final rule. NMFS cannot initiate rulemaking for actions recommended by the Council until the final FW 40B package is received from the Council. NMFS did not receive the final FW 40B package until February 15, 2005. This delay limited the ability of NMFS to adequately review and implement FW 40B, after consideration of public comment, in time to allow delayed effectiveness before the beginning of the 2005 fishing year on May 1, 2005, or the opening of the CA II Yellowtail Flounder SAP on June 1, 2005. Failure to waive the 30-day delayed effectiveness would allow the SAP to open on June 1, 2005 (instead of July 1, 2005, as modified in this final rule), resulting in potentially high landings of GB yellowtail flounder that could depress market prices for yellowtail flounder as observed during the 2004 fishing year. In addition, since June is part of the spawning season for GB yellowtail flounder, allowing the SAP to open on June 1 by delaying the effectiveness would result in lower ex-vessel prices due to the lower quality of fish landed during the spawning period. Effort reductions implemented by Amendment 13 resulted in substantial adverse economic impacts to the groundfish fishery. Additional economic impacts resulting from a delayed effectiveness of the measures included in this final rule, taken cumulatively, represents further economic hardships to an already struggling industry. Moreover, opening on June 1 would allow vessels to continue to disrupt spawning aggregations of GB yellowtail flounder.

Although not overfished, the GB yellowtail flounder stock is currently below a level consistent with maximum sustainable yield (MSY). Therefore, under the Magnuson-Stevens Act, this stock must be rebuilt to a level consistent with MSY. Consequently, allowing the SAP to open due to a delayed effectiveness would enable

vessels to continue to harvest spawning fish, thereby undermining efforts to protect spawning aggregations of GB yellowtail flounder and rebuild this stock as required by the Magnuson-Stevens Act. Further, opening on June 1 could contribute to the premature harvest of the GB Yellowtail Flounder TAC, resulting in the closure of access to the Eastern U.S./Canada Area and a prohibition on the retention of GB yellowtail flounder in the entire U.S./Canada Management Area by limited access NE multispecies DAS vessels during the 2005 fishing year. Such a closure and retention prohibition could cause unnecessary additional discards of GB yellowtail flounder, reducing economic benefits to the fishery and further increasing mortality and the potential that the fishery will exceed the yearly TAC. Exceeding the yearly TAC would result in any TAC overages being deducted from the available TAC allocated to the following fishing year. Additionally, since the Regional Administrator has indicated in this action that there is justification to not authorize any trips into CA II Yellowtail Flounder SAP for the 2005 fishing year, a delayed effectiveness could result in the SAP opening on June 1, 2005, only to be closed again once such a decision is made and a notice published, thereby causing confusion to the industry. Therefore, a delayed effectiveness would be contrary to the public interest because it would (1) prevent the agency from protecting spawning aggregations of GB yellowtail flounder as required by the Magnuson-Stevens Act; (2) result in lower market prices, reduced economic returns to the fishing industry, and further adverse economic impacts; and (3) increase confusion in the fishing industry through rapid closure of the SAP.

Public Reporting Burden

This final rule contains five 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. Notice requirements for observer deployment prior to every trip for Category 1 herring vessels intending to fish in the GOM or GB RMA's, OMB# 0648–0521, (2 min/response);

2. NMFS Office of Law Enforcement landings notice requirement for Category 1 herring vessels operating with an observer waiver, OMB# 0648–0521, (5 min/response);

3. Notification and Communication with USCG and Center for Coastal Studies, OMB# 0648–0521, (10 min/response);

4. Written requests to receive a DAS credit for standing by an entangled whale, OMB# 0648–0521, (30 min/response);

5. Vessel baseline downgrade request for the DAS Leasing Program, OMB# 0648–0475, (1 hr/response).

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

Final Regulatory Flexibility Analysis

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), prepared this FRFA in support of the approved measures in FW 40B. The FRFA describes the economic impacts that this 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 40B based upon the corresponding economic analysis prepared for FW 40B (FW 40B RIR), the comment and response section of this final rule, and the analysis contained in FW 40B. For the most part, those impacts are not repeated here. A copy of the IRFA, the FRFA, the RIR, and FW 40B 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 final rule and in the FW 40B document and are not repeated here.

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 thirteen comments on the proposed rule. Of these, there was one comment on the IRFA and the economic impacts to small entities (vessels) resulting from the management measures presented in the proposed rule. A summary of the economic issues raised, and NMFS's responses, follow:

Issue: One industry group suggested that NMFS has not calculated the overall expenses (*i.e.*, fuel, ice, bait, etc.) incurred by vessels that intend to participate in the WGOM Rod/Reel Haddock SAP as compared to the expected daily catch resulting from their participation in this SAP. This commenter indicated that the VMS operational costs, in addition to other costs, are too high for the expected returns from haddock caught, and recommended that the requirements to use VMS should be removed.

Response: The IRFA prepared for this action fulfills the requirements of the RFA to determine economic impacts based on available information. Apart from VMS operational cost information, data specifying other vessel costs in this SAP were not available for the analysis conducted for this provision. This is another reason why the analysis for this measure was insufficient to justify its approval. Accordingly, no further analysis of this measure was done because NMFS determined to disapprove this SAP for the reasons specified in the preamble of this final rule under ''Disapproved Measures.'' Therefore, no changes in response to this comment were made to the final rule.

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

This final rule implements measures that have the potential to affect any vessel currently issued a limited access NE multispecies permit and vessels issued a Category 1 herring permit. Currently, there are approximately 1,500 vessels issued a limited access NE multispecies permit and 105 vessels issued a Category 1 herring permit. However, it is very unlikely that every vessel issued a limited access NE multispecies permit or a Category 1 herring permit would be affected by this proposed action because of past and recent participation in the fishery, the voluntary nature of specific programs proposed in this action, and the associated regulatory and economic cost burdens for some of the proposed provisions. Except for the notification requirements for Category 1 herring vessels, all of the provisions in the proposed rule are voluntary. Therefore, vessels that participate in these programs would likely have determined that the potential benefits of their participation outweigh costs associated with these programs.

Based upon the information in the EA prepared for FW 40B, up to 1,409

vessels (*i.e.*, vessels issued a limited access NE multispecies DAS permit) may participate in the DAS Leasing and DAS Transfer Programs, the CA II Yellowtail Flounder SAP, or elect to stand by an entangled whale. Up to 1,351 vessels issued a limited access NE multispecies DAS permit that are currently not members of the GB Cod Hook Sector are eligible to enter the GB Cod Hook Sector. Currently, the 53 vessels designated as Trip gillnet vessels are no longer restricted in the number of gillnets that they may use and are not required to purchase gillnet tags for their gillnets.

The Small Business Administration (SBA) size standard for small commercial fishing entities is $3.5 million in gross receipts and would apply to limited access NE multispecies permit holders and vessels issued a Category 1 herring permit. Data analyzed for Amendment 13 indicated that the maximum gross receipt for any single commercial fishing vessel for the period 1998 to 2001 was $1.3 million. Data analyzed in FW 40B indicate that Category 1 herring vessels averaged approximately $1.26 million in gross sales. For this reason, each vessel in this analysis is treated as a single entity for the purposes of size determination and impact assessment. All commercial fishing entities affected by this proposed rule would fall under the SBA size standard for small commercial fishing entities, and there would be no disproportionate impacts between small and large entities.

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

The measures implemented by this final rule include the following provisions requiring either new or revised reporting and recordkeeping requirements: (1) Notice requirements for observer deployment prior to every trip for Category 1 herring vessels intending to fish in the GOM or GB RMA's; (2) NMFS Office of Law Enforcement landings notice requirement for Category 1 herring vessels operating with an observer waiver; (3) notification and communication with USCG and Center for Coastal Studies for standing by an entangled whale; (4) request for DAS Credit for standing by an entangled whale; and (5) vessel baseline downgrade request for the DAS Leasing Program.

The measures proposed under FW 40B would result in several costs to participants. To participate in the herring fishery, Category 1 vessels are required to use VMS. The cost of the purchase and installation of VMS units to vessels participating in the herring fishery have already been considered and approved in a previous PRA submission. VMS operational costs that have not been previously authorized under the PRA include the costs associated with VMS notifications to NMFS Office of Law Enforcement for Category 1 herring vessels that are not issued an observer waiver. These costs total approximately $3 per vessel every year, assuming every vessel issued a Category 1 herring permit fishes in the GOM or GB RMA's, a 50-percent observer coverage rate, and a total of 1,337 trips per year. There are no costs associated with communicating with the USCG or the Center for Coastal Studies regarding standing by an entangled whale as these communications would likely occur via radio. Written requests to receive a DAS credit for standing by an entangled whale will cost the public $3.70 for postage, assuming 10 such requests are submitted per year. The costs associated with vessel baseline downgrade requests for the DAS Leasing Program total $518, assuming every eligible vessel would downgrade their DAS Leasing Program baseline in one year and a postage cost of $0.37 per submission.

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.

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

As discussed in the preamble of this final rule, NMFS has disapproved three of the proposed management measures in FW 40B. These measures are: A research TAC set-aside for GB cod, the WGOM Rod/Reel Haddock SAP, and the minimum effective effort provision. The GB cod research set-aside TAC was disapproved because of insufficient detail regarding how to implement this measure. This lack of detail prevented NMFS from accurately assessing the potential biological and economic impacts of this measure. This disapproval will likely result in increased economic benefits, at least in the short-term, to the entire fishery compared to those specified in the proposed rule because this research TAC set-aside would have reduced the amount of the GB cod incidental catch TAC available to Category B DAS programs implemented under FW 40A (*i.e.*, the Regular B DAS Pilot Program and the Eastern U.S./Canada Haddock SAP Pilot Program). Without this research set-aside TAC, participants in the Regular B DAS Pilot Program and the Eastern U.S./Canada Haddock SAP Pilot Program will have more opportunities to harvest healthier groundfish stocks because of the larger GB cod incidental catch TAC's allocated to these programs. Further, with higher incidental catch TAC's available for the 2005 fishing year, benefits to these vessels will be higher than anticipated in the proposed rule and will be equivalent with the economic benefits resulting from the no action alternative.

The disapproval of the WGOM Rod/Reel Haddock SAP will reduce the economic benefits described in the proposed rule. The IRFA estimated the benefits of this SAP at $140,000, assuming that vessels would be able to catch the entire haddock TAC allocated for this SAP. However, estimated benefits from this SAP would likely have been lower as the catch of GOM cod in this SAP would have likely limited the potential of participating vessels from realizing the maximum benefits from the haddock TAC. The IRFA noted that this SAP would have provided an opportunity for vessels, particularly small vessels in the GOM, to target healthy groundfish stocks using a Category B DAS. Despite the potential economic benefits of this SAP, NMFS is required to ensure that such SAP's are consistent with the FMP, and meet the requirements of the Magnuson-Stevens Act and other applicable law. As explained in the preamble of this final rule, the information used to justify this SAP was not representative of the fishing operations proposed and the analysis of the proposed measures did not adequately show that the amount of bycatch of GOM cod were minimized to the extent practicable. For these reasons, the proposed SAP is inconsistent with National Standard 2, National Standard 9, section 303(a)(11) of the Magnuson-Stevens Act, as well as the objectives of the FMP. The GOM cod incidental catch TAC that was allocated to this SAP is instead allocated to the Regular B DAS Pilot Program. This provides vessels with greater economic benefits from increased opportunities to target healthy groundfish stocks in the GOM under this program. These benefits would be equivalent with the economic benefits resulting from the no action alternative.

FW 40B proposed to re-categorize 10 Category C DAS as Category B Reserve DAS for all vessels allocated zero Category A or B DAS under Amendment 13. These DAS could only have been used in specific SAP's that do not contain a DAS flipping provision. As described in the preamble of this final

rule, NMFS concluded that this measure posed equity concerns, not justified by conservation benefits, and was therefore not consistent with National Standard 4. The IRFA indicated that the economic benefits of this provision would be positive for vessels receiving a minimum DAS allocation. However, this measure would also reduce economic benefits to other vessels that were allocated Category A and B DAS under Amendment 13 by increasing the number of participants in specific SAP's and spreading the limited potential benefits of these SAP's among more vessels. With the disapproval of this measure, the economic impacts of this action would be equivalent with the economic impacts of the no action alternative.

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 implements measures that will increase the economic efficiency of several programs implemented in previous actions to help mitigate some of the negative economic impacts of effort reductions under Amendment 13, including facilitating participation in the DAS Leasing and Transfer Programs and revising measures that will help maximize the benefits of the GB yellowtail flounder TAC in the CA II Yellowtail Flounder SAP.

This final rule reduces the conservation tax for Category A and B DAS exchanged through the DAS Transfer Program to facilitate consolidation of the groundfish fleet through market-based incentives. Currently, Category A and B DAS exchanged through the DAS Transfer Program are subject to a 40 percent conservation tax, while Category C DAS are subject to a 90-percent conservation tax. In addition, the vessel selling its DAS must exit all fisheries. This action reduces the conservation tax for Category A and B DAS exchanged to 20 percent, but would retain the 90-percent conservation tax for Category C DAS and the requirement that the vessel selling its DAS exit all fisheries. This conservation tax reduction increases the potential value of a DAS exchanged under the DAS Transfer Program. It is currently not known whether the conservation tax itself has inhibited vessels from participating in this program to date. Unless the selling vessel holds no other limited access permits, the selling vessel may not be able to recoup the full value of the permit by selling the NE multispecies DAS alone. Because the vessel is required to retire from all other fisheries, the opportunity cost to the seller could be quite high. However, overall, this action is expected to increase the potential return to both buyers and sellers and have a beneficial impact on small entities of uncertain magnitude.

This action also removes the tonnage requirement for the DAS Transfer Program, requiring that vessels receiving DAS exchanged through the DAS Transfer Program only meet the size requirements for length overall and horsepower. This would bring the size restrictions of the DAS Transfer Program in line with those of the DAS Leasing Program. These revisions are expected to increase participation in the DAS Transfer Program by increasing the potential pool of compatible vessels capable of exchanging DAS under the DAS Transfer Program. Therefore, these revisions are expected to increase the potential economic benefits associated with increased fleet efficiency. It is unknown if this provision would facilitate additional DAS transfers, but it is likely that economic impacts from this provision would be positive. Reducing the conservation tax and removing the tonnage criterion through this final rule will likely yield greater economic benefits than the no action alternative because to date no vessels have participated in the DAS Transfer Program under the 40 percent conservation tax on Category A and B DAS.

FW 40B allows vessels the one-time opportunity to downgrade the permit baseline characteristics established for the DAS Leasing Program to reflect the physical characteristics of the vessel currently using the permit. This is expected to increase the potential pool of vessels available to lease DAS. The economic impact of this provision is likely to be positive compared to the no action alternative, though the number of vessels that might downgrade their DAS Leasing Program baseline and the economic value of that downgrade is not quantifiable.

The CA II Yellowtail Flounder SAP was implemented under Amendment 13. This final rule revises the season, adjusts the trip limit, limits the number of trips that could be taken during a fishing year, and establishes a process that allows the Regional Administrator to help achieve OY from the yellowtail flounder TAC and ensure that the SAP does not conflict with the management objectives outside of the SAP. Changing the start date for this SAP from June 1 to July 1 will likely increase the price received by vessels landing GB yellowtail flounder from the SAP because ex-vessel prices for GB yellowtail flounder have been historically lower in June compared to July. Reducing the GB yellowtail flounder landing limit from 30,000 lb (13,605 kg) per trip to 10,000 lb (4,536 kg) per trip and reducing vessels from two trips into the SAP per month to one trip per month will likely spread out landings of GB yellowtail flounder throughout the fishing year. This will likely lead to more consistently higher ex-vessel prices throughout the fishing year by avoiding dramatic drops in ex-vessel price that result when large amounts of yellowtail flounder are landed at one time. While regulating the supply of yellowtail flounder through restrictive trip limits may offer vessels higher ex-vessel prices, these restrictions could also increase costs by increasing the number of trips necessary to harvest the available TAC. However, current regulations allow vessels to fish in the CA II Yellowtail Flounder SAP and the Eastern U.S./Canada Haddock SAP Pilot Program and/or the Eastern U.S./Canada Area on the same trip, enabling vessels to target other species and potentially earn sufficient revenue to cover associated vessel costs. However, the Regional Administrator, after consulting with the Council, may determine that there is insufficient GB yellowtail flounder TAC available to support the opening of the CA II Yellowtail Flounder SAP without jeopardizing the GB yellowtail fishery outside of the SAP. If this determination is made, the Regional Administrator may reduce trips taken into this SAP to zero during the 2005 fishing year. This would further ensure that the large amounts of GB yellowtail flounder that were landed from this SAP during the 2004 fishing year that resulted in depressed market prices and the premature closing of the Eastern U.S./Canada Area do not negatively affect the fishery in a similar manner during the 2005 fishing year. A lower GB yellowtail flounder trip limit for the CA II Yellowtail Flounder SAP and the ability to close access to this SAP when there is insufficient GB yellowtail flounder TAC to support the SAP and a fishery outside the SAP would allow vessels greater opportunity to fully harvest the available GB cod and GB haddock TAC

allocated to the Eastern U.S./Canada Area and achieve the full economic benefit from the U.S./Canada Management Area for vessels operating under a Category A DAS. These revisions may help mitigate the derby effects and the resulting decreases in economic benefits from the U.S./Canada Management Area experienced during the 2004 fishing year and would result in increased economic benefits than the no action alternative.

FW 40B also changes the manner in which the GB Cod Hook Sector allocation is calculated by allowing all vessels and all landings, regardless of gear, to count towards the Sector's GB cod allocation. This will increase the Sector's share of the overall GB cod TAC for the 2005 fishing year. While Sector vessels would be able to increase overall fishing revenues from the increased allocation of GB cod, this provision may reduce the amount of GB cod target TAC available to non-Sector vessels. Even though the TAC available to non-Sector vessels is a target TAC and would not automatically result in area closures, the diminished non-Sector GB cod target TAC could potentially slightly increase the probability that the GB cod target TAC would be exceeded, necessitating possible additional restrictions on non-Sector vessels to ensure the target TAC is not exceeded. Therefore, compared to the no action alternative, this action would result in positive economic benefits to members of the GB Cod Hook Sector associated with an increase in the TAC of 0.33-percent, or 14 mt for the 2005 fishing year. Non-Sector vessels may potentially see future minimal restrictions on fishing and income opportunities associated with a decrease in available TAC of 14 mt for the 2005 fishing year. However, any reduction in fishing opportunities for non-Sector vessels caused by additional vessels joining the GB Cod Hook Sector and therefore increasing the GB Cod Hook Sector's GB cod TAC allocation could potentially be offset by the resulting reduction in the number of non-Sector vessels.

This final rule implementing FW 40B establishes a mechanism to provide a DAS credit for vessels standing by an entangled whale. This incentive for vessels to report and stand by an entangled whale is expected to increase the likelihood that entangled whales could be found, tracked, and potentially disentangled. Increasing the possibility that an entangled whale could be successfully tracked and disentangled would result in positive existence and non-consumptive use values to the public.

FW 40B requires that Category 1 herring vessels notify the NMFS Observer Program at least 72 hours prior to fishing for herring in the GOM or GB RMA's. In addition, if an observer is not provided for the trip, the vessel must notify NMFS Office of Law Enforcement via VMS at least 12 hours prior to offloading the catch. These requirements are likely to impose some costs associated with reduced trip flexibility. However, it is not known the extent to which this provision would compromise economic efficiency of herring vessel operations.

Finally, this action removes the net limit for Trip gillnet vessels. Removing the net limit also eliminates the need for vessels to purchase gillnet tags for groundfish gillnets (a reduction in costs of $180 per vessel). This also eliminates the need to switch the limited number of gillnet tags over to different sized nets during vessel operations. This provides greater flexibility in vessel operations, resulting in unknown positive economic benefits. This provision could increase the number of gillnets used by Trip gillnet vessels leading to potential increases in vessel revenue associated with higher landings.

FW 40B analyzed the aggregate economic benefits of four other non-selected alternatives. These alternatives consisted of various combinations of all of the provisions described in FW 40B, including some that were not specified in the selected alternative. Alternative 1, includes every provision described in FW 40B, including additional options for the DAS Leasing and Transfer Programs, the GB Haddock SAP North of CA I, an option that would restrict participation in the WGOM Closure Area Rod/Reel Haddock SAP to only NE multispecies DAS vessels, options to prohibit herring vessels from fishing in the NE multispecies closed areas, and a minimum observer requirement for vessels to participate in Category B DAS programs. Some of the provisions included in Alternative 1 (specifically, the GB Haddock SAP North of CA I and options to revise the DAS Transfer Program) would have resulted in greater economic benefits than the selected alternative, while others would have resulted in greater adverse impacts to specific groups of vessels. Given the restrictive measures and monitoring requirements involved with the GB Haddock SAP North of CA I, this measure would likely provide few additional opportunities for fishermen at the cost of considerable additional complexity in the fishery. Further, under Alternative 1, vessels participating in the DAS Leasing Program would have been adversely affected by a conservation tax for the DAS Leasing Program as well as Category 1 herring vessels that would have been prohibited from fishing in the NE multispecies closed areas. Finally, the minimum observer requirements to participate in a SAP would have likely resulted in greater costs to smaller vessels that do not have the required safety equipment necessary to carry an observer. These measures would have resulted in substantial adverse economic impacts than the selected alternative.

Alternative 2 is identical to the selected alternative without specifying certain options for the measures included, and would have resulted in the same economic impacts.

Alternative 3 differs from the selected alternative in that it would not change the current conservation tax for the DAS Leasing and Transfer Programs, includes modifications to the non-groundfish permit transfer provisions of the DAS Transfer Program, and does not include modifications to the GB Cod Hook Sector allocation calculation. This alternative would likely result in economic benefits similar to the no action alternative, although modifications to the DAS Transfer Program would have likely increased the value of DAS exchanged under that program. Alternative 4 differs from the proposed alternative in that it includes the GB Haddock SAP North of CA I, but does not include modifications to the GB Cod Hook Sector allocation calculation. Alternative 4 would result in greater economic benefit than the selected alternative because of the GB Haddock SAP North of CA I; however, as specified above, this measure would have likely provided few additional fishing opportunities for fishermen at the cost of considerable additional complexity in the fishery. The measures implemented by this final rule will provide greater economic efficiency than the non-selected alternatives without increasing the complexity of the fishery, compromising opportunities for Category 1 herring vessels to fish in the GOM or GB RMA's, or increasing the costs for vessels to comply with Observer Program requirements.

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 rule making process, a small entity complaince guide was prepared. Copies of the guide will be sent to all holders of limited access multispecies permits and Category 1 herring 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

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 25, 2005.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons stated in the preamble, 15 CFR part 902, and 50 CFR part 648 are amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, the table in paragraph (b) under 50 CFR is amended by:

■ a. Revising the existing entries for § 648.4, § 648.9, § 648.10, § 648.14, § 648.80, § 648.81, § 648.82, § 648.86, § 648.89, § 648.94, and § 648.322; and

■ b. Adding new entries for § 648.85, § 648.87, and § 648.88 to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
* * *	* *
50 CFR	
* * *	* *
648.4	–0202, –0212, and –0489.
* * *	* *
648.9	–0202, –0404, –0489 and –0501.
648.10	–0202, –0489, and –0501.
* * *	* *
648.14	–0202, –0212, –0469, –0489, –0501, and –0502.
* * *	* *
648.80	–0202, –0422, –0489, and –0521.
648.81	–0202, –0412, and –0489.
648.82	–0202, –0457, –0489, and –0521.
* * *	* *
648.85	–0212, –0489, –0501, and –0502.
648.86	–0202, –0391, –0457, and –0489.
648.87	–0489.
648.88	–0489.
648.89	–0412 and –0489.
* * *	* *
648.94	–0202 and –0489.
* * *	* *
648.322	–0480 and –0489.
* * *	* *

50 CFR Chapter VI

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

■ 4. In § 648.2, a new definition for ''Category 1 herring vessel'' is added in alphabetical order, to read as follows:

§ 648.2 Definitions.

* * * * *

Category 1 herring vessel, means a vessel issued a permit to fish for Atlantic herring that is required to have an operable VMS unit installed on board pursuant to §648.205(b).

* * * * *

■ 5. In § 648.10, paragraphs (b)(1)(vi) through (b)(1)(viii) are revised to read as follows:

§ 648.10 DAS notification requirements.

* * * * *

(b) * * *

(1) * * *

(vi) 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);

(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); and

* * * * *

■ 6. In § 648.14, paragraphs (a)(136), (a)(139), and (c)(14) are revised; and paragraphs (a)(165), (c)(80), (bb)(19), and (bb)(20) are added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(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 (xi).

* * * * *

(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)(vi) or (vii).

* * * * *

(165) If a vessel is fishing under a Category B DAS in the Closed Area II Yellowtail Flounder SAP specified in § 648.85(b)(3), the Regular B DAS Pilot Program specified in § 648.85(b)(6), or the Eastern U.S./Canada Haddock SAP Pilot Program specified in § 648.85(b)(8), remove any fish caught with any gear, including dumping the contents of a net, except on board the vessel.

* * * * *

(c) * * *

(14) If the vessel has been issued a limited access NE multispecies permit and fishes under a NE multispecies DAS with gillnet gear, fail to comply with gillnet tagging requirements specified in §§ 648.80(a)(3)(iv)(B)(*4*), (a)(3)(iv)(C), (a)(4)(iv)(B)(*3*), (b)(2)(iv)(B)(*3*), and (c)(2)(v)(B)(*3*), or fail to produce, or cause to be produced, gillnet tags when requested by an authorized officer.

* * * * *

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

* * * * *

(bb) * * *

(19) If the vessel has been issued a Category 1 herring permit and is fishing

for herring in the GOM/GB Exemption Area specified in § 648.80(a)(17), fail to notify NMFS at least 72 hours prior to departing on a trip for the purposes of observer deployment.

(20) If the vessel has been issued a Category 1 herring permit and is fishing for herring in the GOM/GB Exemption Area specified in § 648.80(a)(17), fail to notify the NMFS Office of Law Enforcement of the time and date of landing via VMS at least 12 hours prior to landing or crossing the VMS demarcation line on its return trip to port if issued an observer waiver pursuant to § 648.80(d)(7) or (e)(6).

* * * * *

■ 7. In § 648.80, paragraphs (a)(3)(iv)(A)(*2*), (a)(4)(iv)(A), (b)(2)(iv) introductory paragraph, (b)(2)(iv)(A), (c)(2)(v)(A), (d)(2), (d)(4), (d)(5), and (e)(2) through (e)(4) are revised; paragraphs (a)(3)(iv)(A)(*3*) and (a)(3)(iv)(A)(*4*) are removed; and paragraphs (d)(6), (d)(7), (e)(5), and (e)(6) are added to read as follows:

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

* * * * *

(a) * * *

(3) * * *

(iv) * * *

(A) * * *

(2) *Net size requirements.* Nets may not be longer than 300 ft (91.4 m), or 50 fathoms (91.4 m) in length.

* * * * *

(4) * * *

(iv) * * *

(A) *Trip gillnet vessels.* A Trip gillnet vessel fishing under a NE multispecies DAS and fishing in the GB Regulated Mesh Area may not fish with nets longer than 300 ft (91.4 m), or 50 fathoms (91.4 m) in length.

* * * * *

(b) * * *

(2) * * *

(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. Day gillnet vessels must also abide by the tagging requirements in paragraph (a)(3)(iv)(C) of this section.

(A) *Trip gillnet vessels.* A Trip gillnet vessel fishing under a NE multispecies DAS and fishing in the SNE Regulated Mesh Area may not fish with nets longer than 300 ft (91.4 m), or 50 fathoms (91.4 m) in length.

* * * * *

(c) * * *

(2) * * *

(v) * * *

(A) *Trip gillnet vessels.* A Trip gillnet vessel fishing under a NE multispecies DAS and fishing in the MA Regulated Mesh Area may not fish with nets longer than 300 ft (91.4 m), or 50 fathoms (91.4 m) in length.

* * * * *

(d) * * *

(2) When fishing under this exemption in the GOM/GB Exemption Area, as defined in paragraph (a)(17) 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;

* * * * *

(4) The vessel does not fish for, possess, or land NE multispecies;

(5) The vessel must carry a NMFS-approved sea sampler/observer, if requested by the Regional Administrator;

(6) To fish for herring under this exemption in the GOM/GB Exemption Area as defined in paragraph (a)(17) of this section, vessels issued a Category 1 herring permit pursuant to § 648.205(b) 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 beginning any trip into these areas for the purposes of observer deployment; and

(7) Any vessel issued an observer waiver pursuant to paragraph (d)(6) of this section must notify NMFS Office of Law Enforcement through VMS of the time and place of offloading at least 12 hours prior to crossing the VMS demarcation line on its return trip to port, or, for vessels that have not fished seaward of the VMS demarcation line, at least 12 hours prior to landing.

* * * * *

(e) * * *

(2) When fishing under this exemption in the GOM/GB Exemption Area, as defined in paragraph (a)(17) 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;

(4) The vessel does not fish for, possess, or land NE multispecies; and

(5) To fish for herring under this exemption in the GOM/GB Exemption Area as defined in paragraph (a)(17) of this section, vessels issued a Category 1 herring permit pursuant to § 648.205(b) 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 beginning any trip into these areas for the purposes of observer deployment; and

(6) Any vessel issued an observer waiver pursuant to paragraph (e)(5) of this section must notify NMFS Office of Law Enforcement through VMS of the time and place of offloading at least 12 hours prior to crossing the VMS demarcation line on its return trip to port, or, for vessels that have not fished seaward of the VMS demarcation line, at least 12 hours prior to landing.

* * * * *

■ 8. In § 648.82, paragraphs (k)(4)(ix), (l)(1)(ii), and (l)(1)(iv) are revised, and paragraphs (k)(4)(xi), and (m) are added to read as follows:

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

* * * * *

(k) * * *

(4) * * *

(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 (k)(4)(xi) of this section.

* * * * *

(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 (k)(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)(E) and (F), or any other provision, respectively.

(l) * * *

(1) * * *

(ii) NE multispecies DAS may be transferred only to a vessel with a baseline main engine horsepower rating that is no more than 20 percent greater than the baseline engine horsepower of the transferor vessel. NE multispecies DAS may be transferred only to a vessel with a baseline length overall that is no more than 10 percent greater than the baseline length overall of the transferor vessel. For the purposes of this program, the baseline horsepower and length overall are those associated with the permit as of January 29, 2004.

* * * * *

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

* * * * *

(m) *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.

■ 9. In § 648.85, paragraphs (b)(3)(iii), and (b)(3)(vi) through (b)(3)(viii) are revised to read as follows:

§ 648.85 Special management programs.

* * * * *

(b) * * *

(3) * * *

(iii) *Season.* Eligible vessels may fish in the Closed Area II Yellowtail Flounder SAP during the period July 1 through December 31.

* * * * *

(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 one trip per month, during the season described in paragraph (b)(3)(iii) of this section.

(vii) *Maximum number of trips per fishing year.* Unless otherwise authorized by the Regional Administrator as specified in paragraph (a)(3)(iv)(D) of this section, the total number of allowed trips by all vessels combined that may be declared into the Closed Area II Yellowtail Flounder SAP shall be as announced by the Regional Administrator, after consultation with the Council, for each fishing year, prior to June 1, through rulemaking consistent with the Administrative Procedure Act. The total number of trips by all vessels combined that may be declared into this SAP shall not exceed 320 trips per year. When determining the total number of trips, the Regional Administrator shall consider the available yellowtail flounder TAC under the U.S./Canada Resource Sharing Understanding, the potential catch of GB yellowtail flounder by all vessels fishing outside of the SAP, recent discard estimates in all fisheries that catch yellowtail flounder, and the expected number of SAP participants. If the Regional Administrator determines that the available catch, as determined by subtracting the potential catch of GB yellowtail flounder by all vessels outside of the SAP from the GB yellowtail flounder TAC allocation specified in paragraph (a)(2) of this section, is insufficient to allow for at least 150 trips with a possession limit of 15,000 lb (6,804 kg) of yellowtail flounder per trip, the Regional Administrator may choose not to

authorize any trips into the SAP during a fishing year.

