

agency's interpretation of what EIPs should contain in order to meet the requirements of the CAA. Because this guidance is non-binding and does not represent final agency action, EPA is using the guidance as an initial screen to determine whether approvability issues arise.

5. Excess emissions provisions are addressed by "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup and Shutdown," EPA's Office of Air and Radiation and Office of Enforcement and Compliance Assurance, September 20, 1999 ("Excess Emissions Policy").

#### *B. Does the Rule Meet the Evaluation Criteria?*

We believe this rule is consistent with the CAA as applied by relevant policy and guidance regarding emissions trading programs, excess emissions provisions, enforceability, RACT, and SIP relaxations. Specifically, the submitted rule amendments were found to fulfill the requirements of EPA's previous conditional approval of the RECLAIM program rules and to address all concerns raised therein with respect to our Excess Emissions Policy. The TSD has more information on our evaluation.

#### *C. Public Comment and Final Action*

Because EPA believes the submitted rule fulfills all relevant requirements, we are proposing to fully approve it as described in section 110(k)(3) of the Act. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate this rule into the federally enforceable SIP.

### **III. Statutory and Executive Order Reviews**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5

U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone,

Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: August 17, 2004.

**Wayne Nastri,**

*Regional Administrator, Region IX.*

[FR Doc. 04-20682 Filed 9-13-04; 8:45 am]

**BILLING CODE 6560-50-P**

## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 648**

[Docket No 040804229-4229-01; I.D. 080204G]

RIN 0648-AS34

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

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to implement measures in Framework Adjustment 40-A (FW 40-A) to the NE Multispecies Fishery Management Plan (FMP). FW 40-A was developed by the New England Fishery Management Council (Council) to provide additional opportunities for vessels in the fishery to target relatively healthy stocks of groundfish in order to mitigate the economic and social impacts resulting from the effort reductions required by Amendment 13 to the FMP, and to harvest groundfish stocks at levels that approach optimum yield (OY). The proposed action would create three programs to allow vessels to use Category B Days-at-Sea (DAS) (both Regular and Reserve) to target healthy stocks: Regular B DAS Pilot Program; Closed Area (CA) I Hook Gear Haddock Special Access Program (SAP); and Eastern U.S./Canada Haddock SAP Pilot Program. In addition, FW 40-A proposes to relieve an Amendment 13 restriction that currently prohibits vessels from fishing both in the Western U.S./Canada Area, and outside that area on the same trip. The intended effect of FW 40-A would be to provide fishing opportunities that would mitigate some of the negative economic and social impacts caused by the effort reductions in Amendment 13.

**DATES:** Comments must be received by September 29, 2004.

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

- E-mail: [FW40A@NOAA.gov](mailto:FW40A@NOAA.gov).

Include in the subject line the following: "Comments on the Proposed Rule for Groundfish Framework 40-A".

- Federal e-Rulemaking Portal: <http://www.regulations.gov>.

- Mail: Paper, disk, or CD-ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on the Proposed Rule for Groundfish Framework 40-A."

- Fax: (978) 281-9135.

Copies of FW 40-A, its Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), and the Environmental Assessment (EA) are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, The Tannery Mill 2, Newburyport, MA 01950.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule should be submitted to the Regional Administrator at the address above and to David Rostker, Office of Management and Budget (OMB), by e-mail at [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or fax to (202) 395-7285. NMFS prepared a summary of the IRFA, which is contained in the Classification section of the preamble of this proposed rule.

