

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Date 04/09/2010

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 04/09/2010

ACTION REQUESTED: Revision of a currently approved collection  
TYPE OF REVIEW REQUESTED: Regular  
ICR REFERENCE NUMBER: 201004-0648-004  
AGENCY ICR TRACKING NUMBER:  
TITLE: Northeast Multispecies Amendment 16  
LIST OF INFORMATION COLLECTIONS: See next page

OMB ACTION: Approved without change  
OMB CONTROL NUMBER: 0648-0605  
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: 03/31/2013 DISCONTINUE DATE:

BURDEN:	RESPONSES	HOURS	COSTS
Previous	0	0	0
New	383,448	78,608	3,477,978
Difference			
Change due to New Statute	0	0	0
Change due to Agency Discretion	383,448	78,608	3,477,978
Change due to Agency Adjustment	0	0	0
Change Due to Potential Violation of the PRA	0	0	0

TERMS OF CLEARANCE:

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

List of ICs

IC Title	Form No.	Form Name	CFR Citation
Sector operations plan and NEPA analysis			50 CFR 648.87
Monitoring and Reporting Service Providers Application and response to denial			50 CFR 648.87
Monitoring system (database) for discards, sector manager weekly catch reports and annual reports			50 CFR 648.87
Notification of ejection from sector			50 CFR 648.87
Transfer of Annual Catch Entitlement between Sectors	NA	Application to transfer annual catch entitlement between sectors	
VMS activation confirmation responses, time and cost, and cost of purchase, maintenance and automated polling	NA	VMS Certification of Activation	
Area and DAS Declaration - groundfish vessels fishing under any NE Multispecies DAS			50 CFR 648.10
VMS trip catch reports			50 CFR 648.87
Catch reporting requirements: US/Canada Area and CA II SAPs, Closed Area I SAP and Regular B Program			50 CFR 648.90
Restricted Gear Area LOA and VMS Declaration			50 CFR 648.81
Dockside Monitoring and Reporting Requirements - hails, notifications and database entry			50 CFR 648.87
Dockside Monitoring Reporting Requirements			50 CFR 648.87
At-Sea monitoring and reporting requirements - notifications and database requirements			50 CFR 648.87
At-sea provider reporting requirements			50 CFR 648.87
NE Fishery Observer Notification			50 CFR 648.85
Dealer requirements			50 CFR 648.87

# PAPERWORK REDUCTION ACT SUBMISSION

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

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

## 19. Certification for Paperwork Reduction Act Submissions

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

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

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

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

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

Signature of Senior Official or designee

Date

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

Signature

Date

Signature of NOAA Clearance Officer

Signature

Date

**SUPPORTING STATEMENT  
NORTHEAST MULTISPECIES AMENDMENT 16  
OMB CONTROL NO. 0648-xxxx**

**A. JUSTIFICATION**

This is a request for a temporary new information collection. As time and opportunity allows, applicable portions will be merged with Office of Management and Budget (OMB) Control No. 0648-0202, “Northeast Region Permit Family of Forms,” OMB Control No. 0648-0212, “Northeast Region Logbook Family of Forms,” OMB Control No. 0648-0229, “Northeast Region Dealer Purchase Family of Forms,” and OMB Control No. 0648-0593, “Observer Programs’ Information That Can Be Gathered Only Through Questions.”

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

Amendment 16 to the Northeast (NE) Multispecies Fishery Management Plan (FMP) was developed by the New England Fishery Management Council (Council) as part of the biennial adjustment process established in the FMP to update status determination criteria for all NE multispecies (groundfish) stocks; adopt rebuilding programs for groundfish stocks newly classified as being overfished and subject to overfishing; and revise management measures necessary to end overfishing, rebuild overfished groundfish stocks, and mitigate the adverse economic impacts of increased effort controls. In addition, Amendment 16 would implement new requirements for establishing allowable biological catch (ABC), annual catch limits (ACL), and accountability measures (AM) for each stock managed by the FMP, pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as revised. Finally, this action would add Atlantic wolf fish to the list of species managed by the FMP. This action is necessary to address the results of the most recent stock assessment that indicates that several additional groundfish species are overfished and subject to overfishing, and that stocks currently classified as being overfished require additional reductions in fishing mortality in order to rebuild by the end of existing rebuilding periods.

**SECTOR REQUIREMENTS**

Amendment 16 builds upon the sector measures implemented under Amendment 13 (FR 0648-AN17, 69 FR 22906) and Framework Adjustment 42 (FR 0648-AT24, 71 FR 62156) by proposing 17 additional sectors and revisions to many existing sector requirements, including sector allocation provisions, operations plan requirements, and monitoring and reporting requirements, as specified further below.

**Operations Plan Requirements and NEPA Analysis**

Amendment 13, the action that first approved the formation of the two operational sectors, specified a number of required elements that must be included in each sector operations plan. Amendment 16 would add to those requirements to provide additional details regarding sector reporting and monitoring provisions, as well as to better understand the composition and effort distribution of participating vessels so that the Council can better evaluate the impacts of sectors. These additional operations plan requirements include information about overage penalties if a sector exceeds its allocation for any stock; detailed information about the sector’s independent

third-party dockside/roving monitor service provider to evaluate whether such providers meet National Marine Fisheries Service (NMFS) standards to monitor sector landings; detailed information about a monitoring program for discards; a list of all Federal and state permits held by vessels participating in the sector; a list of specific ports where sector members will land fish with specific exemptions provided for safety, weather, and other reasons; Total Allowable Catch (TAC) thresholds and how the sector would notify NMFS once the threshold has been reached; identification of potential redirection of effort as a result of sector operations and any efforts to limit the adverse effects of such redirection of effort; and finally how groundfish would be avoided while participating in other fisheries that have a bycatch of groundfish if the sector does not anticipate being allocated or acquiring groundfish allocation from another sector. Sector operations plans would be required to be submitted by September 1 of each year to ensure that the operations plans and associated analysis are reviewed in time to implement such operations by the start of the next fishing year (FY) on May 1. The Regional Administrator would review each sector operations plan and associated analysis and approve or disapprove such operations through notice in the Federal Register.

In addition to requiring the submission of an Operations Plan, each sector must draft and submit an appropriate National Environmental Policy Act (NEPA) document assessing the impacts of forming the sector. This document will also analyze the impacts of the requested exemptions on the environment, including natural, social and economic aspects.

### **Certification/Approval of Monitoring Providers**

Amendment 13 did not previously establish any requirements for service providers that would help sectors monitor catch. Amendment 16, therefore, would establish standards that would be used by NMFS to evaluate service providers employed by vessels to comply with the dockside and/or at-sea monitoring and reporting requirements. Providers would apply for certification/approval from NMFS, which would make a determination for approval based upon the completeness of the application and a determination of the applicant's ability to perform the duties and responsibilities as a monitoring service provider. As part of the application, potential service providers must include the following information: identification; contact information; statements from each owner, board member and officer that they are free from a conflict of interest with fishing-related parties and free of any criminal conviction; a description of any prior experience, a description of the provider's ability to carry out the proposed responsibilities and duties; evidence of adequate insurance, proof of insurance coverage for employees; proof of training; an Emergency Action Plan, and evidence the company is in good financial standing. In addition, prior to approval, providers would be required to demonstrate compliance with the following criteria and requirements: a comprehensive plan to deploy monitors; ensure that monitors remain available to NMFS for debriefing; report instances of harassment or discrimination; produce, if requested, a copy of each signed and valid contract, materials developed, and used by the providers, refusal to deploy monitors based on timing of notice or safety concerns; a system to record, retain, and distribute information to NMFS; a means to protect confidentiality, and provide sufficient safety and data collection equipment.

For an individual to be certified as a dockside or roving monitor, the provider must demonstrate that each potential monitor meets the following criteria: a high school diploma or equivalent; successful completion of all NMFS-required training courses; certification by a physician attesting to the physical capacity for carrying out the required responsibilities, absence of

fisheries-related convictions based upon a background check, and independence from fishing-related parties.

For an individual to be certified as an at-sea monitor, the provider must demonstrate that each potential monitor meets the following criteria: a high school diploma or equivalent; successful completion of all NMFS-required training courses; certification by a physician attesting to the physical and mental capacity for carrying out the required responsibilities, current American Red Cross Cardiopulmonary Resuscitation (CPR)/First Aid Certification (or equivalent); absence of fisheries-related convictions based upon a background check, and independence from fishing-related parties.

These provisions are necessary to ensure that monitoring providers are capable of carrying out their duties to monitor and validate landings and discards as an input to monitoring the utilization of annual catch entitlements (ACE).

### **Monitoring System for Discards**

Sector operations plans would specify how a sector would monitor its landings and discards to ensure that the sector does not exceed its allocation. Sectors would likely evaluate the same documents as NMFS to determine these values, including Vessel Trip Reports (VTR), Vessel Monitoring System (VMS) data, and Interactive Voice Response (IVR) and any other sector required report and track data through some electronic spreadsheet or database. Sectors would be required to maintain a monitoring system to house this data and comply with specified reporting requirements, outlined below.

### **Weekly Catch Reports**

Amendment 16 would require each sector to report all landings and discards by sector vessels to NMFS on a weekly basis. In addition to summarizing fishing activities, the weekly report will also include infractions made by sector members, discrepancies in data, enforcement activities, and how each problem is being/has been resolved. These reports would be used to determine the effort and fishing mortality associated with sector activities as well as whether the sector is complying with the provisions of their operation plan.

### **Annual Report**

Within 60 days of the end of each fishing year, approved sectors would be required to submit an annual report containing information on the sector's activities for the fishing year to both the Council and NMFS. Each report would contain information describing the fishing activities, harvest levels of all federally managed species, and any applicable enforcement actions attributable to sector vessels in order to evaluate the performance of each sector. These reports would be used to determine the effort and fishing mortality associated with sector activities as well as whether the sector is complying with the provisions of their operation plan and other requirements specified under § 648.87.

## **Notification of Ejection from the Sector**

Amendment 16 prohibits vessels expelled from a sector to participate in the NE multispecies fishery as part of either the common pool or another sector for the remainder of the fishery year following the expulsion. Therefore, in the event that a sector member commits an infraction resulting in ejection from the sector, the operations plan must state how and when the sector will notify NMFS. It is anticipated that the Sector Manager or designated agent will contact NMFS immediately, with formal communication to follow regarding details of the incident.

## **ANNUAL CATCH ENTITLEMENT (ACE) TRANSFERS**

Amendment 16 proposes a provision to assign each limited access multispecies permit a potential sector contribution (PSC) based on landings from 1996-2006 (participants committed to existing sectors as of March 1, 2008 had GB cod PSCs based on landings from 1996-2001). Sectors would be allocated ACE based upon the potential sector contribution (PSC) of its members. This action would allow ACE to be traded between sectors to provide additional flexibility in the event that 1) the initial portfolio of ACE for each sector does not match the sector's desired ACE portfolio, or 2) a sector exceeds its ACE and needs additional ACE to cover the overage and continue fishing. Under the program, sectors could request to transfer ACE at any point during the fishing year, and up to two weeks following the conclusion of the fishing year. Participants would be required to complete and submit an ACE transfer form to NMFS for approval. This provision would add a new burden to the information collection.

## **VMS REQUIREMENTS**

In Framework Adjustment 42, the Council required all vessels fishing under a NE multispecies days at sea (DAS) to use VMS. This was considered necessary to effectively administer and enforce many of the area-specific measures proposed in that action. Although vessels participating in sectors would no longer be required to use a NE multispecies DAS under Amendment 16, the Final Environmental Impact Statement (FEIS) neither explicitly requires sector vessels to continue to use VMS, nor explicitly exempts such vessels from using VMS. Because the area-specific measures implemented under Framework Adjustment 42 would continue to apply to sector vessels and because Amendment 16 relies upon VMS as a media to submit area declaration, hail reports, and catch information necessary to implement sector provisions proposed under Amendment 16, NMFS is proposing to revise the existing VMS regulations at § 648.10 to require that all vessels issued a limited access NE multispecies permit and fishing under a NE multispecies DAS or under the restrictions and conditions of an approved sector operations plan use a VMS for each groundfish trip. Therefore, the potential number of NE multispecies permitted vessels utilizing VMS may increase to include the 147 vessels issued Handgear A (Category HA) permits.

For these vessels that may be required to use VMS when participating in sectors under Amendment 16, there will be two responses associated with installation: 1) completion of the VMS Certification form (previously approved under OMB Control No. 0648-0202) and 2) a telephone call to confirm VMS activation with Office of Law Enforcement (OLE). Vessels required to have an operational VMS unit on board must complete a form supplied by NMFS verifying that a VMS unit has been installed on the vessel and is operational. These form requests information regarding vessel name, Federal permit number, vessel documentation or

state registration number, information (name, address, and telephone number) on the installing dealer, date of installation, serial number of unit, and e-mail address of vessel. The form also requests responses to questions regarding whether or not the unit is operational, if operating instructions have been provided to the vessel owner, and if the vessel owner has been trained on use of the VMS unit by the provider. Once the form has been completed, the vessel owner or authorized representative signs and dates the form, and returns it to the address listed on the form. In addition, in order to ensure VMS unit connectivity, all vessel owners required, or choosing to use, VMS units would be required to call NMFS' OLE, Northeast Region (NER) to confirm connectivity of new and replacement VMS units.

## **BROAD STOCK AREA REQUIREMENTS**

To facilitate the monitoring of annual catch limits (ACL) and sectors, Amendment 16 proposes to establish four broad stock areas (Southern New England/Mid-Atlantic (SNE/MA), Inshore Georges Bank (GB), Offshore GB, and Gulf of Maine (GOM)) that encompass multiple statistical areas for the purposes of providing more accurate and timely data that can be used to apportion catch to individual stock areas, including providing area information for stock apportionment if VTR data are missing or delayed. Operators of all vessels issued a limited access NE multispecies permit, that are fishing for groundfish under a NE multispecies DAS or on a sector trip, would be required to declare their intent to fish in one or more of these broad stock areas via vessel monitoring system (VMS) prior to each trip on which groundfish may be landed. In addition, all vessels would be required to submit the VTR serial number associated with the first page of the VTR for that trip, as instructed by the Regional Administrator. The VTR serial number would be used to link VTRs with dealer reports and VMS data to increase the accuracy of data used for monitoring catch.

## **CATCH REPORTING REQUIREMENTS**

NMFS proposes to revise the daily VMS catch report for Special Management Programs (SMP) to reflect the requirements outlined in the trip-level catch reports described above. This would eliminate the current requirement for vessel operators fishing in SMPs to report species discards and statistical area fished, but would require vessel operators to specify the VTR serial number or other universal trip ID specified by NMFS, the date fish were caught (applicable only for SMP trips), and the amount of each species kept in each broad stock reporting area. Catch reports, including VTR serial numbers, would be used to increase the accurate of data used in the monitoring of catch.

This exemption from the SMP reporting requirements for sector vessels would not apply to vessels participating in the Closed Area I Hook Gear Haddock Special Access Program (SAP). This SAP includes an overall haddock TAC that is applicable to both sector and common pool vessels fishing in this SAP. Therefore, the existing requirement for sector managers to provide daily catch reports by participating sector vessels would be maintained under this proposed rule.

## **RESTRICTED GEAR AREAS (RGA)**

Amendment 16 proposes two RGAs for vessels not participating in sectors (i.e. common pool vessels). Both RGAs are intended to reduce the catch of flatfish species (predominantly SNE/MA winter flounder and SNE/MA yellowtail flounder) through the required use of selective gear (haddock separator trawl, a Ruhle trawl, a rope trawl, longline/tub trawls, handgear, or sink gillnets) in areas where these species are caught. Tie-down gillnets would be allowed, provided the mesh is greater than or equal to 10 inches (25.4 cm). Vessels intending to fish in either of these areas would be required to declare their intent to fish in these areas via VMS and, as a back-up, obtain an LOA from the Regional Administrator as a backup, in order to ensure compliance and consistency with the purpose of the exemption. These measures are necessary for the deployment of Observers for trips in these areas.

## **DOCKSIDE and AT-SEA MONITORING and REPORTING REQUIREMENTS**

Amendment 16 would require sectors to develop mechanisms to adequately monitor catch and discards by participating vessels. One of these mechanisms is an independent third-party dockside/roving monitoring program that would observe offloads by sector vessels to ensure that landings are accurately reported. This dockside/roving monitoring program would be required starting in fishing year (FY) 2010, and would be funded by sectors, unless otherwise specified by NMFS. Dockside monitors would observe offloadings directly to a dealer, while roving monitors would be used to monitor offloads to a truck for later delivery to a dealer. During FY 2010, the offloads of 50 percent of trips by each sector would be randomly observed, with 20 percent randomly observed in future years. In addition, because discards and area fished are critical elements in the monitoring of sector catch, sectors would be required to develop an adequate independent third-party at-sea/electronic monitoring program beginning in FY 2012. This program would be used to verify area fished and catch (landings and discards), by species and gear type, for the purposes of monitoring sector ACE utilization. Coverage levels would be specified by NMFS on a yearly basis, based upon a list of participating vessels and gear types for each sector. To facilitate deployment of dockside/roving and at-sea monitors and enforcement of these provisions, Amendment 16 would require vessels to submit trip-start and trip-end hail reports to the dockside/roving and at-sea/electronic monitoring service providers and to NMFS Office of Law Enforcement. The details for any dockside/roving and at-sea/electronic monitoring program must be specified in each sector's annual operations plans. Dockside and at-sea monitoring programs will assist with the monitoring and validation of landings and discards as an input to monitoring the utilization of ACEs.

Amendment 16 will apply a "hard" TAC to common pool vessels in Fishing Year 2012, and will further establish target trimester TACs for each stock. To facilitate monitoring trimester TACs under the common pool trimester TAC accountability measure (AM), 20 percent of trips by common pool vessels would have their offloads monitored by an independent third-party service provider approved/certified by NMFS to provide such services. These service providers would be required to randomly deploy dockside monitors to monitor the offload of catch directly to a dealer, and roving monitors to monitor the offload of catch onto a truck for subsequent shipment to a dealer. The costs associated with monitoring vessel offloads would be the responsibility of individual vessels. Vessels would be required to submit trip-start and trip-end hail reports to facilitate the deployment of such dockside/roving monitors. Similarly, beginning in FY 2010

additional at-sea monitors will be provided to supplement the Northeast Fisheries Observer Program (NEFOP), bringing the total number of observed trips (monitors plus NEFOP) to 30%.

Amendment 16 would require coverage rates for dockside monitoring of 50% of trips by sector vessels in FY 2010, 20% of sector trips in FY 2011, and 20% of sector trips in FY 2012. Similarly, in FY 2010, NMFS has committed to providing 30% coverage in addition to the NEFOP program. It is anticipated that this coverage level will be maintained for FY 2011. Beginning in FY 2012, mandatory 30% coverage will be required for sector participants.

## **NORTHEAST FISHERY OBSERVER TRIP NOTIFICATION**

As is currently specified in OMB Control No. 0648-0202, vessel operators intending to fish in the United States (U.S.)/Canada Area, Closed Area 1 Hook Gear Haddock SAP, or the Regular B Program are required to provide 72-hour notification to the NEFOP in order to deploy an observer aboard vessels to collect biological samples and data during commercial fishing trips. Amendment 16 proposes to make adjustments to the Observer Program, requiring all NE multispecies vessels to provide 48-hours advance notice. Observer notification and deployment is required to ensure adequate monitoring fishing activities, collection of data, and compliance.

## **DEALER REPORTING AND RECORD RETENTION REQUIREMENTS**

Because Amendment 16 would implement new requirements for dockside/roving monitors for common pool vessels beginning in FY 2012, NMFS is proposing to require dealers to provide a copy of any dealer weigh-out documents or dealer receipts for a particular offloading event to dockside/roving monitors. In addition, this proposed rule would require providers providing dockside/roving monitor services to retain and make available for review any records relating to fish offloaded and observed by dockside/roving monitors for 3 years after the fish were first offloaded. This measure is intended to maintain consistency with existing record retention requirements and facilitate enforcement of measures proposed under Amendment 16.

**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.**

## **SECTOR REQUIREMENTS**

### **Operations Plan Requirements, NEPA Analysis, and Reporting Requirements**

Amendment 16 proposes the addition of 17 sectors to two sectors previously approved under Amendment 13. A sector allocation proposal, operation plan, and the accompanying analysis included within each document is required to adequately describe the proposed sector operations in order for the Council, in consultation with NMFS, to determine whether the sector plan meets the requirements of Amendment 16 and does not jeopardize efforts to rebuild groundfish stocks. Sector proposals that do not meet the identified requirements may not be approved. Operations Plans and associated NEPA analyses may propose up to two years of operation, but it is anticipated that annual submissions will be made via the U.S. mail. Operations plans will be evaluated by NMFS for compliance with and support of the goals of Amendment 16. Weekly

reports will be required to be submitted on a weekly basis. Annual reports will be due 60 days following the completion of the fishing year. Notifications of ejections from a sector will be submitted when the actions of a sector participant warrant removal, as outlined in the Operations Plan. Reports and notifications will be submitted via U.S. mail and will be used by NMFS to evaluate each sector and monitor catch.

### **Certification/Approval of Monitoring Providers**

An entity seeking to provide dockside and/or at-sea monitoring services must obtain approval from NMFS, annually. Applicants are required to provide information in a narrative style rather than completing a form. NMFS reviews and evaluates each application for completeness against evaluation criteria and uses the provided information to evaluate the abilities of the prospective provider to perform the required responsibilities and duties on a recurring basis.

### **Monitoring System for Discards**

Sector operations plans must specify how a sector will monitor its landings and discards to ensure that the sector does not exceed its allocation of ACE. The data included in this monitoring system, which will likely consist of a Microsoft Excel spreadsheet or some individually developed database, is anticipated to be used by the sector manager in the preparation of weekly and annual reports, as outlined above, for catch monitoring and sector evaluation.

### **ANNUAL CATCH ENTITLEMENT (ACE) TRANSFERS**

The information requested on the ACE Transfer form is used by several NMFS offices to implement the ACE Transfer Program and to track quotas. The sector's name will be collected and used to verify compliance with weekly reports, and confirm VTR compliance of its member vessels prior to the approval of a transfer. Signatures of both sector managers are necessary to acknowledge the ACE transfer by both parties. Without both signatures, the transfer request would not be processed. ACE Transfer requests are anticipated to be submitted throughout the fishing year, with a possibility for increased submissions as toward the end of the fishing year.

### **VMS REQUIREMENTS**

The data collected through monitoring programs of the NE multispecies fishery are used in many analyses by NMFS, the Councils, states, Departments of State and Commerce, OMB, Corps of Engineers, Congressional staffs, and the fishing industry and public. Vessels are allowed to fish for NE multispecies only for a specific number of DAS, or until a sector's ACE has been exhausted. The VMS accounts for this fishing activity, and the information is used by both the vessel owners and agency representatives for monitoring and enforcement.

VMS is currently required for NE multispecies permit holders fishing under a Category A or B DAS (originally implemented by FW 42 under OMB Control No. 0648-0489, later merged into OMB Control No. 0648-0202), or, effectively, the following Multispecies Permit Categories: Category A (Individual DAS), Category C (Small Vessel), D (Hook Gear), E (Combination Vessels) and F (Large Mesh Individual DAS). Since participation in a sector is open to all limited access NE multispecies permit categories, including Handgear A (Category HA) permits,

it is anticipated that the 147 vessels issued Category HA permits will be required to begin using VMS.

For the 147 vessels issued Category HA permits that may be required to use VMS when participating in sectors under Amendment 16, there will be two responses associated with installation: 1) completion of the VMS Certification form (previously approved under OMB Control No. 0648-0202) and 2) a telephone call to confirm VMS activation with OLE. Vessels required to have an operational VMS unit on board must complete a form supplied by NMFS verifying that a VMS unit has been installed on the vessel and is operational. These form requests information regarding vessel name, Federal permit number, vessel documentation or state registration number, information (name, address, and telephone number) on the installing dealer, date of installation, serial number of unit, and e-mail address of vessel. The form also requests responses to questions regarding whether or not the unit is operational, if operating instructions have been provided to the vessel owner, and if the vessel owner has been trained on use of the VMS unit by the provider. Once the form has been completed, the vessel owner or authorized representative signs and dates the form, and returns it to the address listed on the form. In addition, in order to ensure VMS unit connectivity, all vessel owners required, or choosing to use, VMS units would be required to call NMFS'OLE, NER to confirm connectivity of new and replacement VMS units.

## **BROAD STOCK AREA REQUIREMENTS**

To facilitate the monitoring of ACLs and sectors, Amendment 16 proposes to establish four broad stock areas (SNE/MA, Inshore GB, Offshore GB, and GOM) that encompass multiple statistical areas. NMFS is proposing to require trip-level VMS catch reports submitted to NMFS to obtain more timely and accurate data used to apportion catch to individual stock areas and to monitor ACLs and sectors. Submissions will be required upon the completion of each fishing trip.

## **CATCH REPORTING REQUIREMENTS**

Several programs previously required vessel operators to submit a daily VMS catch report detailing the amount of each species kept and discarded, the statistical area fished, the VTR serial number for that trip, and the date the fish were caught. For consistency with other catch reporting provisions, NMFS has revised these requirements from daily VMS catch reports to trip-level. Reports will be submitted through VMS to NMFS and will be used to monitor ACLs and sectors. Submissions will be required upon the completion of each fishing trip.

The Logbook Family of Forms (OMB Control No. 0648-0212) estimated the annual number of trips into the U.S./Canada Management Area and associated SAPs in Closed Area II to be 14,000 trips annually and the number of participating entities to be 400. It also estimated that 142 entities would take 2,130 trips into the Closed Area I Hook Gear Haddock SAP annually. Finally, it estimates 997 entities would take 5,000 trips in the B Regular Program.

## **RESTRICTED GEAR AREAS**

Amendment 16 establishes two RGAs intended to reduce the catch of flatfish species (predominantly SNE/MA winter flounder and SNE/MA yellowtail flounder) through the required use of selective gear in areas where these species are caught. Vessel owners intending to fish in either of the RGAs will be required to declare their intent to fish in these areas through VMS and, as a back up, obtain an LOA for their vessel from NMFS. Information collected through this provision would be used by NMFS to monitor participation in and enforcement of this program and its associated restrictions.

These LOAs are to be kept on board the vessel during the extent of program participation (minimum of 7 days) in order to verify enrollment in the program. Entrant would be required to notify NMFS of intent to participate to obtain the LOA, or provide entry and exit notice via telephone call or VMS. The required information is generally collected verbally through either a telephone call or in person, and no physical application is actually completed. The information collected for participation in exemption programs consists of vessel owner name, NMFS permit number, vessel name, and participation period. Vessels wishing to withdraw from a program, after the minimum participation period has been met, must provide NMFS with similar information via phone call or a withdrawal form.

## **DOCKSIDE and AT-SEA MONITORING and REPORTING REQUIREMENTS**

It is anticipated that a total of five monitoring providers would apply for approval under these provisions. Approved monitoring providers are required to submit information during the course of the year in order to comply with various requirements and responsibilities. Reports pertaining to monitor deployment, harassment, and catch data will be required throughout the year, as requested by NMFS, along with copies of contracts and any additional materials. The information submitted via U.S. mail will be used to monitor the fishery and monitor deployments, including the evaluation of catch and bycatch. None of the information provided by service providers would be disseminated to the public.

Amendment 16 would require coverage rates for dockside monitoring of 50% of trips by sector vessels in FY 2010, 20% of sector trips in FY 2011, and 20% of sector trips in FY 2012. Similarly, in FY 2010, NMFS has committed to providing 30% coverage in addition to the NEFOP program. It is anticipated that this coverage level will be maintained for FY 2011. Beginning in FY 2012, mandatory 30% coverage will be required for sector participants. Beginning in FY 2012, vessels electing not to join a sector will be required to have 20% dockside monitoring. Similarly, beginning in FY 2010 additional at-sea monitors will be provided to supplement the NEFOP program, bringing the total number of observed trips (monitors plus NEFOP) to 30%. Hails (notifications of trip start and end) are necessary to ensure that the specified monitoring levels are met. These measures are necessary for the accurate monitoring of ACLs and sectors.

To produce a conservative estimate of the total annual time burden to the public for complying with this requirement, the assumption is made that all groundfish vessels will participate in a sector and that all trips will be taken by sector vessels.

## **NORTHEAST FISHERY OBSERVER TRIP NOTIFICATION**

As is currently specified in OMB Control No. 0648-0202, vessel operators intending to fish in the U.S./Canada Area, Closed Area 1 Hook Gear Haddock SAP, or the Regular B Program are required to provide notification to the NEFOP prior to each trip. Amendment 16 proposes to expand this requirement to all NE multispecies vessels, but decrease the advance notice to 48-hours before a trip. Notification is required to deploy Observer aboard vessels for the collection of biological samples and data during commercial fishing trips. Notification will be made via a telephone call to NEFOP, and will be used to schedule and deploy monitors.

## **DEALER REPORTING AND RECORD RETENTION REQUIREMENTS**

Dealer reporting requirements currently approved under OMB Control No. 0648-0229, Northeast Region Dealer Purchase Family of Forms, estimate approximately 576 dealers in the Northeast Region. Under this provision, dealers will be required to provide dockside/roving monitors a copy of any dealer weigh-out documents or dealer receipts for each particular offloading event observed by dockside/roving monitors. The information included on these documents will assist in the monitoring of landings and discards in the NE multispecies fishery.

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 National Oceanic and Atmospheric Administration (NOAA) standards for confidentiality, privacy, and electronic information. See response to Question 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.**

Currently, applications/operations plans, appeals, and notification of ejections from a sector must be sent via U.S. mail, as signed statements are required. It is anticipated that that weekly and annual reports, and reports as requested by NMFS could be sent via U.S. mail or by electronic means (email). NMFS has other components, including LOA requests and hails, which will be made via telephone. Electronic Vessel Trip Reports (eVTR) while not currently approved as a reporting method by NMFS are being evaluated as a future reporting method and have been proposed for parallel use by sector participants.

Automated reporting has been made available via VMS for fishing vessels required to have the system for participation in a sector. Additionally, automated declarations, once-hourly polling and catch reporting are all available through electronic means (VMS).

No other improved information collection technology has been identified to further reduce the burden associated with Amendment 16. Every effort will be made in the future to use computer technology to reduce the public burden.

**4. Describe efforts to identify duplication.**

The information to be collected through the proposed information collection is not duplicated elsewhere. The Magnuson-Stevens Act's operational guidelines require each FMP to evaluate existing state and Federal laws that govern the fisheries in question, and the findings are made part of each FMP. Council membership includes state and Federal officials responsible for resource management in their area. In fact, NMFS has identified duplicative reporting requirements and proposes to exempt vessel from such reporting requirements under this action. Therefore, NMFS is confident that it is aware of similar collections if they exist.

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

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

NMFS has currently certified three providers to provide VMS service to vessels participating in the fisheries that require VMS as a condition of their permits. Each provider offers comparable equipment and services over a range of prices. This reduces the burden on the public by increasing competition among providers, thereby decreasing costs to the fishing industry to obtain and operate a VMS unit. Further, the increased variety of VMS units may allow vessel owners/operators to select the most economical and efficient unit to purchase, therefore minimizing costs associated with VMS.

Through this action, NMFS has reduced duplicative reporting requirements, and reduced the number of fields included in the required catch reports.

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

Not conducting the collection of information described in Questions 1 and 2 would undermine the ability of proposed measures to effectively implement ACLs, AMs, and section provisions adopted by Amendment 16. This collection of information is necessary for a variety of reasons, including monitoring fishing effort and catch, enforcing RGAs and other area specific measures, and increasing efficiency of sector operations by facilitating exchanges of ACE. Furthermore, reducing the frequency of collection would also compromise the ability to monitor vessel activities, in turn affecting the enforcement of management measures.

To the extent practicable, frequency of information collection under this new collection has been minimized. To reduce the frequency any further would compromise the intent of each collection of information requirement. For example, less frequent monitoring of vessels fishing under the NE multispecies program (participating in either a sector or the common pool) would reduce the effectiveness of the system in helping prevent violations of DAS controls and ACE allocations,

which, in turn, could reduce the effectiveness of measures to control fishing mortality and rebuild overfished stocks.

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

Some of the requirements may not be consistent with OMB guidelines with regard to the reporting frequency. While OMB guidelines suggest that respondents not be required to report more often than quarterly, requirements for VMS for NE multispecies, sector manager weekly catch reports, and new dealer requirements will require more frequent reports.

Vessels that intend to target NE multispecies fishery must declare via VMS that they will be on such a trip prior to leaving and upon returning to port. The declaration requirement is needed to keep an accounting of DAS usage and fishing location necessary to attribute catch to stock areas and effectively monitor ACLs. Similarly, the sector manager weekly catch reports are needed to ensure that each sector is adequately monitoring its allocation of ACE. Dealers will be required to provide monitors with a copy of weigh-out slips/receipts to ensure consistency.

**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.**

The information collections contained in this submission are part of a proposed rule, RIN 0648-AW72, to implement management measures outlined in Amendment 16 to the NE Multispecies FMP. This rule will announce the provisions specified above and solicit public comment on the program and the information collection requirements necessary to implement this program. Once public comments have been considered, a final rule outlining the measures that would be implemented, as modified by public comment, would be published in the Federal Register.

The Council held many Council and Groundfish Oversight Committee meetings during the development of FW 42 during the period of September 2006 through September 2009 during which there were opportunities for public discussion of proposed management strategies. The Council approved the measures contained in Amendment 16, including those specified above, on June 23, 2009.

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

Neither payments nor gifts are given to the respondents.

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

All data will be handled in accordance with 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). In addition, any information collected would be considered confidential and would not be disclosed except as provided in Section 402(b) of the Magnuson-Stevens Act.

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

There are no questions of a sensitive nature involved in this collection of information.

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

A full summary of the burden estimate involved in this collection of information can be found in Table 1.

## **SECTOR OPERATIONS**

### **Operations Plan and NEPA Analysis**

Amendment 16 proposes the approval of 17 sectors in addition to the two currently approved. As previously outlined, each sector is required to submit an operations plan to NMFS for approval. The operations plan must include multiple elements detailing the proposed operations, reporting requirements and monitoring provisions. Based upon knowledge of the preparation of operations plans by the 19 sectors currently proposed, it is estimated that approximately 4 months (640 hours) would be necessary to prepare and compile the requirements of a sector operations plan, including these new provisions, and to have these documents reviewed. Therefore, in total, it is anticipated that a total of 12,160 hours would be required annually for the preparation of the operations plans under this proposed information collection, though this burden is likely to decrease over subsequent years as sectors gain experience preparing these documents. In addition, sectors would be required to submit a NEPA analysis analyzing proposed fishing operations and requested exemptions. For Fishing Year 2010 Sectors, NMFS provided funding for a contractor to assist in the drafting of the NEPA document. Based upon the time allotted to the contract for preparation of the NEPA documents, it is anticipated to take approximately 4 months (640 hours) to prepare the required NEPA analysis. It is anticipated that a total of 12,160 hours would be required for the preparation of 19 NEPA analysis documents; however, for a contractor hired by the respondent, only costs are counted, not burden, for the respondent. **Therefore, the total number of hours associated with the preparation of these documents is 12,160 hours.**

### **Monitoring and Reporting Service Providers Application**

NMFS anticipates that five monitoring service providers may apply for approval and operate under this program, for a total of 5 submissions per year. In addition, it is expected that 3 of the

applications will be required to supplement their original application with a 5-page supplemental document. Based upon a similar monitoring program recently instituted for the Atlantic Sea Scallop Fishery (OMB Control No. 0648-0546), an estimated 10 hours of preparation would be required by each application to compile all required documents, while each response to an initial denial is anticipated to take an additional 10 hours. Therefore, based on the previously estimated burden, **a total of 80 hours is expected** from the monitoring and reporting service provider application requirement proposed in Amendment 16 (50 hours for the initial applications plus 30 hours for the expected responses).

### **Monitoring System for Discards**

Each sector will be required to maintain a database of all VTRs, dealer reports, dockside monitor reports, and at-sea monitor and NMFS observer data associated with trips by sector vessels. The time burden associated with this requirement is in the amount of time it would take for sector staff to enter the data into a database. Data from dealer reports, observer reports, and at-sea monitor reports will be provided electronically to sectors. Obtaining this data would likely involve the sector manager or designated staff accessing a web portal to download the data and upload it to the sector's database. It is estimated that the time burden associated with this task would be negligible, regardless of the number of sector trips involved. For the purpose of estimating the time burden of entering VTR data, it is assumed that sector vessels will provide sector managers with paper copies of VTRs. Data from the paper copies would have to be manually entered into the sector database at an estimated burden of three minutes per VTR. Assuming that all of the 25,000 trips anticipated to be made in the groundfish fishery each year are made by sector vessels would produce a conservative estimate of the total number of VTRs sectors would have to process each year. As some portion of these trips would be made in multiple areas and require multiple VTRs per trip, sectors would have to process a maximum of 30,000 VTRs. **Thus, the estimated annual burden to sectors for processing VTRs would be 1,500 hours** (3 minutes/VTR x 30,000 VTRs).

Dockside monitoring will be required for sector vessels beginning in fishing year (FY) 2010. Coverage rates will be 50% of trips by sector vessels in FY 2010, 20% of sector trips in FY 2011, and 20% of sector trips in FY 2012. Dockside monitors will produce reports that will be submitted to the sector manager and/or dockside monitoring provider. To make a conservative estimate of the time burden for sectors for entering data from dockside monitor reports, it is assumed that these reports will be submitted directly to the sector manager in paper form, rather than electronically from the dockside monitoring provider. Dockside monitor reports will contain roughly the same type of information as VTRs, so it is reasonable to assume that each dockside monitor report will also take three minutes to process. If the coverage rates are annualized to 30% of sector trips, and assuming that the estimated number of trips is taken by sector vessels (25,000 trips), sectors would have to process 7,500 dockside monitor reports. **Thus, the estimated annual burden to sectors for processing dockside monitor reports would be 375 hours** (3 minutes/report x 7,500 reports).

**Therefore, the total annualized time burden of this requirement for the public is estimated to be 1,875 hours** (1,500 hours for VTRs + 375 hours for dockside monitor reports).

## **Sector Manager Weekly Reports**

As described in Questions 1 and 2, Amendment 16 would require sectors to submit weekly reports summarizing information describing the fishing activities, harvest levels of all federally managed species, and any applicable enforcement actions attributable to sector vessels to NMFS. Compilation of data and preparation of the report should mirror the efforts of NMFS staff who prepare weekly quota reports. Based upon this, it is expected that each sector would require approximately 4 hours to prepare and submit the required weekly report. **In total, approximately 3,952 hours are expected to be required annually for the preparation and submission of all weekly sector reports** (4 hours X 19 sectors X 52 weeks).

## **Annual Reports**

All sectors approved under the provisions contained at § 648.87 of the proposed rule that would implement Amendment 16 would be required to submit annual year-end reports as described in Questions 1 and 2. The information required to be included in this report would likely necessitate collecting and reviewing data obtained from each of the sector participants and assembling this information into a cohesive report. Amendment 16 specifies the collection of landings and discards, however, due to the preparation of weekly reports including similar information, it is difficult to estimate the amount of time that would be spent developing this report. Under Amendment 13, it was estimated that an annual report from a sector would require approximately 6 hours to complete and submit, with the compilation of landings data. Because Amendment 16 requires additional information, which will be summarized in weekly reports, it is assumed that the time to prepare the annual report would double from the time included in previous estimates to 12 hours. With a potential of 19 sectors, **the estimated burden associated with this information collection would be 228 hours.**

## **Notification of Ejection from a Sector**

As previously stated, sectors must specify in their Operations Plan how and when NMFS would be notified of the ejection of a member due to an infraction. A total of 1,482 vessels have the opportunity to join a sector, of which approximately half have preliminarily enrolled to participate. Amendment 16 proposes to prohibit vessels that have been ejected from a sector to participate in the groundfish fishery for the remainder of the permit year, therefore only one ejection per vessel is expected in any given permit year. Therefore, a conservative estimate of all vessels intending to participate in sectors or half of the vessels eligible to participate would be ejected (741 vessels). Notification would likely be immediate in the form of a phone call or email, with formal correspondence to follow in the mail. Therefore, it is likely to take approximately one half hour to place the telephone call or send the email, and draft, print and send the necessary correspondence. **In total, this provision would require an estimated burden of 371 hours.**

## **ANNUAL CATCH ENTITLEMENT (ACE) TRANSFERS**

The proposed ACE Transfer program would add new burdens for information collection. This program is restricted to sectors and its participants. The estimated number of potential participants in this program would be the number of potential sectors, approximately 19. It is speculated that the sectors would only participate in one ACE Transfer per allocated species

during the course of the first year, for a total of 300 transfer requests. This number presumes that some sectors will participate in more than one transfer, while others will not participate at all. Sectors wishing to participate would be required to complete an Application to Transfer Annual Catch Entitlement (ACE). One form is required to process each ACE transfer request. Both sectors participating in the agreement (Transferor and Transferee) must enter information pertaining to their sector on the same form, and sign the form at the bottom, indicating their agreement to the specifics of the transfer. This results in a total of 600 responses (2 responses per ACE transfer form). This new data collection is similar in nature to the Days at Sea Leasing Program, which estimates that the public reporting averages 5 minutes per response. According, using an estimated average burden of 5 minutes per response, **a total of 50 hours** (600 responses X 5 minutes) **would be the burden for this new data collection.**

## **VMS REQUIREMENTS**

For the 147 vessels issued Category HA permits that may be required to use VMS when participating in sectors under Amendment 16, there will be two responses associated with installation: 1) completion of the VMS Certification form, and 2) a telephone call to confirm VMS activation with OLE. The estimated burden associated with the VMS activation confirmation requirement is 5 minutes (for a total burden of 12 hours, **annualized to 4 hours**), and the VMS certification form takes an estimated 10 minutes to complete (for a total burden of 25 hours, **annualized to 8 hours, 20 minutes (8 hours)**).

## **AREA AND DAS DECLARATION**

For each trip, a declaration including information on the vessel, days and times of departure, and description of fishing activities, will need to be transmitted via VMS. Amendment 16 would add VMS requirements for the 147 Category HA vessels, should they participate in a sector. Therefore, the number of participants making area and DAS declarations will increase to 1,144 vessels. With a conservative estimate of 25,000 trips, **it is estimated to require 2,083 hours** (5 min per declaration) for all Northeast Multispecies vessels to make the required declaration.

## **BROAD STOCK AREA REQUIREMENTS**

All vessels that declare their intent to fish in two or more of the broad reporting areas would be required to submit a report via VMS at the conclusion of the trip that details the amount of fish the vessel kept by broad reporting area. It is estimated that this requirement would apply to 134 vessels, the number of vessel that fished trips in multiple areas in the 2008 fishing year. This is a reasonable estimate for the maximum number of vessels that would fish trips in more than one reporting area in the coming fishing years, because the measures implemented through Amendment 16 are expected to result in fewer fishing trips. Groundfish vessels made approximately 2,500 trips into multiple areas in FY 2008 and would be expected to make no more than this number into multiple broad reporting areas in the coming fishing years. Using an estimate of approximately 15 minutes to complete a catch report via VMS that was previously approved in the burden estimate for similar catch reports in SAPs (OMB Control No. 0648-0212), **the total estimated burden of for these catch reports is 625 hours** (i.e., 15 minutes per report multiplied by 2,500 trips).

## CATCH REPORTING REQUIREMENTS

The SAP catch reports will include the same data fields as the broad reporting area catch reports described above. Since this catch report will be universal in form for all SAPs, the estimated time burden to the public of fulfilling this requirement for each SAP will be the same for all SAPs. Given the breadth of changes that Amendment 16 will bring to the groundfish fishery, it is difficult to anticipate the level of participation in SAPs that may be expected in the coming fishing years. These are reasonable estimates of the annual number of trips into the U.S./Canada Area and SAPs in the coming fishing years, and the number of entities this requirement would apply to, because reductions in fishing mortality may reduce effort overall, but the area and season of some SAPs would be expanded under Amendment 16, which may provide incentives for greater participation in these SAPs. However, overall, the total time burden associated with such catch reports is not expected to change under this action. As a result, **the burden to vessels participating in the U.S. Canada Management Area and associated SAPs is estimated to remain at 3,500 hours** (15 minutes x 14,000 reports). **The total time burden to vessels participating in the Closed Area I Hook Gear Haddock SAP is expected to remain at 533 hours** (15 minutes x 2,130 reports). **Finally, the total time burden to vessels participating in the Regular B Program is expected to remain at 1,246 hours** (15 minutes X 4,985 reports).

## RESTRICTED GEAR AREA

### RGA Declaration and Letter of Authorization

Vessels wishing to fish in either of the RGAs will be required to declare via VMS their intent to fish in one of the areas prior to leaving port for each trip. **Each of 490 vessels' (one third of all vessels) declaration into this area is anticipated to take approximately 5 minutes, for a total of 41 hours.**

Vessels wishing to fish in the either of the Restricted Gear Areas (RGAs) will be required to, as a back up to the VMS declaration, obtain a letter of authorization (LOA) from the Regional Administrator. As the RGAs are a new program, it is uncertain how many vessels will participate annually in the coming fishing years and how many LOAs those vessels will request (participation period is a minimum of 7 days). Given historical participation in exemption programs that also require LOAs, a reasonable estimate would be that one third of all vessels would submit one request each year for an LOA to fish in the RGAs each year (490 entities). The estimated time required to request an LOA is 5 minutes. **Therefore, the total burden time for this program is estimated at 41 hours** (for a total of approximately 41 hours (490 vessels X 5 minutes).

## DOCKSIDE MONITORING AND REPORTING REQUIREMENTS

Dockside monitoring, including the following requirements, will be required for sector vessels for FY 2010 and FY 2011, and for common pool vessels beginning in FY 2012. Coverage rates will be 50% of trips for sector vessels in FY 2010 and 20% of trips each year thereafter. Dockside monitoring will be required for 20% of trips by common pool vessels in FY 2012 and each year thereafter. There is a great deal of uncertainty about the number of vessels that will operate in sector in any given year, which makes it nearly impossible to predict the number of entities that will be affected by each of these coverage rates. Therefore, for the purposes of

calculating the burden associated with the following requirements, the coverage rates have been annualized to 30% coverage each year  $\{[(50\% \text{ in year 1}) + (20\% \text{ in year 2}) + (20\% \text{ in year 3})]/3 \text{ years}\}$  and assumed to apply to all groundfish vessels.

## **Hails and Confirmations**

### *Trip-Start Hail*

Before the start of each trip, all sector vessels (and common pool vessels beginning FY 2012) will be required to notify their dockside monitoring provider of their intent to take a trip. This hail can be done as an email via VMS or by phone, as decided by each sector and their monitoring service provider. The hail would take an estimated two minutes to complete and would affect approximately 1,482 entities annually, which is the total number of limited access NE multispecies permit holders. It is estimated that NE multispecies permit holders will make a total of 25,000 trips next year, issuing one trip-start hail per trip, for a total of 25,000 hails.

**Therefore, the total estimated time burden for all vessels is 833.33 (833) hours** (2 min/hail x 25,000 hails). Because this includes the total number of trips anticipated to be taken by all NE multispecies vessels, the total estimated burden of 833 hours would be the total burden for the entire fishery (including common pool vessels).

### *Trip-Start Hail Confirmation*

Dockside monitoring providers would be required to respond to vessel trip-start hails with a confirmation of receipt. This requirement is expected to apply to up to five entities, which is the number of providers that have applied for approval to provide dockside monitoring services to the groundfish industry. This confirmation may be done via phone or VMS and is anticipated to likely be through an automated system. **Therefore, there is no expected time burden for providers associated with this requirement.**

### *Trip-End Hail*

The requirement entails notifying the dockside monitoring provider of the intent to land a trip and to schedule a dockside monitor to meet the vessel upon landing. This hail can be done through VMS or by phone and is estimated to take 15 minutes to complete. It is estimated that NE multispecies permit holders will make a total of 25,000 trips next year, issuing one trip-end hail per trip, for a total of 25,000 trip-end hails. To account for the time burden associated with additional hails that may be sent as corrections to errors in the trip-end hail, an additional 2,500 hails are expected for a total of 27,500 hails. **Therefore, the total estimated time burden to the public for complying with this requirement is 6,875 hours.**

### *Trip-End Hail Confirmation*

Dockside monitoring providers are required to respond to vessel trip-end hails with a confirmation of receipt. This requirement is expected to apply to up to five entities, which is the number of providers that have applied for approval to provide dockside monitoring services to the groundfish industry. This confirmation may be done via phone or VMS and is anticipated to require approximate 2 minutes for the providers to confirm whether or not a dockside monitor has been assigned. **In total, this will require a time burden of 833 hours to the providers** (2,500 confirmations X 2 minutes).

### *Forwarding of Hails to NMFS*

The dockside monitoring provider or sector manager is required to provide information contained in trip-start and trip-end hails (including whether a trip will be monitored) to NMFS upon receipt of each hail. This requirement could be fulfilled by either the sector manager or the contracted provider, but for the purposes of conservatively estimating the time burden associated with this requirement, it is assumed that the greater number of entities (19 sector managers) would forward all hails. Hail information will be forwarded by email to the NMFS' Office of Law Enforcement and may require staff at the provider or sector to enter this data into an email if the hail from the vessel was done by phone. It is estimated that this data entry would take a total of two minutes to complete for two hails each trip (25,000 trips), for a total of 52,500 items (including 2,500 additional items to account for corrections). **This would result in a total estimated time burden to the public of 1,750 hours** (2 min/item x 52,500 items).

### *Notification of Monitor Emergency*

The dockside monitoring provider is required to notify the vessel, sector, and NMFS' Office of Law Enforcement (OLE), if a monitor will not be able to meet the vessel as scheduled, what time the monitor will arrive or if the vessel will be issued a waiver. For expediency, it is assumed the provider would inform the vessel, sector, and NMFS by phone, which would be expected to take approximately five minutes to complete. A reasonable estimate of the number of trips that might require this notification is 25% of trips or 6,250 trips. At three calls per trip, this results in a total of 18,750 items and **1,563 hours of burden to monitoring providers** (5 min/item x 18,750 items). There would also be a time burden associated with this requirement for sector staff and vessel operators to receive the calls. **It is estimated that the burden to vessel operators and sector staff would be 521 hours each** (5 min/call x 6,250 calls)/60 min). **This results in a total time burden to the public of 2,605 hours** (1,563 hours + 521 hours + 521 hours).

### **Database and Data Entry Requirements**

Amendment 16 requires that dockside or at-sea monitoring providers maintain a database of dockside monitor reports, monitor deployments, and other associated information. With respect to dockside monitoring, this requirement is expected to apply to up to five entities, which is the number of providers that have applied for approval to provide dockside monitoring services to the groundfish industry. At a 30% annualized coverage rate, dockside monitoring providers would have to input data from 7,500 dockside monitor reports or copies of dealer receipts (30% of 25,000 groundfish trips), assuming this data is collected by monitors on paper and not transmitted to the dockside monitoring provider electronically. In addition, there is a requirement that the dockside monitors collect the VTRs from observed trips and provide these with the monitor reports to the dockside monitoring provider (or sector manager). Assuming that the providers will also have to enter and archive VTR data, the providers will have to process 9,000 VTRs (30% of 30,000 VTRs). **Entering data from these reports would take approximately three minutes per report, for a total estimated time burden to the public of 825 hours** (7,500 monitor reports + 9,000 VTRs) x 3 minutes).

### **Dockside Monitoring Provider Reporting Requirements**

Amendment 16 specifies that dockside monitoring providers must make several reports available to NMFS, if requested, much like those reports required for the Scallop Observer Program approved under OMB Control No. 0648-0546. These include: reports of monitor deployments,

reports including catch/discard data, reports of harassment, copies of contracts, copies of additional materials, and ensuring that that monitors remain available for debriefing for two weeks following a monitored trip. A total of 5 dockside monitoring providers are anticipated to participate in this program. Based on estimates included in OMB Control No. 0648-0546 and expanded to the NE multispecies fishery, **it is estimated to require 17,108 hours to comply with all of these reporting provisions.**

## **AT-SEA MONITORING AND REPORTING REQUIREMENTS**

### **Hails and Notifications**

#### *Pre-Trip Notification*

At-sea monitoring will be required for a minimum of 30% of sector trips beginning in FY 2010. Sector vessels will be required to notify their monitoring provider for at-sea monitoring services of their intent to make a trip, as specified in the operation plan, including such information as vessel name, permit number, VTR serial number, date, location, and time of departure. This notification would consist of a phone call to the monitoring provider that is expected to take approximately two minutes to complete. It is unclear how many vessels will participate in sectors annually (estimated at 700 vessels), and thus how many entities this requirement would affect and how many trips those entities will make. To produce a conservative estimate of the total annual time burden to the public for complying with this requirement, the assumption is made that half groundfish vessels will participate in a sector and that all trips will be taken by sector vessels. **Therefore, the total estimated time burden to the public of complying with this requirement is 2000 hours** [0.08 hours/notification x 1 notification/trip x 25,000 trips].

#### *Vessel Notification of Selection for Coverage*

Once a sector vessel has made their pre-trip notification to the sector's at-sea monitoring provider, the provider must determine which trips by the sector will be assigned an at-sea monitor and notify the vessel of its selection for coverage. It is expected that this requirement would apply to up to five entities, which is the number of providers that have applied for approval to provide monitoring services to sector vessels. The notification would be done by phone and would take approximately five minutes to complete. The providers would have to issue an estimated 7,500 notifications to individual vessels each year (30% of 25,000 trips). **This results in a total estimated time burden to the public of 625 hours** (0.08 hours x 7,500 notifications).

### **Database and Data Entry Requirements**

#### *At-Sea Monitoring Provider Database*

Amendment 16 would require that dockside or at-sea monitoring providers maintain a database of monitor reports, monitor deployments, and other associated information. With respect to at-sea monitoring, this requirement is expected to apply to up to five entities, which is the number of providers that have applied for approval to provide monitoring services to the groundfish industry. Data collected by individual at-sea monitors would be transmitted directly to NMFS via an electronic hand-held data collection device. This data will be processed by Northeast Fishery Observer Program (NEFOP) staff, which would then make the data available electronically to the dockside monitoring providers and sector managers. Obtaining this data would likely involve the provider staff accessing a web portal to download the data and upload it

to the provider's database. It is estimated that the time burden associated with this task would be negligible, regardless of the number of sector trips involved. Therefore, there is no expected time burden to the public associated with this requirement.

#### *NMFS Data Processing*

NEFOP staff will receive data directly from at-sea monitors via an electronic method that is not anticipated to have a time burden associated with it. NEFOP will process this data in accordance with NEFOP procedures, before making it available to the public. This requirement will be fulfilled by the Federal government and, therefore, there is no expected time burden for the public associated with this requirement.

#### **At-Sea Monitoring Provider Reporting Requirements**

Amendment 16 specifies that at-sea monitoring providers would be required to make several reports available to NMFS, if requested, much like those reports required for the Scallop Observer Program approved under OMB Control No. 0648-0546, Northeast Region Observer Providers. These reports include: reports of monitor deployments, reports including catch/discard data, reports of harassment, copies of contracts, copies of additional materials, and ensuring that that monitors remain available for debriefing for two weeks following a monitored trip. A total of 5 at-sea monitoring providers are anticipated to participate in this program. Based on estimates included in OMB Control No. 0648-0546 and expanded to the NE multispecies fishery, **it is estimated to require 17,108 hours to comply with all of these reporting provisions.**

#### **NORTHEAST FISHERY OBSERVER TRIP NOTIFICATION**

Changes to the requirements for Observer notification will require all 1,482 vessels enrolled in sectors or fishing in the common pool to notify NEFOP of its intent to make a trip via telephone call. It is anticipated that approximately 25,000 trips will be made by all NE multispecies vessels. Using the time burden previously approved under OMB Control No. 0648-0202, it is expected to require approximately 2 minutes to complete this call. **Therefore, a total burden of 833 hours is anticipated.**

#### **DEALER REQUIREMENTS**

NMFS is requiring that dealers provide copies of their reports or weighout slips for each offload event. Dealer reporting requirements currently approved under OMB Control No. 0648-0229 estimate approximately 576 dealers in the Northeast Region. For the anticipated 25,000 NE multispecies trips, at most, 50% of trips will be monitored annually, or an average of 22 trips per vessel transferring fish to these dealers, for a total of 12,500 trips. **At an estimated 2 minutes per report, or a total of 417 hours.**

**Total burden hours are estimated to be 78,608.**

**At an average labor rate of \$25, total labor costs are estimated at \$1,965,200.**

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

A full summary of the burden estimate involved in this collection of information can be found in Table 1.

## **SECTOR OPERATIONS**

### **Operations Plan and NEPA Analysis**

Due to the increase in requirements associated with a sector operations plan, NMFS has estimated \$60,000-\$150,000 in start-up operational costs. Based upon this estimate, **operational costs associated with the start-up of sectors are anticipated to cost \$2,850,000** (19 sectors x \$150,000 operational costs). This estimate includes both the development and review of the operations plan, and the development of the required NEPA analysis. Based upon legal consultation fees incurred by the two currently approved sectors associated with the development and review of their operations plan, it is estimated to cost \$50,000 annually to develop operations plans for at least the first three years. NMFS provided funding for an independent contractor to prepare for sector analyses in FY 2010, anticipating a cost of \$100,000 per document. It is anticipated that preparation of NEPA documents in subsequent years would incur a similar annual cost, to the sectors, though it may be reduced in future years, as subsequent analyses can build upon the initial NEPA analyses.

In addition to the preparation of these documents, submission of these documents would incur costs associated with copying and the postage required for delivery of the documents to NMFS. It is unknown how large these documents would be, however, based upon the documents submitted for FY 2010, it is estimated that each operations plans would require approximately 50 pages, and each NEPA document would require approximately 150 pages. Monitoring provider documents will also be submitted in conjunction with the operations plan by the sector (see below), therefore it is estimated that an additional 200 pages will be submitted. In total, it is anticipated that sectors will be submitting approximately 400 pages of materials. **With copying costs estimated at \$0.10, the cost incurred by each sector is approximately \$40. The cost of mailing a 5 pound parcel from the furthest state covered by the Northeast region would cost approximately \$10.00. Therefore, each sector would incur an additional \$50 cost for copying and submission of the required documents annually, for an annual total of \$950.**

**In summary, a total cost of \$2,850,950 is anticipated to be incurred by these requirements.**

### **Monitoring and Reporting Service Providers Application**

At \$0.10 per page, it is anticipated that **\$20 will be incurred to cover copying costs.** Monitoring provider documents are proposed to be submitted to the Sectors for inclusion in each operations plan. It is anticipated that each provider would supply the documents via electronic means, therefore incurring no additional costs. **Therefore, the total burden to the providers is anticipated to be \$20.**

Submission of an additional 5 pages **to respond to a service provider disapproval** would cost approximately \$1.50 in copying costs (5 pages X 3 responses X \$0.10/page) plus approximately \$1.50 in mailing costs (3 responses X \$0.44 postage), **for a total of \$3.**

### **Monitoring System for Discards**

The cost of a database is estimated at \$1,500 (for a PC with Microsoft Excel), with an annualized cost of \$500, or **\$9,500 for 19 computers.**

### **Sector Manager Weekly Catch Reports**

It is unknown how large these documents would be, but based on internal weekly quota monitoring procedures, would likely not be more than 5 pages. Assuming these documents are submitted in electronically, therefore **no additional costs would be incurred.**

### **Annual Reports**

The submission of sector annual reports that would be required under Amendment 16 would incur costs, proportional to the size of the document, from copying and the mailing of these documents to NMFS. The estimated cost for copying and postage that were used in Amendment 13 for the collection of this information was 10 pages per submission at \$0.10/page copying cost and two stamps per submission. Because additional information is required under Amendment 16, it is estimated that an annual report would double in length to approximately 20 pages. **Therefore, an annual cost burden for the submission of this document is estimated at \$4 per submission (20 pages X \$0.10 per page and 4 stamps X \$0.44 per stamp), or \$76 total.**

### **Notification of Ejection from a Sector**

This information collection does not require respondents to purchase new or additional equipment or services. Most computers, telephones and/or facsimile machines utilized by the respondents would have already been purchased as part of customary and usual business practices; thus start up costs associated with this provision are negligible. Therefore, immediate notification by either telephone or electronic communication would not incur additional costs beyond usual business practices. Using the previously assumed rate for copying (\$0.10/page), it is estimated that a 1-page notification of expulsion would, in total cost \$74 annually (741 responses X 1 page X \$0.10/page). Additionally, the costs associated with mailing (1 stamp) this 1-page correspondence is estimated at \$326 (741 responses X \$0.44/stamp). **In total, notification of expulsion from a sector is anticipated to cost \$400 annually.**

### **ANNUAL CATCH ENTITLEMENT (ACE) TRANSFERS**

For each ACE transfer request, two respondents would have to enter their information onto the application to transfer ACE form. It is not known whether ACE transfer would take place in person, or through other means. Accordingly, participants may mail the transfer application to the other participant to complete the transaction. The form would then have to be mailed to NMFS for processing. With 300 applications anticipated per year, **there would be a maximum postage cost of \$264** (300 stamps to mail the transfer from one respondent to the other + 300 more to mail the document to NMFS) X \$0.44/stamp). Participants may wish to retain a copy of

the ACE transfer form for their own records. Using an estimate of \$0.10 per page for copying costs, participants would incur **an additional \$60 cost** (600 copies X \$0.10/copy). **Therefore, postage and copying costs would total \$324.**

## **VMS REQUIREMENTS**

Based on the VMS requirement costs currently estimated in OMB Control No. 0648-0202, the 147 additional Category HA vessels will need to purchase and install a VMS unit at a cost of \$3,200 each, annualized to \$1,067 or **\$156,849 for all vessels**. These vessels must also call to confirm VMS installation; however, as telephone service is considered a routine business expense, no additional cost is expected to be incurred based on the VMS installation confirmation call. A one time postage cost of approximately \$65 is associated with VMS Certification Form submission (\$.44 per stamp x 147 vessels), **annualized to \$22.**

VMS monitoring in the NE multispecies fishery is automated, but costs \$0.05 per transmission with a polling rate of one time per hour. The total cost for daily, once-hourly VMS location transmission is \$1.20 per vessel (24 polls/day X \$0.05), totaling \$177 daily, for all Category HA permits.

The average monthly cost for a VMS unit, based on annual maintenance costs, is approximately \$150, or \$22,050 for all Category HA vessels. The total annual cost of monthly operation is \$27,360 (\$22,050 + \$5,310 for monthly polling). **Annual maintenance costs would be \$264,600 and annual polling costs, \$63,720.**

## **AREA AND DAS DECLARATION**

For each trip, a declaration with information on the vessel, days and times of departure, and description of fishing activities, will need to be transmitted via VMS. Using cost estimates of \$1/declaration previously approved under OMB Control No. 0648-0202, **it is anticipated to cost the 1,144 vessels \$12,500 to make the required declarations.**

## **BROAD STOCK AREA REQUIREMENTS**

All vessels that declare the intent to fish in two or more of the broad reporting areas will be required to submit a report via VMS at the conclusion of the trip that details the amount of fish the vessel kept. The catch report would include the VTR serial number (14 characters), date (8 characters), kept catch of each groundfish stock (13 species x 4 stock areas x 6 characters each = 312 characters), kept catch of all fish on board (6 characters), and commas separating the fields (54 characters), for a total of 394 characters per report. At a cost of \$0.004 per character plus \$0.50 per submission, each catch report would cost \$0.788. Therefore, **the total cost to the public of complying with this requirement is estimated to be \$1,970** (\$0.788/report x 2,500 reports).

## **CATCH REPORTING REQUIREMENTS**

The SAP catch reports will include the same data fields as the broad reporting area catch reports, and will have the same transmission cost of \$0.788 per report. Since this catch report will be

universal in form for all SAPs, the estimated cost to the public of fulfilling this requirement for each SAP will be the same. Amendment 16 proposes to decrease the reporting burden associated with this provision from daily to trip level, necessitating revising estimates included in the Logbook Family of Forms (OMB Control No. 0648-0212). Therefore, the total cost to the public of vessels participating in the U.S./Canada Management Area and associated SAPs is estimated to be **\$11,032** (\$0.788/report x 14,000 reports). The total cost to the public of vessels participating in the Closed Area I Hook Gear Haddock SAP is estimated to be **\$1,678** (\$0.788/report x 2,130 reports). The total cost associated with vessels participating in the Regular B Program is estimated to be **\$3,929** (\$0.788/report x 5,000 reports).

## **RESTRICTED GEAR AREAS**

### **RGA Letter of Authorization**

There is no estimated annual cost to the respondents or recordkeepers in association with this exemption program.

### **RGA VMS Declaration**

Vessels wishing to fish in one of the two RGA will be required to make a declaration through VMS. Each declaration will cost approximately \$0.50 per declaration. Assuming one third of all vessels fishes in one of these two areas, **the cost of these messages is estimated at \$245** (490 declarations X \$0.50/declaration).

## **DOCKSIDE MONITORING AND REPORTING REQUIREMENTS**

### **Hails and Confirmations**

#### *Trip-Start Hail*

For the purpose of estimating cost burden, it was assumed that all entities would make the trip-start hail via VMS. The hail email must include the vessel permit number (6 characters), Trip ID number (14 characters), anticipated arrival time (12 characters), and anticipated offload time (12 characters), and intended port/harbor and state of offload (12 characters), with fields separated by commas (5 characters), for a total of 61 characters per email. The most expensive VMS provider currently charges \$0.004 per character plus \$0.5 per email transmission, for a cost of \$0.744 per hail. **Assuming that all trips will be taken by sector vessels (25,000 trips) results in a total cost to the public of \$18,600** (\$0.744/hail x 25,000 hails). For hails via phone, there will be no cost to the public, beyond the costs associated with regular phone service.

#### *Trip-Start Hail Confirmation*

For hails via phone, there will be no cost to the providers, beyond the costs associated with regular phone service. However, for hails via VMS, dockside monitoring providers are required to send an email to the vessel operator confirming the receipt of the trip-start hail, at a cost to the vessel operator. The cost of this transmission would be attributed to the vessel operators to which the hails are sent. It is estimated that this transmission would include confirmation of receipt of the trip start hail and could contain up to 20 characters, at a cost of \$0.004 per character plus \$0.50 per email for transmission costs, for a total of \$0.58 per transmission. Providers would respond to one hail per trip for 25,000 trips per year (assuming all trips are

taken by sector vessels), which would result in a **total cost burden for vessel operators of \$14,500** (\$0.58/hail x 25,000 hails).

#### *Trip-End Hail*

For the purpose of estimating cost burden, it was assumed that all entities would make the trip-end hail via VMS, as opposed to by radio or phone, at a cost of \$0.9 per hail. The hail email must include the vessel permit number (6 characters), Trip ID number (14 characters), the first dock or dealer the vessel will be landing at (10 characters), the first port or harbor of landing (10 characters), the first state of landing (2 characters), the second port or harbor of landing (10 characters), the second state of landing (2 characters), arrival time (12 characters), offload time (12 characters), and the total weight of groundfish on board (6 characters), the total weight of non-groundfish on board (6 characters), with fields separated by commas (10 characters), for a total of 100 characters per email. The most expensive VMS provider currently charges \$0.004 per character plus \$0.5 per email transmission, for a total cost per hail of \$0.9. Assuming 27,500 items, at one hail per trip (including 2,500 correction hails), **the total cost to the public of fulfilling this requirement would be \$24,750** (\$0.9/hail x 27,500 hails).

#### *Trip-End Hail Confirmation*

It was assumed that responses to trip-end hails by providers would be via VMS, which would have an associated cost to the provider or vessel operator. The trip-end hail confirmation email would include confirmation of the receipt of the trip-end hail and notifying the vessel operator as to whether their vessel has been selected for a dockside or roving monitor or has been issued a waiver. It was estimated that this email would contain up to 50 characters, at a cost of \$0.004 per character, Or \$0.20 and 0.50 per email for transmission costs, totaling \$0.70 per email. **It is estimated that the providers would respond to one hail per trip for a maximum of 27,500 items per year (including 2,500 correction hails), which would result in a total cost burden for all vessel operators of \$19,250** (\$0.70/hail x 27,500 hails).

#### *Forwarding of Hails to NMFS*

There will be no recordkeeping/reporting costs to the respondents for this information collection requirement.

#### *Notification of Monitor Emergency*

There will be no recordkeeping/reporting costs to the respondents for this information collection requirement.

### **Database and Data Entry Requirements**

Each provider will be required to maintain a database of all dockside monitor reports, deployments, and associated information. The cost of the database (for a PC with Microsoft Excel which may be more sophisticated than a sector office already owns) is \$1,500, annualized to \$500, X 5 providers, **totaling \$2,500 per year.**

## **Dockside Monitoring Provider Reporting Requirements**

As outlined above, dockside monitoring providers must submit a number of reports, if requested. These reports include: reports of monitor deployments, reports including catch/discard data, reports of harassment, copies of contracts, copies of additional materials, and ensuring that monitors remain available for debriefing for two weeks following a monitored trip. With copying (\$0.10 per page) and mailing (\$0.44 per stamp), or \$0.54 per report, **costs for the 15,565 reports would total \$8,405.**

**For the OLE debrief, there are no costs to the respondents.**

## **AT-SEA MONITORING AND REPORTING REQUIREMENTS**

### **Hails and Notification**

#### *Pre-Trip Notification*

It is assumed that the pre-trip notification by sector vessels to the at-sea monitoring providers would be done by phone. Therefore, the cost of making this phone call is expected to be included in the costs of each individual vessel operator's phone service and result in no additional cost burden to the public.

#### *Vessel Notification of Selection for Coverage*

It is assumed that the notification by the provider to vessels of their selection for at-sea monitoring would be done by phone. Therefore, the cost of making this phone call is expected to be included in the costs of each individual provider's phone service and result in no additional cost burden to the public.