(viii) *Trip limits*—(A) *Yellowtail flounder trip limit.* 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 10,000 lb (4,536 kg) of yellowtail flounder per trip. The Regional Administrator may adjust this limit to a maximum of 30,000 lb (13,608 kg) per trip after considering the factors listed in paragraph (b)(3)(vii) of this section for the maximum number of trips.

(B) *Cod and haddock trip limit.* Unless otherwise restricted, a NE multispecies vessel fishing any portion of a trip in the Closed Area 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 Closed Area II Yellowtail Flounder SAP is subject to the haddock requirements described under § 648.86(a), unless further restricted under paragraph (a)(3)(iv) of this section.

* * * * *

■ 10. In § 648.87, paragraphs (d)(1)(ii) and (d)(1)(iii)(A) are revised to read as follows:

§ 648.87 Sector allocation.

* * * * *

(d) * * *

(1) * * *

(ii) *Eligibility.* All vessels issued 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, regardless of gear fished.

(iii) * * *

(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, regardless of gear used, as reported in the NMFS dealer database.

* * * * *

[FR Doc. 05–10780 Filed 5–25–05; 4:29 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[T.D. TTB–27; Notice No. 21]

RIN 1513–AA58

Establishment of the Ribbon Ridge Viticultural Area (2002R–215P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: This Treasury decision establishes the Ribbon Ridge viticultural area in northern Yamhill County, Oregon. The new Ribbon Ridge viticultural area is entirely within the existing Willamette Valley viticultural area. We designate viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

DATES: *Effective Date:* July 1, 2005.

FOR FURTHER INFORMATION CONTACT: N. A. Sutton, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, 925 Lakeville St., # 158, Petaluma, CA 94952; telephone 415–271–1254.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (the FAA Act, 27 U.S.C. 201 *et seq.*) requires that alcohol beverage labels provide the consumer with adequate information regarding a product's identity and prohibits the use of misleading information on such labels. The FAA Act also authorizes the Secretary of the Treasury to issue regulations to carry out its provisions. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers these regulations.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) contains the list of approved viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been recognized and defined in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographic origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.3(b) of the TTB regulations requires the petition to include—

- Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;
- Historical or current evidence that supports setting the boundary of the proposed viticultural area as the petition specifies;
- Evidence relating to the geographical features, such as climate, soils, elevation, and physical features, that distinguish the proposed viticultural area from surrounding areas;
- A description of the specific boundary of the proposed viticultural area, based on features found on United States Geological Survey (USGS) maps; and
- A copy of the appropriate USGS map(s) with the proposed viticultural area's boundary prominently marked.

Ribbon Ridge Petition

The North Willamette Valley AVA Group petitioned TTB for the establishment of the ''Ribbon Ridge'' viticultural area in northern Yamhill County, Oregon. The 3,350-acre viticultural area is about 4 miles northwest of Dundee, 22 miles southwest of Portland, and 40 miles inland from the Pacific Ocean. The Ribbon Ridge viticultural area lies within the larger, established Willamette Valley viticultural area (27 CFR 9.90). As of 2002, the petitioned-for area contained 3 commercial wineries and 14 vineyards covering about 286 acres.

Geographically, Ribbon Ridge is a distinct, 3.5 mile long by 1.75-mile wide ridge separated from the surrounding mountains and hills on all sides by creek valleys. According to the petition,

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*, 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 was viewed 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 affect 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.

* * * * *

[FR Doc. 05–18229 Filed 9–9–05; 12:44 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 060606150–6240–02; I.D. 053106A]

RIN 0648–AT24

Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery, Framework Adjustment 42; Monkfish Fishery, Framework Adjustment 3

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

ACTION: Final rule.

SUMMARY: This final rule implements Framework Adjustment (FW) 42 to the Northeast (NE) Multispecies Fishery Management Plan (FMP) and FW 3 to the Monkfish FMP (Joint Framework). FW 42, developed by the New England Fishery Management Council (Council), is a biennial adjustment to the NE Multispecies FMP that sets forth a rebuilding program for Georges Bank (GB) yellowtail flounder and modifies NE multispecies fishery management measures to reduce fishing mortality rates (F) on six other groundfish stocks in order to maintain compliance with the rebuilding programs of the FMP. FW 42 also modifies and continues specific measures to mitigate the economic and social impacts of Amendment 13 to the FMP and to allow harvest levels to approach optimum yield (OY).

DATES: The emergency rule published on April 13, 2006 (71 FR 19348), that was extended by a temporary rule published on October 6, 2006 (71 FR 59020), which is scheduled to expire on April 4, 2007, is instead superseded by this final rule and expires at 12:01 a.m. on November 22, 2006. The amendments in this final rule become effective at 12:02 a.m. on November 22, 2006.

ADDRESSES: Copies of FW 42 and FW 3, the Regulatory Impact Review (RIR), the Final Regulatory Flexibility Analysis (FRFA), 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 FRFA consists of the Initial Regulatory Flexibility Analysis (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/FRFA 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,* or by fax at (202) 395–7285.

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

SUPPLEMENTARY INFORMATION:

Background

Amendment 13, implemented on April 27, 2004 (69 FR 22906), brought the FMP into conformance with Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requirements, including measures to end overfishing and rebuild all overfished groundfish stocks. In addition, Amendment 13 established a biennial FMP adjustment process that requires the Council to review the fishery periodically using the most current scientific information available, recommend target total allowable catches (Target TACs), and recommend to the Regional Administrator any changes to management measures necessary to achieve the goals and objectives of the FMP.

A proposed rule was published on July 26, 2006 (71 FR 42522), that included a detailed description of the biennial adjustment process, the August 2005 regional peer-review of stock assessment updates (GARM II; Northeast Fisheries Science Center Reference Document 05–13) completed for the 19 stocks managed under the FMP, proposed management measures, and timing issues related to the Joint Frameworks. Below is a brief summary of information published in the proposed rule.

The Council's Plan Development Team (PDT) performed an evaluation of the fishery based upon the results of GARM II and other available information. The primary goal of the PDT review was to determine the stocks for which an adjustment in management measures is required in order to ensure that the current F levels are consistent with the F's required under the rebuilding plans for overfished stocks managed under the FMP. Based on the information from GARM II and catch data, the PDT estimated F's for those stocks in need of reductions for calendar year (CY) 2005 (F_{2005}), a time period during which the fishery operated under only one suite of regulations (Amendment 13). Specifically, the PDT utilized available information for a portion of CY 2005, projected landings for the remainder of the year (based on current and historic information), and then estimated the F for the entire CY (F_{2005}).

To determine which of the 19 groundfish stocks were being fished at F's that were not in compliance with the Amendment 13 rebuilding target F's, the PDT compared the required F for 2006 to estimated F_{2005} for each stock. The PDT determined that, with one exception (GB yellowtail flounder), if F_{2005} exceeded the Amendment 13 target F for 2006, adjustment of management measures was necessary. These comparisons indicated that F_{2005} for some groundfish stocks was less than that estimated for 2004 (F_{2004}), but still higher than the 2006 target F (F_{2006}) specified in the rebuilding program established under Amendment 13. The groundfish stocks in need of additional F reductions to achieve the Amendment 13 F targets for fishing year (FY) 2006 are: 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; and white hake (see Table 1 below).

TABLE 1.—F REDUCTIONS NECESSARY TO ACHIEVE FY 2006 AMENDMENT 13 F TARGETS

Stock	F_{2004}	Estimated F_{2005}	Amendment 13 F_{2006}	F reduction necessary (%)
GOM Cod	0.58	0.37	0.23	32

TABLE 1.—F REDUCTIONS NECESSARY TO ACHIEVE FY 2006 AMENDMENT 13 F TARGETS—Continued

Stock	F_{2004}	Estimated F_{2005}	Amendment 13 F_{2006}	F reduction necessary (%)
CC/GOM Yellowtail Flounder	0.75	0.48	0.26	46
SNE/MA Yellowtail Flounder	0.99	0.58	0.26	55
SNE/MA Winter Flounder	0.38	0.35	0.32	9
GB Winter Flounder	1.86	NA	1.0*	46
White Hake	1.18	NA	1.03	13

*Amendment 13 did not establish a 2006 F target for GB winter flounder. Rather, Amendment 13 established the value of Fmsy as 0.32. However, because model estimates of relative F rate are more precise than estimates of actual F rates, GARM II presented the estimate of F rate for 2004 in relative terms. The threshold value for the relative F rate (F_{2004}/Fmsy) for GB winter flounder is 1.0.

NA: An estimate of F_{2005} for the stocks of GB winter flounder and white hake could not be developed because the assessments are index based. The necessary F reductions are based upon F_{2004}.

In addition to responding to the most recent information regarding F, the proposed measures were intended to continue and modify the management regime implemented by Amendment 13 and subsequent framework adjustments (FW 40–A, FW 40–B, and FW 41), and to replace measures implemented under Secretarial emergency authority at the beginning of FY 2006 (May 1, 2006, through April 30, 2007). The Council originally developed FW 42 with the intention of implementing the management measures on May 1, 2006 (the start of FY 2006), as specified by Amendment 13, and as required by the regulations. However, due to a delay in completion of FW 42 and the need to reduce F on specific groundfish stocks by the start of FY 2006, NMFS implemented emergency management measures (71 FR 19348; April 13, 2006) that went into effect on May 1, 2006, until such time that approved FW 42 measures could be implemented. This rule supercedes the emergency rule, and the regulatory text in this final rule is written to amend the regulations in 50 CFR part 648 as they appeared prior to implementation of the emergency rule.

Disapproved FW 42 Measure

FW 42 proposed that the Regional Administrator be given authority to adjust trip limits upward to facilitate harvest of the Target TACs, if it were projected that less than 90 percent of the Target TAC would be caught during the FY. Trip limit changes would have been allowed at any time during the FY, or before the start of the FY, if information was sufficient to make the necessary projections. This measure was disapproved, as explained below, because it is inconsistent with National Standard 2 and section 303(a)(8) of the Magnuson-Stevens Act.

This proposed measure would have expanded the Regional Administrator's authority to increase trip limits for six stocks (the regulations already provide authority for the Regional Administrator to modify the haddock trip limit): GOM cod, GB cod, white hake, GB winter flounder, CC/GOM yellowtail flounder, and SNE/MA yellowtail flounder. Administratively, this measure is problematic in that data on the catch amount and location of affected stocks are not available on a real-time basis and, depending upon the size of the TAC and the rate of harvest, there would likely not be enough information to make an accurate projection. To monitor these stocks, NMFS would need to rely on Vessel Trip Report (VTR) data and dealer landings data to make projections and, although such data provide some useful information, sufficient information on both catch amount and catch location would not be available on a real-time basis. Furthermore, the composition of Target TACs for three of the affected stocks (GOM cod, CC/GOM yellowtail flounder, and SNE/MA yellowtail flounder) also include discard data and/or recreational data, which also would not be available on a real-time basis. Because of the lack of sufficient real-time data for a number of stocks to accurately monitor catch of particular species within the fishery, the data available to implement this measure would not constitute the best available scientific information, as required by National Standard 2. In addition, section 303(a)(8) of the Magnuson-Stevens Act requires that an FMP specify the nature and extent of scientific data needed for the effective implementation of the FMP. Because of the limitations of existing data sources, without additional real-time reporting requirements to provide reliable and timely catch and discard data from both the commercial and recreational sectors, NMFS does not have sufficient real-time data to implement this provision. Therefore, this measure is not consistent with National Standard 2 or the required provisions of the Magnuson-Stevens Act and NMFS has disapproved it.

Approved Joint Framework Measures

NMFS has approved the remainder of the measures proposed in the Joint Frameworks. A description of these approved measures follows.

1. Recreational Restrictions

Under this final rule, private recreational vessels and vessels fishing under the charter/party regulations of the NE Multispecies FMP are prohibited from possessing or retaining any cod from the GOM Regulated Mesh Area (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). Private recreational and charter/party vessels may 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. These measures are designed to achieve a reduction in F for GOM cod caught by the recreational sector that is similar to the F reduction required of the commercial sector. The gear and cod stowage requirements are necessary to enforce these measures.

2. GB Yellowtail Flounder Rebuilding Plan

This final rule approves the FW 42 rebuilding plan for GB yellowtail flounder, whereby GB yellowtail flounder will be rebuilt from its current stock size to the biomass that can produce maximum sustainable yield (MSY) (B_{msy}) using an adaptive strategy that rebuilds the stock by 2014 with approximately a 75-percent probability of success. Under the adaptive strategy, the maximum F on the stock through 2008 will be set at F_{msy} (0.25), and subsequent changes to F required to complete rebuilding by 2014 ($F_{rebuild}$) will be developed in the 2009 biennial adjustment required by the FMP. This rebuilding strategy and 2014 timeline was selected by the Council to be

consistent with the rebuilding timelines for most of the stocks in the FMP, and to take into account uncertainty regarding the assessment of the stock. This rebuilding strategy is consistent with the management strategy agreed to under the U.S. cooperative management agreement with Canada.

3. Target TACs

Target TACs are approved through this rule pursuant to § 648.90(a)(2), which requires the Council to develop new Target TACs, based upon the most recent scientific information, as part of the biennial adjustment process. Thus, this final rule approves the Target TACs for all groundfish stocks for FY 2006, 2007, and 2008. The following Target TACs in Table 2 were developed by the Council's PDT and were calculated from projections of future catches, using recent assessment data and the Amendment 13 target F's. It is important to note that during the public comment period for this action, it was determined that an incorrect F rate was used in the calculation of Target TACs for American plaice for FY 2006–2008. This error resulted in over-estimating the Target TAC that would achieve the rebuilding F targets for these years, but does not require a change in management measures needed to achieve the rebuilding objectives of this action. The Target TACs for American plaice in Table 2 reflect the corrected Target TACs.

TABLE 2.—APPROVED TARGET TACS FOR 2006 THROUGH 2008

[Mt, live weight]

Species	Stock	2006	2007	2008	Composition
Cod	GB	7,458	9,822	11,855	E*
	GOM	5,146	10,020	10,491	C*
Haddock	GB	49,829	103,329	121,681	E
	GOM	1,279	1,254	1,229	A
Yellowtail flounder	GB	2,070	see footnote		D*
	SNE/MA	146	213	312	B*
	CC/GOM	650	1,078	1,406	B*
American plaice		2,781	3,243	4,135	B*
Witch flounder		5,511	5,075	4,331	A*
Winter flounder	GB	1,424	1,604	1,782	A*
	GOM		see footnote		C
	SNE/MA	2,481	3,016	3,577	C*
Redfish		1,946	2,075	2,167	A
White hake		2,056	1,676	1,367	E*
Pollock		12,005	12,005	12,005	E
Windowpane flounder	North	389	389	389	A
	South	173	166	159	A
Ocean pout		38	38	38	A
Atlantic halibut		NA	NA	NA	NA

A = Commercial Landings.
B = Commercial Landings and Discards.
C = Commercial Landings, Discards, and Recreational Harvest.
D = Commercial Landings and Discards (U.S. portion of U.S./Canada TAC).
E = Commercial Landings (U.S. and Canada).
*For Stocks of Concern: Incidental TAC is a subset of Target TAC.
GARM II did not develop a TAC for GOM winter flounder because of uncertainties in the assessment.
Note, proposed TACs for GB cod and GB haddock include Canadian landings.
GB yellowtail flounder TACs are hard TACs, which are determined annually and cannot be specified in advance.
2006 GB yellowtail flounder TAC was implemented on April 28, 2006 (71 FR 25095).

4. Incidental Catch TACs

The values of Incidental Catch TACs for FY 2006 through 2008 are implemented through this final rule pursuant to the regulations at § 648.85(b)(5), which require the Council to develop new Incidental Catch TACs based upon the most recent scientific information, as part of the biennial FMP adjustment process. Although Incidental Catch TACs for 2006 were specified in FW 41, this action modifies definitions of the Incidental Catch TACs with respect to the Target TACs, modifies the allocation of Incidental Catch TACs among Special Management Programs, and specifies values of all Incidental Catch TACs, based upon the most recent scientific information (GARM II). As noted above, an error was discovered in the calculation of Target TACs for American plaice that resulted in over-estimating the Target TACs, and, therefore, the Incidental Catch TACs for this species. The corrected Incidental Catch TACs for American plaice are listed in Table 3 below.

In addition to the actions described above that relate to the Incidental Catch TACs for the eight stocks of concern noted above, this final rule defines GB yellowtail flounder and GB winter flounder as additional stocks of concern, defines the size of the Incidental Catch TACs (with respect to the Target TACs) that are likely to be caught in the Special Management Programs, specifies Incidental Catch TAC values for FYs 2006 through 2008, and allocates the Incidental Catch TACs among Special Management Programs.

This final rule clarifies the relationship between Target TACs and Incidental Catch TACs; that is, Incidental Catch TACs are considered as a subset of the pertinent Target TACs (rather than as amounts in excess of the Target TACs). This clarification is intended to increase the utility of Target TACs as a tool used to evaluate the effectiveness of the management measure.

TABLE 3.—DEFINITION OF INCIDENTAL CATCH TACS (PERCENT) AND SPECIFICATION OF TARGET TACS FOR FY 2006 THROUGH 2008 (MT)

Stock of concern	Percentage of total target TAC	2006	2007	2008
GB cod	Two	122.6	(*)	(*)
GOM cod	One	49.9	99.0	103.9
GB yellowtail flounder	Two	41.4	(*)	(*)
CC/GOM yellowtail flounder	One	6.5	10.8	14.1
SNE/MA yellowtail flounder	One	1.5	2.1	3.1
American plaice	Five	139	162.1	206.7
Witch flounder	Five	275.6	253.8	216.6
SNE/MA winter flounder	One	24.8	30.2	35.6
GB winter flounder	Two	28.5	32.1	35.6
White hake	Two	41.1	33.5	27.3

*Note: GB cod and GB yellowtail flounder TACs are determined annually and cannot be estimated in advance.

TABLE 4.—ALLOCATION OF INCIDENTAL CATCH TACS AMONG CATEGORY B DAYS-AT-SEA (DAS) PROGRAMS

[Shown as a percentage of the Incidental Catch TAC]

Stock of concern	Regular B DAS program	Closed area I hook gear haddock SAP	Eastern U.S./ Canada haddock SAP
GOM cod	100	NA	NA
GB cod	50	16	34
CC/GOM yellowtail flounder	100	NA	NA
American plaice	100	NA	NA
White hake	100	NA	NA
SNE/MA yellowtail flounder	100	NA	NA
SNE/MA winter flounder	100	NA	NA
Witch flounder	100	NA	NA
GB yellowtail flounder	50	NA	50
GB winter flounder	50	NA	50

5. Default DAS Allocations

Amendment 13 established two ''default'' measures that would automatically reduce F on multiple groundfish species, for American plaice and SNE/MA yellowtail flounder, beginning in FY 2006, unless certain criteria are met. Because these criteria have not been met, the Amendment 13 default DAS measure (a change in the Category A and B DAS ratio from 60:40 to 55:45) for FY 2006–2008 remains unchanged. This default measure represents an 8.3-percent reduction in the number of allocated Category A DAS. This final rule also modifies the default differential DAS counting measure in the SNE RMA, as described in Section 8 of this preamble.

6. Vessel Monitoring System (VMS) Requirement

All limited access NE multispecies DAS vessels using a groundfish DAS must be equipped with an approved VMS that meets the requirements of § 648.9. As of the effective date of this rule, it is illegal for a limited access NE multispecies DAS vessel to begin a fishing trip under a groundfish DAS without an approved VMS. A vessel owner with a limited access NE multispecies DAS permit who does not intend to and does not fish any groundfish DAS during the FY is allowed to renew the vessel's limited access permit without having an approved VMS, but may not fish any of the vessel's groundfish DAS for that FY. A vessel owner that is not already equipped with an approved VMS must provide pertinent information (e.g., type of VMS unit, installation date, dealer, etc.) to NMFS prior to beginning a NE multispecies fishing trip after the effective date of this final rule. NMFS is sending letters to all limited access NE multispecies DAS permit holders in order to provide detailed information on the procedures pertaining to VMS purchase, installation, and use. If a vessel is subject to multiple, conflicting VMS regulations of different programs, the most restrictive requirement applies. For example, a vessel fishing in both the Eastern U.S./Canada Area and in one of the Differential DAS Areas (described in Sections 7 and 8 of this preamble) on the same trip is subject to the VMS restrictions that pertain to both programs (e.g., the requirement to declare into the Differential DAS Areas prior to leaving port or prior to leaving the Eastern U.S./Canada Area and the reporting requirements for the Eastern U.S./Canada Area specified at § 648.85(a)(3)(v)).

Despite a mandatory VMS requirement, NE multispecies DAS vessels are still required to declare periods out of the fishery (spawning block out and Day Gillnet vessel blocks out) through the Interactive Voice Response (IVR) call-in system. The Regional Administrator may authorize limited access NE multispecies vessels to utilize the IVR system in lieu of the VMS system for the administration of DAS requirements should a vessel's VMS become inoperable. In addition, if a vessel's VMS is not operational, the Regional Administrator may require vessels to obtain a Letter of Authorization (LOA) as an alternate method of enforcing a possession limit.

7. Differential DAS Counting in GOM

Under this final rule, all NE multispecies Category A DAS used by a vessel that has declared (through VMS, or other means approved by the Regional Administrator), prior to leaving the dock, that it will be fishing within the GOM Differential DAS Area during any portion of its trip, with the exception noted below for a Day gillnet vessel, will be charged at a rate of 2:1, regardless of area fished. The GOM

Differential DAS Area (defined at § 648.82(e)(2)(i)(A) of the regulatory text portion of this document), includes most of the area west of 69°30′ W. long. and between 41°30′ and 43°30′ N. lat. (between approximately Monomoy Island, MA, and Portland, ME). Day gillnet vessels will be charged DAS at a rate of 2:1 for the actual hours used for any trip of less than 3 hr in duration, and for any trip of greater than 7.5 hr. For Day gillnet trips between 3 and 7.5 hr duration, vessels will be charged a full 15 hr. To illustrate how DAS are charged in the GOM Differential DAS Area for different categories of vessels, the following examples are provided. A trawl vessel that has declared into the GOM Differential DAS Area on a trip that lasts 10 actual hr would be charged 20 hr (10 hr × 2) of DAS use, regardless of where the vessel fished. Conversely, a Day gillnet vessel that has declared into the GOM Differential DAS Area on a trip that lasts 5 actual hr would be charged for 15 hr of DAS use regardless of where the vessel fished (between 3 and 7.5 hr = 15 hr); a Day gillnet vessel fishing in the GOM Differential DAS Area on a trip that lasts 8 actual hr would be charged for 16 hr of DAS use regardless of where the vessel fished (8 hr × 2). On any trip in which a vessel declares, prior to leaving the dock, that it will be fishing in the GOM Differential DAS Area under a Category A DAS, the vessel will be charged at the differential DAS rate for the entire fishing trip, even if only a portion of the trip is spent fishing in the GOM Differential DAS Area. A vessel may not fish under a Category A DAS in the GOM Differential DAS Area, unless it has declared into this area prior to the start of the trip, or unless exempted, as described below. A vessel that does not declare its intent to fish in the GOM Differential DAS Area may still transit or be in the area, provided its fishing gear is properly stowed according to the regulations and, if the vessel is in the area for reasons other than transiting (e.g., to evade bad weather), the vessel immediately notifies NMFS that it is within the GOM Differential DAS Area, but not fishing through its VMS. This provision has been modified from the proposed rule, which allowed non-fishing and non-transiting vessels to be in the area ''due to bad weather, or other circumstances beyond its control,'' based on Council comment and to ensure effective enforcement of this provision.

No changes to the Monkfish FMP regulations are implemented to accommodate the NE multispecies Differential DAS rules, but the following is an explanation of how the proposed groundfish regulations would work with the current Monkfish FMP regulations. A vessel issued a limited access monkfish Category C or D permit that has declared into the GOM Differential DAS Area under a monkfish DAS (thereby using both a monkfish and NE multispecies DAS) will have its NE multispecies DAS charged at a rate of 2:1, but its monkfish DAS will continue to be charged at a rate of 1:1. The regulations will continue to allow a monkfish Category C and D vessel to fish under a monkfish-only DAS, when groundfish DAS are no longer available, to ensure that it can fish its full allocation of monkfish DAS. Monkfish Category C and D vessels that accrued monkfish-only DAS under the recent emergency regulations as a result of the use of NE multispecies DAS at the differential rate of 1.4 to 1 will be able to continue to use such monkfish only DAS under this final rule, during the remainder of this FY. Under this final rule, vessels fishing under a monkfish-only DAS will continue to be required to fish under the provisions of the monkfish Category A or B permit. Such a vessel is limited to monkfish-only DAS equal to its net monkfish DAS allocations (including carry-over DAS) minus its net NE multispecies Category A DAS allocation (including carry-over DAS). A monkfish vessel will continue to be allocated ''monkfish only'' DAS based upon its current allocations of monkfish and NE multispecies DAS. This allocation is not expanded to account for the effects on monkfish DAS due to the differential DAS measures implemented by this final rule. For example, if a Category C monkfish vessel allocated 40 monkfish DAS has a current NE multispecies DAS allocation of 15 DAS, the maximum number of monkfish-only DAS that the vessel would be able to fish would be 25 DAS (40 monkfish DAS − 15 NE multispecies DAS). However, for a vessel fishing under differential DAS, the overall amount of monkfish DAS that could be used is effectively reduced because the NE multispecies DAS are used at the differential rate. Using the example above, if the vessel fished all 15 NE multispecies DAS at the differential DAS rate, the vessel would use up its allocation of NE multispecies DAS after 7.5 days of actual time fished (7.5 days × 2.0 = 15 DAS). Therefore, even though the vessel only fished 7.5 actual NE multispecies DAS, it would be able to fish only up to 25 of its monkfish DAS as ''monkfish-only'' DAS.

For a vessel that has declared into the GOM Differential DAS Area, trip limits apply based on the actual days spent fishing, and not on the basis of the differential DAS that were charged for the trip. The cod possession limit rule that requires vessels to ''run the clock'' to fully account for each daily limit of cod caught does not apply to trips charged at the differential DAS rate (for both GOM and GB cod). For example, if the trip of a vessel declared into the GOM Differential DAS Area lasts for 25 hr actual time, the vessel would be allowed to catch twice the daily limit of GOM cod (800 lb (362.9 kg) per DAS), and would be charged 50 hr of DAS. Because differential DAS apply only to Category A DAS, a vessel that begins and ends its trip in the GOM Differential DAS Area under the Regular B DAS Program is not subject to the differential DAS counting and is subject to the DAS counting rules of the Regular B DAS Program.

A vessel that fishes inside and outside of the Eastern U.S./Canada Area on the same trip (as described in section 15 of this preamble) may also fish in the GOM Differential DAS Area on the same trip, provided the vessel declares its intent to fish in the GOM Differential DAS Area via VMS prior to leaving the Eastern U.S./Canada Area. A vessel that has declared into both the GOM Differential DAS Area and the Eastern U.S./Canada Area on the same trip will be subject to the most restrictive DAS counting, trip limits, and reporting requirements applicable to the two areas for the entire trip.

The GOM Differential DAS restrictions are designed to reduce F on GOM/CC yellowtail flounder, GOM cod, and white hake.

8. Differential DAS Counting in SNE

All NE multispecies Category A DAS used by a vessel that has declared (through VMS, or other means approved by the Regional Administrator), prior to leaving the dock, that it will be fishing within the SNE Differential DAS Area during any portion of its trip, with the exception noted below, will be charged at a rate of 2:1 when fishing in a specific portion of the SNE RMA. A vessel may not fish, except as noted below, under a Category A DAS in the SNE Differential DAS Area, unless it has declared into the area prior to the start of the trip. The SNE Differential DAS Area (defined at § 648.82(e)(2)(i)(B) in the regulatory text portion of this document) is an irregular-shaped offshore area extending from 73°40′ W. long., east to 69°30′ W. long. (from south of western Long Island to north of the Nantucket Lightship Closed Area). On

any trip in which a vessel declares, prior to leaving the dock, via its VMS unit, that it will be harvesting fish in the SNE Differential DAS Area under a Category A DAS, the vessel will be charged at the differential DAS rate for that portion of the trip spent in the SNE Differential Area (as determined from VMS positional data). The time spent outside this area will be charged at the rate of 1:1. For example, if a trawl vessel declares into the SNE Differential DAS Area through its VMS unit on a trip that lasts 12 actual hr with only 4 hr actually spent in the SNE Differential DAS Area, the total DAS deducted for that trip would equal 16 hr (8 hr of actual time outside the SNE Differential DAS Area plus 8 hr (4 hr × 2) of differential DAS time). A Day gillnet vessel that declares into the SNE Differential DAS Area through VMS will be charged according to the following formula for the actual time spent in the SNE Differential DAS Area: For hours accrued in the area less than 3 hr or greater than 7.5 hr, vessels will be charged at a rate of 2:1; for hours accrued in the area between 3 and 7.5 hr, vessels will be charged a full 15 hr. The DAS accrued outside of the SNE Differential DAS Area will accrue on a 1:1 basis. For example, if a Day gillnet vessel declared into the SNE Differential DAS Area on a trip that lasts 12 actual hours with only 5 hr actually spent in the SNE Differential DAS Area, the total DAS deducted for that trip would be 22 hr (7 hr of actual time outside of the SNE Differential DAS Area, plus 15 hr according to the above formula). For trips where a Day gillnet vessel declares into the SNE Differential DAS Area, the application of the DAS accrual formula described above does not supersede the DAS accrual formula that applies to all NE multispecies Day gillnet vessels. In other words, the net DAS charge for a Day gillnet vessel for a trip declared into the SNE Differential DAS Area may not be less than the DAS that would accrue on the same length trip by a Day gillnet vessel not declared into the SNE Differential DAS Area.

If the Regional Administrator requires the use of the IVR or other non-VMS reporting system, a vessel fishing for any portion of its trip in the SNE Differential DAS Area will be charged at the rate of 2:1 for the entire trip, in a manner similar to that described for differential DAS counting in the GOM Differential DAS Area (see section 7 of this preamble). Because it is not possible to determine the amount of time a vessel fishes inside the SNE Differential DAS Area using IVR or IVR technology, the vessel must be charged at the differential rate for the entire trip. Further, if a vessel fishes in both the GOM and SNE Differential DAS Area on the same trip, the vessel will be charged at the rate of 2:1 for the entire trip.

Similar to fishing in the GOM Differential DAS Area, a vessel issued a limited access monkfish Category C or D permit that has declared into the SNE Differential DAS Area under a monkfish DAS (and therefore is accruing both monkfish and NE multispecies DAS) will have its NE multispecies DAS charged at a rate of 2:1, as described above, and its monkfish DAS charged at a rate of 1:1.

A vessel that does not declare its intent to fish in the SNE Differential DAS Area under a Category A DAS, may still transit or be in the area, provided its fishing gear is properly stowed, according to the applicable regulations, and if the vessel is not in the area for transiting purposes, it immediately notifies NMFS through its VMS that it is in the SNE Differential DAS Area, but not fishing. This provision has been modified from the proposed rule, which allowed non-fishing and non-transiting vessels to be in the area ''due to bad weather, or other circumstances beyond its control,'' based on Council comment and to ensure effective enforcement of this measure.