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

**SUPPLEMENTARY INFORMATION:**

**Background**

The Council developed Amendment 13 to bring the FMP into compliance with all Magnuson-Stevens Act requirements, including ending overfishing and rebuilding all overfished groundfish stocks. Amendment 13 was partially approved by the Secretary of Commerce on March 18, 2004. A final rule implementing the approved measures was published April 27, 2004 (69 FR 22906), with most measures becoming effective May 1, 2004. Amendment 13 adopted a suite of management measures to reduce fishing mortality on groundfish stocks that are either overfished, or where overfishing is occurring. For several stocks, the fishing mortality targets adopted in Amendment 13 represented substantial

reductions from previous levels. For other stocks, the fishing mortality targets were set at or above previous levels, and fishing mortality could remain the same or potentially increase without causing overfishing. Because most fishing trips in this fishery catch a wide range of species, and the principal management tool used in the FMP to reduce fishing effort is DAS, the reduction in DAS implemented by Amendment 13 impacts numerous species. It is difficult to design management measures that selectively change fishing mortality for individual species. Because the management measures in Amendment 13 were designed to reduce fishing mortality where necessary, they may also reduce fishing mortality more than is necessary for other, healthier stocks. As a result, yield from healthier stocks may have been sacrificed and the ability of the FMP to ensure OY from these stocks may be diminished. OY is the amount of fish that will provide the greatest overall benefit to the nation. FW 40-A proposes programs that would provide additional opportunities to target healthy groundfish stocks in order to maximize the ability to achieve OY. These programs would also mitigate some of the negative economic and social impacts caused by the effort reductions in Amendment 13.

Among the primary Amendment 13 management measures to control fishing mortality are DAS reductions. Amendment 13 categorized the DAS allocated to each permit as Category A, Category B DAS which are further categorized as Regular B, and Reserve B, and Category C DAS. Category A DAS can be used to target any regulated groundfish stocks, while Category B DAS are to be used only to target healthy groundfish stocks. Category C DAS cannot be used at all at this time. The regulations implementing Amendment 13 include only one opportunity to use Category B DAS: A SAP designed to target Georges Bank (GB) yellowtail flounder in CA II. FW 40-A proposes additional opportunities to use Category B DAS. The Council understood at the time Amendment 13 was submitted, that additional means to allow use of Category B DAS would be explored and possibly implemented through the framework process in the FMP.

**Proposed Measures**

FW 40-A proposes three programs that would create additional opportunities to target healthier groundfish stocks. These are: The Regular B DAS Pilot Program, the CA I Hook Gear Haddock SAP, and the

Eastern U.S./Canada Haddock SAP Pilot Program. In addition, FW 40-A would relieve the restrictions on the area that can be fished on the same trip by vessels fishing in the Western U.S./Canada Area. A description of the proposed management measures follows.

*1. Regular B DAS Pilot Program*

The proposed Regular B DAS program would create opportunities to use B Regular DAS outside of a SAP (and outside closed areas) to target stocks that can withstand additional fishing effort (Gulf of Maine (GOM) haddock, pollock, GOM winter flounder, GB haddock, GB yellowtail flounder, and GB winter flounder). In addition, the program would provide the Council with information that could be used to design future Regular B DAS programs. The pilot program is proposed to run for 1 year, from November 1, 2004, (or starting with the effective date of FW 40-A, if after November 1, 2004) through October 31, 2005. In order to limit the potential biological impacts of the program, only 1,000 B Regular DAS per quarter (November through January, February through April, May through July, and August through October) would be allocated for use for the entire pilot program. These DAS would not be allocated to individual vessels, but would be used by vessels on a first-come, first-served basis.

Vessels participating in this program would be required to be equipped with an approved Vessel Monitoring System (VMS). The vessel owner or operator would be required to notify the NMFS Observer Program at least 72 hours in advance of a trip in order to facilitate observer coverage. This notice would require reporting of the following information: The general area or areas that will be fished (GOM, GB, or Southern New England (SNE)), vessel name, contact name for coordination of observer deployment, telephone number of contact, date, time, and port of departure. Providing notice of the area that the vessel intends to fish would not restrict the vessel's activity to only that area on that trip, but would be used to plan observer coverage. Prior to departing on the trip, the vessel owner or operator would be required to notify NMFS via VMS that the vessel intends to participate in the Regular B DAS Pilot Program. There would be no specific area or gear requirements for participation, but vessels would not be allowed to fish on that trip in a SAP, in the Eastern U.S./Canada Area, or in a seasonal or year-round closed area, and would be required to comply with the gear requirements of the FMP. While fishing under a Regular B DAS in this