### **Database and Data Entry Requirements**

#### *At-Sea Monitoring Provider Database*

Each at-sea monitoring provider will be required to maintain a database of all at-sea monitor reports, deployments, and associated information. The cost burden associated with this requirement was determined to be the cost of the database itself, which could consist of a personal computer (PC) equipped with Microsoft Excel at an annualized cost of \$500. NEFOP will be providing the at-sea monitoring data to the providers and sectors in an electronic form that can be uploaded to the provider or sector databases at little to no cost. There is not anticipated to be any additional costs to providers for data input. Therefore, the total cost to the public of complying with this requirement is estimated to be \$500 annually, **totaling \$2,500 per year for five providers.**

#### *NMFS Data Processing*

NEFOP staff will receive data directly from at-sea monitors via an electronic method that is not anticipated to have a cost burden associated with it for the public. NEFOP will process this data in accordance with NEFOP procedures, before making it available to the public. This requirement will be fulfilled by the Federal government and, therefore, there is no expected cost burden for the public associated with this requirement.

## **At-Sea Monitoring Provider Reporting Requirements**

As outlined above, at-sea monitoring providers must submit a number of reports, if requested. These reports include: reports of monitor deployments, reports including catch/discard data, reports of harassment, copies of contracts, copies of additional materials, and ensuring that monitors remain available for debriefing for two weeks following a monitored trip. With copying (\$0.10 per page) and mailing (\$0.44 per stamp), or \$0.54 per report, **costs for the 15,565 reports would total \$8,405.**

**For the OLE debrief included under these requirements, there are no costs to the respondents.**

## **NORTHEAST FISHERY OBSERVER TRIP NOTIFICATION**

No additional cost to the public is expected to be incurred by the public due to this requirement, as telephone service is considered a routine business expense.

## **DEALER REQUIREMENTS**

Changes to the dealer reporting provisions would require dealers to provide weigh-out slips or reports to dockside/roving monitors. It is anticipated that 12,500 reports would be copied to meet this requirement. Assuming the report is a one page summary, it is **anticipated to cost \$1,250** (12,500 reports X \$0.10/page) to meet this requirement.

Start-up costs for 147 VMS monitors, annualized to 156,800 plus 29 computers (5 at-sea and 5 dockside monitoring providers and 19 sector offices), annualized to \$14,500 total **\$171,300**. Reporting/recordkeeping costs are **\$3,306,678**. **Total costs to the public are \$3,477,978.**

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

A full summary of the burden estimate involved in this collection of information can be found in Table 1.

## **SECTOR OPERATIONS**

### **Operations Plans and NEPA Analysis**

Sector documents submitted to NMFS under the provisions outlined in Amendment 16 would require extensive review to ensure that the operations plan and associated NEPA document meet the objectives of the FMP without jeopardizing the rebuilding plans of groundfish stocks. Based upon the time to review these documents submitted under Amendment 13 requirements, and taking into account the expansion of requirements under Amendment 16, it is anticipated to require 120 hours to review each sector's submission. Using a wage rate of \$30/hour (ZP<sup>1</sup>-02 and ZP-03 levels), results in an annualized cost to the government of \$68,400 (120 hours X 19 sector X \$30/hour).

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<sup>1</sup> Federal series for biological/engineering career path

## **Monitoring and Reporting Service Provider Application**

Since monitoring provider documents are proposed to be submitted along with the sector's operations plan and NEPA analysis, it is expected that the cost of reviewing these documents would already be covered under the review of the operations plan.

## **Response to Denial**

Based on a similar program approved under OMB Control No. 0648-0546, it is estimated to take the government approximately 1 hour to review each submission, totaling 3 hours. At a pay rate of \$35/hour (ZP-03 level), it would cost \$105 to review these additional materials.

## **Monitoring System for Discards**

The sector database requirement will be fulfilled by individual sectors and, therefore, this requirement is expected to have no cost burden for the Federal government.

## **Sector Manager Weekly Catch Reports**

Since NMFS will use the weekly report to ensure that the data being used by the sector is consistent with the data submitted directly to NMFS, staff will be required to review the weekly reports. It is anticipated to require approximately 2 hours to review each submission, and reconcile data. At the ZP-03 level (\$35/hour) the review of 988 reports is anticipated to cost \$69,160.

## **Annual Reports**

In addition, each approved sector would be required to submit an annual report summarizing the sector's activities and harvest levels for the fishing year. Based upon the estimate included in Amendment 13 for the review of an annual report, and factoring in additional requirements, it is estimated to require approximately 4 hours to review and evaluate the performance of the sector. This review would cost the government \$140 per submission (ZP-03 level at \$35/hour), resulting in a potential cost of \$2,660 (\$140/submission X 19 submissions).

## **Notification of Ejection from a Sector**

Upon receipt of notification that a vessel has been ejected from a sector, NMFS would be required to process this information internally, including notifying multiple divisions of this action, likely through electronic means. It is therefore anticipated that it would require approximately 30 minutes to notify the appropriate parties and add the proper information into the appropriate databases. Therefore, it is estimated to cost the government approximately \$11,115 (741 responses X 0.5 hours X \$30/hour) annually.

## **ANNUAL CATCH ENTITLEMENT (ACE) TRANSFERS**

Costs associated with the transfer program reflect a cost of \$15/hour to the government at the ZP-02 level. The cost to the government for the ACE transfer program requires 10 minutes per request. This results in an annualized cost of \$750 to the government (300 applications X 10

minutes/response X \$15/hour) to review and process an ACE transfer. In addition, the government would incur the costs associated with distributing receipts to both participants. It is estimated that one toner cartridge would be necessary to print these receipts at approximately \$40. These receipts are mailed to each participant at a cost of \$264 (600 stamps X \$0.44/stamp). This results in an additional cost of \$1,014 to the government for the management of the ACE transfer program.

## **VMS REQUIREMENTS**

Based on estimates used in the renewal of OMB Control No. 0648-0202, there is a \$25 per hour wage and overhead cost to the Government associated with the call-ins to verify proof of VMS installation and processing of the VMS Certification Form. Assuming 147 vessels purchase new VMS units, the total annualized cost to the government for receiving verification calls and processing certification forms is estimated at \$306 (147 vessels X 15 minutes/verification X \$25/hour/3 years). There is no cost to the Federal government associated with automated VMS polling of vessel position.

## **AREA AND DAS DECLARATION**

The only cost incurred by the Federal government from this requirement is associated with software used to process the transmissions. These software costs are included in the general costs of operating and administering the VMS program, which are estimated at \$352,293 annually. This requirement will not add any additional burden to the Federal government.

## **BROAD STOCK AREA REQUIREMENTS**

The VMS catch reports from vessels fishing in multiple broad reporting areas will be transmitted to NMFS via VMS. The costs associated with the transmission of this message will be borne by the individual vessels. The only cost incurred by the Federal government from this requirement is associated with software used to process the transmissions. These software costs are included in the general costs of operating and administering the VMS program, which are estimated at \$352,293 annually. This requirement will not add any additional burden to the Federal government.

## **CATCH REPORTING REQUIREMENTS**

The VMS catch reports from vessels fishing in SAPs will be transmitted to NMFS via VMS. The costs associated with the transmission of this message will be borne by the individual vessels. The only cost incurred by the Federal government from this requirement is associated with software used to process the transmissions. These software costs are included in the general costs of operating and administering the VMS program, which are estimated at \$352,293 annually. This requirement will not add any additional burden to the Federal government.

## RESTRICTED GEAR AREAS

### **GRA Letter of Authorization**

The cost burden associated with issuing LOAs for exemption programs authorized for permit holders is estimated to be \$25/hour to the Federal government. Therefore, administering this exemption program would cost \$1,025 annually (41 hours x \$25/hour). In addition, the government would incur costs associated with mailing the LOA to the requesting party. An additional cost of \$215.60 (490 responses x \$0.44/stamp) would be associated with this program. Therefore, the total cost to the Federal government is estimated at \$1,240.60 (\$1,241).

### **RGA VMS Declaration**

The only cost incurred by the Federal government from this requirement is associated with software used to process the transmissions. These software costs are included in the general costs of operating and administering the VMS program, which are estimated at \$352,293 annually. This requirement will not add any additional burden to the Federal government.

## DOCKSIDE MONITORING AND REPORTING REQUIREMENTS

### **Hails and Confirmations**

#### *Trip-Start Hail*

Individual vessels will hail to dockside monitoring providers before the start of a trip via telephone or an email via VMS. The cost of this transmission will be borne by the individual vessels making the hails and, therefore, this requirement is not expected to add an additional cost burden for the Federal government.

#### *Trip-Start Hail Confirmation*

This hail confirmation will be by phone or email via VMS from the dockside monitoring providers to individual vessels in response to the trip-start hail. The cost of this hail will be borne by the vessels receiving the transmissions and, therefore, this requirement is expected to have no cost burden for the Federal government.

#### *Trip-End Hail*

Individual vessels will hail to dockside monitoring providers at the end of a trip by email via VMS. The cost of this transmission will be borne by the individual vessels making the hails and, therefore, this requirement is expected to have no cost burden for the Federal government.

#### *Trip-End Hail Confirmation*

This requirement consists of a VMS transmission from the dockside monitoring providers to individual vessels. The cost of this transmission will be borne by the vessels receiving the transmissions and, therefore, this requirement is expected to have no cost burden for the Federal government.

#### *Forwarding of Hails to NMFS*

This requirement applies to individual sectors and monitoring providers. The cost of forwarding hails will be borne by the individual sectors, by forwarding the hails themselves or as part of the

contract with their monitoring providers. Therefore, this requirement is expected to have no cost burden for the Federal government.

#### *Notification of Monitor Emergency*

Cost burden to the Federal government associated with this requirement was estimated as the cost of having staff take the five minute phone calls from providers for an estimated 25% of trips. The cost of phone service was not factored into this estimation, because it was assumed it would be covered under NMFS' regular phone service costs. A wage rate of \$25 per hour and a total hour burden of 521 hours [(5 min/call x 6,250 calls)/60 min] results in a total estimated cost burden to the Federal government of \$13,021 (\$25/hour x 521 hours).

### **Database and Data Entry Requirements**

#### *Dockside Monitoring Provider Database*

This requirement is for providers providing dockside monitoring services to maintain a database of dockside monitor reports, deployments, and other data. The cost of complying with this requirement will be borne by the dockside monitoring providers and, therefore, this requirement is expected to have no cost burden for the Federal government.

### **Dockside Monitoring Provider Reporting Requirements**

As outlined above, dockside monitoring providers must submit a number of reports, if requested. These reports include: reports of monitor deployments, reports including catch/discard data, reports of harassment, copies of contracts, copies of additional materials, and ensuring that monitors remain available for debriefing for two weeks following a monitored trip. Including the cost of reviewing (17,108 hours) these documents and conducting a debrief (at \$35 per hour), these requirements are anticipated to cost \$721,361.

## **AT-SEA MONITORING AND REPORTING REQUIREMENTS**

### **Hails and Notifications**

#### *Pre-Trip Notification*

Individual vessels will notify the at-sea monitoring providers of their intent to take a trip by phone. The cost of this phone call would be covered by the individual vessels making the notification and, therefore, this requirement is expected to have no cost burden for the Federal government.

#### *Vessel Notification of Selection for Coverage*

This requirement consists of a phone call from an at-sea monitoring provider to an individual vessel, upon receipt of the pre-trip notification, notifying the vessel that it has been selected for at-sea monitoring coverage. The cost of this notification will be borne by the at-sea monitoring provider and, therefore, this requirement is expected to have no cost burden for the Federal government.

## **Database and Data Entry Requirements**

### *At-Sea Monitoring Provider Database*

This requirement is for providers providing at-sea monitoring services to maintain a database of at-sea monitor reports, deployments, and other data. The cost of complying with this requirement will be borne by the at-sea monitoring providers and, therefore, this requirement is expected to have no cost burden for the Federal government.

### *NMFS Data Processing<sup>2</sup>*

NEFOP staff will receive data directly from at-sea monitors via an electronic method that is not expected to change the cost burden associated with the administration and operation of NEFOP. However, NEFOP will process this data in accordance with NEFOP procedures, before making it available to the public. Assuming a 30% coverage rate and that all groundfish trips are made by sector vessels, NEFOP will process data from 7,500 monitor reports annually. An estimate of 30 minutes to process each report at a pay rate of \$35 per hour is consistent with estimates of burden from previous observer program approved under OMB 0648-0546). Thus, the total cost to the government will be \$131,250.00 [(0.5 hours/report x 7,500 reports) x \$35/hour].

## **At-Sea Monitoring Provider Reporting Requirements**

As outlined above, at-sea monitoring providers must submit a number of reports, if requested. These reports include: reports of monitor deployments, reports including catch/discard data, reports of harassment, copies of contracts, copies of additional materials, and ensuring that monitors remain available for debriefing for two weeks following a monitored trip. Including the cost of review (17,108 hours) these documents and conducting a debrief (at \$35 per hour), these requirements are anticipated to cost \$721,361.

## **NORTHEAST FISHERY OBSERVER TRIP NOTIFICATION**

The cost calculations for observer deployment are based on \$25 per hour wage and overhead value for the Government. There are an estimated 25,000 fishing trips per year that would be notifying NEFOP of a scheduled trip. Each response to an observer coverage request is expected to take 2 minutes to complete, thus the annualized cost to the Government is \$22,075.

## **DEALER REQUIREMENTS**

The Federal government will not incur any additional costs based on this requirement.

**Total government costs would be \$1,763,069.**

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

This is a new program. Unduplicated burden associated with OMB Control Nos. 0648-0202, 0648-0212, 0648-0229 and 0648-0593 will be merged with these collections when time allows.

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<sup>2</sup> There was no similar item under Dockside Monitoring: NMFS is not responsible for the Dockside monitoring database. At sea monitoring data is processed by the government (NEFOP) in accordance with NEFOP standards. Dockside Monitoring Data is not.

**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.**

Not applicable.

**18. Explain each exception to the certification statement.**

Not applicable.

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

This collection does not employ statistical methods.

	# of Entities	Items per Entity	Total # of Items	Response Time (hours)	Total Burden	Public	Govt.
<b>Sector Operations</b>							
Operations Plan and NEPA Analysis	19	1	19	640	12160	2850950	68400
Monitoring and Reporting Service Providers Applicator	5	1	5	10	50	20	0
Response to Denial	3	1	3	10	30	3	105
Monitoring System for Discards (database) Annualized 30% coverage	19	1,974	37,500	0.05	1875	9500	0
Sector manager weekly catch reports	19	52	988	4	3952	0	69160
Annual Reports	19	1	19	12	228	76	2660
Notification of Ejection from Sector	741	1	741	0.5	371	400	11115
<b>Transfer of ACE</b>	300	2	600	0.083	50	324	1014
<b>VMS Installation</b>							
Cost of VMS Unit (\$3,200 per unit, annualized)	147	1				156849	0
<b>Proof of VMS Installation</b>							
VMS Certification Form	147	1	49	0.167	8	22	204
Call-in for unit confirmation	147	1	49	0.083	4	0	102
<b>VMS Operation</b>							
Multispecies	147					264600	0
<b>Automated VMS polling of vessel position</b>							
Automated VMS polling (365*24)	147	8,760				63720	0
<b>Area and DAS Declaration (time burden and message cost)</b>							
Groundfish vessels fishing under any NE Multispecies DAS	1,144	22	25,000	0.083	2083	12500	0
<b>Broad Stock Area Requirements</b>							
VMS trip catch reports	134	19	2,500	0.25	625	1970	0
<b>Catch Reporting Requirements</b>							
US/Canada Area and CA II SAPs	400	35	14,000	0.25	3500	11032	0
Closed Area 1 SAP	142	15	2,130	0.25	533	1678	0
Regular B Program	997	5	4,985	0.25	1246	3929	0
<b>Restricted Gear Areas</b>							
RGA LOA	490	1	490	0.083	41	0	1241
RGA VMS Declaration	490	1	490	0.083	40	245	0
<b>Dockside Monitoring and Reporting Requirements</b>							
Trip start hail (vessel)	1,482	17	25,000	0.03	833	18600	0
Trip start hail confirmation (vessel)	1,482	0		n/a	0	14500	0
Trip-end hail (vessel)	1,482	19	27,500	0.25	6875	24750	0
Trip-end hail confirmation (observer provider)	1,482	19	27,500	0.03	833	19250	0
Forward Hails to NMFS	19	2,763	52,500	0.03	1750	0	0
Notification to vessel/sector/NMFS of monitor emergency	5	3,750	18,750	0.083	2605	0	13021
Database and Data Entry Requirements	5	3,300	16,500	0.05	825	2500	0
Reporting Requirements (costs for all items below)						8405	721361
Report of Monitor Deployments	5	1680	8,400	0.167	1403		
Relay Catch/Discard Data to NMFS	5	1680	8,400	0.083	697		
Reports of Harassment, Discrimination, Safety Concern, Injury, etc	5	1000	5000	0.5	2500		
Copy of Each Signed and valid Contract between Provider and Entities Requiring Monitoring	5	1	5	0.5	3		
Copy of Additional Service Provider Documents	5	1	10	0.5	5		
OLE Debrief of Monitor (govt. costs included in reporting requirements above)	5	1250	6250	2	12500	0	
<b>At-Sea Monitoring and Reporting Requirements</b>							
Pre-trip notification	700	36	25,000	0.08	2000	0	
Vessel notification of selection for coverage	5	1,500	7,500	0.08	625	0	
NMFS ASM Database and Data Entry	1	0	0	0.50	0	0	131250
ASM Vendor Database Requirements	5	0	0	0.00	0	2500	0
Reporting Requirements ( public and government costs for all items below)						8405	721361
Report of Monitor Deployments	5	1680	8,400	0.167	1403		
Relay Catch/Discard Data to NMFS	5	1680	8,400	0.083	697		
Reports of Harassment, Discrimination, Safety Concern, Injury, etc	5	1000	5000	0.5	2500		
Copy of Each Signed and valid Contract between Provider and Entities Requiring Monitoring	5	1	5	0.5	3		
Copy of Additional Service Provider Documents	5	1	10	0.5	5		
OLE Debrief of Monitor (govt. costs included in reporting requirements above)	5	1250	6250	2	12500	0	
<b>Northeast Fishery Observer Program</b>							
48-hour notification for all Multispecies Vessels	1482	17	25000	0.03	833	0	22075
<b>Dealer Requirements</b>							
Provide Weigh-out Slips/Receipts to Monitoring Providers	576	22	12,500	0.03	417	1250	0
<b>Totals</b>	<b>1,482</b>		<b>383,448</b>		<b>78608</b>	<b>3477978</b>	<b>1763069</b>



# 2010 APPLICATION TO TRANSFER ANNUAL CATCH ENTITLEMENT (ACE) BETWEEN SECTORS

Provide all information requested

**SUBMIT TO**  
**NE MULTISPECIES ACE TRANSFER PROGRAM**  
**US DEPARTMENT OF COMMERCE, NOAA**  
**NATIONAL MARINE FISHERIES SERVICE**  
**55 GREAT REPUBLIC DRIVE, GLOUCESTER, MA 01930**

**Sector Transferring ACE:**  
Sector Name: \_\_\_\_\_

**Sector Receiving ACE:**  
Sector Name: \_\_\_\_\_

**Amount (in pounds) of ACE to be transferred, by stock:**

_____ : GB Cod	_____ : SNE/MA Yellowtail Flounder
_____ : GB Haddock	
_____ : GB Winter Flounder	_____ : E. US/CAN Cod
_____ : GB Yellowtail Flounder	_____ : E. US/CAN Haddock
	_____ : Witch Flounder
_____ : GOM Cod	_____ : American Plaice
_____ : GOM Haddock	_____ : White Hake
_____ : GOM Winter Flounder	_____ : Pollock
_____ : CC/GOM Yellowtail Flounder	_____ : Redfish

**Total Price Paid for ACE Transfer:** \_\_\_\_\_

Signed: \_\_\_\_\_  
(Transferring Sector Manager)

Signed: \_\_\_\_\_  
(Receiving Sector Manager)

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

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

**ACE Transfer applications must be received by close of business May 15, 2011.**

ACE may be transferred only through the end of the current fishing year and two weeks after the fishing year ends and must be used in accordance with the regulations at 50 CFR 648.87(b)(1)(viii). Please see a summary of conditions and restrictions on the reverse side of this form.

**NOTE:** If the sector's ACE is exceeded, the sector must cease operations in that stock area until it can acquire additional ACE through a transfer to balance the catch. A sector can resume fishing in the stock area if it acquires more ACE.

This form is required to obtain approval for the transferring of ACE under 50 CFR 648.87(b)(1)(viii) and to monitor ACE allocation and usage for each sector. Signature of this form certifies that sectors comply with limited access permit requirements specified in 50 CFR 648.4, and that the information provided on this form is true, complete and correct to the best of their knowledge, and made in good faith (18 U.S.C. 1001). Making a false statement on this form is punishable by law.

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

Public reporting burden for this collection of information is estimated to average 5 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information. Send comments regarding this burden estimate or suggestions for reducing this burden estimate or any other aspect of this collection of information to NMFS, 55 Great Republic Drive, Gloucester, MA 01930.

Reg text to be included once regs are complete...



**United States Department Of Commerce**  
National Oceanic and Atmospheric Administration  
National Marine Fisheries Service  
Northeast Region  
55 Great Republic Drive  
Gloucester, MA 01930

## **GULF OF MAINE HADDOCK SINK GILLNET PROGRAM AUTHORIZATION LETTER**

F/V

**Date Issued:**  
**Permit Number:**  
**Hull Number:**  
**Participation Period:**

Pursuant to regulations at 50 CFR 648.85(b)(9), the above vessel is authorized to target haddock in the Gulf of Maine (GOM) Regulated Mesh Area using sink gillnet gear with less than the minimum mesh size specified at 50 CFR 648.80(a)(3)(ii) provided that the vessel complies with the following conditions and requirements specified:

1. This authorization letter must be carried on board the vessel.
2. Stand-up gillnet gear must be used exclusively for the duration of the participation period specified above. The gillnets may not have mesh less than six inches.
3. A Day gillnet vessel participating in this program cannot fish with, possess, haul, or deploy more than thirty nets. There are no limits on the number of nets for Trip gillnet vessels.
4. The season for this program is January 1 through April 30 and remains subject to any rolling or seasonal closures. The minimum participation period for this program is the entire season.
5. All vessels notifying NMFS of their intent to participate must use Category A DAS for any fishing trip during the period January 1 through April 30, regardless of whether catch is landed or not.
6. Participating vessel must annually notify NMFS by October 1 of the intent to participate in this program. Vessels advising NMFS of their intent to participate in the program must notify the observer program at least 72 hours before any sink gillnet trip during the period between January 1 and April 30.
7. Failure to comply with any of the above provisions, or of the provisions of the Magnuson-Stevens Act, automatically and immediately voids this authorization and subjects the violator to fines and/or permit sanctions.

PRIVACY ACT STATEMENT: Under the provision of the Privacy Act of 1974 (Public Law 93-579), no agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains.

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BURDEN STATEMENT: The GOM Haddock Sink Gillnet Authorization is approved under OMB Control #0648-XXXX, and is approved for use through XX/XX/XXXX. Public reporting burden for this collection of information is estimated to average 2 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 suggestions for reducing this burden to National Marine Fisheries Service, Fishery Management Operation Division, 55 Great Republic Drive, Gloucester, MA 01930-2298.

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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.



United States Department Of Commerce  
National Oceanic and Atmospheric Administration  
National Marine Fisheries Service  
Northeast Region  
55 Great Republic Drive  
Gloucester, MA 01930

## NORTHEAST MULTISPECIES RESTRICTED GEAR AREA AUTHORIZATION LETTER

F/V

**Date Issued:**  
**Permit Number:**  
**Hull Number:**  
**Participation Period:**

Pursuant to regulations at 50 CFR 648.8X(x), the above vessel is authorized to fish in the Northeast Multispecies Restricted Gear Areas provided that the vessel complies with the following conditions and requirements specified at 50 CFR 648.8X(x):

1. This authorization letter must be carried on board the vessel.
2. Gear restrictions. Unless otherwise authorized pursuant to paragraph (n)(3)(iv) of this section, a limited access NE multispecies vessel subject to the restrictions of paragraph (n) of this section may only use one or more of the gear types listed in paragraphs 648.81(n)(3)(i) through (iii) of this section. No other type of fishing gear may be on board the vessel when fishing in the NE Multispecies Restricted Gear Areas specified in paragraphs (n)(1) and (2) of this section.
3. Trip limits. A limited access NE multispecies vessel subject to the restrictions of paragraph (n) of this section must comply with the trip limits specified in § 648.86, unless further restricted by the following trip limits:
  - If fishing exclusively under a NE multispecies DAS or under both a NE multispecies DAS and a monkfish DAS with gear other than gillnet gear, 500 lb (227 kg) of all flatfish species (American plaice, witch flounder, winter flounder, windowpane flounder, yellowtail flounder, and Atlantic halibut), combined; 500 lb (227 kg) of monkfish (whole weight), unless also subject to the monkfish possession restrictions in § 648.94(b)(3); 500 lb (227 kg) of skates (whole weight); and zero possession of lobsters.
  - If fishing under both a NE multispecies DAS and a monkfish DAS with gillnet gear, 500 lb (227 kg) of all flatfish species (American plaice, witch flounder, winter flounder, windowpane flounder, yellowtail flounder, and Atlantic halibut), combined; the applicable monkfish possession limits specified in § 648.94(b); 500 lb (227 kg) of skates (whole weight); and zero possession of lobsters.
4. Transiting. A limited access NE multispecies vessel that is not subject to the restrictions of this paragraph (n) may transit the NE Multispecies Restricted Gear Areas specified in

paragraphs (n)(1) and (2) of this section, provided any gear that is not authorized under paragraph (n)(3) of this section is stowed and not available for immediate use in accordance with § 648.23(b).

5. There is a minimum enrollment period of 7 calendar days. A vessel may not fish outside of these RGAs during the participation period listed on the LOA. Vessels issued this exemption authorization for a period longer than 7 calendar days may withdraw from the exemption authorization no earlier than 7 days after the first day of the participation period noted above. Vessel owners may request a withdrawal by calling the NMFS, Northeast Region Permit Office at (978) 281-9370. The vessel will not be officially withdrawn until it returns the valid Letter of Authorization to the Permit Office at the address above and receives a Withdrawal Notice issued by NMFS.
6. Failure to comply with any of the above provisions, or of the provisions of the Magnuson-Stevens Act, automatically and immediately voids this authorization and subjects the violator to fines and/or permit sanctions.

PRIVACY ACT STATEMENT: Under the provision of the Privacy Act of 1974 (Public Law 93-579), no agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains.

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BURDEN STATEMENT: The Restricted Gear Areas Authorization is approved under OMB Control #0648-XXXX, and is approved for use through **XX/XX/XXXX**. Public reporting burden for this collection of information is estimated to average 2 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 suggestions for reducing this burden to National Marine Fisheries Service, Fishery Management Operation Division, 55 Great Republic Drive, Gloucester, MA 01930-2298.

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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.

**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;

**16 U.S.C. 1853**  
**MSA § 303**

(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;

**16 U.S.C. 1853**  
**MSA § 303**

(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]<sup>15</sup> 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.

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<sup>15</sup> 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)<sup>16</sup>—

(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.

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<sup>16</sup> 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]<sup>17</sup> 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.

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<sup>17</sup> 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.

**16 U.S.C. 1853a**  
**MSA § 303A**

(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 GROUND FISH 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.

**16 U.S.C. 1853a note, 1854**  
**MSA §§ 303A note, 304**

**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.

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**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.

**16 U.S.C. 1881a-1881b**  
**MSA §§ 402-403**

(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.

**Title 50: Wildlife and Fisheries**

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

**Subpart F—Management Measures for the NE Multispecies and Monkfish Fisheries**

**§ 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)(2) 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)(2) 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 violations of such conditions and requirements and any other applicable Federal regulations, resulting in an assessment of 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 NMFS pursuant to paragraph (c)(2) of this section.

(xvi) The Regional Administrator may exempt participants in the Sector, pursuant to paragraph (c)(2) 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)(1)(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 Operations Plan specified in this paragraph (b)(2) and the Letter of Authorization issued pursuant to paragraph (c)(2) of this section. It shall be unlawful to violate any such conditions and requirements unless such conditions or restrictions are identified as administrative only in an approved Operations Plan. Each Sector, vessel, and vessel operator and/or vessel owner participating in the Sector may be charged jointly and severally for violations of Sector Operations Plan requirements as well as any other applicable Federal regulations, resulting in an assessment of civil penalties and permit sanctions pursuant to 15 CFR part 904.

(c) *Approval of a Sector and granting of exemptions by the Regional Administrator*. (1) Once the submission documents specified under paragraphs (a)(1) and (b)(2) of this section have been determined to comply with the requirements of this section, NMFS may consult with the Council and shall approve or disapprove Sector operations consistent with applicable law.

(2) 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, and 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.

(3) The Regional Administrator may withdraw approval of a Sector, after consultation with the Council, at any time 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 consistent with applicable law.

(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	<sup>(1)</sup>	70°00'
HS2	42°20'	70°00'
HS3	42°20'	<sup>3</sup> 67°18.4'
Follow the U.S. EEZ boundary south to HS4		
HS4	39°00'	66°45.5'
HS5	39°00'	71°40'
HS6	<sup>(2)</sup>	71°40'

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

<sup>2</sup>The south facing shoreline of Rhode Island.

<sup>3</sup>The U.S. Canada Maritime Boundary.

(ii) *Eligibility*. All vessels issued a valid limited access NE multispecies DAS permit are eligible to participate in the GB Cod Hook Sector.

(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, 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)(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) *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 valid limited access NE multispecies DAS permit are eligible to participate in the GB Cod Fixed Gear Sector.

(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.

# **The National Environmental Policy Act of 1969**, as amended

(Pub. L. 91-190, 42 U.S.C. 4321-4347, January 1, 1970, as amended by Pub. L. 94-52, July 3, 1975, Pub. L. 94-83, August 9, 1975, and Pub. L. 97-258, § 4(b), Sept. 13, 1982)

An Act to establish a national policy for the environment, to provide for the establishment of a Council on Environmental Quality, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That this Act may be cited as the "National Environmental Policy Act of 1969."

## **Purpose**

### **Sec. 2 [42 USC § 4321].**

The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

## **TITLE I**

### **CONGRESSIONAL DECLARATION OF NATIONAL ENVIRONMENTAL POLICY**

#### **Sec. 101 [42 USC § 4331].**

(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may --

1. fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
2. assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
3. attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
4. preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;
5. achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
6. enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

#### **Sec. 102 [42 USC § 4332].**

The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall --

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on --

- (i) the environmental impact of the proposed action,
- (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
- (iii) alternatives to the proposed action,
- (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
- (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes;

(D) Any detailed statement required under subparagraph (C) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or official, if:

- (i) the State agency or official has statewide jurisdiction and has the responsibility for such action,
- (ii) the responsible Federal official furnishes guidance and participates in such preparation,
- (iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and
- (iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this Act; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.

(E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(F) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(G) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(H) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(I) assist the Council on Environmental Quality established by title II of this Act.

**Sec. 103 [42 USC § 4333].**

All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this Act and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this Act.

**Sec. 104 [42 USC § 4334].**

Nothing in section 102 [42 USC § 4332] or 103 [42 USC § 4333] shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.

**Sec. 105 [42 USC § 4335].**

The policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of Federal agencies.

**TITLE II**

**COUNCIL ON ENVIRONMENTAL QUALITY**

**Sec. 201 [42 USC § 4341].**

The President shall transmit to the Congress annually beginning July 1, 1970, an Environmental Quality Report (hereinafter referred to as the "report") which shall set forth (1) the status and condition of the major natural, manmade, or altered environmental classes of the Nation, including, but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range, urban, suburban and rural environment; (2) current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the Nation; (3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures; (4) a review of the programs and activities (including regulatory activities) of the Federal Government, the State and local governments, and nongovernmental entities or individuals with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and (5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.

**Sec. 202 [42 USC § 4342].**

There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the "Council"). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in the light of the policy set forth in title I of this Act; to be conscious of and responsive to the scientific, economic, social, aesthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment.

**Sec. 203 [42 USC § 4343].**

(a) The Council may employ such officers and employees as may be necessary to carry out its functions under this Act. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this Act, in accordance with section 3109 of title 5, United States Code (but without regard to the last sentence thereof).

(b) Notwithstanding section 1342 of Title 31, the Council may accept and employ voluntary and uncompensated services in furtherance of the purposes of the Council.

**Sec. 204 [42 USC § 4344].**

It shall be the duty and function of the Council --

1. to assist and advise the President in the preparation of the Environmental Quality Report required by section 201 [42 USC § 4341] of this title;
2. to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in title I of this Act, and to compile and submit to the President studies relating to such conditions and trends;
3. to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in title I of this Act for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto;
4. to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;
5. to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;
6. to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;
7. to report at least once each year to the President on the state and condition of the environment; and
8. to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.

**Sec. 205 [42 USC § 4345].**

In exercising its powers, functions, and duties under this Act, the Council shall --

1. consult with the Citizens' Advisory Committee on Environmental Quality established by Executive Order No. 11472, dated May 29, 1969, and with such representatives of science, industry, agriculture, labor, conservation organizations, State and local governments and other groups, as it deems advisable; and
2. utilize, to the fullest extent possible, the services, facilities and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication of effort and expense may be avoided, thus assuring that the Council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

**Sec. 206 [42 USC § 4346].**

Members of the Council shall serve full time and the Chairman of the Council shall be compensated at the rate provided for Level II of the Executive Schedule Pay Rates [5 USC § 5313]. The other members of the Council shall be compensated at the rate provided for Level IV of the Executive Schedule Pay Rates [5 USC § 5315].

**Sec. 207 [42 USC § 4346a].**

The Council may accept reimbursements from any private nonprofit organization or from any department, agency, or instrumentality of the Federal Government, any State, or local government, for the reasonable travel expenses incurred by an officer or employee of the Council in connection with his attendance at any conference, seminar, or similar meeting conducted for the benefit of the Council.

**Sec. 208 [42 USC § 4346b].**

The Council may make expenditures in support of its international activities, including expenditures for: (1) international travel; (2) activities in implementation of international agreements; and (3) the support of international exchange programs in the United States and in foreign countries.

**Sec. 209 [42 USC § 4347].**

There are authorized to be appropriated to carry out the provisions of this chapter not to exceed \$300,000 for fiscal year 1970, \$700,000 for fiscal year 1971, and \$1,000,000 for each fiscal year thereafter.

**The Environmental Quality Improvement Act**, as amended (Pub. L. No. 91- 224, Title II, April 3, 1970; Pub. L. No. 97-258, September 13, 1982; and Pub. L. No. 98-581, October 30, 1984.

**42 USC § 4372.**

(a) There is established in the Executive Office of the President an office to be known as the Office of Environmental Quality (hereafter in this chapter referred to as the "Office"). The Chairman of the Council on Environmental Quality established by Public Law 91-190 shall be the Director of the Office. There shall be in the Office a Deputy Director who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) The compensation of the Deputy Director shall be fixed by the President at a rate not in excess of the annual rate of compensation payable to the Deputy Director of the Office of Management and Budget.

(c) The Director is authorized to employ such officers and employees (including experts and consultants) as may be necessary to enable the Office to carry out its functions under this chapter and Public Law 91-190, except that he may employ no more than ten specialists and other experts without regard to the provisions of Title 5, governing appointments in the competitive service, and pay such specialists and experts without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but no such specialist or expert shall be paid at a rate in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of Title 5.

(d) In carrying out his functions the Director shall assist and advise the President on policies and programs of the Federal Government affecting environmental quality by --

1. providing the professional and administrative staff and support for the Council on Environmental Quality established by Public Law 91- 190;
2. assisting the Federal agencies and departments in appraising the effectiveness of existing and proposed facilities, programs, policies, and activities of the Federal Government, and those specific major projects designated by the President which do not require individual project authorization by Congress, which affect environmental quality;
3. reviewing the adequacy of existing systems for monitoring and predicting environmental changes in order to achieve effective coverage and efficient use of research facilities and other resources;
4. promoting the advancement of scientific knowledge of the effects of actions and technology on the environment and encouraging the development of the means to prevent or reduce adverse effects that endanger the health and well-being of man;
5. assisting in coordinating among the Federal departments and agencies those programs and activities which affect, protect, and improve environmental quality;
6. assisting the Federal departments and agencies in the development and interrelationship of environmental quality criteria and standards established throughout the Federal Government;
7. collecting, collating, analyzing, and interpreting data and information on environmental quality, ecological research, and evaluation.

(e) The Director is authorized to contract with public or private agencies, institutions, and organizations and with individuals without regard to section 3324(a) and (b) of Title 31 and section 5 of Title 41 in carrying out his functions.

**42 USC § 4373.** Each Environmental Quality Report required by Public Law 91-190 shall, upon transmittal to Congress, be referred to each standing committee having jurisdiction over any part of the subject matter of the Report.

**42 USC § 4374.** There are hereby authorized to be appropriated for the operations of the Office of Environmental Quality and the Council on Environmental Quality not to exceed the following sums for the following fiscal years which sums are in addition to those contained in Public Law 91- 190:

- (a) \$2,126,000 for the fiscal year ending September 30, 1979.
- (b) \$3,000,000 for the fiscal years ending September 30, 1980, and September 30, 1981.
- (c) \$44,000 for the fiscal years ending September 30, 1982, 1983, and 1984.
- (d) \$480,000 for each of the fiscal years ending September 30, 1985 and 1986.

**42 USC § 4375.**

(a) There is established an Office of Environmental Quality Management Fund (hereinafter referred to as the "Fund") to receive advance payments from other agencies or accounts that may be used solely to finance --

1. study contracts that are jointly sponsored by the Office and one or more other Federal agencies; and
2. Federal interagency environmental projects (including task forces) in which the Office participates.

(b) Any study contract or project that is to be financed under subsection (a) of this section may be initiated only with the approval of the Director.

(c) The Director shall promulgate regulations setting forth policies and procedures for operation of the Fund.

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 648

[Docket No. 040112010-4114-02; I.D. 122203A]

RIN 0648-AN17

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

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

**ACTION:** Final rule.

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

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

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

**ADDRESSES:** Copies of Amendment 13, its Regulatory Impact Review (RIR), and the Final Supplemental Environmental Impact Statement (FSEIS) are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, The Tannery-Mill 2, Newburyport, MA 01950. NMFS prepared a Final Regulatory Flexibility Act Analysis (FRFA), which is contained in the Classification section of this rule. The FSEIS/RIR/FRFA is also accessible via the Internet at <http://www.nero.nmfs.gov>. Copies of the Record of Decision (ROD) and the Small Entity Compliance Guide are available from the Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Street, Gloucester, MA 01930-2298.

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

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

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

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

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

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

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

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

#### SAPs

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Approved Measures

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

#### 1. Recreational Measures

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

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

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

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

#### 2. Handgear Permit

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

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

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

#### 3. Northern Shrimp Exempted Fishery

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

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

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

#### 5. SNE Scallop Dredge Exemption Program

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

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

#### 6. Modified VMS Operational Requirements

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

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

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

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

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

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

#### 8. Periodic Adjustments to the FMP

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

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

#### 9. Rebuilding Program

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

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

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

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

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

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

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

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

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

carried over and cannot be fished at this time.

**Default Measures.** Amendment 13 establishes fishing mortality rate targets to end overfishing and rebuild all of the managed groundfish stocks. Some of the fishing mortality rates are immediately reduced to a level that ends overfishing. For several other stocks, reductions in fishing mortality rates will be phased in, in order to mitigate impacts of the reductions. To ensure that the scheduled fishing mortality reductions under Amendment 13 are realized by fishing year 2006, specifically for American plaice and SNE/MA yellowtail flounder, which may require an additional reduction in the fishing mortality rate to completely end overfishing, the following default measures will automatically become effective on May 1, 2006: An additional 5-percent reduction in DAS, which will allow a vessel to fish up to 55 percent of its DAS baseline allocation as A DAS, and 45 percent as B DAS; and differential DAS counting for vessels fishing in the SNE/MA RMA, where DAS will be counted at a rate of 1.5 to 1. On May 1, 2009, there will be an additional DAS reduction of 10 percent, which will allow a vessel to fish up to 45 percent of its DAS baseline allocation as A DAS, and 55 percent as B DAS, to ensure rebuilding for GB cod, GOM cod, Cape Cod (CC)/GOM yellowtail flounder, SNE/MA yellowtail flounder, American plaice, white hake, and SNE/MA winter flounder. A stock assessment update is scheduled to occur in 2005, and a benchmark assessment will be conducted in 2008 to determine whether the default measures are necessary, or whether existing measures have proven sufficient to achieve the necessary reductions in fishing mortality. The default measures will not

occur if the Regional Administrator determines: (1) That the Amendment 13 projected target biomass levels for stocks targeted by the default measures, based on the 2005 and 2008 stock assessments, have been or are projected to be attained with at least a 50-percent probability in the 2006 and 2009 fishing years, respectively, and overfishing is not occurring on those stocks (*i.e.*, current information indicates that the stocks are rebuilt and overfishing is not occurring); or (2) that biomass projections, based on the 2005 and 2008 stock assessments, show that rebuilding will occur by the end of the rebuilding period with at least a 50-percent probability, and the best available estimate of the fishing mortality rate for the stocks targeted by the default measures indicates that overfishing is not occurring (*i.e.*, current information indicates that rebuilding will occur by the end of the rebuilding period and the fishing mortality rate is at or below Fmsy). If one of the two conditions is met and all other stocks meet the fishing mortality rates specified in Amendment 13, the Regional Administrator will publish that determination in the **Federal Register**, consistent with the requirements of the APA. The criteria for avoiding default measures have been modified from the proposed rule to better reflect the intent of Amendment 13, based on comments received from the Council.

**Trip Limits.** The following modifications to the cod and yellowtail flounder trip limits are implemented:

GOM cod: The possession limit is increased to 800 lb (363 kg)/DAS, with a limit of 4,000 lb (1,814 kg)/trip.

GB cod: The possession limit is reduced to 1,000 lb (454 kg)/DAS, with a limit of 10,000 lb (4,536 kg)/trip, unless the vessel has declared into the Eastern U.S./Canada Area.

CC/GOM yellowtail flounder, when fishing in the CC/GOM Yellowtail Flounder Area:

April 1 through May 31, and October 1 through November 30: 250 lb (113 kg)/trip; and

June 1 through September 30, and December 1–March 31: 750 lb (340 kg)/DAS, with a 3,000-lb (1,361-kg)/trip possession limit.

SNE/MA yellowtail flounder, when fishing in the SNE/MA yellowtail flounder area (the SNE/MA stock area):

March 1 through June 30: 250 lb (113 kg)/trip; and

July 1 through February 28 (or 29): 750 lb (340 kg)/DAS, with a 3,000-lb (1,361-kg)/trip possession limit.

**Modifications to Gear Restrictions.** Gear restrictions are modified as follows:

For Day gillnet vessels fishing in the GOM RMA: The minimum mesh size for flatfish nets is reduced from 7-inch (17.8-cm) mesh to 6.5-inch (16.5-cm) mesh.

For Trip gillnet vessels fishing in the GB RMA: The number of gillnets that may be used is increased from 50 to 150.

For Day gillnet vessels fishing in the MA RMA: The number of roundfish gillnets that can be used is reduced from 80 to 75, and the minimum mesh size is increased from 5.5-inch (14.0-cm) diamond or 6.0-inch (15.2-cm) square to 6.5-inch mesh (16.5-cm) (square or diamond); and

The number of flatfish gillnets that can be used is reduced from 160 to 75, and the minimum mesh size is increased from 5.5-inch (14.0-cm) diamond or 6.0-inch (15.2-cm) square to 6.5-inch (16.5-cm) mesh (square or diamond).

A summary of the revised gear requirements appears in Table 1.

TABLE 1.—GEAR RESTRICTIONS BY REGULATED MESH AREAS

	Gulf of Maine	Georges Bank	SNE	Mid-Atlantic
<b>Minimum Mesh Size Restrictions for Gillnet Gear</b>				
NE Multispecies Day Gillnet Category*	Roundfish nets: 6.5" (16.5 cm) mesh; 50-net allowance; 2 tags/net Flatfish nets: 6.5" (16.5 cm) mesh; 100-net allowance; 1 tag/net	All nets: 6.5" (16.5 cm) mesh; 50-net allowance; 2 tags/net	All nets: 6.5" (16.5 cm) mesh; 75-net allowance; 2 tags/net	Roundfish nets: 6.5" (16.5 cm) mesh; 75-net allowance; 2 tags/net. Flatfish nets: 6.5" (16.5 cm) mesh; 75-net allowance; 2 tags/net.
NE Multispecies Trip Gillnet Category*	All nets 6.5" (16.5 cm) mesh; 150-net allowance; 1 tag/net	All nets 6.5" (16.5 cm) mesh; 150-net allowance; 2 tags/net	All nets 6.5" (16.5 cm) mesh; 75-net allowance; 2 tags/net	All gillnet gear 6.5" (16.5 cm) mesh; 75-net allowance; 2 tags/net.
Monkfish Vessels**	10" (25.4 cm) mesh/150-net allowance.			

TABLE 1.—GEAR RESTRICTIONS BY REGULATED MESH AREAS—Continued

	Gulf of Maine	Georges Bank	SNE	Mid-Atlantic
	1 tag/net.			
<b>Minimum Mesh Size Restrictions for Trawl Gear</b>				
Codend only mesh size*	6.5" (16.5 cm) diamond or square		7.0" (17.8 cm) diamond or 6.5" (16.5 cm) square	6.5" (16.5 cm) diamond or square.
Large Mesh Category—entire net	8.5" (21.59 cm) diamond or square			7.5" (19.0 cm) diamond or 8.0" (20.3 cm) square.
<b>Maximum Number of Hooks and Size Restrictions for Hook Gear***</b>				
Limited access multispecies vessels	2,000 hooks	3,600 hooks	2,000 hooks	4,500 hooks (Hook gear vessels only).
	No less than 6" (15.2 cm) spacing allowed between the fairlead rollers			
	12/0 circle hooks required for longline gear			N/A.

\* When fishing under a NE multispecies DAS

\*\* Monkfish Category C and D vessels, when fishing under a monkfish DAS

\*\*\* When fishing under a NE multispecies DAS or when fishing under the Small Vessel permit

#### 10. DAS Transfer Program

Limited access NE multispecies permit holders may transfer DAS permanently to other limited access permit holders, subject to the following restrictions and conditions:

The length overall (LOA) and gross tonnage baseline of the buyer/transferee vessel may not be more than 10 percent greater, and its horsepower may not be more than 20 percent greater than the baseline of the seller/transferor vessel. The seller/transferor vessel must retire from all state and Federal commercial fisheries and relinquish permanently all Federal and state fishing permits.

Category A and B DAS that are transferred are reduced by 40 percent; Category C DAS that are transferred are reduced by 90 percent. Vessel permits under Confirmation of Permit History (CPH) may be transferred, but vessels fishing under a sector allocation are prohibited from transferring DAS during the fishing year in which the vessel is participating in the sector.

#### 11. DAS Leasing Program

This final rule implements a program to allow limited access NE multispecies permit holders to lease groundfish DAS to one another in fishing years 2004 and 2005, under the conditions and restrictions described below. For purposes of this program, the term "lease" refers to the transfer of the use of DAS from one limited access groundfish vessel to another, for no more than 1 fishing year.

**Eligibility.** All vessels with a valid limited access groundfish DAS permit are eligible to lease groundfish Category A DAS to or from another such vessel, subject to certain restrictions. Eligible vessels acquiring DAS through leasing

are termed lessees; eligible vessels leasing-out DAS are termed lessors. DAS associated with a CPH may not be leased. Vessels issued a Small Vessel or Handgear A permit, *i.e.*, vessels that do not require the use of groundfish DAS, are not allowed to lease DAS, and vessels participating in an approved sector under the Sector Allocation Program are not allowed to lease DAS to non-sector vessels during the fishing year in which the vessel is participating in the sector.

**Application Procedures.** An eligible vessel wanting to lease groundfish DAS must submit a complete application to the Regional Administrator at least 45 days prior to the time that the vessel intends to fish the leased DAS. Vessels with a VMS will likely be able to receive notification of an approved lease agreement sooner than 45 days. Upon approval of the application by NMFS, the lessor and lessee will be sent written confirmation of the approved application. Leased DAS will be effective only during the fishing year for which they are leased. A vessel may lease to as many qualified vessels as desired, provided that all of the restrictions and conditions are complied with.

An application to lease DAS for a given fishing year may be submitted at any time prior to the fishing year in question, or anytime throughout the fishing year in question, up until March 1. Should an application be denied, the Regional Administrator will send a letter to the applicant describing the reason(s) for the application's rejection. The decision by the Regional Administrator is the final agency decision. There is no appeal process.

**Conditions and restrictions.** No subleasing of groundfish DAS is allowed. This means that, once a lease application is approved by NMFS, the leased DAS may not be leased a second time, even if the lessee was prevented from fishing the leased DAS due to circumstances beyond his/her control (*e.g.*, a vessel sinking). Vessels are not allowed to lease carry-over DAS. Only Category A DAS may be leased, and all leased DAS must be Category A DAS.

Vessels are allowed to lease as few as 1 DAS to any one vessel. The maximum number of DAS that can be leased by a lessee is the lessee's vessel's DAS allocation for the 2001 fishing year (excluding any carryover DAS). The lessee may fish that number of DAS as Category A DAS, in addition to the Category A DAS balance the vessel had prior to acquiring the leased DAS. For example, if a person wants to lease DAS for a vessel with a limited access groundfish permit, and that vessel had 88 DAS allocated to it in fishing year 2001, the maximum DAS it may lease is 88. If the same vessel has 53 Category A DAS allocated to it in fishing year 2004, that vessel may hold and fish up to 141 Category A DAS for 2004 (the 53 A DAS allocated for fishing year 2004 plus the 88 DAS allocated to that vessel in fishing year 2001).

A lessor may not lease DAS to any vessel with a baseline horsepower rating that is 20 percent or more greater than that of the horsepower baseline of the lessee vessel. A lessor also may not lease DAS to any vessel with a baseline LOA that is 10 percent or more greater than that of the baseline of the lessee vessel's LOA.

**History of DAS Use and Landings.** Because, in the future, DAS use and

landing history may be used to determine fishing rights, history of leased DAS use will be presumed to remain with the lessor vessel, and landings resulting from the use of the leased DAS will be presumed to be attributed to the lessee vessel. However, the history of used leased DAS will be presumed to remain with the lessor only if the lessee actually fishes the leased DAS in accordance with the DAS notification program. For purposes of DAS-use history, leased DAS will be considered to be the first DAS to be used, followed by the allocated DAS. For example, if a vessel has an allocation of 50 DAS, leased an additional 20 DAS, and actually fished a total of 60 DAS during the fishing year, the lessor of the 20 DAS would be attributed with 20 DAS, for purposes of its DAS-use history, because the lessee vessel will be presumed to have used its 20 leased DAS first. This same vessel will be presumed to have only fished 40 of its 50 allocated DAS for the purposes of its DAS-use history. History of fish landings will be presumed to be attributed to the vessel that actually landed the fish (lessee).

In the case of multiple lessors, the leased DAS actually used will be attributed to the lessors based on the order in which such leases are approved by NMFS. For example, if lessee Vessel A has 50 allocated DAS, leases 30 DAS from lessor Vessel B on August 1, and leases another 10 DAS from lessor Vessel C on August 5, then the first 30 DAS used by lessee Vessel A during that fishing year would be attributed to lessor Vessel B, the next 20 DAS would be attributed to lessor Vessel C, and the next 50 DAS would be attributed to lessee Vessel A, for purposes of DAS-use history.

*Monkfish Category C and D vessels.* It is possible that a vessel with both a limited access groundfish permit and a limited access monkfish permit (monkfish Category C or D vessels), because of the groundfish DAS reductions under Amendment 13, could have more allocated monkfish DAS than groundfish A DAS. Such vessels are allowed to fish under a monkfish-only DAS when groundfish DAS are no longer available, provided the vessel fishes under the provisions of the monkfish Category A or B permit, or unless otherwise noted below. Monkfish Category C and D vessels that have remaining monkfish-only DAS, and that have submitted a groundfish DAS Leasing Application that has been approved by NMFS, will be required to fish their available "monkfish-only" DAS in conjunction with their leased groundfish A DAS, to the extent that the

vessel has groundfish A DAS available. This is consistent with the original intent of the Monkfish Fishery Management Plan (Monkfish FMP).

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

#### 12. U.S./Canada Resource Sharing Understanding

This rule implements the U.S./Canada Resource Sharing Understanding (Understanding) approved in Amendment 13. Certain changes from the proposed rule have been made in this final rule to be consistent with Amendment 13. Under the Understanding, management of GB cod, GB haddock, and GB yellowtail flounder is subject to the terms of the Understanding within two specified areas on GB referred to as the U.S./Canada Management Areas (composed of the Western U.S./Canada Area and the Eastern U.S./Canada Area). The Eastern U.S./Canada Area is composed of statistical areas 561 and 562, and is the U.S./Canada management area for GB cod and GB haddock (cod/haddock management area). The Western U.S./Canada Area is composed of statistical areas 522 and 525. The U.S./Canada management area for GB yellowtail flounder is composed of both the Eastern and Western U.S./Canada Areas.

The Understanding specifies an allocation of TAC for these three stocks for each country, based on a formula that considers historical catch percentages and current resource distribution. Annual harvest levels and recommended management measures for the U.S./Canada Management Areas will be determined through a process involving the Council, the Transboundary Management Guidance Committee (TMGC), and the U.S./Canada Steering Committee. The U.S. TACs in fishing year 2004 will be as follows: 300 mt (metric tons) for GB cod; 5,100 mt for GB haddock; and 6,000 mt for GB yellowtail flounder. These TACs were recommended by the TMGC and adopted by the Council at its January

2004 meeting. Once any one of these TACs is reached, all vessels will be prohibited from harvesting, possessing, or landing the species for which the TAC has been reached. In addition, the Eastern U.S./Canada Area will be closed to all fishing by groundfish DAS vessels, with the exception of an approved SAP, provided that TAC for the target species is still available. The Western U.S./Canada Area will not be closed, but will have other restrictions imposed, such as trip limits, as necessary, as the GB yellowtail flounder TAC is approached.

Amendment 13 is intended to constrain catches of the three shared stocks by U.S. vessels to ensure that they will not exceed the U.S. allocations. The management measures to implement the Understanding are as follows: All NE multispecies DAS vessels fishing on a groundfish DAS in the U.S./Canada Management Areas are required to utilize a fully functional VMS. Vessels are required to declare, through their VMS, prior to departure on a trip, the portion of the U.S./Canada Management Area they intend to fish in. For the purposes of selecting vessels for observer deployment, a vessel fishing in the U.S./Canada Management Area must provide notice to NMFS at least 5 working days prior to the beginning of any trip on which it declares into the U.S./Canada Management Area. This notification will ensure that the desired level of observer coverage can be achieved. Once declared into a specific area, a vessel may not fish outside of that area for the remainder of that fishing trip. Vessels making a trip in the U.S./Canada Management Area are required to report their GB cod, GB haddock, and GB yellowtail flounder catches (including discards) through their VMS on a daily basis. Because these are "hard" TACs, and any overages in a given year must be paid back in a lower TAC for that stock in the next fishing year, it is essential that catches be reported in a timely manner. Groundfish vessels not under DAS are not subject to the VMS requirement. To ensure enforceability of the Understanding, all groundfish vessels fishing with a VMS will be polled at least twice per hour when fishing in one of the U.S./Canada Management Areas. As an incentive to fish on the shared stocks in the Eastern U.S./Canada Area, DAS will not be counted until the vessel crosses the boundary line into that Area. To reduce bycatch of cod and other species, all groundfish trawl vessels fishing in the Eastern U.S./Canada Area, but not the Western U.S./Canada Area as specified in the proposed rule, are also required to fish with, and have on board only, either a flatfish net and/or

a haddock separator trawl, which are defined in this final rule. After further review of Amendment 13 and the comments submitted by the Council, the intent of the gear restrictions is to ensure that the U.S./Canada TACs are not exceeded. Because both the flounder net and haddock separator trawl are designed to affect cod selectivity, and because the cod TAC is specific to the Eastern U.S./Canada Area only, application of this gear requirement to the Western U.S./Canada Area is not necessary to achieve the stated goal. The definitions of the separator trawl and flatfish nets have been revised based on public comment.

This rule implements a cod trip limit within the Eastern U.S./Canada Area of 500 lb (227 kg)/DAS, up to 5,000 lb (2,270 kg)/trip, not to exceed 5 percent of the total catch, whichever is less, for all groundfish permitted vessels, unless further restricted, to create an incentive to avoid catching cod.

Amendment 13 provides that, when specified portions of the TACs have been harvested, reduced trip limits will be imposed for all groundfish permitted vessels to slow the harvest of any stock that is approaching its TAC. When 70 percent of a specified stock is projected to be caught, and catch rates indicate that the TAC for that stock will be caught by the end of the fishing year, the following trip limits will go into place: Haddock: 1,500 lb (680 kg)/day, 15,000 lb (6,804 kg)/trip; yellowtail flounder: 1,500 lb (680 kg)/day, 15,000 lb (6,804 kg)/trip. When 100 percent of a shared stock TAC is projected to be caught, the Eastern U.S./Canada Area will be closed to all groundfish DAS vessels, unless a SAP allows some fishing in the area on a specific stock and under conditions specified for that SAP. The Western U.S./Canada Area will not be closed, but may have other restrictions imposed, such as trip limits, as necessary, as the GB yellowtail flounder TAC is approached.

The U.S./Canada Management Area measures will remain in place until altered through one of two procedures. For periodic adjustments, the Regional Administrator, through rulemaking consistent with the APA, may adjust gear requirements, modify access to fishing within the U.S./Canada Management Areas, and/or adjust trip limits to attempt to achieve, but not exceed, the annual TACs. Inseason adjustments by the Regional Administrator may be made at the points when 30 percent and 60 percent of the TACs for each of the relevant stocks are projected to have been harvested. In addition, the Regional Administrator, in consultation with the

Council, can withdraw from provisions of the Understanding if the provisions are determined by the Regional Administrator to be inconsistent with the provisions of the Magnuson-Stevens Act or other applicable law, or with the goals and objectives of the FMP. If the Regional Administrator withdraws from the Understanding, all management measures in place at that time will remain in place until changed through appropriate procedures under the FMP or the Magnuson-Stevens Act.

Other existing fisheries prosecuted in the U.S./Canada Management Areas are unaffected by the Understanding measures, except that landings of GB cod, GB haddock, and GB yellowtail flounder caught in the U.S./Canada Management Areas will be counted against the Understanding TACs, regardless of gear type used.

### 13. SAPs

A SAP represents a narrowly defined fishery that is prosecuted in such a way as to avoid or minimize impacts on groundfish stocks of concern, as well as minimize bycatch and impact on EFH. Amendment 13 implements two SAPs that allow fishing for regulated groundfish without compromising efforts to rebuild overfished stocks or end overfishing of regulated multispecies.

*CA II Yellowtail Flounder SAP.* This SAP is intended to allow harvesting of GB yellowtail flounder. Vessels may fish in the CA II Yellowtail Flounder SAP, using B DAS, under the following conditions and restrictions. From June 1 through December 31, vessels may make up to two trips per month into the CA II Yellowtail Flounder Access Area to target yellowtail flounder. Because this SAP lies within the Eastern U.S./Canada Area, vessels fishing in this SAP are subject to the VMS, reporting, observer deployment, and gear requirements of the Understanding. DAS will be counted starting when the vessel crosses the boundary into the Eastern U.S./Canada Area and will end when the vessel crosses the boundary when leaving the Eastern U.S./Canada Area. In addition, vessels are limited to 30,000 lb (13,608 kg) of yellowtail flounder per trip; the cod trip limit will be one fifth of the cod landing limit specified for the Eastern U.S./Canada Area (*i.e.*, one fifth of 500 lb (227 kg) of cod per DAS, or 100 lb (45.4 kg) per DAS), not to exceed 5 percent of the total catch on board; and the total number of trips into the SAP in a fishing year will be limited to 320. The Regional Administrator has broad authority to modify possession restrictions and trip limits under this SAP.

*SNE/MA Winter Flounder SAP.* This SAP is intended to reduce discards of SNE winter flounder in the summer flounder fishery. Under this SAP, a vessel fishing for summer flounder west of 72°30' W. long.; using mesh authorized by the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries; and not fishing on a groundfish DAS; may possess and land up to 200 lb (90.7 kg) of winter flounder, subject to the following restrictions: (1) The vessel must possess a valid Federal summer flounder permit; (2) the weight of winter flounder may not exceed the weight of summer flounder on board; (3) while in the program, the vessel may not fish on a groundfish DAS; (4) all fishing must take place west of 72°30' W. long.; and (5) possession and/or landing of other regulated groundfish species is prohibited.

### 14. EFH Measures

These measures are intended to minimize impacts of the groundfish fishery on EFH to the maximum extent practicable. Amendment 13 designates portions of the year-round closed areas, as well as new areas, as level 3 habitat closed areas. A level 3 habitat closed area is defined as an area that is closed indefinitely, on a year-round basis, to all bottom-tending mobile gear. Following are the EFH Closure Areas implemented by this final rule: The WGOM Habitat Closure Area; the Cashes Ledge Habitat Closure Area; the Jeffrey's Bank Habitat Closure Area; the CA I North Habitat Closure Area; the CA I South Habitat Closure Area; the CA II Habitat Closure Area; and the Nantucket Lightship Habitat Closure Area. Other measures not specifically designed to minimize impacts on EFH, but that would have benefits in terms of minimizing impacts on EFH, are also relied upon to meet the EFH provisions of the Magnuson-Stevens Act.

### 15. Reporting Requirements

*Dealer Reporting.* Dealers are required to report daily, once an electronic dealer reporting system is developed and implemented by NMFS. Dealers will be required to report the current set of data elements for all fish purchases; the disposition of the landings; and a trip identifier, which would be reported by all parties in the transaction. Electronic dealer reporting requirements for all dealers are anticipated to be implemented by May 1, 2004, through a separate rulemaking.

*Vessel Reporting.* Once a viable electronic system becomes available for reporting by vessels, that system will replace the current VTR system. Vessels

will be required to report all of the information currently required by the VTR, as well as a password, a trip identifier, and landings information by statistical area for each trip. Reports will be required to be submitted at least at the current statistical area level of reporting. Vessels will have the option of using any approved, viable electronic means possible to report this information. The trip identifier will be required to be reported by all parties in the transaction. Implementation of electronic vessel reporting will be accomplished through a separate, future rulemaking.

#### 16. Sector Allocation

Under Amendment 13, a sector of the groundfish fishery may develop a plan, based on an allocation of allowable catch or effort (DAS), that only members of the sector can participate in. This provides flexibility to the industry and encourages stewardship of the resource and less need for Council and NMFS involvement, so long as certain criteria are adhered to, including FMP objectives and Magnuson-Stevens Act requirements. Under this process, a self-selected group of groundfish permit holders may agree to form a sector and submit a binding plan for management of that sector's allocation of catch or effort. Allocations to a sector may be based either on catch, through TACs requiring closure of a fishery upon reaching the TAC (hard TAC); or on effort (DAS), with target TACs specified for the sector. Vessels within the sector are allowed to pool harvesting resources and consolidate operations in fewer vessels, if they desire. A primary motivation for the formation of a sector is the assurance that members of the sector will not face reductions of catch or effort as a result of the actions of vessels outside of the sector (*i.e.*, if the other vessels exceed their target TACs). The final rule is revised, based on public comment, to provide the Regional Administrator the authority to exempt members of a sector from regulations that apply to the fishery at-large, if they are in conflict with a sector's approved operations plan.

**Formation of a Sector.** Participation in a self-selecting sector is voluntary. Vessels that do not choose to join a sector remain in the common pool of vessels and fish under the regulations governing the remainder of the fishery. In order to form a sector, the sector applicant(s) must submit to the Council, at least 1 year prior to the date that it plans to begin operation, a proposal requesting that the Council initiate a framework adjustment to authorize an allocation of catch or effort, subject to

compliance with general requirements described below and any analytical documents necessary to comply with the National Environmental Policy Act (NEPA). If the Council and NMFS publish and ultimately approve the framework action, the sector is required to submit a legally binding plan of operations (operations plan) for the sector, in accordance with the provisions specified in § 648.87(b)(2), to the Council and to the Regional Administrator. Once the operations plan is deemed complete, NMFS will solicit public comment on the operations plan through publication of a notice of proposed rulemaking in the **Federal Register**. Upon consideration of the comments received, the Regional Administrator will approve or disapprove the operations plan through publication of a final determination consistent with the APA.

#### Movement Between Sectors

Each sector may set its own rules with regard to movement between sectors, which must be contained in the operations plan. Once a vessel signs a binding contract to participate in a sector, that vessel is required to remain in the sector for the remainder of the fishing year. In the situation where a sector is implemented in the middle of the fishing year, vessels that fish under the DAS program outside the sector allocation in a given fishing year may not participate in a sector during the same fishing year, unless the operations plan provides for an acceptable accounting for DAS used prior to implementation of the sector. If a permit for a vessel participating in a sector is transferred during the fishing year, the new owner must also comply with the sector regulations for the remainder of the fishing year. Vessels removed from a sector for violation of the sector rules are not eligible to fish under the NE multispecies regulations for the remainder of the fishing year.

**General Requirements for All Sector Allocation Proposals.** Allocation of fishery resources to a sector is based on documented accumulated landings for the 5-year period prior to submission of a sector allocation proposal to the Council, of each participant in the sector. Any allocations of GB cod for fishing years 2004 through 2007 must be based upon a proposed sector's documented accumulated landings during the 1996 through 2001 fishing years, but no sector may be allocated more than 20 percent of a stock's TAC. Once an allocated TAC is projected to be attained, sector operations will be terminated for the remainder of the fishing year. If, in a particular fishing

year the sector exceeds its TAC, the sector's allocation will be reduced by the amount of the overage in the following fishing year. If the sector does not exceed its TAC, but other vessels in the general pool do, the sector's quota in the following year will not be reduced as a result of such overages. Sectors may participate in SAPs in accordance with the rules of the SAP.

#### *GB Cod Hook Gear Sector.*

Amendment 13 authorizes a sector allocation for the GB Cod Hook Gear Sector. Therefore, the GB Cod Hook Gear Sector will be allocated a maximum of 20 percent of the GB cod TAC for each fishing year for which an operations plan is approved. Participating vessels will be required to use only hook gear. For each fishing year, the sector's allocation of the GB cod TAC, up to the maximum of 20 percent of the total GB cod TAC, will be determined by calculating the percentage of all landings of GB cod made by the participating vessels, based on their landings histories for the qualifying period of 1996–2001. This calculation will be performed as follows: (1) The accumulated landings of GB cod by the sector participants for the 6 fishing years 1996–2001 will be summed; (2) the accumulated landings of GB cod by all vessels (sector participants and non-participants) during the 6 fishing years 1996–2001 will be summed; (3) the accumulated landings of GB cod by the sector participants from 1996–2001 will then be divided by the accumulated landings of GB cod by all vessels for 1996–2001; this will result in the percentage of the GB cod TAC for the next fishing year that will be allocated to the sector (up to 20 percent of the total GB cod TAC). This procedure will be repeated for each fishing year, using the landings history of GB cod by the sector participants from 1996–2001, and the GB cod TAC for that fishing year. If, in a particular fishing year, the sector exceeds its TAC, the sector's allocation will be reduced by the amount of the overage in the following fishing year. When the GB cod TAC is reached, participants in the sector will be prohibited from using any fishing gear that is capable of harvesting groundfish for the remainder of the fishing year. Participating vessels may only harvest groundfish in the GB Cod Hook Sector Area (statistical areas 521, 522, 525, 526, 533, 534, 537, 538, 539, 541, 542, 543, 561, and 562). Leasing of DAS during the fishing year may occur among sector participants only. The applicant is required to submit its operations plan to the Council and NMFS for approval and public

notification prior to its implementation. Because of this process, the GB Hook Sector cannot be implemented until after May 1, 2004. In order to constrain effort in the fishery to the necessary levels, and because the sector would be based on a hard TAC allocation, any vessel that had fished a groundfish DAS during fishing year 2004, prior to the implementation of the sector, will not be allowed to participate in the sector for the first year, unless the operations plan provides for an acceptable accounting for DAS used prior to implementation of the sector. New participants may join the sector at the beginning of a new fishing year, but once in the sector, a vessel must stay in the sector for the entire duration of the sector specified in the operations plan.

17. Closed Area Rationale

When any new closed areas are adopted, the Council must define the intent and specific purpose for the closure and explicitly describe the duration of the closure, who can fish in the closed area, and who cannot fish in the closed area.

18. Frameworkable Items

The following management measures may be adjusted through a framework action, in addition to those measures previously identified as framework measures in the FMP:

Revisions to status determination criteria, including, but not limited to, changes in the target fishing mortality rates, minimum biomass thresholds, numerical estimates of parameter values, and the use of a proxy for biomass;

DAS allocations (such as the category of DAS under the DAS reserve program), DAS baselines, etc.;

Modifications to capacity measures, such as changes to the DAS transfer or DAS leasing measures;

Calculation of area-specific TACs, area management boundaries, and adoption of area-specific management measures;

Sector allocation requirements and specifications, including establishment of a new sector;

Measures to implement the U.S./Canada Resource Sharing Understanding, including any specified TACs (hard or target);

Changes to administrative measures;

Additional uses for regular B DAS;

Future uses for C DAS;

Reporting requirements;

The GOM Inshore Conservation and Management Stewardship Plan;

GB cod gillnet sector allocation;

A allowable percent of TAC available to a sector through a sector allocation;

Categorization of DAS;

DAS leasing provisions;

Adjustments for steaming time;

Adjustments to the Handgear Only permits;

Gear requirements to improve selectivity, reduce bycatch, and/or reduce impacts of the fishery on EFH; SAP modifications; and

Anything else analyzed with respect to Amendment 13.