Similar to how trip limits are counted when fishing in the GOM Differential DAS Area, for trips declared into the SNE Differential DAS Area, all trip limits apply based on the actual days spent fishing, and not on the basis of the number of DAS charged. A vessel that begins and ends a fishing trip under the Regular B DAS Program is not be subject to differential DAS counting, regardless of where it fishes.

A vessel that fishes inside and outside of the U.S./Canada Management Area on the same trip (as described in section 15 of this preamble) may also fish in the SNE Differential DAS Area on the same trip, provided the vessel declares its intent to fish in the SNE Differential DAS Area via VMS prior to leaving the Eastern U.S./Canada Area. A vessel that has declared into both the SNE Differential DAS Area and the Eastern U.S./Canada Area on the same trip will be subject to the more restrictive DAS counting, trip limits, and reporting requirements applicable to the two areas for the entire trip.

The SNE Differential DAS restrictions are designed to reduce F on SNE/MA yellowtail flounder, SNE winter flounder, and white hake.

9. Commercial Trip Limits

This final rule does not change the Amendment 13 GOM cod trip limit (800 lb (362.9 kg) per DAS, up to 4,000 lb (1,818.2 kg) per trip). This final rule implements new trip limits for white hake and GB winter flounder, modifies the existing trip limits for the three yellowtail flounder stocks (CC/GOM, GB, and SNE/MA), and modifies the haddock trip limit and the GOM cod trip limit exemption and cod overage regulations.

A NE multispecies DAS vessel fishing under Category A DAS, or any other vessel subject to the NE multispecies possession and trip limit regulations, may land up 1,000 lb (453.6 kg) of white hake per DAS, or any part of a DAS, up to 10,000 lb (4,536.2 kg) per trip, unless otherwise restricted. A NE multispecies DAS vessel fishing under a Category A DAS that has declared into the U.S./Canada Management Area, or any other vessel subject to the NE multispecies possession and trip limit regulations, may land up to 5,000 lb (2,268.1 kg) of GB winter flounder and 10,000 lb (4,536.2 kg) of GB yellowtail flounder per trip, unless otherwise restricted. The U.S./Canada Management Area is defined as the same geographic area as the GB winter flounder and the GB yellowtail flounder stock areas.

NE multispecies DAS vessels fishing under Category A DAS, or any other vessel subject to the NE multispecies possession and trip limit regulations, may land up to 250 lb (113.6 kg) per DAS, or any part of a DAS, up to 1,000 lb (453.6 kg) per trip of CC/GOM or SNE/MA yellowtail flounder for the entire FY. Because the trip limits for CC/GOM and SNE/MA yellowtail flounder are the same, this final rule removes the requirement that vessels obtain and possess on board a yellowtail flounder LOA issued by the Regional Administrator in order to land yellowtail flounder from the CC/GOM or SNE/MA Yellowtail Flounder Areas.

This final rule expands the Regional Administrator's authority to modify the GB yellowtail flounder trip limit, removes the requirement that NMFS impose a GB yellowtail flounder trip limit when 70 percent of the TAC is reached, and removes the threshold harvest levels of 30 percent and 60 percent before other management measures can be adjusted. Instead, this final rule implements an initial GB yellowtail flounder trip limit of 10,000 lb (4,536.2 kg) per trip and allows the Regional Administrator to make adjustments to the GB yellowtail flounder trip limit at any time during the FY, and to eliminate or adjust the initial 10,000-lb (4,536.2–kg) trip limit before the start of the FY, in order to prevent exceeding or in order to facilitate harvesting the GB yellowtail flounder TAC, in a manner consistent

with the Administrative Procedure Act, as more fully described under Section 22 of this preamble. If no trip limit is specified for the beginning of a FY, the 10,000–lb (4,536.2–kg) yellowtail flounder trip limit will remain in effect. The Regional Administrator may specify a yellowtail flounder trip limit for all of the U.S./Canada Management Area or for either of its two sub-areas (*i.e.*, the Western U.S./Canada Area or the Eastern U.S./Canada Area). This final rule also recognizes non-binding guidance developed by the Council to assist the Regional Administrator regarding potential in-season modifications to the GB yellowtail flounder trip limit. Table 5 contains catch thresholds and associated trip limits offered as non-binding Council guidance for consideration.

TABLE 5.—GB YELLOWTAIL FLOUNDER TRIP LIMIT ADJUSTMENT GUIDANCE

FY quarter	If catch is projected to reach 30% of the TAC during the specified quarter, the suggested trip limit is as follows:	If catch is projected to reach 60% of the TAC during the specified quarter, the suggested trip limit is as follows:
Quarter 1 (May–July)	7,500 lb (3,402.1 kg)	3,000 lb (1,360.9 kg).
Quarter 2 (August–October)	10,000 lb (4,536.2 kg)	5,000 lb (2,268.1 kg).
Quarter 3 (November–January)	25,000 lb (11,340.4 kg)	10,000 lb (4,536.2 kg).
Quarter 4 (February–April)	Remove trip limits	25,000 lb (11,340.4 kg).

This final rule eliminates the current initial haddock trip limit provision (May–Sept 3,000 lb (1,360.8 kg) per DAS up to 30,000 lb (13,608 kg) per trip; Oct–Apr 5,000 lb (2,268 kg) per DAS up to 50,000 lb (22,680 kg) per trip) and as more fully described under Section 22 of this preamble, the automatic trip limit reduction for Eastern GB haddock (1,500 lb (680.4 kg) per DAS or up to 15,000 lb (6,804.1 kg) per trip) when 70 percent of the TAC is projected by the Regional Administrator.

The requirement for NE multispecies DAS vessels to obtain a GB Cod Trip Limit Exemption LOA from the Regional Administrator when fishing outside of the GOM RMA, if the vessel operator desires to be exempt from the more restrictive cod trip limit in the GOM, is eliminated because this law enforcement tool is no longer necessary. Instead, with the exception of vessels declared into the U.S./Canada Management Area, a NE multispecies DAS vessel fishing south of the GOM RMA must declare through the VMS, prior to leaving the dock in accordance with instructions to be provided by the Regional Administrator, its intent to fish south of the GOM RMA in order to be subject to the less restrictive GB cod trip limits. Such a vessel is exempt from the GOM cod landing limit, but may not fish in the GOM RMA for the duration of the trip. Such a vessel may transit the GOM RMA, provided that its gear is properly stowed while in the GOM RMA. A vessel that has not declared through VMS that it will be fishing south of the GOM RMA, is subject to the most restrictive applicable cod trip limit, regardless of area fished for the entire trip.

The Regional Administrator retains the authority to require a vessel to obtain a GOM Cod Trip Limit Exemption LOA (as under pre-FW 42 regulations), if NMFS's administration of the VMS program is not operational. If an LOA is required, such a vessel may not fish north of the exemption area for a minimum of 7 consecutive days (when fishing under the NE multispecies DAS program), and must carry the LOA on board.

For a vessel that is not declared into and does not fish in either of the two differential DAS areas and that catches cod in excess of the GOM or GB cod trip limits (i.e., the vessel possesses up to 1 extra day's worth of cod in relation to the amount of DAS that have elapsed), the current requirement for vessels to ''run'' their clocks upon entering port (to account for the amount of cod on board) is replaced by a requirement to make a declaration via VMS prior to crossing the VMS demarcation line. For a vessel making this VMS declaration, NMFS will make the appropriate increase to the DAS accrued (up to 23 hours and 59 minutes) to round up the next 24-hr increment of DAS.

10. Regular B DAS Program

This final rule renews the Regular B DAS Program, but modifies certain aspects in order to further reduce the potential risks associated with the use of a Regular B DAS and to minimize impacts to the monkfish fishery. The program will no longer be characterized as a ''Pilot,'' and will remain in effect indefinitely.

The Regular B DAS Program allows limited access NE multispecies DAS vessels with an allocation of Regular B DAS to fish under a Regular B DAS in order to harvest relatively healthy groundfish stocks (GB haddock, pollock, redfish, GOM winter flounder, and GOM haddock). GB winter flounder and GB yellowtail flounder are now considered ''stocks of concern'' that require additional reductions in F. Vessels eligible to fish in the Regular B DAS Program may not fish in this program and in a Special Access Program (SAP) (e.g., the Eastern U.S./Canada Haddock SAP, Closed Area (CA) I Hook Gear Haddock SAP, or CA II yellowtail flounder SAP) on the same trip. 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 CY (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). DAS that are not used in one quarter will not be available for use in subsequent quarters. As implemented previously under FW 40–A, Regular B DAS will accrue at the rate of 1 DAS for each calendar day, or part of a calendar day, fished.

A vessel participating in this program must be equipped with an approved VMS and must notify the NMFS Observer Program at least 72 hr in advance of a trip in order to facilitate observer coverage. This notification requires reporting of the following information: The general area or areas that will be fished (GOM, GB, or 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 does not restrict the vessel's activity to fish only in that area on that trip, but will be used to plan observer coverage. 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 must report their catches of certain groundfish stocks of concern (cod, yellowtail flounder, winter flounder, witch flounder,

American plaice, and white hake) and haddock daily through VMS, including the amount of fish kept and discarded. These reporting requirements are consistent with the standardized reporting requirements that, as implemented by this final rule, apply to all Special Management Programs of the FMP, as explained in section 17 of this preamble.

In contrast to the Regular B DAS Pilot Program, in which a trawl vessel was not required to utilize any particular gear type, under this final rule, a trawl vessel must use an approved haddock separator trawl when participating in the Regular B DAS Program. Other trawl net configurations may be on board the vessel, provided they are properly stowed when the vessel is fishing under the Regular B DAS Program rules. The intent of this restriction is to further reduce the potential for vessels to catch stocks of concern, notably cod, yellowtail flounder, and winter flounder. Furthermore, for a trawl vessel fishing with the proposed haddock separator trawl, 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 help promote and ensure the proper utilization of the haddock separator trawl; a properly configured haddock separator trawl should not catch large quantities of these species.

A vessel fishing under a Category B DAS while in this program is prohibited from discarding legal-sized regulated NE multispecies, Atlantic halibut, ocean pout, and monkfish, and is limited to landing 100 lb (45.4 kg) per DAS, or any part of a DAS, of each of the following groundfish stocks: GOM cod, GB cod, GB yellowtail flounder, American plaice, witch flounder, white hake, SNE/MA winter flounder, GB winter flounder, southern windowpane flounder, and ocean pout, unless further restricted (see below). In addition, a vessel fishing in this program is limited to landing no more than one Atlantic halibut and 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 CC/GOM or SNE/MA yellowtail flounder. A limited access monkfish DAS vessel fishing with gear other than trawl gear that is participating in this program under a NE multispecies DAS is subject to the monkfish Incidental Catch limit applicable to the monkfish Incidental Catch permit (Category E) (i.e., 400 lb (181.4 kg) tail weight/DAS, or 50 percent of the total weight of fish on board, whichever is less, when fishing in the monkfish Northern Fishery Management Area (NFMA); and 50 lb (22.7 kg) tail weight/DAS when fishing in the monkfish Southern Fishery Management Area (SFMA)). A limited access monkfish DAS vessels fishing with trawl gear that is participating in this program under a NE multispecies DAS is subject to the monkfish Incidental Catch limit applicable to the monkfish Incidental Catch permit (Category E), as well as the monkfish restrictions associated with the required use of the haddock separator trawl (as described below). That is, vessels may not land more than 500 lb (226.8 kg) whole weight of monkfish per trip when fishing in the monkfish NFMA; and 500 lb (226.8 kg) whole weight per trip or 50 lb (22.7 kg) tail weight per DAS, whichever is less, when fishing in the monkfish SFMA.

If a vessel fishing under the Category B DAS Program harvests and brings on board a stock with an Incidental Catch TAC (cod, yellowtail, American plaice, witch flounder, white hake, SNE winter flounder, GB winter flounder), or southern windowpane flounder, ocean pout, Atlantic halibut, or monkfish, in excess of the landing limits, the vessel operator must retain on board the excess catch of these species, and immediately notify NMFS, via VMS, that it is changing its DAS category from a Regular B DAS to a Category A DAS (i.e., ''DAS flip''). If a vessel flips from a Regular B DAS to a Category A DAS, it will be charged Category A DAS, which will accrue to the nearest minute, for the entire trip (i.e., not to the nearest day). Once the vessel flips, it is subject to the Category A trip limit restrictions. A vessel fishing in the Category B DAS Program must abide by all the reporting requirements described above for the duration of the trip, even if the vessel ''flips'' to a Category A DAS.

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 catch a groundfish species of concern in an amount that exceeded the trip limit), with the exception of vessels fishing in one of the differential DAS areas (as explained below), 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 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. If a vessel is fishing in either the GOM Differential DAS Area or the SNE Differential DAS 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 two. For example, if a vessel plans a trip under the Regular B DAS Program and has 10 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.

This action provides the Regional Administrator authority to approve the use of additional gear specifically for this program, based on approved gear standards recommended by the Council. After consideration of the Groundfish Committee's recommendation on the standards that must be met by potential gears, the Council may determine what standards, if any, will be recommended to the Regional Administrator to facilitate the determination of whether a proposed gear type is acceptable based on whether the proposed gear has been demonstrated to reduce catch of groundfish stocks of concern. Upon receipt of the Council's recommendation on gear standards, NMFS may implement these standards in a manner consistent with the Administrative Procedure Act. If NMFS decides not to implement the Council's recommendation on gear standards, it must provide a written rationale to the Council regarding its decision not to do so.

The Pilot Program implemented by FW 40–A allowed a vessel issued a limited access monkfish Category C or D permit to use a NE multispecies Regular B DAS to fulfill the requirements of the Monkfish FMP, which requires such a vessel to use a NE multispecies DAS every time a monkfish DAS is used. To reduce fishing mortality on monkfish resulting from the use of Regular B DAS, this final rule implements the Monkfish FW 3 provision prohibiting a limited access monkfish DAS vessel that also possesses a limited access NE multispecies DAS permit from using a monkfish DAS (in conjunction with a NE multispecies Regular B DAS) when participating in the Regular B DAS Program. This vessel may still participate in this program and use a NE multispecies Regular B DAS, but it must fish under a NE multispecies DAS only and is subject to the monkfish trip limits. Discarding of legal-sized monkfish is prohibited when fishing under this program.

NMFS will administer the Regular B DAS Program quarterly DAS cap by monitoring the total number of Regular B DAS accrued on trips that begin and end under a Regular B DAS. Mere declaration of a Regular B DAS Program trip through VMS does not reserve a

vessel's right to fish under this program, because the vessel must also cross the demarcation line to begin a trip in this program. Once the maximum number of Regular B DAS are projected to be used in a quarter, the Regional Administrator will end the Regular B DAS Program for that quarter. In order to limit the potential impact of the Regular B DAS Program on the fishing mortality of groundfish stocks of concern, a quarterly Incidental Catch TAC will be set for certain groundfish stocks of concern for this program. Based upon the definition of Incidental Catch TACs and the allocation of Incidental Catch TACs among Special Management Programs (Table 3 and 4, respectively), the proposed Incidental Catch TACs allocated to the Regular B DAS Program are calculated and divided into quarterly Incidental Catch TACs as shown in Table 6. The quarterly Incidental Catch TACs are divided among quarters in order to correspond to the allocation of DAS among quarters. The 1st quarter (May–July) will receive 13 percent of the Incidental Catch TACs, and the remaining quarters (August–October, November–January, and February–April) will each receive 29 percent of the Incidental Catch TACs.

TABLE 6.—INCIDENTAL CATCH TACS FOR THE REGULAR B DAS PROGRAM

[mt, live weight]

	FY 2006		FY 2007		FY 2008	
	Qtr 1	Qtr 2–4	Qtr 1	Qtr 2–4	Qtr 1	Qtr 2–4
GB cod	8.0	17.8	See **Note**			
GOM cod	6.5	14.5	12.9	28.7	13.5	30.1
GB yellowtail flounder	2.7	6.0	See **Note**			
SNE/MA yellowtail	0.2	0.4	0.3	0.6	0.4	0.9
CC/GOM yellowtail	0.8	1.9	1.4	3.1	1.8	4.1
American plaice	18.1	40.3	21.1	47.0	26.9	60.0
Witch flounder	35.8	79.9	33.0	73.6	28.2	62.8
White hake	5.3	11.9	4.4	9.7	3.6	7.9
SNE/MA winter flounder	3.2	7.2	3.9	8.7	4.7	10.4
GB winter flounder	1.9	4.1	2.1	4.6	2.2	5.2

Note: TACs for this stock depend on annual specification of TACs in the U.S./Canada Management Area. TACs are calculated using the definition of Incidental Catch TACs and the allocation of Incidental Catch TACs among Special Management Programs (Table 3 and 4, respectively), as well as the quarterly division of the TAC described above. Separate specification of these TACs is not necessary, because they are calculated based upon an explicit formula.

With the exception of white hake, CC/GOM yellowtail flounder, and SNE/MA yellowtail flounder, if the Incidental Catch TAC for any one of these species is caught (landings plus discards) during a quarter, use of Regular B DAS in the pertinent stock area will be prohibited for the remainder of that quarter. Vessels can once again use Regular B DAS at the beginning of the subsequent quarter. When the white hake Incidental Catch TAC is caught, the possession of white hake when fishing under the Regular B DAS Program will be prohibited. For the CC/GOM and SNE/MA stocks of yellowtail flounder, when the respective Incidental Catch TACs are caught, only a portion of the stock area where the species is predominantly caught will be closed to Regular B DAS Program participants. Upon attainment of the CC/GOM yellowtail flounder incidental Catch TAC, the following 30-minute square blocks will close: Blocks 98, 114, 123, 124, 125, 132, and 133. Upon attainment of the SNE/MA yellowtail flounder Incidental Catch TAC, the following 30-minute square blocks will close: Blocks 70 to 73, 82 to 88, 98, 99, and 101 to 103.

Under the Pilot Program, the Regional Administrator had the authority to prohibit the use of Regular B DAS for the duration of a quarter or FY, if it was 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. This final rule continues this authority, but provides additional reasons for terminating the program. Additional reasons for terminating the program include, but are not limited to, the following: Inability to restrict catches to the Incidental Catch TACs; evidence of excessive discarding; evidence of a significant difference in flipping rates between observed and unobserved trips; and insufficient observer coverage to adequately monitor the program, particularly if coverage declines below the Council's recommendation of 36 percent (the same level of observer coverage as occurred during the original Pilot Program).

11. Renewal of DAS Leasing Program

This final rule 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.

12. Renewal and Modification of the Eastern U.S./Canada Haddock SAP

This final rule renews and modifies the Eastern U.S./Canada Haddock SAP for FY 2006 through 2008 as described below, and no longer characterizes this SAP as a ''Pilot Program.''

The Eastern U.S./Canada Haddock SAP Program allows limited access NE multispecies DAS vessels fishing with an authorized haddock separator trawl to catch haddock using a Category B DAS, in a portion of the Eastern U.S./Canada Area, including the northernmost tip of CA II. The time period for the SAP is revised to August 1–December 31. Delaying the start date from May 1 to August 1 is intended to help prevent an early closure of this area and thereby prolong the period of time during which vessels have access to the haddock fishery in the area under a Category B DAS.

In a manner similar to the provision proposed under the Regular B DAS Program, this final rule provides the Regional Administrator authority to approve the use of additional gear specifically for this SAP based on approved gear standards recommended by the Council.

This final rule implements new restrictions for trips on which use of the haddock separator trawl is required (including this SAP). For trawl trips, possession of flounders (all species, combined); monkfish (whole weight), unless otherwise specified below; and skates is limited to 500 lb (227 kg) each per trip; and possession of lobsters is

prohibited to help ensure the proper utilization of the haddock separator trawl.

In order to limit the potential impact on fishing mortality that the use of Category B DAS may have on GB cod, an annual GB cod Incidental Catch TAC is specified for this SAP that represents 34 percent of the overall Incidental Catch TAC for GB cod (19.6 mt for FY 2006). In addition to an Incidental Catch TAC for GB cod, this action also establishes an Incidental Catch TAC for GB yellowtail flounder and GB winter flounder for this SAP. The Incidental Catch TACs for these two species in this SAP each represent 50 percent of the respective overall Incidental Catch TACs for these stocks allocated to Special Management Programs. The 2006 GB yellowtail flounder Incidental Catch TAC is 20.7 mt, and the GB winter flounder Incidental Catch TACs for 2006–2008 are 14.3, 16.1, and 17.8 mt, respectively. The GB yellowtail flounder Incidental Catch TAC is dependent upon the annual specification of the U.S./Canada TACs, and therefore will be calculated on an annual basis for FYs 2007 and 2008. Separate specification of this Incidental Catch TAC is not necessary, because it is calculated based upon an explicit formula. Participation in the SAP by vessels using a Category B DAS will be prohibited when any one of the three Incidental Catch TACs are projected to have been caught.

Under this final rule, many of the reporting requirements for this SAP are the same as the reporting requirements that are applicable to all Special Management Programs, as explained under Section 17 in this preamble. Finally, this rule restricts vessels that are fishing in this SAP while under a Category B DAS, from discarding regulated NE multispecies, Atlantic halibut, and ocean pout. All other measures for this SAP are consistent with the measures previously implemented.

13. Modification to CA I Hook Gear Haddock SAP

This final rule specifies a haddock TAC for the CA I Hook Gear Haddock SAP for FY 2006 through 2008, and provides the Regional Administrator the authority to adjust these TACs based on future stock assessments using a specified formula. The formula is based upon the size of the haddock TAC allocated for FY 2004 (1,130 mt live weight) and, based on new information, will be adjusted according to the growth/decline of the western GB (WGB) haddock exploitable biomass in relationship to its size in 2004. The size of the WGB component of the stock is currently considered to be 35 percent of the total stock size (unless modified by a new stock assessment). The formula is as follows: $TAC_{year\ x}$ = (1,130 mt live weight) × (Projected WGB Haddock Exploitable $Biomass_{year\ x}$ / WGB Haddock Exploitable $Biomass_{2004}$).

TABLE 7.—CA I HADDOCK GEAR HADDOCK SAP TACS FOR FY 2006–2009, AND PERTINENT HISTORIC INFORMATION

FY	Total GB haddock stock exploitable biomass (mt × 1,000)	WGB haddock exploitable biomass (mt × 1,000)	Ratio of total GB haddock stock to WGB component	TAC (mt live weight)
2004	100.907	35.317	N/A	1,130
2005	137.341	48.069	1.361	1,538
2006	202.261	70.791	2.004	2,265
2007	442.427	154.849	4.385	4,955
2008	560.303	196.106	5.553	6,275

For example for FY 2006, based on the information in the table and the formula: 202.261 × 35% = 70.792; 70.792/35.317 = 2.004; and 1,130 × 2.004 = 2,265 mt.

When the haddock TAC is projected to be harvested, the SAP will close. The standardized reporting requirements as discussed in Section 17 of this preamble apply to this SAP.

14. GB Cod Fixed Gear Sector

This final rule authorizes the formation of a second sector in the FMP, the GB Cod Fixed Gear Sector (Fixed Gear Sector), in accordance with the procedures and requirements implemented by Amendment 13 (§ 648.87). Requirements under § 648.87(b) that apply to all sectors apply to the Fixed Gear Sector. This final rule implements a requirement that the Fixed Gear Sector fish only in the geographic area defined as the GB Cod Hook Gear Sector Area, which is that portion of the GB cod stock area north of 39°00′ N. lat. and east of 71°40′ W. long. Because the FW 42 document was silent with respect to the geographic area to be associated with the proposed Fixed Gear Sector, NMFS proposed, based on the inferred intent of the Council, the above geographic area in the FW 42 proposed rule, due to the fact that the goals of the GB Cod Fixed Gear Sector are very similar the goals of the GB Cod Hook Gear Sector. However, the Fixed Gear Sector's 2006 Operations Plan has proposed that this area be expanded. A proposed rule (71 FR 48903, August 22, 2006) soliciting comment on this Operations Plan is currently under review. Depending on the outcome of that proposed rulemaking, this area could be revised through a separate final rule.

The primary purpose of the Fixed Gear Sector is to fish in an efficient manner, under customized managed measures, for the primary purpose of harvesting GB cod. A vessel fishing in the Fixed Gear Sector is restricted to fishing with either jigs, non-automated demersal longline, hand gear, or sink gillnets. The Fixed Gear Sector, as required under § 648.87(b)(2), must submit an Operations Plan and Fixed Gear Sector Contract to the Regional Administrator at least 3 months prior to the beginning of each FY. As described above, a vessel fishing in the Fixed Gear Sector would be restricted to fishing with various gear, including jigs; however jigs are not defined in the regulations. This final rule includes a definition of jigging and jig as follows: Jigging, with respect to the NE multispecies fishery, means fishing for groundfish with hook and line gear (hand line or rod and reel) using a jig, which is a weighted object attached to the bottom of the line used to sink the line and/or imitate a baitfish, which is moved (''jigged'') with an up and down motion.

This final rule authorizes the formation of the Fixed Gear Sector, but neither approves nor disapproves the 2006 Operations Plan of the Fixed Gear Sector. Approval or disapproval of the Fixed Gear Sector's 2006 Operation Plan will be announced through publication

of a separate final rule in the **Federal Register**.

15. Eastern U.S./Canada Area Flexibility

This final rule modifies the regulations to allow a vessel that fishes in the Eastern U.S./Canada Area to choose to fish in other areas outside of the Eastern U.S./Canada Area on the same trip, with an exception noted below. If a vessel chooses to fish both inside and outside of the Eastern U.S./Canada Area on the same trip, the operator must notify NMFS via VMS prior to leaving the dock or at any time during the trip prior to leaving the Eastern U.S./Canada Area, and must comply with the most restrictive DAS counting, trip limits, and reporting requirements for the areas fished, regardless of area fished, for the entire trip. For example, a vessel electing to fish inside and outside of the Eastern U.S./Canada Area on the same trip will not receive any steaming time credit, and all cod, haddock, and yellowtail flounder caught on the entire trip will be applied against the pertinent U.S./Canada Management Area TACs for these species. In addition, the vessel must comply with the reporting requirements for the Eastern U.S./Canada Area for the entire trip.

A vessel is prohibited from fishing in the CC/GOM or SNE/MA yellowtail flounder stock areas if, when fishing in the Eastern U.S./Canada Area, it exceeds the yellowtail flounder trip limit specified for these areas (i.e., 250 lb (113.4 kg)/day to 1,000 lb (453.6 kg)/trip). Prohibiting a vessel from fishing outside of the Eastern U.S./Canada Area on the same trip if it has exceeded the CC/GOM or SNE/MA trip limit for yellowtail flounder is necessary to preclude the possibility of a vessel discarding its yellowtail flounder in order to fish outside of the area. A vessel that fishes inside and outside of the Eastern U.S./Canada Area on the same trip may also fish in one of the Differential DAS Areas (and accrue DAS at the higher rate) described in Sections 7 and 8 of this preamble, provided the vessel declares its intent to fish in such areas via VMS prior to leaving the Eastern U.S./Canada Area.

16. Modification of the DAS Transfer Program

This final rule modifies several aspects of the DAS Transfer Program. The intent of these changes are to increase the utility of the program, provide clarification of program details that were not previously considered, and support effective administration of the program by NMFS. The vessel transferring its NE multispecies DAS permit (transferor) is no longer required to exit all state and Federal fisheries, and may acquire other fishing permits (i.e., other Federal limited access permits, Federal open access permits, and/or state permits) after the transfer. Secondly, other non-groundfish permits that the transferor vessel has no longer automatically expire, and may be transferred as a bundle to the vessel receiving the NE multispecies DAS permit (subject to pertinent regulations regarding vessel replacement). Duplicate permits must expire, and a vessel may not consolidate DAS or other allocations from non-groundfish permits. Non-groundfish permits are subject to all applicable regulations such as vessel replacement size restrictions. The program maintains the conservation tax of 20 percent on Category A and Category B DAS, as well as the conservation tax of 90 percent on Category C DAS, in order to support the program's goal of long-term reduction in fishing effort.

Because the execution of a DAS transfer is a process whereby two limited access NE multispecies permits (with two baselines, DAS allocations, and histories) become a single permit (with a single baseline, DAS allocation, and history), this action also specifies the rules that pertain to the resultant single permit. All history associated with the transferred NE multispecies DAS permit is acquired by the recipient (transferee), and is subsequently associated with the permit rights of the transferee. The pertinent history includes catch history, DAS use history, and permit rights history. Neither the individual elements of the history associated with the transferor vessel, nor the total history may be separated from the NE multispecies DAS being transferred. With respect to vessel baseline characteristics, the baseline of the transferee vessel will be the smaller baseline of the two vessels or, if the transferee vessel has not previously upgraded under the vessel replacement rules, the vessel owner may choose to adopt the larger baseline of the two vessels, which would constitute the vessel's one-time upgrade, if such upgrade is consistent with the vessel replacement rules. For a vessel involved in a DAS transfer that was granted a one-time downgrade of its DAS Leasing Program baseline specifications, as described in § 648.82(k)(4)(xi), the DAS leasing specifications would revert to those specifications prior to the one-time downgrade, except in the case when the downgrade was made by the transferee vessel and the transferee's vessel baseline specifications were adopted during the DAS transfer.

Because limited access NE multispecies Hook Gear vessels (Category D) are not allowed to change permit categories under current permit rules, this final rule clarifies that vessels with a limited access NE multispecies Category D permit will only be allowed to transfer their NE multispecies DAS (acting as a transferor) to another Category D vessel. However, such vessels may participate in a DAS transfer as a transferee vessel and acquire DAS from any limited access NE multispecies DAS permit category. That is, a Category D Hook Gear vessel may transfer DAS only to another Category D Hook Gear vessel, but may receive transferred DAS from any limited access NE multispecies DAS permitted vessel.

In order to simplify the DAS Transfer Program, this final rule clarifies that, for the purposes of calculating the DAS conservation tax, the transferee vessel must specify which vessel's DAS are being acquired and are, therefore, subject to the conservation tax. If a conservation tax were to apply strictly to the DAS acquired from the transferor vessel, buyers would have a strong incentive to arrange the DAS Transfer Program transaction such that it would result in the permit with the least number of DAS being designated as the transferor (seller) permit. Lastly, this final rule prohibits a vessel from participating in the DAS Leasing Program as a lessee or lessor during a particular FY and then subsequently participating in the DAS Transfer Program as a transferor during the same FY. A vessel may participate in the DAS Leasing Program as a lessor or as a lessee and then submit an application for a DAS transfer as a transferor, but the transfer, if approved, will not be effective until the beginning of the following FY. Vessels are not prohibited from participating in the DAS Leasing Program after a DAS transaction has occurred.

17. Standardized Requirements for Special Management Programs

This final rule modifies and standardizes the requirements that apply to the Special Management Programs. The standardized requirements are described below, and any new requirement, or new application of an existing requirement is noted.

The requirement for the use of VMS and the advance notice to the observer program prior to each trip is continued. For all Special Management Programs, the species that must be reported daily (catch and discards) will be haddock

and all species for which a stock of concern has been identified as likely to be caught in a Special Management Program (currently, the species with stocks of concern identified as such are: Cod, yellowtail flounder, winter flounder, witch flounder, white hake, and American plaice).

For all Special Management Programs, there is a new requirement for the vessel operator to report the date of the catch. The vessel operator may report catch for a particular day of fishing at any time of the day on which it was caught, up until 0900 hr. the following day.

For all Special Management Programs, there is a new requirement to report the serial number of the VTR. A vessel operator must report the serial number from the first page of the logbook on the daily VMS catch report. Because the serial numbers are associated with individual vessels, a vessel operator is prohibited from sharing logbooks with other vessel operators. The VTR serial number serves as an important tool that enables fishery managers to make better use of available data by linking VTR data with dealer and DAS data.