program, Regular B DAS would accrue at the rate of 1 DAS for each calendar day, or part of a calendar day, fished. For example, a vessel that left on a trip 1 hour before midnight on one day, and fished until 1 hour after midnight on the next calendar day, would be charged 48 hours of B Regular DAS. Vessels fishing in this program would be prohibited from discarding legal-sized regulated groundfish, and would be limited to landing 100 lb (45.4 kg) per DAS for each groundfish species of concern, with the exception of yellowtail flounder, which would have a landing limit of 25 lb (11.3 kg) per DAS. If a vessel harvests and brings on board legal-sized regulated groundfish in excess of the landing limits, the vessel operator would be required to retain the excess catch, and immediately notify NMFS via VMS in order to change its DAS category from a Regular B DAS to a Category A DAS ("DAS flip"). Although the Council proposed in FW 40-A that the DAS flip must occur at some time prior to the vessel crossing

the VMS demarcation line, NMFS is proposing that the DAS flip must occur immediately upon exceeding the landing limits in order to enhance the effectiveness and enforceability of this measure. Because the timing of notification of the DAS flip was not explicitly stated in FW 40-A, NMFS is highlighting this measure for comment. If a vessel flips from a Regular B DAS to a Category A DAS, it would be charged Category A DAS which would accrue to the nearest minute for the entire trip (i.e., not to the nearest day), and would be subject to the possession and landing restrictions that apply to the fishery as a whole (i.e., not the Regular B DAS Pilot Program limits). In order to ensure that a vessel would always have the ability to flip to a Category A DAS while fishing under a Regular B DAS (should it encounter a groundfish species of concern in an amount that exceeded the trip limit), the number of Regular B DAS that would be allowed to be used on a trip would be limited to the number of Category A DAS that

the vessel has at the start of the trip. For example, if a vessel plans a trip under the Regular B DAS Pilot Program and has 5 Category A DAS available, the maximum number of Regular B DAS that the vessel could fish on that trip under the Regular B DAS Pilot Program would be 5.

NMFS would administer the 1,000 Regular B DAS maximum by monitoring the number of Regular B DAS accrued on trips that end under a Regular B DAS. Declaration of the trip through VMS would not serve to reserve a vessel's right to fish under a Regular B DAS. Once 1,000 Regular B DAS were used in a quarter, the Regular B DAS Pilot Program would end for that quarter.

In order to limit the potential impact on fishing mortality that the use of Category B DAS (Regular B DAS or Reserve B DAS) may have on groundfish stocks of concern, a quarterly Incidental Total Allowable Catch (TAC) would be set for the groundfish stocks of concern, as summarized in the following table:

PROPOSED INCIDENTAL TACS FOR B REGULAR DAS PILOT PROGRAM (MT)

Stocks of Concern	Nov 2004 to Jan 2005	Feb 2005 to Apr 2005	May 2005 to Jul 2005	Aug 2005 to Oct 2005
GOM cod .....	48.5	48.5	63.5	63.5
GB cod .....	19.75	19.75	24.25	24.25
Cape Cod/GOM yellowtail flounder .....	9	9	12.5	12.5
American plaice .....	92.5	92.5	90	90
white hake .....	38.5	38.5	38	38
Southern New England/Mid-Atlantic (SNE/MA) yellowtail flounder .....	17.5	17.5	49.5	49.5
SNE/MA winter flounder .....	71.5	71.5	89	89
witch flounder .....	129.5	129.5	175	175

With the exception of white hake, if the incidental TAC for any one of these species were caught during a quarter (landings plus discards), use of Regular B DAS in the pertinent stock area would be prohibited for the remainder of that quarter. Because several stocks of concern may be found in a given stock area, the closure of that stock area to the use of Regular B DAS would result in the prohibition of fishing under a Regular B DAS for any stock of concern in that stock area, even if there were TAC remaining for some of the stocks of concern for that quarter. All stock areas would reopen for the use of B Regular DAS at the beginning of the subsequent quarter. If the white hake incidental TAC were caught in a quarter, the possession of white hake would be prohibited when fishing under Regular B DAS in any stock area for the remainder of that quarter. White hake would be treated differently than the other stocks of concern because the stock area for white hake covers all the

waters from GOM through SNE, and closure of its stock area to the use of Regular B DAS rather than prohibiting its possession, would unnecessarily curtail the Regular B DAS Pilot Program.