19. MSY Control Rules

An MSY control rule is intended to provide management advice to the Council as to what the appropriate fishing mortality rate (F) would be at a given stock size. Under Amendment 13, the MSY control rule for all stocks, with the exception of Atlantic halibut, is:  $F = \frac{B_{msy}}{B_{target}}$  until the stock is rebuilt (provisional control law). Due to insufficient information, it is not possible to develop a formal rebuilding program for Atlantic halibut; therefore, Amendment 13 contains a provisional control rule that reduces fishing mortality on halibut to as close to zero as possible. Amendment 9 (64 FR 55821; October 15, 1999) added Atlantic halibut to the species managed under the FMP and implemented a one-fish possession limit and set a minimum size of 36 inches (66 cm). This limit is intended to stop directed fishing on halibut without requiring wasteful discarding by vessels that incidentally catch an occasional halibut.

20. Overfishing Definitions

Amendment 13 clarifies and revises the overfishing definitions for groundfish stocks to be consistent with the National Standard Guidelines (National Standard 1). A stock is considered overfished when the size of the stock or stock complex in a given year falls below the minimum stock size threshold or reasonable proxy thereof, and overfishing is considered to be occurring when the fishing mortality rate exceeds the maximum fishing mortality threshold for a period of 1 year. The status determination criteria for the minimum biomass thresholds is increased to at least half of the target biomass levels.

21. Target TACs

The management measures implementing Amendment 13 are intended to achieve the target TACs shown in Table 2 for calendar years 2004, 2005, and 2006. The 2006 target TACs will remain in place through the remainder of the rebuilding program, unless otherwise modified through a future Council action.

TABLE 2.—TARGET TACs FOR CALENDAR YEARS 2004–2006, IN METRIC TONS

Species	Stock	2004	2005	2006
Cod	GB	3,949	4,830	6,361
	GOM	4,850	6,372	7,470
Haddock	GB	24,855	27,692	31,866
	GOM	4,831	4,735	4,642
Yellowtail flounder	GB	11,713	11,341	11,599
	SNE/MA	707	1,982	3,325
	CC/GOM	881	1,233	1,034
American plaice		3,695	3,625	3,015
Witch flounder		5,174	6,992	7,667
Winter flounder	GB	3,000	3,000	3,000
	GOM	3,286	2,634	2,205
	SNE/MA	2,860	3,550	4,445
Redfish		1,632	1,725	1,803
White hake		3,839	3,822	3,805
Pollock		10,584	10,584	10,584
Windowpane flounder	North	534	534	534
	South	285	273	262
Ocean pout		77	77	77

TABLE 2.—TARGET TACS FOR CALENDAR YEARS 2004–2006, IN METRIC TONS—Continued

Species	Stock	2004	2005	2006
Atlantic halibut .....	.....	NA	NA	NA

22. Change to Minimum Enrollment Requirement for Fishery Exemption Programs

Amendment 13 reduces the minimum enrollment requirement for five of the six existing fishery exemption/ authorization programs from 30 days to 7 days, and establishes a minimum enrollment requirement of 7 days for one program where a minimum enrollment period is currently not specified. The following exemption/ authorization programs previously contained a minimum enrollment requirement of 30 days: (1) The GOM Cod Landing Limit Exemption Program; (2) the Monkfish Southern Fishery Management Area Landing Limit and Minimum Fish Size Exemption Program; (3) the Skate Bait-only Possession Limit Exemption Program; (4) the yellowtail flounder landing limit north of 40°00' N. lat. in the GOM/GB RMA; and (5) the yellowtail flounder landing limit north of 40°00' N. lat. in the SNE/MA RMA. The Nantucket Lightship Party/Charter Exemption Program does not currently specify a minimum enrollment requirement. The two yellowtail flounder possession authorization programs is revised by Amendment 13 and also has a 7-day minimum enrollment requirement.

23. Policy on Cooperative Research

Because allocation of DAS is based on a vessel's historical DAS use, Amendment 13 establishes a policy that a vessel would not lose allocated DAS due to its participation in a research project or experimental fishery, if that participation can be adequately documented. If a permit holder believes that allocation of DAS under Amendment 13 has been limited by the vessel's participation in a research project or experimental fishery, the permit holder may provide to the Regional Administrator documentation to substantiate the time the vessel spent participating in a research project(s) that was not considered in the Amendment 13 DAS allocation. The Regional Administrator will consider such requests on a case-by-case basis, review the information submitted, and consider adjusting that vessel's A DAS allocation accordingly.

Comments and Responses

A total of 4,941 comments on the proposed rule and the Amendment were received by the close of business on February 27, 2004, the majority of which were two form letters drafted principally by environmental organizations, with minor modifications and signatures added by the individual commenters. A total of 162 other comments were received from individuals and organizations. This section of the final rule lists the principal comments that pertained to Amendment 13 and the proposed rule and the responses of the NMFS. An additional 1,242 comments, submitted by the Ocean Conservancy on behalf of its members and activists, were received by NMFS on March 16, 2004. In its cover letter, the Ocean Conservancy explained that these additional letters were faxed to the Agency on February 27, 2004, but were not received due to an overload of incoming faxes. All of the issues raised in these additional comment letters were raised by others and are addressed below in the response to comments.

*Comment 1:* A total of 126 commenters from the charter/party or private recreational sectors supported the proposed private recreational and party/charter bag limits of 10 cod and unrestricted haddock, as well as the proposed minimum size limits for cod and haddock (22 and 19 inches (55.9 and 48.1 cm), respectively). Commenters believe that the new limits allow the opportunity to catch reasonable amounts of cod and haddock and that the recreational catch and impact is small in comparison to the impact of the commercial sector. Two commenters did not support the private recreational and party/charter bag limits, and believe they should be reduced instead of increased. One commenter did not support the reduction in minimum size for cod.

*Response:* The principal goals of the recreational measures are to: (1) Decrease the fishing mortality on GOM cod, and (2) enable recreational fishing vessels to benefit from the rebuilding of the haddock stock. The means of achieving reductions in fishing mortality on GOM cod by the charter/party sector is imposition of a cod bag limit in the GOM. The bag limit of 10 cod per person per day for party/charter

vessels fishing in the GOM RMA is more restrictive than the no-action alternative, which would not have restricted cod catch at all for party/charter vessels. The Amendment 13 analysis indicates that the recreational measures will result in a decrease in both numbers and weight of cod landed, when compared to the no-action alternative. NMFS determined that the bag limit is appropriate because it will reduce fishing mortality on GOM cod, yet will still allow charter/party vessels to attract passengers and remain in business. Reduction of the minimum length requirements for cod and haddock to 22 inches and 19 inches (55.9 and 48.3 cm), respectively, results in the elimination of the discrepancy in minimum size restrictions applied to the commercial sector, the charter/party sector and the private recreational sector. A 10 cod/person/day limit for the charter/party sector in the GOM makes the cod limit in the GOM the same for both the charter/party and the private recreational sectors. The impact of implementing the GOM cod bag limit on a per-person-per-day basis could not be evaluated using available data. Because recreational data for haddock are minimal, recreational fishing mortality of haddock is not included in the total estimates of fishing mortality for haddock.

*Comment 2:* One commenter did not agree with the definition of multiple day trips as any trip in excess of 15 hours and covering 2 consecutive calendar days.

*Response:* NMFS considers the definition of a multiple-day trip to be appropriate because it reflects current industry practices, it includes relevant criteria (trip duration and calendar days fished), and it specifies reasonable values for those criteria, such that recreational landings will be kept within acceptable levels.

*Comment 3:* One commenter did not support the creation of the limited access Handgear A permit and two commenters supported its creation. One commenter did not support allowing limited access Handgear A permits to be transferred without size restrictions. One commenter did not support the reduction in trip limit for cod for the open access handgear category. One commenter felt that the handgear permit rules should be subject to change through a framework action.

*Response:* NMFS has concluded that the creation of the limited access Handgear A permit is justified. The objective of the creation of the limited access Handgear A permit category is to control participation in the handgear fishery in order to limit its potential expansion, and therefore limit the potential for an increase in fishing effort. Amendment 13 states that, although relatively few open access Handgear vessels landed cod, haddock, or pollock, and very few landed more than 500 lb (226.8 kg), there exists the potential for the total effort associated with such vessels to increase due to the large numbers of permits, the fact that the fishery has been open access, and the fact that the activity by open access permits has been increasing. Allowing limited access Handgear A permits to be transferred without size restrictions is not likely to increase fishing power significantly. Therefore this action would not undermine the objectives of the permit category, due to the relatively small number of vessels that are expected to qualify for a limited access Handgear A permit, and because such vessels are restricted to using handgear, for which effort is not highly correlated to the size of the vessel. The reduced cod trip limit for open access Handgear A vessels is justified due to the need to reduce fishing mortality on both the GOM and GB stocks of cod. Under Amendment 13, the trip limit restrictions for regulated multispecies (other than cod) that apply to vessels with an open access Handgear permit are the same as the restrictions that apply to vessels with a limited access Handgear A permit. The restrictions associated with the handgear permits can be changed by a framework action.

*Comment 4:* One commenter supported the elimination of the area restriction for the northern shrimp fishery, one commenter did not support elimination of the area restriction, and one commenter stated that the assessment of bycatch in the northern shrimp fishery in Amendment 13 is inadequate.

*Response:* The Amendment 13 analysis of the bycatch in the northern shrimp fishery is based on research conducted by the Maine Department of Marine Resources (which quantifies the bycatch of regulated species and whiting), and concludes that, although the impacts of eliminating the area restriction on this fishery cannot be estimated with certainty, they should be minimal. The required use of the Nordmore grate, which remains in effect, minimizes the catch of regulated multispecies in this fishery. Although the bycatch of whiting may be

significant, the northern stock of whiting is rebuilt and the removal of the area restriction on the northern whiting fishery is not likely to impair management of that species.

*Comment 5:* One commenter did not support providing access for vessels fishing with tuna purse seine gear to CA I, CA II, and the NLCA, and one commenter supported such access.

*Response:* The objective of this measure is to provide greater flexibility to tuna purse seine vessels while still protecting groundfish. The Amendment 13 analysis concludes that, although groundfish bycatch may increase very slightly, the impacts will not be significant due to the low numbers of vessels in the fishery (five), the limited fishing season, and the method of fishing. Fishing in these areas by tuna purse seine vessels may shift the location of where bycatch in this fishery is caught, but not increase bycatch over recent levels. Several years of experimental fishing by tuna purse seiners in groundfish closed areas has supported the conclusion that such access will have minimal impacts on non-target species.

*Comment 6:* Four commenters felt that the proposed addition of clam dredges to the list of gears excluded from the NLCA was not justified because of the value of the surfclam and ocean quahog resource in the NLCA, and their belief that exclusion of the gear from this area would not have positive benefits for either groundfish EFH or the rebuilding of the groundfish fisheries. The commenters support full access to the NLCA based on best scientific information. One commenter felt that the exclusion of dredge gear from the area gives preference to the groundfish fishery over the surfclam and ocean quahog industry and is therefore a violation of National Standard 4.

*Response:* The effect of the measures in the proposed rule would have been to exclude clam dredges from all portions of the NLCA. NMFS agrees that the Amendment 13 does not analyze the prohibition of clam dredges in the NLCA outside of the Nantucket Lightship Habitat Closure Area and that there is no evidence that the proposed exclusion would provide meaningful positive benefits to groundfish, and consequently has disapproved the measure excluding clam dredges in the portion of the NLCA closed exclusively to protect groundfish. However, Amendment 13 does analyze the prohibition of clam dredges in the habitat closed areas as part of a level 3 closure (closed to all bottom-tending mobile gear). This prohibition is part of

the strategy for protecting vulnerable EFH located within the habitat closed area and is not for bycatch reduction purposes. The best available science was utilized in the analysis supporting this measure. The conclusion of the Northeast Gear Effects Workshop was that hydraulic clam dredges have a high impact on physical and biological structure of benthic habitat in sandy substrates. It was determined that recovery of physical structures could range from days to months, and that recovery of biological structures could range from months to years, depending upon the background energy of the environment. These conclusions are supported by existing research, as summarized in the fishing gear effects section of Amendment 13. In terms of overall regional priorities for management of fishing impacts on EFH, it was concluded that otter trawls and scallop dredges are a higher overall priority because of their wider geographic use over a wider variety of substrate types. However, it was agreed that localized effects could be very significant if the dredged area is productive habitat for one or more managed fish resources, or if the area coincides with strong settlement of larval fish. The EFH vulnerability analysis conducted for Amendment 13 shows that 9 New England managed species, comprising 17 distinct life stages, are moderately or highly vulnerable to hydraulic clam dredges. Vulnerability was based upon the known impacts of the gear type, the potential for lost habitat function, the sensitivity of the habitat to disturbance, and the overlap of gear usage with EFH. In addition, Amendment 13 concludes that adverse and potentially adverse impacts from hydraulic clam dredges occurs primarily in the Mid-Atlantic and secondarily in southern New England, on sand substrates. The Nantucket Lightship Habitat Closed Area contains vulnerable EFH for most of these species. Prohibition of all types of bottom-tending mobile gear in this closed area is necessary to provide the most effective protection to this vulnerable EFH. Exemption of clam dredges in the habitat closed area would negate most, if not all, of the habitat benefits, rendering the closed area strategy ineffective and therefore impracticable. The environmental and socio-economic impacts of the habitat closed areas were analyzed as part of Amendment 13 and were considered in the approval decision. The exclusion of clam dredges from the Nantucket Lightship Habitat Closure Area is not a violation of National Standard 4 because

it is necessary to achieve the desired EFH protection and since other bottom-tending mobile gear is also prohibited in all of the habitat closure areas.

*Comment 7:* One commenter recommended disapproval of a portion of the Nantucket Lightship Habitat Closure Area that is subject to a level 3 habitat closure (closed to bottom-tending mobile gear). Specifically, the commenter was concerned about the trapezoid-shaped area that lies outside of the current NLCA.

*Response:* Disapproval of a portion of the proposed Nantucket Lightship Habitat Closure Area would constitute a modification to the configuration of that area and undermine the objectives of providing EFH protection. Although Amendment 13 analyzed the aggregate economic and biological impacts of various combinations of habitat closure areas, the configuration that the commenter supports was not part of the alternative adopted by the Council, analyzed in Amendment 13, and considered by the public and, therefore, there is no basis to support the commenter's claims. Therefore, the measure is consistent with applicable law.

*Comment 8:* One commenter supported the proposed exemption that would allow fishing by shrimp trawl vessels in the WGOM Habitat Closure Area.

*Response:* NMFS has disapproved the measure that would allow shrimp trawlers to fish in the WGOM Habitat Closure Area, as discussed and justified in the preamble to this final rule under "Disapproved Measures."

*Comment 9:* Five commenters supported approval of all four proposed SAPs in order to provide economic opportunity to the industry to harvest groundfish stocks at a more optimal level.

*Response:* NMFS agrees that allowing for SAPs is important for the reasons stated. However, in order for a SAP to be approved, it must comply with the objectives of the FMP, National Standards, and all applicable laws. The premise for a SAP is that, if specific fisheries for healthy stocks of groundfish can be identified that do not undermine achievement of the goals of the FMP, fishing under certain restrictions within a SAP can be allowed. Prior to NMFS approval, a SAP must be fully developed and the analysis of its impacts must demonstrate that the SAP is consistent with the objectives of the FMP, as well as enforceable. The CA II Yellowtail Flounder SAP and the SNE/MA Winter Flounder SAP meet these criteria, and were therefore approved in Amendment

13 and implemented by this final rule. The CA II Haddock SAP and the CA I Hookgear Haddock SAP, however, do not meet one or more of these criteria and were, therefore, disapproved, as discussed more fully in the preamble to this final rule under "Disapproved Measures."

*Comment 10:* The Council submitted comments of a technical nature suggesting clarifications to the proposed regulations. The U.S. Coast Guard also submitted a technical comment. These included suggested additional definitions of terms, and clarifications to or additions of additional regulatory language.

*Response:* NMFS agrees with most of the suggested clarifications and has made these changes in this final rule. The specific changes are identified in this preamble under "Changes to the Proposed Rule."

*Comment 11:* Three commenters noted that the proposed rule would alter the frequency of VMS polling to twice per hour (from once per hour) for groundfish DAS vessels, once a vessel has elected to fish in the U.S./Canada Management Areas, regardless of whether or not the vessel is fishing in the U.S./Canada Management Areas. The commenters stated that this is not an Amendment 13 requirement, and is therefore not justified. A commenter further stated that polling twice per hour in the U.S./Canada Management Areas only is unjustified, given that vessels must declare into these areas, and that the areas are large.

*Response:* NMFS agrees that groundfish DAS vessels that are required to utilize VMS should not be required to pay for being polled twice per hour when not fishing in the U.S./Canada Management Areas, and has removed this restriction in this final rule. However, the requirement that vessels must pay for polling twice per hour when fishing in the U.S./Canada Management Areas has not been removed to enhance enforcement of the Understanding. Despite the large size of the U.S./Canada Management Area, there remains the potential for vessels fishing near the perimeters of this area to fish in both portions of this area (Eastern and Western) and/or to fish outside the area. In order to monitor the TAC in the U.S./Canada Management Area, it is critical that NMFS has a system to track the location of fishing vessels. Decreasing the time interval between polls paid by vessels enhances NMFS's monitoring of the fishing activity in his area.

*Comment 12:* The Council commented that, should the cod possession limit for vessels fishing

under a limited access Handgear A permit be adjusted in proportion to a change in the GOM trip cod trip limit for DAS vessels, as allowed under this final rule, this adjustment should be rounded up to the nearest 50 lb (22.7 kg) in order to facilitate compliance with, and enforcement of, the adjusted trip limit. The Council also recommended that, if the cod possession limit for open access Handgear permits is adjusted in proportion to a change in the GOM cod trip limit for DAS vessels, this adjustment be rounded up to the nearest 25 lb (11.3 kg).

*Response:* NMFS has made these revisions to this final rule.

*Comment 13:* Two commenters did not support a provision in the proposed rule that would require DAS leasing applicants to include on the lease application the amount of money for which the DAS are being leased. The commenters felt that disclosure of such information is an infringement on the privacy of the applicants.

*Response:* Information about the value of a leased DAS is very important to future efforts to understand the impacts of the DAS Leasing Program and to evaluate whether the program is successful in providing flexibility to the industry. A more thorough understanding of the economics of the groundfish fishery will enable managers to analyze the economic impacts of fishery regulations more accurately. This requirement is consistent with Secretarial authority under the Magnuson-Stevens Act. Only aggregated information on the price paid for DAS leased will be made public. Specific information contained in an application will remain confidential.

*Comment 14:* One commenter suggested that, after a DAS lease has been approved by NMFS, a provision should be created to allow a lessee to return DAS to the lessor(s) in the event of exceptional circumstances, such as the sinking of the lessee vessel.

*Response:* Amendment 13 did not propose such a provision. Furthermore, such a provision would require NMFS to incur additional costs to develop and maintain additional data management capabilities and administrative procedures to support a DAS transaction that is expected to be relatively rare and, therefore, not justified under National Standard 7.

*Comment 15:* Four commenters did not support the requirement that vessels fishing in the U.S./Canada Management Area be prohibited from fishing outside this area on a particular trip. Some suggested that vessels be allowed to fish in both the Western and Eastern areas on the same trip, while others suggested

that the restriction apply only to the Eastern U.S./Canada Area.

*Response:* The requirement that a vessel fish in either the Eastern or Western U.S./Canada Area, and no other area on a particular trip, is necessary to monitor and enforce the catches of cod, haddock, and yellowtail flounder accurately and to attribute these catches to the particular area in which they were caught. If a vessel were allowed to fish both outside and inside one of the U.S./Canada Management Areas, it would be extremely difficult to assess the amount of each species caught in the respective areas and to enforce related measures. Catches must be accurately attributed to either the Eastern or Western U.S./Canada Area because the TACs are area-specific. In addition, because the Eastern and Western U.S./Canada Areas are subject to different trip limits and gear restrictions, allowing vessels to fish in both areas on a single trip would make enforcement of these restrictions impossible.

*Comment 16:* Five commenters noted that the requirement to use either a haddock separator trawl or a flounder net should apply only to the Eastern U.S./Canada Area and not to both the Eastern and Western U.S./Canada Areas, because the intent of the requirement is to achieve, but not exceed, the cod, haddock, and yellowtail TACs under the U.S./Canada Understanding. They noted that the cod and haddock TACs apply only to the Eastern U.S./Canada Area. One commenter noted that the requirement to utilize these gears in the Western U.S./Canada Area would result in large losses of flounders, monkfish, pollock, and other species.

*Response:* NMFS has made the suggested change in this final rule. Although Amendment 13 includes conflicting information with regard to the scope of the net requirements, it is clear from Amendment 13 and comments submitted by the Council that the intent of the gear restrictions is to ensure that the U.S./Canada TACs are not exceeded. Because both the flounder net and haddock separator trawl are designed to affect cod selectivity, and because the cod TAC is specific to the Eastern U.S./Canada Area only, application of this gear requirement to the Western U.S./Canada Area is not necessary to achieve the stated goal.

*Comment 17:* Four commenters stated that the requirement that vessels intending to fish in the U.S./Canada Area Management Area must notify the observer program of their intent to fish 5 days prior to the start of the trip is excessive and does not reflect the way vessels operate. The commenters suggested that the notification

requirement be reduced to 2 days prior to the start of the trip.

*Response:* NMFS believes that the 5-days notice is necessary for vessels that intend to fish in the U.S./Canada Management Area, in order to provide NMFS adequate time to plan and execute observer deployments, based on the level of observer coverage required in the fishery. NMFS must assess observer availability, contact observers, and allow time for the observer to travel to the port of departure. Frequently, an observer is already deployed on another vessel and is not immediately available.

*Comment 18:* Three commenters believed that the closure of the Eastern U.S./Canada Area should apply only to vessels fishing on a groundfish DAS, and not to all vessels fishing with gear capable of catching groundfish. The commenters stated that this is inconsistent with Amendment 13.

*Response:* NMFS acknowledges that the intent of Amendment 13 was to limit the scope of the Eastern U.S./Canada Area closure to vessels fishing on a groundfish DAS. This final rule reflects that change. This change alleviates an unintended impact on non-groundfish fisheries.

*Comment 19:* One commenter stated that the Sector Allocation regulations that authorize the Council to allocate DAS to a Sector is not consistent with Amendment 13 and should be removed.

*Response:* Although the Amendment 13 document does not include specific criteria related to the allocation of DAS to a Sector, in section 3.4.16.1.2 (where criteria for allocation of TAC is described), the discussion of Sector allocation in Amendment 13 includes numerous references to the concept of DAS allocations to a Sector. The regulations include a reference to DAS allocations in order to be consistent with the Amendment and to make clear that the Council has the authority to allocate DAS and/or develop criteria for the allocation of DAS to a Sector. No such allocation is being proposed in the final rule and any future allocation of DAS to a sector would have to be analyzed and justified in the action authorizing such future allocations.

*Comment 20:* One commenter believed that the 500 lb (226.8 kg) GB cod trip limit was inconsistent with the intent of Amendment 13 and should apply only to the Eastern U.S./Canada Area, and not to the Western U.S./Canada Area as the proposed rule states.

*Response:* NMFS agrees that Amendment 13 intended that the GB cod trip limit should apply only to the Eastern U.S./Canada Area and has made this change to the final rule. This proposed restrictive cod trip limit is

consistent with Amendment 13, as it is applicable to the U.S./Canada Area specific to cod, *i.e.*, the Eastern U.S./Canada Area.

*Comment 21:* One commenter noted that, according to the proposed rule, when the U.S. TAC for GB yellowtail flounder is attained, the prohibition on possession applies only to the Western U.S./Canada Area, but felt that this is inconsistent with the intent of the Council and Amendment 13. The commenter suggested that the prohibition instead apply both to the Western and the Eastern U.S./Canada Area, in order to be consistent with Council intent.

*Response:* NMFS agrees that the intent of Amendment 13 and the Understanding was to prohibit retention of GB yellowtail flounder in both the Western and Eastern U.S./Canada Areas. Upon attainment of the U.S. yellowtail flounder TAC, the Eastern U.S./Canada area will close to vessels fishing under a groundfish DAS, except if fishing in an open SAP. For all other vessels, prohibition of retention of yellowtail flounder in the Eastern U.S./Canada Area, as well as the Western U.S./Canada Area, is necessary to comply with the Understanding.

*Comment 22:* One commenter felt that vessels fishing under an A DAS in the U.S./Canada Management Area should be subject to less restrictive measures.

*Response:* The suggested measure is not consistent with or included in Amendment 13, and therefore cannot be considered for inclusion in this final rule.

*Comment 23:* One commenter stated that he believed that there were too many restrictions associated with fishing in the U.S./Canada Management Areas, and that vessels would refocus their fishing efforts in the near shore waters instead.

*Response:* The restrictions associated with fishing in the U.S./Canada Management Area result primarily from the management strategy chosen to implement and ensure compliance with the Understanding and Amendment 13 objectives. The strategy selected was a system of hard TACs associated with specific geographic areas. In order to implement this hard-TAC system, there must be a means to monitor the amount of catch by species and by area, as well as a means to curtail catch when the TACs are attained. The measures associated with the U.S./Canada Management Area provide a means to monitor the TACs and curtail fishing, as necessary to ensure that the TACs are not exceeded. As an incentive to fish in the Eastern U.S./Canada Area, vessels will not be charged DAS while steaming

to and from that area. The Council may consider recommending additional incentives in a framework action as provided for Amendment 13.

*Comment 24:* The Mid-Atlantic Council commented that it does not support the reductions in Category A DAS, and expressed concern that there may be increased participation in Mid-Atlantic fisheries, such as the squid fishery, as a result of groundfish vessels that attempt to recover lost groundfish revenue (as a result of the DAS reductions). The Mid-Atlantic Council indicated that the Amendment 13 analysis is inadequate because it does not include specific information on the increased landings that result in Mid-Atlantic fisheries, or the species composition of such landings. Because of the perceived shortcomings in the Amendment 13 analysis, the Mid-Atlantic Council concluded that the proposed DAS measures are inconsistent with National Standard 8.

*Response:* The DAS measures are not inconsistent with National Standard 8. The quantitative analysis in sections 4.6 and 4.7 of Amendment 13 provides extensive discussions and considerations of impacts on fishing communities as required by National Standard 8. Further, section 5.4.13.1.3 of the Amendment provides information on the number of permits in other fisheries held by NE multispecies limited access permit holders, their reliance on groundfish revenue, and the level of participation of such permit holders in other fisheries. Although the analysis does not predict landings, it provides useful information that describes the relative scope and nature of the potential effort shift relating to different ports and communities. The economic analysis indicates that the vessels that will be most affected by Amendment 13 are those that are dependent on groundfish for 75 percent or more of their gross revenue. A large number of these vessels have monkfish, spiny dogfish, General category scallop, or bluefish permits, and less than 10 percent have limited access squid permits. Much of the ability to shift into other fisheries is limited to trawl gear. Therefore, Amendment 13 has taken into account impacts of measures and ways to minimize such impacts consistent with National Standard 8.

*Comment 25:* A total of 3,236 commenters, consisting mostly of form comments did not support the phased reduction rebuilding strategy, which, for some stocks, implements a rebuilding program that begins with a fishing mortality rate that is above the threshold rate, and further reduces the target fishing mortality rate in the future. The

principal concerns were that, under this strategy, overfishing for some stocks is not being ended immediately; the rebuilding of the stocks would take an excessive amount of time, and requiring additional time to rebuild stocks, is more risky, and therefore a threat to the health of the stocks and the ecosystem; and overall, the Amendment 13 rebuilding plan is not consistent with the Magnuson-Stevens Act and National Standard guidelines issued by NMFS. Approximately half of these commenters felt that the proposed rebuilding plans were not adequately evaluated, and that Amendment 13 should set rebuilding schedules and rebuilding targets on a species-by-species basis. One commenter supported implementing a phased reduction strategy for all stocks. One commenter supported the rebuilding strategy and noted that combining the adaptive and phased mortality reduction strategies mitigates the economic impacts of the high biomass targets.

*Response:* NMFS has concluded that the proposed phased strategy in fishing mortality reduction is consistent with the Magnuson-Stevens Act and the National Standards. The Magnuson-Stevens Act sets out requirements for preventing or ending overfishing and rebuilding fish stocks at 16 U.S.C. 1851(a)(1) (National Standard 1), 1853(a)(1) and (10), and 1854(e). NMFS promulgated National Standard guidelines relating to these requirements specifically at 50 CFR 600.310. Although the Magnuson-Stevens Act, at 16 U.S.C. 1854(e)(3), requires a management plan to be prepared by the council within a year after stocks are identified as being overfished, there is nothing in the Act or the guidelines that require that overfishing be ended immediately upon implementation of such a plan, as argued by commenters. The only timing requirement in the Magnuson-Stevens Act and guidelines, regarding the time necessary to end overfishing and rebuild fish stocks, is that rebuilding must be achieved as soon as possible, not to exceed 10 years, after taking into account various factors, including the status and biology of the stock and the needs of fishing communities. See 16 U.S.C. 1854(e)(4). To require the ending of overfishing immediately would establish a rigid standard that could result in an unnecessarily short rebuilding time frame, without consideration being given to the factors mentioned above. This result would be inconsistent with 16 U.S.C. 1854(e)(4), because it would undermine the ability

of the Secretary to exercise his discretion in determining how long a rebuilding schedule should be, in consideration of the factors that the Magnuson-Stevens Act deems important. It is entirely consistent, therefore, with the Magnuson-Stevens Act that the ending of overfishing can be achieved at any time during the prescribed rebuilding schedule, as long as the ability to rebuild is not jeopardized.

To put Amendment 13 in perspective, only 8 of the 19 groundfish stocks are experiencing overfishing. Overfishing will continue to occur for only 5 of the stocks being managed under the phased approach. Nevertheless, severe decreases in current fishing mortality are scheduled for the first year of the rebuilding plan, and overfishing on all stocks is expected to end by year 5. Amendment 13 also contains provisions (e.g., default measures to reduce DAS in 2006 and 2009) designed to ensure that further reductions in fishing mortality will take place if, after future assessments, stocks are not projected to rebuild within their specified rebuilding periods.

NMFS has concluded that it is unlikely this strategy will jeopardize the rebuilding of any stock. The NE multispecies fishery is comprised of 19 stocks, many of which co-occur in the same geographic areas, and are subject to fishing by a great diversity of commercial and recreational fishers. The complexity of the fishery and the co-occurrence of stocks of concern and stocks that are not overfished is one of the reasons Amendment 13 utilizes both the adaptive and phased strategies to reduce fishing mortality to rebuild stocks. Immediate cessation of overfishing on all stocks does not adequately take into account and allow for variations among, and contingencies in the fishery, and would cause more severe economic consequences than those projected under the selected fishing mortality reduction strategy. The selection of a phased mortality reduction strategy for some stocks, and an adaptive approach for the remainder of stocks, represents a balancing of the objectives of reducing fishing mortality and minimizing economic impacts, while achieving the goal of rebuilding all overfished stocks of groundfish.

For two of the five groundfish stocks being rebuilt under the phased approach, fishing mortality will be immediately reduced by 49 percent and 59 percent (American plaice and SNE/MA yellowtail flounder, respectively), and will subsequently be reduced to Fmsy, thus ending overfishing completely in 2 years. For three of the

five stocks being rebuilt under the phased approach, fishing mortality will be immediately reduced by 45 percent, 65 percent, and 37 percent. (GB cod, CC/GOM yellowtail flounder, and white hake, respectively), and subsequently reduced to at or below Fmsy in 5 years. These reductions in fishing mortality assume that 85 percent of allocated DAS will be used. In all cases, Amendment 13 contains management measures designed to rebuild the 12 overfished stocks. The time periods required to rebuild the 12 overfished stocks described in Amendment 13 do not exceed the criteria described in the National Standards guidelines and are in accordance with the "Constraints on Council action" in § 600.310(e)(4).

NMFS disagrees that the rebuilding plan was not adequately analyzed. The Amendment 13 analysis of the rebuilding strategies includes expected trajectories of the spawning stock biomass of overfished stocks for both the proposed and the alternative rebuilding strategies. The analysis shows the increase in biomass over time, and in relation to the target biomass (*i.e.*, rebuilt biomass), and is, therefore, sufficient to determine the adequacy of the rebuilding strategy with respect to both the magnitude of rebuilding and the amount of time rebuilding will take. The three rebuilding strategies (constant fishing mortality, phased reduction fishing mortality, and the adaptive approach), which are compared in section 5.2.1.8 of Amendment 13, are all designed to achieve the target biomass within the rebuilding period with a 50 percent probability.

*Comment 26:* A total of 4,779 commenters, consisting of mostly form comments, felt that Amendment 13 needs to include stock specific catch limits to control fishing mortality.

*Response:* Stock-specific catch limits (hard TACs) were among those alternatives that were analyzed in Amendment 13 and considered by the Council, but they were not recommended in Amendment 13. The Amendment 13 states, and NMFS concurs with, the following rationale for this decision: "The Council is concerned that this alternative would lead to a derby fishery, and either excessive discards (if possession of a species is prohibited when a TAC is reached) or a sacrifice in yield from healthy stocks (if groundfish fishing is prohibited when a TAC is reached). In addition, managing 19 stocks, with overlapping geographic ranges, would be administratively difficult. A past Council attempt to manage the fishery with a hard TAC was an abject failure."

Although the Council determined that stock-specific catch limits are not an appropriate management tool to be applied to all stocks, Amendment 13 implements such limits for the GB stocks that are shared with Canada (cod, haddock, and yellowtail flounder).

In addition, Amendment 13 contains various measures to reduce fishing mortality. The implementation of DAS reductions, trip limits and closed areas are all designed to achieve the majority of the fishing mortality reduction. Furthermore, gear restrictions serve as an additional means of controlling fishing effort, as well as enhancing stock structure.

*Comment 27:* A total of 1,549 commenters, consisting mostly of form comments, felt that Amendment 13 represents an important opportunity to reform the FMP, and should therefore incorporate the commenters' suggested revisions.

*Response:* Amendment 13 represents an important opportunity to improve the FMP and contains various conservation and management measures for the Northeast groundfish fishery. A partial list of the novel types of management programs that Amendment 13 implements includes the following: Control of latent effort and refinement of the use of DAS through the DAS baseline and categorization of DAS; coordination of management of shared GB stocks with Canada in order to maximize benefits from shared stocks; real-time dealer electronic reporting, habitat closure areas to protect EFH, DAS leasing and transfer to programs provide flexibility under reduced DAS allocations, and selective use of hard TACs.

*Comment 28:* One commenter requested clarification of justification for the starting date of the rebuilding periods.

*Response:* The rebuilding periods begin in 2004 because the Amendment 13 management measures are expected to be implemented in 2004. The National Standard Guidelines state: "A rebuilding program undertaken after May 1, 1998, commences as soon as the first measures to rebuild the stock or stock complex are implemented." Prior to implementation of Amendment 13, there were no formal rebuilding programs for the overfished stocks. In 1999, Amendment 9 to the FMP implemented status determination criteria, but did not implement rebuilding programs. An amendment to the FMP was necessary to develop and implement a comprehensive rebuilding strategy for the FMP. To retroactively impose a 1999 start date 5 years later would make it virtually impossible for

the agency to reasonably take into account all of the National Standards and other required provisions of the Magnuson-Stevens Act, because rebuilding would have to be accomplished for all stocks in a truncated time period. The measures in Amendment 13, beginning in 2004, will rebuild the groundfish stocks, while at the same time ensuring that other considerations required by the law regarding impacts on the industry are fully considered and accounted for. NMFS has concluded, therefore, that its decision to start the rebuilding clock in 2004 is more consistent with the applicable law and is more appropriate than starting it in 1999.

*Comment 29:* One commenter felt that the GB stock of yellowtail flounder should be under a rebuilding program.

*Response:* The GB stock of yellowtail flounder is neither overfished, nor has the stock previously been declared overfished. Therefore, there is no requirement for a rebuilding program. Amendment 13 measures are designed to maintain the GB stock of yellowtail flounder at a level consistent with optimum yield.

*Comment 30:* One commenter believed that Alternative 1B in Amendment 13 should have been selected because this alternative would have the least economic impacts. The commenter compared the estimates of numbers of jobs affected, the amount of lost revenue, and the loss in personal income associated with the proposed alternative and those associated with Alternative 1B and concluded that the proposed alternative would produce the same long-term results, yet at a much larger first-year cost.

*Response:* NMFS recognizes that Alternative 1B is a significant alternative that would yield a lesser economic impact to the New England region in the first year of the rebuilding plan. In terms of the economic impact to vessels, Alternative 1B would yield a reduction of \$28 million in first year revenues compared to \$40 million for the selected alternative. However, analysis of Alternative 1B did not substantiate that it would result in higher economic benefits over the long-term. Alternative 1B consists of a series of increasing DAS reductions of 35 percent in 2004, 45 percent in 2005, 55 percent in 2006, and 65 percent in 2007. The full schedule of reductions was not evaluated because the area closure model used to evaluate all other alternatives is not a dynamic model. In other words, the model used to evaluate both biological and economic impacts only produces a short-term, one year forecast. DAS reductions for years 2005–

2007 could not be estimated given the limitations in the modeling. Even assuming projections were made for these years, the projections would likely be overestimated, and would not be representative of likely impacts. Presumably, at least part of the economic impact of the 2005 DAS reduction would be offset by a change in productivity; similarly for the DAS reduction in 2006 and 2007. Applying the area closure model to the full 65 percent reduction in DAS would have misrepresented the year 4 impacts. Alternative 1B also contains the 2:1 DAS counting in SNE/MA and the raised footrope trawl in the CC/GOM stock area. It is important to note that, in order for Alternative 1B to have no additional cumulative negative economic impacts after the first year, the relative change in productivity must be proportional to the change in DAS. In other words, an annual productivity increase of 10 percent would be required to offset the 10 percent reduction in DAS. NMFS believes that it is more likely that the negative cumulative impacts of 4 years of DAS reductions would exceed that of the selected alternative, especially since the difference between the two alternatives in 2004 is only about \$12 million in revenues. This gap begins to narrow rather quickly when one considers that, while revenues would likely increase in 2005 under the preferred alternative, they would be declining under Alternative 1B as DAS continue to be reduced. In addition, Amendment 13 notes that the negative impacts attributable to the selected alternative were overestimated because of the inability to formally include the positive effects of harvest under B DAS. Alternative 1B contains no such opportunities. Therefore, NMFS concludes that the gap between these two alternatives narrows in 2004 with the addition of the harvest using B DAS and very much favors the selected alternative in 2005 through 2007. While Alternative 1B was considered, it was apparent that the risk of not achieving required productivity gains after year 1 was very high and could do irreparable economic harm to the NE multispecies fleet in the final 3 years of the stepped reduction. A thorough breakdown of economic impacts by industry and by port is provided in Volume 1, section 5.4.6, of Amendment 13. Results of that analysis fulfill the requirements of E.O. 12866, which requires the Agency to take into account all economic impacts to the Nation resulting from the proposed rulemaking.

*Comment 31:* One commenter felt that NMFS must revise the recovery rate analysis in the fishing gear habitat impact assessment because there are contradictions in certain sections that do not comply with National Standard 2.

*Response:* Amendment 13, in Section 9.3.1.8.4.2, Potential Adverse Impacts of Bottom Trawls and Dredges, states that the recovery rate for damaged sponges and soft corals is 12 months, based upon the literature that was reviewed in section 9.3.1.2.4.2. Forty-four relevant peer-reviewed and non-peer-reviewed publications were included in the literature review and comprise the best available science on the subject. Recovery rates were provided when reported by the authors of the scientific studies. Discrepancies between recovery rates listed in tables 453–455 and those reported by the 2001 Gear Effects Workshop are due to the subjective nature of the responses provided by the Workshop participants compared to the research results published by various authors. NMFS is confident that the best available science was utilized in the fishing gear effects analysis and that the document is in compliance with National Standard 2.

*Comment 32:* One commenter felt that NMFS range of habitat closure alternatives is inadequate.

*Response:* The Amendment 13 considers a wide range of reasonable alternatives to minimize the adverse effects of fishing on EFH to the extent practicable. The alternatives range in terms of the type of management tool used, and are analyzed in terms of the practicability standard prescribed by the Magnuson-Stevens Act and implementing regulations. There are several alternatives considered representing each of the three identified management tools (effort reduction, gear modification, and closed areas). There are 11 distinct alternatives described using the closed area tool. These alternatives range from use of existing area management scenarios to expansion of existing area management scenarios, to development of new closed areas not dependent upon any previous area closures. Specifically, the National Research Council (NRC), as well as an international panel of experts convened for the 2001 Northeast U.S. Fishing Gear Effects Workshop, have recognized that there are three fishery management tools available to mitigate the effects of trawls and dredges on seafloor habitats: Fishing effort reduction, gear modifications, and area closures. The NRC stated that effort reduction is the cornerstone of managing the effects of fishing on habitat, but typically some

combination of these three measures will be most effective. Amendment 13 utilizes this concept and analyzes a range of reasonable alternatives under each one of the tools listed below in the context of practicability of the measures.

*Effort Reductions:* The major goals of Amendment 13, as described in section 2.2, Purpose and Need for Action, is to rebuild overfished fisheries, end overfishing where it occurs, minimize bycatch to the extent practicable, and to provide options for reducing harvesting capacity. Approximately 35 management measures will be implemented to achieve these goals. These non-habitat measures are described and analyzed in sections 5.3.6.7 and 5.3.8.2 as Habitat Alternative 2 (Benefits to EFH of Other Amendment 13 Measures). The analysis concludes that the net effect of these measures are positive or provide a benefit to habitat.

*Gear Modifications:* Several alternatives have been developed related to otter trawl gear or fishery modifications to mitigate impacts to bottom habitats to the extent practicable. Habitat Alternative 8 (Restrictions on the use of rockhopper and/or roller gear) provides five specific alternatives (Alternatives 8a–8e) to minimize potential adverse effects of otter trawls on habitat. Habitat Alternative 9 would require the use of VMS on all groundfish vessels to provide high resolution data on the distribution of fishing effort.

*Area Closures:* The majority of the alternatives developed to minimize or mitigate adverse impacts of fishing on habitat to the extent practicable revolve around closed areas. Eleven distinct closed area alternatives were developed and analyzed. Three alternatives were developed specifically to protect hard-bottom areas (Habitat Alternatives 3a, 3b, and 4). Four alternatives were developed to balance EFH protection with fishery productivity (Habitat Alternatives 5a, 5b, 5c, and 5d). Three alternatives were developed to utilize existing groundfish mortality closure areas to gain additional habitat protections (Habitat Alternatives 6, 10a, and 10b), and one alternative (Habitat Alternative 7) was developed to prohibit additional fishing gear in the groundfish mortality closure areas.

*Comment 33:* A total of 1,550 commenters, consisting mostly of form comments, stated that Amendment 13 fails to protect sensitive cod nursery grounds from trawling and weakens protection for juvenile cod (no action protects 22.9 percent of juvenile cod EFH, and the proposed action (Alternative 10b) protects 15.3 percent of juvenile cod EFH).

*Response:* NMFS disagrees. The Magnuson-Stevens Act requirement is to minimize, to the extent practicable, the adverse effects of fishing on EFH. The Amendment 13 FSEIS concludes (section 9.3.1) that there are 23 managed species, comprising 42 distinct life stages, that have EFH that is vulnerable to the effects of bottom-tending mobile gear. Therefore, the Magnuson-Stevens Act requirement is to minimize, to the extent practicable, the adverse effects of fishing on the EFH of these 42 species/life stages, not all of which utilize or require the same habitat type (FSEIS Table 161). Amendment 13 undertook an approach to balance EFH protections among all 42 species/life stages, instead of targeting minimization measures on one species/life stage. Amendment 13 implements a series of management measures that represent several major strategies for providing direct and indirect protection to a wide variety of vulnerable EFH. Implementation of Habitat Alternative 10b establishes a series of habitat closed areas within the GOM, GB, and SNE, which prohibit the use of bottom-tending mobile gear (otter trawls and dredges). These closed areas total 2,811 sq nm and, with regard to juvenile cod, encompass 15.3 percent of the entire juvenile cod EFH (see Table 143 in Amendment 13). Therefore, a significant amount of juvenile cod EFH, as well as the EFH of 38 other species/life stages is, afforded direct protection against the adverse impacts from bottom-tending mobile gear. In addition to these closed areas, Amendment 13 implements many management measures aimed at achieving major reductions in the overall fishing effort within the groundfish complex (See section 5.3.6.7 and 5.3.8.2 describing Habitat Alternative 2). These fishing effort reductions relate to reduced impacts on benthic habitats, thereby providing more indirect protections to vulnerable EFH.

In comparison to the No Action Alternative, Habitat Alternative 10b provides direct protection to 15.3 percent of the juvenile cod EFH and to the EFH of 38 other species/life stages, compared to the temporary and intermittent protections afforded under the No Action Alternative (section 5.3.6.1.2.1). Although the No Action Alternative is listed in various tables in section 5.3.8 as a point of reference for closed area alternatives, it is not directly comparable because of the type of closure it represents. The values provided under the No Action Alternative represent the existing groundfish mortality closures, which are not closed for habitat protection

purposes and are available to access by various bottom-tending mobile gears. This is why section 5.3.8.3.2, Summary of EFH Benefits of Area Closure Options, does not compare the No Action Alternative to the 10 closed-area alternatives. Amendment 13 shows that Habitat Alternative 10b is superior and practicable, providing permanent or indefinite protection to 15.3 percent of the juvenile cod EFH, compared to no permanent or indefinite protection provided by the No Action Alternative. Alternative 10b does not weaken EFH protections for any species. In considering these alternatives, the Council and NMFS also determined that Alternative 10b met the practicability standard of 50 CFR 600.815(a)(2)(iii) (See section 5.3.10 of Amendment 13).

*Comment 34:* One commenter felt that the majority of the habitat alternatives were developed in 2000 and 2001, prior to the reinitiation of scoping in 2001, and over a year before the completion of the gear impacts assessment in the fall of 2002. Thus, the commenter stated the record shows that these alternatives were not based on the best available scientific information and violate National Standard 2.

*Response:* The scoping for the EFH components of Amendment 13 commenced on February 1, 2001 (66 FR 8568) and continued through April 4, 2001 (66 FR 13281). At the conclusion of the scoping period, the public comments, including all recommended alternatives, were compiled and discussed by the Council's Habitat Technical Team in April 2001, with recommendations forwarded to the Habitat Committee and the Council. It was not until after the conclusion of the public scoping period that alternatives were considered for analysis by the Council. In fact, reasonable alternatives were considered by the Council through 2003. Recommended alternatives that were not analyzed were classified as considered but rejected, and can be found in section 4.2 of Amendment 13.

In terms of the gear impacts assessment, the 1998 EFH Omnibus Amendment concluded that bottom-tending mobile gear may adversely affect EFH, particularly complex bottom habitats. This conclusion has not changed over time, but has been further supported by more recent scientific studies. Therefore the basis for development and selection of alternatives to minimize adverse effects of fishing on EFH has not changed since 1998. The Gear Effects Evaluation provided in Amendment 13 (Section 9.3.1.2) reflects this newest science and therefore complies with National Standard 2.

*Comment 35:* One commenter stated that Amendment 13 fails to separate EFH protections for GOM juvenile cod EFH and GB juvenile cod EFH, since these stocks are managed separately.

*Response:* EFH is designated by species and by life stage over the entire range of the species. There is no requirement to designate EFH by species, by life stage, and by stock. Presently, EFH is not described by stock, and analysis of habitat impacts by stock would create significant managerial and scientific difficulties, without concomitant benefit to the species. NMFS has determined, therefore, based upon the best available science, that the EFH of both GOM and GB cod stocks are protected to the extent practicable under current management practices.

*Comment 36:* One commenter felt that NMFS must develop alternatives to designate habitat areas of particular concern (HAPC) to comply with the *AOC v Evans* Court Order (Civ. No. 99-00982 GK (D.D.C)).

*Response:* Amendment 13 meets legal requirements of the Magnuson-Stevens Act and the AOC Joint Stipulation. The groundfish FMP already has established one HAPC in Closed Area 2. The Council has established a process for further consideration of HAPCs and is currently seeking public comment on this issue as part of the development of EFH Omnibus Amendment 2.

*Comment 37:* One commenter felt that NMFS should reject Habitat Alternative 2.

*Response:* Habitat Alternative 2 includes approximately 35 measures to achieve the non-habitat-related goals of Amendment 13, and provides indirect net benefits to EFH (see analysis in section 5.3.8.2 of Amendment 13). Habitat Alternative 2 is not the only alternative that is being relied upon to minimize the adverse effects of fishing on EFH. The EFH final rule (67 FR 2343) specifically requires that the evaluation of fishing effects must list management actions that minimize potential adverse effects on EFH and describe the benefits of those actions to EFH. The response to Comment 32 also contains pertinent information in response to this comment.

*Comment 38:* Two commenters suggested that NMFS partially reject Habitat Alternative 10b, and instead select Alternative 3a, because they felt it protects more gravel habitats.

*Response:* While Habitat Alternative 10b is an industry-developed alternative, it was subjected to the same environmental analysis as all the other closed area alternatives. The analysis shows that it ranked relatively high for

EFH protection and protection of other ecosystem properties when compared to the other closed area alternatives, including Habitat Alternative 3a, and that it represents the most practicable alternative. Habitat Alternative 10b was shown to be the most effective in protecting EFH that is highly vulnerable to the effects of bottom-tending mobile gear (section 5.3.8.3.2.2 of Amendment 13). As stated in Response 33, the Magnuson-Stevens Act requirement is to minimize, to the extent practicable, the adverse effects of fishing on EFH, not just the EFH of one species or life stage. Habitat Alternative 10b establishes a series of habitat closed areas within the GOM, GB, and SNE, which prohibits the use of bottom-tending mobile gear (otter trawls and dredges). These closed areas total 2,811 sq nm and, with regard to juvenile cod, encompass 15.3 percent of the entire juvenile cod EFH, (see Table 143 in Amendment 13). Therefore, a significant amount of juvenile cod EFH, as well as the EFH of 38 other species/life stages, is afforded direct protection against the adverse impacts from bottom-tending mobile gear. In addition, because the EFH protections are more effective than most of the other alternatives, and since this alternative has a relatively low economic cost to the fishing industry and port communities, Alternative 10b was shown to be the most practicable alternative to implement (Amendment 13 Section 5.3.10.3.4.10). In comparison, Alternative 3a, while providing a good degree of EFH protection, has high economic costs to the industry and disproportional community impacts. Alternative 3a was shown not to be practicable. The Magnuson-Stevens Act and EFH Final Rule require that actions to minimize the adverse effects of fishing on EFH be practicable. The practicability analysis considered the costs and benefits of the alternative on EFH, associated fisheries, and the Nation, as required by § 600.815(a)(2)(iii) and is consistent with National Standard 7.

*Comment 39:* Three commenters felt that the habitat closed areas protect mainly sand habitats instead of more valuable complex gravel habitats.

*Response:* Amendment 13 concludes that complex hard bottom (gravel) habitats are vulnerable to the adverse effects of bottom-tending mobile gear. However, Amendment 13 also shows that hard bottom sediments are not the only vulnerable EFH. The EFH for other species described as sand, soft sediments, silt, mud, and soft mud have also been determined to be highly vulnerable to the adverse effects of bottom-tending mobile gear (Table 161

of Amendment 13). Amendment 13 provides a balanced approach to EFH protection and protection of these substrate types.

The substrate analysis provided in Amendment 13 (section 5.3.8.3.1.2) shows the percent composition within each closed area based upon six sediment characteristics: Bedrock, gravel, gravelly sand, sand, muddy sand, and mud. Table 141 in Amendment 13 shows that, out of the 83,550 sq nm included in the Northwest Atlantic analysis area, 53,856 sq nm are composed of sand/gravelly sand, representing 64 percent of the entire area. Less than 1 percent of the Northwest Atlantic analysis area has been mapped as gravel or bedrock. These complex hard bottom areas of bedrock and gravel are not uniformly distributed (see Figures 160 and 162 of Amendment 13) and are difficult to encompass in closed areas without including large amounts of sand and other substrates. The closed area alternatives analyzed in Amendment 13 encompass anywhere from 3 to 32 percent of the mapped gravel areas. Habitat Alternative 10b includes all substrate types representing vulnerable EFH. Compared to the Northwest Atlantic analysis area, Alternative 10b includes 2 percent of the bedrock, 19 percent of the gravel, 11 percent of the gravelly sand, 3 percent of the sand, 2 percent of the muddy sand, and 2 percent of the mud (Table 141 of Amendment 13).

*Comment 40:* One commenter felt that NMFS should implement Habitat Alternative 8d in Amendment 13, which prohibits the use of rock hopper and roller gear.

*Response:* The analysis in Amendment 13 is inconclusive as to whether this alternative provides additional habitat protections, and as to the costs to the industry (section 5.3.10.3.4.8) in implementing this alternative. Direct benefits to EFH under this alternative would have to be demonstrated and better understood before it could be adopted. NMFS has concluded that implementation of habitat closed areas (Alternative 10b) is a more effective way of protecting vulnerable EFH based on best available science.

*Comment 41:* One commenter was concerned that Amendment 13 contains no measures specifically designed to protect deep water corals.

*Response:* Amendment 13 does not contain any measures specifically designed to protect deep-water corals because the use of bottom-tending mobile gear associated with the NE multispecies fisheries has not been

identified as having an adverse effect on deep-water corals. NE multispecies fisheries are not typically conducted in these deep waters (section 9.3.1.2.3.4.4 of Amendment 13).

*Comment 42:* An industry group strongly opposed the measures in Amendment 13 and the proposed rule that would exclusively preclude access by bottom-tending mobile gear to specific geographical areas of the fishing grounds. The commenter felt this represents an unacceptably disproportionate measure and inequitable allocation of access to the groundfish resource among sectors of the fishery.

*Response:* The Magnuson-Stevens Act and the EFH Final Rule require that the adverse effects of fishing on EFH be minimized to the extent practicable. An evaluation of the potential adverse effects of each fishing activity on EFH was conducted as part of Amendment 13 (section 9.3.1). This evaluation concluded that bottom-tending mobile gears can have a potential adverse effect on the EFH of 42 species/life stages within the geographic bounds of the NE multispecies fishery. Amendment 13 must minimize, to the extent practicable, those adverse effects on EFH that are occurring as a direct result of the use of bottom-tending mobile gears in that fishery. Habitat closed areas, or areas where bottom-tending mobile gear are prohibited, are the most effective way of minimizing those adverse effects. The areas selected as habitat closures (Habitat Alternative 10b) are 81 percent within the existing groundfish mortality closures where the harvest of groundfish is currently prohibited. The practicability analysis (section 5.3.10.3.4.10) shows that Habitat Alternative 10b results in the least economic cost to the industry (except for Habitat Alternative 6). In addition, this alternative provides the most effective protection to EFH, making Habitat Alternative 10b the most practicable alternative to implement. Alternatives that provided equally as much protection to EFH, but that would be more costly to the industry, were determined not to be practicable and, therefore, are not being implemented.

*Comment 43:* One commenter suggested that the final rule make it clear that EFH closures are frameworkable.

*Response:* The 1998 EFH Omnibus Amendment added frameworkable actions for the conservation and protection of EFH, which includes changes to the boundaries of EFH and HAPC designations, gear restrictions, area closures, and establishment of special management areas or zones. In

addition, this final rule includes gear requirements or gear changes in order to reduce impacts on EFH.

*Comment 44:* One commenter expressed support for exclusion of trawlers from sensitive habitats.

*Response:* Although the scope and exact meaning of the term "sensitive" is unclear, Amendment 13 does address the concept being supported by the commenter. Specifically, Amendment 13 and this final rule implement a series of habitat closed areas (Habitat Alternative 10b) as level 3 closures (closed to all bottom-tending mobile gear) to protect EFH that is vulnerable to the effects of bottom-tending mobile gear.

*Comment 45:* Three commenters did not support the default measures that will make further reductions to fishing mortality in 2006 and 2009, unless certain criteria are met. One commenter believed that the default measures are not consistent with National Standard 6, another commented that the proposed measures were not approved by the Council, and a third was concerned that the impacts of the default measures were not adequately analyzed.

*Response:* The default management measures were developed because the phased and adaptive rebuilding strategies implemented by Amendment 13 require future reductions in fishing mortality beyond the levels of fishing mortality reductions that will be implemented in 2004. Both the phased and adaptive rebuilding approaches use a strategy where a higher rate of fishing mortality (landings and discards) are permitted during the initial years of the rebuilding program, but lower fishing mortality rates are therefore required in subsequent years in order to rebuild to the appropriate level (Bmsy) within the required timeframe.

The default criteria were developed because it is possible that, at the time the default measures are scheduled to be implemented (2006 and 2009), the stock status situation will have improved such that the scheduled default mortality reductions (*i.e.*, management restrictions) will not be necessary. The goal of the default criteria is to implement measures of success and have a relatively swift means to avoid the default measures if they are not necessary. More specifically, if in 2006 the stock assessment indicates that either the fishing mortality rates and/or the stock sizes are more favorable than currently predicted, and the default criteria are met, the default management measures would not need to be implemented. Full regulatory action would not be necessary in order to prevent the default management

measures from being implemented, and therefore, both time and work would be saved. If however, there were no default criteria in Amendment 13, and the situation is favorable at the time the default measures are scheduled to be implemented, the Council would have to develop, and NMFS would have to implement new regulations to prevent the default measures from being implemented.

The default measures and criteria are consistent with National Standard 6, which requires "Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches." These default criteria are specifically designed to allow for the contingency that the default measures are not necessary.

With respect to the commenter's concern about the adoption and analysis of the default measures, the Council approved the default measures at its meeting on November 6, 2003, and both the default measures and the default criteria are included and analyzed in Amendment 13. The amount of DAS reductions specified by the default measures is proportional to the percentage reduction in fishing mortality necessary for the targeted stocks, and was calculated by the Plan Development Team based upon the analyses of DAS reductions associated with Alternative 1B, in the DSEIS. The full schedule of DAS reductions was not evaluated because the area closure model used to evaluate the alternatives is not a dynamic model. Applying the area closure model to the 2006 and 2009 DAS reductions would have misrepresented the impacts, so it was not done.

*Comment 46:* Four commenters noted that the criteria in the proposed rule that specify the conditions under which the default management measures would not be implemented, which are contained in 50 CFR 648.82(d)(4), are inconsistent with Amendment 13 and Council intent. One commenter stated that the default criteria should be different for the 2006 and the 2009, and that the criteria should only contain references to fishing mortality.

*Response:* NMFS agrees that the criteria in the proposed rule do not completely reflect those proposed in Amendment 13. NMFS abridged the criteria in the proposed rule in an attempt to make them more succinct, but will modify the criteria in the final rule in order to more precisely reflect the intent of those listed in Amendment 13. NMFS disagrees that the 2006 and 2009 default criteria should be different, and disagrees that the criteria should

include only references to fishing mortality. As described in the response to comment number 45, the default criteria are intended to describe potential conditions under which the default measures would not be necessary. If the stock is rebuilding well and existing management measures are achieving the required fishing mortality rate (or the stocks are not overfished), additional management measures to further reduce the fishing mortality would not be necessary.

*Comment 47:* One commenter felt that the amendment fails to address potential impacts to the infrastructure of ports.

*Response:* The economic analysis in Amendment 13 makes it possible to identify economic impacts on specific industrial sectors on a regional and subregional level. However, data were not available on fishing and fishing-related infrastructure, either in terms of physical features or business entities at a port level. The aggregation of data by region makes it difficult to trace impacts to specific ports within a specific region. Furthermore, defined industrial sectors contain aggregations or combinations of distinct businesses based on the primary product. Thus, while seafood processing is identified as a distinct sector, a distributor of commercial fishing gear would be included in a wholesale trade sector; along with a myriad of other wholesalers, most of which have nothing to do with fishing. Similarly, a trucking company that specializes in seafood would be grouped in with other trucking companies so the impact on the one or more businesses that transport seafood could not be identified.

*Comment 48:* One commenter noted that the analysis of impacts on vessels is incomplete due to a lack of comprehensive data on the fleet, most notably costs.

*Response:* NMFS concurs that a comprehensive fishing vessel cost database would improve economic analysis of Amendment 13, or any other management action, but such a data base was not available at the time analysis of vessel-level impacts were estimated. Vessel break-even analysis was consistent with similar analyses prepared for prior groundfish actions, and impacts based on vessel-level changes in gross revenues is also standard practice in the absence of reliable cost data. The limitations of this approach are acknowledged in Amendment 13.

*Comment 49:* One commenter stated that the amendment does not address community impacts beyond vessels.

*Response:* Amendment 13 does provide information on revenue impacts on vessels with homeports from selected ports (*i.e.*, the port groups identified in the Affected Human Environment as being primary groundfish ports) and provides more aggregated regional impacts for sub-regions that contain multiple ports. The commenter is correct in the sense that neither of these analyses provide detailed information at a community level. Data were available, and analyses prepared, that would have made it possible to report revenue changes at a port-level. Such analyses have been a staple of economic analyses prepared for other management actions. However, without additional information on the composition of the shore-side economies of each affected community, merely reporting revenue changes by port provides only limited information on community impacts. Reporting impacts at a larger, sub-regional level permits full exposition of directly and indirectly affected economic sectors, but does so at the expense of losing specificity at the community level. Future reporting of management impacts would provide more information at a community level if both port-level revenue changes and sub-regional impacts on coastal economies are developed. More detailed community impact assessments will require systematic data collection, as well as additional research to identify the key components of community impacts.

*Comment 50:* The Council's social science advisory committee expressed concern about the adequacy of social and economic analysis in Amendment 13.

*Response:* Adequacy addresses whether the analyses provided for Amendment 13 were based on the best available data and whether these data were used in a manner consistent with professional standards. The panel of experts that reviewed the social and economic analyses concluded that they were adequate both in terms of the use of available data and the choice of the analytical methods applied to evaluate the impacts of specific management decisions.

*Comment 51:* A total of four commenters did not support the definitions of gear required for vessels fishing in the U.S./Canada Area. Some suggested minor revisions to the haddock separator trawl, as well as alternative definitions to the flatfish net, that would more closely resemble nets used in experimental research within the area. All commenters indicated that the flatfish net, as defined in the proposed rule, was impracticable.

*Response:* NMFS has made the necessary changes to the haddock separator trawl measure in this final rule. The definition has been changed to require that the mesh in the separator panel be composed of 6-inch (15.2-cm) diamond mesh, rather than 6.5-inch (16.5-cm) square or diamond mesh. This mesh would maintain consistency with the regulations at § 648.80(a)(4) and would minimize the retention of cod in the upper portion of the net compared to square mesh. Little guidance was provided in Amendment 13 defining flatfish gear. Accordingly, the proposed flatfish net was defined using available scientific research and consultations with gear experts. NMFS maintains that the proposed flatfish net definition would reduce cod bycatch while allowing vessels to target flatfish. Based upon suggestions from the public and additional available research, NMFS has included an alternative flatfish net definition that more closely resembles nets used in experimental research within the US/Canada Management Area.

*Comment 52:* A total of 11 commenters stated that management measures implemented by Amendment 13 will fail to achieve the desired fishing mortality rates. Their principal concerns are that categorization of DAS into A, B, and C days will not reduce DAS fished, that the overall DAS allocation is excessive and will not end overfishing, and the B and C DAS categories will increase opportunity in the fishery. Two of these commenters stated that the analysis of fishing mortality includes A DAS only and, therefore, fails to account for all sources of fishing mortality. One commenter stated that the stocks of GOM cod, white hake, and witch flounder will not meet the mortality goals. One commenter believes that the rules do not serve the public interest, but instead serve the commercial fishing industry because they are too lenient.

*Response:* Category A DAS are the principal effort control mechanism in the FMP, that, in combination with the other management measures (*e.g.*, closed areas, gear restrictions, and trip limits), will reduce the fishing mortality in the fishery in order to rebuild the groundfish stocks. However, because DAS are a non-specific management tool, they limit fishing effort on both overfished stocks and those stocks that are not overfished. The concept of Category B DAS was developed in order to address the fact that non-specific cuts in DAS, based upon the most severely depleted stocks, unnecessarily limits the ability of fishers to fish for stocks that are not overfished. The purpose of

allocating Category B DAS is to provide limited potential to target stocks that are not overfished.

Category C DAS may not be used upon implementation of Amendment 13, and their future use will depend upon both the rebuilding of stocks and capacity of the fishery.

Upon implementation of Amendment 13, the only DAS that may be used in the fishery unrestricted are Category A DAS. Table 81 in Amendment 13 indicates that the total number of DAS used will be decreased by between 39 and 50 percent when compared with the no action alternative (depending upon the rate of DAS use). Such a decrease in DAS use does not represent an increase in fishing opportunity. Table 81 also provides a summary of the anticipated fishing mortality reductions that the management measures will achieve, based upon the allocation of A DAS in combination with other management measures, and assuming 3 rates of DAS use. With few exceptions, the calculations indicate that the management measures are sufficient to achieve the necessary reductions in fishing mortality.

Based upon the information contained in Table 81, the commenter's concern about the achievement of the mortality goals for the stocks of GOM cod and witch flounder (two of the "exceptions" noted above) are justified, because the table indicates that the expected reduction in fishing mortality may be less than the needed reduction in fishing mortality for these stocks. NMFS' determination that the management measures have been demonstrated to be sufficient to meet the mortality objectives is based on both Table 81, and other information contained in Amendment 13. The pertinent information in Amendment 13 includes not only the results of the data analysis, but also the limitation of the model. According to Section 5.1.1, the closed area model, the principal analytical component of the fishing mortality calculations, has the following limitations: "The model is a simulation of behavioral responses to changes in fishery regulations. It should not be interpreted as a precise calculation of future fishing mortality. While the model output results in apparently precise numerical estimates, it is better to interpret these as broad indicators of relative changes, rather than as precise prediction of mortality impacts. Small percentage changes, for example, should be viewed as less likely relative outcomes than large percentage changes. For stocks where the Council is implementing measures to make large reductions in fishing mortality, it

should be clear that the results of the measures will have to be carefully monitored to make sure the objectives are achieved. The model may not capture the exact response of fishermen to the regulations and as a result may over or under estimate the realized impacts." In light of the limitations of the model, the determination of the sufficiency of the rebuilding program should not be based solely upon small percentage differences between the desired and the achieved mortality reductions in stocks such as GOM cod. With respect to witch flounder, the management measures achieve approximately 75 percent of the necessary mortality reductions. If necessary, the default measures in 2006 will further reduce fishing mortality. NMFS will carefully monitor the results of the management measures through daily dealer reporting, and other means to ensure that the model did not overestimate the predicted impacts.

In contrast to Category A DAS, Category B DAS may only be used in approved SAPs upon implementation of Amendment 13. Amendment 13 provides for an allocation of B regular and B reserve DAS in order to allow limited opportunity in SAPs, and enable the Council to develop additional opportunities to utilize B DAS. Only two SAPs are being approved in Amendment 13, both of which are projected to have insignificant impacts on species of concern. NMFS agrees that the analysis of fishing mortality does not include B DAS in a global way, and that B DAS represent an additional source of fishing mortality. However, NMFS disagrees that the allocation of B DAS, their use in SAPs, and their potential use outside SAPs, necessarily mean that the fishing mortality on stocks of concern will be excessive. Amendment 13 demonstrates that the SAPs implemented by Amendment 13 will not undermine the fishing mortality objectives, based upon the status of the stocks that will be harvested and the restrictions to strictly limit bycatch of species of concern. Approval by NMFS of additional opportunities to utilize B DAS, in addition to those opportunities provided by Amendment 13, will be contingent upon B DAS targeting appropriate stocks and the development of measures that carefully consider bycatch of species of concern.

Since only two SAPs, only one of which utilizes B DAS, are being approved in Amendment 13, with insignificant impact on species of concern, NMFS has determined that allocating B DAS is consistent with the objectives of the FMP and the Magnuson-Stevens Act.

*Comment 53:* A total of 7 commenters did not agree with the various trip limits as proposed. One stated that low trip limits and inadequate gear restrictions promote discards. Two commenters stated that the GB cod trip limit is too high, creating an incentive to target cod. One commenter suggested that the GB cod trip limit mirror the GOM cod trip limit. One commenter stated that the 250-lb (113-kg) seasonal trip limit for yellowtail flounder in the SNE/MA RMA should be implemented on a year-round basis. One commenter supported possession limits for American plaice, white hake, and SNE/MA winter flounder. Finally, one commenter stated that the GOM cod trip limit should be reduced by 50 percent.

*Response:* NMFS agrees that trip limits may promote discards if set at a low level in relation to the amount of fish encountered, and discards may be exacerbated by non-selective gear. The cod and yellowtail trip limits are set at levels in order to optimize the effect on fishing mortality. The GB cod trip limit may be more successful in achieving this objective than the SNE/MA yellowtail flounder trip limit. The analysis in Amendment 13 indicates that the GB cod trip limit is set at a level that minimizes the potential for regulatory discards, as well as reduces fishing mortality. The reduction of the trip limit from 2,000 lb (907 kg) per DAS to 1,000 lb (454 kg) per DAS decreases the incentive to target GB cod. With respect to GOM cod, NMFS disagrees that the trip limit should be reduced. The higher trip limit for GOM cod is designed to reduce bycatch during the period that cod aggregate for spawning. The analysis concludes that the change in trip limit to 800 lb (363 kg) per DAS will significantly reduce the ratio of fish discarded to fish kept, without jeopardizing mortality goals. Imposition of the SNE/MA yellowtail flounder trip limits will likely increase discards when compared with the no action alternative; however, this is justified given the low biomass of the stock and the fact that overall mortality on this stock should be significantly reduced compared to the no action alternative. The fact that the SNE/MA yellowtail flounder trip limit varies on a seasonal basis (250 lb (113 kg) per trip to 750 lb (340 kg) per trip) may mitigate the amount of discarding by limiting fishing on aggregations of flounder. Imposition of the 250 lb (113 kg) trip limit for the entire year would increase discards. In the future, as the stock rebuilds, this trip limit should be raised. The Council chose not to implement trip limits in order to reduce fishing mortality for American plaice,

white hake, and SNE/MA winter flounder, but instead decided to rely solely on the combined effects of DAS reductions and closed areas and gear (see Response to Comment 83 for further discussion). The continuation of a least 5 percent observer coverage on groundfish vessels should provide adequate monitoring of whether the trip limits are effective regarding reducing fishing mortality and bycatch. If data indicate that the trip limits are not effective, the Council can recommend necessary adjustments.