While participating in SAPs and the Regular B DAS Program, a vessel is prohibited from discarding legal-sized regulated NE multispecies, Atlantic halibut, and ocean pout while fishing under a Category B DAS. This final rule also requires a vessel that is participating in either the Regular B DAS Program or a SAP that exceeds any of the NE multispecies trip limits, to exit these respective programs. With the exception of the CA I Hook Gear Haddock SAP, a vessel must exit the Special Management Program and ''flip'' to a Category A DAS as soon as the maximum trip limit is exceeded. The requirement that vessels participating in the Special Management Programs report daily via VMS continues, even after a vessel is required to exit the program.

18. Gear Performance Incentives for Special Management Programs

In times and areas when a Special Management Program requires a vessel to use a haddock separator trawl or other gear authorized by the program to reduce catches of stocks of concern, possession of flounders (all species combined), monkfish (live/whole weight), and skates (live/whole weight) is limited to 500 lb (226.8 kg) each, per trip, and possession of lobsters is prohibited. If a specific program includes a possession limit that conflicts with these Gear Performance Incentives, the most restrictive limit will apply. For example, a vessel fishing under a NE multispecies Category B DAS in the proposed Regular B DAS Program in the monkfish SFMA, and that has a limited access monkfish Category C or D permit (and is therefore prohibited from fishing under a monkfish DAS), is limited to 50 lb (22.7 kg) of monkfish per trip. The intent of this measure is to increase the incentive for vessels to configure the gear properly, because only small amounts of these species may be landed when using the gear. This Gear Performance Incentive requirement applies to the Regular B DAS Program, NE multispecies SAPs, and the Eastern U.S./Canada Management Area (if/when the haddock separator trawl is the only allowable trawl net).

19. Modification of Cod Landing Limit in Eastern U.S./Canada Area

For vessels fishing in the Eastern U.S./Canada Area under a Category A DAS, this final rule removes the restriction that the amount of cod not exceed 5 percent of the total weight of fish on board.

20. SNE/MA RMA Trawl Codend Mesh Requirement

The trawl codend mesh requirement applicable to the SNE/MA RMA is modified from 6.5-inch (15.2-cm) square or 7.0-inch (17.8-cm) diamond mesh to 6.5-inch (15.2-cm) square or 6.5-inch (15.2-cm) diamond mesh.

21. Regional Administrator Authority To Adjust Measures in the U.S./Canada Management Area

This final rule expands the Regional Administrator's authority to adjust management measures in the U.S./Canada Management Area at any time during the FY, as well as prior to the start of the FY for the subsequent FY, if information is sufficient to make the necessary projections, and after consultation with the Council, in order to more effectively prevent overharvesting or to facilitate harvesting of the hard TACs (and achieving OY).

This final rule eliminates the required implementation of a trip limit for Eastern GB haddock (i.e., when 70 percent of the TAC is projected, the Regional Administrator must implement a possession limit of 1,500 lb (680.4 kg) per day, up to 15,000 lb (6,804.1 kg) per trip).

This final rule clarifies that the Regional Administrator may implement different management measures for vessels using Category A DAS and Category B DAS, and requires that the Regional Administrator, when determining in-season adjustments, consider Council intent that opportunities for fishing on Category A DAS should take precedence over opportunities to fish under Category B DAS.

Comments and Responses for FW 42 and FW 3

Eighty-three comments were received during the comment period on the proposed rule for this action from 61 individuals, 10 fishing industry groups, 1 conservation group, 1 research institution, 3 shoreside processors, 5 elected officials, and 2 state resource management agencies (Massachusetts Division of Marine Fisheries (DMF) and the Maine Department of Marine Resources (DMR)). Only comments that were applicable to the proposed measures, including the analyses used to support these measures, are addressed in this preamble. It is important to note in considering the responses to comments herein that, in the context of implementing a framework adjustment measures such as FW 42, NMFS may only approve or disapprove substantive measures, and, may not unilaterally modify any measure in a substantive way pursuant to section 304(a)(3) to the Magnuson-Stevens Act.

Recreational Restrictions

Comment 1: One commenter questioned the effectiveness of the proposed seasonal GOM cod possession prohibition for the charter/party sector, as few vessels would be affected by this measure, suggesting that more effective measures are necessary. This commenter also doubted that the seasonal (i.e., November through March) cod possession prohibition would affect private anglers as much as indicated in the FW 42 document, stating that weather and vessel size often limit their ability to fish during this period.

Response: The analysis prepared for FW 42 indicates that the seasonal GOM cod possession prohibition, in conjunction with an increase in the minimum size for GOM cod, would achieve the reduction in F for GOM cod deemed necessary from the charter/party and private recreational fishing sector. Therefore, additional recreational management measures are not necessary.

GB Yellowtail Flounder Rebuilding Plan

Comment 2: The DMR strongly supported the proposed GB yellowtail flounder rebuilding plan due to the high probability of rebuilding the stock by 2014, especially considering the negative retrospective patterns observed in recent biomass and mortality estimates.

Response: NMFS agrees and implements the proposed rebuilding program through this final rule.

Target TACs

Comment 3: One commenter suggested that all of the groundfish Target TACs specified for 2007 and 2008 should be reduced by 50 percent. Another commenter was concerned that increased Target TACs in 2007 do not reflect observed increases in F on particular stocks since 2004. A third commenter indicated that the Target TAC increases in 2007 and 2008 are overly optimistic and suggested that NMFS reevaluate Target TACs on a yearly basis using updated data. Finally, a fourth commenter cautioned that the Target TACs should not be reduced too quickly and that there should be a mechanism to increase these TACs.

Response: As specified in the EA prepared for this action, the PDT estimated F rates for CY 2005 using the best information available. While additional preliminary landings data have become available since the submission of the FW 42 EA for final review and the implementation of emergency measures on May 1, 2006, these data are not sufficient to adequately determine whether drastic changes have occurred in the fishery that would require revision of the objectives and measures proposed by FW 42. Specifically, this preliminary information is not sufficient to determine whether the measures implemented to date during CY 2006, including the emergency measures, have, in fact, achieved the necessary F reductions for specific stocks during CY 2006. Although the analysis prepared for FW 42 indicates that reductions in the Target TACs for several species are necessary, a 50-percent reduction in Target TACs is not warranted at this time because only six stocks require F reductions to maintain the Amendment 13 rebuilding programs. Finally, Amendment 13 established a process whereby Target TACs for each species are established through the Council's biennial adjustment process. The next adjustment is scheduled to be developed in 2008, and implemented on May 1, 2009. That adjustment will take into account the best scientific information available at the time, and use that information to determine whether additional adjustments to F are necessary.

Comment 4: One commenter expressed concern that the recent revelation that an incorrect F rate was used during the calculation of Target TACs for American plaice (see description of approved measure 3 above) could affect the determination whether FW 42 meets the Amendment 13 mortality objectives for 2006. This commenter suggested that NMFS should adjust these TACs to prevent overfishing.

Response: The revised Target TAC does not alter the determination that the proposed action meets the mortality targets for all stocks managed by the FMP. The most recent stock assessment (GARM II) and analysis prepared for this action indicate that American plaice is achieving the mortality reductions necessary under the Amendment 13 rebuilding program for this stock notwithstanding the error in the calculation of the Target TAC for this stock. Due to the Amendment 13 default DAS reductions, as well as other measures proposed to reduce F for overfished stocks, the FW 42 analysis indicates that F on American plaice will be reduced by an additional 11 percent which is expected to constrain landings from exceeding the revised Target TAC specified in this final rule.

Default DAS Allocations

Comment 5: Five commenters supported the Amendment 13 default DAS allocation reductions proposed to be continued through FW 42. However, six commenters asserted that this default measure is unnecessary because the triggers for this measure have not been met, as F for American plaice is below the Amendment 13 target F rate for 2006 and existing measures for SNE/MA yellowtail flounder already reduce F on this species to comply with the Amendment 13 rebuilding program. These commenters suggest that an evaluation of completed FY 2005 and preliminary 2006 data would further support this assertion. One commenter pointed out that Alternatives 1–5 were analyzed without the default DAS reduction measure and they still met the necessary F reductions for this action. One commenter opposed the suggestion in the proposed rule that the default DAS reduction was necessary for white hake.

Response: The regulations implementing Amendment 13 established three criteria to determine whether the default measures are necessary; these criteria are specified in the current regulations at § 648.82(d)(4): (1) Target stocks (SNE/MA yellowtail flounder and American plaice) are projected to be at the target biomass in the year the measures are to be implemented, and, overfishing is not occurring; or (2) biomass estimates show rebuilding is on track and the best available estimate of the fishing mortality rate for these stocks meets the target F_{MSY}, and (3) all other stocks that would be affected by the default measures are meeting their target F rates. Based on the results of GARM II and updated information reflecting the estimated F rate for these stocks in CY 2005, American plaice meet both the first and the second criteria. However, the third criterion for eliminating the default measures is not satisfied because the target F rates are not being achieved for five other stocks that would be subject to the default measures. Because the stock area defined for American plaice includes the stock areas of all other stocks managed by the FMP, the default measures, in conjunction with other measures proposed in FW 42, are still needed to reduce F on other stocks caught within the broadly defined American plaice stock area. Further, in 2006, SNE/MA yellowtail flounder is not projected to achieve its target biomass, is not meeting the target F rate, and, therefore, continues to experience overfishing. Any new data available at this time is still preliminary and insufficient to change the approved FW 42 measures.

It is true that Alternatives 1–5 considered by the Council in FW 42 did not include the Amendment 13 default DAS reduction, yet still achieved the necessary F reductions for this action. However, in order to achieve the necessary F reductions for this action, these alternatives required a greater reduction in the overall DAS allocation than the Amendment 13 default measure. For example, Alternative 5 proposed a 40-percent reduction in allocated Category A DAS by reducing the Category A:B DAS allocation ratio to 36:64 rather than the 55:45 allocation ratio of the default measure. In other words, these alternatives would have resulted in a greater overall reduction in available Category A DAS than the Amendment 13 default measure to achieve the necessary F reductions for this action.

According to analysis prepared for this action, the Amendment 13 default DAS reduction, as demonstrated by the analysis of the No Action alternative, will reduce F on SNE/MA yellowtail flounder by 46.6 percent and white hake by 2.5 percent. However, F on these stocks must be reduced by 55 percent and 13 percent, respectively, to maintain the Amendment 13 rebuilding programs for these stocks. As a result, the default measures alone are insufficient to achieve the necessary F reductions for these stocks. Therefore, the additional measures included in this final rule, as proposed in FW 42, are needed in order to maintain the Amendment 13 rebuilding programs for

these and other stocks. Further, the EA prepared for FW 42 indicates that additional F reductions beyond the measures proposed in this action and the subsequent Amendment 13 default measures scheduled for implementation in 2009 may be necessary to fully rebuild these stocks by the end of the rebuilding programs for these stocks.

The Council had the opportunity to revise the Amendment 13 default measures and did so by choosing to revise the differential DAS counting rate for SNE/MA yellowtail flounder to achieve the necessary F reduction for this stock. Because the Council chose not to revise the Amendment default DAS reduction, and because criteria to eliminate this default measure were not met, the default DAS reduction will remain effective upon implementation of this final rule. Measures proposed by FW 42, combined with the default DAS reduction, are expected to achieve the necessary F reductions for several groundfish stocks to maintain the Amendment 13 rebuilding programs.

VMS Requirement

Comment 6: Seven commenters supported the mandatory VMS requirement proposed by FW 42, recommending that FW 42 be implemented before September 30, 2006, to ensure reimbursement for the purchase of VMS units outlined in a recent notice in the **Federal Register** (71 FR 41425, July 21, 2006). One commenter indicated that a mandatory VMS requirement would facilitate the development of future area-specific measures. However, three commenters suggested that a VMS requirement offers little benefit to the industry and recommended deferring implementation unless the differential DAS counting rate is reduced.

Response: The increasing complexity of the management measures implemented or proposed by FW 42, including area-specific regulations such as differential DAS counting and real-time reporting requirements, necessitate an increased reliance on VMS to accurately and efficiently monitor vessel operations under the FMP. A mandatory VMS requirement for vessels fishing under a NE multispecies DAS allows NMFS to accurately count DAS used in the proposed differential DAS counting areas and monitor catch from Special Management Programs. Without the use of VMS, NMFS would be hindered in effectively administering many of the measures proposed in FW 42, or any of the existing Special Management Programs. Many of these programs provide at least some means of mitigating recent effort reductions in the fishery by facilitating the use of Category B DAS and access to SAPs within closed areas. In addition, because a vessel's DAS charge only starts once a vessel crosses the VMS demarcation line, rather than at the dock, as under the previous call-in system, a mandatory VMS requirement also provides some benefit to the fishing industry by reducing the DAS charged on most fishing trips.

Comment 7: One commenter requested that NMFS implement a power-down mechanism for periods when groundfish vessels participate in other non-VMS regulated fisheries. This commenter suggested a minimum participation period of 30 days to facilitate enforcement of this provision.

Response: Although the Council did not consider modifying the existing VMS power-down provision or implementing a new VMS power-down provision, NMFS does not support the commenter's request because it would compromise efforts to enforce proposed and existing regulations by preventing NMFS from monitoring vessel activity away from the dock.

Differential DAS Counting in GOM

Comment 8: Six commenters indicated that the proposed GOM Differential DAS Area restrictions are unjustified, that they do not strike a balance between conservation and economics, and that such restrictions will result in economic failure of the fishing industry; while eight other commenters expressed general opposition to this proposed measure and the economic impacts that it will cause.

Response: As discussed in further detail in the responses below, NMFS believes the GOM Differential DAS Counting Area is consistent with all of the National Standards, including National Standards 1 (measures shall prevent overfishing and achieve OY), 2 (measures shall be based on the best scientific information available), 4 (measures shall not discriminate among fishermen), 8 (measures shall minimize economic impacts to the extent practicable), and 10 (measures shall promote safety to the extent practicable). The National Standards indicate that management measures shall minimize adverse economic impacts to fishing communities to the extent practicable, provided the measures meet the conservation requirements of the Magnuson-Stevens Act. Analysis prepared for this action indicates that the GOM Differential DAS Area is necessary to achieve the required F reductions for GOM cod and CC/GOM yellowtail flounder. In addition, this analysis also indicates that this measure is part of the alternative that results in the least decrease in fishing revenue compared to the other alternatives considered by the Council for this action, while still achieving the F targets necessary to meet the rebuilding objectives of the FMP. As a result, this measure achieves not only the necessary conservation objectives of this action, but it also minimizes the economic impacts to fishing communities, thereby achieving the economic and social objectives of this action and balancing, to the extent possible and practicable, the requirements of the National Standards.

Comment 9: Nine commenters suggested that the GOM Differential DAS Area is too big and would exceed the necessary F reductions for both GOM cod and CC/GOM yellowtail flounder. Six of these commenters suggested that the area should not extend beyond 70 ° W. long. (an area that would include approximately 70 percent of the landings of GOM cod and CC/GOM yellowtail flounder), as landings from 30′ squares 115, 116, 123, 138, and 139 account for very little of the F for these stocks.

Response: The proposed size of the GOM Differential DAS Area is necessary to achieve the required F reductions for both GOM cod and CC/GOM yellowtail flounder based on the analysis of the Northeast Fisheries Science Center's Closed Area Model (CAM). Although catch from additional blocks identified by the commenters is low, it is expected that fishing effort would increase in these blocks, should differential DAS counting be limited to a smaller area within the GOM. The Council considered another alternative that included differential DAS counting within a smaller area of the GOM, but chose to adopt the larger area contained in the preferred Alternative B2 (modified) because the proposed area included a more substantial portion of the GOM cod and CC/GOM yellowtail flounder landings (approximately 85 percent of the landings from both stocks) and would effectively achieve the conservation objectives of this action when combined with the other proposed measures. Because the GOM Differential DAS Counting Area recommended by the commenters was not analyzed during the development of FW 42, it is uncertain whether this area would achieve the necessary F reductions for this action.

Comment 10: Eight commenters requested that NMFS only charge DAS at the differential counting rate of 2:1 when vessels are actually fishing within the GOM Differential DAS Area,

suggesting that the regulations governing vessel operations in this area should mirror those for the SNE/MA Differential DAS Area.

Response: Unlike the SNE/MA Differential DAS Area, the GOM Differential DAS Area is situated along the coast and vessels must transit through this area to return to port. During the development of FW 42, Council members expressed concern that vessels may elect to ''top off'' their trips by fishing within this area on their return to port if there were no differential DAS rate in effect. This would greatly undermine the effectiveness of this measure, as detailed in an example provided in Section 4.2.2 of the EA prepared to support FW 42. Charging DAS at the differential rate for the entire trip minimizes incentives to circumvent the intention of the GOM Differential DAS Area and increases the effectiveness of this measure towards reducing F and achieving the rebuilding objectives for GOM cod and CC/GOM yellowtail flounder by reducing effort in the inshore GOM.

Comment 11: Thirteen commenters argued that the proposed GOM Differential DAS Area compromises safety of fishing vessels by forcing vessels to fish farther offshore to avoid the higher DAS charge, thereby violating National Standard 10.

Response: The EA prepared for this action considered issues relating to safety within the alternatives considered. Of the alternatives considered in FW 42, including a minimum 24-hr DAS charge and more extensive DAS reductions for all vessels, the proposed action is described as being the best option for achieving the necessary conservation objectives of the action while having the least negative impact on vessel safety. In terms of practicability, this alternative is estimated to have the least reduction in revenues which, in turn, is thought to have the least impact on vessel safety. NMFS acknowledges that the GOM Differential DAS Area may influence vessels to fish farther offshore. However, the safe operation of a fishing vessel is ultimately the responsibility of the master of the vessel. FW 42 proposes a provision that allows vessels to be within the GOM Differential DAS Area without being charged DAS at the differential rate, provided the vessel notifies NMFS that it is not fishing and the gear is properly stowed. This provision will allow vessels fishing outside of the GOM Differential DAS Area to seek the safety of coastal waters should weather conditions deteriorate and was intended to mitigate the impacts to safety from the proposed GOM Differential DAS Area without compromising the conservation objectives of this measure. As a result, the Council and NMFS have determined that the measure promotes safety to the extent practicable, as specified in National Standard 10.

Comment 12: Five commenters supported the proposed provision that would allow vessels to be within the GOM Differential DAS Area without being charged DAS at the differential rate, provided the vessel notifies NMFS that it is in the area and that the gear is properly stowed.

Response: NMFS agrees with the Council that it is important to allow vessels to be within the GOM Differential DAS Area without being charged DAS at the differential rate to minimize safety concerns associated with the size of the differential DAS Area (see response to Comment 10 above) and has approved this provision. This final rule also implements a similar provision in the SNE/MA Differential DAS Area.

Comment 13: Four commenters suggested that the differential DAS counting measure was never intended to reduce F for white hake. These commenters argued that the proposed trip limits for this stock are sufficient to achieve the necessary F reductions for this species, while another commenter indicated that such F reductions have already taken place, based on 2005/2006 catch data. Two commenters supported the proposed trip limit for white hake.

Response: NMFS acknowledges that, according to the EA prepared for FW 42, the proposed GOM Differential DAS Area was not intended to specifically reduce F on white hake. However, the GOM Differential DAS Area is an integral component of a suite of measures necessary to achieve the necessary F reduction for this species and other species caught in conjunction with white hake. This suite of alternatives was selected as part of a targeted approach to reduce F on specific stocks, in specific areas, without unnecessarily reducing catch of other healthier stocks by imposing across-the-board reductions in DAS allocations included in five of the other alternatives considered in FW 42. Further, because the white hake stock area encompasses the stock areas of all other stocks managed by the FMP, measures necessary to reduce F on other overfished stocks, such as the GOM Differential DAS Area, also contribute towards achieving the necessary F reductions for white hake. The primary analytical tool used to evaluate the impacts of the proposed measures (i.e., the CAM) takes into consideration all of the proposed measures, including both the white hake trip limit and differential DAS counting. As a result, it is impossible to attribute the expected F reductions resulting from one specific measure from the CAM results, as vessel behavior is influenced by all of the proposed measures combined. Therefore, all of these measures, including differential DAS counting in the GOM, are necessary to maintain the Amendment 13 rebuilding program for this species, as well as other overfished stocks.

It is possible that the emergency management measures implemented by the April 13, 2006, emergency interim final rule could reduce F for white hake more than is necessary for the entire FY 2006. However, data regarding the realized effectiveness of the emergency measures are not available at this time and were not available at the time FW 42 was submitted by the Council for final review by NMFS. Even assuming that the emergency measures resulted in reducing F for white hake more than is required for 2006, similar reductions in F would not be realized during FY 2007 and 2008, because the emergency measures are superceded by this final rule. As a result, differential DAS counting in the GOM, in addition to the Amendment 13 default DAS reduction and the trip limits in FW 42 are necessary to achieve the necessary F reductions for white hake for the expected duration of this action (i.e., through 2009). Because white hake is overfished and overfishing is still occurring, a precautionary approach potentially resulting in a greater reduction in F for white hake than is necessary in FY 2006 is consistent with the National Standard 1 guidelines at § 600.310(f)(5), and would increase the likelihood that these stocks would meet the Amendment 13 rebuilding objectives.

Comment 14: Eight commenters stated that the proposed differential DAS counting measure in the GOM is inconsistent with National Standard 4 because it denies reasonable access to healthy groundfish stocks for vessels operating out of ports in Massachusetts and New Hampshire, and discriminates against such vessels by disproportionally imposing the conservation burden on these states. Five of these commenters argued that this measure is also inconsistent with National Standard 8 because it does not provide for the sustained participation by fishing communities in Massachusetts and New Hampshire and does not minimize economic impact, as vessels cannot afford to lease DAS if

fishing within the GOM Differential DAS Area.

Response: The proposed GOM Differential DAS Area applies to any vessel intending to fish under a NE multispecies DAS in this area, regardless of principal port or home port. Area-specific measures such as this are necessary if the management strategy in FW 42 is to selectively reduce F on overfished stocks, while facilitating greater access to healthier stocks in an attempt to help achieve OY in the fishery. As detailed further in the response to Comment 15 below, differential DAS counting in the inshore GOM is necessary to achieve the necessary F reductions for GOM cod and CC/GOM yellowtail flounder and to maintain the Amendment 13 rebuilding programs for these stocks. Vessels that fish primarily in this area are necessarily more negatively affected than vessels that fish outside of this area, but there is neither discriminatory intent to this measure, nor direct or deliberate distribution of DAS or access to the fishery among individual vessels based on principal or home port. Any disproportionate impact is an unavoidable consequence of geography, not a result of intent to discriminate. As specified in the National Standard 4 guidelines, allocation of fishing privileges may disadvantage one group over another if it is necessary to achieve the objectives of the FMP. As a result, the GOM Differential DAS Area is reasonably calculated as necessary to promote conservation and is consistent with the guidelines developed for National Standard 4 and the objectives of the FMP.

As required by National Standard 8, the EA prepared to support this action analyzes and fully takes into account the social and economic impacts of the proposed GOM Differential DAS Area. This analysis indicates that the alternative adopted by the Council not only meets the conservation objectives of this action, but it would also result in the least reduction in fishing revenues of all of the alternatives considered. The proposed measure minimizes the adverse economic impacts to fishing communities and provides the greatest potential for sustained participation of such communities among the alternatives considered. Therefore, the GOM Differential DAS Area measure is fully consistent with National Standard 8.

Comment 15: Ten commenters suggested that the GOM Differential DAS Area in particular, and the suite of measures proposed by FW 42, in general, are inconsistent with National Standard 1 because they fail to achieve OY on many healthy stocks or provide the greatest overall benefit to the nation. They based their claim on the fact that recently observed landings are lower than the Target TACs established for several species. Further, eight commenters argued that the GOM Differential DAS Area will fail to prevent overfishing of GOM cod, but will actually increase F on this species by providing incentives for vessels that traditionally fish within this area to concentrate fishing effort on the highest-valued species, primarily GOM cod. Finally, four commenters suggested that, because some vessels will be unable to steam outside of this area due to their vessel size, these vessels will be forced to fish within this area, therefore, increasing discards of GOM cod and CC/GOM yellowtail flounder.

Response: The model used to evaluate the impacts of the differential DAS counting areas (i.e., the CAM) attempts to predict vessel behavior to maximize fishing profit in response to the suite of proposed measures. As a result, the CAM attempts to capture any change in fishing behavior to target the highest-valued species. Therefore, the results of the CAM reflect anticipated behavior changes in response to the GOM Differential DAS Area and indicate that the proposed measure still meets the mortality objectives of this action. In addition, because the CAM incorporates trip limits, the model's results incorporate any changes in F attributable to discards of GOM cod and CC/GOM yellowtail flounder, although it is not possible to isolate the direction and degree of change with respect to discards from these results.

As acknowledged many times in Amendment 13 and FW 42, it is difficult to achieve an exact balance of measures that will achieve the necessary conservation objectives for all stocks while ensuring OY at the same time in a fishery as diversified and complex as the groundfish fishery. Due to the comingled nature of the groundfish fishery and the reliance upon non-selective measures such as DAS reductions to manage the fishery, effort and subsequent F reductions on one stock will likely result in effort and F reductions on other stocks. Because several stocks managed by the FMP require F reductions to comply with the Amendment 13 rebuilding programs, the consequence of measures such as the GOM Differential DAS Area result in decreased catch of other, including healthier, groundfish stocks. FW 42 attempts to balance out and mitigate the impacts of such unavoidable reductions in catch by proposing the continuation of programs that facilitate the harvest of healthier stocks. Examples of such programs include approved SAPs and the Regular B DAS Program. Further, the DAS Leasing Program attempts to allow vessels to obtain additional DAS to pursue other stocks. Should vessels take advantage of these programs, it is likely that the fishery will better achieve OY while overfished stocks rebuild according to the Amendment 13 rebuilding programs.

As highlighted in the response to Comment 39 below, it is important to point out that Target TACs are an imprecise indicator of whether the fishery is achieving OY. As originally defined by Amendment 9, and described in Section 3.1.4 of Amendment 13, ''OY for a stock is achieved when fishing at the target F for a given stock size.'' Therefore, the important factor determining OY is not whether the fishery harvests the Target TACs for each stock, but whether the fishery is achieving the F targets established for each stock. The rebuilding programs established under Amendment 13 were designed to end overfishing and achieve OY for the fishery. These rebuilding programs comply with National Standard 1 and other applicable law in that they end overfishing on all stocks managed by the FMP and rebuild overfished groundfish stocks within the required timeframe. Measures proposed by FW 42 are necessary to end overfishing for some stocks and to continue to achieve the F targets established by the Amendment 13 rebuilding programs. This rebuilding strategy was designed to achieve OY, as reduced by social, economic, and ecological factors, in order to provide the greatest benefit to the nation, once all stocks are rebuilt, consistent with the National Standard 1 guidelines at § 600.310. Because the measures proposed by FW 42, including the GOM Differential DAS Area, ensure that several grounfish stocks remain on the Amendment 13 rebuilding trajectory, they are also consistent with National Standard 1.

Comment 16: One commenter argued that vessels within both the gillnet and hook gear sectors of the fishery should be exempt from the GOM Differential DAS Area restrictions, citing the recent decision by NMFS to exempt members of the GB Cod Hook Sector from differential DAS counting because they do not land very much yellowtail flounder (71 FR 42087, July 25, 2006).

Response: NMFS does not believe it is appropriate to exempt vessels fishing with gillnets or hook gear from the requirements of the GOM Differential DAS Area for several reasons. First, these vessels are not required to use

gillnets or hook gear for the entire FY and may elect to fish with trawl gear at any time during the FY. However, members of the GB Cod Hook Sector are required to fish with hook gear throughout the year. Further, the Sector demonstrated through catch reports that Sector vessels caught only minimal amounts of flatfish, including yellowtail flounder. It has not been demonstrated that gillnets are capable of avoiding yellowtail flounder; in fact, some gillnet gear specifically targets flatfish. Second, members of the GB Cod Hook Sector are restricted by a hard TAC on the amount of cod that such vessels can land, whereas non-Sector vessels, including non-Sector vessels using hook gear, would have no such limitation on the amount of cod catch and would only be restricted by DAS use and daily possession limits. Thus, the intent of the GOM Differential DAS Area could be easily undermined and F could actually increase on GOM cod. Third, the GB Cod Hook Sector Area is entirely outside of the GOM cod stock area and these vessels target GB cod, not GOM cod. Therefore, it would be inappropriate and inconsistent with the goals and objectives of this action and the FMP to allow vessels using gillnet gear and hook gear outside of the GB Cod Hook Sector to be exempt from the requirements of the GOM Differential DAS Area.

Comment 17: Eight commenters suggested that the differential DAS counting rate should be kept at 1.4:1 within the GOM Differential DAS Area. Some claimed that incorrect data for CC/GOM yellowtail flounder was used in the analysis for FW 42 and that, if corrected data were used for this stock, the need to implement a differential DAS rate of 2:1 to reduce F would be eliminated. Others claimed that updated data describing the effects of the emergency measures implemented by the April 13, 2006, emergency interim final rule will indicate that the fishery has already met the necessary F reductions for CC/GOM yellowtail flounder for 2006, eliminating the need for additional F reductions for this stock. One other commenter claimed that updated data for FY 2005 will reveal that the Amendment 13 measures were more effective at reducing F for most stocks than previously estimated. Commenters suggested that differential DAS counting within the GOM should be limited to FY 2006 only, and that the Council should substitute this with another measure for FY 2007 and 2008, including either eliminating differential DAS counting entirely or by substituting differential DAS counting with the industry proposal offered by the Northeast Seafood Coalition during the development of FW 42.

Response: Data used to evaluate whether additional measures proposed by FW 42 are necessary to meet the F targets for 2006 represent the best scientific information available. Additional catch data identified by the commenters were not available at the time the Council adopted FW 42 and submitted it to NMFS for final review. The National Standard 2 guidelines indicate that new information that becomes available between the initial drafting of the action and its submission for final review should be incorporated into the final action where practicable, but only if the information indicates that drastic changes have occurred in the fishery that could require the revision of the proposed action. The catch data identified by the commenters did not become available until after the Council submitted FW 42 to NMFS for final review. As a result, no analysis was conducted to determine the effects of incorporating this information into the analysis of the FW 42 measures. Because no analysis of the impact of this information was provided by the commenters, it is uncertain whether this additional information would be sufficient to indicate that the existing management measures, including those implemented by the April 13, 2006, emergency interim final rule, achieved the necessary F reductions for all stocks. Further, because the catch data referred to by the commenters is preliminary information, these data are not sufficient to evaluate whether drastic changes have occurred in the fishery that could require revision of the measures proposed by FW 42. However, NMFS has no reason to believe that drastic changes in the fishery have occurred. Because F is evaluated on a CY basis instead of a FY basis, it is not appropriate to use final landings from FY 2005, or even preliminary landings from FY 2006, to evaluate whether the F targets for CY 2005 were achieved, or whether the measures implemented by the emergency action were sufficient to reduce F for particular stocks for CY 2006, respectively. Although additional data may provide a more accurate depiction of catch and effort in the fishery during the entire FY 2005 and the first portion of FY 2006, as it would be in hindsight of any action, consideration of such preliminary data would further delay FW 42. Because measures in the emergency action do not fully achieve the necessary F reductions in FY 2006 for CC/GOM yellowtail flounder, it is critical that FW 42 be implemented as soon as possible in order to prevent overfishing on this stock and other stocks and prevent delaying the Amendment 13 rebuilding programs for all stocks. For a discussion regarding the validity of the data used to support measures proposed by FW 42, see the response to Comment 42 below. Therefore, FW 42 measures are based on the best scientific information available, consistent with National Standard 2.