This proposed program would allow the use of Regular B DAS by vessels fishing for species managed under other fishery management plans that require the use of a groundfish DAS to fish for, such as monkfish.

Vessels fishing in the Regular B DAS Pilot Program would be required to report their catches of groundfish stocks of concern daily through VMS, including the amount of fish kept and discarded, by statistical area fished. Vessels fishing for species managed by other fishery management plans, and not landing groundfish would not be subject to this reporting requirement.

The Administrator, Northeast Region, NMFS (Regional Administrator) would have the authority to prohibit the use of Regular B DAS for the duration of a quarter or fishing year, if it is projected

that continuation of the Regular B DAS Pilot Program would undermine the achievement of the objectives of the FMP or the Regular B DAS Pilot Program, or if the level of observer coverage were insufficient to make such a projection.

2. CA I Hook Gear Haddock SAP

This SAP would allow vessels with a limited access or open access NE multispecies permit to target haddock using longline or tub trawl gear, when fishing under either a Category A or B DAS within a defined portion of CA I during the period October 1 - December 31. A haddock TAC of 1,000 mt would be specified, and the SAP would close to all participants when the Regional Administrator projects that the TAC (landings and discards) has been caught. In order to limit the fishing mortality that the use of a Category B DAS may have on GB cod, an incidental GB cod TAC for vessels fishing under a Category B DAS in this SAP would be set at 16

percent of the overall incidental catch TAC for GB cod, which would be 12.6 mt, 15.5 mt, and 20.3 mt for the 2004, 2005, and 2006 fishing years, respectively, based on current information. The percentages could be changed by a future management action, and the TACs would be recalculated in 2005, through the periodic adjustment process, to reflect the best available information. When the Regional Administrator projects that this incidental TAC has been caught, fishing in the SAP on a Category B DAS would no longer be allowed (for any participant). Vessels fishing on a trip in which they have declared into the Regular B DAS Pilot Program would be prohibited from fishing in this or any other SAP on the same trip.

In order to enable the NMFS Observer Program to administer the deployment of observers in the SAP, a vessel intending to participate in this SAP would be required to notify NMFS by September 1 (with the exception of the 2004 fishing year) of its intention to fish in the program. For the 2004 fishing year, vessels would be required to notify the NMFS Observer Program by a date set by the Regional Administrator. Should a final rule adopting Framework 40-A be issued, NE multispecies permit-holders would be notified of the deadline through a letter that would be sent after issuance of such rule. Notification by vessels intending to participate in this SAP would not have to include specific information about the date of any trip into the SAP; the intent is simply to require that vessels declare their intent to participate in the SAP. This information is intended to provide the NMFS Observer Program with an estimate of the total number of vessels that intend to participate in the SAP. If a vessel does not notify the NMFS Observer Program of its intent to participate in the SAP by the required date, it would not be allowed to participate in the SAP during that fishing year. If the Regional Administrator, based upon this estimated participation level, determines that funding is inadequate for the necessary level of observer coverage for both the GB Cod Hook Sector (Sector), and non-Sector vessels, the Sector would pay the additional costs required to deploy adequate levels of observers on the Sector vessels participating in this SAP. Vessels would be required to notify the NMFS Observer Program by telephone at least 72 hours prior to leaving on a trip to the SAP, and would be required to provide the following information: Vessel name; contact name for coordination of

observer deployment; telephone number of contact; and date, time and port of departure. All vessels participating in this SAP, including open access vessels, would be required to be equipped with an approved VMS. Vessels would be required to declare into the SAP program via VMS and specify the type of DAS that would be used, prior to leaving port on a trip into the SAP.