*Comment 54:* One commenter objected to the fact that the alternative being implemented was developed relatively late in the regulatory process.

*Response:* NMFS agrees that Alternative 5 was developed after the other 4 alternatives were developed, but believes that the development of Amendment 13 was consistent with applicable laws. The selected alternative was based largely on components that were contained in the DSEIS and discussed during the public hearing process, and the full alternative is contained in Amendment 13.

Furthermore, pursuant to the Magnuson-Stevens Act, the public had an additional 60-day comment period on Amendment 13 and all of the alternatives presented, including the selected alternative. Finally, the proposed rule allowed for a 30-day public comment period on the proposed Amendment 13 measures. In view of the numerous opportunities for comment, NMFS believes that the public was informed of, and could comment on each of the proposed alternatives in Amendment 13, including the selected alternative. All appropriate comments received on the Amendment, the NEPA document and the proposed rule have been evaluated by NMFS in order to make a decision whether to approve, disapprove or partially approve Amendment 13.

*Comment 55:* One commenter objected to the continuing use of "rolling" closure areas in the FMP because of the belief that a derby fishery is created when the closed areas are opened.

*Response:* The GOM Rolling Closure Areas provide important protection to spawning aggregations of the GOM cod stock. Although there may be the potential for a derby fishery upon opening of these areas, there are no data indicating that this has been a problem. In any event, the derby affect is likely limited in duration and scope. The impact of the rolling closure areas on GOM cod remains positive.

*Comment 56:* Three commenters did not support the restriction that DAS

carried over from the 2003 fishing year into the 2004 fishing year will be available only as Category B DAS, due to the belief that this creates a safety concern.

*Response:* The classification of fishing year 2003 carry-over DAS as Category B DAS in fishing year 2004 does not represent a safety concern. Although this restriction may provide additional incentive for vessels to fish their DAS in the 2003 fishing year prior to implementation of Amendment 13, due to the different restrictions associated with a Category A DAS and a Category B DAS (as discussed in the response to comment number 52), the regulations do not require a vessel owner to make an unsafe decision regarding whether or not to fish on a particular day.

*Comment 57:* One commenter noted that the concept of B DAS are missing from Amendment 13.

*Response:* Amendment 13 explains the concept of B DAS in section 3.6.1.1. The final rule provides for an allocation of B DAS (both Regular and Reserve), and implements, in a limited fashion, opportunity for their use within SAPs, as well as some associated restrictions (e.g., carry over, leasing of, etc.). Although Amendment 13 describes the concept of B DAS, and anticipates the possible future use of Regular B DAS outside of an approved SAP, the amendment only partially describes the conditions under which the Reserve B DAS may be used. The final rule, therefore, does not include the restrictions associated with Regular B DAS that are discussed in the amendment. The Council is currently developing such restrictions through a framework adjustment.

*Comment 58:* One commenter was opposed to inclusion of the 2001 fishing year in the calculation of the DAS baseline. The commenter believed that this results in a higher total number of DAS defined by the baseline, due to the inclusion of DAS that are not associated with any landings. One commenter supported the inclusion of the 2001 fishing year in the DAS baseline calculation for the following reasons: (1) Allows all fishing effort predating the Settlement Agreement to be treated fairly; (2) broadens the total qualified pool, which is reduced by the minimum landing requirement associated with the baseline DAS allocation; and (3) yields the desirable economic result of higher DAS allocations to all qualified permit holders.

*Response:* The Amendment 13 proposed DAS baseline alternative was selected because it is the alternative that most fairly distributed DAS based on recent groundfish fishing activity.

NMFS disagrees that inclusion of the 2001 fishing year results in a higher DAS baseline. Amendment 13 indicates that the selected baseline results in a lower total number of DAS than does the baseline alternative that does not include the 2001 fishing year. The selected alternative, which includes the 2001 fishing year, also includes a requirement that a qualifying year is one in which the vessel landed 5,000 lb (2,268 kg) or more of regulated multispecies. NMFS agrees with the reasons stated in support of the baseline that includes the 2001 fishing year.

*Comment 59:* One commenter stated that Amendment 13 should include information on the closed area model.

*Response:* NMFS believes that Amendment 13 provides adequate information on the closed area model. The closed area model, which was utilized to estimate the biological impacts of the closed areas, trip limits, and DAS reductions, is described in Section 5.1.1. of Amendment 13. This section describes the inputs to the model, its weaknesses, its advantages, and well as advice to the reader regarding interpretation of the results of the model (see Response to Comment 52). The model itself is an analytical computer program that has been discussed in public fora, and is not appropriate for inclusion in Amendment 13.

*Comment 60:* One commenter suggested that the GB Hook Gear Cod Trip Limit Program be disapproved because it adds uncertainty to the management regime, is incomplete, and difficult to enforce.

*Response:* NMFS has disapproved this program as further described in the preamble of this final rule under the section called "Disapproved Measures."

*Comment 61:* One commenter stated that NMFS should reconsider Amendment 13 if scientific information becomes available that indicates the stocks are in better shape. One commenter supported the biennial adjustment process described in the amendment.

*Response:* Pursuant to the Magnuson-Stevens Act, conservation and management measures established for the Northeast groundfish FMP should be based on the best available scientific information available. The process outlined in the NE multispecies regulations under § 648.90 will be the method utilized to incorporate new information into the FMP. The biennial adjustment extends the duration of time between each required periodic review and adjustment, but does not limit the ability of the Council to develop

management measures at any time necessary.

*Comment 62:* Two commenters expressed support for the biological reference points. One commenter opposed setting the biomass threshold at 50 percent of Bmsy and thought the appropriate level should be 25 percent of Bmsy. One commenter believes that, for certain stocks (e.g., Acadian redfish), the biomass threshold should be set at greater than 50 percent of Bmsy. One commenter stated that the biological reference points should not be modified through framework action.

*Response:* NMFS believes that the amendment sets the biological reference points (status determination criteria) at appropriate values, based upon the National Standard guidelines (NSGs) and the best available scientific information. The NSGs require that the biomass threshold be set at no lower than 50 percent of Bmsy, therefore, setting the threshold at 25 percent of Bmsy would be inconsistent with the NSGs. Although the National Standard guidelines allow for the biomass threshold to be set at a level greater than 50 percent of Bmsy based upon the biological characteristics of a stock, the NEFSC has certified that the Amendment 13 overfishing definitions comply with the National Standard 1 Guidelines. With regard to the process of making changes to the status determination criteria, Amendment 13 differentiates between the process of making changes to the parameters, and the process of making changes to the values of such parameters. Amendment 13 notes that it is the Council's responsibility to recommend status determination criteria, and states that changes to the parameters require Council action, whereas changes to the values do not. Finally, status determination criteria may be adjusted through the use of a framework so that the best available science can be incorporated into the FMP in a timely manner. This process will ensure that NMFS is satisfying its Magnuson-Stevens Act mandates, specifically, National Standard 2.

*Comment 63:* One commenter did not support the sector allocation requirement that allocations of TAC be based upon the catch history during a specific 5 year period, because the requirement would not allow for development of a sector if vessels did not have recent catch history. Another commenter did not support the approval of sectors unless the sectors are subject to a hard TAC.

*Response:* NMFS agrees that, under the sector regulations, those vessels without recent fishing history would not

be able to form a sector. This restriction is consistent with the Goals and Objectives of Amendment 13 (Goal 2): "Create a management system so that fleet capacity will be commensurate with resource status so as to achieve goals of economic efficiency and biological conservation and that encourages diversity within the fleet." Allowing vessels that have not been active in the fishery recently may have the effect of increasing fishing capacity, which would be inconsistent with this goal. As NE multispecies stocks rebuild, the Council may consider removing such restrictions on sector allocations. NMFS agrees that the amendment specifies allocation of a hard TAC or DAS to sectors.

*Comment 64:* Three commenters supported the GB Cod Hook Sector allocation. Two of these commenters believe that participants in the GB Cod Hook Sector should not be regulated by many of the requirements of the FMP, and that the final rule should allow the Regional Administrator to waive specific measures for sector vessels. One commenter stated that the reference in the preamble to the proposed rule regarding the 5-year enrollment period in the GB Cod Hook Sector was incorrect. One commenter stated that the cod TAC for the GB Cod Hook Sector should be allocated based upon an amount of GB cod that includes the Canadian share of the stock. One commenter stated that the DAS for sector vessels should be considered fully utilized (in the event that the sector did not fish under the DAS system).

*Response:* Amendment 13 discusses the potential for a sector to be exempt from specific regulations that would still apply to non-sector vessels and that the Regional Administrator should have the authority to exempt sectors from specific regulations, if the sector's Operating Plan justifies such exemption and the regulation being exempted is not necessary for the achievement of FMP objectives in light of sector measures. The final rule is corrected to reflect this authority. NMFS will consider granting such exemptions through the procedure defined under § 648.87(d), that describes the process for approval of a sector by the Regional Administrator. The approval process includes solicitation of public comment and consultation with the Council. With regard to the requirement that participating vessels stay in the sector until the end of the five year period, NMFS agrees with the commenter that this requirement in the preamble of the proposed rule is incorrect and removes this language from the preamble.

Although Amendment 13 includes a requirement to remain in a sector for the duration of a particular fishing year, the amendment does not discuss the requirement to participate for a five year period. NMFS disagrees that the cod TAC for the GB Cod Hook Sector should be based upon a total amount of cod that includes the Canadian share. Allocation of the hook sector's GB cod TAC in the manner suggested by the commenter could result in allocating an amount of cod that exceeds the sector's historic share of the U.S. fishery, and would therefore be inconsistent with Council intent. Lastly, Amendment 13 did not include a provision that the DAS for vessels participating in a sector be considered fully used. The discussion of such a provision should be included in a sector's Operations Plan.

*Comment 65:* Two commenters stated that the Regional Administrator should have the authority to implement other restrictions at the time the default measures are scheduled to be implemented. One commenter believed that the Regional Administrator should have the authority to adjust management measures in the middle of the fishing year in order to decrease fishing mortality.

*Response:* Neither the Amendment nor the proposed rule included provisions to grant such authority to the Regional Administrator. Without specific criteria in Amendment 13 for making such adjustments, this final rule cannot provide this authority. The Council, however, may develop and recommend an adjustment to management measures at any time through the framework adjustment process.

*Comment 66:* One commenter stated that the final rule should contain the status determination criteria, including definitions of OY, as well as Table 10 from Amendment 13, (proposed rebuilding trajectories; fishing mortality rates for the rebuilding program).

*Response:* The Magnuson-Stevens Act and the National Standard Guidelines require that every fishery management plan contain certain components, such as an identification of OY and stock status determination criteria. However, there is no requirement that all of these items be codified by a regulation. NMFS typically does not include every measure in a fishery management plan or its amendments in codified regulations because it adds to the complexity, length, and costs of publication and such inclusion is not necessary for enforcement or compliance purposes. NMFS has included in this final rule regulatory language for all of the approved

measures in Amendment 13 that require public compliance, as opposed to measures in the amendment that guide or constrain Council action.

*Comment 67:* One commenter supported the provision that allows vessels with VMS to opt out of the VMS program for a minimum period of 1 calendar month.

*Response:* NMFS agrees and is implementing that measure in this final rule.

*Comment 68:* One commenter suggested that NMFS disapprove the proposed removal of the FAAS from the regulations. The commenter stated that the FAAS was implemented to provide the Council and NMFS with the ability to quickly respond to seasonal and area bycatch problems in the groundfish fishery. Furthermore, the commenter suggested that any administrative constraints that limit the potential usefulness of the system should be corrected.

*Response:* NMFS agrees with the commenter and disapproved the proposed removal of the FAAS, as explained in the preamble to this final rule under "Disapproved Measures." NMFS will continue to seek ways to expedite implementation of regulatory actions.

*Comment 69:* One commenter requested clarification on whether the target TACs listed in Table 11 of Amendment 13 are in relation to the calendar year or fishing year.

*Response:* The targets TACs are for the calendar year. The preamble of this final rule has been revised to make this clear.

*Comment 70:* One commenter requested explanation on how the control rules will govern management measures.

*Response:* Section 3.1.8 of Amendment 13 explains how control rules will be applied to the FMP. The control rules are meant to be consistent with fishing mortality thresholds that define when overfishing is occurring.

*Comment 71:* One commenter was opposed to the implementation of any of the Amendment 13 SAPs, stating that there are no stocks that could support an increase in effort.

*Response:* NMFS has approved two Amendment 13 SAPs and disapproved two SAPs. Regarding the approved CA II Yellowtail Flounder SAP, the target species, GB yellowtail flounder, is currently not overfished, nor is overfishing occurring. Since the Amendment 13 DAS reductions are intended to reduce fishing mortality to appropriate levels for the stocks of greatest concern, additional effort directed on GB yellowtail flounder,

through the use of B DAS as well as steaming time deduction, is not likely to undermine the fishing mortality objectives for this stock. Furthermore, GB yellowtail flounder is one of the three shared stocks managed under the U.S./Canada Resource Sharing Understanding and, therefore, is subject to a hard TAC, *i.e.*, a quota specified for a stock, whereby, once attained, the possession limit would be zero. In addition, the Regional Administrator has authority to reduce the GB yellowtail flounder trip limit to ensure that this TAC is not exceeded. Should the TAC be exceeded, the overage would be deducted from the next fishing year's TAC. (For further information, see Comment 77 below.) Vessels electing to fish in the CA II Yellowtail Flounder SAP are required to fish with either a haddock separator trawl or flatfish net to mitigate bycatch of cod. In addition, a cod trip limit of 100 lb (45.4 kg) is proposed when fishing in this area to prevent vessels from circumventing the regulations.

The approved SNE/MA Winter Flounder SAP, which allows vessels directing on summer flounder to retain up to 200 lb (90.7 kg) of winter flounder is intended as a measure to reduce bycatch. Currently, vessels in the summer flounder fishery that catch small amounts of winter flounder are required to discard this species at sea when they are fishing outside of the groundfish DAS program. The SNE/MA Winter Flounder SAP allows these vessels to keep the winter flounder that they would normally be discarding. The fishing mortality on the SNE/MA winter flounder stock will, consequently, not likely be affected, since overall effort is not expected to increase. Winter flounder that otherwise would have been discarded can, instead, be landed.

*Comment 72:* One commenter expressed support for the abbreviated SAP approval process.

*Response:* The proposed abbreviated SAP process has been disapproved, as explained in to the preamble of this final rule under "Disapproved Measures."

*Comment 73:* One commenter noted that there are no proposed SAPs in the near-shore waters of Maine and noted that small vessels from Maine would be unable to physically access the SAPs proposed in offshore waters.

*Response:* Although there are no Amendment 13 proposed SAPs within the near-shore waters of Maine, the Council may develop and recommend an inshore GOM SAP to NMFS through the framework adjustment process. Small vessels from Maine that are unable to physically access the CA II

Yellowtail Flounder SAP may indirectly benefit from this approved SAP should larger vessels that fish Maine's inshore waters redirect their fishing efforts in the CA II Yellowtail Flounder SAP. Because SAPs are designed to target fishing on the healthiest stocks of groundfish, their locations necessarily must reflect the distributions of those stocks. As more stocks rebuild, there will be more opportunities for SAPs.

*Comment 74:* One commenter expressed opposition to the two trip per month restriction in the CA II Yellowtail Flounder SAP, stating that this would create a derby fishery and concentrate landings in the summer months when prices are low.

*Response:* The two-trip-per-month restriction is designed to avoid a derby fishery. In 2002, 117 vessels reported fishing for yellowtail flounder in the waters adjacent to CA II. If this same number of vessels participate in the CA II Yellowtail Flounder SAP, this fishery would be expected to last 4 to 6 weeks into its June through December season before the 320 maximum number of trips were taken. However, there are many new restrictions in the U.S./Canada Management Area where the CA II SAP resides (such as VMS, and reporting requirements, and gear restrictions) and it is, therefore, difficult to predict how many vessels will actually participate. However, the two-trip-per-month restriction in the CA II Yellowtail Flounder SAP should help avoid a derby fishery.

*Comment 75:* Two commenters suggested that the trip limits for stocks within the SAPs be under the Regional Administrator's authority to adjust.

*Response:* This final rule implements a maximum 30,000 lb (13,608 kg) yellowtail flounder trip limit for the CA II Yellowtail Flounder SAP and a restriction on retaining more than one-fifth of the daily GB cod possession limit specified for the Eastern U.S./Canada Area, which would equate to 100 lb (45.4 kg). In addition, because this SAP is located within the U.S./Canada Management Area, the Regional Administrator has the authority, under the regulations implementing the Understanding (§ 648.85(a)(3)(iv)(D)), to further adjust the trip limit to prevent over-harvesting or under-harvesting of the shared U.S./Canada stocks of GB cod, GB haddock, and GB yellowtail flounder. The regulations implementing the SNE/MA Winter Flounder SAP restrict vessels from landing more than 200-lb (90.7-kg) of winter flounder. Although the Regional Administrator does not have the authority to modify the 200 lb (90.7 kg) trip limit, there is little need for the Regional

Administrator to have adjustment authority because the limit is already set very low.

*Comment 76:* One commenter noted that the cod trip limit within the SAPs needs to be clarified.

*Response:* In response to this comment, NMFS has modified the regulations under § 648.85(b)(3)(viii) to specify that the cod trip limit within the approved CA II Yellowtail Flounder SAP is one-fifth of the daily cod possession limit specified for the Eastern U.S./Canada Area, as intended in Amendment 13. Because the Eastern U.S./Canada Area trip limit is 500 lb (226.8 kg) of cod per DAS, the cod trip limit in the CA II Yellowtail Flounder SAP is 100 lb (45.4 kg), until such time that daily cod trip limit for the Eastern U.S./Canada Area is revised through another action.

*Comment 77:* One commenter opposed providing steaming time credit to and from the Eastern U.S./Canada Area, stating that it was unwarranted due to the proposed allowance of B DAS use within the proposed SAPs.

*Response:* Steaming time to and from the Eastern U.S./Canada Area, as well as the allowance of B DAS in this fishery, is provided as an incentive for vessels to fish on the relatively healthy stock of GB yellowtail flounder. Landings of yellowtail flounder have recently leveled off to approximately 3,000–4,000 mt. Because of the large effort reductions implemented through this final rule, landings of GB yellowtail flounder are expected to decline further from this level. However, because this stock is estimated to be able to support a harvest of approximately 12,000 mt, the steaming time incentive has been provided as a mechanism to allow vessels to redirect onto this stock, while removing effort directed at groundfish stocks of concern.

*Comment 78:* One commenter suggested that the CA II Yellowtail Flounder SAP should include hard TACs to control the catch.

*Response:* This final rule implements the U.S./Canada Resource Sharing Understanding, which incorporates the CA II Yellowtail Flounder SAP, including hard TACs for the three shared U.S./Canada stocks of GB cod, GB haddock, and GB yellowtail flounder.

*Comment 79:* One commenter stated that NMFS should control bycatch of non-groundfish species and account for mortality of these species within the SAPs.

*Response:* The Council and NMFS must consider minimizing bycatch for all non-targeted groundfish and non-groundfish species, to the extent

practicable, when developing and approving a SAP. NMFS recognizes that bycatch of skate, in particular, may be of concern in the CA II Yellowtail Flounder SAP; however, it is not clear that bycatch of skate will be any greater for vessels fishing in CA II than when they are fishing outside of this area. Overall, bycatch is likely to be greatly reduced by amendment 13 due to the large reductions in fishing mortality and the required gear modifications when fishing within the Eastern U.S./Canada Area, which incorporates the CA II Yellowtail Flounder SAP.

*Comment 80:* Three commenters opposed the CA II Haddock SAP, stating that cod and haddock are caught in equal amounts in this area, and that the document does not contain any information on bycatch for this SAP.

*Response:* NMFS agrees that the analysis for the CA II Haddock SAP is insufficient and has disapproved this SAP, as explained in the preamble to this final rule under "Disapproved Measures."

*Comment 81:* One commenter stated that NMFS should not rely on historical information to determine access for the CA II Yellowtail Flounder SAP because of its uncertainty.

*Response:* The Amendment 13 document analyzes this measure in light of the best scientific information available, including the most recently available observer data for both experimental trips within, and commercial fishing trips adjacent to, the southern portion of CA II, as well as preliminary information from the recent CA II yellowtail flounder experimental fishery conducted in September through December 2002. Therefore, this measure is consistent with National Standard 2, which requires all measures to be based on the best scientific information available.

*Comment 82:* One commenter stated that access to the CA I Haddock Hookgear SAP should be provided only to the GB Cod Hookgear Sector, and that the coordinates for this SAP should be those coordinates reflected in the experimental fishery that has been approved by NMFS.

*Response:* NMFS disapproved the CA I Haddock Hookgear SAP for the reasons stated in the preamble to this final rule under "Disapproved Measures." In any case, NMFS does not have the authority to change the management measures proposed by the Council in Amendment 13. Bycatch

*Comment 83:* Approximately 3,230 commenters, consisting mostly of form comments stated that Amendment 13 should adopt enforceable measures to minimize bycatch and waste.

*Response:* National Standard 9 requires bycatch and bycatch mortality to be minimized to the extent practicable. NMFS has determined that bycatch and the unavoidable mortality of bycatch in the NE multispecies fishery are being addressed adequately and consistent with applicable law. The minimum mesh size restrictions, gillnet gear reductions, running DAS clock to account for cod overages, and the exempted fishery program are the primary bycatch reduction measures in the FMP. Other measures such as DAS reductions, and other gear modifications, such as the rockhopper gear restrictions in the GOM, also contribute to bycatch reduction. The exempted fishery program, implemented in Framework 9 and expanded in Amendment 7, virtually eliminated all fisheries in the GOM, GB, and SNE RMAs when fishing outside of the NE multispecies and scallop DAS programs, unless it can be determined that the fishery can operate with less than a 5 percent bycatch of regulated species. Amendment 13 contains several additional management measures that will likely reduce bycatch. These include: An increased reduction in fishing effort; mesh size increases; additional gillnet gear reductions; hookgear reductions that include a restriction on the number of allowable hooks; a requirement to fish with circle hooks only; and a prohibition on the use of de-hookers with less than 6-inch (15.2-cm) spacing between the fairlead rollers; an increase in the GOM cod daily trip limit; the allowance of 200 lb (90.7-kg) of winter flounder in the SNE/MA Winter Flounder SAP; an expansion of the exempted fisheries program; and the requirement to use either a flounder net or haddock separator trawl are designed to affect cod selectivity while fishing in the Eastern U.S./Canada Management Area. In light of the substantial reductions in fishing effort and consequent costs to fishermen resulting from Amendment 13, the Council and NMFS have determined that, on balance, the measures in the FMP, as amended by Amendment 13, have reduced bycatch and bycatch mortality to the extent practicable.

*Comment 84:* Four commenters fault Amendment 13 for not promoting selective fishing gear that is consistent with the groundfish trip limits.

*Response:* Because of the relatively low hard TAC specified for GB cod within the Eastern U.S./Canada Area, this final rule implements a 500-lb (226.8-kg) trip limit for GB cod when fishing in this area and requires that vessels fish with either a haddock separator net or a flatfish net; fishing

gears are designed to reduce bycatch of cod. Although there are no specific gear requirements that would ensure that vessels do not exceed the GOM cod daily trip limit of 800 lb (362.9 kg), or the GB cod daily trip limit of 1,000 lb (453.6 kg), vessels would be allowed to retain an additional day's worth of fish, should they exceed the trip limit, provided the vessel operator does not call out of the DAS program until the additional time equating to this overage has elapsed (this is referred to as the "running clock"). This measure is intended to reduce discards of cod. There are no selective fishing gears proposed for the SNE/MA yellowtail flounder trip limit; however, because some of the seasonal trip limits are so low (250 lb (113.4 kg) per trip), many vessels will likely choose to direct on other stocks, at least during the seasons with these very low trip limits.

*Comment 85:* One commenter stated that Amendment 13 does not contain an adequate assessment of bycatch, since it uses fishing year 2001 as the baseline for evaluating bycatch effects of the proposed measures, and that the proposed measures should be evaluated against a baseline of no fishing. The commenter further stated that fishing year 2002 provides the most recent and reliable bycatch data and those data should be incorporated into Amendment 13.

*Response:* All the proposed measures were evaluated based on a comparison to the no action alternative, *i.e.*, the management measures in place in 2001, prior to the Court-ordered measures implementing the Settlement Agreement (Interim Action). Amendment 13 uses bycatch information from the most recent completed assessments. Although additional bycatch information has been collected since the most recent assessments were completed (2002 fishing year), it has not been analyzed or reviewed through the stock assessment process and therefore is not considered the best scientific information available.

*Comment 86:* One commenter stated that there should be scheduled bycatch reviews required for all exempted fisheries.

*Response:* The regulations under the exempted fishery program (§ 648.80(a)(8)) provide for additions as well as deletions of exempted fisheries, should there be concern that an exempted fishery is jeopardizing fishing mortality objectives. In addition, should there be concern regarding bycatch in an exempted fishery, the Council, at any time, may consider developing a framework adjustment to address this.

### Observers

*Comment 87:* Approximately 4,780 commenters, consisting mostly of form comments, stated that Amendment 13 should provide adequate observer coverage to monitor target and non-target species. Some of these commenters suggested that 10 percent coverage would be adequate; others suggested 20 percent coverage for all groundfish fisheries (including SAPs), with as much as 50 percent coverage for fisheries encountering protected species.

*Response:* NMFS intends to maintain its observer coverage in the groundfish fishery at a minimum level of 5 percent. NMFS has conducted an analysis of the relative precision of discard estimates using observer coverage and landings data for the year 2000 for all stocks of regulated species in the NE multispecies fishery. This analysis focused on vessels fishing under the NE multispecies DAS program. Based on this analysis, NMFS has determined that 5 percent observer coverage on all trips fished under a NE multispecies DAS would provide sufficiently robust statistical data to assess and estimate the amount and type of bycatch of regulated species in the NE multispecies fishery. The criteria for statistical robustness include comparability with similar studies worldwide, consistency with Atlantic Coastal Cooperative Statistical Program (ACCS) standards, and comparability with other variance components in the stock assessments. A 5-percent observer level represents a 5.6-fold increase in the number of trips observed in 2000. Additional coverage, although not required for statistical adequacy in the groundfish fishery, could be implemented if dedicated resources are available, e.g., an allowance for 10-percent coverage as provided for in the Omnibus Bill for fishing year 2004. Additional coverage would exceed levels considered statistically adequate for the groundfish fishery, but may allow expanded coverage of other fisheries where it may not be possible to achieve a particular target coverage level but where some possibility of groundfish bycatch exists, e.g., the Atlantic herring midwater fishery. It would also allow flexibility to cover some potentially new components of the fishery, such as the use of B DAS, at higher rates as part of a pilot program. The Northeast Fisheries Science Center receives separate funding annually to place observers on vessels in fisheries that have the potential to take protected species. This coverage is directed annually by staff of the Northeast Regional Office's Protected Resources

Division to address species of concern. Coverage levels are determined by computing the sample size needed for a specific degree of precision in the estimate of take, not by percentage coverage.

For Fiscal Year (FY) 2004, NMFS intends to provide 10 percent level of observer coverage to estimate the amount and type of discards for the Northeast multispecies fishery as mandated by Congress in the FY 04 budget appropriation. As stated above, NMFS has determined that 5 percent observer coverage on all trips fished under a NE multispecies DAS would provide sufficiently robust statistical data to assess and estimate the amount and type of bycatch of regulated species in the NE multispecies fishery. This 5 percent level of observer coverage will resume in FY 05 and beyond, absent a similar appropriation requiring a greater level of observer coverage.

*Comment 88:* Four commenters stated that there is no standard methodology to account for and minimize bycatch.

*Response:* In accordance with the Magnuson-Stevens Act, NMFS is developing a bycatch protocol that describes common elements of a standardized bycatch reporting methodology (SBRM) for fisheries under the jurisdiction of the agency. Consistent with this protocol, the NE Multispecies FMP and Amendment 13 have measures in place that satisfy the elements of an SBRM being developed by NMFS. These include comprehensive reporting requirements on dealers and fishermen. In addition, Amendment 13 requires daily electronic dealer reporting when such a program is available. NMFS intends to implement such a program through a separate rulemaking anticipated to be in place on May 1, 2004. Amendment 13 also requires that, once a viable electronic system becomes available, vessels will be subject to electronic reporting on a trip-by-trip basis. As stated in the response to Comment 86, NMFS intends to maintain its observer coverage in the groundfish fishery at no less than 5 percent. This coverage will be provided through the appropriate statistical design for each of the major gear types used in the NE multispecies fishery and will be distributed throughout the geographic range of the fishery. For groundfish DAS vessels fishing within the proposed U.S./Canada Management Area, real-time information on bycatch for the GB stocks of cod, haddock, and yellowtail flounder will be corroborated through the observer program. Should funds become available, NMFS also intends to increase observer coverage on

non-groundfish vessels to better assess bycatch of groundfish.

*Comment 89:* One commenter stated that NMFS should revise Amendment 13 to provide for a reasonable range of alternatives for adequate observer coverage.

*Response:* As the Amendment 13 document points out, the Council does not manage the observer program and, therefore, did not consider a range of alternatives for observer coverage in this program. NMFS has determined through statistical analysis what level of coverage is adequate, as explained in the response to Comment 86. This analysis also considered other levels of observer coverage.

### DAS Transfers

*Comment 90:* Two commenters stated that they support the DAS Transfer Program because it will allow some vessels to survive.

*Response:* NMFS agrees and has approved this program.

*Comment 91:* Three commenters opposed the 40-percent conservation tax specified in the DAS Transfer Program, stating that it was excessive, provided little incentive to participate in the program, and that the program should have controls similar to the DAS Leasing Program. Two commenters believe that the requirement to surrender all permits is too punitive.

*Response:* The intent of the proposed DAS Transfer Program is to provide the fishing industry with greater economic opportunity and flexibility by allowing vessels to permanently transfer their DAS, albeit at a cost in the form of a conservation tax (i.e., Category A and B DAS would be reduced by 40 percent and Category C DAS would be reduced by 90 percent). This "tax" is intended to provide a means to achieve some long-term reduction in fishing effort through the removal of active and inactive DAS from the groundfish fishery. Although the Council is currently considering modifying the conservation tax through a separate framework action, NMFS has determined that Amendment 13 sufficiently analyzes the conservation tax and has approved this measure.

### U.S./Canada

*Comment 92:* Six commenters spoke in support of the Understanding, stating that this program will help mitigate the economic impacts of Amendment 13. One commenter specifically supported the gear requirements in the Eastern and Western U.S./Canada Areas.

*Response:* NMFS supports the Understanding, as it will allow the U.S. and Canada to better coordinate

management of the U.S./Canada shared stocks of cod, haddock, and yellowtail flounder on GB. Upon reviewing the Amendment 13 document and the Council's intent in adopting the gear requirements (haddock separator trawl and flatfish net) included in the Understanding, NMFS has modified the final rule such that vessels would be subject to the gear modifications only when fishing in the Eastern U.S./Canada Area. Additional information on this issue may be found in the Response to Comment 16.

*Comment 93:* One commenter opposed the use of hard TACs proposed for the U.S./Canada shared resources of cod, haddock, and yellowtail flounder, stating that hard TACs do not work.

*Response:* NMFS believes that the hard TACs proposed for the shared U.S./Canada stocks of cod, haddock, and yellowtail flounder on GB are necessary to ensure compliance with the Understanding. Under the measures implementing the Understanding, groundfish DAS vessels fishing on a groundfish DAS within the U.S./Canada Management Areas are required to fish with a VMS and report their daily catches (both landings and discards) of cod, haddock, and yellowtail flounder. This real-time monitoring will provide timely information to make needed adjustments to ensure that these TACs are not exceeded.

*Comment 94:* One commenter requested that both the haddock separator trawl and the flatfish net be allowed on board when fishing in the U.S./Canada Management Areas.

*Response:* NMFS has modified the final rule to reflect this change.

#### *Electronic Reporting*

*Comment 95:* A total of 4,779 commenters, consisting mostly of form comments, supported daily electronic dealer reporting.

*Response:* NMFS has approved this measure and is currently developing a rule to implement the daily electronic dealer reporting requirement.

*Comment 96:* A total of 4,779 commenters, consisting mostly of form comments, supported a mandatory VMS requirement.

*Response:* Amendment 13 requires that groundfish DAS vessels that have opted to fish under a groundfish DAS in the U.S./Canada Management Area be required to fish with a VMS for the remainder of the fishing year, regardless of where they are fishing. This is anticipated to affect approximately 400 vessels, which makes up a large percentage of the groundfish DAS fleet. Implementing a mandatory VMS program for all groundfish vessels at

this time was not considered as a management option in Amendment 13, largely because of the costs to smaller vessels. As costs come down for VMS units, NMFS and the Council intend to reconsider a universal VMS requirement.

*Comment 97:* Seven commenters either supported or opposed the DAS Leasing Program. Four commenters supported the program, with two suggesting extending the program for a total of 5 years, instead of the proposed 2 year duration. Supporters indicated that the program would enable some vessels to continue to fish, maintain shoreside infrastructure, and prevent increases in fishing effort and large-scale effort shifts. One supporter of the program commented that the 120-day block out of the fishery requirement for day gillnet vessels prevents these vessels from participating in the program. One commenter opposed the program, stating that there was insufficient analysis of the impacts of the program on fishing mortality. Three commenters suggested that NMFS should disapprove the program if it results in increased DAS use rates and prevents the attainment of mortality goals. Finally, three commenters suggested implementing a leasing conservation tax, while an additional commenter suggested that NMFS closely monitor the leasing program for consolidation of effort.

*Response:* The DAS Leasing Program will enable some vessels to continue fishing, despite reductions in allocated DAS, as well as help maintain shoreside infrastructure by ensuring a continuous supply of groundfish. NMFS also agrees that the DAS Leasing Program may increase the use rate of DAS. The allocation of A DAS took this fact into consideration. The DAS Leasing Program is one of many factors in the Amendment that may either increase or decrease the DAS use rate. The Amendment 13 analysis assumes that the rate of DAS use will increase over recent levels; however, it is not possible to determine precisely the affect of individual management measures or programs on the rate of use of DAS. NMFS agrees with commenters that support a 2-year duration of the program. Reevaluation of the effects of the DAS Leasing Program on fishing mortality and industry consolidation in 2005 will allow the Council to propose changes, as necessary, to address concerns and maintain the rebuilding schedule. Amendment 13 does not change the regulations governing Day gillnet vessels. While the 120 DAS block requirements limit the time available to participate in the DAS Leasing Program,

these regulations do not prohibit participation in the program. Amendment 13 does not contain a DAS leasing tax. However, the Council is considering such a tax in Framework Adjustment 40.

*Comment 98:* Two commenters supported the proposed size restrictions of lessee vessels, with one commenter preferring a horsepower conversion factor proposed in the April 24, 2003, proposed emergency rule (68 FR 20096) instead of the upgrade provisions proposed under Amendment 13.

*Response:* The size restrictions for lessee vessels are intended to ensure that any increase in the DAS use rate resulting from a leasing program will not also result in an increase in fishing capacity. These size restrictions are consistent with the vessel upgrade provisions specified at § 648.4. Therefore, the size restrictions maintain fishing capacity within the limits assessed in Amendment 13. The horsepower conversion factor preferred by one commenter and specified in the proposed emergency rule was withdrawn on July 14, 2003 (68 FR 41549) based upon public comments.

*Comment 99:* Two commenters opposed the proposed method for assigning DAS leasing history. One commenter suggested that the DAS use and landings history should be assigned as determined by the lease participants, while the other commenter suggested that both the DAS use and the landings history should accrue to the lessor.

*Response:* The attribution of DAS use and landings history is necessary to account for DAS usage and landings and is consistent with the provisions governing DAS use and landings outside of the DAS Leasing Program. This method is also consistent with current data tracking methods and more accurately reflects vessel activity within the program. Further, at this time, the NMFS data tracking programs are not capable of assigning DAS use and landings history based upon an agreement between lease participants. Because the method for accounting for DAS is based on a presumption of what information the Council may require later, the Council may recommend other accounting methods in future actions, provided such methods are adequately justified and consistent with applicable law.

*Comment 100:* Two commenters addressed the ability to lease DAS from permits held in Confirmation of Permit History (CPH). One commenter indicated there is no justification to disallow the leasing of CPH DAS, while the other commenter supported the

proposed prohibition of leasing CPH DAS.

*Response:* Restrictions prohibiting permits held in CPH from leasing DAS were proposed to reduce the amount of latent effort entering the fishery resulting from the leasing program. Currently, there are 68 permits held in CPH that would qualify for a total of 1,482 Category A DAS under Amendment 13. Under the DAS Leasing Program, these DAS will be unavailable for leasing and represent a reduction in potential effort increases. However, these DAS may be leased if permits are taken out of CPH and placed upon another vessel. The DAS associated with such vessels were included in the analysis of biological impacts in Amendment 13. This is consistent with the CPH regulations specified at § 648.4(a)(1)(i)(J).

*Comment 101:* One commenter suggested that the procedure for correcting a DAS baseline specified in the regulations should include a reference to consideration of requests for DAS baseline corrections that result from participation in a cooperative research project.

*Response:* NMFS disagrees that additional regulatory language is required. The procedure to correct an incorrect DAS baseline addresses a separate issue than the Council's policy statement on the loss of DAS due to participation in a cooperative research project. The Regional Administrator has the authority to implement the Council's policy if appropriate.

*Comment 102:* One commenter suggested additional regulatory text that would clarify the time period when DAS leasing applicants could submit applications for the following fishing year, and suggested that NMFS accept applications as of March 15.

*Response:* NMFS has clarified the pertinent regulations in this final rule, although NMFS did not restrict the time period that an applicant may submit an application for the following fishing year.

*Comment 103:* One commenter supported defining OY as 75 percent of Fmsy, but was concerned that the management measures allow F to exceed OY. The commenter questioned how such measures comply with the requirements of the Magnuson-Stevens Act that OY be achieved on a continuing basis.

*Response:* The Magnuson-Stevens Act defines OY as the yield from a fishery that provides the greatest overall benefit to Nation, is prescribed based on MSY and, for an overfished fishery, provides for rebuilding to a level consistent with producing MSY. The management

measures contained in Amendment 13 have been designed to meet all these requirements and, in NMFS's opinion, have at least a 50 percent probability of doing so.

*Comment 104:* An environmental organization expressed concern regarding bycatch of migratory striped bass in the groundfish fishery, particularly by trawl vessels, and requested that the final rule implementing Amendment 13 take action to reduce seasonal bycatch of striped bass. The commenter also requested that at-sea observer coverage be used to closely monitor and report striped bass bycatch.

*Response:* The measures to reduce bycatch in the groundfish fishery that were proposed in Amendment 13 were approved; NMFS does not have the authority to implement measures that were not proposed in Amendment 13 in this final rule. An initial examination of information on striped bass bycatch in the NMFS at-sea observer database indicates that, while striped bass bycatch in the groundfish trawl fishery has been observed, significant catches appear to be infrequent and limited in time and area. NMFS will continue to collect and analyze data on all species caught in the groundfish fishery through the at-sea observer program, which will provide information on bycatch that could be used by the Council to develop future measures to further reduce bycatch.

#### Changes from the Proposed Rule

NMFS has made several changes to the proposed rule as a result of public comment and because of the disapproval of several management measures proposed in Amendment 13. Other changes are technical or administrative in nature and clarify or otherwise enhance enforcement and administration of the fishery management program. These changes are listed below in the order that they appear in the regulations.

In § 648.2, definitions are added for: "Circle hook," "Stocks targeted by the default measures," "Transboundary Management Guidance Committee," "Transboundary Resource Advisory Committee," and "U.S./Canada Steering Committee," to clarify these terms in the regulations.

In § 648.4(a)(1)(i)(A)(2), the date until which reported landings to qualify for the limited access Handgear A permit will be accepted is corrected to be consistent with the date described in the preamble of the proposed rule.

In § 648.4, paragraph (a)(1)(i)(A)(3) is added to further define the application

criteria for the limited access Handgear A permit.

In § 648.4, paragraph (a)(1)(ii) is added to further define what types of vessels may qualify for open access multispecies, hand gear or charter/party permits.

In § 648.4, paragraph (c)(2)(iii)(B) is modified to reflect the disapproval of the GB Hook Gear Cod Trip Limit Program.

In § 648.9, paragraph (c)(1)(ii) is revised to clarify that double polling of the VMS unit for groundfish DAS vessels will occur only when the vessel is fishing under a groundfish DAS within the U.S./Canada Management Areas.

In § 648.10(b)(2)(i), the reference to § 648.85(a)(2)(iii) is corrected to read § 648.85(a)(3)(ii).

In § 648.10(b)(2)(v), the inadvertent reference to paragraph (b)(2)(v) is removed.

In § 648.14, paragraph (a)(132) is revised to reflect the application of the gear requirement to the Eastern U.S./Canada Area.

In § 648.14, paragraph (a)(134), and paragraphs (a)(142) through (152) are revised as a result of the disapproval of the CA II Haddock SAP and the CA I Hook Gear SAP.

§ 648.14, paragraph (c)(24) is revised to reflect disapproval of the GB Hook Gear Trip Limit Program.

In § 648.14, paragraph (c)(30) is revised to reflect disapproval of the exemption of shrimp trawls from the WGOM Habitat Closure Area.

In § 648.14, paragraph (c)(50) is removed to reflect disapproval of the GB Hook Gear Trip Limit Program.

In § 648.80, paragraphs (a)(8)(i), (ii), and (iv) are revised to replace the word "bycatch," with "incidental catch," to reflect the definition of bycatch used in the Magnuson-Stevens Act.

In § 648.80, paragraph (a)(8)(iii) is revised to correct an omission in the proposed rule regulatory text, but referred to in the preamble to the proposed rule, by including language that provides the Council with the ability to recommend to the Regional Administrator, through a framework adjustment, an exemption that would allow vessels to retain and land regulated multispecies.

In § 648.80, paragraph (b)(11) is revised to include language referencing 50 CFR part 648, subpart D.

In § 648.80, paragraph (i)(4) is revised to clarify that the requirement to send a letter to the Regional Administrator is annual.

In § 648.81, paragraph (c)(2)(iii) is added to reflect the disapproval of the provision that would have excluded

surfclam and ocean quahog dredge gear from those portions of the NLCA that reside outside the Nantucket Lightship Habitat Closure Area.

In § 648.81(d)(2), the reference to paragraphs (b)(2)(ii) and (iii) is corrected to read paragraphs (f)(2)(ii) and (iii).

In § 648.81, paragraph (h)(1)(i) is revised to reflect the disapproval of the shrimp trawl exemption from the WGOM Habitat Closure Area.

In § 648.82, paragraph (b)(6) is revised, as requested by the Council, to include language to round up to the nearest 50 lb (22.7 kg) an adjustment to the cod trip limit for limited access Handgear A permitted vessels for ease of administration and enforcement. This paragraph is also revised to reflect that the cod trip limit adjustment is dependent on changes to the GOM cod trip limit, rather than the cod trip limit.

In § 648.82(c)(1), the date for reported landings to determine a vessel's baseline DAS allocation is corrected to be consistent with the date in the preamble of the proposed rule.

In § 648.82, paragraphs (c)(1) and (d) are revised to clarify the permit categories for which a DAS baseline shall be defined and a DAS allocation made available, respectively.

In § 648.82, paragraph (c)(1) is revised to clarify that a vessel's Amendment 13 used DAS baseline should never exceed the vessel's annual DAS allocation prior to August 1, 2002.

In § 648.82, paragraph (d)(4) is revised, as requested by the Council, to more accurately reflect the criteria and procedure for not reducing DAS allocations and modifying DAS accrual.

In § 648.82, paragraph (e) is respecified as paragraphs (e)(1) and (e)(2) for clarification.

In § 648.82, paragraph (k)(3) is revised to be consistent with Amendment 13, as requested by the Council, to reflect that vessels may submit a DAS lease application prior to the start of a fishing year.

In § 648.82, paragraph (k)(3)(i) is revised, as requested by the Council, to include the following language: "Aggregate data may be used in the analysis of the DAS Leasing Program."

In § 648.82, paragraph (k)(3)(iv) is revised, as requested by the Council, to clarify that additional DAS associated with a limited access Large Mesh permit may not be counted towards a vessel's 2001 fishing year allocation when determining how many DAS a vessel may lease.

In § 648.82, paragraph (l)(1)(ii) is revised to include a restriction on gross tonnage that was omitted from the proposed rule in error. This change

makes the regulations consistent with the intent of the Council.

In § 648.85, paragraph (a)(3)(i) is revised to clarify that VMS double polling per hour would occur in the U.S./Canada Management Areas only for groundfish DAS vessels declaring a groundfish DAS in this area.

In § 648.85, paragraph (a)(3)(ii) is revised to clarify that groundfish DAS vessels must declare into the U.S./Canada Management Areas only when intending to fish under a groundfish DAS.

In § 648.85(a)(3)(ii), the incorrect reference to paragraph (b)(4) is removed.

In § 648.85, paragraph (a)(3)(iii) is revised to be consistent with Amendment 13, as requested by the Council, to indicate that the gear requirements under the Understanding are specific to the Eastern U.S./Canada Area only. In addition, a reference to paragraph (a)(1) is corrected to read paragraph (a)(1)(i), and a reference to paragraphs (a)(6)(i) and (ii) is corrected to read paragraphs (a)(3)(iii)(A) and (B).

In § 648.85, paragraphs (a)(3)(iii) and (b)(3)(x) are clarified to read that a vessel fishing in the Eastern U.S./Canada Area may fish with both a haddock separator trawl and a flatfish net on the same trip.

In § 648.85, paragraphs (a)(3)(iii)(A) and (B) are revised to reflect changes made to the gear requirements under the Understanding based on public comment received.

In § 648.85, paragraph (a)(3)(iv)(A) is revised to be consistent with Amendment 13, as requested by the Council, to reflect that the 500-6lb (227-kg) daily cod limit is a landing limit rather than a possession limit and includes a maximum trip limit of 5,000 lb (2,270 kg). This paragraph further clarifies that this trip limit is specific to the Eastern U.S./Canada Area only.

In § 648.85, paragraphs (a)(3)(iv)(A)(1) and (2) are added to include language that the Eastern U.S./Canada Area will close upon attainment of 100 percent of the cod TAC.

In § 648.85, paragraphs (a)(3)(iv)(A)(1), (B)(3), and (C)(3) are revised to reflect that all vessels will be prohibited from retaining cod, haddock, and yellowtail flounder, respectively, once 100 percent of the respective TACs are projected to be attained.

In § 648.85, paragraph (a)(3)(iv)(B) is revised to reflect that the haddock limit is a landing limit rather than a possession limit.

In § 648.85, paragraphs (a)(3)(iv)(B)(3) and (C)(3) are corrected, as requested by the Council, to indicate that the closure of the Eastern U.S./Canada Area is specific to groundfish DAS vessels only.

In § 648.85, paragraphs (a)(3)(iv)(C)(1) and (2) are revised to reflect that the only yellowtail flounder trip limit in the U.S./Canada Management Areas, prior to any adjustment, is within the CA II Yellowtail Flounder SAP.

In § 648.85, paragraph (a)(3)(iv)(E) is corrected to be consistent with Amendment 13, as requested by the Council, to indicate that the closure of the Eastern U.S./Canada Area is specific to groundfish DAS vessels only.

In § 648.85, paragraph (a)(3)(v) is revised to clarify the daily reporting requirements for cod, haddock, and yellowtail flounder for vessels declared in the U.S./Canada Area.

In § 648.85, paragraphs (b)(1) and (2) are revised to reflect the disapproval of the abbreviated SAP process proposed in Amendment 13.

In § 648.85, paragraph (b)(3)(v) is revised and paragraphs (b)(3)(v)(A) and (B) are removed to reflect a change to the VMS declaration regulations resulting from disapproval of the CA II Haddock SAP.

In § 648.85, paragraph (b)(3)(viii) is revised to clarify that the cod trip limit in the CA II Yellowtail Flounder SAP is one-fifth of the daily cod possession specified for the Eastern U.S./Canada Area.

In § 648.85, paragraph (b)(4) is revised and paragraph (b)(6) is removed to reflect disapproval of the Closed Area II Haddock SAP. In addition, paragraph (b)(4) has been clarified to indicate that only limited access NE multispecies vessels are allowed to fish in the SNE/MA Winter Flounder SAP. Also, paragraph (b)(4)(iv) is modified to replace phrase "NE multispecies" with "regulated species."

In § 648.85, paragraph (b)(5) is removed to reflect disapproval of the CA I Hook Gear SAP.

In § 648.85, paragraph (c)(2)(iii)(C) is revised, as requested by the Council, to specify that the GB TAC referred to is the GB cod TAC.

In § 648.86, paragraph (b)(2)(iii) is modified to reflect the disapproval of the GB Hook Gear Cod Trip Limit Program.

In § 648.87, paragraph (b)(1)(i) is corrected to refer to a sector allocation instead of a framework adjustment.

In § 648.87, paragraphs (b)(1)(vii), (b)(1)(ix), (b)(2)(x), (c)(1), (c)(2), (c)(3), and (d)(1) were modified, and a new paragraph (b)(1)(xv) was added in order to ensure effective administration and enforcement of the sector allocation program. These changes, edits and additions clarify what requirements sector participants must comply with, that sector participants may be charged jointly and severally pursuant to 15 CFR

Part 904, and that sector participants must possess a Letter of Authorization issued by NMFS which authorizes participation in the sector and exempts them from certain fishery regulations necessary to fish in accordance with an Operations Plan.

In § 648.87, paragraph (b)(1)(xvi) was added, consistent with Amendment 13, to specify the NE multispecies management measures that all Sectors, fishing under a TAC allocation, must abide by.

In § 648.87, paragraph (b)(2) is revised to clarify that both an Operations Plan and a Sector Contract must be submitted to the Regional Administrator.

In § 648.87, paragraph (c) is modified to add Regional Administrator authority to exempt members of an approved sector from Federal fishing regulations.

In § 648.87(c)(1), the reference to paragraph (c)(1) is corrected to read paragraph (b)(2).

In § 648.87, paragraph (c)(4) was added in order to ensure effective administration and enforcement of the sector allocation program. This change indicates that the Regional Administrator may withdraw approval of a Sector, after consultation with the Council based on a Sector participants noncompliance with the Sector's Operation Plan or if the Operations Plan undermines the achievement of fishing mortality objectives of the NE Multispecies FMP.

In § 648.87(d)(1), the reference to paragraphs (e)(1)(ii) and (d) are corrected to read paragraphs (d)(1)(ii) and (c), respectively.

In § 648.87, paragraph (d)(1)(i) is revised to correct the definition of the GBCHSA to include the Eastern U.S./Canada Area, which was incorrectly omitted from the definition in the proposed rule.

In § 648.87(d)(1)(iii)(A), paragraph (b)(1)(i) is corrected to read (b)(2).

In § 648.88, paragraph (a)(1) is revised, as requested by the Council, to include language to round up to the nearest 25 lb (11.4 kg) an adjustment to the cod trip limit for open access Handgear permitted vessels for ease of administration and enforcement.

In § 648.89, paragraph (e)(3)(ii) is corrected to be consistent with the letter of authorization requirements of the other closed areas.

In § 648.90, paragraph (d) is revised and paragraph (e) is added to reflect disapproval of the removal of the Flexible Area Access Program.

#### Classification

The Regional Administrator determined that the FMP amendment implemented by this rule is necessary

for the conservation and management of the NE multispecies fishery and is consistent with the Magnuson-Stevens Act and other applicable laws.

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

A notice of availability of the FSEIS, which analyzed the impacts of all of the measures under consideration in Amendment 13, was published on February 6, 2004 (68 FR 5856). Through the FSEIS, NMFS has analyzed project alternatives, associated environmental impacts, the extent to which the impacts could be mitigated, and has considered the objectives of the proposed action in light of statutory mandates, including the Magnuson-Stevens Act. NMFS has also considered public and agency comments received during the EIS review periods. In balancing the analysis and public interest, NMFS has decided to partially approve the Council's preferred alternative. NMFS also concludes that all practical means to avoid, minimize, or compensate for environmental harm from the proposed action have been adopted. A copy of the ROD for Amendment 13 is available from the Regional Administrator (see ADDRESSES).

As described in the preamble to the proposed rule, this action is being taken consistent with the Court Order issued in *CLF v. Evans*, which requires implementation of Amendment 13 no later than May 1, 2004. NMFS has been developing the implementing regulations for Amendment 13 since January 2004 with goal of implementing Amendment 13 on May 1, 2004. However, a provision (Div. H, section 105) in the Consolidated Appropriations Act of 2004 precluded NMFS from expending any funds authorized for Fiscal Year 2004 to "implement any measures to reduce overfishing and promote rebuilding of fish stocks managed under the Management Plan [Northeast Multispecies FMP] other than such measures set out in the final rule." This language prevented NMFS from implementing Amendment 13 as a final rule on time to be in compliance with the *CLF* court order unless it was repealed before May 1, 2004. However, on April 13, 2004, President Bush signed into law H.R. 2584, which contains a provision repealing Section 105 of division H of the Consolidated Appropriations Act of 2004, thus enabling NMFS to implement Amendment 13.

To comply with the Court-ordered May 1, 2004 implementation of Amendment 13, the Assistant Administrator for NMFS, under 5 U.S.C. 553(d)(3) finds good cause to waive the

30-day delayed effectiveness for the management measures contained in Amendment 13. Although NMFS is waiving the 30-day delay in effectiveness, the implementing regulations for Amendment 13 will not take effect until May 1, 2004, or as otherwise stated in the "Dates" section above.

This rule contains 21 new collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The collection of this information has been approved by OMB. The public's reporting burden for the collection-of-information requirements includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information requirements.

The new reporting requirements and the estimated time for a response are as follows:

1. Initial vessel application for a limited access Handgear A permit, OMB Control Number 0648-0202, (10 min/response);
2. Limited access Handgear A permit appeals, OMB Control Number 0648-0202, (2 hr/response);
3. DAS baseline appeal, OMB Control Number 0648-0202, (2 hr/response);
4. DAS Transfer Program application, OMB Control Number 0648-0202, (5 min/response);
5. VMS purchase and installation, OMB Control Number 0648-0202, (1 hr/response);
6. Automated VMS polling of vessel position twice per hour while fishing within the U.S./Canada Area, OMB Control Number 0648-0202, (5 sec/response);
7. VMS proof of installation, OMB Control Number 0648-0202, (5 min/response);
8. SAP area and DAS use declaration via VMS prior to each trip into a SAP, OMB Control Number 0648-0202, (5 min/response);
9. Notice requirements for observer deployment prior to every trip into the CA I Hook Gear SAP, OMB Control Number 0648-0202, (2 min/response);
10. Expedited submission of a proposed SAP, OMB Control Number 0648-0202, (20 hr/response);
11. Request to power down VMS for at least 1 month, OMB Control Number 0648-0202, (5 min/response);
12. Request for an LOA to participate in the GOM Cod Landing Exemption, OMB Control Number 0648-0202, (5 min/response);
13. Request for an LOA to participate in the Yellowtail Flounder Possession/Landing Exemption for the Northern

Yellowtail Trip Limit Area, OMB Control Number 0648-0202, (5 min/response);

14. Request for an LOA to participate in the Yellowtail Flounder Possession/Landing Exemption in SNE and MA RMAs, OMB Control Number 0648-0202, (5 min/response);

15. Request for an LOA to participate in the Monkfish Southern Fishery Management Area Landing Limit and Minimum Fish Size Exemption, OMB Control Number 0648-0202, (5 min/response);

16. Request for an LOA to participate in the Skate Bait-only Possession Limit Exemption, OMB Control Number 0648-0202, (5 min/response);

17. Submission of a sector allocation proposal, OMB Control Number 0648-0202, (50 hr/response);

18. Submission of a plan of operations for an approved sector allocation, OMB Control Number 0648-0202, (50 hr/response);

19. Daily electronic catch and discard reports of GB cod, GB haddock, and GB yellowtail flounder when fishing within the U.S./Canada Area and/or the associated SAPs, OMB Control Number 0648-0212, (0.25 hr/response);

20. Annual reporting requirement for sectors, OMB Control Number 0648-0202, (6 hours/response); and

21. Trip notification for vessels participating in the Eastern U.S./Canada Area for the purpose of observer coverage, OMB Control Number 0648-0202, (5 min/response). Public comment is sought regarding: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS (see ADDRESSES) and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington DC 20503 (Attn: NOAA Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection-of-information displays a currently valid OMB control number.

### Final Regulatory Flexibility Analysis

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), has prepared this FRFA in support of Amendment 13 to the Fishery Management Plan for Northeast Multispecies (Amendment 13). The FRFA describes the economic impact that this final rule will have on small entities.

The FRFA incorporates the economic impacts summarized in the initial RFA (IRFA) for the proposed rule to implement Amendment 13 (69 FR 4362, January 29, 2004) and the corresponding economic analyses prepared for Amendment 13 (e.g., the FSEIS and the Regulatory Impact Review (RIR)). For the most part, those impacts are not repeated here. A copy of the IRFA, the FRFA, the RIR and the FSEIS are available from NMFS, Northeast Regional Office and on the Northeast Regional Office Website (see ADDRESSES). A description of the reasons why this action is being considered, the objectives of, and legal basis for, the final rule is found in the preamble to the final rule.

### Description of and Estimate of the Number of Small Entities to Which the Final Rule Will Apply

The final rule implements changes affecting any vessel holding a limited access groundfish permit, an open access handgear-only permit, and vessels that hold an open access Party/Charter permit. Based on fishing year 2002 (FY 2002) data, the total number of small entities that may be affected would be 1,442 limited access permit holders, 1,994 Handgear permit holders, and 685 Party/Charter permit holders. However, since an open access permit holder may hold more than one permit, the total number of unique entities holding either a Handgear or a Party/Charter permit was 2,250 of which 1,565 held only a Handgear permit, 306 held only a Party/Charter permit, and 379 held both a Handgear and a Party/Charter permits. The Small Business Administration size standard for small commercial fishing entities is \$3.5 million in gross receipts, while the size standard for small Party/Charter is \$5.0 million in gross receipts. The commercial fishing size standard would apply to limited access permit holders, as well as open access Handgear only permits. Available data based on 1998-2001 average gross receipts show that the maximum gross receipts for any single commercial fishing vessel was \$1.3 million. For this reason, each vessel is treated as a single entity for purposes of size determination and

impact assessment. This means that all commercial fishing entities would fall under the SBA size standard. In addition, since all Party/Charter vessels have gross receipts of under \$5.0 million, these also fall under the SBA size standard. Since all entities were deemed to fall under the SBA size standard for small commercial and recreational fishing entities, there will be no disproportionate impacts between small and large entities.

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

#### Reporting and Recordkeeping Requirements

The measures approved under Amendment 13 include the following provisions requiring either new or revised reporting and recordkeeping requirements: (1) Initial vessel application for a limited access Handgear A permit; (2) limited access Handgear A permit appeals; (3) DAS baseline appeals; (4) DAS Transfer Program application; (5) VMS purchase and installation; (6) automated VMS polling of vessel position twice per hour while fishing within the U.S./Canada Management Area; (7) VMS proof of installation; (8) SAP area and DAS use declaration via VMS prior to each trip into a SAP; (9) expedited submission of a proposed SAP; (10) request to power down VMS for at least 1 month; (11) request for an LOA to participate in the GOM Cod Landing Exemption; (12) request for an LOA to participate in the Yellowtail Flounder Possession/Landing Exemption for the Northern Yellowtail Trip Limit Area; (13) request for an LOA to participate in the Yellowtail Flounder Possession/Landing Exemption in SNE and MA RMAs; (14) request for an LOA to participate in the Monkfish Southern Fishery Management Area Landing Limit and Minimum Fish Size Exemption; (15) request for an LOA to participate in the Skate Bait-only Possession Limit Exemption; (16) submission of a sector allocation proposal; (17) submission of a plan of operations for an approved sector allocation; (18) daily electronic catch and discard reports of GB cod, GB haddock, and GB yellowtail flounder when fishing within the U.S./Canada Management Area and/or the associated SAPs; and (19) annual reporting requirement for sectors. The compliance costs associated with most of these new reporting and recordkeeping requirements are minimal, consisting only of postage and copying costs. Individual vessel owners or groups of vessel owners will be impacted by these

requirements. There will not be a need for professional skills to comply with these requirements, although groups of vessel owners applying for a sector allocation may be advised to seek outside consulting services in preparing and submitting a plan for a sector allocation. Additional information regarding the projected reporting or recordkeeping costs associated with this action was made available for review in NMFS's PRA submission to OMB on or about February 10, 2004.

#### *Other Compliance Requirements*

All groundfish DAS vessels participating in the U.S./Canada Understanding, including all participants in the CA II Yellowtail Flounder SAP, with the exception of the SNE/MA Winter Flounder SAP, must use VMS within these programs. Any vessel that does not currently possess a VMS must obtain one prior to fishing in the U.S./Canada Management Area. The cost of purchasing and installing VMS, along with the associated operational costs is currently estimated at \$3,600 per vessel.

The required changes to mesh size relative to the no-action 2001 baseline (pre-court order and settlement agreement fishery) were estimated to affect 424 trawl vessels fishing in the GOM or GB area, and 221 trawl vessels fishing in the SNE area. The average cost to replace a codend was estimated to be \$1,250. The mesh changes were estimated to affect 18 Day gillnet vessels that use tie-down nets in the GOM. The average cost to these vessels to replace their nets is estimated to be \$7,794. The mesh changes were estimated to affect 31 Day gillnet vessels that use stand-up nets in the GOM. The average cost to these vessels to replace their nets was \$9,300. The mesh changes were estimated to affect 25 Trip gillnet vessels that fish in the GOM. The average cost to these vessels to replace their nets was estimated to be \$18,352. The mesh changes were estimated to affect 32 gillnet vessels that fished in either GB or SNE. The average cost to these vessels to replace their nets was estimated to be \$8,800. However, most requirements to purchase new nets to be in compliance with mesh regulations implemented by this final rule also have appeared in a series of emergency rules to implement the Court Order and subsequent Settlement Agreement. Therefore, for the majority of vessels that have continued in the fishery, these compliance costs have already been met.

The average cost for vessels fishing in the eastern US/Canada Management Area to replace their nets with a flatfish

net was estimated to be \$7500, and the average cost associated with purchasing and installing a separator panel, for the purposes of being in compliance with the haddock separator trawl net requirement, was estimated to be approximately \$747. The modification of an existing flatfish net to meet the requirements of the final rule is estimated to be \$550.

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

NMFS received forty-nine hundred and forty-one comments on the proposed rule. Of these, there were eleven comments on the IRFA and several comments that directly or indirectly dealt with economic impacts to small entities (vessels) resulting from the management measures presented in the proposed rule to implement Amendment 13.

One commercial fishing group submitted a number of comments on the IRFA. Those comments and NMFS's responses follow:

*Comment A:* The Agency's economic analysis (referring to the IRFA) focuses exclusively on fishing vessels, neglecting a review of the impacts on shoreside infrastructure, accessory businesses, and most importantly, the consumer. The analysis fails to address the magnitude of the effects on port infrastructure, including but not limited to dock owners, processors, gear, fuel and ice suppliers. Without this data and analysis, the review lends itself to more commentary about the analysis that is missing as opposed to the analysis that is present.

*Response:* The IRFA contained in the proposed rule fulfills the requirements of the RFA which directs Federal agencies to analyze economic impacts to small business entities resulting from implementing regulations. Neither the RFA, nor Federal caselaw require Federal agencies to analyze the expected economic impacts resulting from their regulations on small entities *indirectly* affected by the agency's actions. Instead, the RFA analysis is limited to small entities which will be *directly* regulated by a Federal agency. In this case, the analysis is focused on vessels that comprise the affected NE multispecies fleet. The Council's economic analysis contained in Amendment 13 and the RIR address the commenter's concerns. A thorough breakdown of economic impacts by industry, by port, is provided in Volume 1, Section 5.4.6 of

Amendment 13. Results of that analysis fulfills the requirements of E.O. 12866 which requires the Agency to take into account all economic impacts to the Nation resulting from rulemaking. See also response to comment 47.

*Comment B:* The Agency's analysis of the economic impacts is incomplete and not entirely helpful. The Agency itself writes, regarding its primary evaluation for vessels, "Change in gross revenues provides an *incomplete picture* of the impact of the proposed action on vessel profitability making it difficult to determine whether any given vessel may cease business operations." Without knowing the complete impact on fishing vessels how can one attempt to realize the full effect of the proposed rule?

*Response:* The economic analysis for evaluation of vessels in Amendment 13 is not incomplete. In the section cited by the commenter, the analyst is explaining why the Council did *not* use changes in gross revenue as a proxy for profitability, although it is not unusual to use this technique for fishery management actions where cost data is incomplete or unavailable. Instead, the Council estimated a relative measure of profitability change and percent of possible business failures by simulating vessel costs and returns using a combination of the cost data developed for the break-even DAS analysis, available data, and the estimated reduction in effective effort. Specifically, empirical data were used to fit theoretical probability distributions for fixed costs, costs per day, annual revenue on groundfish trips, annual revenue on trips where groundfish were not landed, days absent on groundfish trips, and days absent on trips where groundfish were not landed.

*Comment C:* NMFS states that no data collection system exists to collect cost data comparable to the permit database which collects information on landings and revenues, and there are no means to directly provide a reliable numerical estimate of current profit levels or how many vessels may be able to remain profitable once the proposed action is implemented. The commenter states that these statements only reinforce our frustration regarding economic impacts to communities.

*Response:* NMFS concurs that a comprehensive fishing vessel cost database would improve economic analysis of Amendment 13, or any other management action but such a data base was not available at the time analysis of vessel-level impacts were estimated. Vessel break-even analysis was consistent with similar analyses prepared for prior groundfish actions,

and impacts based on vessel-level changes in gross revenues is also standard practice in the absence of reliable cost data. The limitations of this approach are acknowledged in the FSEIS. See also response to comment 48.

*Comment D:* We are troubled by NMFS's admission that the DAS leasing model is incomplete. Incomplete analysis and modeling does not give a clear picture of the socio-economic effects of leasing, making it difficult to comment effectively on the impact to the industry and fishing communities.

*Response:* NMFS does not believe the mathematical programming model used to determine the profitability of DAS leasing is incomplete. There is no admission of an incomplete analysis found in the IRFA accompanying the proposed rule. Rather, NMFS has described the likely socio-economic impacts resulting from a DAS leasing program in the section entitled "Steps Taken to Minimize Economic Impacts." The Office of Advocacy, U.S. Small Business Administration (Advocacy) submitted the following comments on the IRFA:

*Comment E:* Advocacy notes that NMFS discusses the economic impacts of the various proposed rule requirements individually, and there is no discussion on what the final overall impact of all of the actions and compliance requirements will be on small fishers. Advocacy believes that the transparency and usability of the impact assessment would be improved for use by interested small entities if the costs were presented in a summary table. It is difficult to discern the total cost of the rule on any particular vessel even if one knows all of the data regarding the vessels size and operation location. Advocacy would like to see an introductory statement regarding total impacts to the industry.

*Response:* NMFS has concluded that the approach used in the analysis does not lend itself easily to a broad interpretation of total impacts or impacts to a typical or average multispecies vessel. In many analyses, profitability is assumed to be shared equally among vessels regardless of different geographic areas, gear type, vessel size, etc. In the Amendment 13 economic analysis, the Council was able to specify a more exact estimate of profitability depending upon the socio-economic description of vessels, specifically in regard to vessel size, gear, and port of landing in terms of profitability. This allows a vessel owner of a specific sized vessel, from a specific geographic area, using a specific gear type, to ascertain the impact of the final

rule on a particular vessel. However, in response to Advocacy's request, NMFS has produced a summary table of economic impacts to small vessels resulting from this rule. This table appears as an appendix to the FRFA, which can be obtained from NMFS, Northeast Regional Office and on the Northeast Regional Office Web site (see ADDRESSES).

*Comment F:* An additional change to the presentation of costs that would improve transparency of the analysis would be a detailed description of which compliance requirements are included in the revenue loss and business closure analysis described on pages 4377 to 4379.

*Response:* The Council estimated a relative measure of profitability change and percent of possible business failures by simulating vessel costs and returns using a combination of the cost data developed for the break-even DAS analysis, available data, and the estimated reduction in effective effort. Specifically, empirical data were used to fit theoretical probability distributions for fixed costs, costs per day, annual revenue on groundfish trips, annual revenue on trips where groundfish were not landed, days absent on groundfish trips, and days absent on trips where groundfish were not landed. Specific compliance costs, such as required gear changes, cannot be gleaned from this model. Therefore, the contribution of these costs in determining profitability cannot be accounted for because they are implicit to the economic model. In addition, it is important to note that the replacement of nets occurs on a regular basis regardless of required replacements due to changes in regulated mesh size, and these costs are captured by the economic model.

*Comment G:* NMFS distinguishes between small vessels, medium size vessels, and large vessels in terms of expected economic impact. With the exception of an explanation of what would be classified as a small trawl vessel, there is no information about how NMFS has determined what is a small vessel, medium vessel, or large vessel.