The Council never considered a differential DAS counting rate of 1.4:1 within the GOM Differential DAS Area, but rather adopted a differential DAS counting rate of 2:1 because it met the mortality objectives of this action for FY 2006 through 2008 within a small geographic area. In contrast to the emergency action that implemented a differential DAS counting rate of 1.4:1 throughout the entire GOM RMA, FW 42 proposed to implement a higher differential DAS counting rate of 2:1 within a smaller inshore GOM Differential DAS Area as part of a targeted approach to reduce F on overfished stocks while minimizing reductions in F for other healthier stocks. Under the emergency action, a differential DAS counting rate of 1.4:1 was able to meet the necessary F reductions for GOM cod because it was applied to the entire GOM RMA, not just the inshore portion of the area. However, even over this expanded area, this lower differential rate was unable to achieve the necessary F reduction for CC/GOM yellowtail flounder. Therefore, it is unlikely that such a revision would achieve the necessary F reductions for GOM cod and CC/GOM yellowtail flounder over the much smaller area proposed by the GOM Differential DAS Area. The Council did not specify an end date for this measure, implying that this measure would remain in place until changed by a subsequent action. The Council may elect to modify or revise this measure through a future management action. Substituting the GOM Differential DAS measure proposed in FW 42 with the Northeast Seafood Coalition's proposal, as submitted at the March 2006 Council meeting, would not be approvable since the PDT found that the proposal, as proposed, would not achieve the necessary F reductions for several stocks.

Comment 18: One commenter suggested that NMFS allow vessels to declare into the GOM Differential DAS Area while at sea in a manner similar to the ''flex'' options.

Response: In general, NMFS requires that vessels declare their intent to fish in a particular area via VMS prior to

leaving port to ensure effective administration, monitoring, and enforcement of the area-specific provisions such as DAS counting and trip limits. Because FW 42 would allow a vessel fishing in the Eastern U.S./Canada Area to elect to fish outside of this area on the same trip via declaring a ''flex'' trip, NMFS has determined that it would be appropriate to also provide the industry with an option to declare their intent to fish in the GOM Differential DAS Area via the ''flex'' options, as recommended by this commenter. Therefore, a vessel could elect to ''Flex into the GOM Differential DAS Area'' while at sea to enable it to fish in the Eastern U.S./Canada Area and the GOM Differential DAS Area on the same trip. Alternatively, the vessel could declare into this area prior to leaving port. More information regarding area declarations and available ''flex'' options will be detailed in a permit holder letter sent to all groundfish vessels.

Commercial Trip Limits

Comment 19: Eight commenters supported the proposed GB yellowtail flounder trip limit.

Response: NMFS also supports the proposed trip limit for GB yellowtail flounder and implements this limit through this final rule.

Comment 20: Four commenters supported the proposed trip limits for CC/GOM and SNE/MA yellowtail flounder, while one other commenter suggested that such trip limits would increase discards.

Response: FW 42 indicates that, although the proposed trip limits may increase discard rates for CC/GOM and SNE/MA yellowtail flounder, the amount of discards should actually decrease due to effort reductions in the form of the default DAS reduction and GOM and SNE Differential DAS Areas also proposed in FW 42. Further, the proposed mesh revision in the SNE/MA RMA should also decrease discards of SNE/MA yellowtail flounder. The proposed trip limits for CC/GOM and SNE/MA yellowtail flounder may also decrease discards by standardizing the trip limits between the two stock areas and throughout the FY. Analysis conducted for this action accounts for discard mortality when evaluating the efficacy of the proposed trip limits on F. Based on this analysis, the proposed trip limits are necessary to achieve the rebuilding objectives of this action.

Comment 21: Three commenters supported the proposed trip limit of 5,000 lb/trip (2,268 kg/trip) for GB winter flounder, while four commenters supported a trip limit of 7,500 lb/trip (3,402 kg/trip) and one commenter thought it should be 10,000 lb/trip (4,536 kg/trip) instead. Those supporting a higher trip limit suggest that the higher trip limit is supported by the FW 42 analysis.

Response: Two of the alternatives considered by the Council during the development of FW 42, Alternative B2 and E (modified), included a GB winter flounder trip limit of 750 lb/DAS (340 kg/DAS), up to 7,500 lb/trip (3,402 kg/trip). However, the Council modified the GB winter flounder trip limit in Alternative B2 to 5,000 lb/trip (2,268 kg/trip) by unanimous consent and subsequently adopted this revised alternative as its preferred alternative for FW 42. Council members expressed concern that excessive discards would result under a daily possession limit for this stock, suggesting that an overall trip limit of 5,000 lb/trip (2,268 kg/trip) would more effectively reduce discards by minimizing the time necessary to catch the GB winter flounder trip limit. The proposed trip limit of 5,000 lb/trip (2,268 kg/trip) was selected based on the average trip duration of seven DAS multiplied by the proposed daily trip limit of 750 lb/DAS (340 kg/DAS) (7 DAS × 750 lb/DAS (340 kg/DAS) = 5,250 lb/trip (2,381.4 kg/trip)). Because the Council did not analyze the 10,000 lb/trip (4,536 kg/trip) limit suggested by one commenter, it is unknown whether this trip limit would achieve the necessary F reductions for this stock, given the other measures proposed by FW 42. Therefore, implementation of the proposed GB winter flounder trip limit of 5,000 lb/trip (2,268 kg/trip), which was demonstrated to achieve the necessary F reductions, is justified.

Regular B DAS Program

Comment 22: Seven commenters, including the DMR, supported the proposed revisions to the Regular B DAS Program. One of these commenters stated that this program was important to help mitigate the economic impacts of recent effort reductions.

Response: NMFS agrees that this program is an important way for vessels to mitigate the economic impacts of recent effort reductions and that the proposed revisions to this program would allow vessels to use Regular B DAS to target healthy stocks without compromising the rebuilding efforts of overfished stocks.

Comment 23: Two commenters suggested that NMFS should maximize the observer coverage to improve the effectiveness of this program. One commenter indicated that the 3-day Observer Program notice is unreasonable and unfairly limits the flexibility of vessel operations.

Response: A relatively high rate of observer coverage (a target observer coverage rate of approximately 36 percent based on previous observer coverage) is specified for this program. During the recent pilot phase of this program, approximately 36 percent of trips into this program were observed. NMFS believes the current observer coverage rate is sufficient to effectively monitor this program without compromising efforts to observe vessel operations in the rest of the fishery. A 3-day notice is necessary to allow the Observer Program to deploy observers and ensure that the proper amount of coverage for this program is achieved throughout the FY.

Comment 24: One commenter observed that the overall Target TACs and resulting Incidental Catch TACs for several species are too small to support an active Regular B DAS Program in the GOM. Three other commenters contended that the program offers little value to vessels unless they are capable of fishing on GB for haddock.

Response: Because of the need to reduce F for several stocks in the GOM and SNE RMAs, the Target TACs and Incidental Catch TACs for several species are necessary to achieve the F objectives in FW 42. Therefore, participation in the Regular B DAS Program will likely be limited by the availability of the incidental catch TACs for specific stocks of concern, in particular GOM cod and CC/GOM yellowtail flounder, which have quarterly Incidental Catch TACs as low as 6.7 mt (14,771 lb, or 6,700 kg) and 0.8 mt (1,764 lb, or 800 kg), respectively. FW 42 identifies several healthy groundfish stocks that may be targeted by vessels participating in the Regular B DAS Program: GB haddock, redfish, pollock, GOM winter flounder, and GOM haddock. Therefore, although limited, this program offers benefits to participating vessels in both the GOM and GB, to the extent practicable, provided vessels can selectively target these stocks without catching large quantities of the stocks of concern.

Comment 25: Three commenters, including the DMF, stated that it is impossible for gillnet vessels and small trawl vessels to effectively participate in this program, given the proposed small possession limits and the haddock separator trawl requirement. One commenter specifically requested a special Regular B DAS Program for gillnet vessels, stating that these vessels cannot fish with the haddock separator trawl.

Response: The proposed measures outlined for the Regular B DAS Program only require trawl vessels to fish with a haddock separator trawl when participating in this program. Gillnet vessels may fish with gillnet gear under this program. Gillnet vessels will be limited to 100 lb/DAS (45.4 kg/DAS) for each stock of concern and will not be limited to the restrictive trip limits for monkfish, flounders, skates, and lobsters required by the haddock separator trawl performance standards proposed for trawl vessels fishing in the Regular B DAS Program. The intent of this program is to selectively target healthy stocks (primarily haddock) while avoiding stocks of concern. The restrictive possession limits are necessary to reduce incentives to catch stocks of concern, which would compromise the effectiveness of the haddock separator trawl.

Comment 26: Three commenters requested that NMFS make several revisions to the proposed requirements for the Regular B DAS Program, as follows: (1) Remove the haddock separator trawl requirement; (2) eliminate the restrictive trip limits of 500 lb/trip (227 kg/trip) for flatfish and monkfish outlined in the Gear Performance Incentives; (3) increase the possession limits of groundfish stocks of concern proportionate to the Incidental Catch TACs for these stocks; and (4) increase the number of Regular B DAS allocated in each quarter, using catch rates from the Regular B DAS Pilot Program. These commenters stated that the proposed gear requirement would eliminate the incentive to test and improve the effectiveness of other gear under this program. Further, they question the effectiveness of the haddock separator trawl. These commenters contend that the proposed trip limits are confusing, are not supported by any identified conservation or management objectives, and that the quarterly Incidental Catch TACs and DAS limits provide sufficient protection for stocks of concern. Although the commenters supported the concept of gear performance standards, they contested that the proposed standards are arbitrary since the performance of the separator trawl to date indicates that this gear is not capable of achieving these standards. Three other commenters, including the DMR, supported the proposed Gear Performance Incentives for Special Management Programs, stating that they minimize incentives to compromise the effectiveness of the haddock separator trawl.

Response: The intent of the proposed haddock separator trawl requirement was to facilitate the harvest of healthy stocks such as haddock and pollock, while reducing the catch of overfished stocks such as cod, yellowtail flounder, and winter flounder. When properly configured, the haddock separator trawl is capable of effectively reducing the catches of cod, flounders, and other bottom-dwelling species such as monkfish, skates, and lobsters when targeting haddock. However, when improperly configured, the net is capable of catching larger amounts of these species, as observed in the recent performance of the haddock separator trawl in the NE multispecies fishery. The proposed Gear Performance Incentives, reflected in the trip limits associated with the use of the haddock separator trawl in the Regular B DAS Program and the Eastern U.S./Canada Haddock SAP, were developed by the Council to increase incentives to configure the gear properly to avoid catching cod, flounder, skates, monkfish, and lobsters, thereby minimizing bycatch and time sorting catch on deck. These performance incentives were first proposed by the Groundfish Advisory Panel and later modified by the Groundfish Oversight Committee to provide a minimal allowance of bycatch of these other species. The proposed performance incentives are similar to the results achieved by a 1992 experiment by the Canadian Department of Fisheries and Oceans to test the performance of a haddock separator trawl. These standards are necessary to help promote and help ensure that the haddock separator trawl is used as intended in order to reduce catches of stocks of concern and prolong the availability of Incidental Catch TACs and access to this program. FW 42 does provide a mechanism whereby additional gears can be authorized in this program. The Council did not increase the number of Regular B DAS allocated to each quarter, as suggested by the commenter, but instead chose to reduce the number of Regular B DAS allocated to the first quarter to reduce the impact of this program on spawning fish. NMFS finds, therefore, that the suggested revisions to the Regular B DAS Program are not justified.

Comment 27: The Council recommended that NMFS consider requiring vessels participating in the Regular B DAS Program within the proposed differential DAS Areas to declare their intent to fish in these areas prior to leaving port to accurately count DAS, should the vessel is required to flip its DAS, in order to simplify enforcement and administration of this measure.

Response: As proposed, vessels would only be charged DAS at the differential DAS counting rate of 2:1 when declared into either the GOM or the SNE Differential DAS Areas and fishing under a Category A DAS. Because a vessel participating in this program is not subject to differential DAS counting while under a Regular B DAS, NMFS is requiring vessels to declare their intent to fish within the differential DAS Areas only when flipping to a Category A DAS. NMFS believes that the measure, as proposed, is sufficient to simplify administration and enforcement of this provision.

Renewal of DAS Leasing Program

Comment 28: Nine commenters, including the DMR, supported the extension of the DAS Leasing Program, as it mitigates the economic impacts of recent and continuing effort reductions. Six commenters, including the DMF, contest this belief and suggest that the leasing program will not mitigate the economic impacts of recent effort reductions, but will instead increase effort, and therefore F, on GOM cod, and result in further effort reductions and economic impacts in the future.

Response: The DAS Leasing Program provides benefits to fishermen that help offset some of the economic and social impacts resulting from continued effort reductions in the fishery. Analysis of the impacts of the DAS Leasing Program indicates that it is difficult to isolate the impacts of the DAS Leasing Program from the impacts of other management measures. However, an estimation of the impact from this program indicated that landings of most stocks by lessee vessels increased during CY 2004 when compared to their landings in CY 2003, suggesting that the leasing program is responsible for nominal increases in landings and F for these stocks. Although landings of GOM cod increased by approximately 3 percent, the stocks for which the DAS Leasing Program contributed the highest increase in landings (GB haddock, pollock, redfish, witch flounder, and American plaice) are all considered healthy stocks that do not need F reductions to maintain the Amendment 13 rebuilding program. This suggests that the DAS Leasing Program actually increases landings of these healthy species, thereby increasing the likelihood that the fishery will harvest OY from these stocks. The analysis further indicated that 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. As a result, the DAS Leasing Program does, in fact, help mitigate the economic impacts of recent effort reductions. National Standards 5 and 8 require that management measures consider efficiency in the utilization of fishery resources, where practicable, and provide for the sustained participation of fishing communities, respectively, consistent with the conservation objectives of the FMP. Consistent with these national standards, this final rule 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. FW 42 concludes that the DAS Leasing Program, in light of other measures in FW 42, will not undermine conservation objectives of this action or the FMP.

Comment 29: Five commenters, including the DMF, asserted that the DAS Leasing Program is discriminatory because it consolidates DAS onto fewer vessels, preventing other vessels from gaining access to the fishery, suggesting an inconsistency with National Standard 4. Further, they claimed that smaller vessels that fish within the GOM are effectively restricted from participating in the DAS Leasing Program due to the proposed differential DAS counting in the inshore GOM and the higher cost to lease DAS to fish in this area.

Response: The DAS Leasing Program was designed with several provisions that limit the potential for consolidation of DAS within the fleet, including a cap on the number of DAS that a vessel could lease and limiting leases to vessels that are within specific size restrictions of the lessor vessel. As specified above, the DAS Leasing Program allows active groundfish vessels to continue to participate in the fishery by acquiring additional DAS from other vessels. An evaluation of the DAS Leasing Program reveals that this program allowed lessee vessels, including small trawl vessels, to fish enough DAS to cover overhead and crew expenses. This analysis also points out that the DAS Leasing Program resulted in a net increase in DAS for vessels operating out of Massachusetts, a state bordering the GOM. The FW 42 analysis acknowledges that vessels that have traditionally fished within the GOM Differential DAS Area may have a difficult time acquiring sufficient DAS through the DAS Leasing Program to fish in this area due to differential DAS counting. However, as noted above, differential DAS counting is necessary to achieve the conservation objectives of this action. Should a vessel determine that it is not profitable to fish within the GOM, given the impact of differential DAS counting, the DAS Leasing Program would enable such vessels to earn some revenue by leasing DAS to other vessels. Because the DAS Leasing Program does not contain any provision that discriminates among participants based on state of residence or any other criteria and makes no direct or deliberate distribution of DAS among individuals, the continuation of the DAS Leasing Program is consistent with the guidelines developed for National Standard 4 and contributes towards achieving goals 4 and 5 and objective 7 of the FMP as defined in Amendment 13.

Renewal and Modification of the Eastern U.S./Canada Haddock SAP

Comment 30: Six commenters, including the DMR, expressed general support for the renewal and proposed modifications to the Eastern U.S./Canada Area Haddock SAP.

Response: NMFS has also approved the proposed modifications to this SAP and continues it through FY 2008.

GB Cod Fixed Gear Sector

Comment 31: Thirty commenters expressed support for the proposed GB Cod Fixed Gear Sector, as it facilitates responsibility and accountability in the fishery, protects cod, and limits effort shifts within the fishery. Twenty-five commenters suggested that NMFS should correct the Fixed Gear Sector Area to reflect the larger area proposed by the Sector Operations Plan, rather than the existing GB Cod Hook Gear Sector Area, as this could facilitate pursuit of an offshore monkfish fishery while accounting for GB cod caught.

Response: NMFS agrees that the proposed Sector facilitates responsibility and accountability within the fishery. In addition, NMFS agrees that the proposed measure limits effort shifts within the fishery by requiring that Sector vessels fish with specific gear within a specific area. Further, by limiting catches of cod to a hard TAC, the proposed Sector ensures that F on GB cod from this Sector will not exceed its F targets. Because the catches of other species are regulated by DAS, NMFS believes that the proposed Sector is consistent with the F objectives of this action for other species and the overall objectives of the FMP.

Because the FW 42 document did not identify a geographic area associated with the proposed GB Cod Fixed Gear Sector, NMFS proposed that the GB Cod Fixed Gear Sector Area be the same as the GB Cod Hook Gear Sector Area, based on the fact that the goals of the GB Cod Fixed Gear Sector are very similar to those of the GB Cod Hook Gear Sector. The GB Cod Fixed Gear Sector submitted an Operations Plan requesting that Sector participants be allowed to fish in an area larger than the GB Cod Hook Sector Area identified in the FW 42 proposed rule in order to pursue an offshore gillnet fishery for monkfish. A proposed rule (August 22, 2006, 71 FR 48903) soliciting public comment on this Operations Plan is currently under review.

Comment 32: One commenter opposed the proposed Fixed Gear Sector, stating that NMFS should not encourage distribution of public resources into the control of private groups for their exclusive use. This commenter indicated that the proposed Sector neither advances rebuilding objectives, nor mitigates economic or social impacts of Amendment 13, and recommends that NMFS should expand participation in the fishery consistent with the 14th Amendment to the U.S. Constitution. Two commenters expressed concern that an exemption from the gillnet limits for the proposed Sector will allow vessels to exclusively target cod and then shift effort to other species, thereby reducing the effectiveness of the existing limit on the number of gillnets that may be fished by Day gillnet vessels and increasing effort on pollock and monkfish.

Response: Amendment 13 created the mechanism by which sectors can be formed. The objective of sectors is to provide incentives for groups of similar vessels (by port, gear type, size, etc.) to regulate themselves in an efficient and effective manner (see Section 3.4.16 of Amendment 13). Sectors also provide a mechanism for capacity reduction through consolidating effort onto fewer vessels, thereby ''reducing the cost of operations and possibly facilitating the profitable exit of some individual vessel owners from the fishery.'' The creation of a sector does not deprive other vessels from participating in the fishery, or from other fishing opportunities. Rather, it limits the fishing activities of a specific group of vessels to their historic participation in the fishery. Amendment 13 also requires that a sector stay within its allocation of GB cod and/or other hard TACs, which ensure that the sectors achieve the goals of the FMP for these species. Further, sectors provide substantial benefits to participants by creating incentives to regulate themselves in an effective and efficient manner.

The proposed Sector is limited by both a hard TAC on GB cod and by DAS for all other species. Therefore, Sector vessels would be required to use a NE multispecies DAS and/or monkfish DAS on every fishing trip and would be required to abide by all other regulations, unless specifically exempted by the Regional Administrator. As a result, the concern that Sector vessels could reduce the effectiveness of the gillnet limitation on pollock and monkfish by shifting effort onto these species appears unfounded.

Section 303(b) of the Magnuson-Stevens Act allows the establishment of a limited access system in a fishery to achieve OY. NMFS believes that it would be inappropriate to expand participation in the fishery beyond its current capacity, as this would compromise the Amendment 13 rebuilding programs and prevent the groundfish fishery from achieving OY.

Comment 33: Seven commenters recommended that NMFS only approve the proposed Sector if it would be allocated hard TACs for all stocks. Another commenter indicated that the proposed Sector should have hard TACs for bycatch species and monkfish. One other commenter opposed the approval of Sectors with a combination of both DAS and hard TACs as the primary management measures and indicated that the proposed Sector could cause effort to be redirected, having a significant impact on the rest of the fleet.

Response: Section 3.4.16 of Amendment 13 describes the mechanism by which sectors may be formed, indicating that ''Allocations to each sector may be based on catch (hard TACs) or effort (DAS) with target TACs specified for each sector.'' Although there has been some debate whether new sectors should be managed exclusively by either hard TACs or DAS restrictions, NMFS approved the GB Cod Hook Sector Operations Plan with a combination of both hard TACs and DAS limits after determining that DAS limits provide sufficient protection of stocks not subject to the hard TACs specified for a particular sector. In FW 42, the Council approved the GB Cod Fixed Gear Sector, which explicitly included a combination of hard TAC management for GB cod and DAS to manage all other groundfish stocks. It was unclear from the comment received how such sectors could cause effort to be redirected and what impact it would have on the rest of the fleet. As discussed in the response to Comment 32, the proposed Sector should not result in significant effort shifts, as Sector vessels would be limited to specific gear and area restrictions. By staying within these restrictions, Sector operations should not affect whether the rest of the fishery achieves the conservation objectives for GB cod and would have a minimal impact on potential future effort reductions in the fishery.

Eastern U.S./Canada Area Flexibility

Comment 34: Ten commenters, including the DMR, supported the proposed measure to allow vessels to fish inside and outside of the Eastern U.S./Canada Area on the same trip, as it provides important flexibility in vessel operations in the event of bad weather or poor fishing opportunities.

Response: NMFS has approved this measure and implements it through this final rule.

Modification of the DAS Transfer Program

Comment 35: Eleven commenters, including the DMR, expressed support for the proposed modifications to the DAS Transfer Program, as they would increase the utility and effectiveness of the program. One commenter opposed allowing vessels to fish commercially after transferring its DAS, believing instead that the vessel should be permanently removed from all fisheries.

Response: Previous requirements to permanently exit all fisheries upon transferring DAS contributed to dissuading any vessel from participating in this program. This undermined the purpose and effectiveness of the program and neither reduced capacity in the NE multispecies fishery, nor increased the efficiency of the fleet, as intended. NMFS believes that the proposed modifications would provide incentives for vessels to participate in the program, thereby permanently reducing capacity and increasing efficiency in the NE multispecies fishery and has, therefore, approved this program as proposed in FW 42.

Standardized Requirements for Special Management Programs

Comment 36: Three commenters, including the DMR and the Council, believe that NMFS should continue to require vessels to declare the statistical area in which fish were caught via VMS. These commenters state that there has been no analysis to demonstrate that VMS location can be reliably used to assign catch to a particular statistical area, especially considering that some stocks are not uniformly distributed within all stock areas. In addition, the DMR suggested that NMFS require vessels to report catch by 30′ squares.

Response: The proposed elimination of this reporting requirement was intended to reduce the reporting burden on vessels participating in the Regular B DAS Program and for vessels fishing inside and outside of the Western U.S./Canada Area on the same trip. However, NMFS acknowledges that because some stocks are not uniformly distributed within all stock areas, it would be difficult to utilize VMS to accurately assign catch to a particular statistical area and reinserts this requirement into the final rule, thereby maintaining the requirement to report the statistical area in which fish were caught when participating in these programs. If appropriate, the Council may recommend that vessels report catch by 30′ squares by proposing such requirements in a subsequent action.

Modification of Cod Landing Limit in Eastern U.S./Canada Area

Comment 37: Nine commenters supported the modification to the GB cod trip limit in the Eastern U.S./Canada Area.

Response: NMFS has approved the proposed trip limit modification for GB cod and implements it through this final rule.

SNE/MA RMA Trawl Codend Mesh Requirement

Comment 38: Four commenters supported the proposed revision of the SNE/MA RMA trawl mesh requirements because it maintains consistency with mesh requirements in other areas and provides an incentive to use diamond mesh to reduce discards of yellowtail flounder.

Response: NMFS has approved the proposed measure and implements it through this final rule.

Regional Administrator Authority To Adjust Trip Limits for Target TAC Stocks

Comment 39: Eleven commenters, including the Council, expressed support for the proposed Regional Administrator authority to adjust trip limits upwards to facilitate the harvest of the Target TACs specified for six species, stating that it would facilitate the harvest of OY in these fisheries. Two of these commenters contested concerns expressed in the proposed rule that this measure would be problematic to administer, stating that the Regional Administrator has sufficient real-time data to effectively project whether the Target TAC would be harvested to allow trip limits to be increased. One commenter opposed this provision, indicating that the proposed Target TACs are set too high, that there is

limited real-time monitoring capability, that the proposed measure does not also include a provision to reduce Target TACs, and that Target TACs are not effective for determining whether the management program is meeting F targets.

Response: Contrary to assertions made by several commenters, sufficient data are not available to adequately assess total catch for these six species on a real-time basis. The Target TAC for GOM cod is based on commercial landings, discards, and recreational harvest. Data on the recreational harvest of GOM cod are not available on a real-time basis and are only available at the end of the FY. Because recreational harvest of GOM cod is a substantial component of the overall catch of this stock (approaching 43 percent of the total catch in 2004) and has varied considerably within the past 10 years, it is not possible to accurately project the total harvest of this stock throughout the fishery on a real-time basis. Further, discard estimates are generated in several ways. For some stocks (e.g., GOM cod), discard estimates are derived from observer data on a quarterly basis. However, the availability of these data would be inadequate for real-time projections of total catch. For other stocks (e.g., CC/GOM and SNE/MA yellowtail flounder, in particular), discards are estimated using VTRs. However, discard data from VTRs are not considered reliable and are subject to change. Therefore, there is considerable uncertainty regarding the data available to project total harvest of particular stocks on a real-time basis. Because of these limitations, the data available to implement this measure would not constitute the best available scientific information, as required by National Standard 2. In addition, section 303(a)(8) of the Magnuson-Stevens Act requires that an FMP specify the nature and extent of scientific data needed for the effective implementation of the FMP. As detailed above, without additional real-time reporting requirements to provide reliable and timely catch and discard data from both the commercial and recreational sectors, NMFS would not have sufficient real-time data to accurately monitor catch of particular species within the fishery. Therefore, this measure is not consistent with National Standard 2 or the required provisions of the Magnuson-Stevens Act and NMFS has disapproved it.

Regional Administrator Authority To Adjust Measures in the U.S./Canada Management Area

Comment 40: Five commenters expressed general support for the Regional Administrator authority to adjust measures in the U.S./Canada Management Area.

Response: NMFS believes that this measure increases the flexibility of the Regional Administrator to adjust the measures regulating vessel operations in the U.S./Canada Management Area to facilitate harvesting or prevent the fishery from exceeding specified U.S./Canada Management Area TACs for GB cod, GB haddock, and GB yellowtail flounder, or to prevent these TACs from being exceeded at any time during the FY. Such flexibility eases the administration and monitoring of these TACs and allows more effective and efficient management of the resources within this area without compromising the conservation objectives of the FMP.

General Comments

Comment 41: One commenter suggested that NMFS extend the emergency action and eight commenters requested that NMFS implement the measures proposed by FW 42 as soon as possible, arguing that the measures implemented by the April 13, 2006, emergency interim final rule do not meet the conservation objectives, but that FW 42 would meet these objectives. Four of these commenters expressed their preference for another alternative considered by the Council during the development of FW 42, Alternative E (modified).

Response: The emergency measures implemented by the April 13, 2006, emergency interim final rule were meant as a stop-gap measure to immediately reduce F on specific stocks, but they were never meant to achieve the full conservation objectives for 2006 without subsequent implementation of additional measures proposed by FW 42. Because the emergency measures are not intended to achieve the necessary F reductions in 2006 for all stocks, it is not appropriate to continue these measures. Therefore, NMFS agrees that it is important to implement approved FW 42 measures as quickly as possible to ensure that the conservation objectives are fully met for 2006. Alternative E was considered, but not adopted by the Council during the development of FW 42 because the underlying conservation measure to reduce F was based on charging DAS used in 24-hr increments. Several Council members expressed concern that this alternative would pose greater risk to vessel safety than the alternative adopted in FW 42.

Comment 42: Two individuals questioned the validity of the science used to support measures proposed by FW 42. Sixteen other commenters, including the DMF, argued that the analysis supporting FW 42 is inconsistent with National Standard 2. They assert that the CAM used to evaluate the proposed measures is not considered the best available science because it assumes a ''linear relationship between catch-per-unit-effort (CPUE) and effort'' without sufficient supporting evidence that such a relationship exists. Also, they suggest that the assumptions used by the CAM are invalid, including overestimating the CPUE for CC/GOM yellowtail flounder, and that the model does not have sufficient resolution to predict individual vessel behavior.

Response: The CAM is the primary tool used to evaluate the effectiveness of the proposed measures at achieving the necessary F reductions for this action. In 2001, the fundamental structure of the CAM was reviewed and endorsed by the Social Sciences Advisory Committee of the Council. In addition, a second review of this model was conducted by a panel of independent experts in January 2004. Based upon this second review, slight modifications to the CAM were performed to enhance the effectiveness of the model. Comparing the results of the CAM to the change in F between CY 2001 and CY 2004 observed by GARM II indicates that the CAM results were a reasonable approximation of the effectiveness of the Amendment 13 measures in terms of realized F for most stocks. Although the commenters highlight additional and ongoing evaluations of the performance and adequacy of the CAM, to date these reviews have yet to be completed and submitted to the Northeast Fisheries Science Center for review.

Commenters offered several criticisms of the CAM that have been determined to be inaccurate. First, the CAM is a non-linear model based on profit, not catch. The marginal profit of a particular vessel is considered non-linear, affecting where and when the vessel is expected to fish to maximize profit. However, CPUE is assumed to be constant and does not change regardless of how much effort is attributed to a particular block fished in an effort to maximize profit.

Assertions that changes in the CC/GOM yellowtail flounder CPUE used in the model would affect whether the proposed measures are able to achieve the necessary F reductions are also inaccurate. The CAM evaluates the

changes in exploitation from the proposed measures relative to status-quo measures. Therefore, if the same CPUE for CC/GOM yellowtail flounder is used to evaluate exploitation for both status-quo and proposed measures, then the relative change in exploitation between the two sets of measures would be the same, regardless of the value of the CC/GOM yellowtail flounder CPUE used by the model. The end result is that the fishery requires a 40-percent reduction in exploitation (or 46-percent reduction in F) to maintain the Amendment 13 rebuilding program for this stock. In addition, applying the same logic used to argue that the CPUE for CC/GOM yellowtail flounder was overestimated in the evaluation of FW 42 (that the absence of trip limits for this stock during the 2001–2004 period used to calculate the average CPUE for the CAM overestimate the actual CPUE for this stock) would suggest that the CPUE for GOM cod was underestimated in the evaluation of FW 42, as the proposed trip limit of 800 lb/DAS (363 kg/DAS) is substantially higher than the 400–800 lb/DAS (181 kg–363 kg/DAS) trip limits implemented between 2001–2004 and used as the average CPUE in the CAM.

The commenters repeatedly infer that catch is an adequate measure of the performance of the fishery. They state that the small reductions in Target TAC signify that only small F reductions are necessary, eliminating the need for draconian management measures. However, the reason the Target TACs are not as large as the required F reductions is because the projection model used to calculate Target TACs assumes that biomass increases because F is reduced to the necessary levels upon implementation of the proposed measures. As discussed in the response to Comment 39, the true indicator of the performance of the fishery is F, not catch. Even though the fishery may underharvest the Target TAC for a particular stock during the FY, the F may still be too high for that CY. The CAM does not evaluate the proposed measures based on expected catch, but rather relative changes in exploitation, which is then converted into F. Because F is evaluated on a CY basis and not a FY basis, it is inaccurate to compare catch from a particular FY with F for a particular CY.