Vessels could use either a Category A or Category B (Regular or Reserve) DAS to participate in the SAP. If fishing on a Category A DAS, vessels could fish inside the SAP area and outside the SAP area on the same trip. Vessels fishing under a Category B DAS could not fish both inside and outside the SAP area on the same trip. Vessels fishing under a Category B DAS (and fishing only inside the SAP) would be exempt from the current limitation on the number of hooks fished. Specific requirements for the SAP would differ for Sector and non-Sector vessels. All non-Sector vessels would be required to report their catches (landings and discards) of haddock and groundfish stocks of concern daily via VMS. Limited access NE multispecies vessels that are not in the Sector would be limited to fishing a maximum of 4 DAS in the SAP on a single trip and would be subject to a cod possession limit of 500 lb (226.8 kg) per DAS, with a maximum of 2,000 lb (907.2 kg) per trip. This landing limit would apply for the entire trip for any vessel participating in the SAP, whether using a Category A or Category B DAS. There is no flipping provision proposed for this SAP (i.e., vessels may not switch from using Category B to Category A DAS on a trip). Vessels participating in the SAP that have a limited access Handgear A or open access Handgear B permit would be restricted to 300 lb (136.1 kg) of cod per trip and 75 lb (34.0 kg) of cod per trip, respectively. For species other than cod, all vessels would be required to comply with the possession and trip limit restrictions currently specified in the regulations.

Non-Sector vessels fishing both inside and outside of the SAP on the same trip (under a Category A DAS) would be restricted to the gear limits that apply to the area outside the SAP, and would have to report the amount of haddock and groundfish stocks of concern caught (retained and discarded) when crossing the boundary into or out of the SAP area. Cod caught by a non-Sector vessel while fishing under a Category A DAS would not be counted against the incidental cod TAC. Cod catches while fishing under a Category B DAS would be counted against the incidental cod TAC.

Sector vessels that fish in the CA I Hook Gear Haddock SAP would not be allowed to fish outside the SAP area on the same trip. All cod caught by Sector-vessels would count against the Sector's cod TAC and, in accordance with the Sector's Operations Plan, such vessels would be prohibited from discarding legal-sized cod and would be able to fish an unlimited number of hooks. Daily catch reports for each Sector vessel fishing in the SAP could be submitted by the Sector manager, rather than by the vessel.

The Regional Administrator would have the authority to close the CA I Hook Gear Haddock Access Area for the duration of the season if the level of observer coverage is insufficient to project whether continuation of the SAP would undermine the achievement of the objectives of the FMP or the CA I Hook Gear Haddock SAP.

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

The Eastern U.S./Canada Haddock SAP Pilot Program would allow limited access NE multispecies DAS vessels fishing with trawl gear that complies with the gear requirements of the Eastern U.S./Canada Area (haddock separator trawl or flounder net) to target haddock using a Category B DAS, from May 1 December 31, in a portion of the Eastern U.S./Canada Area, including the northern-most tip of CA II. Under Amendment 13 (50 CFR § 648.85(a)(3)(iii)), the Regional Administrator has the authority to modify the types of fishing gear allowed to be used in the Eastern U.S./Canada Area (to further reduce cod catch), which includes the area of the proposed SAP. The proposed pilot program would be in effect for 2 years from the date of implementation of the program. The SAP would close if the Regional Administrator projects that the haddock or cod TAC for the Eastern U.S./Canada Area has been caught (landings and discards). In order to limit the potential impact on fishing mortality that the use of Category B DAS may have on GB cod, an incidental GB cod incidental TAC would be specified that represents 34 percent of the overall incidental catch TAC for GB cod for fishing years 2004, 2005, and 2006 (27 mt, 33 mt, and 43 mt, respectively, based on current information). The percentages could be changed by a future management action, and the incidental TACs would be recalculated in 2005, through the periodic adjustment process to reflect the best information available. Participation in the SAP by vessels using a Category B DAS would be

prohibited when the incidental catch TAC is projected to have been caught.