*Response:* In the economic analysis accompanying Amendment 13, large vessels are defined as greater than 70 ft (21.35 m) in total length, medium vessels as 50 ft (15.25 m) to 70 ft (21.35), and small vessels less than 50 ft (15.25 m).

*Comment H:* NMFS states that the costs associated with the reporting and recordkeeping requirements are minimal and consist only of postage and copying costs without providing an

estimate of those costs. Moreover, the estimated time for completing the paperwork is approximately 82 hours. There is no indication that the level of expertise for completing forms has been considered. If these forms require the professional services, complying with the paperwork requirements of the rule would be costly. Even if the forms can be filled out by the business owner, it is time that is being spent that the business owner could spend concentrating on something else. Were these things considered when NMFS concluded that the cost would be minimal? Advocacy encourages NMFS to provide an estimate of what the additional costs may be, as well as a better explanation of its conclusion that the costs will be minimal.

*Response:* The analysis of costs of recordkeeping and reporting contained in the IRFA is consistent with OMB guidance on burden estimates under the PRA. NMFS recognizes that, in the past, burden hours were costed out a certain rate suggested by OMB. However, recent OMB guidance requires that only costs of postage and copying should be considered. Postage costs are assumed to be \$0.37 per submission and copying costs are assumed to be \$0.10 per page.

*Comment I:* In the description and estimate of the number of small entities subject to the proposed rule, NMFS gives a thorough discussion of the commercial fishing industry. However, in terms of recreational Party/Charter vessels, NMFS merely states the size standard for a small Party/Charter vessel and the number of Party/Charter permits that it has issued in the past. There is no information about how many of the recreational vessels would qualify as small business under the 100 employee size standard.

*Response:* Advocacy is correct. NMFS assumed that the public was aware that Party/Charter vessels have relatively small crews, usually 3 to 4 persons. None of the 685 Party/Charter vessels cited in the IRFA have a crew size greater than 100 employees. In addition, the SBA definition of a small Party/Charter vessel is one which has gross receipts under \$5M. Under this definition, none of the Party/Charter vessels affected by this rule are considered small entities under the RFA.

*Comment J:* NMFS asserts that the majority of the Party/Charter vessels earn at least 75 percent of fishing income from passenger fees. However, no basis is provided for that statement. There is also no information regarding average vessel income.

*Response:* The percentage of fishing income from passenger fees for vessels

with a Charter/Party permit, whether they fish exclusively Party/Charter or fish commercially part of the year, is derived directly from the NMFS dealer database. Average income per vessel was not estimated since this would have most likely required a unique survey of Party/Charter vessels to account for refreshment, rental of fishing gear, etc. However, NMFS maintains that the relaxation of the bag limit will increase profitability in the Party/Charter business because it is likely to lead to greater passenger demand and increased frequency of party/charter trips.

*Comment K:* Advocacy states that some members of the fishing industry maintain that the proposed rule includes provisions that were not intended by Amendment 13, including fishing area closures that were not intended by the Council. Specifically, they contend that the closure of the GB Eastern U.S./Canada Management Area when the cod quota is reached may jeopardize Amendment 10 to the Sea Scallop FMP, and they are concerned about the extension of cod trip limits and gear requirements to the Western U.S./Canada Management Area. Advocacy is concerned that these inconsistencies may increase the burden on small entities and that they may not have been considered fully in determining the economic impact of the rule, as required by the RFA.

*Response:* NMFS has fully responded to industry comments regarding inconsistencies with Amendment 13 in the final rule. (see responses to Comments 16 through 18 and 20 through 23 in the preamble to this rule). NMFS, in responding to these comments, has modified the proposed rule as it applies to the U.S./Canada Management Area. Specific changes made in this final rule and their economic impacts to vessels are discussed in the following section, *Economic Impacts Resulting from Disapproved Measures and Changes to the Proposed Rule*.

*Comment L:* One commenter noted that, under the proposed alternative, there would be an impact in New England ports of \$135 million in lost revenue, \$54 million in lost personal income, and 1,900 affected jobs, contrasted with \$95 million in lost revenue, \$38 million in lost personal income, and 1,300 affected jobs associated with the stepped reduction alternative (Alternative 1B) and questioned why NMFS chose to implement an alternative that would produce the same long-term goals, yet at a much larger first-year cost.

*Response:* NMFS recognizes that Alternative 1B is a significant

alternative that would yield a lesser economic impact to the New England region in the first year of the rebuilding plan. In terms of the economic impact to vessels, Alternative 1B is estimated to yield a reduction of \$28 million in first year revenues compared to \$10-40 million for the preferred alternative. However, Alternative 1B consists of a series of increasing DAS reductions of 35 percent in 2004, 45 percent in 2005, 55 percent in 2006, and 65 percent in 2007. The full schedule of reductions was not evaluated because the area closure model used to evaluate all other alternatives is not a dynamic model. Therefore, profitability losses and gains could not be compounded, but only considered on a year-to-year basis. Applying the area closure model to the full 65-percent reduction in DAS would have misrepresented the year-4 impacts, so it was not done. Alternative 1B also contains the 2:1 DAS counting in SNE and the raised footrope trawl in the CC/GOM stock area. Presumably, at least part of the negative economic impact of the 2005 DAS reduction would be offset by a change in productivity; similarly for the DAS reduction in 2006 and 2007. It is important to note that in order for Alternative 1B to have no additional cumulative negative economic impacts after the first year, the relative change in productivity must be proportional to the change in DAS. In other words, an annual productivity increase of 10 percent would be required to offset the 10-percent reduction in DAS. NMFS believes that it is more likely that cumulative negative economic impacts of 4 years of DAS reductions under Alternative 1B would exceed that of the preferred alternative, especially since the difference between the two alternatives in 2004 is only about \$12 million in gross sales. This gap begins to narrow rather quickly when one considers that, while revenues would likely increase in 2005 under the preferred alternative, they would be declining under Alternative 1B as DAS continue to be reduced. In addition, the FSEIS notes that the negative impacts attributable to the preferred alternative were overestimated because of the inability to formally include the positive effects of harvest under B DAS. Alternative 1B contains no such opportunities. Therefore, NMFS concludes that the gap between these two alternatives narrows in 2004 with the addition of the harvest using B DAS and very much favors the preferred alternative in 2005 through 2007. While Alternative 1B was considered, it was apparent that the risk of not achieving required productivity gains after year 1

was very high and could do irreparable economic harm to the NE multispecies fleet in the final 3 years of the stepped reduction.

While much of the discussion above focuses on impacts to vessels, it is important to note that changes in impacts on revenues earned by the NE multispecies fleet would mirror impacts to the general economy, e.g., revenues earned by non-fishing sectors, personal income, job growth, etc. The Council estimated impacts to the general economy by observing changes in harvest rates and utilizing an input-output model (IMPLAN).

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

As discussed in the preamble of this final rule, NMFS has disapproved seven proposed management measures in Amendment 13, including: An abbreviated application process for SAPs; the CA II Haddock SAP; the CA I Hookgear Haddock SAP; a prohibition on the use of surfclam and ocean quahog dredges in the NLCA; the exemption to allow shrimp trawl gear in the WGOM Closure Area; the GB hookgear cod trip limit program; and the removal of the FAAS. In addition, as discussed in the preamble, NMFS has modified proposed measures regarding the U.S./Canada Management Area of GB, on the basis of public comments received.

The disapprovals of the proposed SAPs in CA I and II will reduce economic benefits vis-a-vis the proposed rule. However, since these SAPs were not implemented during the 2001 baseline period, these disapprovals will have no economic impact on NE multispecies vessels resulting from the final rule, as would be expected under a no action alternative. In the IRFA, under the Category B DAS discussion, NMFS noted that fishing under Category B DAS in these programs will enhance the profitability of participating vessels. However, the management of the SAPs must also meet the requirements of NEPA, the Magnuson-Stevens Act, and other applicable laws, as explained in the preamble of this final rule. It was concluded that the CA II haddock access program could undermine the effectiveness of measures designed to prevent landings and discards of GB cod from exceeding the U.S./Canada shared TAC, and significantly reduce fishing mortality on GB cod. For these reasons the proposed SAP is inconsistent with National Standard 1 and National Standard 2. Amendment 13 does not include information on whether a directed fishery on haddock in CA I

would be successful in avoiding GB cod catches throughout the year. This SAP also proposes to require 100-percent observer coverage, but does not state how this would be accomplished, nor does it justify the costs associated with such a requirement. Because there is no justification provided for the proposal to allow only hook vessels into the SAP, this proposal does not comply with applicable law. For these reasons, the proposed CA II Haddock SAP and the CA I Hook Gear Haddock SAP have been disapproved.

The disapproval of the expedited process for issuance of SAPs is administrative in nature and should not affect the profitability of any particular SAP.

Amendment 13 analyzed the biological and economic impacts of excluding all bottom-tending mobile gear from the EFH Closure Areas, but did not analyze the impacts of excluding clam dredge gear from those portions of the groundfish closure areas that reside outside of the EFH Closure Area boundaries. Because the impacts of the proposed exclusion of clam dredge gear from these areas was not analyzed, the proposed measure to exclude this gear from the groundfish closure areas that reside outside the EFH Closure Areas is inconsistent with National Standard 2 and EFH requirements under the Magnuson-Stevens Act, and has therefore, been disapproved.

The disapproval of the prohibition of surfclam and ocean quahog dredges in portions of the NLCA that are not contained in the Nantucket Lightship Closed Habitat Area will increase economic benefits to vessels participating in these fisheries vis-a-vis the proposed rule. However, when compared to the 2001 baseline, the disapproval will have no economic impact to these vessels resulting from the final rule, since they are already engaged in fishing in the NLCA, tantamount to a no action alternative. Nevertheless, as discussed in the IRFA, surfclam and ocean quahog vessels currently utilizing the NLCHA are expected to undergo a decrease in revenues of 0.9 percent resulting from the prohibition on fishing in that area. See the response to Comment 6.

The disapproval of an exemption for shrimp trawlers to fish in the WGOM Closed Area will reduce economic benefits vis-a-vis the proposed rule. However, the exemption in all other areas outside the small mesh exemption line will allow shrimp trawlers to expand their harvest, and thus, the net economic impact of the exemption will increase profitability of individual vessels relative to the 2001 baseline.

This proposed measure has been disapproved because it would compromise the effectiveness of this habitat closure and because there is inadequate justification supporting such an exemption. Exemption of shrimp trawl vessels from the WGOM Habitat Closure Area without clear justification is inconsistent with National Standard 2.

The disapproval of the GB hookgear cod trip limit program is likely to have a negative economic impact on individual vessels relative to the proposed rule, since this would have allowed for a higher trip limit under certain spatial and temporal conditions. However, when compared to the 2001 baseline, there is no economic impact from disapproving this measure because it is identical to a no action alternative.

The disapproval of the Council's recommendation to eliminate the FAAS will have no economic impact to vessels. The FAAS represents a rarely used administrative procedure to implement rules quickly.

The changes to the proposed rule regarding the U.S./Canada Management Area are an allowance for vessels other than groundfish DAS vessels to continue to fish in the Eastern U.S./Canada Management Area, and the relaxation of the cod limit and gear restrictions, as described in the preamble of this final rule, for groundfish DAS vessels fishing in the Western U.S./Canada Management Area. Removing the prohibition on fishing by other gears in the Eastern U.S./Canada Management Area will increase economic benefits to those vessels relative to the proposed rule, in which all gears capable of catching groundfish would have been prohibited. However, since those vessels cannot retain NE multispecies when the TACs are reached, as they could in 2001, there will be a negative impact on revenues compared to the 2001 baseline period, but limited by the fact that NE multispecies is a limited incidental catch associated with a relatively large catch of scallops or monkfish by category A and B vessels. Relaxation of the cod limit and the removal of the restriction to use flatfish nets or separator trawls in the Western U.S./Canada Management Area will yield positive economic impacts to affected DAS groundfish vessels vis-a-vis the proposed rule. The cod trip limit would increase from 500 lb (1,102 kg) to 1,000 lb (2,204 kg) and cost savings will be realized because gear modification will not be required in the Western U.S./Canada Management Area. However, when compared to the 2001 baseline, the reduction in the cod limit from

2,000 lb (4,408 kg) to 1,000 lb (2,204 kg) would continue to negatively impact revenues of individual vessels participating in the Western U.S./Canada Management Area. The removal of the requirement to use a haddock separator trawl or flatfish net when fishing in the Western U.S./Canada Management Area represents a decrease in compliance costs and concomitant increase in profitability for certain vessels, relative to the proposed rule, that would otherwise have had to obtain a new flatfish net or modify existing haddock or flatfish nets at costs estimated to be \$7,500, \$747, and \$550, respectively. Relative to the 2001 baseline, however, this represents no change in fishing requirements and, hence, there is no economic impact to vessels fishing this area. In response to public comment, this final rule will also allow a modification of existing flatfish nets for use in the Eastern U.S./Canada Management Area. The cost of this modification is estimated to be \$550 (see compliance costs).

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

This final rule contains a number of measures that will provide small entities with some degree of flexibility to be able to offset at least some portion of the estimated losses in profit. The major offsetting measures include the opportunity to use additional B DAS, leasing of DAS, DAS transfer, and sector allocation. This final rule is expected to achieve target fishing mortality rates for stocks that are most adversely affected.

**Category B DAS**

Category B DAS will be subdivided into two categories, one which would be used in SAPs (reserve B DAS), while the use of the remaining B DAS (regular B DAS) will be determined in a future framework action. The primary purpose of B DAS is to provide access to and increased yield from stocks that may be fished at higher levels. These opportunities would enhance profitability for vessels that may be able to participate in any one or more of these special fisheries.

### DAS Leasing or Transfer

Particularly for vessels with few alternative fisheries, reductions in profit may be offset by the ability to acquire more DAS either through leasing or DAS transfer. The former would make DAS available to a vessel for a single fishing season whereas the latter would be a permanent transfer of DAS from one vessel to another. Transferred DAS would be subject to a 40-percent conservation tax on the transfer of active DAS, and a 90-percent conservation tax on inactive (Category C) DAS, but vessels would be able to acquire both Category A and Category B DAS. By contrast, a DAS lease would not be subject to a conservation tax, but vessels would be only allowed to acquire Category A DAS. It is not known which option any given vessels may choose to pursue, but analysis clearly suggests that making DAS available in some form of exchange can improve overall profitability for both buyer and seller. The following describes this analysis.

The economic impact of a DAS leasing program was estimated by simulating a quota market using a math programming model. The model maximized industry profits by choosing the days each vessel will fish (if any) of their own allocation, days they will lease from other vessels, and the number of their days they will lease to other vessels. Each vessel can only fish a maximum number of DAS, which is the sum of their Amendment 13 Category A DAS allocation and their FY 2001 allocation. Days fished above their allocation of days must be leased from other vessels. In the model, vessels were constrained to be either a lessee or lessor, although in a real-world situation a vessel could be a lessee and a lessor simultaneously. Restrictions were placed on the model, which did not allow days to be leased by larger vessels from smaller vessels, consistent with the restrictions of this program. Results from the model yielded a very efficient outcome in terms of maximizing industry profit with as few vessels as possible. In reality, the actual leasing of DAS among industry participants may not be as profitable as projected by the math programming model. An individual vessel's activity level chosen by the model is determined by its productivity, the maximum allowable days it can fish, the lease price for DAS, daily fishing costs, and the prices of each species, and a restriction that prohibits leasing of days from smaller vessels by bigger vessels. The model doesn't differentiate between areas fished, where vessels land their fish, and a variety of other factors that will

influence the amount of DAS leased, including other fisheries in which the vessel can participate, and it assumes perfect information among participants.

Vessels were grouped together, regardless of gear type, and then stratified into fleets of 100 vessels. Each fleet was then paired with itself, and then with every other fleet to simulate trades between all 1,345 vessels that could potentially lease quota. For each sector pair, the model was run 50 times in order to incorporate a stochastic lease price, which was generated based on results from a previous linear programming model. Lease prices used in the model ranged from \$218 to \$2,093, with a mean of \$1,029. Results from the simulations were used to examine changes in profitability which would occur from allowing DAS leasing.

Results from the simulation runs were stratified by gear type and length of vessel. Class 1 vessels were less than 50 ft (15.25 m); class 2 vessels were between 50 ft (15.25 m) and 69 ft (21.04 m), and class 3 vessels were 70 ft (21.35 m) and greater. The three gear types examined were hook (50 vessels), trawl (1,126 vessels) and gillnet (169 vessels). There were more vessels in the model than had Category A DAS in the proposed action. Because vessels can fish up to the total of their Category A DAS and their FY 2001 allocation, vessels with zero Category A DAS can still lease DAS, and therefore need to be included in the model. Because the model is attempting to maximize industry profit, under a DAS leasing scheme, fewer vessels will fish. However, mean profits for all vessels will be higher than if DAS trading were not allowed, and all vessels fished their allocation. Mean profits are also higher than those generated by actual fishing during calendar year 2002 by vessels actually fishing. Vessels that choose to lease all their DAS can greatly enhance their profit, since the owner is getting all the revenue from the lease without incurring any costs, and in particular by not having to pay labor costs. The decision from a vessel perspective on whether to lease DAS to other vessels is based on whether they can lease their DAS for more than they would earn after paying expenses, including payments to the crew. If a vessel decides to lease DAS from other vessels, it is based on whether it can earn more from a leased DAS than what it will pay for the lease, plus what it will pay to the crew and to cover other expenses.

Model results generally showed the flow of lease days going from larger vessels to smaller vessels. Trawl and gillnet vessels less than 50 ft (15.25 m) in length were projected to use more

DAS than in 2002 under a DAS leasing scheme. Trawl and gillnet vessels greater than 50 ft (15.25 m) were projected to have their DAS usage decline from 2002 levels. Hook vessels were projected to see their DAS increase. Restrictions on DAS trading make it difficult for larger vessels to lease from smaller vessels, but the opposite does not hold. Small vessels have a large potential number of vessels that they can lease from, which is what model results show. The analysis concludes that larger vessels can profit by leasing their days to smaller vessels. For example, length class 2 trawl vessels average profit was \$68,387 using an average of 36.92 days of effort under a DAS leasing scheme, while their average profit was \$31,428 using 46.13 days of effort in 2002. Small trawl vessels average profit was \$41,111 using 31.9 days of effort under DAS leasing, while their 2002 average profit was \$12,271, and their average DAS was 25.13. This demonstrates that both sectors would be better off with a DAS leasing program than fishing at their calendar year 2002 effort levels.

Additionally, the average profit levels were projected to be higher under DAS leasing than if the vessels fished at their allocated 2004 levels. This demonstrates DAS leasing could provide substantial regulatory relief to these vessels compared with no leasing (no action alternative).

### Handgear A Permit

The final rule converts the existing open access handgear permit into a limited access category and creates an open access category for Handgear A permits. Vessels that qualify for a limited access Handgear A permit will benefit from a relaxation of the cod trip limit and will not be subject to trip limits on any other species. Vessels that do not qualify for limited access Handgear A permit will still be able to obtain an open access permit, but the cod trip limit will be much lower than current Handgear only permit holders may retain. Available data show that, even though a large number of open access handgear permits have been issued in the past, less than 10 percent of these permits actually report landings of any amount of either cod or haddock. A preliminary assessment of qualification indicates that approximately 150 vessels will qualify for a limited access Handgear A permit. Thus, the conversion to a limited access permit with the potential to achieve higher landings and higher incomes overall also may permit the majority of small entities currently participating in the fishery to continue operating. The

no action alternative would yield no economic benefits as compared to the proposed action. Therefore, the proposed alternative is favorable when compared to the no action.

#### **Elimination of the Area Restriction for the Northern Shrimp Exempted Fishery**

The northern shrimp fishery will no longer be restricted to the area shoreward to the small mesh fishery exemption line. However, vessels will continue to be prohibited from fishing in the WGOM Habitat Closure Area. While this prohibition will reduce economic benefits vis-a-vis the proposed management measure, which would have allowed fishing in a much larger area, the lifting of the restriction to fish shoreward of the small fishery exemption line will yield an increase in the profitability of shrimp vessels, albeit smaller than originally proposed. The no action alternative would have yielded no economic benefits and would not have changed the economic conditions in the shrimp fishery. Therefore, this management measure is favorable when compared to the no action alternative.

#### **Tuna Purse Seine Vessel Access to Groundfish Closed Areas**

Tuna purse seine gear is defined as exempted gear for the purposes of the FMP. Tuna purse seine vessels will be allowed into all groundfish closed areas, subject only to the normal restrictions for using an exempted gear in the area. This will benefit the purse seiners by expanding groundfish areas available for fishing and, thus, allow those vessels to increase profitability. The Council recognizes that part of the seine contains mesh less than the regulated mesh size for the NE multispecies fisheries.

#### **SNE General Category Scallop Vessel Exemption Program**

Unless otherwise prohibited in 50 CFR 648.81, vessels with a limited access scallop permit that have declared out of the DAS program as specified in § 648.10, or that have used up their DAS allocations, and vessels issued a General Category scallop permit, may fish in statistical areas 537, 538, 539, and 613—defined as the SNE General Category Scallop Exemption Area—when not under a NE multispecies DAS. This relieves a restriction and allows scallop vessels to enter expanded areas for the harvest of scallops, allowing those vessels to increase profits, if available. The no action alternative would yield no economic benefits, because vessels would be precluded from participating in this program. Therefore, the proposed

alternative is favorable when compared to the no action alternative.

#### **Modified VMS Operation Requirement**

A vessel using a VMS can opt out of the fishery for a minimum period of 1 calendar month by notifying the Regional Administrator. Notification must include the date a vessel will resume transmitting VMS reports. After receiving confirmation from the Regional Administrator, the vessel operator can stop sending VMS reports. During the period out of the VMS program, the vessel cannot engage in any fisheries until the VMS is turned back on. This will reduce operating costs associated with VMS operation (see section 3.4.11 of Amendment 13). The no action alternative would yield no economic benefits. Therefore, the proposed alternative is favorable when compared to the no action alternative.

#### **Revised Standards for Certification for Incidental Catch/Exempted Fisheries**

The standards for certification of a incidental catch/exempted fishery that were implemented through Amendment 7 would continue to be used. However, this measure allows the Regional Administrator to modify the 5-percent incidental catch rule and make additional modifications on a one-to-one basis under an accepted set of conditions. The economic benefits or costs of this measure are uncertain, since the Regional Administrator could decrease the percentage used in the incidental catch rule, as well as increase it. However, the measure is intended to allow a very controlled expansion of fishing areas, thus, benefitting vessels economically while conserving species of concern. The effect of the no action alternative would depend on the Regional Administrator's determination on a case-by-case basis, *e.g.*, if the Regional Administrator lowered the acceptable incidental catch percentage, the no action alternative would have a beneficial impact, but if the acceptable incidental catch percentage were increased, the no action alternative would have a negative impact.

#### **Periodic Adjustment Process**

The annual adjustment process is revised to be a biennial adjustment, with the PDT performing a review and submitting management recommendations to the Council every 2 years. This will tend to have a positive effect on profitability of individual vessels, since it expands their planning horizon, making their fishing operations more efficient and profitable. The no action alternative would yield no economic benefits. Therefore, the

proposed alternative is favorable when compared to the no action alternative.

#### **U.S./Canada Resource Sharing Understanding**

Management of GB cod, haddock, and yellowtail flounder is subject to the terms of the Understanding. The Understanding specifies an allocation of GB cod, haddock, and yellowtail flounder for each country. The management objective is for the U.S. fishery to harvest the shared stocks of cod, haddock, and yellowtail flounder at, but not above, the U.S. allocation. This allocation would be based on a formula, which includes historical catch percentage and present resource distribution. The economic implications of this agreement would depend on the specific allocation, the reduction in DAS attributable to steaming time, and other economic considerations such as fuel prices and Canadian and U.S. fish prices. This measure would most likely benefit larger vessels who traditionally fish GB. It would also allow each country to plan its fishing activities in advance which could result in a more efficient use of the limited resources found on GB, thus, increasing the profitability of individual vessels engaged in the fishery. The no-action alternative would yield no economic benefits as this system would not be established and fishermen would not be in a position to benefit from management measures established through this Understanding. Therefore, the proposed alternative is favorable when compared to the no-action.

#### **Sector Allocation**

Under this measure, sector allocation may be used to apportion part or all of groundfish fishery resources to various industry sectors. A self-selected group of permit holders may agree to form a sector and submit a binding plan for management of that sector's allocation of catch or effort. Allocations to each sector may be based on catch (hard TACs) or effort (DAS), with target TACs specified for each sector. Vessels within the sector are allowed to pool harvesting resources and consolidate operations in fewer vessels if they desire. One of the major benefits of self-selecting sectors is that they provide incentives to self-govern, therefore, reducing the need for Council-mandated measures. A primary motivation for the formation of a sector is assurance that members of the sector will not face reductions of catch or effort as a result of the actions of vessels outside the sector (*i.e.*, if the other vessels exceed their target TACs). This measure could benefit vessels within a sector, since they would be able to

better plan and control their fishing operations. However, as sector plans evolve, each plan would need to include an economic analysis to determine the extent, if any, that vessels outside the sector are negatively impacted. By creating a process for the formation of self-selecting sectors, Amendment 13 creates an opportunity for groups of vessels to adapt their fishing behavior so that they remain economically viable in the face of increasing restrictions imposed to rebuild groundfish stocks. The ability to form a sector could be an important component of providing flexibility to small commercial fishing entities to mitigate the economic impacts of the Amendment. Further, depending on the geographic location of the membership of a given sector, sector allocation could also provide an opportunity for fishing communities to reduce economic impacts. The no action alternative would yield no economic benefits. Therefore, the proposed alternative is favorable when compared to the no-action alternative.

#### GB Hook Sector

The final rule creates a voluntary sector for longline/hook vessels on GB. This provides an opportunity for vessels to mitigate the impacts of the management alternatives. By organizing into a cooperative, vessels may be able to develop more efficient ways to harvest groundfish and minimize the inefficiencies that result from the regulations. While it is not possible to estimate the economic impacts of a sector until the actual participants are known, the pool of participants will probably be the vessels that have used longline gear to fish on GB in the past.

The are significant alternatives included in this final rule associated with the choice of the rebuilding measures and the disapproval of SAPs and other mitigating factors. In addition to the No-Action alternative which leaves the fishery unchanged, the phased-reduction alternatives 1B and 1D would have a lesser negative impact on multispecies vessels than the proposed alternative in the first year of the rebuilding period; \$28.3M and \$33M, respectively, compared to \$40M for the proposed alternative. All other rebuilding alternatives would have a higher negative economic impact on vessels during the first year. The non-selection of the No-Action alternative results from a Court Order which required the agency to pursue a rebuilding plan for overfished stocks in the Northeast multispecies complex. The rationale for not selecting Alternative 1B is discussed above and in the response to Comment 30 in the

preamble. Both 1B and 1D are phased-reduction alternatives; the difference being a hook limit for cod on Georges Bank for Alternative 1D yielding a greater economic impact than 1B. However, the point is that both phased-reduction strategies could yield greater rewards in the first year but at a much higher economic risk in the following three year period. It is this risk that the Council considered when deliberating on a preferred alternative. In addition, the preferred alternative consists of a B DAS program for fishing in the SAPs, which will potentially yield greater economic benefits for those fishers able to participate in this program. The phased-reduction alternatives do not include B DAS. The mitigating alternatives would all yield a higher economic benefit, primarily because they represent either the removal of current fishing restrictions or opportunities for expanded fishing. Therefore, the disapproval of 2 SAPs and the exemption for shrimp trawlers in habitat closed areas, specifically the WGOM habitat closed areas, actually constitute the non-selection of significant alternative since the proposed alternatives for these management measures would have yielded higher economic impacts to fishing vessels. A discussion of the rationale for these disapprovals appears in this final rule under "Disapproved Measures".

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide was prepared. The guide will be sent to all holders of permits issued for the NE multispecies fishery. In addition, copies of this final rule and guide (*i.e.*, permit holder letter) are available from the Regional Administrator and are also available at NMFS, Northeast Region (see ADDRESSES).

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 15, 2004.

**John Oliver,**

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

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

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

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

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

■ 2. In § 648.2, new definitions for "Bottom tending mobile gear," "Circle hook," "DAS Lease," "DAS Lessee," "DAS Lessor," "Handgear," "Sector," "Static gear," "Stock of concern," "Stocks targeted by the default measures," "Sub-lease," "Transboundary Management Guidance Committee," "Transboundary Resource Advisory Committee," "Tub-trawl," "Tuna purse seine gear," and "U.S./Canada Steering Committee," are added in alphabetical order, to read as follows:

#### § 648.2 Definitions.

\* \* \* \* \*

*Bottom-tending mobile gear*, with respect to the NE multispecies fishery, means gear in contact with the ocean bottom, and towed from a vessel, which is moved through the water during fishing in order to capture fish, and includes otter trawls, beam trawls, hydraulic dredges, non-hydraulic dredges, and seines (with the exception of a purse seine).

\* \* \* \* \*

*Circle hook*, with respect to the NE multispecies fishery, means a fishing hook with the point turned perpendicularly back to the shank, or an offset circle hook where the barbed end of the hook is displaced relative to the parallel plane of the eyed-end, or shank, of the hook when laid on its side.

\* \* \* \* \*

*DAS Lease*, with respect to the NE multispecies limited access fishery, means the transfer of the use of DAS from one limited access NE multispecies vessel to another limited access NE multispecies vessel for a period not to exceed a single fishing year.

*DAS Lessee*, with respect to the NE multispecies limited access fishery, means the NE multispecies limited access vessel owner and/or the associated vessel that acquires the use of DAS from another NE multispecies limited access vessel.

*DAS Lessor*, with respect to the NE multispecies limited access fishery, means the NE multispecies limited access vessel owner and/or the associated vessel that transfers the use

of DAS to another NE multispecies limited access vessel.

\* \* \* \* \*

*Handgear*, with respect to the NE multispecies fishery, means handline gear, rod and reel gear, and tub-trawl gear.

\* \* \* \* \*

*Sector*, with respect to the NE multispecies fishery, means a group of vessels that have voluntarily signed a contract and agree to certain fishing restrictions, and that have been allocated a portion of the TAC of a species, or an allocation of DAS.

\* \* \* \* \*

*Static gear*, with respect to the NE multispecies fishery, means stationary gear, usually left for a period of time in one place, that depends on fish moving to the gear, and includes gillnets, longlines, handgear, traps, and pots.

*Stock of concern*, with respect to the NE multispecies fishery, means a stock that is in an overfished condition, or that is subject to overfishing.

*Stocks targeted by the default measures*, with respect to the NE multispecies fishery, are: American plaice, and SNE/MA yellowtail flounder for the 2006 fishing year; and American plaice, GB cod, GOM cod, CC/GOM yellowtail flounder, SNE/MA yellowtail flounder, white hake and SNE/MA winter flounder for the 2009 fishing year.

*Sub-lease*, with respect to the NE multispecies fishery, means the leasing of DAS that have already been leased to another vessel.

\* \* \* \* \*

*Transboundary Management Guidance Committee (TMGC)*, with respect to the NE multispecies fishery, means the technical sub-committee that provides non-binding guidance to the U.S./Canada Steering Committee, comprised of government and industry representatives from U.S. and Canada.

*Transboundary Resource Advisory Committee (TRAC)*, with respect to the NE multispecies fishery, means a committee consisting of scientific staff from NMFS and Canada's Department of Fisheries and Oceans that jointly assess the status of the shared U.S./Canada stocks of cod, haddock, and yellowtail flounder.

\* \* \* \* \*

*Tub-trawl*, with respect to the NE multispecies fishery, means gear designed to be set horizontally on the bottom, with an anchored mainline to which are attached three or more gangions and hooks. Tub-trawls are retrieved only by hand, not by mechanical means.

*Tuna purse seine gear*, with respect to the NE multispecies fishery, means encircling gear designed and utilized to harvest pelagic tuna.

\* \* \* \* \*

*U.S./Canada Steering Committee*, with respect to the NE multispecies fishery, means the joint U.S./Canada committee consisting of staff from NMFS and Canada's Department of Fisheries and Oceans that has overall responsibility for the U.S./Canada Resource Sharing Understanding.

\* \* \* \* \*

■ 3. In § 648.4, paragraph (a)(1)(i)(A), paragraph (a)(1)(i)(E) introductory text, paragraphs (a)(1)(i)(G), (a)(1)(i)(I)(1) and (a)(1)(i)(M), (a)(1)(ii) and paragraph (c)(2)(iii) are revised to read as follows:

**§ 648.4 Vessel permits.**

(a) \* \* \*

(1) \* \* \*

(i) \* \* \*

(A) *Eligibility*. To be eligible to apply for a limited access NE multispecies permit, as specified in § 648.82, a vessel must have been issued a limited access NE multispecies permit for the preceding year, be replacing a vessel that was issued a limited access NE multispecies permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history; unless otherwise specified in this paragraph (a)(1)(i)(A). For the fishing year beginning May 1, 2004, a vessel may apply for a limited access Handgear A permit described in § 648.82(b)(6), if it meets the criteria described under paragraphs (a)(1)(i)(A)(1) and (2) of this section.

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

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

(3) *Application/renewal restrictions*. The vessel owner must submit a complete application for an initial limited access handgear permit before May 1, 2005. For fishing years beyond the 2004 fishing year, the provisions of paragraph (a)(1)(i)(B) of this section apply.

\* \* \* \* \*

(E) *Replacement vessels*. With the exception of vessels that have obtained

a limited access Handgear A permit described in § 648.82(b)(6), to be eligible for a limited access permit under this section, the replacement vessel must meet the following criteria and any other applicable criteria under paragraph (a)(1)(i)(F) of this section:

\* \* \* \* \*

(G) *Consolidation restriction*. Except as provided for in the NE Multispecies DAS Leasing Program, as specified in § 648.82(k), and the NE Multispecies DAS Transfer Program as specified in § 648.82(l), limited access permits and DAS allocations may not be combined or consolidated.

\* \* \* \* \*

(I) \* \* \*

(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 multispecies permit, is eligible for and may be issued an open access scallop multispecies possession limit permit and may fish for, possess on board, and land multispecies finfish subject to the restrictions in § 648.88. The owner of a vessel issued an open access permit may request a different open access permit category by submitting an application to the Regional Administrator at any time.

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(iii) An application for a limited access NE multispecies permit must also contain the following information:

(A) For vessels fishing for NE multispecies with gillnet gear, with the exception of vessels fishing under the Small Vessel permit category, an annual declaration as either a Day or Trip gillnet vessel designation as described in § 648.82(k). A vessel owner electing a Day or Trip gillnet designation must indicate the number of gillnet tags that he/she is requesting, and must include a check for the cost of the tags. A permit holder letter will be sent to the owner of each eligible gillnet vessel, informing him/her of the costs associated with this tagging requirement and providing

directions for obtaining tags. Once a vessel owner has elected this designation, he/she may not change the designation or fish under the other gillnet category for the remainder of the fishing year. Incomplete applications, as described in paragraph (e) of this section, will be considered incomplete for the purpose of obtaining authorization to fish in the NE multispecies gillnet fishery and will be processed without a gillnet authorization.

(B) [Reserved]

\* \* \* \* \*

■ 4. In § 648.7, paragraphs (a)(1) introductory text, (a) (1)(i), and (b)(1)(i) are revised to read as follows:

**§ 648.7 Recordkeeping and reporting requirements.**

(a) \* \* \*

(1) *Detailed weekly report.* Until otherwise required by the Regional Administrator, federally permitted dealers must submit to the Regional Administrator, or official designee, a detailed weekly report, within the time periods specified in paragraph (f) of this section, on forms supplied by or approved by the Regional Administrator, and a report of all fish purchases, except for surfclam and ocean quahog dealers or processors, who are required to report only surfclam and ocean quahog purchases. Once authorized in writing by the Regional Administrator, all dealers must submit daily reports electronically or through other media. The following information, and any other information required by the Regional Administrator, must be provided in the report:

(i) All dealers issued a dealer permit under this part, with the exception of those utilizing the surfclam or ocean quahog dealer permit, must provide: Dealer name and mailing address; dealer permit number; name and permit number or name and hull number (USCG documentation number or state registration number, whichever is applicable) of vessels from which fish are landed or received; trip identifier for a trip from which fish are landed or received; dates of purchases; pounds by species (by market category, if applicable); price per pound by species (by market category, if applicable) or total value by species (by market category, if applicable); port landed; signature of person supplying the information; and any other information deemed necessary by the Regional Administrator. The dealer or other authorized individual must sign all report forms. If no fish are purchased during a reporting week, no written report is required to be submitted. If no

fish are purchased during an entire reporting month, a report so stating on the required form must be submitted.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) Unless otherwise required under § 648.85(a), the owner or operator of any valid permit under this part must maintain on board the vessel, and submit, an accurate fishing log report for each fishing trip, regardless of species fished for or taken, on forms supplied by or approved by the Regional Administrator. Once authorized in writing by the Regional Administrator, a vessel owner or operator must submit trip reports electronically, for example by using a VMS or other media. At that time electronic trip reports would replace the Fishing Vessel Trip Report. With the exception of those vessel owners or operators fishing under a surfclam or ocean quahog permit, at least the following information and any other information required by the Regional Administrator must be provided: Vessel name; USCG documentation number (or state registration number, if undocumented); permit number; date/time sailed; date/time landed; trip type; number of crew; number of anglers (if a charter or party boat); gear fished; quantity and size of gear; mesh/ring size; chart area fished; average depth; latitude/longitude (or loran station and bearings); total hauls per area fished; average tow time duration; hail weight, in pounds (or count of individual fish, if a party or charter vessel), by species, of all species, or parts of species, such as monkfish livers, landed or discarded; and, in the case of skate discards, "small" (*i.e.*, less than 23 inches (58.4 cm), total length) or "large" (*i.e.*, 23 inches (58.4 cm) or greater, total length) skates; dealer permit number; dealer name; date sold, port and state landed; and vessel operator's name, signature, and operator's permit number (if applicable).

\* \* \* \* \*

■ 5. In § 648.9, paragraphs (b)(5) and (c) are revised to read as follows:

**§ 648.9 VMS requirements.**

\* \* \* \* \*

(b) \* \* \*

(5) The VMS shall provide accurate hourly position transmissions every day of the year unless otherwise required under paragraph (c)(1)(ii) of this section, or unless exempted under paragraph (c)(2) of this section. In addition, the VMS shall allow polling of individual vessels or any set of vessels at any time, and receive position reports in real time. For the purposes of this specification,

“real time” shall constitute data that reflect a delay of 15 minutes or less between the displayed information and the vessel’s actual position.

\* \* \* \* \*

(c) *Operating requirements for all vessels.* (1) Except as provided in paragraph (c)(2) of this section, or unless otherwise required by § 648.58(h) or paragraph (c)(1)(ii) of this section, all required VMS units must transmit a signal indicating the vessel’s accurate position, as specified under paragraph (c)(1)(i) of this section.

(i) At least every hour, 24 hours a day, throughout the year.

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

(2) *Power down exemption.* (i) Any vessel required to transmit the vessel’s location at all times, as required in paragraph (c)(1) of this section, is exempt from this requirement if it meets one or more of the following conditions and requirements:

(A) The vessel will be continuously out of the water for more than 72 consecutive hours, the vessel signs out of the VMS program by obtaining a valid letter of exemption pursuant to paragraph (c)(2)(ii) of this section, and the vessel complies with all conditions and requirements of said letter;

(B) For vessels fishing with a valid NE multispecies limited access permit, the vessel owner signs out of the VMS program for a minimum period of 1 calendar month by obtaining a valid letter of exemption pursuant to paragraph (c)(2)(ii) of this section, the vessel does not engage in any fisheries until the VMS unit is turned back on, and the vessel complies with all conditions and requirements of said letter; or

(C) The vessel has been issued an Atlantic herring permit, and is in port, unless required by other permit requirements for other fisheries to transmit the vessel’s location at all times.

(ii) *Letter of exemption—(A) Application.* A vessel owner may apply for a letter of exemption from the VMS transmitting requirements specified in paragraph (c)(1) of this section for his/her vessel by sending a written request to the Regional Administrator and providing the following: The location of the vessel during the time an exemption is sought; and the exact time period for which an exemption is needed (*i.e.*, the

time the VMS signal will be turned off and turned on again); and, in the case of a vessel meeting the conditions of paragraph (c)(2)(i)(A) of this section, sufficient information to determine that the vessel will be out of the water for more than 72 continuous hours. The letter of exemption must be on board the vessel at all times, and the vessel may not turn off the VMS signal until the letter of exemption has been received.

(B) *Issuance.* Upon receipt of an application, the Regional Administrator may issue a letter of exemption to the vessel if it is determined that the vessel owner provided sufficient information as required under paragraph (c)(2) of this section, and that the issuance of the letter of exemption will not jeopardize accurate monitoring of the vessel’s DAS. Upon written request, the Regional Administrator may change the time period for which the exemption is granted.

\* \* \* \* \*

■ 6. In § 648.10, paragraphs (b), (c), and (f) are revised to read as follows:

**§ 648.10 DAS notification requirements.**

\* \* \* \* \*

(b) *VMS Notification.* (1) The following vessels must have installed on board an operational VMS unit that meets the minimum performance criteria specified in § 648.9(b), or as modified pursuant to § 648.9(a):

(i) A scallop vessel issued a Full-time or Part-time limited access scallop permit;

(ii) A scallop vessel issued an Occasional limited access permit when fishing under the Sea Scallop Area Access Program specified in § 648.58;

(iii) A scallop vessel fishing under the Small Dredge program specified in § 648.51(e);

(iv) A vessel issued a limited access NE multispecies, monkfish, Occasional scallop, or Combination permit, whose owner elects to provide the notifications required by this paragraph (b), unless otherwise authorized or required by the Regional Administrator under paragraph (d) of this section.

(v) A vessel issued a limited access NE multispecies permit electing to fish under the U.S./Canada Resource Sharing Understanding, as specified in § 648.85(a).

(2) The owner of such a vessel specified in paragraph (b)(1) of this section must provide documentation to the Regional Administrator at the time of application for a limited access permit that the vessel has an operational VMS unit installed on board that meets those criteria, unless otherwise allowed under this paragraph (b). If a vessel has

already been issued a limited access permit without the owner providing such documentation, the Regional Administrator shall allow at least 30 days for the vessel to install an operational VMS unit that meets the criteria and for the owner to provide documentation of such installation to the Regional Administrator. A vessel that is required to, or whose owner has elected to, use a VMS unit is subject to the following requirements and presumptions:

(i) A vessel that has crossed the VMS Demarcation Line specified under paragraph (a) of this section is deemed to be fishing under the DAS program, unless the vessel’s owner or authorized representative declares the vessel out of the scallop, NE multispecies, or monkfish fishery, as applicable, for a specific time period by notifying the Regional Administrator through the VMS prior to the vessel leaving port, or unless the vessel’s owner or authorized representative declares the vessel will be fishing in the Eastern U.S./Canada Area as described in § 648.85(a)(3)(ii) under the provisions of that program.

(ii) A Part-time scallop vessel may not fish in the DAS allocation program unless it declares into the scallop fishery for a specific time period by notifying the Regional Administrator through the VMS.

(iii) Notification that the vessel is not under the DAS program must be received prior to the vessel leaving port. A vessel may not change its status after the vessel leaves port or before it returns to port on any fishing trip.

(iv) DAS for a vessel that is under the VMS notification requirements of this paragraph (b), with the exception of vessels that have elected to fish in the Eastern U.S./Canada Area, pursuant to § 648.85(a), begin with the first hourly location signal received showing that the vessel crossed the VMS Demarcation Line leaving port. DAS end with the first hourly location signal received showing that the vessel crossed the VMS Demarcation Line upon its return to port. For those vessels that have elected to fish in the Eastern U.S./Canada Area pursuant to § 648.85(a)(2)(i), the requirements of this paragraph (b) begin with the first 30-minute location signal received showing that the vessel crossed into the Eastern U.S./Canada Area and end with the first location signal received showing that the vessel crossed out of the Eastern U.S./Canada Area upon beginning its return trip to port.

(v) If the VMS is not available or not functional, and if authorized by the Regional Administrator, a vessel owner must provide the notifications required

by paragraphs (b)(2)(i), (ii), and (iii) of this section by using the call-in notification system described under paragraph (c) of this section, instead of using the VMS specified in this paragraph (b).

(3)(i) A vessel issued a limited access NE multispecies, monkfish, Occasional scallop, or Combination permit must use the call-in notification system specified in paragraph (c) of this section, unless the owner of such vessel has elected, under paragraph (b)(3)(iii) of this section, to provide the notifications required by this paragraph (b), or unless the vessel has elected to fish in the Eastern U.S./Canada Area or Western U.S./Canada Area, as described under § 648.85(a)(2)(i), unless otherwise authorized under paragraph (b)(2)(v) of this section.

(ii) Unless otherwise required by paragraph (b)(1)(v) of this section, upon recommendation by the Council, the Regional Administrator may require, by notification through a letter to affected permit holders, notification in the **Federal Register**, or other appropriate means, that a NE multispecies vessel issued an Individual DAS or Combination Vessel permit install on board an operational VMS unit that meets the minimum performance criteria specified in § 648.9(b), or as modified as provided under § 648.9(a). An owner of such a vessel must provide documentation to the Regional Administrator that the vessel has installed on board an operational VMS unit that meets those criteria. If a vessel has already been issued a permit without the owner providing such documentation, the Regional Administrator shall allow at least 30 days for the vessel to install an operational VMS unit that meets the criteria and for the owner to provide documentation of such installation to the Regional Administrator. A vessel that is required to use a VMS shall be subject to the requirements and presumptions described under paragraphs (b)(2)(i) through (v) of this section.

(iii) A vessel issued a limited access NE multispecies, monkfish, Occasional scallop, or Combination permit may be authorized by the Regional Administrator to provide the notifications required by this paragraph (b) using the VMS specified in this paragraph (b). The owner of such vessel becomes authorized by providing documentation to the Regional Administrator at the time of application for an Individual or Combination vessel limited access NE multispecies permit that the vessel has installed on board an operational VMS unit that meets the

minimum performance criteria specified in § 648.9(b), or as modified as provided under § 648.9(a). Vessels that are authorized to use the VMS in lieu of the call-in requirement for DAS notification shall be subject to the requirements and presumptions described under paragraphs (b)(2)(i) through (v) of this section. Those who elect to use the VMS do not need to call in DAS as specified in paragraph (c) of this section. Vessels that do call in are exempt from the prohibition specified in § 648.14(c)(2).

(c) *Call-in notification.* Owners of vessels issued limited access NE multispecies, monkfish or red crab permits who are participating in a DAS program and who are not required to provide notification using a VMS, and scallop vessels qualifying for a DAS allocation under the Occasional category and who have not elected to fish under the VMS notification requirements of paragraph (b) of this section, are subject to the following requirements:

(1) Less than 1 hour prior to leaving port, for vessels issued a limited access NE multispecies DAS permit or, for vessels issued a limited access NE multispecies DAS permit and a limited access monkfish Category C or D permit, unless otherwise specified in this paragraph (c)(1), and, prior to leaving port for vessels issued a limited access monkfish Category A or B permit, the vessel owner or authorized representative must notify the Regional Administrator that the vessel will be participating in the DAS program by calling the Regional Administrator and providing the following information: Owner and caller name and phone number, vessel's name and permit number, type of trip to be taken, port of departure, and that the vessel is beginning a trip. A DAS begins once the call has been received and a confirmation number is given by the Regional Administrator, or when a vessel leaves port, whichever occurs first, unless otherwise specified in paragraph (c)(6) of this section. Vessels issued a limited access monkfish Category C or D permit that are allowed to fish as a Category A or B vessel in accordance with the provisions of § 648.92(b)(2)(ii), are subject to the call-in notification requirements for limited access monkfish Category A or B vessels specified under this paragraph (c)(1) for those monkfish DAS where there is not a concurrent NE multispecies DAS.

(2) The vessel's confirmation numbers for the current and immediately prior NE multispecies, monkfish or red crab fishing trip must be maintained on board the vessel and provided to an authorized officer upon request.

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

(4) The Regional Administrator will furnish a phone number for DAS notification call-ins upon request.

(5) Any vessel that possesses or lands per trip more than 400 lb (181 kg) of scallops, and any vessel issued a limited access NE multispecies permit subject to the NE multispecies DAS program and call-in requirement that possesses or lands regulated species, except as provided in §§ 648.17 and 648.89, any vessel issued a limited access monkfish permit subject to the monkfish DAS program and call-in requirement that possesses or lands monkfish above the incidental catch trip limits specified in § 648.94(c), and any vessel issued a limited access red crab permit subject to the red crab DAS program and call-in requirement that possesses or lands red crab above the incidental catch trip limits specified in § 648.263(b)(1), shall be deemed in its respective DAS program for purposes of counting DAS, regardless of whether the vessel's owner or authorized representative provided adequate notification as required by paragraph (c) of this section.

\* \* \* \* \*

(f) *Additional NE multispecies call-in requirements*—(1) *Spawning season call-in.* With the exception of vessels issued a valid Small Vessel category permit, or the Handgear A permit category, vessels subject to the spawning season restriction described in § 648.82 must notify the Regional Administrator of the commencement date of their 20-day period out of the NE multispecies fishery through either the VMS system or by calling and providing the following information: Vessel name and permit number, owner and caller name and phone number, and the commencement date of the 20-day period.

(2) *Gillnet call-in.* Vessels subject to the gillnet restriction described in § 648.82(j)(1)(ii) must notify the Regional Administrator of the commencement date of their time out of the NE multispecies gillnet fishery using

the procedure described in paragraph (f)(1) of this section.

■ 7. In § 648.14, paragraphs (a)(39), (40), (43), (47), (52), (55), (90), (104), (116), (126); (b)(1) through (4); (c)(1), (c)(3), (c)(7), (c)(10) through (c)(15), (c)(21), (c)(24), (c)(26), (c)(29) through (c)(31), and (c)(33); the introductory text to paragraph (d); and paragraph (d)(2) are revised; paragraphs (c)(18), (c)(23), and (c)(32) are removed and reserved; and paragraphs (a)(128) through (162) and (c)(34) through (50) are added to read as follows:

**§ 648.14 Prohibitions.**

(a) \* \* \*

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

(40) Enter or be in the area described in § 648.81(c)(1) on a fishing vessel, except as allowed under § 648.81(c)(2) and (i).

\* \* \* \* \*

(43) Violate any of the provisions of § 648.80, including paragraphs (a)(5), the small-mesh northern shrimp fishery exemption area; (a)(6), the Cultivator Shoal whiting fishery exemption area; (a)(9), Small-mesh Area 1/Small-mesh Area 2; (a)(10), the Nantucket Shoals dogfish fishery exemption area; (a)(12), the Nantucket Shoals mussel and sea urchin dredge exemption area; (a)(13), the GOM/GB monkfish gillnet exemption area; (a)(14), the GOM/GB dogfish gillnet exemption area; (a)(15), the Raised Footrope Trawl Exempted Whiting Fishery; (b)(3), exemptions (small mesh); (b)(5), the SNE monkfish and skate trawl exemption area; (b)(6), the SNE monkfish and skate gillnet exemption area; (b)(8), the SNE mussel and sea urchin dredge exemption area; (b)(9), the SNE little tunny gillnet exemption area; and (b)(11), the SNE Scallop Dredge Exemption Area. Each violation of any provision in § 648.80 constitutes a separate violation.

\* \* \* \* \*

(47) Fish for the species specified in § 648.80(d) or (e) with a net of mesh size smaller than the applicable mesh size specified in § 648.80(a)(3) or (4), (b)(2), or (c)(2), or possess or land such species, unless the vessel is in compliance with the requirements specified in § 648.80(d) or (e), or unless the vessel has not been issued a NE multispecies permit and fishes for NE multispecies exclusively in state waters, or unless otherwise specified in § 648.17.

\* \* \* \* \*

(52) Enter, be on a fishing vessel in, or fail to remove gear from the EEZ portion of the areas described in

§ 648.81(d)(1) through (g)(1), except as provided in § 648.81(d)(2), (e)(2), (f)(2), (g)(2), and (i).

\* \* \* \* \*

(55) Purchase, possess, or receive as a dealer, or in the capacity of a dealer, regulated species in excess of the possession limits specified in § 648.85 or § 648.86 applicable to a vessel issued a NE multispecies permit, unless otherwise specified in § 648.17.

\* \* \* \* \*

(90) Use, set, haul back, fish with, possess on board a vessel, unless stowed in accordance with § 648.23(b), or fail to remove, sink gillnet gear and other gillnet gear capable of catching NE multispecies, with the exception of single pelagic gillnets (as described in § 648.81(f)(2)(ii)), in the areas and for the times specified in § 648.80(g)(6)(i) and (ii), except as provided in §§ 648.80(g)(6)(i) and (ii) and 648.81(f)(2)(ii), or unless otherwise authorized in writing by the Regional Administrator.

\* \* \* \* \*

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

\* \* \* \* \*

(116) Fish for, harvest, possess, or land any species of fish in or from the GOM/GB Inshore Restricted Roller Gear Area described in § 648.80(a)(3)(vii) with trawl gear where the diameter of any part of the trawl footrope, including discs, rollers or rockhoppers, is greater than 12 inches (30.5 cm).

\* \* \* \* \*

(126) Call in DAS in excess of that allocated, leased, or permanently transferred, in accordance with the restrictions and conditions of § 648.82.

\* \* \* \* \*

(128) Fish for, harvest, possess or land any regulated NE multispecies from the areas specified in § 648.85(a)(1), unless in compliance with the restrictions and conditions specified in § 648.85(a)(3).

(129) Enter or fish in the Western U.S./Canada Area or Eastern U.S./Canada Area specified in § 648.85(a)(1), unless declared into the area in accordance with § 648.85(a)(3)(ii).

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

(131) If the vessel has been issued a limited access NE multispecies DAS permit, and is in the area specified in § 648.85(a), fail to comply with the VMS requirements in § 648.85(a)(3)(i).

(132) If fishing with trawl gear under a NE multispecies DAS in the Eastern U.S./Canada Area defined in § 648.85(a)(1)(ii), fail to fish with a haddock separator trawl or a flounder trawl net, as specified in § 648.85(a)(3)(iii).

(133) If fishing under a NE multispecies DAS in the Western U.S./Canada Area or Eastern U.S./Canada Area specified in § 648.85(a)(1), exceed the trip limits specified in § 648.85(a)(3)(iv), unless further restricted under § 648.85(b).

(134) If fishing under a NE multispecies DAS, enter or fish in the Eastern U.S./Canada Area specified in § 648.85(a)(1), if the area is closed as described in § 648.85(a)(3)(iv)(E), unless fishing in the Closed Area II Yellowtail Flounder SAP specified in § 648.85(b)(3).

(135) If fishing under a NE multispecies DAS in the Western U.S./Canada Area or Eastern U.S./Canada Area specified in § 648.85(a)(1), fail to report landings in accordance with § 648.85(a)(3)(v).

(136) If fishing under the Closed Area II Yellowtail Flounder SAP, fish for, harvest, possess or land any regulated NE multispecies from the area specified in § 648.85(b)(3)(ii), unless in compliance with the restrictions and conditions specified in § 648.85(b)(3)(i) through (x).

(137) Enter or fish in Closed Area II as specified in § 648.81(b), unless declared into the area in accordance with § 648.85(b)(3)(v).

(138) Enter or fish in Closed Area II under the Closed Area II Yellowtail Flounder SAP outside of the season specified in § 648.85(b)(3)(iii).

(139) If fishing in the Closed Area II Yellowtail Flounder SAP specified in § 648.85(b)(3), exceed the number of trips specified under § 648.85(b)(3)(vii).

(140) If fishing in the Closed Area II Yellowtail Flounder SAP specified in § 648.85(b)(3), exceed the trip limits specified in § 648.85(b)(3)(viii).

(141) If declared into the areas specified in § 648.85(b), enter or exit the declared areas more than once per trip.

(142) [Reserved]

(143) [Reserved]

(144) [Reserved]

(145) [Reserved]

(146) [Reserved]

(147) [Reserved]

(148) [Reserved]

(149) [Reserved]

(150) [Reserved]

(151) [Reserved]

(152) [Reserved]

(153) If fishing under the SNE/MA Winter Flounder SAP, described in § 648.85(b)(6), fail to comply with the

restrictions and conditions under § 648.85(b)(6)(i) through (iv).

(154) If fishing under an approved Sector, as authorized under § 648.87, fail to abide by the restrictions specified in § 648.87(b)(1).

(155) If fishing under an approved Sector, as authorized under § 648.87, fail to remain in the sector for the remainder of the fishing year as required under § 648.87(b)(1).

(156) If fishing under the Georges Bank (GB) Cod Hook Sector, as authorized under § 648.87, fish in the NE multispecies DAS program in a given fishing year, or if fishing under a NE multispecies DAS, fish under the GB Cod Hook Sector in a given fishing year, unless as otherwise provided under § 648.87(b)(1)(xii).

(157) If a vessel has agreed to participate in a Sector, fail to remain in the Sector for the entire fishing year, as required under § 648.87(b)(1)(xi).

(158) If a vessel is removed from a Sector for violation of the Sector rules, fish under the NE Multispecies regulations for non-Sector vessels.

(159) If fishing under the GB Cod Hook Sector, fish with gear other than jigs, demersal longline, or handgear.

(160) Land or possess on board a vessel, more than the possession or landing limits specified in § 648.88(a)(1), if fishing under an open access Handgear permit.

(161) Possess on board gear other than that specified under § 648.88(a)(2)(i), or fish with hooks greater than the number specified under § 648.88(a)(2)(iii), if fishing under an open access Handgear permit.

(162) Fish for, possess, or land regulated multispecies from March 1 to March 20, if issued an open access Handgear permit.

(b) \* \* \*

(1) Land, or possess on board a vessel, more than the possession or landing limits specified in § 648.86 (a), (b), (c), (d), (g), and (h), or to violate any of the other provisions of § 648.86, unless otherwise specified in § 648.17.

(2) [Reserved]

(3) While fishing in the areas specified in § 648.86(g)(1)(i) or (g)(2)(i), with a NE multispecies Handgear A permit, or under the NE multispecies DAS program, or under the limited access monkfish Category C or D permit provisions, possess yellowtail flounder in excess of the limits specified under § 648.86(g)(1)(ii) or (g)(2)(ii), respectively, unless fishing under the recreational or charter/party regulations, or transiting in accordance with § 648.23(b).

(4) If fishing in the areas specified in § 648.86(g)(1)(i) or (g)(2)(i), with a NE

multispecies Handgear A permit, or under the NE multispecies DAS program, or under the limited access monkfish Category C or D permit provisions, fail to comply with the requirements specified in § 648.81(g)(1)(ii) or (g)(2)(ii), respectively.

(c) \* \* \*

(1) Fish for, possess at any time during a trip, or land per trip more than the possession limit of NE multispecies specified in § 648.86(d) after using up the vessel's annual DAS allocation or when not participating in the DAS program pursuant to § 648.82, unless otherwise exempted under § 648.82(b)(5) or § 648.89.

(3) Combine, transfer, or consolidate DAS allocations, except as provided for under the DAS Leasing Program or the DAS Transfer Program, as specified under § 648.82(k) and (l), respectively.

(7) Possess or land per trip more than the possession or landing limits specified under § 648.86(a), (b), (c), (d), (g), and (h), and under § 648.82(b)(5) or (6), if the vessel has been issued a limited access NE multispecies permit.

(10) Enter, fail to remove sink gillnet gear or gillnet gear capable of catching NE multispecies from, or be in the areas, and for the times, described in § 648.80(g)(6)(i) and (ii), except as provided in §§ 648.80(g)(6)(i) and 648.81(j).

(11) If the vessel has been issued a limited access NE multispecies permit and fishes under a NE multispecies DAS, fail to comply with gillnet requirements and restrictions specified in § 648.82(j).

(12) If the vessel has been issued a limited access Day gillnet category designation, fail to comply with the restriction and requirements specified in § 648.82(j)(1).

(13) If the vessel has been issued a limited access Trip gillnet category designation, fail to comply with the restrictions and requirements specified in § 648.82(j)(2).

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

(15) Produce, or cause to be produced, gillnet tags under § 648.80(a)(3)(iv)(C),

without the written confirmation from the Regional Administrator described in § 648.80(a)(3)(iv)(C).

\* \* \* \* \*

(18) [Reserved]

\* \* \* \* \*

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

\* \* \* \* \*

(23) [Reserved]

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

\* \* \* \* \*

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

\* \* \* \* \*

(29) Enter, be on a fishing vessel in, or fail to remove gear from the areas described in § 648.81(d)(1), (e)(1), (f)(1), and (g)(1) during the time periods specified, except as provided in § 648.81(d)(2), (e)(2), (f)(2), (g)(2), and (i).

(30) If fishing with bottom tending mobile gear, fish in, enter, be on a fishing vessel in, the Essential Fish Habitat (EFH) Closure Areas described in § 648.81(h)(1)(i) through (vi).

(31) If the vessel has been issued a Charter/party permit or is fishing under charter/party regulations, fail to comply with the requirements specified in § 648.81(f)(2)(iii) when fishing in the areas described in § 648.81(d)(1) through (f)(1) during the time periods specified in those sections.

(32) [Reserved]

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

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

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

(36) Act as lessor or lessee of a NE multispecies Category B DAS, or Category C DAS.

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

(38) Sub-lease NE multispecies DAS.

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

(40) Lease NE multispecies DAS to a vessel that does not have a valid limited access multispecies permit.

(41) Lease NE multispecies DAS associated with a Confirmation of Permit History.

(42) Lease NE multispecies DAS if the number of unused allocated DAS is less than the number of DAS requested to be leased.

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

(44) Transfer NE multispecies DAS or use transferred DAS that have not been approved for transfer by the Regional Administrator as specified under § 648.82(l).

(45) Provide false information on the application for NE multispecies DAS Transfer, as required under § 648.82(l)(2).

(46) Permanently transfer only a portion of a vessels total allocation of DAS.

(47) Permanently transfer NE multispecies DAS between vessels, if such vessels are not in accordance with the size restrictions specified in § 648.82(l)(1)(ii).

(48) If permanently transferring NE multispecies DAS to another vessel, fail to forfeit all state and Federal fishing permits, or fish in any state or Federal commercial fishery indefinitely.

(49) If fishing under the cod trip limit specified in § 648.86(b)(2)(ii), fail to obtain an annual declaration, or fish north of the exemption line specified in § 648.86(b)(4).

(50) [Reserved]

(d) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a), (b), and (c) of this section, it is unlawful for any person owning or operating a vessel

issued an open access multispecies handgear permit to do any of the following, unless otherwise specified in § 648.17:

\* \* \* \* \*

(2) Use or possess on board, gear capable of harvesting NE multispecies, other than rod and reel, or handline gear, or tub-trawls, while in possession of, or fishing for, NE multispecies.

\* \* \* \* \*

■ 8. In § 648.23, paragraphs (b)(1)(iii)(A) and (b)(1)(iv)(A) are revised to read as follows:

**§ 648.23 Gear restrictions.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(iii) \* \* \*

(A) The net is on a reel, its entire surface is covered with canvas or other similar opaque material, and the canvas or other material is securely bound;

\* \* \* \* \*

(iv) \* \* \*

(A) The net is on a reel, its entire surface is covered with canvas or other similar opaque material, and the canvas or other material is securely bound;

\* \* \* \* \*

■ 9. Section 648.80 is revised to read as follows:

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

Except as provided in § 648.17, all vessels must comply with the following minimum mesh size, gear and methods of fishing requirements, unless otherwise exempted or prohibited.

(a) *Gulf of Maine (GOM) and GB Regulated Mesh Areas—(1) GOM Regulated Mesh Area.* The GOM

Regulated Mesh Area (copies of a map depicting the area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the east by the U.S.-Canada maritime boundary, defined by straight lines connecting the following points in the order stated:

Point	N. lat.	W. long.
G1 .....	(1)	(1)
G2 .....	43°58'	67°22'
G3 .....	42°53.1'	67°44.4'
G4 .....	42°31'	67°28.1'
CI13 .....	42°22'	67°20' <sup>2</sup>

<sup>1</sup> The intersection of the shoreline and the U.S.-Canada Maritime Boundary.

<sup>2</sup> The U.S.-Canada Maritime Boundary.

(ii) Bounded on the south by straight lines connecting the following points in the order stated:

Point	N. lat.	W. long.
CI13 .....	42°22'	67°20' <sup>1</sup>
G6 .....	42°20'	67°20'
G7 .....	42°20'	69°30'
G8 .....	42°00'	69°30'
G9 .....	42°00'	(2)

<sup>1</sup> The U.S.-Canada Maritime Boundary.

<sup>2</sup> The intersection of the Cape Cod, MA, coastline and 42°00' N. lat.

(2) *GB Regulated Mesh Area.* The GB Regulated Mesh Area (copies of a map depicting the area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the north by the southern boundary of the GOM Regulated Mesh Area as defined in paragraph (a)(1)(ii) of this section; and

(ii) Bounded on the east by straight lines connecting the following points in the order stated:

Point	N. lat.	W. long.	Approximate loran C bearings
CI13 .....	42°22'	67°20'	(1)
SNE1 .....	40°24'	65°43'	(2)

<sup>1</sup> The U.S.-Canada Maritime Boundary.

<sup>2</sup> The U.S.-Canada Maritime Boundary as it intersects with the EEZ.

(iii) Bounded on the west by straight lines connecting the following points in the order stated:

Point	N. lat.	W. long.
G12 .....	(1)	70°00'
G11 .....	40°50'	70°00'
NL1 .....	40°50'	69°40'
NL2 .....	40°18.7'	69°40'
NL3 .....	40°22.7'	69°00'
.....	(2)	69°00'

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

<sup>2</sup> Southward to its intersection with the EEZ.

(3) *GOM Regulated Mesh Area minimum mesh size and gear restrictions—(i) Vessels using trawls.*

Except as provided in paragraphs (a)(3)(i) and (vi) of this section, and unless otherwise restricted under paragraph (a)(3)(iii) of this section, the minimum mesh size for any trawl net, except midwater trawl, on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the

GOM Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh, applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) diamond mesh or square mesh applied to the codend of the net as defined in paragraphs (a)(3)(i)(A) and (B) of this section, provided the vessel complies with the requirements of paragraph (a)(3)(vii) of this section. This restriction does not apply to nets or pieces of nets smaller

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

(A) For vessels greater than 45 ft (13.7 m) in length overall, a diamond mesh codend is defined as the first 50 meshes counting from the terminus of the net, and a square mesh codend is defined as the first 100 bars counting from the terminus of the net.

(B) For vessels 45 ft (13.7 m) or less in length overall, a diamond mesh codend is defined as the first 25 meshes counting from the terminus of the net, and a square mesh codend is defined as the first 50 bars counting from the terminus of the net.

(ii) *Vessels using Scottish seine, midwater trawl, and purse seine.* Except as provided in paragraphs (a)(3)(ii) and (vi) of this section, and unless otherwise restricted under paragraph (a)(3)(iii) of this section, the minimum mesh size for any Scottish seine, midwater trawl, or purse seine on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the GOM Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied throughout the net, or any combination thereof, provided the vessel complies with the requirements of paragraph (a)(3)(vii) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iii) *Large-mesh vessels.* When fishing in the GOM Regulated Mesh Area, the minimum mesh size for any trawl net vessel, or sink gillnet, on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(b)(4), is 8.5-inch (21.6-cm) diamond or square mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iv) *Gillnet vessels—(A) Trip gillnet vessels—(1) Mesh size.* Except as provided in paragraphs (a)(3)(iv) and (vi) of this section, and unless otherwise restricted under paragraph (a)(3)(iii) of this section, for vessels that obtain an annual designation as a Trip gillnet vessel, the minimum mesh size for any sink gillnet when fishing under a DAS in the NE multispecies DAS program in the GOM Regulated Mesh Area is 6.5 inches (16.5 cm) throughout the entire

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

(2) *Number of nets.* A Trip gillnet vessel fishing under a NE multispecies DAS and fishing in the GOM Regulated Mesh Area may not fish with, haul, possess, or deploy more than 150 gillnets, except as provided in § 648.92(b)(8)(i). Vessels may fish any combination of roundfish and flatfish gillnets up to 150 nets, and may stow nets in excess of 150.

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

(4) *Tags.* Roundfish or flatfish nets must be tagged with one tag per net, secured to every other bridle of every net within a string of nets.

(B) *Day gillnet vessels—(1) Mesh size.* Except as provided in paragraphs (a)(3)(iv) and (vi) of this section, and unless otherwise restricted under paragraph (a)(3)(iii) of this section, for vessels that obtain an annual designation as a Day gillnet vessel, the minimum mesh size for any sink gillnet when fishing under a DAS in the NE multispecies DAS program in the GOM Regulated Mesh Area is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(2) *Number of nets.* A day gillnet vessel fishing under a NE multispecies DAS and fishing in the GOM Regulated Mesh Area may not fish with, haul, possess, or deploy more than 50 roundfish sink gillnets or 100 flatfish (tie-down) sink gillnets, each of which must be tagged pursuant to paragraph (a)(3)(iv)(C) of this section, except as provided in § 648.92(b)(8)(i). Vessels may fish any combination of roundfish and flatfish gillnets up to 100 nets, and may stow additional nets not to exceed 160 nets, counting deployed nets.

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

(4) *Tags.* Roundfish nets must be tagged with two tags per net, with one tag secured to each bridle of every net, within a string of nets, and flatfish nets must have one tag per net, with one tag secured to every other bridle of every net within a string of nets. Gillnet vessels must also abide by the tagging requirements in paragraph (a)(3)(iv)(C) of this section.

(C) *Obtaining and replacing tags.* Tags must be obtained as described in § 648.4(c)(2)(iii), and vessels must have on board written confirmation issued by the Regional Administrator, indicating that the vessel is a Day gillnet vessel or a Trip gillnet vessel. The vessel operator must produce all net tags upon request by an authorized officer. A vessel may have tags on board in excess of the number of tags corresponding to the allowable number of nets, provided such tags are onboard the vessel and can be made available for inspection.