One of the commenters stated that the CAM only evaluates the impacts on 10 of the 20 stocks managed by the FMP. This is not correct, as the CAM assesses the impacts of proposed measures on 19 of the 20 stocks managed by the fishery (Atlantic halibut is not included in the CAM).

Finally, contrary to assertions made by the commenters, the CAM uses the fishing locations of similarly-configured vessels from their fishing ports to determine whether vessels would shift effort into areas that they had never fished previously. Because the CAM uses data from VTRs, the CAM is limited in its resolution regarding time and area fished. However, the CAM is able to sufficiently predict individual vessel behavior to maximize profits based on the available data. Additional reporting requirements would need to be implemented to improve the data available to, and the resolution of, the existing model. The commenters did not question the validity of the economic analysis conducted for FW 42, despite the fact that the economic analysis relies upon the output from the CAM to estimate impacts on the fleet and fishing communities. In summary, NMFS has determined that the information relied on, and the analysis conducted, including analysis using the CAM, represents the best scientific information available, consistent with National Standard 2.

Comment 43: One commenter recommended that the GOM cod possession limit remain at 600 lb/DAS (272 kg/DAS) during FY 2006 to minimize incentives to target GOM cod and then increase the trip limit to 800 lb/DAS (363 kg/DAS) in FY 2007, once the stock starts to improve.

Response: Emergency measures implemented by the April 13, 2006, emergency interim final rule established a GOM cod trip limit of 600 lb/DAS (272 kg/DAS) to minimize incentives to target GOM cod in the short term under that action. However, in light of the other measures proposed in FW 42, the Council decided that it was not necessary to change the proposed trip limit of 800 lb/DAS (363 kg/DAS) in FW 42. The analysis for FW 42 concluded that a change in the trip limit was not necessary to achieve the necessary F reductions for GOM cod, given the suite of measures proposed by FW 42, including the default DAS reduction and the GOM Differential DAS Area. By leaving the trip limit at 800 lb/DAS (363 kg/DAS) bycatch is reduced and economic impacts on the fishing industry is mitigated.

Comment 44: Some commenters believed that the development of FW 42 was rushed and that the Council was not given enough time to develop a workable solution to address the conservation objectives of the action. Fifteen commenters argued that the public were not given adequate opportunity to evaluate the alternatives considered by Council because the social and economic analysis of two of the alternatives developed by the PDT (Alternative E (modified) and Alternative B2—the preferred alternative adopted by the Council) was not available for public review prior to the Council's vote to adopt a preferred alternative in FW 42. Twelve commenters believed that the social and economic impacts of the proposed measures were not given meaningful consideration during the development of FW 42, while four other commenters specifically stated that a full environmental impact statement (EIS) should have been prepared for this action because socio-economic impacts and sacrificed OY resulted from an inadequate range of alternatives. Finally, two commenters advocated that NMFS should disapprove FW 42 and remit it to the Council for further evaluation and consideration in order to reconsider whether effort controls are adequate in this fishery.

Response: The timeline available to develop FW 42 was based on the Amendment 13 requirement to implement any modifications to the management measures necessary to achieve the Amendment 13 F targets for each species and maintain the Amendment 13 rebuilding programs by the start of FY 2006 on May 1, 2006. The development of FW 42 began in January 2005 and involved more than 10 public meetings, including 5 Groundfish Oversight Committee and 5 Council meetings. In addition, the PDT held more than 19 conference calls and meetings that were often attended by members of the public. To ensure that these rebuilding programs remain on track, the Council needed to complete FW 42 by its November 2005 meeting to ensure a May 1, 2006, implementation date. Unfortunately, the Council was unable to adopt FW 42 at its November meeting, prompting NMFS to implement emergency measures through the April 13, 2006, emergency interim final rule in time for the start of FY 2006. This delay afforded the Council 2 additional months to develop and refine measures included in FW 42. In addition, the emergency interim final rule provided another mechanism to comment on the measures implemented by the April 13, 2006, emergency interim final rule. Therefore, there was ample opportunity for public input during the development of a workable solution to the management issues addressed by FW 42.

The commenters are correct that analysis of two additional alternatives (Alternatives B2 and E (modified)) were first presented to the public at the January 26, 2006, Groundfish Oversight

Committee meeting. These alternatives were originally developed by the PDT at the request of the Council at its November 15–17, 2006, meeting to analyze two separate areas for differential DAS counting. In fact, the PDT developed nine other alternatives in response to the Council's request, but only forwarded Alternatives B2 and E to the Groundfish Oversight Committee for further consideration, as they more effectively achieved the conservation objectives of the action. A table summarizing the measures included within these new alternatives, as well as tables comparing the biological and economic impacts of these new alternatives with the other alternatives fully analyzed within the draft FW 42 document (Alternatives 1–5), were presented to the Groundfish Oversight Committee on January 26, 2006, and later to the Council at its February 1, 2006, meeting. The full economic and social impacts analyses of these two new alternatives were still being written and, therefore, were not available at this meeting, however. Although more detailed information regarding the economic impacts of the other alternatives in the draft document (Alternatives 1–5) was available for the Council's February 1, 2006, meeting, the Council focused its discussion on the new Alternatives B2 and E because they would avoid the sweeping reductions in DAS allocations proposed in Alternatives 1–5. The public and the Council were provided with a summary of the primary biological and economic impacts (expected F and exploitation rates for each stocks along with changes in revenues by port) for each alternative at the earliest opportunity and could compare the alternatives under consideration prior to the Council vote to adopt a preferred alternative for FW 42. Therefore, the public and the Council had all of the necessary information and time to make an informed decision about the overall impacts of the alternatives considered. Once completed, the final EA was posted on the NMFS Northeast Regional Office Web site and made available to the public. Moreover, the public has had the benefit of fully considering FW 42 measures and their analysis since the proposed rule was published in July.

According to the NOAA guidelines for complying with the National Environmental Policy Act (NEPA) (NOAA Administrative Order 216–6), an EA must consider a reasonable range of alternatives, including the preferred action and the no action alternative. The eight alternatives considered in the EA prepared for FW 42 represent a reasonable range of alternatives. These alternatives included a wide range of options to reduce F in the fishery, including DAS allocation reductions, a minimum DAS charge, and differential DAS counting. In addition, as specified in the response to Comment 17, the Council considered an additional alternative, the industry proposal, that was offered for the first time at the February 1, 2006, Council meeting. The Council requested that the PDT evaluate the impacts of this industry proposal and debated whether to substitute it for the preferred alternative in FW 42 if analysis suggested that it would meet the necessary F reductions. Subsequent analysis presented at the April 5, 2006, Council meeting revealed that this alternative would not achieve the necessary F reductions for this action and the alternative was not considered further. All of the alternatives considered were designed to meet the purpose and need identified for this action. Other alternatives that did not meet the purpose and need for this action were not pursued. Therefore, NMFS asserts that a reasonable range of alternatives were considered for this action, consistent with the requirements of the NAO 216–6 and the NEPA.

Both NAO 216–6 and NEPA specify that significant economic and social impacts, by themselves, do not trigger the need to prepare an EIS. Further, the biological analysis prepared for this action indicates that the proposed FW 42 measures would not result in a significant impact to the human environment. Thus, an EA is appropriate and sufficient to support FW 42. Finally, this action is necessary to ensure that overfishing is stopped and that the stocks continue to rebuild according to the Amendment 13 rebuilding programs. The Council may reconsider whether DAS controls are effective in the groundfish fishery, or whether alternative management regimes would better meet the objectives of the FMP during the development of a subsequent action.

Comment 45: Three commenters specifically questioned whether FW 42 is consistent with National Standard 3 requirements to manage a group of interrelated stocks as a unit or in sufficiently close coordination. These commenters suggested that the fishery is instead managed through a series of individual stock-specific F targets and management measures that attempt to achieve MSY from each stock simultaneously, which may not be possible due to the interrelation of stocks in an ecosystem.

Response: All of the 19 groundfish stocks in the FMP are managed in close coordination with one another and as one unit to the extent practicable, as required by National Standard 3. Many of the primary management measures of this fishery are shared across the entire stock complex, including DAS limits, gear restrictions, limited access, and size limits. The National Standard 3 guidelines indicate management measures do not need to be identical for each geographic area within the management unit, provided that the FMP justifies these differences. Both the proposed GOM and SNE Differential DAS Area include different regulations that would only apply to portions of the entire geographic range of a individual stock and the stock complex as a whole. The EA prepared for FW 42 justifies these proposed measures by indicating that a targeted approach was taken to reduce F on GOM cod and CC/GOM and SNE/MA yellowtail flounder by charging DAS at a higher rate within discrete areas responsible for the majority of the catch of these stocks. This was intended to effectively reduce F on these stocks while maintaining opportunities to harvest other stocks within the GOM and SNE RMAs. While it is true that the FMP establishes individual stock-specific F targets, these targets are necessary to maintain the rebuilding programs established under Amendment 13, as each individual stock is at a different point along its rebuilding trajectory. These rebuilding programs are intended to rebuild the stocks to B_{MSY}, as required by the Magnuson-Stevens Act.

Comment 46: Four commenters, including the DMF, requested that NMFS use the mixed-stock exemption provided in the guidelines for National Standard 1 to allow the fishery to overfish CC/GOM yellowtail flounder in order to avoid unnecessarily sacrificing OY from other healthy stocks through the implementation of drastic effort reductions such as the proposed GOM Differential DAS Area.

Response: The guidelines for National Standard 1 at § 600.310(d)(6) indicate that a Council may construct an FMP such that it allows overfishing of one stock in a multispecies complex to achieve OY for another stock in the multispecies complex, provided three criteria are met: (1) Analysis indicates that overfishing one stock to achieve OY for another stock will result in net benefits to the Nation; (2) analysis indicates that similar long-term net benefits cannot be achieved by modifying fleet behavior, gear selection/configuration, or other technical characteristic in a manner that no overfishing would occur; and (3) the F rate would not cause any stock to

require protection under the Endangered Species Act. The commenters have not provided any analysis that suggest that the three criteria necessary to implement this exemption would be met. Although this alternative was discussed by the Council in developing FW 42, it was not seriously considered and not analyzed, given the time constraints necessary to complete FW 42 and uncertainty that the necessary criteria could be met. Moreover, the mixed-stock exemption alternative would be such a radical departure from the current management regime that an amendment to the FMP, rather than a framework adjustment, would be necessary to implement it.

Comment 47: One commenter was concerned that the proposed measures may cause redirection of effort onto GB.

Response: Based on the CAM, the proposed measures are not predicted to cause effort shifts that would result in increases in F on GB stocks. Analysis prepared for FW 42 indicates that the proposed measures will meet the necessary F reductions for all stocks, including those on GB. In addition, because most of GB is governed by the provisions of the U.S./Canada Management Area, the Regional Administrator has the authority to revise specific measures to ensure that vessel operations within this area do not exceed specified TACs for GB yellowtail flounder, and GB cod and GB haddock in the Eastern U.S./Canada Area. Any revisions to management measures to protect these stocks will likely also result in protection for other groundfish stocks.

Changes From the Proposed Rule

NMFS has made several changes to the proposed rule, including changes as a result of public comment and the disapproval of the measure that would have provided the Regional Administrator with the authority to adjust trip limits for specific stocks. Some of these changes are administrative in nature, clarify the new or existing management measures, or correct inadvertent omissions in the proposed rule. These changes are listed below in the order that they appear in the regulations.

The Council indicated that the PDT recently discovered that there was a mistake in the projection for American plaice that over-estimated the Target TACs and Incidental Catch TACs for this species for FYs 2006–2008. The Target TACs and Incidental Catch TACs specified in Tables 2 and 3 above, respectively, were corrected to rectify this error.

In § 648.14, paragraph (a)(174) has been revised to clarify that the most restrictive measures pertain to DAS counting, trip limits, and reporting requirements.

In § 648.82, paragraph (e)(2)(iii)(A) has been revised, in response to comment and in order to be consistent with Council intent, by removing language specifying that a vessel may be in the GOM Differential DAS Area due to bad weather or circumstances beyond a vessel's control.

In § 648.82, paragraph (e)(2)(iii)(B) has been revised, in response to comment and in order to be consistent with Council intent and FW 42, by adding language that allows a vessel to be in the SNE Differential DAS Area when not fishing or transiting.

In § 648.82, paragraph (e)(2)(iv) has been revised to clarify that the most restrictive measures pertain to DAS counting, trip limits, and reporting requirements.

In § 648.82, paragraph (e)(3) has been revised to clarify that, for vessels fishing in both the Eastern U.S./Canada Area and the Regular B DAS Program on the same trip, the applicable DAS accounting rules for both areas apply.

In § 648.82, paragraph (k)(4)(xi)(B) has been revised to clarify the rules regarding the DAS Leasing Program baseline downgrade in the context of a DAS Transfer.

In § 648.82, paragraph (l)(1)(ii) has been revised to insert a cross reference to § 648.82(k)(4)(xi)(B) pertaining to the rules regarding the DAS Leasing Program baseline downgrade in the context of a DAS Transfer.

In § 648.85, paragraph (a)(3)(ii)(A) has been revised to clarify that the most restrictive measures pertain to DAS counting, trip limits, and reporting requirements.

In § 648.85, paragraph (a)(3)(iv)(C)(*2*) has been revised, in response to comment and in order to be consistent with Council intent, by inserting language specifying that the Regional Administrator may also adjust the GB yellowtail flounder landing limit to facilitate harvesting the GB yellowtail flounder TAC.

In § 648.85, paragraph (a)(3)(v)(B) has been revised, in response to comment and in order to be consistent with Council intent, to reinsert language requiring vessels to report the statistical area in which fish were caught.

In § 648.85, paragraph (b)(6)(iv)(E) has been revised order to insert cross references to applicable trip limits in § 648.85(a) that were omitted from the proposed rule.

In § 648.85, paragraph (b)(8)(v)(I) has been revised to insert cross references to applicable trip limits in § 648.85(a) that were omitted from the proposed rule.

In § 648.87, paragraph (d)(2)(ii)(C), has been revised to replace a reference to the GB Cod Hook Gear Sector with the GB Cod Fixed Gear Sector.

Classification

The Regional Administrator determined that the management measures implemented by this 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 final rule has been determined to be significant for the purposes of Executive Order (E.O.) 12866.

This final rule does not contain policies with federalism or ''takings'' implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), prepared this FRFA in support of the approved measures in FW 42. The FRFA incorporates the economic impacts summarized in the IRFA and the corresponding RIR in the FW 42 document, and this final rule document. The IRFA was published in the proposed rule for this action and is not repeated here. A description of why this action was considered, the objectives of, and the legal basis for this rule are contained in the preamble to the proposed and this final rule and are not repeated here.

Summary of the Issues Raised by 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

Comment A: One commenter disputed the determination in the IRFA that the economic loss to groundfish fishery will only be $21 million. This commenter claimed that the economic impact will be much more. This commenter suggested that the estimate of lost groundfish revenue is not 19 percent of groundfish revenue, as claimed in the IRFA, but rather 25–30 percent of 2005 groundfish revenue, as he suspected that the total fishing revenue for FY 2005 was only $80 million.

Response: The commenter did not provide any specific information to explain the basis for the disputed level of impacts and, therefore, as summarized below, NMFS supports the conclusion of the FRFA. The impacts on revenue in the IRFA are detailed in

Section 7.2.4 of the EA prepared for this action. As noted in the EA, the economic impacts were compared to FY 2004, not FY 2005, because complete FY 2005 data were not available at the time the analysis was completed. During FY 2004, the value of the total catch of groundfish, not total fishing revenue, was approximately $78 million. Of the estimated loss of $21 million attributable to measures proposed by FW 42, $15 million is due to a reduction in groundfish landings, while the remaining $6 million is due to reduced landings of other species. As a result, compared to the estimated $78 million in groundfish revenue landed in FY 2004, the estimated revenue loss of $15 million from FW 42 reflects a 19-percent reduction in groundfish revenue from FY 2004. It should be noted, however, that these economic impacts are the result of modeled impacts and may not accurately reflect the realized impacts of measures proposed by FW 42. Realized impacts may be higher or lower than these estimates, depending on how vessels adapt to the regulations implemented and how markets adjust to the resulting changes in seafood supply.

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

Any vessel that possesses a NE multispecies permit would be required to comply with the proposed regulatory action. However, for the purposes of determination of impacts, only vessels that actually participated in an activity during FY 2004 that would be affected by the proposed action were considered for analysis. Vessels that were inactive were not considered because it is not likely that the participation level will increase in the future under the proposed regulatory regime. During FY 2004, 1,002 permit holders had an allocation of Category A DAS. Limited access NE multispecies permit holders may participate in both commercial and charter/party activity without having an open access NE multispecies charter/party permit. In FY 2004, 705 entities participated in the limited access commercial groundfish fishery, and 6 participated in the open access charter/party fishery for GOM cod. Four of these entities participated in both commercial and charter/party activities, leaving a total of 707 unique vessels with an allocation of Category A DAS that may be affected by the proposed action. Based on FY 2004 data, the proposed action would have a potential impact on a total of 3,216 limited and open access groundfish permit holders, of which less than one-third (976) actually participated in either a commercial or charter/party activity that would be affected by the proposed action. Of these, 858 commercial fishing vessels would be affected by this proposed action, including 132 limited access monkfish Category C or D vessels that fished in the Regular B DAS Pilot Program during FY 2004–2005.

The Small Business Administration (SBA) size standard for small commercial fishing entities is $4 million in gross sales, and the size standard for small charter/party operators is $6.5 million. Available data for FY 2004 gross sales show that the maximum gross sales for any single commercial fishing vessel was $1.8 million, and the maximum gross sales for any affected charter/party 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 charter/party fishing entities would 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 reporting requirements for this final rule are as follows: This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) that has been previously approved by OMB under control numbers 0648–0202, and 0648–0212. Public reporting burdens for these collections of information are as follows: (1) VMS purchase and installation; (2) VMS proof of installation; (3) spawning block declaration; (4) automated VMS polling of vessel position; (5) declaration of intent to participate in the Regular B DAS Program or fish in the U.S./Canada Management Areas, associated SAPs, and CA I SAP, and DAS to be used via VMS prior to each trip into the Regular B DAS Program or a particular SAP; (6) notice requirements for observer deployment prior to every trip into the Regular B DAS Program or the U.S./Canada Management Areas, associated SAPs, and CA I SAP; (7) standardized catch reporting requirements while participating in the Regular B DAS Program or fishing in the U.S./Canada Management Area, associated SAPs, and CA I SAP, respectively; (8) standardized reporting of Universal Data I.D. while participating in the Regular B DAS Program or fishing in the U.S./Canada Management Area, associated SAPs, and CA I SAP; (9) Sector Manager daily reports for CA I SAP; (10) DAS ''flip'' notification via VMS for the Regular B DAS Program; (11) DAS Leasing Program application; (12) declaration of intent to fish inside and outside of the Eastern U.S./Canada Area on the same trip; (13) vessel baseline downgrade request for the DAS Leasing Program; (14) annual declaration of participation in the CA I Hook Gear Haddock SAP; (15) declaration of area and gear via VMS when fishing under a NE multispecies DAS; and (16) declaration of entry into the GOM and SNE Differential DAS Areas when not fishing or transiting. The burdens associated with these information collections include the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Description of Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statues

The alternative selected will continue the Amendment 13 default DAS allocations that took effect on May 1, 2006, under the emergency action; specify Target TACs and Incidental Catch TACs for FYs 2006, 2007, and 2008; implement a VMS requirement for limited access groundfish DAS vessels; implement differential DAS counting in specific areas of the GOM and SNE; modify the recreational possession restrictions and size limits for GOM cod; modify current and implement new commercial trip limits for several species; renew and modify the Regular B DAS Program, including the rules pertaining to monkfish vessels; renew and modify the Eastern U.S./Canada Haddock SAP; renew the DAS Leasing Program; modify the CA I Hook Gear Haddock SAP; authorize the formation of the Fixed Gear Sector; provide flexibility for vessels to fish inside and outside of the Eastern U.S./Canada Area on the same trip; modify reporting requirements for Special Management Programs; modify the DAS Transfer Program; modify the cod trip limit for the Eastern U.S./Canada Area; implement Gear Performance Incentives for the haddock separator trawl; and modify the trawl codend mesh size requirement in the SNE RMA.

The primary purpose of this action is to implement a rebuilding program for GB yellowtail flounder and modify NE multispecies fishery management measures to reduce F on six other groundfish stocks in order to maintain compliance with the rebuilding program

of the FMP. FW 42 also modifies and continues specific measures to mitigate the economic and social impacts of the FMP and allow harvest levels to approach OY.

The alternative that was adopted and implemented achieves the biological goals of FW 42, while minimizing the negative economic and social impacts. The principal feature that distinguishes one alternative from another is the strategy each alternative proposes to reduce F. As such, this discussion focuses on the measures designed to reduce F. Although all alternatives, with the exception of the No Action alternative, would have complied with the legal requirement to reduce F, the alternatives were not equal with respect to their compliance with the mandate to minimize negative social and economic impacts. The FW 42 analyses (Table 193 in the FW 42 document) indicate that the selected alternative will result in the least amount of reduction in total revenue for affected vessels (in dollars), and result in the least percentage decline in groundfish revenue, when compared with other alternatives. In addition, based on public testimony, the selected alternative was believed to promote safety better than another alternative that also had relatively low economic impacts when compared with all of the alternatives. The conclusion that the selected alternative was superior with respect to the potential estimated negative economic impacts was the primary reason this particular alternative was selected and approved. Implementation of the selected alternative will result in minimization of negative impacts on small entities. Although the No Action alternative would have resulted in less negative economic impact, the No Action alternative does not comply with the legal requirements of the Magnuson-Stevens Act regarding conservation since F would not be sufficiently reduced.

The GB yellowtail flounder rebuilding program implements a strategy and timeline for rebuilding this stock and complies with the legal requirements of the Magnuson-Stevens Act. Because the current regulations implementing the U.S./Canada Resource Sharing Understanding (Understanding) effectively control F on this stock, the rebuilding program does not represent a new restriction that has a negative impact on small entities. However, the rebuilding program is binding, in a manner in which the Understanding is not. The No Action alternative would not be in compliance with the Magnuson-Stevens Act. The GB yellowtail flounder rebuilding strategy implemented through this final rule was preferred over the non-selected alternatives because it is consistent with the rebuilding time periods of most of the stocks in the FMP, and has a higher probability associated with rebuilding. This is an adaptive rebuilding plan, effectively balancing the need to minimize impacts to the fishing industry while rebuilding the stock, and therefore minimizing impacts to small entities to the extent practicable.

Implementation of Target and Incidental TACs provide important tools for the functioning of the FMP by enabling harvest of various stocks in a manner consistent with the goals of the FMP. The No Action alternative would not enable the revised Target and Incidental TACs based on the best scientific information available to be used to informally evaluate the fishery. Furthermore, because revised Incidental Catch TACs were not proposed under the No Action alternative, that alternative would not have provided the necessary protection for stocks of concern. Without Incidental Catch TACs, either the Special Management Programs would not be allowed to open (and the associated revenue would be lost), or such programs would operate without the necessary restrictions that ensure compliance with the biological objectives of the FMP.

The implemented measure that allows flexibility for vessels to fish both inside and outside of the Eastern U.S./Canada Area on the same trip decreases the chance that vessels fishing in the Eastern U.S./Canada Area will have an unprofitable trip and, therefore, serves to further minimize negative impacts on small entities.

The requirement that all limited access groundfish DAS vessels using a groundfish DAS must be equipped with an approved VMS was selected in order to support the monitoring, reporting, and enforcement of the increasingly complex measures under the FMP. Although implementation of the VMS requirement will result in additional costs to the active members of the groundfish fleet (all of which are small entities), one of the primary reasons the regulations are so complex is to accommodate the extremely diverse characteristics and interests of the fishery. For example, in the SNE and GOM RMAs the use of VMS enables NMFS to administer and enforce complex rules that charge vessels DAS at different rates depending upon where the vessel fishes. Vessels that do not fish in the geographic areas associated with the stocks that require the largest reduction in fishing effort are not subject to the same restrictions as those vessels that do fish in such areas. The differential DAS system is designed to reduce F on several fish stocks, while allowing vessel owners choices regarding where to fish and the amount of DAS costs to incur. Although it is not possible to precisely quantify economic gains that result from the use of VMS, selection of the VMS alternative supports the complex regulations that are designed to allow the fishery to approach OY. For example, it may have been possible to implement Alternative 5 without a VMS requirement, because Alternative 5 does not include differential DAS counting by areas, but relies instead on a larger reduction in allocated Category A DAS. However, economic impacts of Alternative 5 are greater than those associated with either of the differential DAS alternatives.

Although all the alternatives for recreational and charter/party measures were designed to achieve the same percentage in F reductions for GOM cod as for the commercial sector, the preferred alternative was selected in order to minimize impacts on the recreational and charter/party fisheries. Although impacts on charter/party operators depend on how their potential clients react to the regulatory changes, the analysis suggests that the selected alternative will have less harmful economic impacts then the two non-selected alternatives. Part of the reason for the different economic impacts is the different months encompassed by the alternatives and the traditional seasonality of the recreational and charter/party fisheries. The No Action alternative is not justified because the recreational and charter/party fisheries have contributed to the excessive F rate on GOM cod, and therefore must contribute to the necessary reductions in F under FW 42. If the No Action alternative were selected, the commercial sector would have had to adopt even more restrictive regulations to reduce fishing mortality on GOM cod than those implemented by the final rule.

All of the alternatives, with the exception of the No-Action alternative, include various trip limits for some of the stocks in need of F reductions. Such trip limits, in conjunction with the DAS strategies in the various alternatives, serve to mitigate the amount of DAS restrictions necessary. The no action alternative, which proposes no change to the trip limits, would not have met the biological requirements of the FMP.

All of the alternatives, with the exception of the No-Action alternative, include the renewal and/or modification of the Special Management Programs (CA I Hook Gear Haddock SAP, Eastern

U.S./Canada Haddock SAP, Regular B DAS Program). These programs were renewed and/or modified in order to continue to mitigate the negative economic impacts of the FMP and enable the fishery to approach OY. By renewing and modifying these Special Management Programs, vessels are allowed to access fish stocks in a restricted manner that protects stocks of concern. In contrast, yield and revenue from the fishery would have been reduced under the No Action alternative because that alternative would not have provided enhanced access to various stocks. The DAS Leasing Program provides additional economic opportunity for vessels, as it may have an important role in maintaining profitability for small entities, and the revision of the DAS Transfer Program provides additional incentive to participate in the program and, therefore, provides different types of economic opportunities for vessel owners. Both of these programs minimize the negative impacts of FW 42 by providing economic opportunities for the groundfish fleet, which the No Action alternative would not provide.

Other management measures implemented by this final rule, such as standardization of reporting requirements, modification of Regional Administrator Authority, Gear Performance Incentives, modification to the cod trip limit for the Eastern U.S./Canada Area, and the change in the minimum trawl mesh requirement when fishing in the SNE RMA, serve to improve and facilitate the functioning of the FMP and increase the likelihood that the regulations will have the intended effects. As such, the alternative selected and implemented has a beneficial economic impact on small entities when compared with the No Action Alternative.

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

1. VMS purchase and installation, OMB# 0648–0202 (1 hr/response);
2. VMS proof of installation, OMB# 0648–0202 (5 min/response);
3. Spawning block declaration, OMB# 0648–0202 (2 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 Area, associated SAPs, and CA I SAP, 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 Area, associated SAPs, and CA I SAP, OMB# 0648–0202 (2 min/response);
7. Standardized catch reporting requirements while participating in the Regular B DAS Program or fishing in the U.S./Canada Management Area, associated SAPs, and CA I SAP, respectively, OMB# 0648–0212 (15 min/response);
8. Standardized reporting of Universal Data I.D. while participating in the Regular B DAS Program or fishing in the U.S./Canada Management Area, associated SAPs, and CA I SAP, OMB# 0648–0212 (15 min/response);
9. Sector Manager daily reports for CA I Hook Gear Haddock SAP, OMB# 0648–0212 (2 hr/response);
10. DAS ''flip'' notification via VMS for the Regular B DAS Program, OMB# 0648–0202 (5 min/response);
11. DAS Leasing Program application, OMB# 0648–0475 (10 min/response);
12. 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);
13. Vessel baseline downgrade request for the DAS Leasing Program, OMB# 0648–0202 (1 hr/response);
14. Annual declaration of participation in the CA I Hook Gear Haddock SAP, OMB #0648–0202 (2 min/response);
15. Declaration of area and gear via VMS when fishing under a NE multispecies DAS, OMB# 0648–0202 (5 min/response); and
16. Declaration of entry into the GOM and SNE Differential DAS Area when not fishing or transiting via VMS, 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 of information. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burdern, to NMFS (see **ADDRESSES**) and by e-mail to *David_Rostker@omb.eop.gov*, or fax to 202–395–7285.

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

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 letter to permit holders that also serves as small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Northeast Regional Office, and the guide, i.e., permit holder letter, will be sent to all holders of permits for the multispecies and monkfish fisheries. The guide and this final rule will be available upon request.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 16, 2006.

William T. Hogarth,

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, a new definition for ''Jigging'' is added and the definition for ''Regulated species'' is revised to read as follows:

§ 648.2 Definitions.

* * * * *

Jigging, with respect to the NE multispecies fishery, means fishing for regulated species with handgear, handline, or rod and reel using a jig, which is a weighted object attached to the bottom of the line used to sink the line and/or imitate a baitfish, which is moved (''jigged'') with an up and down motion.

* * * * *

Regulated species, means the subset of NE multispecies that includes Atlantic cod, witch flounder, American plaice, yellowtail flounder, haddock, pollock, winter flounder, windowpane flounder, redfish, and white hake, also referred to as regulated NE multispecies.

* * * * *

■ 3. In § 648.10, paragraphs (b)(1)(vii) and (viii) are removed and reserved; paragraphs (b)(1)(v), (vi), (b)(2) and (3), the introductory text to paragraph (c),

and paragraphs (c)(5), (d), and (f) are revised to read as follows:

§ 648.10 DAS and VMS notification requirements.

* * * * *

(b) * * *

(1) * * *

(v) A vessel issued a limited access 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; and

(vi) A vessel issued a limited access NE multispecies permit that fishes under a NE multispecies Category A or B DAS.

* * * * *

(2) The owner of such a vessel specified in paragraph (b)(1) of this section, with the exception of a vessel issued a limited access NE multispecies permit as specified in paragraph (b)(1)(vi) 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 the minimum performance 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. The owner of a vessel issued a limited access NE multispecies permit that fishes or intends to fish under a Category A or B DAS as specified in paragraph (b)(1)(vi) of this section, must provide documentation to the Regional Administrator that the vessel has an operational VMS unit installed on board that meets those criteria prior to fishing under a groundfish DAS. NMFS shall send letters to all limited access NE multispecies DAS permit holders and provide detailed information on the procedures pertaining to VMS purchase, installation, and use.

(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 (i.e., not fishing under the applicable DAS program) 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 exclusively in the Eastern U.S./Canada Area, as described in § 648.85(a)(3)(ii), under the provisions of that program.

(ii) 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.

(iii) 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, as described in this paragraph (b), begins with the first location signal received showing that the vessel crossed the VMS Demarcation Line after leaving port. DAS counting ends 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 exclusively in the Eastern U.S./Canada Area pursuant to § 648.85(a)(3)(ii), 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, unless the vessel elects to also fish outside the Eastern U.S./Canada Area on the same trip, in accordance with § 648.85(a)(3)(ii)(A).