The following measures proposed for this SAP would be the same as the current regulations governing the Eastern U.S./Canada Area: Vessels fishing in this SAP must have an approved VMS and would not be charged steaming time either to or from the Eastern U.S./Canada Area. Vessel owners or operators planning a trip into this SAP would be required to notify the NMFS Observer Program at least 72 hours prior to leaving on a trip into the SAP in order to facilitate observer coverage, and would be required to provide the following information to the Observer Program: Vessel name; contact name for coordination of observer deployment; telephone number of contact; and date, time, and port of departure. In addition, participating vessels would be required to declare into the SAP via VMS prior to departing on a trip into the SAP. Vessels would also be required to specify via VMS which areas within the Eastern U.S./Canada Area that they intend to fish in, and the type of DAS that would be used. Vessels would be allowed to transit through CA II in order to enable vessels full access to the Eastern U.S./Canada Area. Discarding of legal-sized cod while fishing under a Category B DAS would be prohibited, and the cod landing limit would be 1,000 lb (453.6 kg) per trip (Category A or B DAS), regardless of trip length. If a vessel fishing under a Category B DAS exceeded the cod landing limit, the owner or operator would be required to immediately notify NMFS via VMS and "flip" to a Category A DAS. Once a vessel flipped to a Category A DAS, the vessel would be required to comply with all landing restrictions that apply to Category A DAS. All vessels would be required to comply with the haddock possession limits in place at the time of the fishing trip, regardless of the type of DAS the vessel is fishing under. In order to ensure that while fishing under a Category B DAS the vessel would always have the potential flip to a Category A DAS (should it catch cod in an amount that exceeds the landing limit), the number of Category B DAS that it would be allowed to use on a trip would be limited to the number of Category A DAS that the vessel has at the start of the trip. For example, if a vessel plans a trip into the Eastern U.S./Canada Haddock SAP Pilot Program, and has 5 Category A DAS available, the maximum number of Category B DAS that it could fish under the Eastern U.S./Canada Haddock SAP Pilot Program would be 5.

FW 40-A would change the cod landing limit for the CA II Yellowtail Flounder SAP from 100 lb (45.4 kg)/DAS and 1,000 lb (454 kg)/trip, to 1,000 lb (454 kg)/trip, in order to make the cod possession limits in the Eastern U.S./Canada Haddock SAP Pilot Program the same as in the CA II Yellowtail Flounder SAP. Vessels fishing in the Eastern U.S./Canada Area could fish in any combination of areas within the Eastern U.S./Canada Area, provided the area(s) is open and the vessel abides by the most restrictive regulations of the areas fished. For example, a vessel could fish in both the Eastern U.S./Canada Haddock SAP Pilot SAPPprogram, and in the portion of the Eastern U.S./Canada Area that is not within a SAP on the same trip, provided the vessel fishes under a Category A DAS.

The Regional Administrator would have the authority to close the Eastern U.S./Canada Haddock SAP Pilot Program for the duration of the season, if it is projected that continuation of the Eastern U.S./Canada Haddock SAP Pilot Program would undermine the achievement of the objectives of the FMP or the Eastern U.S./Canada Haddock SAP Pilot Program, or if the level of observer coverage is insufficient to make such a projection.

#### *4. Combined Trips to the Western U.S./Canada Area*

Current regulations restrict groundfish DAS vessels that have declared a trip and are fishing in the Western U.S./Canada Area from fishing in areas outside of that area during the same trip, in order to ensure that there is an accurate attribution of landings to the appropriate stock and facilitate enforcement of the regulations. FW 40-A proposes to provide more flexibility to vessels by allowing them to fish both inside and outside the Western U.S./Canada Area on the same trip, but not in the Eastern U.S./Canada Area. to address the concern of accurate attribution of landings to the appropriate stock, in addition to the current reporting requirements, vessels would be required to report catches (landings and discards) of yellowtail flounder, by statistical area, when crossing into or out of the Western U.S./Canada Area, and to comply with the most restrictive landing limits associated with the areas fished during that trip. Vessels would be required to comply with all other Western U.S./Canada Area requirements for that trip.