(1) *Lost tags.* Vessel owners or operators are required to report lost, destroyed, and missing tag numbers as soon as feasible after tags have been discovered lost, destroyed or missing, by letter or fax to the Regional Administrator.

(2) *Replacement tags.* Vessel owners or operators seeking replacement of lost, destroyed, or missing tags must request replacement of tags by letter or fax to the Regional Administrator. A check for the cost of the replacement tags must be received by the Regional Administrator before tags will be re-issued.

(v) *Hook gear restrictions.* Unless otherwise specified in paragraph (a)(3)(v) of this section, vessels fishing with a valid NE multispecies limited access permit and fishing under a NE multispecies DAS, and vessels fishing with a valid NE multispecies limited access Small-Vessel permit, in the GOM Regulated Mesh Area, and persons on such vessels, are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 2,000 rigged hooks. All longline gear hooks must be circle hooks, of a minimum size of 12/0. An unabated hook and gangions that has not been secured to the ground line of the trawl on board a vessel is deemed to be a replacement hook and is not counted toward the 2,000-hook limit. A "snap-on" hook is deemed to be a replacement hook if it is not rigged or baited. The use of de-hookers ("crucifer") with less than 6-inch (15.2-cm) spacing between the fairlead rollers is prohibited. Vessels fishing with a valid NE multispecies limited access Hook Gear permit and fishing under a multispecies DAS in the GOM Regulated Mesh Area, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel. Vessels fishing with a valid NE multispecies limited access Handgear A permit are prohibited from fishing, or possessing on board the vessel, gear other than handgear. Vessels fishing with tub-trawl gear are prohibited from fishing, setting, or

hauling back, per day, or possessing on board the vessel more than 250 hooks.

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

(vii) *Rockhopper and roller gear restrictions.* For all trawl vessels fishing in the GOM/GB Inshore Restricted Roller Gear Area, the diameter of any part of the trawl footrope, including discs, rollers, or rockhoppers, must not exceed 12 inches (30.5 cm). The GOM/GB Inshore Restricted Roller Gear Area is defined by straight lines connecting the following points in the order stated:

INSHORE RESTRICTED ROLLER GEAR AREA

Point	N. lat.	W. long.
GM1 .....	42°00'	(1)
GM2 .....	42°00'	(2)
GM3 .....	42°00'	(3)
GM23 .....	42°00'	69°50'
GM24 .....	43°00'	69°50'
GM11 .....	43°00'	70°00'
GM17 .....	43°30'	70°00'
GM18 .....	43°30'	(4)

<sup>1</sup> Massachusetts shoreline.

<sup>2</sup> Cape Cod shoreline on Cape Cod Bay.

<sup>3</sup> Cape Cod shoreline on the Atlantic Ocean.

<sup>4</sup> Maine shoreline.

(4) *GB regulated mesh area minimum mesh size and gear restrictions—(i) Vessels using trawls.* Except as provided in paragraph (a)(3)(vi) of this section, and this paragraph (a)(4)(i), and unless otherwise restricted under paragraph (a)(4)(iii) of this section, the minimum mesh size for any trawl net, except midwater trawl, and the minimum mesh size for any trawl net when fishing in

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

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

(iii) *Large-mesh vessels.* When fishing in the GB Regulated Mesh Area, the minimum mesh size for any trawl net, or sink gillnet, and the minimum mesh size for any trawl net, or sink gillnet, when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with

§ 648.23(b), on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(b)(5), is 8.5-inch (21.6-cm) diamond or square mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iv) *Gillnet vessels.* Except as provided in paragraph (a)(3)(vi) of this section and this paragraph (a)(4)(iv), for Day and Trip gillnet vessels, the minimum mesh size for any sink gillnet, and the minimum mesh size for any roundfish or flatfish gillnet when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), when fishing under a DAS in the NE multispecies DAS program in the GB Regulated Mesh Area is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(A) *Trip gillnet vessels—(1) Number of nets.* A Trip gillnet vessel fishing under a NE multispecies DAS and fishing in the GB Regulated Mesh Area may not fish with, haul, possess, or deploy more than 150 nets, except as provided in § 648.92(b)(8)(i). Vessels may fish any combination of roundfish and flatfish gillnets, up to 150 nets, and may stow nets in excess of 150 in accordance with § 648.23(b).

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

(3) *Tags.* Roundfish or flatfish nets must be tagged with two tags per net, with one tag secured to each bridle of every net within a string of nets.

(B) *Day gillnet vessels—(1) Number of nets.* A Day gillnet vessel fishing under a NE multispecies DAS and fishing in the GB Regulated Mesh Area may not fish with, haul, possess, or deploy more than 50 nets, except as provided in § 648.92(b)(8)(i).

(2) *Net size requirements.* Vessels may fish any combination of roundfish and flatfish gillnets, up to 50 nets. Such vessels, in accordance with § 648.23(b), may stow additional nets not to exceed 150, counting the deployed net. Nets may not be longer than 300 ft (91.4 m).

(3) *Tags.* Roundfish or flatfish nets must be tagged with two tags per net, with one tag secured to each bridle of every net within a string of nets.

(4) *Obtaining and replacing tags.* See paragraph (a)(3)(iv)(C) of this section.

(v) *Hook gear restrictions.* Unless otherwise specified in this paragraph (a)(4)(v), vessels fishing with a valid NE multispecies limited access permit and fishing under a NE multispecies DAS, and vessels fishing with a valid NE multispecies limited access Small-Vessel permit, in the GB Regulated Mesh Area, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel and prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 3,600 rigged hooks. All longline gear hooks must be circle hooks, of a minimum size of 12/0. An unabated hook and gangions that has not been secured to the ground line of the trawl on board a vessel is deemed to be a replacement hook and is not counted toward the 3,600-hook limit. A “snap-on” hook is deemed to be a replacement hook if it is not rigged or baited. The use of de-hookers (“crucifer”) with less than 6-inch (15.2-cm) spacing between the fairlead rollers is prohibited. Vessels fishing with a valid NE multispecies limited access Hook gear permit and fishing under a multispecies DAS in the GB Regulated Mesh Area, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel. Vessels fishing with a valid NE multispecies limited access Handgear A permit are prohibited from fishing or possessing on board the vessel, gear other than hand gear. Vessels fishing with tub-trawl gear are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel more than 250 hooks.

(5) *Small Mesh Northern Shrimp Fishery Exemption.* Vessels subject to the minimum mesh size restrictions specified in this paragraph (a) may fish for, harvest, possess, or land northern shrimp in the GOM, GB, SNE, and MA Regulated Mesh Areas, as described under paragraphs (a)(1), (a)(2), (b)(1), and (c)(1) of this section, respectively, with nets with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements of paragraphs (a)(5)(i) through (iii) of this section.

(i) *Restrictions on fishing for, possessing, or landing fish other than shrimp.* An owner or operator of a vessel fishing in the northern shrimp fishery under the exemption described in this paragraph (a)(5) may not fish for, possess on board, or land any species of

fish other than shrimp, except for the following, with the restrictions noted, as allowable incidental species: Longhorn sculpin; combined silver hake and offshore hake—up to an amount equal to the total weight of shrimp possessed on board or landed, not to exceed 3,500 lb (1,588 kg); and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) *Requirement to use a finfish excluder device (FED).* A vessel must have a rigid or semi-rigid grate consisting of parallel bars of not more than 1-inch (2.54-cm) spacing that excludes all fish and other objects, except those that are small enough to pass between its bars into the codend of the trawl, secured in the trawl, forward of the codend, in such a manner that it precludes the passage of fish or other objects into the codend without the fish or objects having to first pass between the bars of the grate, in any net with mesh smaller than the minimum size specified in paragraphs (a)(3) and (4) of this section. The net must have an outlet or hole to allow fish or other objects that are too large to pass between the bars of the grate to exit the net. The aftermost edge of this outlet or hole must be at least as wide as the grate at the point of attachment. The outlet or hole must extend forward from the grate toward the mouth of the net. A funnel of net material is allowed in the lengthening piece of the net forward of the grate to direct catch towards the grate. (Copies of a schematic example of a properly configured and installed FED are available from the Regional Administrator upon request.)

(iii) *Time restrictions.* A vessel may only fish under this exemption during the northern shrimp season, as established by the Commission and announced in the Commission’s letter to participants.

(6) *Cultivator Shoal Whiting Fishery Exemption Area.* Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) and (4) of this section may fish with, use, or possess nets in the Cultivator Shoal Whiting Fishery Exemption Area with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements specified in paragraph (a)(6)(i) of this section. The Cultivator Shoal Whiting Fishery Exemption Area (copies of a map

depicting the area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

CULTIVATOR SHOAL WHITING FISHERY EXEMPTION AREA

Point	N. lat.	W. long.
C1 .....	42°10'	68°10'
C2 .....	41°30'	68°41'
C14 .....	41°30'	68°30'
C3 .....	41°12.8'	68°30'
C4 .....	41°05'	68°20'
C5 .....	41°55'	67°40'
C1 .....	42°10'	68°10'

(i) *Requirements.* (A) A vessel fishing in the Cultivator Shoal Whiting Fishery Exemption Area under this exemption must have on board a valid letter of authorization issued by the Regional Administrator.

(B) An owner or operator of a vessel fishing in this area may not fish for, possess on board, or land any species of fish other than whiting and offshore hake combined—up to a maximum of 30,000 lb (13,608 kg), except for the following, with the restrictions noted, as allowable incidental species: Herring; longhorn sculpin; squid; butterfish; Atlantic mackerel; dogfish; red hake; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter.

(C) Counting from the terminus of the net, all nets must have a minimum mesh size of 3-inch (7.6-cm) square or diamond mesh applied to the first 100 meshes (200 bars in the case of square mesh) for vessels greater than 60 ft (18.3 m) in length and applied to the first 50 meshes (100 bars in the case of square mesh) for vessels less than or equal to 60 ft (18.3 m) in length.

(D) Fishing is confined to a season of June 15 through October 31, unless otherwise specified by notification in the **Federal Register**.

(E) When a vessel is transiting through the GOM or GB Regulated Mesh Areas specified under paragraphs (a)(1) and (2) of this section, any nets with a mesh size smaller than the minimum mesh specified in paragraphs (a)(3) or (4) of this section must be stowed in accordance with one of the methods specified in § 648.23(b), unless the vessel is fishing for small-mesh

multispecies under another exempted fishery specified in this paragraph (a).

(F) A vessel fishing in the Cultivator Shoal Whiting Fishery Exemption Area may fish for small-mesh multispecies in exempted fisheries outside of the Cultivator Shoal Whiting Fishery Exemption Area, provided that the vessel complies with the more restrictive gear, possession limit, and other requirements specified in the regulations of that exempted fishery for the entire participation period specified on the vessel's letter of authorization and consistent with paragraph (a)(15)(i)(G) of this section.

(ii) *Sea sampling.* The Regional Administrator shall conduct periodic sea sampling to determine if there is a need to change the area or season designation, and to evaluate the bycatch of regulated species, especially haddock.

(iii) *Annual review.* The NEFMC shall conduct an annual review of data to determine if there are any changes in area or season designation necessary, and to make appropriate recommendations to the Regional Administrator following the procedures specified in § 648.90.

(7) *Transiting.* (i) Vessels fishing in the Small Mesh Area 1/Small Mesh Area 2 fishery, as specified in paragraph (a)(9) of this section, may transit through the Scallop Dredge Fishery Exemption Area as specified in paragraph (a)(11) of this section with nets of mesh size smaller than the minimum mesh size specified in paragraphs (a)(3) or (4) of this section, provided that the nets are stowed and not available for immediate use in accordance with one of the methods specified in § 648.23(b). Vessels fishing in the Small Mesh Northern Shrimp Fishery, as specified in paragraph (a)(3) of this section, may transit through the GOM, GB, SNE, and MA Regulated Mesh Areas, as described in paragraphs (a)(1), (a)(2), (b)(1), and (c)(1) of this section, respectively, with nets of mesh size smaller than the minimum mesh size specified in paragraphs (a)(3), (a)(4), (b)(2), and (c)(2) of this section, provided the nets are stowed and not available for immediate use in accordance with one of the methods specified in § 648.23(b).

(ii) Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may transit through the Scallop Dredge Fishery Exemption Area defined in paragraph (a)(11) of this section with nets on board with a mesh size smaller than the minimum size specified, provided that the nets are stowed in accordance with one of the methods

specified in § 648.23(b), and provided the vessel has no fish on board.

(iii) Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may transit through the GOM and GB Regulated Mesh Areas defined in paragraphs (a)(1) and (2) of this section with nets on board with a mesh size smaller than the minimum mesh size specified and with small mesh exempted species on board, provided that the following conditions are met:

(A) All nets with a mesh size smaller than the minimum mesh size specified in paragraphs (a)(3) or (4) of this section are stowed in accordance with one of the methods specified in § 648.23(b).

(B) A letter of authorization issued by the Regional Administrator is on board.

(C) Vessels do not fish for, possess on board, or land any fish, except when fishing in the areas specified in paragraphs (a)(6), (a)(10), (a)(15), (b), and (c) of this section. Vessels may retain exempted small-mesh species as provided in paragraphs (a)(6)(i), (a)(10)(i), (a)(15)(i), (b)(3), and (c)(3) of this section.

(8) *Addition or deletion of exemptions*—(i) *Exemption allowing no incidental catch of regulated multispecies.* An exemption may be added in an existing fishery for which there are sufficient data or information to ascertain the amount of incidental catch of regulated species, if the Regional Administrator, after consultation with the NEFMC, determines that the percentage of regulated species caught as incidental catch is, or can be reduced to, less than 5 percent, by weight, of total catch, unless otherwise specified in this paragraph (a)(8)(i), and that such exemption will not jeopardize fishing mortality objectives. The 5-percent regulated species incidental catch standard could be modified for a stock that is not in an overfished condition, or if overfishing is not occurring on that stock. When considering modifications of the standard, it must be shown that the change will not delay a rebuilding program, or result in overfishing or an overfished condition. In determining whether exempting a fishery may jeopardize meeting fishing mortality objectives, the Regional Administrator may take into consideration various factors including, but not limited to, juvenile mortality, sacrifices in yield that will result from that mortality, the ratio of target species to regulated species, status of stock rebuilding, and recent recruitment of regulated species. A fishery can be defined, restricted, or allowed by area, gear, season, or other means determined to be appropriate to

reduce incidental catch of regulated species. Notification of additions, deletions, or modifications will be made through issuance of a rule in the **Federal Register**.

(ii) *Exemption allowing incidental catch of regulated species.* An exemption may be added in an existing fishery that would allow vessels to retain and land regulated multispecies, under the restrictions specified in paragraphs (a)(8)(ii)(A) through (C) of this section, if the Regional Administrator, after consultation with the NEFMC, considers the status of the regulated species stock or stocks caught in the fishery, the risk that this exemption would result in a targeted regulated species fishery, the extent of the fishery in terms of time and area, and the possibility of expansion in the fishery. Incidental catch in exempted fisheries under this paragraph (a)(8)(ii) are subject, at a minimum, to the following restrictions:

(A) A prohibition on the possession of regulated multispecies that are overfished or where overfishing is occurring;

(B) A prohibition on the possession of regulated species in NE multispecies closure areas; and

(C) A prohibition on allowing an exempted fishery to occur that would allow retention of a regulated multispecies stock under an ongoing rebuilding program, unless it can be determined that the catch of the stock in the exempted fishery is not likely to result in exceeding the rebuilding mortality rate.

(iii) For exemptions allowing no incidental catch of regulated species, as defined under paragraph (a)(8)(i) of this section, the NEFMC may recommend to the Regional Administrator, through the framework procedure specified in § 648.90(b), additions or deletions to exemptions for fisheries, either existing or proposed, for which there may be insufficient data or information for the Regional Administrator to determine, without public comment, percentage catch of regulated species. For exemptions allowing incidental catch of regulated species, as defined under paragraph (a)(8)(ii) of this section, the NEFMC may recommend to the Regional Administrator, through the framework procedure specified in § 648.90(b), additions or deletions to exemptions for fisheries, either existing or proposed, for which there may be insufficient data or information for the Regional Administrator to determine, without public comment, the risk that this exemption would result in a targeted regulated species fishery, the extent of the fishery in terms of time

and area, and the possibility of expansion in the fishery.

(iv) Incidental catch in exempted fisheries authorized under this paragraph (a)(8) are subject, at a minimum, to the following restrictions:

(A) With the exception of fisheries authorized under paragraph (a)(8)(ii) of this section, a prohibition on the possession of regulated species;

(B) A limit on the possession of monkfish or monkfish parts of 10 percent, by weight, of all other species on board or as specified by § 648.94(c)(3), (4), (5) or (6), as applicable, whichever is less;

(C) A limit on the possession of lobsters of 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less; and

(D) A limit on the possession of skate or skate parts in the SNE Exemption Area described in paragraph (b)(10) of this section of 10 percent, by weight, of all other species on board.

(9) *Small Mesh Area 1/Small Mesh Area 2*—(i) *Description.* (A) Unless otherwise prohibited in § 648.81, a vessel subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may fish with or possess nets with a mesh size smaller than the minimum size, provided the vessel complies with the requirements of paragraphs (a)(5)(ii) or (a)(9)(ii) of this section, and § 648.86(d), from July 15 through November 15, when fishing in Small Mesh Area 1; and from January 1 through June 30, when fishing in Small Mesh Area 2. While lawfully fishing in these areas with mesh smaller than the minimum size, an owner or operator of any vessel may not fish for, possess on board, or land any species of fish other than: Silver hake and offshore hake—up to the amounts specified in § 648.86(d), butterfish, dogfish, herring, Atlantic mackerel, scup, squid, and red hake.

(B) Small-mesh Areas 1 and 2 are defined by straight lines connecting the following points in the order stated (copies of a chart depicting these areas are available from the Regional Administrator upon request):

SMALL MESH AREA I

Point	N. lat.	W. long.
SM1	43°03'	70°27'
SM2	42°57'	70°22'
SM3	42°47'	70°32'
SM4	42°45'	70°29'
SM5	42°43'	70°32'
SM6	42°44'	70°39'
SM7	42°49'	70°43'
SM8	42°50'	70°41'
SM9	42°53'	70°43'
SM10	42°55'	70°40'
SM11	42°59'	70°32'

SMALL MESH AREA I—Continued

Point	N. lat.	W. long.
SM1	43°03'	70°27'

SMALL MESH AREA II

Point	N. lat.	W. long.
SM13	43°05.6'	69°55'
SM14	43°10.1'	69°43.3'
SM15	42°49.5'	69°40'
SM16	42°41.5'	69°40'
SM17	42°36.6'	69°55'
SM13	43°05.6'	69°55'

(ii) *Raised footrope trawl.* Vessels fishing with trawl gear must configure it in such a way that, when towed, the gear is not in contact with the ocean bottom. Vessels are presumed to be fishing in such a manner if their trawl gear is designed as specified in paragraphs (a)(9)(ii)(A) through (D) of this section and is towed so that it does not come into contact with the ocean bottom.

(A) Eight-inch (20.3-cm) diameter floats must be attached to the entire length of the headrope, with a maximum spacing of 4 ft (122.0 cm) between floats.

(B) The ground gear must all be bare wire not larger than 1/2-inch (1.2-cm) for the top leg, not larger than 5/8-inch (1.6-cm) for the bottom leg, and not larger than 3/4-inch (1.9-cm) for the ground cables. The top and bottom legs must be equal in length, with no extensions. The total length of ground cables and legs must not be greater than 40 fathoms (73 m) from the doors to wingends.

(C) The footrope must be longer than the length of the headrope, but not more than 20 ft (6.1 m) longer than the length of the headrope. The footrope must be rigged so that it does not contact the ocean bottom while fishing.

(D) The raised footrope trawl may be used with or without a chain sweep. If used without a chain sweep, the drop chains must be a maximum of 3/8-inch (0.95-cm) diameter bare chain and must be hung from the center of the footrope and each corner (the quarter, or the junction of the bottom wing to the belly at the footrope). Drop chains must be hung at intervals of 8 ft (2.4 m) along the footrope from the corners to the wing ends. If used with a chain sweep, the sweep must be rigged so it is behind and below the footrope, and the footrope is off the bottom. This is accomplished by having the sweep longer than the footrope and having long drop chains attaching the sweep to the footrope at regular intervals. The forward end of the sweep and footrope must be connected

to the bottom leg at the same point. This attachment, in conjunction with the headrope flotation, keeps the footrope off the bottom. The sweep and its rigging, including drop chains, must be made entirely of bare chain with a maximum diameter of 5/16 inches (0.8 cm). No wrapping or cookies are allowed on the drop chains or sweep. The total length of the sweep must be at least 7 ft (2.1 m) longer than the total length of the footrope, or 3.5 ft (1.1 m) longer on each side. Drop chains must connect the footrope to the sweep chain, and the length of each drop chain must be at least 42 inches (106.7 cm). One drop chain must be hung from the center of the footrope to the center of the sweep, and one drop chain must be hung from each corner. The attachment points of each drop chain on the sweep and the footrope must be the same distance from the center drop chain attachments. Drop chains must be hung at intervals of 8 ft (2.4 m) from the corners toward the wing ends. The distance of the drop chain that is nearest the wing end to the end of the footrope may differ from net to net. However, the sweep must be at least 3.5 ft (1.1 m) longer than the footrope between the drop chain closest to the wing ends and the end of the sweep that attaches to the wing end.

(10) *Nantucket Shoals Dogfish Fishery Exemption Area.* Vessels subject to the minimum mesh size restrictions specified in paragraph (a)(3) or paragraph (a)(4) of this section may fish with, use, or possess nets of mesh smaller than the minimum size specified in the Nantucket Shoals Dogfish Fishery Exemption Area, if the vessel complies with the requirements specified in paragraph (a)(10)(i) of this section. The Nantucket Shoals Dogfish Fishery Exemption Area (copies of a map depicting this area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

NANTUCKET SHOALS DOGFISH EXEMPTION AREA

Point	N. lat.	W. long.
NS1	41°45'	70°00'
NS2	41°45'	69°20'
NS3	41°30'	69°20'
CI1	41°30'	69°23'
NS5	41°26.5'	69°20'
NS6	40°50'	69°20'
NS7	40°50'	70°00'
NS1	41°45'	70°00'

(i) *Requirements.* (A) A vessel fishing in the Nantucket Shoals Dogfish Fishery Exemption Area, under the exemption,

must have on board a letter of authorization issued by the Regional Administrator and may not fish for, possess on board, or land any species of fish other than dogfish, except as provided under paragraph (a)(10)(i)(D) of this section.

(B) Fishing is confined to June 1 through October 15.

(C) When transiting the GOM or GB Regulated Mesh Areas, specified under paragraphs (a)(1) and (2) of this section, any nets with a mesh size smaller than the minimum mesh size specified in paragraphs (a)(3) and (4) of this section must be stowed and unavailable for immediate use in accordance with § 648.23(b).

(D) *Incidental species provisions.* The following species may be possessed and landed, with the restrictions noted, as allowable incidental species in the Nantucket Shoals Dogfish Fishery Exemption Area: Longhorn sculpin; silver hake—up to 200 lb (90.7 kg); monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter; and skate or skate parts—up to 10 percent, by weight, of all other species on board.

(E) A vessel fishing in the Nantucket Shoals Dogfish Fishery Exemption Area, under the exemption, must comply with any additional gear restrictions specified in the letter of authorization issued by the Regional Administrator.

(ii) *Sea sampling.* The Regional Administrator may conduct periodic sea sampling to determine if there is a need to change the area or season designation, and to evaluate the bycatch of regulated species.

(11) *GOM Scallop Dredge Exemption Area.* Unless otherwise prohibited in § 648.81, vessels with a limited access scallop permit that have declared out of the DAS program as specified in § 648.10, or that have used up their DAS allocations, and vessels issued a General Category scallop permit, may fish in the GOM Scallop Dredge Fishery Exemption Area when not under a NE multispecies DAS, providing the vessel complies with the requirements specified in paragraph (a)(11)(i) of this section. The GOM Scallop Dredge Fishery Exemption Area is defined by the straight lines connecting the following points in the order stated (copies of a map depicting the area are available from the Regional Administrator upon request):

GOM SCALLOP DREDGE EXEMPTION AREA

Point	N. lat.	W. long.
SM1 .....	41°35'	70°00'
SM2 .....	41°35'	69°40'
SM3 .....	42°49.5'	69°40'
SM4 .....	43°12'	69°00'
SM5 .....	43°41'	68°00'
G2 .....	43°58'	67°22'
G1 .....	(1)	(1)

<sup>1</sup> Northward along the irregular U.S.-Canada maritime boundary to the shoreline.

(i) *Requirements.* (A) A vessel fishing in the GOM Scallop Dredge Fishery Exemption Area specified in this paragraph (a)(11) may not fish for, possess on board, or land any species of fish other than Atlantic sea scallops.

(B) The combined dredge width in use by, or in possession on board, vessels fishing in the GOM Scallop Dredge Fishery Exemption Area may not exceed 10.5 ft (3.2 m), measured at the widest point in the bail of the dredge.

(C) The exemption does not apply to the Cashes Ledge Closure Area or the Western GOM Area Closure specified in § 648.81(d) and (e).

(ii) [Reserved]

(12) *Nantucket Shoals Mussel and Sea Urchin Dredge Exemption Area.* A vessel may fish with a dredge in the Nantucket Shoals Mussel and Sea Urchin Dredge Exemption Area, provided that any dredge on board the vessel does not exceed 8 ft (2.4 m), measured at the widest point in the bail of the dredge, and the vessel does not fish for, harvest, possess, or land any species of fish other than mussels and sea urchins. The area coordinates of the Nantucket Shoals Mussel and Sea Urchin Dredge Exemption Area are the same coordinates as those of the Nantucket Shoals Dogfish Fishery Exemption Area specified in paragraph (a)(10) of this section.

(13) *GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area.* Unless otherwise prohibited in § 648.81, a vessel may fish with gillnets in the GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area when not under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (a)(13)(i) of this section. The GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area is defined by straight lines connecting the following points in the order stated:

N. lat.	W. long.
41°35' .....	70°00'

N. lat.	W. long.
42°49.5' .....	70°00'
42°49.5' .....	69°40'
43°12' .....	69°00'
(1) .....	69°00'

<sup>1</sup> Due north to Maine shoreline.

(i) *Requirements.* (A) A vessel fishing under this exemption may not fish for, possess on board, or land any species of fish other than monkfish, or lobsters in an amount not to exceed 10 percent by weight of the total catch on board, or 200 lobsters, whichever is less.

(B) All gillnets must have a minimum mesh size of 10-inch (25.4-cm) diamond mesh throughout the net.

(C) Fishing is confined to July 1 through September 14.

(ii) [Reserved]

(14) *GOM/GB Dogfish Gillnet Exemption.* Unless otherwise prohibited in § 648.81, a vessel may fish with gillnets in the GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area when not under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (a)(14)(i) of this section. The area coordinates of the GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area are specified in paragraph (a)(13) of this section.

(i) *Requirements.* (A) A vessel fishing under this exemption may not fish for, possess on board, or land any species of fish other than dogfish, or lobsters in an amount not to exceed 10 percent by weight of the total catch on board, or 200 lobsters, whichever is less.

(B) All gillnets must have a minimum mesh size of 6.5-inch (16.5-cm) diamond mesh throughout the net.

(C) Fishing is confined to July 1 through August 31.

(ii) [Reserved]

(15) *Raised Footrope Trawl Exempted Whiting Fishery.* Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may fish with, use, or possess nets in the Raised Footrope Trawl Whiting Fishery area with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements specified in paragraph (a)(15)(i) of this section. This exemption does not apply to the Cashes Ledge Closure Areas or the Western GOM Area Closure specified in § 648.81(d) and (e). The Raised Footrope Trawl Whiting Fishery Area (copies of a chart depicting the area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

RAISED FOOTROPE TRAWL WHITING FISHERY EXEMPTION AREA

[September 1 through November 20]

Point	N. lat.	W. long.
RF 1 .....	42°14.05'	70°08.8'
RF 2 .....	42°09.2'	69°47.8'
RF 3 .....	41°54.85'	69°35.2'
RF 4 .....	41°41.5'	69°32.85'
RF 5 .....	41°39'	69°44.3'
RF 6 .....	41°45.6'	69°51.8'
RF 7 .....	41°52.3'	69°52.55'
RF 8 .....	41°55.5'	69°53.45'
RF 9 .....	42°08.35'	70°04.05'
RF 10 .....	42°04.75'	70°16.95'
RF 11 .....	42°00'	70°13.2'
RF 12 .....	42°00'	70°24.1'
RF 13 .....	42°07.85'	70°30.1'
RF 1 .....	42°14.05'	70°08.8'

RAISED FOOTROPE TRAWL WHITING FISHERY EXEMPTION AREA

[November 21 through December 31]

Point	N. lat.	W. long.
RF 1 .....	42°14.05'	70°08.8'
RF 2 .....	42°09.2'	69°47.8'
RF 3 .....	41°54.85'	69°35.2'
RF 4 .....	41°41.5'	69°32.85'
RF 5 .....	41°39'	69°44.3'
RF 6 .....	41°45.6'	69°51.8'
RF 7 .....	41°52.3'	69°52.55'
RF 8 .....	41°55.5'	69°53.45'
RF 9 .....	42°08.35'	70°04.05'
RF 1 .....	42°14.05'	70°08.8'

(i) *Requirements.* (A) A vessel fishing in the Raised Footrope Trawl Whiting Fishery under this exemption must have on board a valid letter of authorization issued by the Regional Administrator. To obtain a letter of authorization, vessel owners must write to or call during normal business hours the Northeast Region Permit Office and provide the vessel name, owner name, permit number, and the desired period of time that the vessel will be enrolled. Since letters of authorization are effective the day after they are requested, vessel owners should allow appropriate processing and mailing time. To withdraw from a category, vessel owners must write to or call the Northeast Region Permit Office. Withdrawals are effective the day after the date of request. Withdrawals may occur after a minimum of 7 days of enrollment.

(B) All nets must be no smaller than a minimum mesh size of 2.5-inch (6.35-cm) square or diamond mesh, subject to the restrictions as specified in paragraph (a)(15)(i)(D) of this section. An owner or operator of a vessel enrolled in the raised footrope whiting fishery may not fish for, possess on board, or land any species of fish other than whiting and

offshore hake, subject to the applicable possession limits as specified in § 648.86, except for the following allowable incidental species: Red hake, butterfish, dogfish, herring, mackerel, scup, and squid.

(C) [Reserved]

(D) All nets must comply with the minimum mesh sizes specified in paragraphs (a)(15)(i)(B) of this section. Counting from the terminus of the net, the minimum mesh size is applied to the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.3 m) in length and is applied to the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.3 m) in length.

(E) Raised footrope trawl gear is required and must be configured as specified in paragraphs (a)(9)(ii)(A) through (D) of this section.

(F) Fishing may only occur from September 1 through November 20 of each fishing year, except that it may occur in the eastern portion only of the Raised Footrope Trawl Whiting Fishery Exemption Area from November 21 through December 31 of each fishing year.

(G) A vessel enrolled in the Raised Footrope Trawl Whiting Fishery may fish for small-mesh multispecies in exempted fisheries outside of the Raised Footrope Trawl Whiting Fishery exemption area, provided that the vessel complies with the more restrictive gear, possession limit and other requirements specified in the regulations of that exempted fishery for the entire participation period specified on the vessel's letter of authorization. For example, a vessel may fish in both the Raised Footrope Trawl Whiting Fishery and the Cultivator Shoal Whiting Fishery Exemption Area, and would be restricted to a minimum mesh size of 3 inches (7.6 cm), as required in the Cultivator Shoal Whiting Fishery Exemption Area; the use of the raised footrope trawl; and the catch and bycatch restrictions of the Raised Footrope Trawl Whiting Fishery, except for scup.

(ii) *Sea sampling.* The Regional Administrator shall conduct periodic sea sampling to evaluate the bycatch of regulated species.

(16) *GOM Grate Raised Footrope Trawl Exempted Whiting Fishery.* Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may fish with, use, and possess in the GOM Grate Raised Footrope Trawl Whiting Fishery area from July 1 through November 30 of each year, nets with a mesh size

smaller than the minimum size specified, if the vessel complies with the requirements specified in paragraphs (a)(16)(i) and (ii) of this section. The GOM Grate Raised Footrope Trawl Whiting Fishery Area (copies of a chart depicting the area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

GOM GRATE RAISED FOOTROPE TRAWL WHITING FISHERY EXEMPTION AREA

[July 1 through November 30]

Point	N. lat.	W. long.
GRF1 .....	43°15'	70°35.4'
GRF2 .....	43°15'	70°00'
GRF3 .....	43°25.2'	70°00'
GRF4 .....	43°41.8'	69°20'
GRF5 .....	43°58.8'	69°20'

(i) *Mesh requirements and possession restrictions.* (A) All nets must comply with a minimum mesh size of 2.5-inch (6.35-cm) square or diamond mesh, subject to the restrictions specified in paragraph (a)(16)(i)(B) of this section. An owner or operator of a vessel participating in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery may not fish for, possess on board, or land any species of fish, other than whiting and offshore hake, subject to the applicable possession limits as specified in paragraph (a)(16)(i)(C) of this section, except for the following allowable incidental species: Red hake, butterfish, herring, mackerel, squid, and alewife.

(B) All nets must comply with the minimum mesh size specified in paragraph (a)(16)(i)(A) of this section. Counting from the terminus of the net, the minimum mesh size is applied to the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.3 m) in length and is applied to the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.3 m) in length.

(C) An owner or operator of a vessel participating in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery may fish for, possess, and land combined silver hake and offshore hake only up to 7,500 lb (3,402 kg). An owner or operator fishing with mesh larger than the minimum mesh size specified in paragraph (a)(16)(i)(A) of this section may not fish for, possess, or land silver hake or offshore hake in quantities larger than 7,500 lb (3,402 kg).

(ii) *Gear specifications.* In addition to the requirements specified in paragraph (a)(16)(i) of this section, an owner or operator of a vessel fishing in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery must configure the vessel's trawl gear as specified in paragraphs (a)(16)(ii)(A) through (C) of this section.

(A) An owner or operator of a vessel fishing in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery must configure the vessel's trawl gear with a raised footrope trawl as specified in paragraphs (a)(9)(ii)(A) through (C) of this section. In addition, the restrictions specified in paragraphs (a)(16)(ii)(B) and (C) of this section apply to vessels fishing in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery.

(B) The raised footrope trawl must be used without a sweep of any kind (chain, roller frame, or rockhopper). The drop chains must be a maximum of 3/8-inch (0.95 cm) diameter bare chain and must be hung from the center of the footrope and each corner (the quarter, or the junction of the bottom wing to the belly at the footrope). Drop chains must be at least 42 inches (106.7 cm) in length and must be hung at intervals of 8 ft (2.4 m) along the footrope from the corners to the wing ends.

(C) The raised footrope trawl net must have a rigid or semi-rigid grate consisting of parallel bars of not more than 50 mm (1.97 inches) spacing that excludes all fish and other objects, except those that are small enough to pass between its bars into the codend of the trawl. The grate must be secured in the trawl, forward of the codend, in such a manner that it precludes the passage of fish or other objects into the codend without the fish or objects having to first pass between the bars of the grate. The net must have an outlet or hole to allow fish or other objects that are too large to pass between the bars of the grate to exit the net. The aftermost edge of this outlet or hole must be at least as wide as the grate at the point of attachment. The outlet or hole must extend forward from the grate toward the mouth of the net. A funnel of net material is allowed in the lengthening piece of the net forward of the grate to direct catch towards the grate.

(iii) *Annual review.* On an annual basis, the Groundfish PDT will review data from this fishery, including sea sampling data, to determine whether adjustments are necessary to ensure that regulated species bycatch remains at a minimum. If the Groundfish PDT recommends adjustments to ensure that regulated species bycatch remains at a

minimum, the Council may take action prior to the next fishing year through the framework adjustment process specified in § 648.90(b), and in accordance with the Administrative Procedure Act.

(17) *GOM/GB Exemption Area—Area definition.* The GOM/GB Exemption Area (copies of a map depicting this area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the east by the U.S.-Canada maritime boundary, defined by straight lines connecting the following points in the order stated:

GULF OF MAINE GEORGES BANK EXEMPTION AREA

Point	N. lat.	W. long.
G1 .....	( <sup>1</sup> )	( <sup>1</sup> )
G2 .....	43°58'	67°22'
G3 .....	42°53.1'	67°44.4'
G4 .....	42°31'	67°28.1'
G5 .....	41°18.6'	66°24.8'

<sup>1</sup>The intersection of the shoreline and the U.S.-Canada Maritime Boundary

(ii) Bounded on the south by straight lines connecting the following points in the order stated:

Point	N. lat.	W. long.	Approximate Ioran C bearings
G6 .....	40°55.5'	66°38'	5930-Y-30750 and 9960-Y-43500.
G7 .....	40°45.5'	68°00'	9960-Y-43500 and 68°00' W. lat.
G8 .....	40°37'	68°00'	9960-Y-43450 and 68°00' W. lat.
G9 .....	40°30'	69°00'	
NL3 .....	40°22.7'	69°00'	
NL2 .....	40°18.7'	69°40'	
NL1 .....	40°50'	69°40'	
G11 .....	40°50'	70°00'	
G12 .....		70°00' <sup>1</sup>	

<sup>1</sup>Northward to its intersection with the shoreline of mainland Massachusetts.

(b) *Southern New England (SNE) Regulated Mesh Area—(1) Area definition.* The SNE Regulated Mesh Area (copies of a map depicting this area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the east by the western boundary of the GB Regulated Mesh Area described under paragraph (a)(2)(iii) of this section; and

(ii) Bounded on the west by a line beginning at the intersection of 74°00' W. long. and the south facing shoreline of Long Island, NY, and then running southward along the 74°00' W. long. line.

(2) *Gear restrictions—(i) Vessels using trawls.* Except as provided in paragraphs (b)(2)(i) and (vi) of this section, and unless otherwise restricted under

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

been issued a NE multispecies permit and that are fishing exclusively in state waters.

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

sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iii) *Large-mesh vessels.* When fishing in the SNE Regulated Mesh Area, the minimum mesh size for any trawl net vessel, or sink gillnet, not stowed and not available for immediate use in accordance with § 648.23(b) on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(b)(4), is 8.5-inch (21.6-cm) diamond or square mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iv) *Gillnet vessels.* For Day and Trip gillnet vessels, the minimum mesh size for any sink gillnet not stowed and not available for immediate use in accordance with § 648.23(b), when fishing under a DAS in the NE multispecies DAS program in the SNE Regulated Mesh Area, is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters. Gillnet vessels must also abide by the tagging requirements in paragraph (a)(3)(iv)(C) of this section.

(A) *Trip gillnet vessels—(1) Number of nets.* A Trip gillnet vessel fishing under a NE multispecies DAS and fishing in the SNE Regulated Mesh Area, may not fish with, haul, possess, or deploy more than 75 nets, except as provided in § 648.92(b)(8)(i). Vessels may fish any combination of roundfish and flatfish gillnets up to 75 nets. Such vessels, in accordance with § 648.23(b), may stow nets in excess of 75 nets.

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

(3) *Tags.* Roundfish or flatfish gillnets must be tagged with two tags per net, with one tag secured to each bridle of every net within a string of gillnets.

(B) *Day gillnet vessels—(1) Number of nets.* A Day gillnet vessel fishing under a NE multispecies DAS and fishing in the SNE Regulated Mesh Area may not fish with, haul, possess, or deploy more than 75 nets, except as provided in § 648.92(b)(8)(i). Such vessels, in accordance with § 648.23(b), may stow additional nets not to exceed 160, counting deployed nets.

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

(3) *Tags.* Roundfish or flatfish gillnets must be tagged with two tags per net, with one tag secured to each bridle of every net within a string of nets.

(C) *Obtaining and replacing tags.* See paragraph (a)(3)(iv)(C) of this section.

(v) *Hook gear restrictions.* Unless otherwise specified in this paragraph (b)(2)(v), vessels fishing with a valid NE multispecies limited access permit and fishing under a NE multispecies DAS, and vessels fishing with a valid NE multispecies limited access Small-Vessel permit, in the SNE Regulated Mesh Area, and persons on such vessels, are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 2,000 rigged hooks. All longline gear hooks must be circle hooks, of a minimum size of 12/0. An unabated hook and gangions that has not been secured to the ground line of the trawl on board a vessel is deemed to be a replacement hook and is not counted toward the 2,000-hook limit. A “snap-on” hook is deemed to be a replacement hook if it is not rigged or baited. The use of de-hookers (“crucifer”) with less than 6-inch (15.2-cm) spacing between the fairlead rollers is prohibited. Vessels fishing with a valid NE multispecies limited access Hook Gear permit and fishing under a multispecies DAS in the SNE Regulated Mesh Area, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel. Vessels fishing with a valid NE multispecies limited access Handgear A permit are prohibited from fishing, or possessing on board the vessel, gears other than handgear. Vessels fishing with tub-trawl gear are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel more than 250 hooks.

(vi) *Other restrictions and exemptions.* Vessels are prohibited from fishing in the SNE Exemption Area, as defined in paragraph (b)(10) of this section, except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (b)(3), (b)(5) through (9), (b)(11), (c), (e), (h) and (i) of this section, or if fishing under a NE multispecies DAS, if fishing under the Small Vessel or Handgear A exemptions specified in § 648.82(b)(5) and (b)(6), respectively, or if fishing under a scallop state waters exemption specified in § 648.54, or if fishing under a scallop DAS in accordance with paragraph (h) of this section, or if fishing under a General Category scallop permit in accordance with paragraphs (a)(11)(i)(A) and (B) of

this section, or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit, or if fishing as a charter/party or private recreational vessel in compliance with the regulations specified in § 648.89. Any gear on a vessel, or used by a vessel, in this area must be authorized under one of these exemptions or must be stowed as specified in § 648.23(b).

(3) *Exemptions—(i) Species exemptions.* Owners and operators of vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(4) and (b)(2) of this section, may fish for, harvest, possess, or land butterfish, dogfish (trawl only), herring, Atlantic mackerel, ocean pout, scup, shrimp, squid, summer flounder, silver hake and offshore hake, and weakfish with nets of a mesh size smaller than the minimum size specified in the GB and SNE Regulated Mesh Areas when fishing in the SNE Exemption Area defined in paragraph (b)(10) of this section, provided such vessels comply with requirements specified in paragraph (b)(3)(ii) of this section and with the mesh size and possession limit restrictions specified under § 648.86(d).

(ii) *Possession and net stowage requirements.* Vessels may possess regulated species while in possession of nets with mesh smaller than the minimum size specified in paragraphs (a)(4) and (b)(2) of this section when fishing in the SNE Exemption Area defined in paragraph (b)(10) of this section, provided that such nets are stowed and are not available for immediate use in accordance with § 648.23(b), and provided that regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in paragraphs (a)(4) and (b)(2) of this section. Vessels fishing for the exempted species identified in paragraph (b)(3)(i) of this section may also possess and retain the following species, with the restrictions noted, as incidental take to these exempted fisheries: Conger eels; sea robins; black sea bass; red hake; tautog (blackfish); blowfish; cunner; John Dory; mullet; bluefish; tilefish; longhorn sculpin; fourspot flounder; alewife; hickory shad; American shad; blueback herring; sea raven; Atlantic croaker; spot; swordfish; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less; and skate and skate parts—up to 10

percent, by weight, of all other species on board.

(4) *Addition or deletion of exemptions.* Same as in paragraph (a)(8) of this section.

(5) *SNE Monkfish and Skate Trawl Exemption Area.* Unless otherwise required or prohibited by monkfish or skate regulations under this part, a vessel may fish with trawl gear in the SNE Monkfish and Skate Trawl Fishery Exemption Area when not operating under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (b)(5)(i) of this section, and the monkfish and skate regulations, as applicable, under this part. The SNE Monkfish and Skate Trawl Fishery Exemption Area is defined as the area bounded on the north by a line extending eastward along 40°10' N. lat., and bounded on the west by the western boundary of the SNE Exemption Area as defined in paragraph (b)(10)(ii) of this section.

(i) *Requirements.* (A) A vessel fishing under this exemption may only fish for, possess on board, or land monkfish and incidentally caught species up to the amounts specified in paragraph (b)(3) of this section.

(B) All trawl nets must have a minimum mesh size of 8-inch (20.3-cm) square or diamond mesh throughout the codend for at least 45 continuous meshes forward of the terminus of the net.

(C) A vessel not operating under a multispecies DAS may fish for, possess on board, or land skates, provided:

(1) The vessel is called into the monkfish DAS program (§ 648.92) and complies with the skate possession limit restrictions at § 648.322;

(2) The vessel has an LOA on board to fish for skates as bait only, and complies with the requirements specified at § 648.322(b); or

(3) The vessel possesses and/or lands skates or skate parts in an amount not to exceed 10 percent by weight of all other species on board as specified at paragraph (b)(3) of this section.

(ii) [Reserved]

(6) *SNE Monkfish and Skate Gillnet Exemption Area.* Unless otherwise required by monkfish regulations under this part, a vessel may fish with gillnet gear in the SNE Monkfish and Skate Gillnet Fishery Exemption Area when not operating under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (b)(6)(i) of this section; the monkfish regulations, as applicable, under §§ 648.91 through 648.94; and the skate regulations, as applicable, under §§ 648.4 and 648.322. The SNE Monkfish and Skate Gillnet Fishery

Exemption Area is defined by a line running from the Massachusetts shoreline at 41°35' N. lat. and 70°00' W. long., south to its intersection with the outer boundary of the EEZ, southwesterly along the outer boundary of the EEZ, and bounded on the west by the western boundary of the SNE Exemption Area, as defined in paragraph (b)(10)(ii) of this section.

(i) *Requirements.* (A) A vessel fishing under this exemption may only fish for, possess on board, or land monkfish and incidentally caught species up to the amounts specified in paragraph (b)(3) of this section.

(B) All gillnets must have a minimum mesh size of 10-inch (25.4-cm) diamond mesh throughout the net.

(C) All nets with a mesh size smaller than the minimum mesh size specified in paragraph (b)(6)(i)(B) of this section must be stowed as specified in § 648.23(b).

(D) A vessel not operating under a NE multispecies DAS may fish for, possess on board, or land skates, provided:

(1) The vessel is called into the monkfish DAS program (§ 648.92) and complies with the skate possession limit restrictions at § 648.322;

(2) The vessel has an Letter of Authorization on board to fish for skates as bait only, and complies with the requirements specified at § 648.322(b); or

(3) The vessel possesses and/or lands skates or skate parts in an amount not to exceed 10 percent, by weight, of all other species on board as specified at paragraph (b)(3) of this section.

(ii) [Reserved]

(7) *SNE Dogfish Gillnet Exemption Area.* Unless otherwise required by monkfish regulations under this part, a gillnet vessel may fish in the SNE Dogfish Gillnet Fishery Exemption Area when not operating under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (b)(7)(i) of this section and the applicable dogfish regulations under subpart L of this part. The SNE Dogfish Gillnet Fishery Exemption Area is defined by a line running from the Massachusetts shoreline at 41°35' N. lat. and 70°00' W. long., south to its intersection with the outer boundary of the EEZ, southwesterly along the outer boundary of the EEZ, and bounded on the west by the western boundary of the SNE Exemption Area as defined in paragraph (b)(10)(ii) of this section.

(i) *Requirements.* (A) A vessel fishing under this exemption may only fish for, possess on board, or land dogfish and the bycatch species and amounts specified in paragraph (b)(3) of this section.

(B) All gillnets must have a minimum mesh size of 6-inch (15.2-cm) diamond mesh throughout the net.

(C) Fishing is confined to May 1 through October 31.

(ii) [Reserved]

(8) *SNE Mussel and Sea Urchin Dredge Exemption.* A vessel may fish with a dredge in the SNE Exemption Area, as defined in paragraph (b)(10) of this section, provided that any dredge on board the vessel does not exceed 8 ft (2.4 m), measured at the widest point in the bail of the dredge, and the vessel does not fish for, harvest, possess, or land any species of fish other than mussels and sea urchins.

(9) *SNE Little Tunny Gillnet Exemption Area.* A vessel may fish with gillnet gear in the SNE Little Tunny Gillnet Exemption Area when not operating under a NE multispecies DAS with mesh size smaller than the minimum required in the SNE Regulated Mesh Area, if the vessel complies with the requirements specified in paragraph (b)(9)(i) of this section. The SNE Little Tunny Gillnet Exemption Area is defined by a line running from the Rhode Island shoreline at 41°18.2' N. lat. and 71°51.5' W. long. (Watch Hill, RI), southwesterly through Fishers Island, NY, to Race Point, Fishers Island, NY; and from Race Point, Fishers Island, NY, southeasterly to 41°06.5' N. lat. and 71°50.2' W. long.; east-northeastly through Block Island, RI, to 41°15' N. lat. and 71°07' W. long.; then due north to the intersection of the RI-MA shoreline.

(i) *Requirements.* (A) A vessel fishing under this exemption may fish only for, possess on board, or land little tunny and the allowable incidental species and amounts specified in paragraph (b)(3) of this section and, if applicable, paragraph (b)(9)(i)(B) of this section. Vessels fishing under this exemption may not possess regulated species.

(B) A vessel may possess bonito as an allowable incidental species.

(C) The vessel must have a letter of authorization issued by the Regional Administrator on board.

(D) All gillnets must have a minimum mesh size of 5.5-inch (14.0-cm) diamond mesh throughout the net.

(E) All nets with a mesh size smaller than the minimum mesh size specified in paragraph (b)(9)(i)(D) of this section must be stowed in accordance with one of the methods described under § 648.23(b) while fishing under this exemption.

(F) Fishing is confined to September 1 through October 31.

(ii) The Regional Administrator shall conduct periodic sea sampling to

evaluate the likelihood of gear interactions with protected resources.

(10) *SNE Exemption Area—Area definition.* The SNE Exemption Area (copies of a map depicting this area are available from the Regional Administrator upon request) is that area:

(i) Bounded on the east by straight lines connecting the following points in the order stated:

**SOUTHERN NEW ENGLAND EXEMPTION AREA**

Point	N. lat.	W. long.
G5 .....	41°18.6'	66°24.8'
G6 .....	40°55.5'	66°38'
G7 .....	40°45.5'	68°00'
G8 .....	40°37'	68°00'
G9 .....	40°30.5'	69°00'
NL3 .....	40°22.7'	69°00'
NL2 .....	40°18.7'	69°40'
NL1 .....	40°50'	69°40'
G11 .....	40°50'	70°00'
G12 .....		70°00' <sup>1</sup>

<sup>1</sup>Northward to its intersection with the shoreline of mainland Massachusetts.

(ii) Bounded on the west by a line running from the Rhode Island shoreline at 41°18.2' N. lat. and 71°51.5' W. long. (Watch Hill, RI), southwesterly through Fishers Island, NY, to Race Point, Fishers Island, NY; and from Race Point, Fishers Island, NY; southeasterly to the intersection of the 3-nautical mile line east of Montauk Point; southwesterly along the 3-nautical mile line to the intersection of 72°30' W. long.; and south along that line to the intersection of the outer boundary of the EEZ.

(11) *SNE Scallop Dredge Exemption Area.* Unless otherwise prohibited in § 648.81, or 50 CFR part 648, subpart D, vessels with a limited access scallop permit that have declared out of the DAS program as specified in § 648.10, or that have used up their DAS allocation, and vessels issued a General Category scallop permit, may fish in the SNE Scallop Dredge Exemption Area when not under a NE multispecies DAS, provided the vessel complies with the requirements specified in paragraph (b)(11)(ii) of this section.

(i) The SNE Scallop Dredge Exemption Area is that area (copies of a chart depicting this area are available from the Regional Administrator upon request):

(A) Bounded on the west, south, and east by straight lines connecting the following points in the order stated:

Point	N. lat.	W. long.
Sc1 .....	( <sup>1</sup> )	73°00'
Sc2 .....	40°00'	73°00'
Sc3 .....	40°00'	71°40'

Point	N. lat.	W. long.
Sc4 .....	39°50'	71°40'
Sc5 .....	39°50'	70°00'
Sc6 .....	( <sup>2</sup> )	70°00'
Sc7 .....	( <sup>3</sup> )	70°00'
Sc8 .....	( <sup>4</sup> )	70°00'

<sup>1</sup> South facing shoreline of Long Island, NY.  
<sup>2</sup> South facing shoreline of Nantucket, MA.  
<sup>3</sup> North facing shoreline of Nantucket, MA.  
<sup>4</sup> South facing shoreline of Cape Cod, MA.

(B) Bounded on the northwest by straight lines connecting the following points in the order stated:

Point	N. lat.	W. long.
Sc9 .....	41°00'	( <sup>1</sup> )
Sc10 .....	41°00'	71°40'
Sc11 .....	( <sup>2</sup> )	71°40'

<sup>1</sup> East facing shoreline of the south fork of Long Island, NY.  
<sup>2</sup> South facing shoreline of RI.

(ii) *Exemption program requirements.* (A) A vessel fishing in the Scallop Dredge Exemption Area may not fish for, possess on board, or land any species of fish other than Atlantic sea scallops.

(B) The combined dredge width in use by or in possession on board vessels fishing in the SNE Scallop Dredge Exemption Area shall not exceed 10.5 ft (3.2 m), measured at the widest point in the bail of the dredge.

(C) Dredges must use a minimum of an 8-inch (20.3 cm) twine top.

(D) The exemption does not apply to the Nantucket Lightship Closed Area specified under § 648.81(c).

(c) *Mid-Atlantic (MA) Regulated Mesh Area—(1) Area definition.* The MA Regulated Mesh Area is that area bounded on the east by the western boundary of the SNE Regulated Mesh Area, described under paragraph (b)(1)(ii) of this section.

(2) *Gear restrictions—(i) Vessels using trawls.* Except as provided in paragraph (c)(2)(iii) of this section, the minimum mesh size for any trawl net not stowed and not available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the MA Regulated Mesh Area shall be that specified by § 648.104(a), applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) diamond or square mesh applied to the codend of the net, as defined in paragraph (a)(3)(i) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

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

(iii) *Large-mesh vessels.* When fishing in the MA Regulated Mesh Area, the minimum mesh size for any trawl net vessel, or sink gillnet, not stowed and not available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(b)(4), is 7.5-inch (19.0-cm) diamond mesh or 8.0-inch (20.3-cm) square mesh, throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(iv) *Hook gear restrictions.* Unless otherwise specified in this paragraph (c)(2)(iv), vessels fishing with a valid NE multispecies limited access permit and fishing under a NE multispecies DAS, and vessels fishing with a valid NE multispecies limited access Small Vessel permit, in the MA Regulated Mesh Area, and persons on such vessels, are prohibited from using de-hookers (“crucifer”) with less than 6-inch (15.2-cm) spacing between the fairlead rollers. Vessels fishing with a valid NE multispecies limited access Hook gear permit and fishing under a NE multispecies DAS in the MA Regulated Mesh Area, and persons on such vessels, are prohibited from possessing gear other than hook gear on board the vessel and are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 4,500 rigged hooks. An unabated hook and gangions that has not been secured to the ground line of the trawl on board a vessel is deemed to be a replacement hook and is not counted toward the 4,500-hook limit. A “snap-on” hook is deemed to be a replacement hook if it is not rigged or baited. Vessels fishing with a valid NE multispecies limited access Handgear

permit are prohibited from fishing, or possessing on board the vessel gears other than handgear. Vessels fishing with tub-trawl gear are prohibited from fishing, setting, or hauling back, per day, or possessing on board the vessel, more than 250 hooks.

(v) *Gillnet vessels.* For Day and Trip gillnet vessels, the minimum mesh size for any sink gillnet, not stowed and not available for immediate use in accordance with § 648.23(b), when fishing under a DAS in the NE multispecies DAS program in the MA Regulated Mesh Area, is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(A) *Trip gillnet vessels—(1) Number of nets.* A Trip gillnet vessel fishing under a NE multispecies DAS and fishing in the MA Regulated Mesh Area, may not fish with, haul, possess, or deploy more than 75 nets, except as provided in § 648.92(b)(8)(i). Vessels may fish any combination of roundfish and flatfish gillnets up to 75 nets. Such vessels, in accordance with § 648.23(b), may stow nets in excess of 75 nets.

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

(3) *Tags.* Roundfish or flatfish gillnets must be tagged with two tags per net, with one tag secured to each bridle of every net within a string of gillnets.

(B) *Day gillnet vessels—(1) Number of nets.* A Day gillnet vessel fishing under a NE multispecies DAS and fishing in the MA Regulated Mesh Area, may not fish with, haul, possess, or deploy more than 75 nets, except as provided in § 648.92(b)(8)(i). Such vessels, in accordance with § 648.23(b), may stow additional nets not to exceed 160, counting deployed nets.

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

(3) *Tags.* Roundfish or flatfish gillnets must be tagged with two tags per net, with one tag secured to each bridle of every net within a string of nets.

(C) *Obtaining and replacing tags.* See paragraph (a)(3)(iv)(C) of this section.

(3) *Net stowage exemption.* Vessels may possess regulated species while in possession of nets with mesh smaller than the minimum size specified in paragraph (c)(2)(i) of this section, provided that such nets are stowed and are not available for immediate use in accordance with § 648.23(b), and provided that regulated species were not harvested by nets of mesh size smaller

than the minimum mesh size specified in paragraph (c)(2)(i) of this section.

(4) *Addition or deletion of exemptions.* See paragraph (a)(8)(ii) of this section.

(5) *MA Exemption Area.* The MA Exemption Area is that area that lies west of the SNE Exemption Area defined in paragraph (b)(10) of this section.

(d) *Midwater trawl gear exemption.* Fishing may take place throughout the fishing year with midwater trawl gear of mesh size less than the applicable minimum size specified in this section, provided that:

(1) Midwater trawl gear is used exclusively;

(2) When fishing under this exemption in the GOM/GB Exemption Area, as defined in paragraph (a)(16) of this section, and in the area described in § 648.81(c)(1), the vessel has on board a letter of authorization issued by the Regional Administrator, and complies with all restrictions and conditions thereof;

(3) The vessel only fishes for, possesses, or lands Atlantic herring, blueback herring, or mackerel in areas north of 42°20' N. lat. and in the areas described in § 648.81(a)(1), (b)(1), and (c)(1); and Atlantic herring, blueback herring, mackerel, or squid in all other areas south of 42°20' N. lat.;

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

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

(e) *Purse seine gear exemption.* Fishing may take place throughout the fishing year with purse seine gear of mesh size smaller than the applicable minimum size specified in this section, provided that:

(1) The vessel uses purse seine gear exclusively;

(2) When fishing under this exemption in the GOM/GB Exemption Area, as defined in paragraph (a)(16) of this section, the vessel has on board a letter of authorization issued by the Regional Administrator;

(3) The vessel only fishes for, possesses, or lands Atlantic herring, blueback herring, mackerel, or menhaden; and

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

(f) *Mesh measurements—(1) Gillnets.* Mesh size of gillnet gear shall be measured by lining up 5 consecutive knots perpendicular to the float line and, with a ruler or tape measure, measuring 10 consecutive measures on the diamond, inside knot to inside knot. The mesh shall be the average of the

measurements of 10 consecutive measures.

(2) *All other nets.* With the exception of gillnets, mesh size shall be measured by a wedged-shaped gauge having a taper of 2 cm in 8 cm, and a thickness of 2.3 mm, inserted into the meshes under a pressure or pull of 5 kg.

(i) *Square-mesh measurement.* Square mesh in the regulated portion of the net is measured by placing the net gauge along the diagonal line that connects the largest opening between opposite corners of the square. The square-mesh size is the average of the measurements of 20 consecutive adjacent meshes from the terminus forward along the long axis of the net. The square mesh is measured at least five meshes away from the lacings of the net.

(ii) *Diamond-mesh measurement.* Diamond mesh in the regulated portion of the net is measured running parallel to the long axis of the net. The diamond-mesh size is the average of the measurements of any series of 20 consecutive meshes. The mesh is measured at least five meshes away from the lacings of the net.

(g) *Restrictions on gear and methods of fishing—(1) Net obstruction or constriction.* Except as provided in paragraph (g)(5) of this section, a fishing vessel subject to minimum mesh size restrictions shall not use any device or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of a trawl net, except that one splitting strap and one bull rope (if present), consisting of line and rope no more than 3 in (7.6 cm) in diameter, may be used if such splitting strap and/or bull rope does not constrict, in any manner, the top of the trawl net. "The top of the trawl net" means the 50 percent of the net that (in a hypothetical situation) would not be in contact with the ocean bottom during a tow if the net were laid flat on the ocean floor. For the purpose of this paragraph, head ropes are not considered part of the top of the trawl net.

(2) *Net obstruction or constriction.* (i) Except as provided in paragraph (g)(5) of this section, a fishing vessel may not use any mesh configuration, mesh construction, or other means on or in the top of the net subject to minimum mesh size restrictions, as defined in paragraph (g)(1) of this section, if it obstructs the meshes of the net in any manner.

(ii) A fishing vessel may not use a net capable of catching NE multispecies if the bars entering or exiting the knots twist around each other.

(3) *Pair trawl prohibition.* No vessel may fish for NE multispecies while pair

trawling, or possess or land NE multispecies that have been harvested by means of pair trawling.

(4) *Brush-sweep trawl prohibition.* No vessel may fish for, possess, or land NE multispecies while fishing with, or while in possession of, brush-sweep trawl gear.

(5) *Net strengthener restrictions when fishing for or possessing small-mesh multispecies—* (i) *Nets of mesh size less than 2.5 inches (6.4 cm).* A vessel lawfully fishing for small-mesh multispecies in the GOM/GB, SNE, or MA Regulated Mesh Areas, as defined in paragraphs (a), (b), and (c) of this section, with nets of mesh size smaller than 2.5 inches (6.4-cm), as measured by methods specified in paragraph (f) of this section, may use net strengtheners (covers, as described at § 648.23(d)), provided that the net strengthener for nets of mesh size smaller than 2.5 inches (6.4 cm) complies with the provisions specified under § 648.23(d).

(ii) *Nets of mesh size equal to or greater than 2.5 inches (6.4 cm) but less than 3 inches (7.6 cm).* A vessel lawfully fishing for small-mesh multispecies in the GOM/GB, SNE, or MA Regulated Mesh Areas, as defined in paragraphs (a), (b), and (c) of this section, with nets with mesh size equal to or greater than 2.5 inches (6.4 cm) but less than 3 inches (7.6 cm) (as measured by methods specified in paragraph (f) of this section, and as applied to the part of the net specified in paragraph (d)(1)(iv) of this section) may use a net strengthener (*i.e.*, outside net), provided the net strengthener does not have an effective mesh opening of less than 6 inches (15.2 cm), diamond or square mesh, as measured by methods specified in paragraph (f) of this section. The inside net (as applied to the part of the net specified in paragraph (d)(1)(iv) of this section) must not be more than 2 ft (61 cm) longer than the outside net, must be the same circumference or smaller than the smallest circumference of the outside net, and must be the same mesh configuration (*i.e.*, both square or both diamond mesh) as the outside net.

(6) *Gillnet requirements to reduce or prevent marine mammal takes—*(i) *Requirements for gillnet gear capable of catching NE multispecies to reduce harbor porpoise takes.* In addition to the requirements for gillnet fishing identified in this section, all persons owning or operating vessels in the EEZ that fish with sink gillnet gear and other gillnet gear capable of catching NE multispecies, with the exception of single pelagic gillnets (as described in § 648.81(f)(2)(ii)), must comply with the applicable provisions of the Harbor

Porpoise Take Reduction Plan found in § 229.33 of this title.

(ii) *Requirements for gillnet gear capable of catching NE multispecies to prevent large whale takes.* In addition to the requirements for gillnet fishing identified in this section, all persons owning or operating vessels in the EEZ that fish with sink gillnet gear and other gillnet gear capable of catching NE multispecies, with the exception of single pelagic gillnets (as described in § 648.81(f)(2)(ii)), must comply with the applicable provisions of the Atlantic Large Whale Take Reduction Plan found in § 229.32 of this title.

(h) *Scallop vessels.* (1) Except as provided in paragraph (h)(2) of this section, a scallop vessel that possesses a limited access scallop permit and either a NE multispecies Combination vessel permit or a scallop/multispecies possession limit permit, and that is fishing under a scallop DAS allocated under § 648.53, may possess and land up to 300 lb (136.1 kg) of regulated species per trip, provided that the amount of regulated species on board the vessel does not exceed the trip limits specified in § 648.86, and provided the vessel has at least one standard tote on board, unless otherwise restricted by § 648.86(a)(2).

(2) Combination vessels fishing under a NE multispecies DAS are subject to the gear restrictions specified in this section and may possess and land unlimited amounts of regulated species, unless otherwise restricted by § 648.86. Such vessels may simultaneously fish under a scallop DAS.

(i) *State waters winter flounder exemption.* Any vessel issued a NE multispecies permit may fish for, possess, or land winter flounder while fishing with nets of mesh smaller than the minimum size specified in paragraphs (a)(2), (b)(2), and (c)(2) of this section, provided that:

(1) The vessel has on board a certificate approved by the Regional Administrator and issued by the state agency authorizing the vessel's participation in the state's winter flounder fishing program and is in compliance with the applicable state laws pertaining to minimum mesh size for winter flounder.

(2) Fishing is conducted exclusively in the waters of the state from which the certificate was obtained.

(3) The state's winter flounder plan has been approved by the Commission as being in compliance with the Commission's winter flounder fishery management plan.

(4) The state elects, by a letter to the Regional Administrator, to participate in the exemption program described by

this section (for a particular fishing year).

(5) The vessel does not enter or transit the EEZ.

(6) The vessel does not enter or transit the waters of another state, unless such other state is participating in the exemption program described by this section and the vessel is enrolled in that state's program.

(7) The vessel, when not fishing under the DAS program, does not fish for, possess, or land more than 500 lb (226.8 kg) of winter flounder, and has at least one standard tote on board.

(8) The vessel does not fish for, possess, or land any species of fish other than winter flounder and the exempted small-mesh species specified under paragraphs (a)(5)(i), (a)(9)(i), (b)(3), and (c)(4) of this section when fishing in the areas specified under paragraphs (a)(5), (a)(9), (b)(10), and (c)(5) of this section, respectively. Vessels fishing under this exemption in New York and Connecticut state waters and permitted to fish for skates may also possess and land skates in amounts not to exceed 10 percent, by weight, of all other species on board.

■ 10. Section 648.81 is revised to read as follows:

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

(a) *Closed Area I.* (1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Closed Area I (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (a)(2) and (i) of this section:

CLOSED AREA I

Point	N. lat.	W. long.
CI1 .....	41°30'	69°23'
CI2 .....	40°45'	68°45'
CI3 .....	40°45'	68°30'
CI4 .....	41°30'	68°30'
CI1 .....	41°30'	69°23'

(2) Unless otherwise restricted under the EFH Closure(s) specified in paragraph (h) of this section, paragraph (a)(1) of this section does not apply to persons on fishing vessels or fishing vessels:

(i) Fishing with or using pot gear designed and used to take lobsters, or pot gear designed and used to take hagfish, provided that there is no retention of regulated species and no other gear on board capable of catching NE multispecies;

(ii) Fishing with or using pelagic longline gear or pelagic hook-and-line gear, or harpoon gear, provided that there is no retention of regulated species, and provided that there is no other gear on board capable of catching NE multispecies;

(iii) Fishing with pelagic midwater trawl gear, consistent with § 648.80(d), provided that the Regional Administrator shall review information pertaining to the bycatch of regulated NE multispecies and, if the Regional Administrator determines, on the basis of sea sampling data or other credible information for this fishery, that the bycatch of regulated multispecies exceeds, or is likely to exceed, 1 percent of herring and mackerel harvested, by weight, in the fishery or by any individual fishing operation, the Regional Administrator may place restrictions and conditions in the letter of authorization for any or all individual fishing operations or, after consulting with the Council, suspend or prohibit any or all midwater trawl activities in the closed areas;

(iv) Fishing with tuna purse seine gear, provided that there is no retention of NE multispecies, and provided there is no other gear on board capable of catching NE multispecies. If the Regional Administrator determines through credible information, that tuna purse seine vessels are adversely affecting habitat or NE multispecies stocks, the Regional Administrator may, through notice action, consistent with the Administrative Procedure Act, prohibit individual purse seine vessels or all purse seine vessels from the area; or

(v) Fishing in a SAP, in accordance with the provisions of § 648.85(b).

(b) *Closed Area II.* (1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as Closed Area II (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraph (b)(2) of this section:

**CLOSED AREA II**

Point	N. lat.	W. long.
C111 .....	41°00'	67°20'
C112 .....	41°00'	66°35.8'
G5 .....	41°18.6'	66°24.8' <sup>1</sup>
C113 .....	42°22'	67°20' <sup>1</sup>
C111 .....	41°00'	67°20' <sup>1</sup>

<sup>1</sup> The U.S.-Canada Maritime Boundary.

(2) Unless otherwise restricted under the EFH Closure(s) specified in paragraph (h) of this section, paragraph

(b)(1) of this section does not apply to persons on fishing vessels or fishing vessels—

(i) Fishing with gears as described in paragraphs (a)(2)(i) through (iii), and (a)(2)(v) of this section;

(ii) Fishing with tuna purse seine gear outside of the portion of CA II known as the Habitat Area of Particular Concern, as described in paragraph (h)(v) of this section;

(iii) The vessel is fishing in the CA II Yellowtail Flounder SAP or the Closed Area II Haddock SAP as specified under paragraphs (b)(3) and (b)(4) of this section, respectively; or

(iv) Transiting the area, provided:

(A) The operator has determined that there is a compelling safety reason; and

(B) The vessel's fishing gear is stowed in accordance with the provisions of § 648.23(b).