(iv) The Regional Administrator may authorize or require the use of the call-in system instead of using the use of VMS, as described under paragraph (d) of this section. Furthermore, the Regional Administrator may authorize or require the use of letters of authorization as an alternative means of enforcing possession limits, if VMS cannot be used for such purposes.

(3)(i) A vessel issued a limited access 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 provide the notifications required by this paragraph (b), through VMS as specified under paragraph (b)(3)(iii) of this section.

(ii) [Reserved].

(iii) A vessel issued a limited access monkfish or Occasional scallop 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). For the vessel to become authorized, the vessel owner must provide documentation to the Regional Administrator at the time of application for a limited access permit that the vessel has installed on board an operational VMS as provided under § 648.9(a). A vessel that is 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. Vessels electing to use the VMS do not need to call in DAS as specified in paragraph (c) of this section. A vessel that calls in is exempt from the prohibition specified in § 648.14(c)(2).

* * * * *

(c) *Call-in notification.* The owner of a vessel issued a limited access monkfish or red crab permit who is participating in a DAS program and who is not required to provide notification using a VMS, and a scallop vessel qualifying for a DAS allocation under the Occasional category and who has not elected to fish under the VMS notification requirements of paragraph (b) of this section, and any vessel that may be required by the Regional Administrator to use the call-in program under paragraph (d) of this section, are subject to the following requirements:

* * * * *

(5) Any vessel that possesses or lands per trip more than 400 lb (181 kg) of scallops; any vessel issued a limited access NE multispecies permit subject to the NE multispecies DAS program requirements that possesses or lands regulated NE multispecies, except as provided in §§ 648.10(b)(2)(iii), 648.17, and 648.89; any vessel issued a limited access monkfish permit subject to the monkfish DAS program and call-in requirement that possess 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 to be in its respective DAS program for purposes of counting DAS, regardless of whether the vessel's owner or authorized representative provides adequate notification as required by paragraphs (b) or (c) of this section.

* * * * *

(d) *Temporary authorization for use of the call-in system.* The Regional Administrator may authorize or require, on a temporary basis, the use of the call-in system of notification specified in paragraph (c) of this section, instead of the use of the VMS. If use of the call-

in system is authorized or required, the Regional Administrator shall notify affected permit holders through a letter, notification in the **Federal Register**, e-mail, or other appropriate means.

* * * * *

(f) *Additional NE multispecies call-in requirements*—(1) *Spawning season call-in.* With the exception of a vessel 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 the IVR system (or through VMS, if required by the Regional Administrator) and provide 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.* A vessel subject to the gillnet restriction described in § 648.82 must notify the Regional Administrator of the commencement of its 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)(130), (145), (146), (148), (151), (152), and (156); the introductory text of paragraph (c); paragraphs (c)(7), (25), (33), (49) through (53), (55) through (65) and (78) are revised; paragraphs (c)(48), (c)(54), and (c)(79) are removed and reserved; and paragraphs (a)(173) through (177), (c)(23), (c)(81) through (88), (g)(4), and (g)(5) are added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(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 applicable restrictions specified under § 648.85(a)(3)(ii)(A) or (B).

* * * * *

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

(146) If fishing under the Eastern U.S./Canada Haddock SAP, 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 (I).

* * * * *

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

* * * * *

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

* * * * *

(156) If fishing under an approved 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 in an approved Sector in a given fishing year, unless otherwise provided under § 648.87(b)(1)(xii).

* * * * *

(173) 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)(ii)(A)(*1*).

(174) When fishing inside and outside of the Eastern U.S./Canada Area on the same trip, fail to abide by the most restrictive DAS counting, trip limits, and reporting requirements that apply, as described in § 648.85(a)(3)(ii)(A) and the other applicable area fished.

(175) 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 outside of the Eastern U.S./Canada Area on the same trip, as prohibited under § 648.85(a)(3)(ii)(A).

(176) If fishing under the GB Fixed Gear Sector specified under § 648.87(d)(2), fish with gear other than jigs, non-automated demersal longline, handgear, or sink gillnets.

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

* * * * *

(c) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a) and (b) of this section, it is unlawful for any owner or operator of a vessel issued a valid limited access NE multispecies permit or letter under § 648.4(a)(1)(I), unless otherwise specified in § 648.17, to do any of the following:

* * * * *

(7) Possess or land per trip more than the possession or landing limits specified under § 648.86(a), (e), (g), (h), and (j), and under § 648.82(b)(5) or (6), if the vessel has been issued a limited access NE multispecies permit or open access NE multispecies permit, as applicable.

* * * * *

(23) Fail to declare through VMS its intent to be exempt from the GOM cod trip limit under § 648.86(b)(1), as required under § 648.86(b)(4), or fish north of the exemption line if in possession of more than the GOM cod trip limit specified under § 648.86(b)(1).

* * * * *

(25) For vessels fishing in the NE multispecies DAS program under the provisions of § 648.10(c), the call-in system, fail to remain in port for the appropriate time specified in § 648.86(b)(1)(ii)(A), except for transiting purposes, provided the vessel complies with § 648.86(b)(3). For vessels fishing in the NE multispecies DAS program under the provisions of § 648.10(b), the VMS system, fail to declare through VMS that insufficient DAS have elapsed in order to account for the amount of cod on board the vessel as required under § 648.86(b)(1)(ii)(B).

* * * * *

(33) For vessels fishing in the NE multispecies DAS program under the provisions of § 648.10(c), the call-in system, fail to remain in port for the appropriate time specified in § 648.86(b)(2)(ii)(A), except for transiting purposes, provided the vessel complies with § 648.86(b)(3). For vessels fishing in the NE multispecies DAS program under the provisions of § 648.10(b), the VMS system, fail to declare through VMS that insufficient DAS have elapsed in order to account for the amount of cod on board the vessel as required under § 648.86(b)(2)(ii)(B).

* * * * *

(48) [Reserved]

(49) Discard legal-sized NE regulated multispecies, ocean pout, or Atlantic halibut while fishing under a Special Access Program, as described in §§ 648.85(b)(3)(xi), 648.85(b)(7)(iv)(H) or 648.85(b)(8)(v)(I).

(50) Discard legal-sized NE regulated multispecies, ocean pout, Atlantic halibut, or monkfish while fishing under a Regular B DAS in the Regular B DAS Program, as described in § 648.85(b)(6)(iv)(E).

(51) If fishing under a Regular B DAS in the Regular B DAS 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), other groundfish specified under § 648.86, or monkfish under § 648.94.

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

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

(54) [Reserved]

(55) If fishing in the Eastern U.S./Canada Haddock SAP 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 applicable landing limit specified in § 648.85(b)(8)(v)(F) or under § 648.86.

(56) If fishing in the Eastern U.S./Canada Haddock SAP 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 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), (I), and (J).

(58) If fishing in the Regular B DAS 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 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 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 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 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 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 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 Program specified in § 648.85(b)(6), use a Regular B DAS after the program has closed, as required under § 648.85(b)(6)(iv)(G) or (H).

* * * * *

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

(79) [Reserved]

* * * * *

(81) If fishing in the Regular B DAS Program specified in § 648.85(b)(6), fail to use a haddock separator trawl as described under § 648.85(a)(3)(iii)(A).

(82) If fishing under a NE multispecies Category A DAS in either the GOM Differential DAS Area, or the SNE Differential DAS Area defined under § 648.82(e)(2)(i), fail to declare into the area through VMS as required under § 648.82(e)(2)(ii).

(83) If fishing under a NE multispecies Category A DAS in one of the Differential DAS Areas defined in § 648.82(e)(2)(i), and under the restrictions of one or more of the Special Management Programs under § 648.85, fail to comply with the most restrictive regulations.

(84) Fail to comply with the GB yellowtail flounder trip limit specified under § 648.85(a)(3)(iv)(C).

(85) For vessels fishing inside and outside the Eastern U.S./Canada Area on the same trip, fail to comply with the most restrictive regulations that apply on the trip as required under § 648.85(a)(3)(ii)(A).

(86) For vessels fishing inside and outside the Eastern U.S./Canada Area on the same trip, fail to notify NMFS via VMS that it is electing to fish in this manner, as required by § 648.85(a)(3)(ii)(A)(*1*).

(87) Possess or land more white hake than allowed under § 648.86(e).

(88) Possess or land more GB winter flounder than allowed under § 648.86(j).

* * * * *

(g) * * *

(4) If the vessel is a private recreational fishing vessel, fail to comply with the seasonal GOM cod possession prohibition 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 under § 648.89(c)(2)(v).

(5) If fishing under the recreational or charter/party regulations, fish for or possess cod caught in the GOM Regulated Mesh Area during the seasonal GOM cod possession prohibition under § 648.89(c)(1)(v) or (c)(2)(v) or, fail to abide by the appropriate restrictions if transiting with cod on board.

* * * * *

5. In § 648.80, paragraph (b)(2)(i) is revised to read as follows:

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

* * * * *

(b) * * *

(2) * * *

(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 or 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.

* * * * *

6. In § 648.82, paragraph (c)(1)(iv) is removed; paragraphs (d)(2)(i)(A), the introductory text to paragraph (d)(4), paragraphs (e), (j)(1)(iii), (k)(1), (k)(3), (k)(4)(iv), (k)(4)(xi)(B), (l) introductory text, and paragraphs (l)(1)(i) through (v) are revised; and paragraphs (l)(1)(viii), and (l)(1)(ix) are 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 Program as specified in § 648.85(b)(6). Unless otherwise restricted under the Regular B DAS 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)). Vessels that are required by the Monkfish Fishery Management Plan

to utilize a NE multispecies DAS, as specified under § 648.92(b)(2), may not elect to use a NE multispecies Category B DAS to satisfy that requirement.

* * * * *

(4) *Criteria and procedure for not reducing DAS allocations.* The schedule of reductions in NE multispecies DAS shall not occur if the Regional Administrator:

* * * * *

(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, shall be counted as actual time called, or logged into the DAS program, consistent with the DAS notification requirements specified at § 648.10(c)(5).

(2) *Differential DAS.* For a NE multispecies DAS vessel that 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 in the GOM Differential DAS Area, as defined in paragraph (e)(2)(i)(A) of this section, or in the SNE Differential DAS Area, as defined in paragraph (e)(2)(i)(B) of this section, with the exception of Day gillnet vessels, which accrue DAS in accordance with paragraph (j)(1)(iii) of this section, each Category A DAS, or part thereof, shall be counted at the differential DAS rate described in paragraph (e)(2)(iii) of this section, and be subject to the restrictions defined in this paragraph (e).

(i) *Differential DAS Areas.* (A) *GOM Differential DAS Area.* The GOM Differential DAS Area is defined by straight lines connecting the following points in the order stated:

GOM DIFFERENTIAL DAS AREA

Point	N. lat.	W. long.
GMD1	43°30′	Intersection with Maine Coastline.
GMD2	43°30′	69°30′.
GMD3	43°00′	69°30′.
GMD4	43°00′	69°55′ eastern boundary, WGOM Closed Area.
GMD5	42°30′	69°55′.
GMD6	42°30″	69°30′.
GMD7	41°30′	69°30′.
GMD8	41°30′	70°00′.
GMD9	North to intersection with Cape Cod, Massachusetts, coast and 70°00′ W.	

(B) SNE Differential DAS Area. The SNE Differential DAS Area is defined by straight lines connecting the following points in the order stated:

SNE DIFFERENTIAL DAS AREA

Point	N. lat.	W. long.
SNED1	41°05′	71°45′
SNED2	41°05′	70°00′
SNED3	41°00′	70°00′
SNED4	41°00′	69°30′
SNED5	40°50′	69°30′
SNED6	40°50′	70°20′
SNED7	40°40′	70°20′
SNED8	40°40′	70°30′
SNED9	40°30′	72°30′
SNED10	40°10′	73°00′
SNED11	40°00′	73°15′
SNED12	40°00′	73°40′
SNED13	40°15′	73°40′
SNED14	40°30′	73°00′
SNED15	40°55′	71°45′
SNED16	41°05′	71°45′

(ii) *Declaration.* With the exception of vessels fishing in the Eastern U.S./Canada Area, as described in § 648.85(a)(3)(ii)(A), a NE multispecies DAS vessel that intends to fish, or fishes under a Category A DAS in the GOM Differential DAS Area or the SNE Differential DAS Area, as described in paragraph (e)(2)(i) of this section, must, prior to leaving the dock, declare through the VMS, in accordance with instructions to be provided by the Regional Administrator, which specific differential DAS area the vessel will fish in on that trip. A DAS vessel that fishes in the Eastern U.S./Canada Area and intends to fish, or fishes, subsequently in the GOM Differential DAS Area or the SNE Differential DAS Area under Category A DAS Area must declare its intention to do so through its VMS prior to leaving the Eastern U.S./Canada Area, as specified in § 648.85(a)(3)(ii)(A)(*3*).

(iii) *Differential DAS counting*—(A) *Differential DAS counting when fishing in the GOM Differential DAS Area.* For a NE multispecies vessel that intends to fish, or fishes for some or all of its trip other than for transiting purposes under a Category A DAS in the GOM Differential DAS Area, each Category A DAS, or part thereof, shall be counted at the ratio of 2 to1 for the entire trip, even if only a portion of the trip is spent fishing in the GOM Differential DAS Area. A vessel that has not declared its intent to fish in the GOM Differential DAS Area and that is not transiting, as specified in paragraph (e)(2)(v) of this section, may be in the GOM Differential DAS Area, provided the vessel's fishing gear is stowed in accordance with the provisions of § 648.23(b) for the entire time the vessel is in the area, and the vessel declares immediately upon entering the GOM Differential DAS Area, via VMS, that it is in the area. A vessel that fishes in both the GOM Differential Area and the SNE Differential DAS Area on the same trip will be charged DAS at the rate of 2 to1 for the entire trip.

(B) *Differential DAS counting when fishing in the SNE Differential DAS Area.* For a NE multispecies DAS vessel that intends to fish or fishes some or all of its trip other than for transiting purposes under a Category A DAS in the SNE Differential DAS Area, each Category A DAS, or part thereof, shall be counted at the ratio of 2 to 1 for the duration of the time spent in the SNE Differential DAS Area, as determined from VMS positional data. A vessel that has not declared its intent to fish in the SNE Differential DAS Area and that is not transiting, as specified in paragraph (e)(2)(v) of this section, may be in the SNE Differential DAS Area, provided the vessel's fishing gear is stowed in accordance with the provisions of § 648.23(b) for the entire time the vessel is in the area and the vessel declares immediately upon entering the SNE Differential DAS Area, via VMS, that it is in the area. A vessel that fishes in both the GOM Differential Area and the SNE Differential DAS Area on the same trip will be charged DAS at the rate of 2:1 for the entire trip. If the Regional Administrator requires the use of the DAS call-in, as described under § 648.10(b)(2)(iv), a vessel that fishes any portion of its trip in the SNE Differential DAS Area will be charged DAS at the rate of 2 to1 for the entire trip.

(iv) *Restrictions.* A NE multispecies vessel fishing under a Category A DAS in one of the Differential DAS Areas defined in paragraph (e)(2)(i) of this section, under the restrictions of paragraph (e)(2) of this section and under the restrictions of one or more of the Special Management Programs under § 648.85 must comply with the most restrictive DAS counting, trip limits, and reporting requirements, specified in this paragraph (e)(2) and in § 648.85, under the pertinent Special Management Program.

(v) *Transiting.* A vessel may transit the GOM Differential DAS Area and the SNE Differential DAS Area, as defined in paragraph (e)(2)(i) of this section, provided the gear is stowed in accordance with the provisions of § 648.23(b).

(3) *Regular B DAS Program 24-hr clock.* For a vessel electing to fish in the Regular B DAS Program, as specified at § 648.85(b)(6), and that remains fishing under a Regular B DAS for the entire fishing trip (without a DAS flip), DAS used shall 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 hr of Regular B DAS, not 16 hr; 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 hr of Regular B DAS instead of 23 hr, 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 shall determine the amount of fish the vessel can legally land. For a vessel electing to fish in the Regular B DAS Program, as specified at § 648.85(b)(6), while also fishing in one of the Differential DAS Areas, defined in (e)(2)(i) of this section, Category B DAS shall accrue at the rate described in this paragraph (e)(3), unless the vessel flips to a Category A DAS, in which case the vessel is subject to the pertinent DAS accrual restrictions of paragraph (e)(2)(iii) of this section for the entire trip. For vessels electing to fish in both the Regular B DAS Program, as specified in § 648.85(b)(8), and in the Eastern U.S./Canada Area, as specified in § 648.85(a), DAS counting will begin and end according to the DAS accounting rules specified in § 648.10(b)(2)(iii).

* * * * *

(j) * * *

(1) * * *

(iii) *Method of counting DAS.* A Day gillnet vessel fishing with gillnet gear under a NE multispecies DAS shall accrue DAS as follows:

(A) A Day gillnet vessel fishing with gillnet gear that has elected to fish in the Regular B DAS Program, as specified in § 648.85(b)(6), under a Category B DAS, is subject to the DAS accrual provisions of paragraph (e)(3) of this section.

(B) A Day gillnet vessel fishing with gillnet gear under a NE multispecies Category A DAS, when not subject to differential DAS counting as specified under paragraph (e)(2) of this section, shall accrue 15 hr of DAS for each trip of more than 3 hr, but less than or equal to 15 hr. Such vessel shall accrue actual DAS time at sea for trips less than or equal to 3 hr, or more than 15 hr.

(C) A Day gillnet vessel fishing with gillnet gear under a NE multispecies Category A DAS that is fishing in the GOM Differential DAS Area and, therefore, subject to differential DAS counting as specified under paragraph (e)(2)(iii)(A) of this section, shall accrue DAS at a differential DAS rate of 2 to 1 for the actual hours used for any trip of 0–3 hr in duration, and for any trip of greater than 7.5 hr. For such vessels fishing from 3 to 7.5 hr duration, vessels will be charged a full 15 hr. For example, a Day gillnet vessel fishing in the GOM Differential Area for 8 actual hr would be charged 16 hours of DAS, or if fishing for 5 actual hr would be charged 15 hr of DAS.

(D) A Day gillnet vessel fishing with gillnet gear under a NE multispecies Category A DAS that is fishing in the SNE Differential DAS Area and, therefore, subject to differential DAS counting as specified under paragraph (e)(2)(iii)(B) of this section, shall accrue DAS at a differential DAS rate of 2 to 1 for the actual hours that are in the SNE Differential DAS Area that are from 0–3 hr in duration and greater than 7.5 hr. For hours in the SNE Differential DAS Area that are over 3 hr and less than or equal to 7.5 hr duration, a vessel shall be charged a full 15 hr. For a Day gillnet vessel that fishes both inside and outside of the SNE Differential DAS Area on the same trip, time fished outside the area shall accrue on the basis of actual time, unless otherwise specified in this paragraph (j)(1)(iii). A Day gillnet vessel fishing inside and outside of the SNE Differential DAS Area on the same trip shall not accrue less DAS for the entire trip than would a Day gillnet vessel fishing the same amount of time outside of the SNE Differential DAS Area for the entire trip (accruing DAS as specified under paragraph (j)(1)(iii)(B) of this section).

* * * * *

(k) * * *

(1) *Program description.* 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.

* * * * *

(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 the close of business on 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.

(4) * * *

(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 current allocation of Category A DAS.

* * * * *

(xi) * * *

(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, or through a DAS transfer unless otherwise specified in this paragraph (k)(4)(xi)(B). 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, unless otherwise specified. 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)(E) and (F), or any other provision respectively. For vessels involved in a DAS Transfer Program transaction as described in paragraph (l) of this section, if the transferee vessel baseline is adopted, consistent with the regulations under paragraph (l)(1)(ii) of this section, and the DAS Leasing Program baseline of the transferee vessel was previously downgraded, consistent with the regulations under this paragraph (k)(4)(xi), the downgraded DAS Leasing Program baseline specifications remain valid.

(l) *DAS Transfer Program.* Except for vessels fishing under a sector allocation as specified in § 648.87, or a vessel that acted as a lessee or lessor in the DAS Leasing Program transaction, 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. Upon approval of the DAS transfer, all history associated with the transferred NE multispecies DAS (moratorium right history, DAS use history, and catch history) shall be associated with the permit rights of the transferee. Neither the individual permit history elements, nor total history associated with the transferred DAS may be retained by the transferor.

(ii) NE multispecies DAS may be transferred only to a vessel with a baseline main engine horsepower rating that is no more than 20 percent greater than the baseline engine horsepower of the transferor vessel. NE multispecies DAS may be transferred only to a vessel with a baseline length overall that is no more than 10 percent greater than the baseline length overall of the transferor vessel. For the purposes of this program, the baseline horsepower and length overall are those associated with the permit as of January 29, 2004. Upon approval of the transfer, the baseline of the transferee vessel would be the smaller baseline of the two vessels or, if the transferee vessel had not previously upgraded under the vessel replacement rules, the vessel owner could choose to adopt the larger baseline of the two vessels, which would constitute the vessel's one-time upgrade, if such upgrade is consistent with the vessel replacement rules. A vessel that has executed a one-time downgrade of a DAS Leasing Program baseline in accordance with paragraph (k)(4)(xi) is subject to the restrictions of paragraph (k)(4)(xi)(B) of this section.

(iii) The transferor vessel must transfer all of its Federal limited access permits for which it is eligible to the transferee vessel in accordance with the vessel replacement restrictions under § 648.4, or permanently cancel such permits. When duplicate permits exist, i.e, those permits for which both the transferor and transferee vessel are eligible, one of the duplicate permits must be permanently cancelled.

(iv) For the purpose of calculating the DAS conservation tax as described in this paragraph (l), the applicants must specify which DAS (the transferor's DAS or the transferee's DAS) are subject to the DAS reduction. NE multispecies Category A and Category B DAS, as defined under paragraphs (d)(1) and (2) of this section, shall be reduced by 20 percent upon transfer. Category C DAS, as defined under paragraph (d)(3) of this section, shall be reduced by 90 percent upon transfer.

(v) In any particular fishing year, a vessel may not execute a DAS transfer as a transferor if it previously participated in the DAS Leasing Program as either a lessee or a lessor, as described under paragraph (k) of this section. A vessel may participate in DAS lease transaction (as a lessee or a lessor) and submit an application for a DAS transfer (as a transferor) during the same fishing year, but the transfer, if approved, would not be effective until the beginning of the following fishing year. Other combinations of activities under the DAS Leasing and DAS Transfer programs are permissible during the same fishing year (i.e., act as a transferee, or act as transferor and subsequently conduct a DAS lease).

* * * * *

(viii) A vessel with a NE multispecies limited access Category D permit may transfer DAS only to a vessel with a NE multispecies limited access Category D permit, but may receive transferred DAS from any eligible NE multispecies vessel.

(ix) A vessel with a DAS allocation resulting from a DAS Transfer in accordance with this paragraph (l) may acquire, through leasing, up to the sum of the DAS allocations for the 2001 fishing year, associated with the transferred and original DAS (excluding carry-over DAS from the previous year, or additional DAS associated with obtaining a Large Mesh permit), in accordance with the restrictions of paragraph (k) of this section.

* * * * *

7. In § 648.85, paragraphs (a)(3)(ii)(A); (a)(3)(iv)(A); (a)(3)(iv)(C)(*1*) and (*2*); (a)(3)(iv)(D); (a)(3)(v); (b)(3)(xi); (b)(5); (b)(6)(iii); (b)(6)(iv)(C) through (F), (H), and (I); (b)(6)(v)(C) and (E); (b)(6)(vi); (b)(7)(iv)(F) through (H); (b)(7)(v)(D); (b)(7)(vi)(D); the introductory text of paragraph (b)(8); (b)(8)(i) and (iv); introductory text of paragraph (b)(8)(v)(A); (b)(8)(v)(A)(*2*) through (*4*); and (b)(8)(v)(E), (F), (H), (I) and (K) are revised; paragraphs (b)(6)(ii) and (b)(8)(iii) are removed and reserved; and paragraph (b)(6)(iv)(J) is added to read as follows:

§ 648.85 Special Management Programs.

* * * * *

(a) * * *

(3) * * *

(ii) * * *

(A) A vessel fishing under a NE multispecies DAS in the Eastern U.S./Canada Area may fish both inside and outside of the Eastern U.S./Canada Area on the same trip, provided it complies with the most restrictive DAS counting, trip limits, and reporting requirements for the areas fished for the entire trip, and provided it complies with the restrictions specified in paragraphs (a)(3)(ii)(A)(*1*) through (*4*) of this section. On a trip 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 shall count toward the applicable hard TAC specified for the U.S./Canada Management Area.

(*1*) The vessel operator must notify NMFS via VMS any time prior to leaving the Eastern U.S./Canada Area (including at the time of initial declaration into the Eastern U.S./Canada Area) that it is also electing to fish outside the Eastern U.S./Canada Area. With the exception of vessels participating in the Regular B DAS Program and fishing under a Regular B DAS, once a vessel that has elected to fish outside of the Eastern U.S./Canada Area leaves the Eastern U.S./Canada Area, Category A DAS shall accrue from the time the vessel crosses the VMS demarcation line at the start of its fishing trip until the time the vessel crosses the demarcation line on its return to port, in accordance with § 648.10(b)(2)(iii).

(*2*) The vessel must comply with the reporting requirements of the U.S./Canada Management Area specified under § 648.85(a)(3)(v) for the duration of the trip.

(*3*) If the vessel fishes or intends to fish in one of the Differential DAS Areas defined under § 648.82(e)(2)(i), it must declare its intent to fish in the specific Differential DAS Area prior to leaving the Eastern U.S./Canada Area, and must not have exceeded the CC/GOM or SNE/MA yellowtail flounder trip limits, specified in § 648.86(g), for the respective areas.

(*4*) If a vessel possesses yellowtail flounder in excess of the trip limits for CC/GOM yellowtail flounder or SNE/MA yellowtail flounder, as specified in § 648.86(g), the vessel may not fish in either the CC/GOM or SNE/MA yellowtail flounder stock area during that trip (i.e., may not fish outside of the U.S./Canada Management Area).

* * * * *

(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. A vessel fishing in the Eastern U.S./Canada Area may be further restricted by participation in other Special Management Programs as required under this section.

* * * * *

(C) * * *

(1) *Initial yellowtail flounder landing limit.* Unless further restricted under paragraph (a)(3)(iv)(D) of this section (gear performance incentives), or modified pursuant to paragraph (a)(3)(iv)(D), the initial yellowtail flounder landing limit for each fishing year is 10,000 lb (4,536.2 kg) per trip.

(2) *Regional Administrator authority to adjust the yellowtail flounder landing limit mid-season.* If, based upon available information, the Regional Administrator projects that the yellowtail flounder catch may exceed the yellowtail flounder TAC for a fishing year, the Regional Administrator may implement, adjust, or remove the yellowtail flounder landing limit at any time during that fishing year in order to prevent yellowtail flounder catch from exceeding the TAC or to facilitate harvesting the TAC, in a manner consistent with the Administrative Procedure Act. If, based upon available information, the Regional Administrator projects that the yellowtail flounder catch is less than 90 percent of the TAC, the Regional Administrator may adjust or remove the yellowtail flounder landing limit at any time during the fishing year in order to facilitate the harvest of the TAC, in a manner consistent with the Administrative Procedure Act. The Regional Administrator may specify yellowtail flounder trip limits that apply to the whole U.S./Canada Management Area or to either the Western or Eastern Area.

* * * * *

(D) *Other restrictions or in-season adjustments.* In addition to the possession restrictions specified in paragraph (a)(3)(iv) of this section, the Regional Administrator, in a manner consistent with the Administrative Procedure Act, may modify the gear requirements, modify or close access to the U.S./Canada Management Areas, modify the trip limits specified under paragraphs (a)(3)(iv)(A) through (C) of this section, or modify the total number of trips into the U.S./Canada Management Area, to prevent over-harvesting or facilitate achieving the TAC. Such adjustments may be made at any time during the fishing year, or prior to the start of the fishing year. If necessary to give priority to using Category A DAS versus using Category B DAS, the Regional Administrator may implement different management measures for vessels using Category A DAS than for vessels using Category B DAS. If the Regional Administrator, under this authority, requires use of a particular gear type in order to reduce catches of stocks of concern, unless further restricted elsewhere in this part, the following gear performance incentives will apply: Possession of flounders (all species combined), monkfish, and skates is limited to 500 lb (226.8 kg)(whole weight) each (*i.e.*, no more than 500 lb (226.8 kg) of all flounders, no more than 500 lb (226.8 kg) of monkfish, and no more than 500 lb (226.8 kg) of skates), and possession of lobsters is prohibited.

* * * * *

(v) *Reporting.* The owner or operator of a NE multispecies DAS vessel must submit reports via VMS, in accordance with instructions provided by the Regional Administrator, for each day of the fishing trip when declared into either of the U.S./Canada Management Areas. The vessel must continue to report daily, even after exiting the U.S./Canada Management Area. 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, or as instructed by the Regional Administrator. The reports must include at least the following information:

(A) Total pounds of cod, haddock, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake kept; and total pounds of cod, haddock, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake discarded;

(B) Date fish were caught and statistical area in which fish were caught; and

(C) Vessel Trip Report (VTR) serial number, as instructed by the Regional Administrator.

* * * * *

(b) * * *

(3) * * *

(xi) *No-discard provision and DAS flips.* A vessel fishing in the CA II Yellowtail Flounder SAP, may not discard legal-sized regulated NE multispecies, Atlantic halibut, or ocean pout. If a vessel fishing in the CA II Yellowtail Flounder SAP exceeds an applicable trip limit, the vessel must exit the SAP. If a vessel operator fishing in the CA II Yellowtail Flounder SAP under a Category B DAS harvests and brings on board more legal-sized regulated NE multispecies, ocean pout, or Atlantic halibut than the maximum landing limits allowed per trip, specified under paragraph (b)(3)(iv) or (viii) of this section, or under § 648.86, the vessel operator must immediately notify NMFS via VMS to initiate a DAS flip (from a Category B DAS to a Category A DAS). Once this notification has been received by NMFS, the vessel's entire trip will accrue as a Category A DAS trip. 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 (i.e., either at the beginning of the trip, or 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.

* * * * *

(5) *Incidental Catch TACs.* Unless otherwise specified in this paragraph (b)(5), Incidental Catch TACs shall be specified through the periodic adjustment process described in § 648.90, and allocated as described in this paragraph (b)(5), 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 Catch TACs specified under this paragraph (b)(5) shall be allocated to the Regular B DAS Program described in paragraph (b)(6) of this section.

(ii) *GB cod.* The Incidental Catch TAC for GB cod specified under this paragraph (b)(5) shall be subdivided as follows: 50 percent to the Regular B DAS 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 described in paragraph (b)(8) of this section.

(iii) *GB yellowtail flounder and GB winter flounder.* Each of the Incidental Catch TACs for GB yellowtail flounder and GB winter flounder specified under this paragraph (b)(5) shall be subdivided as follows: 50 percent to the Regular B DAS Program described in paragraph (b)(6) of this section; and 50 percent to

the Eastern U.S./Canada Haddock SAP described in paragraph (b)(8) of this section.

* * * * *

(6) * * *

(ii) [Reserved].

(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 as follows: The first quarter shall receive 13 percent of the Incidental Catch TACs and the remaining quarters shall each receive 29 percent of the Incidental Catch TACs. NMFS shall send letters to all limited access NE multispecies permit holders notifying them of such TACs.

(iv) * * *

(C) *VMS declaration.* To participate in the Regular B DAS Program under a Regular B DAS, a vessel must declare into the Program via 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. Mere declaration of a Regular B DAS Program trip does not reserve a vessel's right to fish under the Program, if the vessel has not crossed the VMS demarcation line.

(D) *Landing limits.* Unless otherwise specified in this paragraph (b)(6)(iv)(D), a NE multispecies vessel fishing in the Regular B DAS 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/stocks: Cod, American plaice, white hake, witch flounder, SNE/MA winter flounder, GB winter flounder, GB yellowtail flounder, southern windowpane flounder, and ocean pout, and 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 CC/GOM or SNE/MA yellowtail flounder. In addition, trawl vessels, which are required to fish with a haddock separator trawl as specified under paragraph (b)(6)(iv)(J) of this section, and other gear that may be required in order to reduce catches of stocks of concern as described under paragraph (b)(6)(iv)(J) of this section, are restricted to the following trip limits: 500 lb (227 kg) of all flatfish species (American plaice, witch flounder, winter flounder, windowpane flounder, and GB yellowtail flounder), combined; 500 lb (227 kg) of monkfish (whole weight); 500 lb (227 kg) of skates (whole weight); and zero possession of lobsters, 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 species, ocean pout, Atlantic halibut, or monkfish. This prohibition on discarding does not apply in areas or times where the possession or landing of regulated species is prohibited. If such a vessel harvests and brings on board legal-sized regulated NE multispecies, or Atlantic halibut in excess of the allowable landing limits specified in paragraph (b)(6)(iv)(D) of this section or § 648.86, the vessel operator must notify NMFS immediately via VMS to initiate a DAS flip from a B DAS to an A DAS. Once this notification has been received by NMFS, the vessel shall automatically be switched by NMFS to fishing under a Category A DAS for its entire fishing trip. Thus, any Category B DAS that accrued between the time the vessel declared into the Regular B DAS Program 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 shall be accrued as Category A DAS, and not Regular B DAS. After flipping to a Category A DAS, the vessel is subject to the applicable trip limits specified under § 648.86 or § 648.85(a) and may discard fish in excess of the applicable trip limits.

(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 may be used on a trip cannot exceed the number of Category A DAS that the vessel has at the start of the trip. If a vessel is fishing in the GOM Differential DAS Area or the SNE Differential DAS Area, as described in § 648.82(e)(2)(i), the number of Regular B DAS that may be used on a trip cannot exceed the number of Category A DAS that the vessel has at the start of the trip divided by 2. For example, if a vessel plans a trip under the Regular B DAS Program into the GOM Differential DAS Area and has 10 Category A DAS available at the start of the trip, the maximum number of Regular B DAS that the vessel may fish under the Regular B Program is 5. A vessel fishing in the Regular B DAS Program for its entire trip shall accrue DAS in accordance with § 648.82(e)(3).

* * * * *

(H) *Closure of Regular B DAS Program and quarterly DAS limits.* Unless otherwise closed as a result of the harvest of an Incidental Catch TAC as described in paragraph (b)(6)(iv)(G) of this section, or as a result of an action by the Regional Administrator under paragraph (b)(6)(vi) of this section, the use of Regular B DAS shall, in a manner consistent with the Administrative Procedure Act, be prohibited when 500 Regular B DAS have been used during the first quarter of the fishing year (May-July), or when 1,000 Regular B DAS have been used during any of the remaining quarters of the fishing year, 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 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)(6)(iv)(C) of this section, the reports must include at least the following information: Statistical area fished; total pounds of haddock, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake kept; total pounds of haddock, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake discarded; date fish were caught; and VTR serial number, as instructed by the Regional Administrator. Daily reporting must continue even if the vessel operator is required to flip, as described under paragraph (b)(6)(iv)(E) of this section.

(J) *Gear requirement*—(*1*) 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, or other type of gear if approved as described under this paragraph (b)(6)(iv)(J). Other gear may be on board the vessel, provided it is stowed when the vessel is fishing under the Regular B DAS Program.

(*2*) The Regional Administrator may authorize additional gear if the Council first recommends to the Regional Administrator, and the Regional Administrator approves, gear standards in a manner consistent with the Administrative Procedure Act. If the Regional Administrator does not approve any gear standards recommended by the Council for use in the Regular B DAS Program, NMFS must provide a written rationale to the Council regarding its decision not to do so.

(v) * * *

(C) *CC/GOM yellowtail flounder stock area.* The CC/GOM yellowtail flounder stock area for the purposes of the

Regular B DAS Program is the area defined by straight lines connecting the following points in the order stated:

CC/GOM YELLOWTAIL FLOUNDER STOCK AREA

Point	N. lat.	W. long.
CCGOM1	43°00′	Intersection with New Hampshire Coastline.
CCGOM2	43°00′	70°00′.
CCGOM3	42°30′	70°00′.
CCGOM4	42°30′	69°30′.
CCGOM5	41°30′	69°30′.
CCGOM6	41°30′	69°00′.
CCGOM7	41°00′	69°00′.
CCGOM8	41°00′	69°30′.
CCGOM5	41°30′	69°30′.
CCGOM9	41°30′	70°00′.
CCGOM10 ..	(1)	70°00′.
CCGOM11 ..	42°00′	Intersection with east facing shoreline of Cape Cod, Massachusetts.
CCGOM12 ..	42°00′	Intersection with west facing shoreline of Massachusetts.
CCGOM13 ..	(2)	70°00′

[1] Intersection with south facing shoreline of Cape Cod, Massachusetts.
[2] Intersection with east facing shoreline of Cape Cod, Massachusetts.

* * * * *

(E) SNE/MA yellowtail flounder stock area. The SNE/MA yellowtail flounder stock area for the purposes of the Regular B DAS Program is the area bounded on the north, east, and south by straight lines connecting the following points in the order stated:

SNE/MA YELLOWTAIL FLOUNDER STOCK AREA

Point	N. lat.	W. long.
SNEMA1	40°00′	74°00′
SNEMA2	40°00′	72°00′
SNEMA3	40°30′	72°00′
SNEMA4	40°30′	69°30′
SNEMA5	41°00′	69°30′
SNEMA6	41°00′	69°00′
SNEMA7	41°30′	69°00′
SNEMA8	41°30′	70°00′
SNEMA9	41°00′	70°00′
SNEMA10	41°00′	70°30′
SNEMA11	41°30′	70°30′
SNEMA12	(1)	72°00′
SNEMA13	(2)	72°00′
SNEMA14	(3)	73°00′
SNEMA15	40°30′	73°00′
SNEMA16	40°30′	74°00′
SNEMA17	40°00′	74°00′

[1] South facing shoreline of Connecticut.
[2] North facing shoreline of Long Island, New York.
[3] South facing shoreline of Long Island, New York.

* * * * *

(vi) *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, in a manner 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. Reasons for terminating the program include, but are not limited to the following: Inability to constrain catches to the Incidental Catch TACs; evidence of excessive discarding; a significant difference in flipping rates between observed and unobserved trips; or insufficient observer coverage to adequately monitor the program.

(7) * * *

(iv) * * *

(F) *Haddock TAC.* The maximum total amount of haddock that may be caught (landings and discards) in the Closed Area I Hook Gear SAP Area in any fishing year is based upon the size of the TAC allocated for the 2004 fishing year (1,130 mt live weight), adjusted according to the growth or decline of the western GB (WGB) haddock exploitable biomass (in relationship to its size in 2004), according to the following formula: $\text{Biomass}_{\text{YEAR X}}$ = (1,130 mt live weight) x (Projected WGB Haddock Exploitable $\text{Biomass}_{\text{YEAR X}}$ / WGB Haddock Exploitable Biomass_{2004}). The size of the western component of the stock is considered to be 35 percent of the total stock size, unless modified by a stock assessment. The Regional Administrator shall specify the haddock TAC for the SAP, in a manner consistent with the Administrative Procedure Act.

(G) *Trip restrictions.* A vessel is prohibited from deploying fishing gear outside of the Closed Area I Hook Gear Haddock SAP Area on the same fishing trip on which it is declared into the Closed Area I Hook Gear Haddock SAP, and must exit the SAP if the vessel exceeds the applicable landing limits described in paragraph (b)(7)(iv)(H) of this section.

(H) *Landing limits.* For all eligible vessels declared into the Closed Area 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. Such vessels are prohibited from discarding legal-sized regulated NE multispecies, Atlantic halibut, and ocean pout, and must exit the SAP and cease fishing if any trip limit is achieved or exceeded.

* * * * *

(v) * * *

(D) *Reporting requirements.* The owner or operator of a Sector vessel declared into the Closed Area 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 Closed Area I Hook Gear Haddock SAP Area. The Sector Manager will provide daily reports to NMFS, including at least the following information: Total pounds of haddock, cod, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake kept; total pounds of haddock, cod, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake discarded; date fish were caught; and VTR serial number, as instructed by the Regional Administrator. Daily reporting must continue even if the vessel operator is required to exit the SAP as required under paragraph (b)(7)(iv)(G) of this section.

* * * * *

(vi) * * *

(D) *Reporting requirements.* The owner or operator of a non-Sector vessel declared into the Closed Area 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 Closed Area 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 pounds of haddock, cod, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake kept; total pounds of haddock, cod, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake discarded; date fish were caught; and VTR serial number, as instructed by the Regional Administrator. Daily reporting must continue even if the vessel operator is required to exit the SAP as required under paragraph (b)(7)(iv)(G) of this section.

* * * * *

(8) *Eastern U.S./Canada Haddock SAP*—(i) *Eligibility.* A vessel 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, is eligible to participate in the Eastern U.S./Canada Haddock SAP, and may fish in the Eastern U.S./Canada

Haddock SAP Area, as described in paragraph (b)(8)(ii) of this section, during the season specified in paragraph (b)(8)(iv) 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)(v)(K) or (L) of this section, or the Eastern U.S./Canada Area is not closed as described under paragraph (a)(3)(iv)(E) of this section.

* * * * *

(iii) [Reserved].

(iv) *Season.* An eligible vessel may fish in the Eastern U.S./Canada Haddock SAP from August 1 through December 31.

(v) * * *

(A) *DAS use restrictions.* A vessel fishing in the Eastern U.S./Canada Haddock SAP 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).

* * * * *

(*2*) A vessel that is declared into the Eastern U.S./Canada Haddock SAP 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 Closed Area 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 Closed Area II Yellowtail Flounder Access Area, and in the 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. Such a vessel may also elect to fish outside of the Eastern U.S./Canada Area on the same trip, in accordance with the restrictions of paragraph (a)(3)(ii)(A) of this section.

(*4*) A vessel that elects to fish in multiple areas, as described in this paragraph (b)(8)(v)(A), must fish under the most restrictive DAS counting, trip limits, and reporting requirements of the areas fished for the entire trip, including those in paragraph (a)(3)(ii)(A)(*3*) of this section.

* * * * *

(E) *Gear restrictions*—(*1*) A NE multispecies vessel fishing in the Eastern U.S./Canada Haddock SAP must use the haddock separator trawl nets authorized for the Eastern U.S./Canada Area, as specified in paragraph (a)(3)(iii)(A) of this section, or other type of gear, if approved as described under this paragraph (b)(8)(v)(E). No other type of fishing gear may be on the vessel when on a trip in the Eastern U.S./Canada Haddock SAP, with the exception of a flounder net, as described in paragraph (a)(3)(iii) of this section, provided that the flounder net is stowed in accordance with § 648.23(b).

(*2*) The Regional Administrator may authorize additional gear if the Council first recommends to the Regional Administrator, and the Regional Administrator approves, gear standards in a manner consistent with the Administrative Procedure Act. If the Regional Administrator does not approve any gear standards recommended by the Council for use in the Eastern U.S./Canada Haddock SAP, NMFS must provide a written rationale to the Council regarding its decision not to do so.

(F) *Landing limits.* Unless otherwise restricted, a vessel fishing any portion of a trip in the Eastern U.S./Canada Haddock 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 Eastern U.S./Canada Haddock SAP 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 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 and 100 lb (45.5 kg) of GB winter flounder, up to a maximum of 500 lb (227 kg) of all flatfish species, combined. Possession of monkfish (whole weight), and skates (whole weight) is limited to 500 lb (227 kg) each, and possession of lobsters is prohibited.

* * * * *

(H) *Incidental TACs.* The maximum amount of GB cod, and the amount of GB yellowtail flounder and GB winter flounder, both 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), is the amount specified in paragraphs (b)(5)(ii) and (iii), respectively.

(I) *No discard provision and DAS flips.* A vessel fishing in the Eastern U.S./Canada Haddock SAP Program may not discard legal-sized regulated NE multispecies, Atlantic halibut, and ocean pout. If a vessel fishing in the Eastern U.S./Canada Haddock SAP under a Category B DAS exceeds the applicable maximum landing limit per trip specified under paragraph (b)(8)(v)(F) of this section, or under § 648.86, the vessel operator must retain the fish and immediately notify NMFS via VMS to initiate a DAS flip (from a Category B DAS to a Category A DAS). After flipping to a Category A DAS, the vessel is subject to all applicable landing limits specified under § 648.85(a) or § 648.86. If a vessel fishing in this SAP while under a Category B DAS or a Category A DAS exceeds a trip limit specified under paragraph (b)(8)(v)(F) of this section or § 648.86, or other applicable trip limit, the vessel must immediately exit the SAP area defined under paragraph (b)(8)(ii) of this section for the remainder of the trip. 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 and the time the vessel declared its DAS flip will be accrued as Category A DAS, and not Category B DAS.

* * * * *

(K) *Mandatory closure of Eastern U.S./Canada Haddock SAP.* When the Regional Administrator projects that one or more of the TAC allocations 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, through publication 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 Program.

* * * * *

■ 8. In § 648.86, the section heading and paragraphs (a)(1), (b)(1), (b)(2), (b)(4), (e), and (g) are revised; and paragraph (j) is added, to read as follows:

§ 648.86 NE Multispecies possession restrictions.

* * * * *

(a) * * *

(1) *NE multispecies DAS vessels*—(i) *Implementation and adjustments to the haddock trip limit to prevent exceeding the Target TAC.* At any time prior to or during the fishing year, if the Regional Administrator projects that the Target TAC for haddock will be exceeded in that fishing year, NMFS may implement or adjust, in a manner consistent with the Administrative Procedure Act, a per DAS possession limit and/or a maximum trip limit in order to prevent

exceeding the Target TAC in that fishing year.

(ii) *Implementation and adjustments to the haddock trip limit to facilitate harvest of the Target TAC.* At any time prior to or during the fishing year, if the Regional Administrator projects that less than 90 percent of the Target TAC for that fishing year will be harvested, NMFS may remove or adjust, in a manner consistent with the Administrative Procedure Act, a per DAS possession limit and/or a maximum trip limit in order to facilitate a haddock harvest and enable the total catch to approach the Target TAC for that fishing year.

* * * * *

(b) * * *

(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 or declared 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, with the exception of vessels fishing in one of the two Differential DAS Areas under the restrictions of § 648.82(e)(2)(i), complies with the following:

(A) For a vessel that is subject to the VMS provisions specified under § 648.10(b), the vessel declares through VMS that insufficient DAS have elapsed in order to account for the amount of cod onboard and, after returning to port, does not depart from a dock or mooring in port, unless transiting as allowed under 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 in the DAS program for 25 hr prior to crossing the VMS demarcation line on the return to port) may land only up to 1,600 lb (725.6 kg) of cod, provided the vessel does not declare another trip or leave port until 48 hr have elapsed from the beginning of the trip).

(B) For a vessel that has been authorized by the Regional Administrator to utilize the DAS call-in system, as specified under § 648.10(c), in lieu of VMS, the vessel 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 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 otherwise restricted under § 648.85 or the provisions of paragraph (b)(2)(ii) of this section, or unless exempt from the landing limit under paragraph (b)(1) of this section as authorized under the Sector provisions of § 648.87, a NE multispecies DAS vessel may land up to 1,000 lb (453.6 kg) of cod per DAS, or part of a DAS, provided it complies with the requirements specified at paragraph (b)(4) of this section and this paragraph (b)(2). A NE multispecies DAS vessel may land up to 1,000 lb (453.6 kg) of cod during the first 24-hr period after such 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) of cod, 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) of cod 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 (4,536 kg) of cod 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, 2,000 lb (907.2 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 1,000 lb (453.6 kg) of cod for that trip, provided the vessel complies with the provisions of 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 or declared 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, with the exception of vessels fishing in one of the two Differential DAS Areas under the restrictions of § 648.82(e)(2)(i), complies with the following:

(A) For a vessel that has been authorized by the Regional Administrator to utilize the DAS call-in system as specified under § 648.10(c), in lieu of VMS, the vessel 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 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.)

(B) For a vessel that is subject to the VMS provisions specified under § 648.10(b), the vessel declares through VMS that insufficient DAS have elapsed in order to account for the amount of cod onboard, and after returning to port does not depart from a dock or mooring in port, unless transiting, as allowed under 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 in the DAS program for 25 hr prior to crossing the VMS demarcation line on the return to port may land only up to 2,000 lb (907.2 kg) of cod, provided the vessel does not declare another trip or leave port until 48 hr have elapsed from the beginning of the trip.)

* * * * *

(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 the Gulf of Maine Regulated Mesh Area, defined in § 648.80(a)(1), provided that it complies with the requirement of this paragraph (b)(4).

(i) *Declaration.* With the exception of vessels declared into the U.S./Canada Management Area, as described under § 648.85(a)(3)(ii), a NE multispecies DAS vessel that fishes or intends to fish south of the line described in paragraph (b)(4) of this section, under the cod trip limits described under paragraph (b)(2) of this section, must, prior to leaving the dock, declare its intention to do so through the VMS, in accordance with instructions to be provided by the Regional Administrator. In lieu of a VMS declaration, the Regional Administrator may authorize such vessels to obtain a letter of authorization. If a letter of authorization is required, such vessel may not fish north of the exemption area for a minimum of 7 consecutive days (when fishing under the multispecies DAS program), and must carry the authorization letter on board.

(ii) A vessel exempt from the GOM cod landing limit may not fish north of the line specified in paragraph (b)(4) of this section for the duration of the trip, but may transit the GOM Regulated Mesh Area, provided that its gear is stowed in accordance with the provisions of § 648.23(b). A vessel fishing north and south of the line on the same trip is subject to the most restrictive applicable cod trip limit.

* * * * *

(e) *White hake.* Unless otherwise restricted under this part, a vessel issued a NE multispecies DAS permit, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions may land up to 500 lb (226.8 kg) of white hake per DAS, or any part of a DAS, up to 5,000 lb (2,268.1 kg) per trip.

* * * * *

(g) *Yellowtail flounder.* (1) *CC/GOM and SNE/MA yellowtail flounder landing limit.* Unless otherwise restricted under this part, a vessel issued a NE multispecies DAS permit, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions, and fishing exclusively outside of the U.S./Canada Management Area, as defined under § 648.85(a)(1), may land or possess on board only up to 250 lb (113.6 kg) of yellowtail flounder per DAS, or any part of a DAS, up to a maximum possession limit of 1,000 lb (453.6 kg) per trip. A vessel fishing outside and inside of the U.S./Canada Management Area on the same trip is subject to the more restrictive yellowtail flounder trip limit (i.e., that specified by this paragraph (g)) or § 648.85(a)(3)(iv)(C).

(2) *GB yellowtail flounder landing limit.* Unless otherwise restricted under this part, a vessel issued a NE multispecies DAS permit, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions, and fishing in the U.S./Canada Management Area defined under § 648.85(a)(1) is subject to the GB yellowtail flounder limit described under paragraph § 648.85(a)(3)(iv)(c).

* * * * *

(j) *GB winter flounder.* Unless otherwise restricted under this part, a vessel issued a NE multispecies DAS permit, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions, and fishing in the U.S./Canada Management Area defined under § 648.85(a)(1), may not possess or land more than 5,000 lb (2,268.1 kg) of GB winter flounder per trip.

* * * * *

■ 9. In § 648.87, paragraph (d)(2) is added to read as follows:

§ 648.87 Sector allocation.

* * * * *

(d) * * *

(2) *GB Cod Fixed Gear Sector.* Eligible NE multispecies DAS vessels, as specified in paragraph (d)(2)(i) of this section, may participate in the GB Cod Fixed Gear Sector within the area defined as the GB Cod Hook Sector Area, as specified under paragraph (d)(1)(i) of this section, under the GB Cod Fixed Gear 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 complies 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) *Eligibility.* All vessels issued a limited access NE multispecies DAS permit are eligible to participate in the GB Cod Fixed Gear Sector, provided they have documented landings through valid dealer reports submitted to NMFS of GB cod during the fishing years 1996 to 2001, regardless of gear fished.

(ii) *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 Operations Plan specified under paragraph (b)(2) of this section, for the fishing years 1996 through 2001, regardless of gear used, 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)(2)(ii)(A) of this section by the sum of total landings by all vessels calculated in paragraph (d)(2)(ii)(B) of this section. The resulting number represents the percentage of the total GB cod TAC allocated to the GB Cod Fixed Gear Sector for the fishing year in question.

(iii) *Requirements.* A vessel fishing under the GB Cod Fixed Gear Sector may not fish with gear other than jigs, non-automated demersal longline, hand gear, or sink gillnets.

■ 10. In § 648.88, paragraph (c) is revised to read as follows:

§ 648.88 NE multispecies open access permit restrictions.

* * * * *

(c) *Scallop NE multispecies possession limit permit.* With the exception of vessels fishing in the Sea Scallop Access Areas as specified in § 648.59(b) through (d), 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 NE multispecies 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 regulated NE multispecies on board the vessel does not exceed any of the pertinent trip limits specified under § 648.86, and provided the vessel has at least one standard tote on board. A vessel fishing in the Sea Scallop Access Areas as specified in § 648.59(b) through (d) is subject to the possession limits specified in § 648.60(a)(5)(ii).

* * * * *

■ 11. In § 648.89, paragraphs (b)(1), (c)(1)(i), and (c)(2)(i) are revised, and paragraphs (b)(3), (c)(1)(v), and (c)(2)(v) are added to read as follows:

§ 648.89 Recreational and charter/party vessel restrictions.

* * * * *

(b) * * *

(1) *Minimum fish sizes.* Unless further restricted under paragraph (b)(3) 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)

* * * * *

(3) *GOM cod.* Private recreational vessels and charter party vessels described in paragraph (b)(1) 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) * * *

(i) Unless further restricted by the Seasonal GOM Cod Possession Prohibition specified under paragraph (c)(1)(v) of this section, each person on a private recreational vessel may possess no more than 10 cod per day in, or harvested from, the EEZ.

* * * * *

(v) *Seasonal GOM cod possession prohibition.* Persons aboard private recreational fishing vessels fishing in the GOM Regulated Mesh Area specified under § 648.80(a)(1) may not fish for or possess any cod 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 any cod on board has been gutted and stored.

(2) * * *

(i) Unless further restricted by the Seasonal GOM Cod Possession Prohibition, specified under paragraph (c)(2)(v) of this section, each person on a private recreational vessel may possess no more than 10 cod per day.

* * * * *

(v) *Seasonal GOM cod possession prohibition.* Persons aboard charter/party fishing vessels fishing in the GOM Regulated Mesh Area specified under § 648.80(a)(1) may not fish for or possess any cod from November 1 through March 31. Charter/party 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 any cod on board has been gutted and stored.

* * * * *

■ 12. In § 648.92, paragraph (b)(2)(i) is revised to read as follows:

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

* * * * *

(b) * * *

(2) * * *

(i) Unless otherwise specified in paragraph (b)(2)(ii) 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 vessel with a limited access NE multispecies DAS permit has an allocation of NE multispecies Category A DAS, specified under § 648.82(d)(1), that is less than the number of monkfish DAS allocated for the fishing year May 1 through April 30. Under this circumstance, the 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 Category A DAS. For such vessels, when the total allocation of NE multispecies Category A 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 Category A DAS allocation is 30, and the vessel fished 30 monkfish DAS, 30 NE multispecies Category A DAS would also be used. However, after all 30 NE multispecies Category A 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. A vessel holding a Category C, D, F, G, or H limited access monkfish permit may not use a NE multispecies Category B DAS in order to satisfy the requirement of this paragraph (b)(2)(i) to use a NE multispecies DAS concurrently with a monkfish DAS.

* * * * *

[FR Doc. 06–8811 Filed 10–17–06; 4:22 pm]

BILLING CODE 3510–22–P

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patmarie Nedelka, (301) 713–3155 ext. 127 or *Patmarie.Nedelka@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The 1990 reauthorization of the Coastal Zone Management Act (CZMA) authorized an awards program to ''implement a program to promote excellence in coastal zone management by identifying and acknowledging outstanding accomplishments in the field.'' As authorized in Section 314 of the CZMA, the Walter B. Jones Awards recognize three categories of excellence: Coastal Steward of the Year, Excellence in Local Government, and Excellence in Coastal and Marine Graduate Study. The CZMA authorizes NOAA to conduct public ceremonies to acknowledge such awards, which allows NOAA to fund invitational travel and purchase awards for the Jones Awards.

In conjunction with the Walter B. Jones Awards, NOAA instituted several additional categories of awards, to recognize additional contributions to ocean and coastal resource management, including Volunteer of the Year, Non-governmental Organization of the Year, Excellence in Promoting Cultural and Ethnic Diversity (in honor of Secretary Ronald Brown), Excellence in Business Leadership, and the Susan Snow Cotter Award for Excellence in Ocean and Coastal Resource (NOAA re-named this award in honor of Susan Snow Cotter in 2007).

As part of conducting the awards program, NOAA will distribute a ''Call for Nominations'' to representatives from Federal, state, local and non-governmental organizations and Members of Congress that work in, are knowledgeable of or benefit from, ocean and coastal resource management.

II. Method of Collection

Respondents may submit their nominations by direct mail, email, and fax.

III. Data

OMB Control Number: None.
Form Number: None.
Type of Review: Regular submission.
Affected Public: State, Local, or Tribal Government; not-for-profit institutions; Members of Congress.
Estimated Number of Respondents: 25.
Estimated Time Per Response: Complete nomination form—30 minutes.
Estimated Total Annual Burden Hours: 13.
Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) 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; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 26, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–12498 Filed 5–28–09; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Northeast Region Logbook Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before July 28, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Aja Peters-Mason, (978) 281–9195 or *Aja.Peters-Mason@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Under the Magnuson-Stevens Fishery Conservation and Management Act, the Secretary of Commerce (Secretary) has the responsibility for the conservation and management of marine fishery resources. Much of this responsibility has been delegated to the National Oceanic and Atmospheric Administration (NOAA)/National Marine Fisheries Service (NMFS). Under this stewardship role, the Secretary was given certain regulatory authorities to ensure the most beneficial uses of these resources. One of the regulatory steps taken to carry out the conservation and management objectives is to collect data from users of the resource. Thus, as regional Fishery Management Councils develop specific Fishery Management Plans (FMP), the Secretary has promulgated rules for the issuance and use of a vessel Interactive Voice Response (IVR) system, a Vessel Monitoring System (VMS) and vessel logbooks to obtain fishery-dependent data to monitor, evaluate, and enforce fishery regulations.

Fishing vessels permitted to participate in federally-permitted fisheries in the Northeast are required to submit logbooks containing catch and effort information, about their fishing trips. Participants in the herring, tilefish and red crab fisheries are also required to make weekly reports on their catch through IVR. In addition, permitted vessels that catch halibut are asked to voluntarily provide additional information on the estimated size of the fish and the time of day caught. The information submitted is needed for the management of the fisheries.

NE multispecies permit holders participating in the special access programs (SAP), the Category B (regular) Days-at-Sea (DAS) program, and fishing in the United States/Canada Resource Sharing Understanding Area are required to use VMS to electronically

submit reports of catch and discards for all trips. The submitted information is necessary to monitor groundfish stocks of concern and prevent overfishing.

II. Method of Collection

Most information is submitted on paper forms, although electronic means may be arranged. In the herring, tilefish and red crab fisheries vessel owners or operators must provide weekly catch information to an IVR system. In the NE Multispecies fishery, vessel owners or operators must declare catch and discards of groundfish species of concern through VMS for all trips.

III. Data

OMB Control Number: 0648–0212.

Form Number: NOAA Forms 88–30 and 88–40.

Type of Review: Regular submission.

Affected Public: Business and other for-profit organizations.

Estimated Number of Respondents: 3,346.

Estimated Time per Response: 5 minutes per Fishing Vessel Trip Report page (FVTR); 12.5 minutes per response for the Shellfish Log; 4 minutes for a herring or red crab report to the IVR system; 2 minutes for a tilefish report to the IVR system; 30 seconds for voluntary additional halibut information; and 15 minutes to report catch and discards of groundfish stocks of concern through VMS.

Estimated Total Annual Burden Hours: 11,029.

Estimated Total Annual Cost to Public: $111,723.

IV. Request for Comments

Comments are invited on: (a) 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; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget (OMB) approval of this information collection; they also will become a matter of public record.

Dated: May 26, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–12499 Filed 5–28–09; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–853, A–570–937]

Citric Acid and Certain Citrate Salts from Canada and the People's Republic of China: Antidumping Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (the Department) and the International Trade Commission (the ITC), the Department is issuing antidumping duty orders on citric acid and certain citrate salts (citric acid) from Canada and the People's Republic of China (PRC). On May 22, 2009, the ITC notified the Department of its affirmative determinations of material injury to a U.S. industry. *See Citric Acid from Canada and China* (Investigation Nos. 701–TA–456 and 731–TA–1151–1152 (Final), USITC Publication 4076, May 2009).

DATES: *Effective Date:* May 29, 2009.

FOR FURTHER INFORMATION CONTACT: Terre Keaton Stefanova (Canada) or Andrea Berton (PRC), AD/CVD Operations, Offices 2 and 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1280 or (202) 482–4037, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 13, 2009, the Department published its affirmative final determinations of sales at less-than-fair-value in the antidumping duty investigations of citric acid from Canada and the PRC. *See Notice of Final Determination of Sales at Less Than Fair Value: Citric Acid and Certain Citrate Salts from Canada,* 74 FR 16843 (April 13, 2009); and *Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 74 FR 16838 (April 13, 2009).

On May 22, 2009, the ITC notified the Department of its final determinations pursuant to section 735(d) of the Tariff Act of 1930, as amended (the Act), that an industry in the United States is materially injured by reason of less-than-fair-value imports of citric acid from Canada and the PRC. *See* section 735(b)(1)(A)(i) of the Act.

Scope of the Orders

The scope of these orders includes all grades and granulation sizes of citric acid, sodium citrate, and potassium citrate in their unblended forms, whether dry or in solution, and regardless of packaging type. The scope also includes blends of citric acid, sodium citrate, and potassium citrate; as well as blends with other ingredients, such as sugar, where the unblended form(s) of citric acid, sodium citrate, and potassium citrate constitute 40 percent or more, by weight, of the blend. The scope of these orders also includes all forms of crude calcium citrate, including dicalcium citrate monohydrate, and tricalcium citrate tetrahydrate, which are intermediate products in the production of citric acid, sodium citrate, and potassium citrate. The scope of these orders does not include calcium citrate that satisfies the standards set forth in the United States Pharmacopeia and has been mixed with a functional excipient, such as dextrose or starch, where the excipient constitutes at least 2 percent, by weight, of the product. The scope of these orders includes the hydrous and anhydrous forms of citric acid, the dihydrate and anhydrous forms of sodium citrate, otherwise known as citric acid sodium salt, and the monohydrate and monopotassium forms of potassium citrate. Sodium citrate also includes both trisodium citrate and monosodium citrate, which are also known as citric acid trisodium salt and citric acid monosodium salt, respectively. Citric acid and sodium citrate are classifiable under 2918.14.0000 and 2918.15.1000 of the Harmonized Tariff Schedule of the United States (HTSUS), respectively. Potassium citrate and crude calcium citrate are classifiable under 2918.15.5000 and 3824.90.9290 of the HTSUS, respectively. Blends that include citric acid, sodium citrate, and potassium citrate are classifiable under 3824.90.9290 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Provisional Measures

Section 773(d) of the Act states that suspension of liquidation instructions issued pursuant to an affirmative preliminary determination may not