(c) *Nantucket Lightship Closed Area.*

(1) No fishing vessel or person on a fishing vessel may enter, fish, or be in the area known as the Nantucket Lightship Closed Area (copies of a chart depicting this area are available from the Regional Administrator upon request), as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (c)(2) and (i) of this section:

**NANTUCKET LIGHTSHIP CLOSED AREA**

Point	N. lat.	W. long.
G10 .....	40°50'	69°00'
CN1 .....	40°20'	69°00'
CN2 .....	40°20'	70°20'
CN3 .....	40°50'	70°20'
G10 .....	40°50'	69°00'

(2) Unless otherwise restricted under the EFH Closure(s) specified in paragraph (h) of this section, paragraph (c)(1) of this section does not apply to persons on fishing vessels or fishing vessels:

(i) Fishing with gears as described in paragraph (a)(2) of this section; or

(ii) Classified as charter, party or recreational vessel, provided that:

(A) If the vessel is a party or charter vessel, it has a letter of authorization issued by the Regional Administrator on board, which is valid from the date of issuance through a minimum duration of 7 days;

(B) With the exception of tuna, fish harvested or possessed by the vessel are not sold or intended for trade, barter or sale, regardless of where the regulated species are caught; and

(C) The vessel has no gear other than rod and reel or handline gear on board.

(D) The vessel does not fish outside the Nantucket Lightship Closed Area

during the period specified by the letter of authorization; or

(iii) Fishing with or using dredge gear designed and used to take surfclams or ocean quahogs, provided that there is no retention of regulated species and no other gear on board capable of catching NE multispecies.

(d) *Cashes Ledge Closure Area.* (1) No fishing vessel or person on a fishing vessel may enter, fish in, or be in, and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in, or on board a vessel in the area known as the Cashes Ledge Closure Area, as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (d)(2) and (i) of this section (a chart depicting this area is available from the Regional Administrator upon request):

**CASHES LEDGE CLOSURE AREA**

Point	N. lat.	W. long.
CL1 .....	43°07'	69°02'
CL2 .....	42°49.5'	68°46'
CL3 .....	42°46.5'	68°50.5'
CL4 .....	42°43.5'	68°58.5'
CL5 .....	42°42.5'	69°17.5'
CL6 .....	42°49.5'	69°26'
CL1 .....	43°07'	69°02'

(2) Unless otherwise restricted under the EFH Closure(s) specified in paragraph (h) of this section, paragraph (d)(1) of this section does not apply to persons on fishing vessels or fishing vessels that meet the criteria in paragraphs (f)(2)(ii) and (iii) of this section.

(e) *Western GOM Closure Area.* (1) No fishing vessel or person on a fishing vessel may enter, fish in, or be in, and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in, or on board a vessel in, the area known as the Western GOM Closure Area, as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (e)(2) and (i) of this section:

**WESTERN GOM CLOSURE AREA<sup>1</sup>**

Point	N. lat.	W. long.
WGM1 .....	42°15'	70°15'
WGM2 .....	42°15'	69°55'
WGM3 .....	43°15'	69°55'
WGM4 .....	43°15'	70°15'
WGM1 .....	42°15'	70°15'

<sup>1</sup> A chart depicting this area is available from the Regional Administrator upon request.

(2) Unless otherwise restricted under paragraph (h) of this section, paragraph (e)(1) of this section does not apply to

persons on fishing vessels or fishing vessels that meet the criteria in paragraphs (f)(2)(ii) and (iii) of this section consistent with the requirements specified under § 648.80(a)(5).

(f) *GOM Rolling Closure Areas.* (1) No fishing vessel or person on a fishing vessel may enter, fish in, or be in; and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in, or on board a vessel in GOM Rolling Closure Areas I through V, as described in paragraphs (f)(1)(i) through (v) of this section, for the times specified in paragraphs (f)(1)(i) through (v) of this section, except as specified in paragraphs (f)(2) and (i) of this section. A chart depicting these areas is available from the Regional Administrator upon request.

(i) *Rolling Closure Area I.* From March 1 through March 31, the restrictions specified in this paragraph (f)(1) apply to Rolling Closure Area I, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA I  
[March 1–March 31]

Point	N. lat.	W. long.
GM3 .....	42°00'	(1)
GM5 .....	42°00'	68°30'
GM6 .....	42°30'	68°30'
GM23 .....	42°30'	70°00'

<sup>1</sup> Cape Cod shoreline on the Atlantic Ocean.

(ii) *Rolling Closure Area II.* From April 1 through April 30, the restrictions specified in this paragraph (f)(1)(ii) apply to Rolling Closure Area II, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA II  
[April 1–April 30]

Point	N. lat.	W. long.
GM1 .....	42°00'	(1)
GM2 .....	42°00'	(2)
GM3 .....	42°00'	(3)
GM5 .....	42°00'	68°30'
GM13 .....	43°00'	68°30'
GM9 .....	43°00'	(4)

<sup>1</sup> Massachusetts shoreline.

<sup>2</sup> Cape Cod shoreline on Cape Cod Bay.

<sup>3</sup> Cape Cod shoreline on the Atlantic Ocean.

<sup>4</sup> New Hampshire Shoreline.

(iii) *Rolling Closure Area III.* From May 1 through May 31, the restrictions specified in this paragraph (f)(1) apply to Rolling Closure Area III, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA III  
[May 1–May 31]

Point	N. lat.	W. long.
GM1 .....	42°00'	(1)
GM2 .....	42°00'	(2)
GM3 .....	42°00'	(3)
GM4 .....	42°00'	70°00'
GM23 .....	42°30'	70°00'
GM6 .....	42°30'	68°30'
GM14 .....	43°30'	68°30'
GM10 .....	43°30'	(4)

<sup>1</sup> Massachusetts shoreline.

<sup>2</sup> Cape Cod shoreline on Cape Cod Bay.

<sup>3</sup> Cape Cod shoreline on the Atlantic Ocean.

<sup>4</sup> Maine shoreline.

(iv) *Rolling Closure Area IV.* From June 1 through June 30, the restrictions specified in this paragraph (f)(1) apply to Rolling Closure Area IV, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA IV  
[June 1–June 30]

Point	N. lat.	W. long.
GM9 .....	42°30'	(1)
GM23 .....	42°30'	70°00'
GM17 .....	43°30'	70°00'
GM19 .....	43°30'	67°32' or (2)
GM20 .....	44°00'	67°21' or (2)
GM21 .....	44°00'	69°00'
GM22 .....	(3)	69°00'

<sup>1</sup> Massachusetts shoreline.

<sup>2</sup> U.S.-Canada maritime boundary.

<sup>3</sup> Maine shoreline.

(v) *Rolling Closure Area V.* From October 1 through November 30, the restrictions specified in this paragraph (f)(1) apply to Rolling Closure Area V, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA V  
[October 1–November 30]

Point	N. lat.	W. long.
GM1 .....	42°00'	(1)
GM2 .....	42°00'	(2)
GM3 .....	42°00'	(3)
GM4 .....	42°00'	70°00'
GM8 .....	42°30'	70°00'
GM9 .....	42°30'	(1)

<sup>1</sup> Massachusetts shoreline.

<sup>2</sup> Cape Cod shoreline on Cape Cod Bay.

<sup>3</sup> Cape Cod shoreline on the Atlantic Ocean.

(2) Paragraph (f)(1) of this section does not apply to persons aboard fishing vessels or fishing vessels:

(i) That have not been issued a multispecies permit and that are fishing exclusively in state waters;

(ii) That are fishing with or using exempted gear as defined under this part, subject to the restrictions on midwater trawl gear in paragraph (a)(2)(iii) of this section, and excluding pelagic gillnet gear capable of catching multispecies, except for vessels fishing with a single pelagic gillnet not longer than 300 ft (91.4 m) and not greater than 6 ft (1.83 m) deep, with a maximum mesh size of 3 inches (7.6 cm), provided:

(A) The net is attached to the boat and fished in the upper two-thirds of the water column;

(B) The net is marked with the owner's name and vessel identification number;

(C) There is no retention of regulated species; and

(D) There is no other gear on board capable of catching NE multispecies;

(iii) That are fishing under charter/party or recreational regulations, provided that:

(A) For vessels fishing under charter/party regulations in a Rolling Closure Area described under paragraph (f)(1) of this section, it has on board a letter of authorization issued by the Regional Administrator, which is valid from the date of enrollment through the duration of the closure or 3 months duration, whichever is greater; for vessels fishing under charter/party regulations in the Cashes Ledge Closure Area or Western GOM Area Closure, as described under paragraph (d) and (e) of this section, respectively, it has on board a letter of authorization issued by the Regional Administrator, which is valid from the date of enrollment until the end of the fishing year;

(B) With the exception of tuna, fish harvested or possessed by the vessel are not sold or intended for trade, barter or sale, regardless of where the regulated species are caught;

(C) The vessel has no gear other than rod and reel or handline on board; and

(D) The vessel does not use any NE multispecies DAS during the entire period for which the letter of authorization is valid;

(iv) That are fishing with or using scallop dredge gear when fishing under a scallop DAS or when lawfully fishing in the Scallop Dredge Fishery Exemption Area as described in § 648.80(a)(11), provided the vessel does not retain any regulated NE multispecies during a trip, or on any part of a trip; or

(v) That are fishing in the Raised Footrope Trawl Exempted Whiting Fishery, as specified in § 648.80(a)(15), and in the GOM Rolling Closure Area V, as specified in paragraph (f)(1)(v) of this section.

(g) *GB Seasonal Closure Area.* (1) From May 1 through May 31, no fishing vessel or person on a fishing vessel may enter, fish in, or be in, and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in the area known as the GB Seasonal Closure Area, as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (g)(2) and (i) of this section:

**GEORGES BANK SEASONAL CLOSURE AREA**  
[May 1–May 31]

Point	N. lat.	W. long.
GB1	42°00'	(1)
GB2	42°00'	68°30'
GB3	42°20'	68°30'
GB4	42°20'	67°20'
GB5	41°30'	67°20'
CI1	41°30'	69°23'
CI2	40°45'	68°45'
CI3	40°45'	68°30'
GB6	40°30'	68°30'
GB7	40°30'	69°00'
G10	40°50'	69°00'
GB8	40°50'	69°30'
GB9	41°00'	69°30'
GB10	41°00'	70°00'
G12	(1)	70° 00'

<sup>1</sup>Northward to its intersection with the shoreline of mainland MA.

(2) Paragraph (g)(1) of this section does not apply to persons on fishing vessels or to fishing vessels:

- (i) That meet the criteria in paragraphs (f)(2)(i) or (ii) of this section;
- (ii) That are fishing as charter/party or recreational vessels; or
- (iii) That are fishing with or using scallop dredge gear when fishing under a scallop DAS or when lawfully fishing in the Scallop Dredge Fishery Exemption Area, as described in § 648.80(a)(11), provided the vessel uses an 8-inch (20.3-cm) twine top and complies with the NE multispecies possession restrictions for scallop vessels specified at § 648.80(h).

(h) *Essential Fish Habitat Closure Areas.* (1) In addition to the restrictions under paragraphs (a) through (e) of this section, no fishing vessel or person on a fishing vessel with bottom tending mobile gear on board the vessel may enter, fish in, or be in the EFH Closure Areas described in paragraphs (h)(1)(i) through (vi) of this section, unless otherwise specified. A chart depicting these areas is available from the Regional Administrator upon request.

(i) *Western GOM Habitat Closure Area.* The restrictions specified in paragraph (h)(1) of this section apply to the Western GOM Habitat Closure Area,

which is the area bound by straight lines connecting the following points in the order stated:

**WESTERN GOM HABITAT CLOSURE AREA**

Point	N. lat.	W. long.
WGM4	43°15'	70°15'
WGM1	42°15'	70°15'
WGM5	42°15'	70°00'
WGM6	43°15'	70°00'
WGM4	43°15'	70°15'

(ii) *Cashes Ledge Habitat Closure Area.* The restrictions specified in paragraph (h)(1) of this section apply to the Cashes Ledge Habitat Closure Area, which is the area defined by straight lines connecting the following points in the order stated:

**CASHES LEDGE HABITAT CLOSURE AREA**

Point	N. lat.	W. long.
CLH1	43°01'	69°03'
CLH2	43°01'	68°52'
CLH3	42°45'	68°52'
CLH4	42°45'	69°03'
CLH1	43°01'	69°03'

(iii) *Jeffrey's Bank Habitat Closure Area.* The restrictions specified in paragraph (h)(1) of this section apply to the Jeffrey's Bank Habitat Closure Area, which is the area bound by straight lines connecting the following points in the order stated:

**JEFFREY'S BANK HABITAT CLOSURE AREA**

Point	N. lat.	W. long.
JB1	43°40'	68°50'
JB2	43°40'	68°40'
JB3	43°20'	68°40'
JB4	43°20'	68°50'
JB1	43°40'	68°50'

(iv) *Closed Area I Habitat Closure Areas.* The restrictions specified in paragraph (h)(1) of this section apply to the Closed Area I Habitat Closure Areas, Closed Area I-North and Closed Area I-South, which are the areas bound by straight lines connecting the following points in the order stated:

**CLOSED AREA I—NORTH HABITAT CLOSURE AREA**

Point	N. lat.	W. long.
CI1	41°30'	69°23'
CI4	41°30'	68°30'
CIH1	41°26'	68°30'
CIH2	41°04'	69°01'

**CLOSED AREA I—NORTH HABITAT CLOSURE AREA—Continued**

Point	N. lat.	W. long.
CI1	41°30'	69°23'

**CLOSED AREA I—SOUTH HABITAT CLOSURE AREA**

Point	N. lat.	W. long.
CIH3	40°55'	68°53'
CIH4	40°58'	68°30'
CI3	40°45'	68°30'
CI2	40°45'	68°45'
CIH3	40°55'	68°53'

(v) *Closed Area II Habitat Closure Area.* The restrictions specified in paragraph (h)(1) of this section apply to the Closed Area II Habitat Closure Area (also referred to as the Habitat Area of Particular Concern), which is the area bound by straight lines connecting the following points in the order stated:

**CLOSED AREA II HABITAT CLOSURE AREA**

Point	N. lat.	W. long.
CIH1	42°00'	67°20'
CIH2	42°00'	67°00'
CIH3	41°40'	66°43'
CIH4	41°40'	67°20'
CIH1	42°00'	67°20'

(vi) *Nantucket Lightship Habitat Closure Area.* The restrictions specified in paragraph (h)(1) of this section apply to the Nantucket Lightship Habitat Closure Area, which is the area bound by straight lines connecting the following points in the order stated:

**NANTUCKET LIGHTSHIP HABITAT CLOSURE AREA**

Point	N. lat.	W. long.
NLH1	41°10'	70°00'
NLH2	41°10'	69°50'
NLH3	40°50'	69°30'
NLH4	40°20'	69°30'
NLH5	40°20'	70°00'
NLH1	41°10'	70°00'

(2) [Reserved]

(i) *Transiting.* A vessel may transit Closed Area I, the Nantucket Lightship Closed Area, the Cashes Ledge Closure Area, the Western GOM Closure Area, the GOM Rolling Closure Areas, the GB Seasonal Closure Area and the EFH Closure Areas, as defined in paragraphs (a)(1), (c)(1), (d)(1), (e)(1), (f)(1), (g)(1), and (h)(1), respectively, of this section, provided that its gear is stowed in

accordance with the provisions of § 648.23(b).

(j) *Restricted Gear Area I.* (1) Restricted Gear Area I is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
<b>Inshore Boundary</b>		
to 120		
69	40°07.9' N.	68°36.0' W.
70	40°07.2' N.	68°38.4' W.
71	40°06.9' N.	68°46.5' W.
73	40°08.1' N.	68°51.0' W.
74	40°05.7' N.	68°52.4' W.
75	40°03.6' N.	68°57.2' W.
76	40°03.65' N.	69°00.0' W.
77	40°04.35' N.	69°00.5' W.
78	40°05.2' N.	69°00.5' W.
79	40°05.3' N.	69°01.1' W.
80	40°08.9' N.	69°01.75' W.
81	40°11.0' N.	69°03.8' W.
82	40°11.6' N.	69°05.4' W.
83	40°10.25' N.	69°04.4' W.
84	40°09.75' N.	69°04.15' W.
85	40°08.45' N.	69°03.6' W.
86	40°05.65' N.	69°03.55' W.
87	40°04.1' N.	69°03.9' W.
88	40°02.65' N.	69°05.6' W.
89	40°02.00' N.	69°08.35' W.
90	40°02.65' N.	69°11.15' W.
91	40°00.05' N.	69°14.6' W.
92	39°57.8' N.	69°20.35' W.
93	39°56.65' N.	69°24.4' W.
94	39°56.1' N.	69°26.35' W.
95	39°56.55' N.	69°34.1' W.
96	39°57.85' N.	69°35.5' W.
97	40°00.65' N.	69°36.5' W.
98	40°00.9' N.	69°37.3' W.
99	39°59.15' N.	69°37.3' W.
100	39°58.8' N.	69°38.45' W.
102	39°56.2' N.	69°40.2' W.
103	39°55.75' N.	69°41.4' W.
104	39°56.7' N.	69°53.6' W.
105	39°57.55' N.	69°54.05' W.
106	39°57.4' N.	69°55.9' W.
107	39°56.9' N.	69°57.45' W.
108	39°58.25' N.	70°03.0' W.
110	39°59.2' N.	70°04.9' W.
111	40°00.7' N.	70°08.7' W.
112	40°03.75' N.	70°10.15' W.
115	40°05.2' N.	70°10.9' W.
116	40°02.45' N.	70°14.1' W.
119	40°02.75' N.	70°16.1' W.
to 181		
<b>Offshore Boundary</b>		
to 69		
120	40°06.4' N.	68°35.8' W.
121	40°05.25' N.	68°39.3' W.
122	40°05.4' N.	68°44.5' W.
123	40°06.0' N.	68°46.5' W.
124	40°07.4' N.	68°49.6' W.
125	40°05.55' N.	68°49.8' W.
126	40°03.9' N.	68°51.7' W.
127	40°02.25' N.	68°55.4' W.
128	40°02.6' N.	69°00.0' W.
129	40°02.75' N.	69°00.75' W.
130	40°04.2' N.	69°01.75' W.
131	40°06.15' N.	69°01.95' W.
132	40°07.25' N.	69°02.0' W.
133	40°08.5' N.	69°02.25' W.
134	40°09.2' N.	69°02.95' W.

Point	Latitude	Longitude
135	40°09.75' N.	69°03.3' W.
136	40°09.55' N.	69°03.85' W.
137	40°08.4' N.	69°03.4' W.
138	40°07.2' N.	69°03.3' W.
139	40°06.0' N.	69°03.1' W.
140	40°05.4' N.	69°03.05' W.
141	40°04.8' N.	69°03.05' W.
142	40°03.55' N.	69°03.55' W.
143	40°01.9' N.	69°03.95' W.
144	40°01.0' N.	69°04.4' W.
146	39°59.9' N.	69°06.25' W.
147	40°00.6' N.	69°10.05' W.
148	39°59.25' N.	69°11.15' W.
149	39°57.45' N.	69°16.05' W.
150	39°56.1' N.	69°20.1' W.
151	39°54.6' N.	69°25.65' W.
152	39°54.65' N.	69°26.9' W.
153	39°54.8' W.	69°30.95' W.
154	39°54.35' N.	69°33.4' W.
155	39°55.0' N.	69°34.9' W.
156	39°56.55' N.	69°36.0' W.
157	39°57.95' N.	69°36.45' W.
158	39°58.75' N.	69°36.3' W.
159	39°58.8' N.	69°36.95' W.
160	39°57.95' N.	69°38.1' W.
161	39°54.5' N.	69°38.25' W.
162	39°53.6' N.	69°46.5' W.
163	39°54.7' N.	69°50.0' W.
164	39°55.25' N.	69°51.4' W.
165	39°55.2' N.	69°53.1' W.
166	39°54.85' N.	69°53.9' W.
167	39°55.7' N.	69°54.9' W.
168	39°56.15' N.	69°55.35' W.
169	39°56.05' N.	69°56.25' W.
170	39°55.3' N.	69°57.1' W.
171	39°54.8' N.	69°58.6' W.
172	39°56.05' N.	70°00.65' W.
173	39°55.3' N.	70°02.95' W.
174	39°56.9' N.	70°11.3' W.
175	39°58.9' N.	70°11.5' W.
176	39°59.6' N.	70°11.1' W.
177	40°01.35' N.	70°11.2' W.
178	40°02.6' N.	70°12.0' W.
179	40°00.4' N.	70°12.3' W.
180	39°59.75' N.	70°13.05' W.
181	39°59.3' N.	70°14.0' W.
to 119		

(2) *Restricted Period*—(i) *Mobile gear.* From October 1 through June 15, no fishing vessel with mobile gear or person on a fishing vessel with mobile gear may fish or be in Restricted Gear Area I, unless transiting. Vessels may transit this area provided that mobile gear is on board the vessel while inside the area, provided that its gear is stowed in accordance with the provisions of § 648.23(b).

(ii) *Lobster pot gear.* From June 16 through September 30, no fishing vessel with lobster pot gear aboard, or person on a fishing vessel with lobster pot gear aboard may fish in, and no lobster pot gear may be deployed or remain in, Restricted Gear Area I.

(k) *Restricted Gear Area II.* (1) Restricted Gear Area II is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
<b>Inshore Boundary</b>		
to 1		
49	40°02.75' N.	70°16.1' W.
50	40°00.7' N.	70°18.6' W.
51	39°59.8' N.	70°21.75' W.
52	39°59.75' N.	70°25.5' W.
53	40°03.85' N.	70°28.75' W.
54	40°00.55' N.	70°32.1' W.
55	39°59.15' N.	70°34.45' W.
56	39°58.9' N.	70°38.65' W.
57	40°00.1' N.	70°45.1' W.
58	40°00.5' N.	70°57.6' W.
59	40°02.0' N.	71°01.3' W.
60	39°59.3' N.	71°18.4' W.
61	40°00.7' N.	71°19.8' W.
62	39°57.5' N.	71°20.6' W.
63	39°53.1' N.	71°36.1' W.
64	39°52.6' N.	71°40.35' W.
65	39°53.1' N.	71°42.7' W.
66	39°46.95' N.	71°49.0' W.
67	39°41.15' N.	71°57.1' W.
68	39°35.45' N.	72°02.0' W.
69	39°32.65' N.	72°06.1' W.
70	39°29.75' N.	72°09.8' W.
to 48		
<b>Offshore Boundary</b>		
to 49		
1	39°59.3' N.	70°14.0' W.
2	39°58.85' N.	70°15.2' W.
3	39°59.3' N.	70°18.4' W.
4	39°58.1' N.	70°19.4' W.
5	39°57.0' N.	70°19.85' W.
6	39°57.55' N.	70°21.25' W.
7	39°57.5' N.	70°22.8' W.
8	39°57.1' N.	70°25.4' W.
9	39°57.65' N.	70°27.05' W.
10	39°58.58' N.	70°27.7' W.
11	40°00.65' N.	70°28.8' W.
12	40°02.2' N.	70°29.15' W.
13	40°01.0' N.	70°30.2' W.
14	39°58.58' N.	70°31.85' W.
15	39°57.05' N.	70°34.35' W.
16	39°56.42' N.	70°36.8' W.
21	39°58.15' N.	70°48.0' W.
24	39°58.3' N.	70°51.1' W.
25	39°58.1' N.	70°52.25' W.
26	39°58.05' N.	70°53.55' W.
27	39°58.4' N.	70°59.6' W.
28	39°59.8' N.	71°01.05' W.
29	39°58.2' N.	71°05.85' W.
30	39°57.45' N.	71°12.15' W.
31	39°57.2' N.	71°15.0' W.
32	39°56.3' N.	71°18.95' W.
33	39°51.4' N.	71°36.1' W.
34	39°51.75' N.	71°41.5' W.
35	39°50.05' N.	71°42.5' W.
36	39°50.0' N.	71°45.0' W.
37	39°48.95' N.	71°46.05' W.
38	39°46.6' N.	71°46.1' W.
39	39°43.5' N.	71°49.4' W.
40	39°41.3' N.	71°55.0' W.
41	39°39.0' N.	71°55.6' W.
42	39°36.72' N.	71°58.25' W.
43	39°35.15' N.	71°58.55' W.
44	39°34.5' N.	72°00.75' W.
45	39°32.2' N.	72°02.25' W.
46	39°32.15' N.	72°04.1' W.
47	39°28.5' N.	72°06.5' W.
48	39°29.0' N.	72°09.25' W.
to 70		

(2) *Restricted period*—(i) *Mobile gear*. From November 27 through June 15, no fishing vessel with mobile gear aboard, or person on a fishing vessel with mobile gear aboard, may fish or be in Restricted Gear Area II, unless transiting. Vessels may transit this area, provided that all mobile gear is on board the vessel while inside the area, and stowed in accordance with the provisions of § 648.23(b).

(ii) *Lobster pot gear*. From June 16 through November 26, no fishing vessel with lobster pot gear aboard, or person on a fishing vessel with lobster pot gear aboard, may fish in, and no lobster pot gear may be deployed or remain in, Restricted Gear Area II.

(l) *Restricted Gear Area III*. (1) Restricted Gear Area III is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
<b>Inshore Boundary</b>		
to 49		
182 .....	40°05.6' N.	70°17.7' W.
183 .....	40°06.5' N.	70°40.05' W.
184 .....	40°11.05' N.	70°45.8' W.
185 .....	40°12.75' N.	70°55.05' W.
186 .....	40°10.7' N.	71°10.25' W.
187 .....	39°57.9' N.	71°28.7' W.
188 .....	39°55.6' N.	71°41.2' W.
189 .....	39°55.85' N.	71°45.0' W.
190 .....	39°53.75' N.	71°52.25' W.
191 .....	39°47.2' N.	72°01.6' W.
192 .....	39°33.65' N.	72°15.0' W.
to 70		

Point	Latitude	Longitude
<b>Offshore Boundary</b>		
to 182		
49 .....	40°02.75' N.	70°16.1' W.
50 .....	40°00.7' N.	70°18.6' W.
51 .....	39°59.8' N.	70°21.75' W.
52 .....	39°59.75' N.	70°25.5' W.
53 .....	40°03.85' N.	70°28.75' W.
54 .....	40°00.55' N.	70°32.1' W.
55 .....	39°59.15' N.	70°34.45' W.
56 .....	39°58.9' N.	70°38.65' W.
57 .....	40°00.1' N.	70°45.1' W.
58 .....	40°00.5' N.	70°57.6' W.
59 .....	40°02.0' N.	71°01.3' W.
60 .....	39°59.3' N.	71°18.4' W.
61 .....	40°00.7' N.	71°19.8' W.
62 .....	39°57.5' N.	71°20.6' W.
63 .....	39°53.1' N.	71°36.1' W.
64 .....	39°52.6' N.	71°40.35' W.
65 .....	39°53.1' N.	71°42.7' W.
66 .....	39°46.95' N.	71°49.0' W.
67 .....	39°41.15' N.	71°57.1' W.
68 .....	39°35.45' N.	72°02.0' W.
69 .....	39°32.65' N.	72°06.1' W.
70 .....	39°29.75' N.	72°09.8' W.
to 192		

(2) *Restricted period*—(i) *Mobile gear*. From June 16 through November 26, no fishing vessel with mobile gear aboard, or person on a fishing vessel with mobile gear aboard, may fish or be in

Restricted Gear Area III, unless transiting. Vessels may transit this area provided that all mobile gear is on board the vessel while inside the area, and is stowed in accordance with the provisions of § 648.23(b).

(ii) *Lobster pot gear*. From January 1 through April 30, no fishing vessel with lobster pot gear aboard, or person on a fishing vessel with lobster pot gear aboard, may fish in, and no lobster pot gear may be deployed or remain in, Restricted Gear Area III.

(m) *Restricted Gear Area IV*. (1) Restricted Gear Area IV is defined by straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
<b>Inshore Boundary</b>		
193 .....	40°13.60' N.	68°40.60' W.
194 .....	40°11.60' N.	68°53.00' W.
195 .....	40°14.00' N.	69°04.70' W.
196 .....	40°14.30' N.	69°05.80' W.
197 .....	40°05.50' N.	69°09.00' W.
198 .....	39°57.30' N.	69°25.10' W.
199 .....	40°00.40' N.	69°35.20' W.
200 .....	40°01.70' N.	69°35.40' W.
201 .....	40°01.70' N.	69°37.40' W.
202 .....	40°00.50' N.	69°38.80' W.
203 .....	40°01.30' N.	69°45.00' W.
204 .....	40°02.10' N.	69°45.00' W.
205 .....	40°07.60' N.	70°04.50' W.
206 .....	40°07.80' N.	70°09.20' W.
to 119		

Point	Latitude	Longitude
<b>Offshore Boundary</b>		
69 .....	40°07.90' N.	68°36.00' W.
70 .....	40°07.20' N.	68°38.40' W.
71 .....	40°06.90' N.	68°46.50' W.
72 .....	40°08.70' N.	68°49.60' W.
73 .....	40°08.10' N.	68°51.00' W.
74 .....	40°05.70' N.	68°52.40' W.
75 .....	40°03.60' N.	68°57.20' W.
76 .....	40°03.65' N.	69°00.00' W.
77 .....	40°04.35' N.	69°00.50' W.
78 .....	40°05.20' N.	69°00.50' W.
79 .....	40°05.30' N.	69°01.10' W.
80 .....	40°08.90' N.	69°01.75' W.
81 .....	40°11.00' N.	69°03.80' W.
82 .....	40°11.60' N.	69°05.40' W.
83 .....	40°10.25' N.	69°04.40' W.
84 .....	40°09.75' N.	69°04.15' W.
85 .....	40°08.45' N.	69°03.60' W.
86 .....	40°05.65' N.	69°03.55' W.
87 .....	40°04.10' N.	69°03.90' W.
88 .....	40°02.65' N.	69°05.60' W.
89 .....	40°02.00' N.	69°08.35' W.
90 .....	40°02.65' N.	69°11.15' W.
91 .....	40°00.05' N.	69°14.60' W.
92 .....	39°57.8' N.	69°20.35' W.
93 .....	39°56.75' N.	69°24.40' W.
94 .....	39°56.50' N.	69°26.35' W.
95 .....	39°56.80' N.	69°34.10' W.
96 .....	39°57.85' N.	69°35.05' W.
97 .....	40°00.65' N.	69°36.50' W.
98 .....	40°00.90' N.	69°37.30' W.
99 .....	39°59.15' N.	69°37.30' W.
100 .....	39°58.80' N.	69°38.45' W.
102 .....	39°56.20' N.	69°40.20' W.
103 .....	39°55.75' N.	69°41.40' W.

Point	Latitude	Longitude
104 .....	39°56.70' N.	69°53.60' W.
105 .....	39°57.55' N.	69°54.05' W.
106 .....	39°57.40' N.	69°55.90' W.
107 .....	39°56.90' N.	69°57.45' W.
108 .....	39°58.25' N.	70°03.00' W.
110 .....	39°59.20' N.	70°04.90' W.
111 .....	40°00.70' N.	70°08.70' W.
112 .....	40°03.75' N.	70°10.15' W.
115 .....	40°05.20' N.	70°10.90' W.
116 .....	40°02.45' N.	70°14.1' W.
119 .....	40°02.75' N.	70°16.1' W.
to 206		

(2) *Restricted period*—(i) *Mobile gear*. From June 16 through September 30, no fishing vessel with mobile gear aboard, or person on a fishing vessel with mobile gear aboard may fish or be in Restricted Gear Area IV, unless transiting. Vessels may transit this area, provided that all mobile gear is on board the vessel while inside the area, and is stowed in accordance with the provisions of § 648.23(b).

(ii) [Reserved]

■ 11. Section 648.82 is revised to read as follows:

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

(a) Except as provided in §§ 648.17 and 648.82(a)(2), a vessel issued a limited access NE multispecies permit may not fish for, possess, or land regulated species, except during a DAS, as allocated under, and in accordance with, the applicable DAS program described in this section, unless otherwise provided elsewhere in this part.

(1) *End-of-year carry-over*. With the exception of vessels that held a Confirmation of Permit History, as described in § 648.4(a)(1)(i)(J), for the entire fishing year preceding the carry-over year, limited access vessels that have unused DAS on the last day of April of any year may carry over a maximum of 10 DAS into the next year. Unused leased DAS may not be carried over. Vessels that have been sanctioned through enforcement proceedings will be credited with unused DAS based on their DAS allocation minus any total DAS that have been sanctioned through enforcement proceedings. For the 2004 fishing year only, DAS carried over from the 2003 fishing year will be classified as Regular B DAS, as specified under paragraph (d)(2) of this section. Beginning with the 2005 fishing year, for vessels with a balance of both unused Category A DAS and unused Category B DAS at the end of the previous fishing year (e.g., for the 2005 fishing year, carry-over DAS from the 2004 fishing year), Category A DAS will be carried over first, than Regular B

DAS, than Reserve B DAS. Category C DAS cannot be carried over.

(2) Notwithstanding any other provision of this part, any vessel issued a NE multispecies limited access permit may not call into the DAS program or fish under a DAS, if such vessel carries passengers for hire for any portion of a fishing trip.

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

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

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

fishing in the respective regulated mesh areas.

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

(4) *Large Mesh Individual DAS category.* This category is for vessels allocated individual DAS that area not fishing under the Hook Gear, Combination, or Individual DAS categories. Beginning May 1, 2004, for a vessel fishing under the Large Mesh Individual DAS category, the baseline for determining the number of NE multispecies DAS available for use shall be calculated based upon the fishing history associated with the vessel's permit, as specified in paragraph (c)(1) of this section. The number and categories of DAS that are allocated for use in a given fishing year are specified in paragraph (d) of this section. The number of Category A DAS shall be increased by 36 percent. To be eligible to fish under the Large Mesh Individual DAS category, a vessel, while fishing under this category, must fish under the specific regulated mesh area minimum mesh size restrictions, as specified in paragraphs (a)(3)(iii), (a)(4)(iii), (b)(2)(iii), and (c)(2)(ii) of this section.

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

(A) The vessel is 30 ft (9.1 m) or less in length overall, as determined by

measuring along a horizontal line drawn from a perpendicular raised from the outside of the most forward portion of the stem of the vessel to a perpendicular raised from the after most portion of the stern.

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

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

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

(i) [Reserved]

(6) *Handgear A category.* A vessel qualified and electing to fish under the Handgear A category, as described in § 648.4(a)(1)(i)(A), may retain, per trip, up to 300 lb (136.1 kg) of cod, one Atlantic halibut, and the daily possession limit for other regulated species as specified under § 648.86. The cod trip limit will be adjusted proportionally to the trip limit for GOM cod (rounded up to the nearest 50 lb (22.7 kg)), as specified in § 648.86(b)). For example if the GOM cod trip limit specified at § 648.86(b) doubled, then the cod trip limit for the Handgear A category would double. Qualified vessels electing to fish under the Handgear A category are subject to the following restrictions:

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

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

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

(c) *Used DAS baseline—(1) Calculation of used DAS baseline.* For all valid limited access NE multispecies DAS vessels, vessels issued a valid small vessel category permit, and NE multispecies Confirmation of Permit Histories, beginning with the 2004

fishing year, a vessel's used DAS baseline shall be based on the fishing history associated with its permit and shall be determined by the highest number of reported DAS fished during a single qualifying fishing year, as specified in paragraphs (c)(1)(i) through (iv) of this section, during the 6-year period from May 1, 1996, through April 30, 2002, not to exceed the vessel's annual allocation prior to August 1, 2002. A qualifying year is one in which a vessel landed 5,000 lb (2,268 kg) or more of regulated multispecies, based upon landings reported through dealer reports (based on live weights of landings submitted to NMFS prior to April 30, 2003). If a vessel that was originally issued a limited access NE multispecies permit was lawfully replaced in accordance with the replacement restrictions specified in § 648.4(a), then the used DAS baseline shall be defined based upon the DAS used by the original vessel and by subsequent vessel(s) associated with the permit during the qualification period specified in this paragraph (c)(1). The used DAS baseline shall be used to calculate the number and category of DAS that are allocated for use in a given fishing year, as specified in paragraph (d) of this section.

(i) Except as provided in paragraphs (c)(1)(ii) through (iv) of this section, the vessel's used DAS baseline shall be determined by calculating DAS use reported under the DAS notification requirements in § 648.10.

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

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

(iv) For vessels fishing under the Day gillnet designation, as specified under paragraph (j)(1) of this section, used DAS, for trips of more than 3 hours, but less than or equal to 15 hours, will be counted as 15 hours. Trips less than or equal to 3 hours, or more than 15 hours, will be counted as actual time.

(2) *Correction of used DAS baseline.*

(i) A vessel's used DAS baseline, as determined under paragraph (c)(1) of this section, may be corrected by submitting a written request to correct

the DAS baseline. The request to correct must be received by the Regional Administrator no later than August 31, 2004. The request to correct must be in writing and provide credible evidence that the information used by the Regional Administrator in making the determination of the vessel's DAS baseline was based on incorrect data. The decision on whether to correct the DAS baseline shall be determined solely on the basis of written information submitted, unless the Regional Administrator specifies otherwise. The Regional Administrator's decision on whether to correct the DAS baseline is the final decision of the Department of Commerce.

(ii) *Status of vessel's pending request for a correction of used DAS baseline.* While a vessel's request for a correction is under consideration by the Regional Administrator, the vessel is limited to fishing the number of DAS allocated in accordance with paragraph (d) of this section.

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

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

(i) For the 2004 and 2005 fishing years, Category A DAS are defined as 60 percent of the vessel's used DAS baseline specified under paragraph (c)(1) of this section.

(ii) For the 2006 through 2008 fishing years, Category A DAS are defined as 55 percent of the vessel's used DAS baseline specified under paragraph (c)(1) of this section.

(iii) Starting in fishing year 2009, Category A DAS are defined as 45 percent of the vessel's used DAS

baseline specified under paragraph (c)(1) of this section.

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

(i) *Regular B DAS—(A) Restrictions on use.* Beginning May 1, 2004, Regular B DAS can only be used in an approved SAP, as specified in § 648.85.

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

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

(2) For the 2006 through 2008 fishing years, Regular B DAS are defined as 22.5 percent of the vessel's DAS baseline specified under paragraph (c)(1) of this section.

(3) Starting in fishing year 2009, and thereafter, Regular B DAS are defined as 27.5 percent of the vessel's DAS baseline specified under paragraph (c)(1) of this section.

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

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

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

(2) For the 2006 through 2008 fishing years, Reserve B DAS are defined as 22.5 percent of the vessel's DAS baseline specified under paragraph (c)(1) of this section.

(3) Starting in fishing year 2009, and thereafter, Reserve B DAS are defined as 27.5 percent of the vessel's DAS baseline specified under paragraph (c)(1) of this section.

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

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

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

specified under paragraph (e)(2) of this section, shall not occur if the Regional Administrator:

(i) Determines that one of the following criteria has been met:

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

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

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

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

(e) *Accrual of DAS.* (1) DAS shall accrue to the nearest minute and, with the exceptions described under this paragraph (e) and paragraph (j)(1)(iii) of this section, will be counted as actual time called into the DAS program.

(2) Starting in fishing year 2006, unless otherwise determined in accordance with paragraph (d)(4) of this section, for NE multispecies vessels fishing under a DAS in the SNE or MA Regulated Mesh Areas, as described in § 648.80(b)(1) and (c)(1), respectively, the ratio of DAS used to time called into the DAS program will be 1.5 to 1.0.

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

(g) *Spawning season restrictions.* A vessel issued a valid Small Vessel or Handgear A category permit specified under paragraphs (b)(5) or (b)(6), respectively, of this section may not fish for, possess, or land regulated species from March 1 through March 20 of each year. Any other vessel issued a limited access NE multispecies permit must declare out and be out of the NE multispecies DAS program for a 20-day period between March 1 and May 31 of each calendar year, using the notification requirements specified in

§ 648.10. A vessel fishing under a Day gillnet category designation is prohibited from fishing with gillnet gear capable of catching NE multispecies during its declared 20-day spawning block, unless the vessel is fishing in an exempted fishery, as described in § 648.80. If a vessel owner has not declared and been out of the fishery for a 20-day period between March 1 and May 31 of each calendar year on or before May 12 of each year, the vessel is prohibited from fishing for, possessing or landing any regulated species or non-exempt species during the period May 12 through May 31, inclusive.

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

(i) [Reserved]

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

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

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

(ii) *Declaration of time out of the gillnet fishery.* (A) During each fishing year, vessels must declare, and take, a total of 120 days out of the non-exempt gillnet fishery. Each period of time declared and taken must be a minimum of 7 consecutive days. At least 21 days of this time must be taken between June 1 and September 30 of each fishing year. The spawning season time out period required by paragraph (g) of this section will be credited toward the 120 days

time out of the non-exempt gillnet fishery. If a vessel owner has not declared and taken any or all of the remaining periods of time required to be out of the fishery by the last possible date to meet these requirements, the vessel is prohibited from fishing for, possessing, or landing regulated multispecies or non-exempt species harvested with gillnet gear, and from having gillnet gear on board the vessel that is not stowed in accordance with § 648.23(b), while fishing under a NE multispecies DAS, from that date through the end of the period between June 1 and September 30, or through the end of the fishing year, as applicable.

(B) Vessels shall declare their periods of required time through the notification procedures specified in § 648.10(f)(2).

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

(iii) *Method of counting DAS.* Day gillnet vessels fishing with gillnet gear under a NE multispecies DAS will accrue 15 hours DAS for each trip of more than 3 hours, but less than or equal to 15 hours. Such vessels will accrue actual DAS time at sea for trips less than or equal to 3 hours, or more than 15 hours.

(2) *Trip gillnet vessels.* When fishing under a NE multispecies DAS, a Trip gillnet vessel is required to remove all gillnet gear from the water before calling out of a NE multispecies DAS under § 648.10(c)(3). When not fishing under a NE multispecies DAS, Trip gillnet vessels may fish in an exempted fishery with gillnet gear, as authorized under the exemptions in § 648.80. Vessels electing to fish under the Trip gillnet designation must have on board written confirmation issued by the Regional Administrator that the vessel is a Trip gillnet vessel.

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

(2) *Eligible vessels.* (i) A vessel issued a valid limited access NE multispecies permit is eligible to lease Category A DAS to or from another such vessel,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(l) *DAS Transfer Program.* Except for vessels fishing under a Sector allocation, as specified in § 648.87, a vessel issued a valid limited access NE multispecies permit may transfer all of its NE multispecies DAS for an indefinite time to another vessel with a valid NE multispecies permit, in accordance with the conditions and restrictions described under this section. The Regional Administrator has final approval authority for all NE multispecies DAS transfer requests.

(1) *DAS transfer conditions and restrictions.* (i) The transferor vessel must transfer all of its DAS.

(ii) NE multispecies DAS may be transferred only to a vessel with a baseline main engine horsepower rating that is no greater than 20 percent of the baseline engine horsepower of the transferor vessel. NE multispecies DAS may be transferred only to a vessel with a baseline length overall or a baseline gross registered tonnage that is no greater than 10 percent of the baseline length overall or the baseline gross registered tonnage, respectively, of the transferor vessel. For the purposes of this program, the baseline horsepower, length overall, and gross registered

tonnage specifications are those associated with the permit as of January 29, 2004.

(iii) The transferor vessel must forfeit all of its state and Federal fishing permits, and may not fish in any state or Federal commercial fishery.

(iv) NE multispecies Category A and Category B DAS, as defined under paragraphs (d)(1) and (2) of this section, will be reduced by 40 percent upon transfer.

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

(vi) NE multispecies DAS associated with a Confirmation of Permit History may not be transferred.

(vii) *Transfer by vessels fishing under a Sector allocation.* A vessel fishing under the restrictions and conditions of an approved Sector allocation as specified under § 648.87(b), may not transfer DAS to another vessel that is not participating in such Sector during the fishing year in which the vessel is a member of that Sector.

(2) *Application to transfer DAS.* Owners of the vessels applying to transfer and receive DAS must submit a completed application form obtained from the Regional Administrator. The application must be signed by both seller/transferor and buyer/transferee of the DAS, and submitted to the Regional Office at least 45 days before the date on which the applicant desires to have the DAS effective on the buying vessel. The Regional Administrator will notify the applicants of any deficiency in the application pursuant to this section. Applications may be submitted at any time during the fishing year, up until March 1.

(i) *Application information requirements.* An application to transfer NE multispecies DAS must contain the following information: Seller's/transferor's name, vessel name, permit number and official number or state registration number; buyer's/transferee's name, vessel name, permit number and official number or state registration number; total price paid for purchased DAS; signatures of seller and buyer; and date the form was completed.

Information obtained from the transfer application will be held confidential, and will be used only in summarized form for management of the fishery. The application must be accompanied by verification, in writing, that the seller/transferor has requested cancellation of all state and Federal fishing permits from the appropriate agency or agencies.

(ii) *Approval of transfer application.* Unless an application to transfer NE multispecies DAS is denied according to paragraph (l)(2)(iii) of this section, the

Regional Administrator shall issue confirmation of application approval to both seller/transferor and buyer/transferee within 45 days of receipt of an application.

(iii) *Denial of transfer application.* The Regional Administrator may reject an application to transfer NE multispecies DAS for the following reasons: The application is incomplete or submitted past the March 1 deadline; the seller/transferor or buyer/transferee does not possess a valid limited access NE multispecies permit; the seller's/transferor's or buyer's/transferee's DAS is sanctioned, pursuant to an enforcement proceeding; the seller's/transferor's or buyer/transferee's vessel is prohibited from fishing; the seller's/transferor's or buyer's/transferee's limited access NE multispecies permit is sanctioned pursuant to enforcement proceedings; or the seller/transferor has a DAS baseline of zero. Upon denial of an application to transfer NE multispecies DAS, the Regional Administrator shall send a letter to the applicants describing the reason(s) for application rejection. The decision by the Regional Administrator is the final agency decision and there is no opportunity to appeal the Regional Administrator's decision.

■ 12. Section 648.83 is revised to read as follows:

**§ 648.83 Multispecies minimum fish sizes.**

(a) *Minimum fish sizes.* (1) Minimum fish sizes for recreational vessels and charter/party vessels that are not fishing under a NE multispecies DAS are specified in § 648.89. Except as provided in § 648.17, all other vessels are subject to the following minimum fish sizes, determined by total length (TL):

MINIMUM FISH SIZES (TL) FOR COMMERCIAL VESSELS

Species	Sizes (inches)
Cod .....	22 (55.9 cm)
Haddock .....	19 (48.3 cm)
Pollock .....	19 (48.3 cm)
Witch flounder (gray sole) .....	14 (35.6 cm)
Yellowtail flounder .....	13 (33.0 cm)
American plaice (dab) .....	14 (35.6 cm)
Atlantic halibut .....	36 (91.4 cm)
Winter flounder (blackback) ....	12 (30.5 cm)
Redfish .....	9 (22.9 cm)

(2) The minimum fish size applies to whole fish or to any part of a fish while possessed on board a vessel, except as provided in paragraph (b) of this section, and to whole, whole-gutted or gilled fish only, after landing. For purposes of determining compliance

with the possession limits in § 648.86, the weight of fillets and parts of fish, other than whole-gutted or gilled fish, will be multiplied by 3. Fish fillets, or parts of fish, must have skin on while possessed on board a vessel and at the time of landing in order to meet minimum size requirements. "Skin on" means the entire portion of the skin normally attached to the portion of the fish or to fish parts possessed is still attached.

(b) *Exceptions.* (1) Each person aboard a vessel issued a NE multispecies limited access permit and fishing under the DAS program may possess up to 25 lb (11.3 kg) of fillets that measure less than the minimum size, if such fillets are from legal-sized fish and are not offered or intended for sale, trade, or barter. For purposes of determining compliance with the possession limits specified in § 648.86, the weight of fillets and parts of fish, other than whole-gutted or gilled fish, will be multiplied by 3.

(2) Recreational, party, and charter vessels may possess fillets less than the minimum size specified, if the fillets are taken from legal-sized fish and are not offered or intended for sale, trade or barter.

(3) Vessels fishing exclusively with pot gear may possess NE multispecies frames used, or to be used, as bait, that measure less than the minimum fish size, if there is a receipt for purchase of those frames on board the vessel.

(c) *Adjustments.* (1) At any time when information is available, the NEFMC will review the best available mesh selectivity information to determine the appropriate minimum size for the species listed in paragraph (a) of this section, except winter flounder, according to the length at which 25 percent of the regulated species would be retained by the applicable minimum mesh size.

(2) Upon determination of the appropriate minimum sizes, the NEFMC shall propose the minimum fish sizes to be implemented following the procedures specified in § 648.90.

(3) Additional adjustments or changes to the minimum fish sizes specified in paragraph (a) of this section, and exemptions specified in paragraph (b) of this section, may be made at any time after implementation of the final rule as specified under § 648.90.

■ 13. Section 648.84 is revised to read as follows:

**§ 648.84 Gear-marking requirements and gear restrictions.**

(a) Bottom-tending fixed gear, including, but not limited to, gillnets and longlines designed for, capable of,

or fishing for NE multispecies or monkfish, must have the name of the owner or vessel or the official number of that vessel permanently affixed to any buoys, gillnets, longlines, or other appropriate gear so that the name of the owner or vessel or the official number of the vessel is visible on the surface of the water.

(b) Bottom-tending fixed gear, including, but not limited to gillnets or longline gear, must be marked so that the westernmost end (measuring the half compass circle from magnetic south through west to, and including, north) of the gear displays a standard 12-inch (30.5-cm) tetrahedral corner radar reflector and a pennant positioned on a staff at least 6 ft (1.8 m) above the buoy. The easternmost end (meaning the half compass circle from magnetic north through east to, and including, south) of the gear need display only the standard 12-inch (30.5-cm) tetrahedral radar reflector positioned in the same way.

(c) Continuous gillnets must not exceed 6,600 ft (2,011.7 m) between the end buoys.

(d) In the GOM and GB regulated mesh area specified in § 648.80(a), gillnet gear set in an irregular pattern or in any way that deviates more than 30° from the original course of the set must be marked at the extremity of the deviation with an additional marker, which must display two or more visible streamers and may either be attached to or independent of the gear.

■ 14. Section 648.85 is revised to read as follows:

**§ 648.85 Special management programs.**

(a) *U.S./Canada Resource Sharing Understanding.* No NE multispecies fishing vessel, or person on such vessel, may enter, fish in, or be in the U.S./Canada Resource Sharing Understanding Management Areas (U.S./Canada Management Areas), as defined in paragraph (a)(1) of this section, unless the vessel is fishing in accordance with the restrictions and conditions of this section.

(1) *U.S./Canada Management Areas.* A NE multispecies DAS vessel that meets the requirements of paragraph (a)(3) of this section, may fish in the U.S./Canada Management Areas described in paragraphs (a)(1)(i) and (ii) of this section.

(i) *Western U.S./Canada Area.* The Western U.S./Canada Area is the area defined by straight lines connecting the following points in the order stated (a chart depicting this area is available from the Regional Administrator upon request):

**WESTERN U.S./CANADA AREA**

Point	N. lat.	W. long.
USCA 1 .....	42° 20'	68° 50'
USCA 2 .....	39° 50'	68° 50'
USCA 3 .....	39° 50'	66° 40'
USCA 4 .....	40° 40'	66° 40'
USCA 5 .....	40° 40'	66° 50'
USCA 6 .....	40° 50'	66° 50'
USCA 7 .....	40° 50'	67° 00'
USCA 8 .....	41° 00'	67° 00'
USCA 9 .....	41° 00'	67° 20'
USCA 10 .....	41° 10'	67° 20'
USCA 11 .....	41° 10'	67° 40'
USCA 12 .....	42° 20'	67° 40'
USCA 1 .....	42° 20'	68° 50'

(ii) *Eastern U.S./Canada Area.* The Eastern U.S./Canada Area is the area defined by straight lines connecting the following points in the order stated (a chart depicting this area is available from the Regional Administrator upon request):

**EASTERN U.S./CANADA AREA**

Point	N. lat.	W. long.
USCA 12 .....	42° 20'	67° 40'
USCA 11 .....	41° 10'	67° 40'
USCA 10 .....	41° 10'	67° 20'
USCA 9 .....	41° 00'	67° 20'
USCA 8 .....	41° 00'	67° 00'
USCA 7 .....	41° 50'	67° 00'
USCA 6 .....	41° 50'	66° 50'
USCA 5 .....	41° 40'	66° 50'
USCA 4 .....	41° 40'	66° 40'
USCA 15 .....	41° 30'	66° 40'
USCA 14 .....	41° 30'	65° 44.3'
USCA 13 .....	42° 20'	67° 18.4'
USCA 12 .....	42° 20'	67° 40'

(2) *TAC allocation.* (i) Except for the 2004 fishing year, the amount of GB cod and haddock TAC that may be harvested from the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) of this section, and the amount of GB yellowtail flounder TAC that may be harvested from the Western U.S./Canada Area and the Eastern U.S./Canada Area, as described in paragraphs (a)(1)(i) and (ii) of this section, combined, shall be determined by the process specified in paragraphs (a)(2)(i)(A) through (E) of this section.

(A) By June 30 of each year, the Terms of Reference for the U.S./Canada shared resources for GB cod, haddock and yellowtail flounder shall be established by the Steering Committee and the Transboundary Management Guidance Committee (TMGC).

(B) By July 31 of each year, a Transboundary Resource Assessment Committee (TRAC) joint assessment of the U.S./Canada shared resources for GB cod, haddock and yellowtail flounder shall occur.

(C) By August 31 of each year, the TMGC shall recommend TACs for the U.S./Canada shared resources for GB cod, haddock and yellowtail flounder. Prior to October 31 of each year, the Council may refer any or all recommended TACs back to the TMGC and request changes to any or all TACs. The TMGC shall consider such recommendations and respond to the Council prior to October 31.

(D) By October 31 of each year, the Council shall review the TMGC recommended TACs for the U.S. portion of the U.S./Canada Management Area resources for GB cod, haddock and yellowtail flounder. Based on the TMGC recommendations, the Council shall recommend to the Regional Administrator the U.S. TACs for the shared stocks for the subsequent fishing year. If the recommendation of the Council is not consistent with the recommendation of the TMGC, the Regional Administrator may select either the recommendation of the TMGC, or the Council. NMFS shall review the Council's recommendations and shall publish in the **Federal Register** the proposed TACs and provide a 30-day public comment period. NMFS shall make a final determination concerning the TACs and will publish notification of the approved TACs and responses to public comments in the **Federal Register**. The Council, at this time, may also consider modification of management measures in order to ensure compliance with the U.S./Canada Resource Sharing Understanding. Any changes to management measures will be modified pursuant to § 648.90.

(E) For fishing year 2004, the amount of GB cod, haddock and yellowtail flounder TAC that may be harvested under this section will be published in the preamble of the proposed and final rules for Amendment 13.

(ii) *Adjustments to TACs.* Any overages of the GB cod, haddock, or yellowtail flounder TACs that occur in a given fishing year will be subtracted from the respective TAC in the following fishing year.

(3) *Requirements for vessels in U.S./Canada Management Areas.* Any NE multispecies vessel may fish in the U.S./Canada Management Areas, provided it complies with conditions and restrictions of this section. Vessels other than NE multispecies vessels may fish in the U.S./Canada Management Area, subject to the restrictions specified in paragraph (a)(3)(iv)(E) of this section and all other applicable regulations for such vessels.

(i) *VMS requirement.* A NE multispecies DAS vessel in the U.S./

Canada Management Areas described in paragraph (a)(1) of this section must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10. The VMS unit will be polled at least twice per hour in the U.S./Canada Management Areas, when the vessel has declared into the U.S./Canada Management Areas under a groundfish DAS, as specified in paragraph (a)(3)(ii) of this section.

(ii) *Declaration.* All NE multispecies DAS vessels that intend to fish in the U.S./Canada Management Area under a groundfish DAS must, prior to leaving the dock, declare the specific U.S./Canada Management Area described in paragraphs (a)(1)(i) or (ii) of this section, or the specific SAP, described in paragraph (b)(3) of this section, within the U.S./Canada Management Area, through the VMS, in accordance with instructions to be provided by the Regional Administrator. A vessel fishing under a NE multispecies DAS in the U.S./Canada Management Area may not fish, during that same trip, outside of the declared area, and may not enter or exit the declared area more than once per trip. Vessels other than NE multispecies DAS vessels are not required to declare into the U.S./Canada Management Areas. For the purposes of selecting vessels for observer deployment, a vessel fishing in either of the U.S./Canada Areas specified in paragraph (a)(1) of this section, must provide notice to NMFS of the vessel name, contact name for coordination of observer deployment, telephone number for contact, date, time and port of departure, at least 5 working days prior to the beginning of any trip which it declares into the U.S./Canada Area as required under this paragraph (a)(3)(ii).

(iii) *Gear requirements.* NE multispecies vessels fishing with trawl gear in the Eastern U.S./Canada Area defined in paragraph (a)(1)(ii) of this section must fish with a haddock separator trawl or a flounder trawl net, as described in paragraphs (a)(3)(iii)(A) and (B) of this section (both nets may be onboard the fishing vessel simultaneously). No other type of fishing gear may be on the vessel during a trip to the Eastern U.S./Canada Area. The description of the haddock separator trawl and flounder trawl net in paragraph (a)(3)(iii) of this section may be further specified by the Regional Administrator through publication of such specifications in the **Federal Register**, consistent with the requirements of the Administrative Procedure Act.

(A) *Haddock Separator Trawl.* A haddock separator trawl is defined as a

groundfish trawl modified to a vertically oriented trouser trawl configuration, with two extensions arranged one over the other, where a codend shall be attached only to the upper extension, and the bottom extension shall be left open and have no codend attached. A horizontal large mesh separating panel constructed with a minimum of 6.0 inch (15.2 cm) diamond mesh must be installed between the selvages joining the upper and lower panels, as described in paragraph (a)(3)(iii)(A) and (B) of this section, extending forward from the front of the trouser junction to the aft edge of the first belly behind the fishing circle.

(1) *Two-seam bottom trawl nets*—For two seam nets, the separator panel will be constructed such that the width of the forward edge of the panel is 80–85 percent of the width of the after edge of the first belly of the net where the panel is attached. For example, if the belly is 200 meshes wide (from selvedge to selvedge), the separator panel must be no wider than 160–170 meshes wide.

(2) *Four-seam bottom trawl nets*—For four seam nets, the separator panel will be constructed such that the width of the forward edge of the panel is 90–95 percent of the width of the after edge of the first belly of the net where the panel is attached. For example, if the belly is 200 meshes wide (from selvedge to selvedge), the separator panel must be no wider than 180–190 meshes wide. The separator panel will be attached to both of the side panels of the net along the midpoint of the side panels. For example, if the side panel is 100 meshes tall, the separator panel must be attached at the 50th mesh.

(B) *Flounder Trawl Net.* A flounder trawl net is defined as bottom trawl gear meeting one of the following two net descriptions:

(1) A two seam low-rise net constructed with mesh size in compliance with § 648.80(a)(4) where the maximum footrope length is not greater than 105 ft (32.0 m) and the headrope is at least 30 percent longer than the footrope. The footrope and headrope lengths shall be measured from the forward wing end, so that the vertical dimension of the forward wing end measures 3.0 ft (0.9 m) or less in height. Floats are prohibited in the center 50 percent of the headrope.

(2) A two seam low-rise net constructed with mesh size in compliance with § 648.80(a)(4) with the exception that the mesh size in the square of the top panel of the net, identified as the area located from the headrope to the beginning of the first belly, shall not be smaller than 12.0-in (30.5-cm) square mesh. The vertical

dimension of the forward wing end may not measure more than 3.0 ft (0.9 m) in height.

(iv) *Harvest controls.* Vessels fishing in the U.S./Canada Management Areas are subject to the following restrictions, in addition to any other possession or landing limits applicable to vessels not fishing in the U.S./Canada Management Areas.

(A) *Cod landing limit restrictions.* Notwithstanding other applicable possession and landing restrictions under this part, NE multispecies vessels fishing in the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) of this section may not land more than 500 lb (226.8 kg) of cod per DAS, or any part of a DAS, up to 5,000 lb (2,268 kg) per trip, not to exceed 5 percent of the total catch on board, whichever is less, unless otherwise restricted under this part.

(1) *Possession restriction when 100 percent of TAC is harvested.* When the Regional Administrator projects that 100 percent of the TAC allocation for cod specified in paragraph (a)(2) of this section will be harvested, NMFS shall, through rulemaking consistent with the Administrative Procedure Act, close the Eastern U.S./Canada Area as specified in paragraph (a)(3)(iv)(E) of this section and prohibit all vessels from harvesting, possessing, or landing cod in or from the Eastern U.S./Canada Area.

(2) [Reserved]

(B) *Haddock landing limit*—(1) *Initial haddock landing limit.* The initial haddock landing limit is specified in § 648.86(a), unless adjusted pursuant to paragraph (a)(3)(iv)(B)(2) and (3) of this section.

(2) *Implementation of haddock landing limit for Eastern U.S./Canada Area.* When the Regional Administrator projects that 70 percent of the TAC allocation for haddock specified under paragraph (a)(2) of this section will be harvested, NMFS shall implement, through rulemaking consistent with the Administrative Procedure Act, a haddock trip limit for vessels fishing in the Eastern U.S./Canada Area of 1,500 lb (680.4 kg) per day, and 15,000 lb (6,804.1 kg) per trip.

(3) *Possession restriction when 100 percent of TAC is harvested.* When the Regional Administrator projects that 100 percent of the TAC allocation for haddock specified in paragraph (a)(2) of this section will be harvested, NMFS shall, through rulemaking consistent with the Administrative Procedure Act, close the Eastern U.S./Canada Area to groundfish DAS vessels as specified in paragraph (a)(3)(iv)(E) of this section and prohibit all vessels from harvesting,

possessing, or landing haddock in or from the Eastern U.S./Canada Area.

(C) *Yellowtail flounder landing limit*—(1) *Initial yellowtail flounder landing limit*. The initial yellowtail flounder possession limit is specific to the CA II Yellowtail Flounder SAP as specified in paragraph (b)(3)(viii) if this section, unless adjusted pursuant to paragraph (a)(3)(iv)(C)(2) and (3) of this section.

(2) *Implementation of yellowtail flounder landing limit for Western and Eastern U.S./Canada Areas*. When the Regional Administrator projects that 70 percent of the TAC allocation for yellowtail flounder specified under paragraph (a)(2) of this section will be harvested, NMFS shall impose and/or adjust, through rulemaking consistent with the Administrative Procedure Act, the yellowtail flounder trip limit for vessels fishing in both the Western U.S./Canada Area and the Eastern U.S./Canada Area to 1,500 lb (680.4 kg) per day, and 15,000 lb (6,804.1 kg) per trip.

(3) *Possession restriction when 100 percent of TAC is harvested*. When the Regional Administrator projects that 100 percent of the TAC allocation for yellowtail flounder specified under paragraph (a)(2) of this section will be harvested, NMFS shall, through rulemaking consistent with the Administrative Procedure Act, close the Eastern U.S./Canada Area to groundfish DAS vessels as specified under paragraph (a)(3)(iv)(E) of this section and prohibit all vessels from harvesting, possessing, or landing yellowtail flounder from the U.S./Canada Management Area.

(D) *Other restrictions or in-season adjustments*. In addition to the possession restrictions specified in paragraph (a)(3)(iv) of this section, when 30 percent and/or 60 percent of the TAC allocations specified under paragraph (a)(2) of this section are projected to be harvested, the Regional Administrator, through rulemaking consistent with the Administrative Procedure Act, may modify the gear requirements, modify or close access to the U.S./Canada Management Areas, increase or decrease the trip limits specified under paragraphs (a)(3)(iv)(A) through (C) of this section, or limit the total number of trips into the U.S./Canada Management Area, to prevent over-harvesting or under-harvesting the TAC allocations.

(E) *Closure of Eastern U.S./Canada Area*. When the Regional Administrator projects that the TAC allocations specified under paragraph (a)(2) of this section will be caught, NMFS shall close, through rulemaking consistent with the Administrative Procedure Act, the Eastern U.S./Canada Area to all

groundfish DAS vessels, unless otherwise allowed under this paragraph (a)(3)(iv)(E). Should the Eastern U.S./Canada Area close as described in this paragraph (a)(3)(iv)(E), groundfish DAS vessels may continue to fish in a SAP within the Eastern U.S./Canada Area, provided that the TAC for the target stock identified for that particular SAP has not been fully harvested. For example, should the TAC allocation for GB cod specified under paragraph (a)(2) of this section be attained, and the Eastern U.S./Canada Area closure implemented, vessels could continue to fish for yellowtail flounder within the SAP identified as the Closed Area II Yellowtail Flounder SAP, described in paragraph (b)(3) of this section, in accordance with the requirements of that program. Upon closure of the Eastern U.S./Canada Area, vessels may transit through this area as described in paragraph (a)(1)(ii) of this section, provided that its gear is stowed in accordance with the provisions of § 648.23(b), unless otherwise restricted under this part.

(v) *Reporting*. The owner or operator of an NE multispecies DAS vessel must submit reports through the VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished when declared into either of the U.S./Canada Management Areas. The reports must be submitted in 24-hr intervals for each day beginning at 0000 hours and ending at 2400 hours. The reports must be submitted by 0900 hours of the following day. For vessels that have declared into the Eastern U.S./Canada Area in accordance with paragraph (a)(3)(ii) of this section, the reports must include at least the following information: Total lb/kg of cod, haddock and yellowtail flounder kept and total lb of cod, haddock, and yellowtail flounder discarded. For vessels that have declared into the Western U.S./Canada Area in accordance with paragraph (a)(3)(ii) of this section, the reports must include at least the following information: Total lb/kg of yellowtail flounder kept and total lb of yellowtail flounder discarded.

(vi) *Withdrawal from U.S./Canada Resource Sharing Understanding*. At any time, the Regional Administrator, in consultation with the Council, may withdraw from the provisions of the U.S./Canada Resource Sharing Understanding described in this section, if the Understanding is determined to be inconsistent with the goals and objectives of the FMP, the Magnuson-Stevens Act, or other applicable law. If the United States withdraws from the Understanding, the implementing measures, including TACs, remain in

place until changed through the framework or FMP amendment process.

(b) *Special Access Programs*. A SAP is a narrowly defined fishery that results in increased access to a stock that, in the absence of such authorization, would not be allowed due to broadly applied regulations. A SAP authorizes specific fisheries targeting either NE multispecies stocks or non-multispecies stocks in order to allow an increased yield of the target stock(s) without undermining the achievement of the goals of the NE Multispecies FMP. A SAP should result in a harvest level that more closely approaches OY, without compromising efforts to rebuild overfished stocks, end overfishing, minimize bycatch, or minimize impact on EFH. Development of a SAP requires a relatively high level of fishery dependent and fishery independent information in order to be consistent with this rationale.

(1) *SAPs harvesting NE multispecies*. A SAP to harvest NE multispecies may be proposed by the Council and approved by NMFS through the framework process described under § 648.90.

(2) *SAPs harvesting stocks other than NE multispecies*. A SAP to harvest stocks of fish other than NE multispecies (non-multispecies SAP) may be proposed by the Council and approved by NMFS through the framework process described under § 648.90.

(3) *Closed Area II Yellowtail Flounder SAP*—(i) *Eligibility*. Vessels issued a valid limited access NE multispecies DAS permit are eligible to participate in the Closed Area II Yellowtail Flounder SAP, and may fish in the Closed Area II Yellowtail Flounder Access Area, as described in paragraph (b)(3)(ii) of this section, for the period specified in paragraph (b)(3)(iii) of this section, when fishing under an NE multispecies DAS, provided such vessels comply with the requirements of this section, and provided the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) is not closed according to the provisions specified under paragraph (a)(1)(iv) of this section. Copies of a chart depicting this area are available from the Regional Administrator upon request.

(ii) *Closed Area II Yellowtail Flounder Access Area*. The Closed Area II Yellowtail Flounder Access Area is the area defined by straight lines connecting the following points in the order stated:

CLOSED AREA II YELLOWTAIL  
FLOUNDER ACCESS AREA

Point	N. lat.	W. long.
Ytail 1 .....	41°30'	67°20'
Ytail 2 .....	41°30'	66°34.8'
G5 .....	41°18.6'	66°24.8' <sup>1</sup>
CII 2 .....	41°00'	66°35.8'
CII 1 .....	41°00'	67°20'
Ytail 1 .....	41°30'	67°20'

<sup>1</sup> The U.S.-Canada Maritime Boundary.

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

(iv) *VMS requirement.* All NE multispecies DAS vessels in the U.S./Canada Management Areas described in paragraph (a)(1) of this section must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(v) *Declaration.* For the purposes of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name, contact name for coordination of observer deployment, telephone number for contact, date, time and port of departure, and special access program to be fished, at least 5 working days prior to the beginning of any trip which it declares into the Special Access Program as required under this paragraph (b)(3)(v). Prior to departure from port, a vessel intending to participate in the Closed Area II Yellowtail Flounder SAP must declare into this area through the VMS, in accordance with instructions provided by the Regional Administrator. In addition to fishing in the Closed Area II Yellowtail Flounder SAP, a vessel, on the same trip, may also declare its intent to fish in the area outside of the Closed Area II that resides within the Eastern U.S./Canada Area, as defined in paragraph (a)(1)(ii) of this section, provided the vessel fishes in this area under the most restrictive provisions of either the Closed Area II Yellowtail Flounder SAP, or the Eastern U.S./Canada Area.

(vi) *Number of trips per vessel.* Unless otherwise authorized by the Regional Administrator as specified in paragraph (a)(3)(iv)(D) of this section, eligible vessels are restricted to two trips per month, during the season described in paragraph (b)(3)(iii) of this section.

(vii) *Maximum number of trips.* Unless otherwise authorized by the Regional Administrator as specified in paragraph (a)(3)(iv)(D) of this section, the total number of trips by all vessels combined that may be declared into the

Closed Area II Yellowtail Flounder SAP is 320 trips per fishing year.

(viii) *Trip limits.* Unless otherwise authorized by the Regional Administrator as specified in paragraph (a)(3)(iv)(D) of this section, a vessel fishing in the Closed Area II Yellowtail Flounder SAP may fish for, possess and land up to 30,000 lb (13,608.2 kg) of yellowtail flounder per trip, and may not possess more than one-fifth of the daily cod possession limit specified for the Eastern U.S./Canada Area under paragraph (a)(3)(iv)(A) of this section.

(ix) *Area fished.* Eligible vessels that have declared a trip into the Closed Area II Yellowtail Flounder SAP, and other areas as specified under paragraph (b)(3)(v) of this section, may not fish, during the same trip, outside of the declared area, and may not enter or exit the area more than once per trip.

(x) *Gear requirements.* Vessels fishing with trawl gear under an NE multispecies DAS in the U.S./Canada Management Areas defined in paragraph (a)(1) of this section, may not fish with, or possess on board, any fishing gear other than a haddock separator trawl or flounder trawl net (both nets may be onboard the fishing vessel simultaneously).

(4) *SNE/MA Winter Flounder SAP.* A limited access NE multispecies vessel fishing for summer flounder west of 72° 30' W. lat., using mesh required under § 648.104(a), may retain and land up to 200 lb (90.7 kg) of winter flounder while not under an NE multispecies DAS, provided the vessel complies with the following restrictions:

(i) The vessel must possess a valid summer flounder permit as required under § 648.4(a)(3), and be in compliance with the restrictions of subpart G of this part;

(ii) The total amount of winter flounder on board must not exceed the amount of summer flounder on board;

(iii) The vessel must not be fishing under an NE multispecies DAS; and

(iv) Fishing for, retention, and possession of regulated species other than winter flounder is prohibited.

■ 15. Section 648.86 is revised to read as follows:

**§ 648.86 Multispecies possession restrictions.**

Except as provided in § 648.17, the following possession restrictions apply:

(a) *Haddock—* (1) *NE multispecies DAS vessels.* (i) From May 1 through September 30, except as provided in paragraph (a)(1)(iii) of this section, or unless otherwise restricted under § 648.85, a vessel that fishes under an NE multispecies DAS may land up to 3,000 lb (1,360.8 kg) of haddock per

DAS fished, or any part of a DAS fished, up to 30,000 lb (13,608 kg) per trip, provided it has at least one standard tote on board. Haddock on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) From October 1 through April 30, except as provided in paragraph (a)(1)(iii) of this section, or unless otherwise restricted under § 648.85, a vessel that fishes under an NE multispecies DAS may land up to 5,000 lb (2,268 kg) of haddock per DAS fished, or any part of a DAS fished, up to 50,000 lb (22,680 kg) per trip, provided it has at least one standard tote on board. Haddock on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(iii) *Adjustments—*(A) *Adjustment to the haddock trip limit to prevent exceeding the target TAC.* At any time during the fishing year, if the Regional Administrator projects that the target TAC for haddock will be exceeded, NMFS may adjust, through publication of a notification in the **Federal Register**, the trip limit per DAS and/or the maximum trip limit to an amount that the Regional Administrator determines will prevent exceeding the target TAC.

(B) *Adjustment of the haddock trip limit to allow harvesting of up to 75 percent of the target TAC.* At any time during the fishing year, if the Regional Administrator projects that less than 75 percent of the target TAC for haddock will be harvested by the end of the fishing year, NMFS may adjust or eliminate, through publication of a notification in the **Federal Register**, the trip limit per DAS and/or the maximum trip limit to an amount, including elimination of the per day and/or per trip limit, that is determined to be sufficient to allow harvesting of at least 75 percent of the target TAC, but not to exceed the target TAC.

(2) *Scallop dredge vessels.* (i) No person owning or operating a scallop dredge vessel issued a NE multispecies permit may land haddock from, or possess haddock on board, a scallop dredge vessel from January 1 through June 30.

(ii) No person owning or operating a scallop dredge vessel without an NE multispecies permit may possess haddock in, or harvested from, the EEZ from January 1 through June 30.

(iii) Unless otherwise authorized by the Regional Administrator as specified in paragraph (f) of this section, scallop dredge vessels or persons owning or operating a scallop dredge vessel that is

fishing under a scallop DAS allocated under § 648.53 may land or possess on board up to 300 lb (136.1 kg) of haddock, except as specified in § 648.88(c), provided that the vessel has at least one standard tote on board. This restriction does not apply to vessels issued NE multispecies Combination Vessel permits that are fishing under a multispecies DAS. Haddock on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(b) *Cod*— (1) *GOM cod landing limit.* (i) Except as provided in paragraphs (b)(1)(ii) and (b)(4) of this section, or unless otherwise restricted under § 648.85, a vessel fishing under a NE multispecies DAS may land only up to 800 lb (362.9 kg) of cod during the first 24-hr period after the vessel has started a trip on which cod were landed (e.g., a vessel that starts a trip at 6 a.m. may call out of the DAS program at 11 a.m. and land up to 800 lb (362.9 kg), but the vessel cannot land any more cod on a subsequent trip until at least 6 a.m. on the following day). For each trip longer than 24 hr, a vessel may land up to an additional 800 lb (362.9 kg) for each additional 24-hr block of DAS fished, or part of an additional 24-hr block of DAS fished, up to a maximum of 4,000 lb (1,818.2 kg) per trip (e.g., a vessel that has been called into the DAS program for more than 24 hr, but less than 48 hr, may land up to, but no more than, 1,600 lb (725.7 kg) of cod). A vessel that has been called into only part of an additional 24-hr block of a DAS (e.g., a vessel that has been called into the DAS program for more than 24 hr, but less than 48 hr) may land up to an additional 800 lb (362.9 kg) of cod for that trip, provided the vessel complies with the provisions of paragraph (b)(1)(ii) of this section. Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) A vessel that has been called into only part of an additional 24-hr block may come into port with and offload cod up to an additional 800 lb (362.9 kg), provided that the vessel operator does not call out of the DAS program as described under § 648.10(c)(3) and does not depart from a dock or mooring in port, unless transiting, as allowed in paragraph (b)(3) of this section, until the rest of the additional 24-hr block of the DAS has elapsed, regardless of whether all of the cod on board is offloaded (e.g., a vessel that has been called into the DAS program for 25 hr, at the time of landing, may land only up to 1,600 lb (725.6 kg) of cod, provided the vessel does not call out of the DAS program or

leave port until 48 hr have elapsed from the beginning of the trip).

(2) *GB cod landing and maximum possession limits.* (i) Unless as provided under § 648.85, or under the provisions of paragraph (b)(2)(iii) of this section for vessels fishing with hook gear, for each fishing year, a vessel that is exempt from the landing limit described in paragraph (b)(1) of this section, and fishing under a NE multispecies DAS may land up to 1,000 lb (453.6 kg) of cod during the first 24-hr period after the vessel has started a trip on which cod were landed (e.g., a vessel that starts a trip at 6 a.m. may call out of the DAS program at 11 a.m. and land up to 1,000 lb (453.6 kg)), but the vessel cannot land any more cod on a subsequent trip until at least 6 a.m. on the following day). For each trip longer than 24 hr, a vessel may land up to an additional 1,000 lb (453.6 kg) for each additional 24-hr block of DAS fished, or part of an additional 24-hr block of DAS fished, up to a maximum of 10,000 lb (4536 kg) per trip (e.g., a vessel that has been called into the DAS program for 48 hr or less, but more than 24 hr, may land up to, but no more than, 2,000 lb (907.2 kg) of cod). A vessel that has called into only part of an additional 24-hr block of a DAS (e.g., a vessel that has called into the DAS program for more than 24 hr, but less than 48 hr) may land up to an additional 1,000 lb (453.6 kg) of cod for that trip of cod for that trip provided the vessel complies with paragraph (b)(2)(ii) of this section. Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) A vessel that has been called into only part of an additional 24 hr block, may come into port with and offload cod up to an additional 1,000 lb (453.6 kg), provided that the vessel operator does not call-out of the DAS program as described under § 648.10(c)(3) and does not depart from a dock or mooring in port, unless transiting as allowed in paragraph (b)(3) of this section, until the rest of the additional 24-hr block of the DAS has elapsed regardless of whether all of the cod on board is offloaded (e.g., a vessel that has been called into the DAS program for 25 hr, at the time of landing, may land only up to 2,000 lb (907.2 kg) of cod, provided the vessel does not call out of the DAS program or leave port until 48 hr have elapsed from the beginning of the trip).

(iii) [Reserved]

(3) *Transiting.* A vessel that has exceeded the cod landing limit as specified in paragraphs (b)(1) and (2) of this section, and that is, therefore, subject to the requirement to remain in port for the period of time described in

paragraphs (b)(1)(ii)(A) and (b)(2)(ii)(A) of this section, may transit to another port during this time, provided that the vessel operator notifies the Regional Administrator, either at the time the vessel reports its hailed weight of cod, or at a later time prior to transiting, and provides the following information: Vessel name and permit number, destination port, time of departure, and estimated time of arrival. A vessel transiting under this provision must stow its gear in accordance with one of the methods specified in § 648.23(b) and may not have any fish on board the vessel.

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

(c) *Atlantic halibut.* A vessel issued a NE multispecies permit under § 648.4(a)(1) may land or possess on board no more than one Atlantic halibut per trip, provided the vessel complies with other applicable provisions of this part.

(d) *Small-mesh multispecies.* (1) Vessels issued a valid Federal NE multispecies permit specified in § 648.4(a)(1) are subject to the following possession limits for small-mesh multispecies, which are based on the mesh size used by, or on board, vessels fishing for, in possession of, or landing small-mesh multispecies.

(i) *Vessels using mesh size smaller than 2.5 inches (6.35 cm) and vessels without a letter of authorization.* Owners or operators of vessels fishing for, in possession of, or landing small-mesh multispecies with, or having on board except as provided in this section, nets of mesh size smaller than 2.5 inches (6.35 cm) (as applied to the part of the net specified in paragraph

(d)(1)(iv) of this section), and vessels that have not been issued a letter of authorization pursuant to paragraphs (d)(1)(ii) or (iii) of this section, may possess on board and land up to 3,500 lb (1,588 kg) of combined silver hake and offshore hake. This possession limit on small-mesh multispecies does not apply if all nets with mesh size smaller than 2.5 inches (6.35 cm) have not been used to catch fish for the entire fishing trip and the nets have been properly stowed pursuant to § 648.23(b), and the vessel is fishing with a mesh size and a letter of authorization as specified in paragraphs (d)(1)(ii), (d)(1)(iii), and (d)(2) of this section. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection. The vessel is subject to applicable restrictions on gear, area, and time of fishing specified in § 648.80 and any other applicable provision of this part.

(ii) *Vessels authorized to use nets of mesh size 2.5 inches (6.35 cm) or greater.* Except as provided in paragraph (d)(3) of this section, owners and operators of vessels issued a valid letter of authorization pursuant to paragraph (d)(2) of this section authorizing the use of nets of mesh size 2.5 inches (6.35 cm) or greater, may fish for, possess, and land small-mesh multispecies up to 7,500 lb (3,402 kg) of combined silver hake and offshore hake when fishing with nets of a minimum mesh size of 2.5 inches (6.35 cm) (as applied to the part of the net specified in paragraph (d)(1)(iv) of this section), provided that any nets of mesh size smaller than 2.5 inches (6.35 cm) have not been used to catch such fish and are properly stowed pursuant to § 648.23(b) for the entire trip. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection. The vessel is subject to applicable restrictions on gear, area, and time of fishing specified in § 648.80 and any other applicable provision of this part.

(iii) *Vessels authorized to use nets of mesh size 3 inches (7.62 cm) or greater.* Except as provided in paragraph (d)(3) of this section, owners and operators of vessels issued a valid letter of authorization pursuant to paragraph (d)(2) of this section authorizing the use of nets of mesh size 3 inches (7.62 cm) or greater, may fish for, possess, and land small-mesh multispecies up to only 30,000 lb (13,608 kg) combined silver hake and offshore hake when fishing with nets of a minimum mesh size of 3 inches (7.62 cm) (as applied to

the part of the net specified in paragraph (d)(1)(iv) of this section), provided that any nets of mesh size smaller than 3 inches (7.62 cm) have not been used to catch such fish and are properly stowed pursuant to § 648.23(b) for the entire trip. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection. The vessel is subject to applicable restrictions on gear, area, and time of fishing specified in § 648.80 and any other applicable provision of this part.

(iv) *Application of mesh size.* Counting from the terminus of the net, the mesh size restrictions specified in paragraphs (d)(1)(i), (ii), and (iii) of this section are only applicable to the first 100 meshes (200 bars in the case of square mesh) for vessels greater than 60 ft (18.3 m) in length, and to the first 50 meshes (100 bars in the case of square mesh) for vessels 60 ft (18.3 m) or less in length. Notwithstanding any other provision of this section, the restrictions and conditions pertaining to mesh size do not apply to nets or pieces of net smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)).

(2) *Possession limit for vessels participating in the northern shrimp fishery.* Owners and operators of vessels participating in the Small-Mesh Northern Shrimp Fishery Exemption, as described in § 648.80(a)(5), with a vessel issued a valid Federal NE multispecies permit specified under § 648.4(a)(1), may possess and land silver hake and offshore hake, combined, up to an amount equal to the weight of shrimp on board, not to exceed 3,500 lb (1,588 kg). Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(3) *Possession restriction for vessels electing to transfer small-mesh NE multispecies at sea.* Owners and operators of vessels issued a valid Federal NE multispecies permit and issued a letter of authorization to transfer small-mesh NE multispecies at sea according to the provisions specified in § 648.13(b) are subject to a combined silver hake and offshore hake possession limit that is 500 lb (226.8 kg) less than the possession limit the vessel otherwise receives. This deduction shall be noted on the transferring vessel's letter of authorization from the Regional Administrator.

(e) [Reserved]

(f) *Calculation of weight of fillets or parts of fish.* The possession limits described under this part are based on

the weight of whole, whole-gutted, or gilled fish. For purposes of determining compliance with the possession limits specified in paragraphs (a), (b), or (c) of this section, the weight of fillets and parts of fish, other than whole-gutted or gilled fish, as allowed under § 648.83(a) and (b), will be multiplied by 3.

(g) *Yellowtail flounder—(1) Cape Cod/GOM yellowtail flounder possession limit restrictions.* Except when fishing under the recreational and charter/party restrictions specified under § 648.89, unless otherwise restricted as specified in §§ 648.82(b)(5), and 648.88(c), a qualified vessel issued a NE multispecies permit and fishing with a limited access Handgear A permit, under a NE multispecies DAS, or under a monkfish DAS when fishing under the limited access monkfish Category C or D permit provisions, may fish for, possess and land yellowtail flounder in or from the Cape Cod/GOM Yellowtail Flounder Area described in paragraph (g)(1)(i) of this section, subject to the requirements and trip limits specified in paragraph (g)(1)(ii) of this section.

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

CAPE COD/GOM YELLOWTAIL FLOUNDER AREA

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

<sup>1</sup> South facing shoreline of Cape Cod, MA.  
<sup>2</sup> East facing shoreline of Maine.

(ii) *Requirements.* Vessels fishing in the Cape Cod/GOM Yellowtail Flounder Area are bound by the following requirements:

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

(B) The vessel may not fish inside the SNE/MA Yellowtail Flounder Area, for a minimum of 7 consecutive days (when fishing with a limited access Handgear A permit, under the NE multispecies DAS program, or under the monkfish DAS program if the vessels is fishing under the limited access monkfish Category C or D permit provisions), unless otherwise specified in paragraph (g)(3) of this section. Vessels subject to these restrictions may fish any portion of a trip in the portion of the GB, SNE, and MA Regulated Mesh Areas outside of the SNE/MA Yellowtail Flounder Area, provided the vessel complies with the possession restrictions specified under this paragraph (g). Vessels subject to these restrictions may transit the SNE/MA Yellowtail Flounder Area, provided the gear is stowed in accordance with § 648.23(b).

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

(D) During the periods June through September, and December through March, the vessel may land or possess on board only up to 750 lb (340.2 kg) of yellowtail flounder per DAS, or any part of a DAS, up to a maximum possession limit of 3,000 lb (1,364.0 kg) per trip.

(2) *SNE/MA yellowtail flounder possession limit restrictions.* Except when fishing under the recreational and charter/party restrictions specified in § 648.89, unless otherwise restricted as specified in § 648.82(b)(3) and (b)(5), and § 648.88(c), a vessel issued a NE multispecies permit and fishing with a limited access Handgear A permit, under a NE multispecies DAS, or under a monkfish DAS when fishing under the limited access monkfish Category C or D permit provisions, in the SNE/MA Yellowtail Flounder Area, described in paragraph (g)(2)(i) of this section, is subject to the requirements and trip limits specified in paragraph (g)(2)(ii) of this section, in order to fish for, possess, or land yellowtail flounder.

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

SNE/MID-ATLANTIC YELLOWTAIL FLOUNDER AREA

Point	N. lat.	W. long.
SYT1 .....	38°00'	(1)
SY2 .....	38°00'	72°00'

SNE/MID-ATLANTIC YELLOWTAIL FLOUNDER AREA—Continued

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

<sup>1</sup> East facing shoreline of Virginia.  
<sup>2</sup> South facing shoreline of Cape Cod, MA.

(ii) *Requirements.* Vessels fishing in the SNE/MA Yellowtail Flounder Area are bound by the following requirements:

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

(B) The vessel may not fish in the Cape Cod/GOM Yellowtail Flounder Area for a minimum of 7 consecutive days (when fishing with a limited access Handgear A permit, under the NE multispecies DAS program, or under the monkfish DAS program if the vessels is fishing under the limited access monkfish Category C or D permit provisions), unless otherwise specified in paragraph (g)(3) of this section. Vessels subject to these restrictions may fish any portion of the GB, SNE, and MA Regulated Mesh Areas outside of the Cape Cod/GOM Yellowtail Flounder Area, provided the vessel complies with the possession restrictions specified under this paragraph (g). Vessels subject to these restrictions may transit the Cape Cod/GOM Yellowtail Flounder Area, provided gear is stowed in accordance with § 648.23(b).

(C) During the period March through June, vessels may land or possess on board only up to 250 lb (113.6 kg) of yellowtail flounder per trip.

(D) During the period July through February, vessels may land or possess on board only up to 750 lb (340.2 kg) of yellowtail flounder per DAS, or any part of a DAS, up to a maximum possession limit of 3,000 lb (1,364.0 kg) per trip.

(3) During the months of January, February, April, May, July through September, and December, when the yellowtail flounder trip limit requirements for the Cape Cod/GOM and SNE/MA Yellowtail Flounder Areas are the same, vessels that obtain a

yellowtail flounder possession/landing letter of authorization as specified under paragraphs (g)(1)(ii)(A) and (g)(2)(ii)(A) of this section are not subject to the requirements specified under paragraphs (g)(1)(ii)(B) and (g)(2)(ii)(B) of this section.

(h) *Other possession restrictions.* Vessels are subject to any other applicable possession limit restrictions of this part.

■ 16. Section 648.87 is revised to read as follows:

§ 648.87 Sector allocation.

(a) *Procedure for implementing Sector allocation proposal.* (1) Any person may submit a Sector allocation proposal for a group of limited access NE multispecies vessels to the Council, at least 1 year in advance of the start of a sector, and request that the Sector be implemented through a framework procedure specified at § 648.90(a)(2), in accordance with the conditions and restrictions of this section.

(2) Upon receipt of a Sector allocation proposal, the Council must decide whether to initiate such framework. Should a framework adjustment to authorize a Sector allocation proposal be initiated, the Council should follow the framework adjustment provisions of § 648.90(a)(2). Any framework adjustment developed to implement a Sector allocation proposal must be in compliance with the general requirements specified in paragraphs (b) and (c) of this section. Vessels that do not join a Sector would remain subject to the NE multispecies regulations for non-Sector vessels specified under this part.

(b) *General requirements applicable to all Sector allocations.* (1) All Sectors approved under the provisions of paragraph (a) of this section must submit the documents specified under paragraphs (a)(1) and (b)(2) of this section, and comply with the conditions and restrictions of this paragraph (b)(1).

(i) The sector allocation must be based on either a TAC limit (hard TAC), or a maximum DAS usage limit for all vessels with a target TAC.

(ii) A Sector shall be allocated no more than 20 percent of a stock's TAC, unless otherwise authorized by the Council.

(iii) Allocation of catch or effort shall be based upon documented accumulated catch histories of the harvested stock(s) for each vessel electing to fish in a Sector, for the 5-year period prior to submission of a Sector allocation proposal to the Council. Documented catch shall be based on dealer landings reported to NMFS.

(iv) Landings histories for Sectors formed to harvest GB cod during the period 2004 through 2007 shall be based on fishing years 1996 through 2001.

(v) The Sector allocation proposal must contain an appropriate analysis that assesses the impact of the proposed Sector, in compliance with the National Environmental Policy Act.

(vi) Once a hard TAC allocated to a Sector is projected to be exceeded, Sector operations will be terminated for the remainder of the fishing year.

(vii) Should a hard TAC allocated to a Sector be exceeded in a given fishing year, the Sector's allocation will be reduced by the overage in the following fishing year, and the Sector, each vessel, and vessel operator and/or vessel owner participating in the Sector may be charged jointly and severally for civil penalties and permit sanctions pursuant to 15 CFR part 904. If the Sector exceeds its TAC in more than 1 fishing year, the Sector's share may be permanently reduced, or the Sector's authorization to operate may be withdrawn.

(viii) If a hard or target TAC allocated to a Sector is not exceeded in a given fishing year, the Sector's allocation of TAC or DAS will not be reduced for the following fishing year as a result of an overage of a hard or target TAC by non-compliant Sectors or by non-Sector vessels.

(ix) Unless exempted through a Letter of Authorization specified in paragraph (c)(3) of this section, each vessel operator and/or vessel owner fishing under an approved Sector must comply with all NE multispecies management measures of this part and other applicable law. Each vessel and vessel operator and/or vessel owner participating in a Sector must also comply with all applicable requirements and conditions of the Operating Plan specified in paragraph (b)(2) of this section and the Letter of Authorization issued pursuant to paragraph (c)(3) of this section. It shall be unlawful to violate any such conditions and requirements and each Sector, vessel, and vessel operator and/or vessel owner participating in the Sector may be charged jointly and severally for civil penalties and permit sanctions pursuant to 15 CFR part 904.

(x) Approved Sectors must submit an annual year-end report to NMFS and the Council, within 60 days of the end of the fishing year, that summarizes the fishing activities of its members, including harvest levels of all federally managed species by Sector vessels, enforcement actions, and other relevant information required to evaluate the performance of the Sector.

(xi) Once a vessel operator and/or vessel owner signs a binding contract to participate in a Sector, that vessel must remain in the Sector for the remainder of the fishing year.

(xii) Vessels that fish under the DAS program outside the Sector allocation in a given fishing year may not participate in a Sector during that same fishing year, unless the Operations Plan provides an acceptable method for accounting for DAS used prior to implementation of the Sector.

(xiii) Once a vessel operator and/or vessel owner has agreed to participate in a Sector as specified in paragraph (b)(1)(xi) of this section, that vessel must remain in the Sector for the entire fishing year. If a permit is transferred by a Sector participant during the fishing year, the new owner must also comply with the Sector regulations for the remainder of the fishing year.

(xiv) Vessels and vessel operators and/or vessel owners removed from a Sector for violation of the Sector rules will not be eligible to fish under the NE multispecies regulations for non-Sector vessels specified under this part.

(xv) All vessel operators and/or vessel owners fishing in an approved Sector must be issued and have on board the vessel, a Letter of Authorization (LOA) issued by the National Marine Fisheries Service pursuant to paragraph (c)(3) of this section.

(xvi) The Regional Administrator may exempt participants in the Sector, pursuant to paragraph (c)(3) of this section, from any Federal fishing regulations necessary to allow such participants to fish in accordance with the Operations Plan, with the exception of regulations addressing the following measures for Sectors based on a hard TAC: Year-round closure areas, permitting restrictions (e.g., vessel upgrades, etc.), gear restrictions designed to minimize habitat impacts (e.g., roller gear restrictions, etc.), and reporting requirements (not including DAS reporting requirements). A framework adjustment, as specified in § 648.90, may be submitted to exempt Sector participants from regulations not authorized to be exempted pursuant to paragraph (c)(2) of this section.

(2) *Operations Plan and Sector Contract.* Each Sector must submit an Operations Plan and Sector Contract to the Regional Administrator at least 3 months prior to the beginning of each fishing year. The following elements must be contained in either the Operations Plan or Sector Contract:

(i) A list of all parties, vessels, and vessel owners who will participate in the Sector;

(ii) A contract signed by all Sector participants indicating their agreement to abide by the Operations Plan;

(iii) The name of a designated representative or agent for service of process;

(iv) If applicable, a plan for consolidation or redistribution of catch or effort, detailing the quantity and duration of such consolidation or redistribution of catch or effort within the Sector;

(v) Historic information on the catch or effort history of the Sector participants, consistent with the requirements specified in paragraph (b) of this section, and any additional historic information specified in the framework adjustment;

(vi) A plan and analysis of the specific management rules the Sector participants will agree to abide by in order to avoid exceeding the allocated TAC (or target TAC under a DAS allocation), including detailed plans for enforcement of the Sector rules, as well as detailed plans for the monitoring and reporting of landings and discards;

(vii) A plan that defines the procedures by which members of the Sector that do not abide by the rules of the Sector will be disciplined or removed from the Sector, and a procedure for notifying NMFS of such expulsions from the Sector;

(viii) If applicable, a plan of how the TAC or DAS allocated to the Sector is assigned to each vessel;

(ix) If the Operations Plan is inconsistent with, or outside the scope of the NEPA analysis associated with the Sector proposal/framework adjustment as specified in paragraph (b)(2)(v) of this section, a supplemental NEPA analysis may be required with the Operations Plan.

(x) Each vessel and vessel operator and/or vessel owner participating in a Sector must comply with all applicable requirements and conditions of the Operating Plan specified in paragraph (b)(2) of this section and the Letter of Authorization issued pursuant to paragraph (c)(3) of this section. It shall be unlawful to violate any such conditions and requirements and each Sector, vessel, and vessel operator and/or vessel owner participating in the Sector may be charged jointly and severally for civil penalties and permit sanctions pursuant to 15 CFR part 904.

(c) *Approval of a Sector and granting of exemptions by the Regional Administrator.* (1) Once the submission documents specified under paragraphs (a)(1) and (b)(2) of this section have been determined to comply with the requirements of this section, NMFS may consult with the Council and will solicit

public comment on the Operations Plan for at least 15 days, through notification of a proposed rulemaking in the **Federal Register**.

(2) Upon review of the public comments, the Regional Administrator may approve or disapprove Sector operations, through a final determination consistent with the Administrative Procedure Act.

(3) If a Sector is approved, the Regional Administrator shall issue a Letter of Authorization to each vessel operator and/or vessel owner belonging to the Sector. The Letter of Authorization shall authorize participation in the Sector operations and may exempt participating vessels from any Federal fishing regulation, except those specified in paragraph (b)(1)(xvi) of this section, in order to allow vessels to fish in accordance with an approved Operations Plan, provided such exemptions are consistent with the goals and objectives of the NE multispecies FMP. The Letter of Authorization may also include requirements and conditions deemed necessary to ensure effective administration of an compliance with the Operations Plan and the Sector allocation. Solicitation of public comment on, and NMFS final determination on such exemptions shall be consistent with paragraphs (c)(1) and (2) of this section.

(4) The Regional Administrator may withdraw approval of a Sector, after consultation with the Council, at anytime if it is determined that Sector participants are not complying with the requirements of an approved Operations Plan or that the continuation of the Operations Plan will undermine achievement of fishing mortality objectives of the NE Multispecies FMP. Withdrawal of approval of a Sector may only be done after notice and comment rulemaking as prescribed by the Administrative Procedure Act.

(d) *Approved Sector allocation proposals*—(1) *GB Cod Hook Sector*. Eligible NE multispecies DAS vessels, as specified in paragraph (d)(1)(ii) of this section, may participate in the GB Cod Hook Sector within the GB Cod Hook Sector Area, under the Sector's Operations Plan, provided the Operations Plan is approved by the Regional Administrator in accordance with paragraph (c) of this section, and provided that each participating vessel and vessel operator and/or vessel owner comply with the requirements of the Operations Plan, the requirements and conditions specified in the Letter of Authorization issued pursuant to paragraph (c) of this section, and all

other requirements specified in this section.

(i) *GB Cod Hook Sector Area (GBCHSA)*. The GBCHSA is defined by straight lines connecting the following points in the order stated (copies of a map depicting the area are available from the Regional Administrator upon request):

GEORGES BANK COD HOOK SECTOR AREA

Point	N. lat.	W. long.
HS1 .....	70°00'	(1)
HS2 .....	70°00'	42°20'
HS3 .....	67°18.4'	42°20' <sup>3</sup>
Follow the U.S. EEZ boundary south to HS3.		
HS3 .....	66°45.5'	39°00'
HS4 .....	71°40'	39°00'
HS5 .....	71°40'	(2)

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

<sup>2</sup>The south facing shoreline of Rhode Island.

<sup>3</sup>(the U.S. Canada Maritime Boundary).

(ii) *Eligibility*. All vessels with a valid limited access NE multispecies DAS permit are eligible to participate in the GB Cod Hook Sector, provided they have documented landings through valid dealer reports submitted to NMFS of GB cod during the fishing years 1996 to 2001 when fishing with jigs, demersal longline, or handgear.

(iii) *TAC allocation*. For each fishing year, the Sector's allocation of that fishing year's GB cod TAC, up to a maximum of 20 percent of the GB cod TAC, will be determined as follows:

(A) Sum of the total accumulated landings of GB cod by vessels identified in the Sector's Operation Plan specified under paragraph (b)(2) of this section, for the fishing years 1996 through 2001, when fishing with jigs, demersal longline, or handgear, as reported in the NMFS dealer database.

(B) Sum of total accumulated landings of GB cod made by all NE multispecies vessels for the fishing years 1996 through 2001, as reported in the NMFS dealer database.

(C) Divide the sum of total landings of Sector participants calculated in paragraph (d)(1)(iii)(A) of this section by the sum of total landings by all vessels calculated in paragraph (d)(1)(iii)(B) of this section. The resulting number represents the percentage of the total GB cod TAC allocated to the GB Cod Hook Sector for the fishing year in question.

(iv) *Requirements*. A vessel fishing under the GB Cod Hook Sector may not fish with gear other than jigs, demersal longline, or handgear.

(2) [Reserved]

■ 17. Section 648.88 is revised to read as follows:

**§ 648.88 Multispecies open access permit restrictions.**

(a) *Handgear permit*. A vessel issued a valid open access NE multispecies Handgear permit is subject to the following restrictions:

(1) The vessel may possess and land up to 75 lb (34 kg) of cod and up to the landing and possession limit restrictions for other NE multispecies specified in § 648.86, provided the vessel complies with the restrictions specified under paragraph (a)(2) of this section. Should the GOM cod trip limit specified under § 648.86(b)(1) be adjusted in the future, the cod trip limit specified under this paragraph (a)(1) will be adjusted proportionally (rounded up to the nearest 25 lb (11.3 kg)).

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

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

(iii) The vessel, if fishing with tub-trawl gear, may not fish with more than a maximum of 250 hooks.

(b) *Charter/party permit*. A vessel that has been issued a valid open access NE multispecies charter/party permit is subject to the additional restrictions on gear, recreational minimum fish sizes, possession limits, and prohibitions on sale specified in § 648.89, and any other applicable provisions of this part.

(c) *Scallop NE multispecies possession limit permit*. A vessel that has been issued a valid open access scallop NE multispecies possession limit permit may possess and land up to 300 lb (136.1 kg) of regulated species when fishing under a scallop DAS allocated under § 648.53, provided the vessel does not fish for, possess, or land haddock from January 1 through June 30, as specified under § 648.86(a)(2)(i), and provided that the amount of yellowtail flounder on board the vessel does not exceed the trip limitations specified in § 648.86(g), and provided the vessel has at least one standard tote on board.

(d) *Non-regulated NE multispecies permit*. A vessel issued a valid open access non-regulated NE multispecies permit may possess and land one Atlantic halibut and unlimited amounts of the other non-regulated NE multispecies. The vessel is subject to restrictions on gear, area, and time of

fishing specified in § 648.80 and any other applicable provisions of this part.  
 ■ 18. Section 648.89 is revised to read as follows:

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

(a) *Recreational gear restrictions.* Persons aboard charter or party vessels permitted under this part and not fishing under the DAS program, and recreational fishing vessels in the EEZ, are prohibited from fishing with more than two hooks per line, and one line per angler, and must stow all other fishing gear on board the vessel as specified under § 648.23(b).

(b) *Recreational minimum fish sizes—*  
 (1) *Minimum fish sizes.* Persons aboard charter or party vessels permitted under this part and not fishing under the NE multispecies DAS program, and recreational fishing vessels in or possessing fish from the EEZ, may not possess fish smaller than the minimum fish sizes, measured in total length (TL) as follows:

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

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

(2) *Exception.* Vessels may possess fillets less than the minimum size specified, if the fillets are taken from legal-sized fish and are not offered or intended for sale, trade or barter.

(c) *Cod possession restrictions—*(1) *Recreational fishing vessels.* (i) Each person on a private recreational vessel may possess no more than 10 cod per day, in, or harvested from, the EEZ.

(ii) For purposes of counting fish, fillets will be converted to whole fish at the place of landing by dividing the number of fillets by two. If fish are filleted into a single (butterfly) fillet, such fillet shall be deemed to be from one whole fish.

(iii) Cod harvested by recreational fishing vessels in or from the EEZ with more than one person aboard may be pooled in one or more containers. Compliance with the possession limit will be determined by dividing the number of fish on board by the number of persons on board. If there is a

violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner or operator of the vessel.

(iv) Cod must be stored so as to be readily available for inspection.

(2) *Charter/party vessels.* Charter/party vessels fishing any part of a trip in the GOM Regulated Mesh Area, as defined in § 648.80(a)(1), are subject to the following possession limit restrictions:

(i) Each person on the vessel may possess no more than 10 cod per day.

(ii) For purposes of counting fish, fillets will be converted to whole fish at the place of landing by dividing the number of fillets by two. If fish are filleted into a single (butterfly) fillet, such fillet shall be deemed to be from one whole fish.

(iii) Cod harvested by charter/party vessels with more than one person aboard may be pooled in one or more containers. Compliance with the possession limits will be determined by dividing the number of fish on board by the number of persons on board. If there is a violation of the possession limits on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner or operator of the vessel.

(iv) Cod must be stored so as to be readily available for inspection.

(3) *Atlantic halibut.* Charter and party vessels permitted under this part, and recreational fishing vessels fishing in the EEZ, may not possess, on board, more than one Atlantic halibut.

(4) *Accounting of daily trip limit.* For the purposes of determining the per day trip limit for cod for recreational fishing vessels and party/charter vessels, any trip in excess of 15 hours and covering 2 consecutive calendar days will be considered more than 1 day. Similarly, any trip in excess of 39 hours and covering 3 consecutive calendar days will be considered more than 2 days and, so on, in a similar fashion.

(d) *Restrictions on sale.* It is unlawful to sell, barter, trade, or otherwise transfer for a commercial purpose, or to attempt to sell, barter, trade, or otherwise transfer for a commercial purpose, NE multispecies caught or landed by charter or party vessels permitted under this part not fishing under a DAS or recreational fishing vessels fishing in the EEZ.

(e) *Charter/party vessel restrictions on fishing in GOM closed areas and the Nantucket Lightship Closed Area—*(1) *GOM Closed Areas.* A vessel fishing under charter/party regulations may not fish in the GOM closed areas specified in § 648.81(d)(1) through (f)(1) during

the time periods specified in those paragraphs, unless the vessel has on board a letter of authorization issued by the Regional Administrator pursuant to § 648.81(f)(2)(iii) and paragraph (e)(3) of this section. The letter of authorization is required for a minimum of 3 months, if the vessel intends to fish in the seasonal GOM closure areas, or is required for the rest of the fishing year, beginning with the start of the participation period of the letter of authorization, if the vessel intends to fish in the year-round GOM closure areas.

(2) *Nantucket Lightship Closed Area.* A vessel fishing under charter/party regulations may not fish in the Nantucket Lightship Closed Area specified in § 648.81(c)(1) unless the vessel has on board a letter of authorization issued by the Regional Administrator pursuant to § 648.81(c)(2)(iii) and paragraph (e)(3) of this section.

(3) *Letters of authorization.* To obtain either of the letters of authorization specified in paragraphs (e)(1) and (2) of this section, a vessel owner must request a letter from the Northeast Regional Office of NMFS, either in writing or by phone (see Table 1 to 50 CFR 600.502). As a condition of these letters of authorization, the vessel owner must agree to the following:

(i) The letter of authorization must be carried on board the vessel during the period of participation;

(ii) With the exception of tuna, fish harvested or possessed by the vessel may not be sold or intended for trade, barter or sale, regardless of where the regulated species are caught;

(iii) The vessel has no gear other than rod and reel or handline gear on board; and

(iv) For the GOM charter/party closed area exemption only, the vessel may not use any NE multispecies DAS during the period of participation.

■ 19. Section 648.90 is revised to read as follows:

**§ 648.90 NE multispecies assessment, framework procedures and specifications, and flexible area action system.**

For the NE multispecies framework specification process described in this section, starting in fishing year 2004, the large-mesh species, halibut and ocean pout biennial review (referred to as NE multispecies) is considered a separate process from the small-mesh species annual review, as described under paragraphs (a)(2) and (b), respectively, of this section.

(a) NE multispecies—(1) *NE Multispecies annual SAFE Report.* The NE Multispecies Plan Development

Team (PDT) shall prepare an annual Stock Assessment and Fishery Evaluation (SAFE) Report for the NE multispecies fishery. The SAFE Report shall be the primary vehicle for the presentation of all updated biological and socio-economic information regarding the NE multispecies complex and its associated fisheries. The SAFE report shall provide source data for any adjustments to the management measures that may be needed to continue to meet the goals and objectives of the FMP.

(2) *Biennial review.* (i) Beginning in 2005, the NE Multispecies PDT shall meet on or before September 30 every other year, unless otherwise specified in paragraph (a)(3) of this section, under the conditions specified in that paragraph, to perform a review of the fishery, using the most current scientific information available provided primarily from the NEFSC. Data provided by states, ASMFC, the USCG, and other sources may also be considered by the PDT. Based on this review, the PDT will develop target TACs for the upcoming fishing year(s) and develop options for Council consideration, if necessary, on any changes, adjustments, or additions to DAS allocations, closed areas, or on other measures necessary to achieve the FMP goals and objectives. For the 2005 biennial review, an updated groundfish assessment, peer-reviewed by independent scientists, will be conducted to facilitate the PDT review for the biennial adjustment, if needed, for the 2006 fishing year. Amendment 13 biomass and fishing mortality targets may not be modified by the 2006 biennial adjustment unless review of all valid pertinent scientific work during the 2005 review process justifies consideration.

(ii) The PDT shall review available data pertaining to: Catch and landings, discards, DAS, DAS use, and other measures of fishing effort, survey results, stock status, current estimates of fishing mortality, social and economic impacts, enforcement issues, and any other relevant information.

(iii) Based on this review, the PDT shall recommend target TACs and develop options necessary to achieve the FMP goals and objectives, which may include a preferred option. The PDT must demonstrate through analyses and documentation that the options they develop are expected to meet the FMP goals and objectives. The PDT may review the performance of different user groups or fleet Sectors in developing options. The range of options developed by the PDT may include any of the management measures in the FMP,

including, but not limited to: Target TACs, which must be based on the projected fishing mortality levels required to meet the goals and objectives outlined in the FMP for the 10 regulated species, Atlantic halibut (if able to be determined), and ocean pout; DAS changes; possession limits; gear restrictions; closed areas; permitting restrictions; minimum fish sizes; recreational fishing measures; description and identification of EFH; fishing gear management measures to protect EFH; and designation of habitat areas of particular concern within EFH. In addition, the following conditions and measures may be adjusted through future framework adjustments: Revisions to status determination criteria, including, but not limited to, changes in the target fishing mortality rates, minimum biomass thresholds, numerical estimates of parameter values, and the use of a proxy for biomass; DAS allocations (such as the category of DAS under the DAS reserve program, etc.) and DAS baselines, etc.; modifications to capacity measures, such as changes to the DAS transfer or DAS leasing measures; calculation of area-specific TACs, area management boundaries, and adoption of area-specific management measures; Sector allocation requirements and specifications, including establishment of a new Sector; measures to implement the U.S./Canada Resource Sharing Understanding, including any specified TACs (hard or target); changes to administrative measures; additional uses for Regular B DAS; future uses for C DAS; reporting requirements; the GOM Inshore Conservation and Management Stewardship Plan; GB Cod Gillnet Sector allocation; allowable percent of TAC available to a Sector through a Sector allocation; categorization of DAS; DAS leasing provisions; adjustments for steaming time; adjustments to the Handgear A permit; gear requirements to improve selectivity, reduce bycatch, and/or reduce impacts of the fishery on EFH; SAP modifications; and any other measures currently included in the FMP.

(iv) The Council shall review the recommended target TACs recommended by the PDT and all of the options developed by the PDT, and other relevant information, consider public comment, and develop a recommendation to meet the FMP objective pertaining to regulated species, Atlantic halibut and ocean pout that is consistent with other applicable law. If the Council does not submit a recommendation that meets the FMP

objectives and is consistent with other applicable law, the Regional Administrator may adopt any option developed by the PDT, unless rejected by the Council, as specified in paragraph (a)(1)(vii) of this section, provided the option meets the FMP objectives and is consistent with other applicable law.

(v) Based on this review, the Council shall submit a recommendation to the Regional Administrator of any changes, adjustments or additions to DAS allocations, closed areas or other measures necessary to achieve the FMP's goals and objectives. The Council shall include in its recommendation supporting documents, as appropriate, concerning the environmental and economic impacts of the proposed action and the other options considered by the Council.

(vi) If the Council submits, on or before December 1, a recommendation to the Regional Administrator after one Council meeting, and the Regional Administrator concurs with the recommendation, the Regional Administrator shall publish the Council's recommendation in the **Federal Register** as a proposed rule with a 30-day public comment period. The Council may instead submit its recommendation on or before February 1, if it chooses to follow the framework process outlined in paragraph (c) of this section, and requests that the Regional Administrator publish the recommendation as a final rule, consistent with the Administrative Procedure Act. If the Regional Administrator concurs that the Council's recommendation meets the FMP objectives and is consistent with other applicable law, and determines that the recommended management measures should be published as a final rule, the action will be published as a final rule in the **Federal Register**, consistent with the Administrative Procedure Act. If the Regional Administrator concurs that the recommendation meets the FMP objectives and is consistent with other applicable law and determines that a proposed rule is warranted, and, as a result, the effective date of a final rule falls after the start of the fishing year on May 1, fishing may continue. However, DAS used by a vessel on or after May 1 will be counted against any DAS allocation the vessel ultimately receives for that year.

(vii) If the Regional Administrator concurs in the Council's recommendation, a final rule shall be published in the **Federal Register** on or about April 1 of each year, with the exception noted in paragraph (a)(2)(vi)

of this section. If the Council fails to submit a recommendation to the Regional Administrator by February 1 that meets the FMP goals and objectives, the Regional Administrator may publish as a proposed rule one of the options reviewed and not rejected by the Council, provided that the option meets the FMP objectives and is consistent with other applicable law. If, after considering public comment, the Regional Administrator decides to approve the option published as a proposed rule, the action will be published as a final rule in the **Federal Register**.

(3) *Review in 2008 for the 2009 fishing year.* In addition to the biennial review specified in paragraph (a)(2) of this section, the PDT shall meet to conduct a review of the groundfish fishery by September 2008 for the purposes of determining the need for a framework action for the 2009 fishing year. For the 2008 review, a benchmark assessment, peer-reviewed by independent scientists, will be completed for each of the regulated multispecies stocks and for Atlantic halibut and ocean pout. The interim biomass targets specified in the FMP will be evaluated during this benchmark assessment to evaluate the efficacy of the rebuilding program. Based on findings from the benchmark assessment, a determination will be made as to whether the FMP biomass targets appear to be appropriate, or whether they should be increased or decreased, in conformance with the best scientific information available.

(b) *Small mesh species.*—(1) *Annual review.* The Whiting Monitoring Committee (WMC) shall meet separately on or before November 15 of each year to develop options for Council consideration on any changes, adjustments, closed areas, or other measures necessary to achieve the NE Multispecies FMP goals and objectives.

(i) The WMC shall review available data pertaining to: Catch and landings, discards, and other measures of fishing effort, survey results, stock status, current estimates of fishing mortality, and any other relevant information.

(ii) The WMC shall recommend management options necessary to achieve FMP goals and objectives pertaining to small-mesh multispecies, which may include a preferred option. The WMC must demonstrate through analyses and documentation that the options it develops are expected to meet the FMP goals and objectives. The WMC may review the performance of different user groups or fleet Sectors in developing options. The range of options developed by the WMC may include any of the management

measures in the FMP, including, but not limited to: Annual target TACs, which must be based on the projected fishing mortality levels required to meet the goals and objectives outlined in the FMP for the small-mesh multispecies; possession limits; gear restrictions; closed areas; permitting restrictions; minimum fish sizes; recreational fishing measures; description and identification of EFH; fishing gear management measures to protect EFH; designation of habitat areas of particular concern within EFH; and any other management measures currently included in the FMP.

(iii) The Council shall review the recommended target TACs recommended by the PDT and all of the options developed by the WMC, and other relevant information, consider public comment, and develop a recommendation to meet the FMP objectives pertaining to small-mesh multispecies that is consistent with other applicable law. If the Council does not submit a recommendation that meets the FMP objectives and that is consistent with other applicable law, the Regional Administrator may adopt any option developed by the WMC, unless rejected by the Council, as specified in paragraph (b)(1)(vi) of this section, provided the option meets the FMP objectives and is consistent with other applicable law.

(iv) Based on this review, the Council shall submit a recommendation to the Regional Administrator of any changes, adjustments or additions to closed areas or other measures necessary to achieve the FMP's goals and objectives. The Council shall include in its recommendation supporting documents, as appropriate, concerning the environmental and economic impacts of the proposed action and the other options considered by the Council.

(v) If the Council submits, on or before January 7, a recommendation to the Regional Administrator after one Council meeting, and the Regional Administrator concurs with the recommendation, the Regional Administrator shall publish the Council's recommendation in the **Federal Register** as a proposed rule with a 30-day public comment period. The Council may instead submit its recommendation on or before February 1, if it chooses to follow the framework process outlined in paragraph (b)(2) of this section and requests that the Regional Administrator publish the recommendation as a final rule, consistent with the Administrative Procedure Act. If the Regional Administrator concurs that the Council's recommendation meets the

FMP objective and is consistent with other applicable law, and determines that the recommended management measures should be published as a final rule, the action will be published as a final rule in the **Federal Register**, consistent with the Administrative Procedure Act. If the Regional Administrator concurs that the recommendation meets the FMP objective and is consistent with other applicable law and determines that a proposed rule is warranted, and, as a result, the effective date of a final rule falls after the start of the fishing year on May 1, fishing may continue.

(vi) If the Regional Administrator concurs in the Council's recommendation, a final rule shall be published in the **Federal Register** on or about April 1 of each year, with the exception noted in paragraph (b)(1)(vi) of this section. If the Council fails to submit a recommendation to the Regional Administrator by February 1 that meets the FMP goals and objectives, the Regional Administrator may publish as a proposed rule one of the options reviewed and not rejected by the Council, provided that the option meets the FMP objectives and is consistent with other applicable law. If, after considering public comment, the Regional Administrator decides to approve the option published as a proposed rule, the action will be published as a final rule in the **Federal Register**.

(2) [Reserved]

(c) *Within season management action for NE multispecies, including small-mesh NE multispecies.* The Council may, at any time, initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the NE Multispecies FMP, to address gear conflicts, or to facilitate the development of aquaculture projects in the EEZ. This procedure may also be used to modify FMP overfishing definitions and fishing mortality targets that form the basis for selecting specific management measures.

(1) *Adjustment process.* (i) After a management action has been initiated, the Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of both the proposals and the analyses and opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures, other than to address gear conflicts, must come from one or more of the

following categories: DAS changes, effort monitoring, data reporting, possession limits, gear restrictions, closed areas, permitting restrictions, crew limits, minimum fish sizes, onboard observers, minimum hook size and hook style, the use of crucifer in the hook-gear fishery, fleet Sector shares, recreational fishing measures, area closures and other appropriate measures to mitigate marine mammal entanglements and interactions, description and identification of EFH, fishing gear management measures to protect EFH, designation of habitat areas of particular concern within EFH, and any other management measures currently included in the FMP. In addition, the Council's recommendation on adjustments or additions to management measures pertaining to small-mesh NE multispecies, other than to address gear conflicts, must come from one or more of the following categories: Quotas and appropriate seasonal adjustments for vessels fishing in experimental or exempted fisheries that use small mesh in combination with a separator trawl/grate (if applicable), modifications to separator grate (if applicable) and mesh configurations for fishing for small-mesh NE multispecies, adjustments to whiting stock boundaries for management purposes, adjustments for fisheries exempted from minimum mesh requirements to fish for small-mesh NE multispecies (if applicable), season adjustments, declarations, and participation requirements for the Cultivator Shoal Whiting Fishery Exemption Area.

(ii) *Adjustment process for whiting TACs and DAS.* The Council may develop recommendations for a whiting DAS effort reduction program or a whiting TAC through the framework process outlined in paragraph (c) of this section only if these options are accompanied by a full set of public hearings that span the area affected by the proposed measures in order to provide adequate opportunity for public comment.

(2) *Adjustment process for gear conflicts.* The Council may develop a recommendation on measures to address gear conflicts as defined under 50 CFR 600.10, in accordance with the procedures specified in § 648.55 (d) and (e).

(3) *Council recommendation.* After developing management actions and receiving public testimony, the Council shall make a recommendation to the Regional Administrator. The Council's recommendation must include supporting rationale and, if management measures are recommended, an analysis

of impacts and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule, consistent with the Administrative Procedure Act. If the Council recommends that the management measures should be issued as a final rule, the Council must consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season.

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures.

(iii) Whether there is an immediate need to protect the resource.

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(4) *Regional Administrator action.* If the Council's recommendation includes adjustments or additions to management measures, after reviewing the Council's recommendation and supporting information:

(i) If the Regional Administrator concurs with the Council's recommended management measures and determines that the recommended management measures should be issued as a final rule, based on the factors specified in paragraph (c)(3) of this section, the measures will be issued as a final rule in the **Federal Register**, consistent with the Administrative Procedure Act.

(ii) If the Regional Administrator concurs with the Council's recommendation and determines that the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the **Federal Register**. After additional public comment, if the Regional Administrator concurs with the Council's recommendation, the measures will be issued as a final rule in the **Federal Register**.

(iii) If the Regional Administrator does not concur, the Council will be notified in writing of the reasons for the non-concurrence.

(d) *Flexible Area Action System.* (1) The Chair of the Multispecies Oversight Committee, upon learning of the presence of discard problems associated with large concentrations of juvenile, sublegal, or spawning multispecies,

shall determine if the situation warrants further investigation and possible action. In making this determination, the Committee Chair shall consider the amount of discard of regulated species, the species targeted, the number and types of vessels operating in the area, the location and size of the area, and the resource condition of the impacted species. If he/she determines it is necessary, the Committee Chair will request the Regional Administrator to initiate a fact finding investigation to verify the situation and publish notification in the **Federal Register** requesting public comments in accordance with the procedures therefore in Amendment 3 to the NE Multispecies FMP.

(2) After examining the facts, the Regional Administrator shall, within the deadlines specified in Amendment 3, provide the technical analysis required by Amendment 3.

(3) The NEFMC shall prepare an economic impact analysis of the potential management options under consideration within the deadlines specified in Amendment 3.

(4) Copies of the analysis and reports prepared by the Regional Administrator and the NEFMC shall be made available for public review at the NEFMC's office and the Committee shall hold a meeting/public hearing, at which time it shall review the analysis and reports and request public comments. Upon review of all available sources of information, the Committee shall determine what course of action is warranted by the facts and make a recommendation, consistent with the provisions of Amendment 3 to the Regional Administrator.

(5) By the deadline set in Amendment 3 the Regional Administrator shall either accept or reject the Committee's recommendation. If the recommended action is consistent with the record established by the fact-finding report, impact analysis, and comments received at the public hearing, he/she shall accept the Committee's recommendation and implement it through notification in the **Federal Register** and by notice sent to all vessel owners holding multispecies permits. The Regional Administrator shall also use other appropriate media, including, but not limited to, mailings to the news media, fishing industry associations and radio broadcasts, to disseminate information on the action to be implemented.

(6) Once implemented, the Regional Administrator shall monitor the affected area to determine if the action is still warranted. If the Regional Administrator determines that the circumstances

under which the action was taken, based on the Regional Administrator's report, the NEFMC's report, and the public comments, are no longer in existence, he/she shall terminate the action by notification in the **Federal Register**.

(7) Actions taken under this section will ordinarily become effective upon the date of filing with the Office of the **Federal Register**. The Regional Administrator may determine that facts warrant a delayed effective date.

(e) Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action and interim measures under section 305(c) of the Magnuson-Stevens Act.

■ 20. In § 648.92, paragraph (b)(2)(ii) is revised and paragraph (b)(2)(iii) is added to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(ii) Unless otherwise specified in paragraph (b)(2)(iii) of this section, each monkfish DAS used by a limited access NE multispecies or scallop vessel holding a Category C or D limited access monkfish permit shall also be counted as a NE multispecies or scallop DAS, as applicable, except when a Category C or D vessel that has an allocation of NE multispecies DAS under § 648.82(d) that is less than the number of monkfish DAS allocated for the fishing year May 1 through April 30, that vessel may fish under the monkfish limited access Category A or B provisions, as applicable, for the number of DAS that equal the difference between the number of its allocated monkfish DAS and the number of its allocated NE multispecies DAS. For such vessels, when the total allocation of NE multispecies DAS has been used, a

monkfish DAS may be used without concurrent use of a NE multispecies DAS. (For example, if a monkfish Category D vessel's NE multispecies DAS allocation is 30, and the vessel fished 30 monkfish DAS, 30 NE multispecies DAS would also be used. However, after all 30 NE multispecies DAS are used, the vessel may utilize its remaining 10 monkfish DAS to fish on monkfish, without a NE multispecies DAS being used, provided that the vessel fishes under the regulations pertaining to a Category B vessel and does not retain any regulated NE multispecies.)

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

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

\* \* \* \* \*

■ 21. In § 648.94, paragraph (f) is revised to read as follows:

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

\* \* \* \* \*

(f) *Area declaration requirement for vessels fishing exclusively in the NFMA.* Vessels fishing under a multispecies, scallop, or monkfish DAS under the less restrictive management measures of the NFMA, must fish for monkfish exclusively in the NFMA and declare into the NFMA for a period of not less than 7 days by obtaining a letter of authorization from the Regional Administrator. A vessel that has not declared into the NFMA under this paragraph (f) shall be presumed to have fished in the SFMA and shall be subject to the more restrictive requirements of that area. A vessel that has declared into the NFMA may transit the SFMA, providing that it complies with the transiting and gear storage provision described in paragraph (e) of this section, and provided that it does not fish for or catch monkfish, or any other fish, in the SFMA.

\* \* \* \* \*

■ 22. In § 648.322, paragraph (b)(6) is revised to read as follows:

**§ 648.322 Skate possession and landing restrictions.**

\* \* \* \* \*

(b) \* \* \*

(6) Skate bait-only possession limit LOA—The vessel owner or operator possesses and lands skates in compliance with this subpart for a minimum of 7 days.

\* \* \* \* \*

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# Federal Register

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**Monday,  
October 23, 2006**

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## **Part II**

# **Department of Commerce**

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**National Oceanic and Atmospheric  
Administration**

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**50 CFR Part 648**

**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; Final Rule**

**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](mailto: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<sub>2005</sub>), 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<sub>2005</sub>).

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<sub>2005</sub> for each stock. The PDT determined that, with one exception (GB yellowtail flounder), if F<sub>2005</sub> exceeded the Amendment 13 target F for 2006, adjustment of management measures was necessary. These comparisons indicated that F<sub>2005</sub> for some groundfish stocks was less than that estimated for 2004 (F<sub>2004</sub>), but still higher than the 2006 target F (F<sub>2006</sub>) 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 <sub>2004</sub>	Estimated F <sub>2005</sub>	Amendment 13 F <sub>2006</sub>	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 <sub>2004</sub>	Estimated F <sub>2005</sub>	Amendment 13 F <sub>2006</sub>	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 F<sub>msy</sub> 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<sub>2004</sub>/F<sub>msy</sub>) for GB winter flounder is 1.0.

NA: An estimate of F<sub>2005</sub> 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<sub>2004</sub>.

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<sub>msy</sub>) 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<sub>msy</sub> (0.25), and subsequent changes to F required to complete rebuilding by 2014 (F<sub>rebuild</sub>) 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*
		2,781	3,243	4,135	B*
American plaice		5,511	5,075	4,331	A*
Witch flounder		1,424	1,604	1,782	A*
Winter flounder	GB		see footnote		C
	GOM				
	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	( <sup>1</sup> )	( <sup>1</sup> )
GOM cod .....	One .....	49.9	99.0	103.9
GB yellowtail flounder .....	Two .....	41.4	( <sup>1</sup> )	( <sup>1</sup> )
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  $\times$  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:  $TAC_{year\ x} = (1,130\ \text{mt live weight}) \times (\text{Projected WGB Haddock Exploitable Biomass}_{year\ x} / \text{WGB Haddock Exploitable Biomass}_{2004})$ .

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:  $202.261 \times 35\% = 70.792$ ;  $70.792/35.317 = 2.004$ ; and  $1,130 \times 2.004 = 2,265$  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 disproportionately 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 groundfish 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) ( $7 \text{ DAS} \times 750 \text{ lb/DAS (340 kg/DAS)} = 5,250 \text{ lb/trip (2,381.4 kg/trip)}$ ). 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 be 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 reinstate 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 Statutes*

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 than 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 burden, to NMFS (see **ADDRESSES**) and by e-mail to [David\\_Rostker@omb.eop.gov](mailto: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 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 Coast-line.
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 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 to 1 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 to 1 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 to 1 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'

<sup>1</sup> Intersection with south facing shoreline of Cape Cod, Massachusetts.  
<sup>2</sup> 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'

<sup>1</sup> South facing shoreline of Connecticut.  
<sup>2</sup> North facing shoreline of Long Island, New York.  
<sup>3</sup> 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:  $Biomass_{YEAR\ X} = (1,130\ mt\ live\ weight) \times (Projected\ WGB\ Haddock\ Exploitable\ Biomass_{YEAR\ X} / WGB\ Haddock\ Exploitable\ Biomass_{2004})$ . 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

Table with 2 columns: Species, Sizes. Rows include Cod, Haddock, Pollock, Witch flounder, Yellowtail flounder, Atlantic halibut, American plaice, Winter flounder, Redfish.

\* \* \* \* \*

(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.

\* \* \* \* \*

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BILLING CODE 3510-22-P

would only clarify that sponsors must include in their applications the information described in § 514.1 that is appropriate for their particular submission, the agency proposes to certify that the rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing "any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any one year." The current threshold after adjustment for inflation is \$133 million, using the most current (2008) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this proposed rule to result in any 1-year expenditure that would meet or exceed this amount.

#### VI. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

#### VII. Paperwork Reduction Act of 1995

This proposed rule refers to previously approved collections of information found in FDA regulations. The proposed rule would amend these previously approved collections of information by clarifying that NADAs must contain the information appropriate for the particular submission. Further, this amendment is based upon the Center for Veterinary Medicine's previous experience with these submissions. Thus, § 514.1, as amended, does not constitute a new or additional paperwork burden requiring Office of Management and Budget (OMB) approval.

Collections of information are subject to review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in

§ 514.1 have been approved under OMB Control No. 0910–0032.

#### VIII. Request for Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

#### List of Subjects in 21 CFR Part 514

Administrative practice and procedure, Animal drugs, Confidential business information, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 514 be amended as follows:

#### PART 514—NEW ANIMAL DRUG APPLICATIONS

1. The authority citation for 21 CFR part 514 continues to read as follows:

**Authority:** 21 U.S.C. 321, 331, 351, 352, 356a, 360b, 371, 379e, 381.

2. In § 514.1, revise the first sentence of paragraph (a) and the introductory text of paragraph (b) to read as follows:

##### § 514.1 Applications.

(a) Applications to be filed under section 512(b) of the act shall be submitted in the form and contain the information described in paragraph (b) of this section, as appropriate to support the particular submission. \* \* \*

(b) Applications for new animal drugs shall be submitted in triplicate and assembled in the manner prescribed by paragraph (b)(15) of this section, and shall include the following information, as appropriate to support the particular submission: \* \* \*

\* \* \* \* \*

Dated: October 19, 2009.

**David Horowitz,**

*Assistant Commissioner for Policy.*

[FR Doc. E9–25518 Filed 10–22–09; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

RIN 0648–AW72

#### Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Amendment 16

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

**ACTION:** Notice of availability of a fishery management plan amendment; request for comments.

**SUMMARY:** NMFS announces that the New England Fishery Management Council (Council) has submitted Amendment 16 to the NE Multispecies Fishery Management Plan (FMP) and its associated draft Final Environmental Impact Statement (FEIS) for Secretarial review and is requesting comments from the public. Amendment 16 was developed by the Council as part of the biennial adjustment process in the FMP to update status determination criteria for all regulated NE multispecies or ocean pout stocks; to adopt rebuilding programs for NE multispecies stocks newly classified as being overfished and subject to overfishing; and to revise management measures, including significant revisions to the Sector management and allocation measures, necessary to end overfishing, rebuild overfished regulated NE multispecies or ocean pout stocks, and mitigate the adverse economic impacts of increased effort controls. Amendment 16 would also implement new requirements for establishing allowable biological catch (ABC), annual catch limits (ACLs), and accountability measures (AMs) for each stock managed by the FMP, pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Finally, this action would add Atlantic wolffish to the list of species managed by the FMP. This action is necessary to address the results of the most recent stock assessment, which indicate that several additional NE multispecies regulated species are overfished and subject to overfishing and that some stocks currently classified as overfished require additional reductions in fishing mortality to rebuild by the end of their rebuilding periods.

**DATES:** Comments must be received on or before December 22, 2009.

**ADDRESSES:** You may submit comments, identified by 0648-AW72, by any of the following methods:

- Email: [MultsA16FEIS@noaa.gov](mailto:MultsA16FEIS@noaa.gov).

Include in the subject line RIN or text that identifies the subject **Federal Register** document open for comment.

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

- Fax: (978) 281-9135, Attn: Douglas Christel.

- Mail or hand-delivery: Paper, disk, or CD-ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on the NE Multispecies Amendment 16 FEIS."

Instructions: All comments received are part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (either N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of Amendment 16, its Regulatory Impact Review (RIR), and the draft of the FEIS are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. Copies of the Initial Regulatory Flexibility Analysis (IRFA) are available from the Regional Administrator at the address above. The EIS/RIR/IRFA is also accessible via the Internet at <http://www.nefmc.org/nemulti/index.html>.

**FOR FURTHER INFORMATION CONTACT:**

Douglas Christel, Fishery Policy Analyst, phone: 978-281-9141, fax: 978-281-9135.

**SUPPLEMENTARY INFORMATION:**

Amendment 13 to the FMP, which became effective May 1, 2004 (April 27, 2004; 69 FR 22906), established two different strategies for rebuilding (an adaptive strategy and a phased rebuilding strategy), and a rebuilding plan for each overfished stock was developed in accordance with one of the two strategies. Under the "adaptive" rebuilding strategy, the fishing mortality

rate (F) is held at a level that would produce maximum sustainable yield ( $F_{MSY}$ ) from 2004 through 2008, and then is subsequently reduced to the level required to rebuild by the selected end-date of the rebuilding period. In contrast, under the "phased" rebuilding strategy, F was allowed to remain above  $F_{MSY}$  at the start of the rebuilding period in 2004, and then was reduced sequentially in 2006 and 2009. Eight stocks (Gulf of Maine (GOM) cod, Georges Bank (GB) haddock, GOM haddock, Southern New England (SNE)/Mid-Atlantic (MA) winter flounder, GB yellowtail flounder, redfish, windowpane flounder (southern stock), and ocean pout) are managed under the adaptive rebuilding strategy, while five stocks (GB cod, Cape Cod (CC)/GOM yellowtail flounder, SNE/MA yellowtail flounder, American plaice, and white hake) are managed under the phased rebuilding strategy.

Amendment 13 also established a biennial adjustment process whereby the Council reviews the FMP and makes any changes to management measures necessary to achieve the goals and objectives of the FMP. This adjustment process provides an update of the scientific information regarding the status of the stocks and an evaluation of the effectiveness of the regulations. The biennial review scheduled to occur in 2008, with necessary changes to the FMP implemented in 2009, included a peer-reviewed benchmark assessment and a review of the biological reference points (stock status determination criteria) for each stock. This planned assessment of the biological reference points (Groundfish Assessment Review Meeting, (GARM III)) was also part of the adaptive rebuilding strategy described above, which sought to evaluate the more fundamental scientific information mid-way through the rebuilding period for most stocks. GARM III, completed in August 2008, included a series of meetings over the course of one year. GARM III evaluated the underlying data and models utilized for assessment of the groundfish stocks, evaluated the biological reference points, established new reference points, assessed the biomass and fishing mortality status of the groundfish stocks in 2007, and provided examples of the Fs that would be expected to rebuild overfished stocks.

GARM III concluded that 11 stocks were still subject to overfishing (i.e., fishing above the  $F_{MSY}$ ) and that 12 stocks were overfished (i.e., biomass levels were less than one half of the biomass at  $MSY$  ( $B_{MSY}$ )), with 10 stocks classified as both overfished and subject to overfishing. A final determination on

the status of pollock could not be made until the fall 2008 survey data made available, as the status of this species is based on the 3-year centered average of the fall biomass indices. Such data became available in January 2009, and indicated that pollock is overfished.

The Council began development of Amendment 16 in 2006, with the intent of implementing any necessary revisions to management measures by the start of fishing year (FY) 2009 on May 1, 2009. On November 6, 2006, a notice of intent to prepare a supplemental EIS and hold scoping meetings designed to solicit public input on any revisions to management measures necessary to continue rebuilding overfished groundfish stocks was published in the **Federal Register** (71 FR 64941). The Council continued to develop Amendment 16 for implementation in FY 2009 until a presentation by the Northeast Fisheries Science Center NMFS (NEFSC) regarding preliminary estimates of 2006 stock size and F at the June 2008 Council meeting indicated that draft effort control measures under development for Amendment 16 were not targeting the correct stocks. Based on this information, the Council decided to wait until the receipt of the final GARM III assessment results in September 2008 to continue the development of appropriate management measures under Amendment 16. The Council subsequently developed a revised schedule of development for Amendment 16, which postponed implementation of Amendment 16 until the start of FY 2010 on May 1, 2010. In addition, the Council voted on September 4, 2008, to request that NMFS implement an interim action for the duration of FY 2009 (May 1, 2009–April 30, 2010), and recommended a specific suite of management measures for the interim action. A proposed rule to implement interim management measures published on January 16, 2009 (74 FR 2959), with final interim measures published on April 13, 2009 (74 FR 17030) and effective on May 1, 2009.

Based upon the final results of GARM III, the Council adopted draft management measures and an associated draft EIS (DEIS) at its February 2009 meeting. A notice of availability for the DEIS, which analyzed the impacts of all of the measures under consideration in Amendment 16, was published on April 24, 2009 (74 FR 18705), with public comments accepted through June 8, 2009. Final measures under Amendment 16 were adopted by the

Council at its June 2009 meeting. In addition to the implementing management measures to reduce F for overfished stocks, Amendment 16 contains changes to status determination criteria and other aspects of the management program, such as an ABC control rule and potential sector contributions, that are not reflected in regulations. The proposed measures include: Revisions to biological reference points for most stocks; incorporation of Atlantic wolffish into the list of NE multispecies managed by the FMP; new reporting measures to increase timeliness and accuracy of catch data; changes in the allocation of days-at-sea (DAS) between Category A DAS and Category B DAS; changes to the way NE multispecies DAS are allocated and counted; gear restricted areas; modifications to the DAS Leasing and Transfer Programs; changes in minimum fish size for two stocks; revisions to special access programs

(SAPs); modifications to existing trip limits, including increased trip limits for some stocks and landings prohibitions for other stocks; changes to Sector allocation procedures; modifications to Sector eligibility requirements; revisions to Sector operation plan requirements, including new and revised monitoring and reporting requirements and allowable exemptions; approval of 17 new Sectors; revisions to recreational gear, seasonal, and possession restrictions; establishment of a process to set and distribute ABCs and ACLs for all managed stocks among fishery subcomponents; and AMs for both commercial and recreational fisheries.

A proposed rule that would implement Amendment 16, if approved, will be published in the **Federal Register** for public comment, following NMFS's evaluation of the proposed rule under the procedures of the Magnuson-Stevens Act. Public comments on the proposed rule must be received by the

end of the comment period on Amendment 16 to be considered in the approval/disapproval decision on the amendment. All comments received by December 22, 2009, whether specifically directed to Amendment 16 or the proposed rule, will be considered in the approval/disapproval decision on the amendment. Any comments on the proposed rule received after that date will not be considered in the decision to approve or disapprove Amendment 16. To be considered, comments must be received by the close of business on the last day of the comment period; that does not mean postmarked or otherwise transmitted by that date.

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

Dated: October 19, 2009.

**Emily H. Menashes,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service*  
[FR Doc. E9-25546 Filed 10-22-09; 8:45 am]

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