#### **Classification**

At this time, NMFS has not determined that the framework

adjustment that this proposed rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be significant for the purposes of E.O. Executive Order 12866.

Pursuant to 5 USC 603 an IRFA has been prepared, which describes the economic impacts that this proposed rule, if adopted, would have on small entities. The proposed action would implement three new programs and modify the existing rules for vessels fishing in the Western U.S./Canada Management Area in order to provide additional economic opportunities. The three programs include restrictions that would limit the biological impacts of the proposed action in order to be consistent with the rebuilding plans and objectives of the FMP. Current regulations under the FMP allow the development of such programs, provided they are consistent with the FMP objectives.

The proposed alternative was compared to the No Action alternative and a single non-selected alternative for each of the three programs (non-selected Regular B DAS Pilot Program, non-selected CA I Hook Gear Haddock SAP, and non-selected CA II Haddock SAP Pilot Program). The No Action alternative is comprised of the management measures that were implemented by Amendment 13 on May 1, 2004. The non-selected Regular B DAS Pilot Program would implement measures for a shorter duration than the proposed program. The non-selected CA I Hook Gear Haddock SAP would be the same as the proposed SAP, with the exception that it would not require advance notice to the Observer Program. The non-selected CA II Haddock SAP Pilot Program would include a longer season, a more restrictive GB cod possession limit, and would not include a Category B DAS flipping requirement.

A full description of the reasons why this action is being considered is found in the preamble to this proposed rule, and in the Executive Summary and Section 3.2 of FW 40-A. There are no Federal rules that may duplicate, overlap, or conflict with the proposed rule.

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

The proposed action would implement changes with the potential to affect any vessel holding a NE

multispecies limited access permit or an open access Handgear B permit (approximately 1,800 active vessels). It is very likely, however, that the proposed measures would impact substantially less than the total number of active permit holders, based upon historic and recent rates of participation in the fishery, and because the proposed programs are voluntary in nature, and have some associated regulatory and economic costs. Because the programs are voluntary, no small entity would be required to bear any additional regulatory or economic burden unless it chose to. It is likely that participating vessels would have reached a decision that the benefits of participating in the program would exceed the costs of participation.

Based upon the information in FW 40–A, approximately 118 or more vessels may participate in the Regular B DAS Pilot Program, 60 vessels may participate in the CA II Hook Gear Haddock SAP, and approximately 86 vessels may participate in the Eastern U.S./Canada Haddock SAP Pilot Program. Up to 236 vessels could choose to fish both inside and outside of the Western U.S./Canada Management Area on the same trip.

The Small Business Administration (SBA) size standard for small commercial fishing entities is \$ 3.5 million in gross receipts and would apply to limited access permit holders and open access Handgear permits holders. Data analyzed for Amendment 13 indicated that the maximum gross receipts for any single commercial fishing vessel for the period 1998 to 2001 was \$ 1.3 million. For this reason, each vessel in this analysis is treated as a single entity for purposes of size determination and impact assessment. All commercial fishing entities would fall under the SBA size standard for small commercial fishing entities, and there would be no disproportionate impacts between small and large entities.

#### *Economic Impacts of Proposed Action*

The proposed action would implement a B Regular DAS pilot program which would allow limited access NE multispecies vessels to target relatively healthy groundfish stocks, using Regular B DAS, thereby, relieving some economic constraints caused by the current regulations. A total of 1,000 Regular B DAS per calendar quarter would be allocated to the Regular B DAS Pilot Program, beginning November 1, 2004. Incidental TACs for eight groundfish stocks of concern would be set on a quarterly basis, and participating vessels would be required

to use a VMS and report catches (both landings and discards) of the stocks of concern via the VMS on a daily basis. The economic impact of the program will depend on the types of fisheries defined by where, when, and how vessels decide to fish, and the resulting catch rates of groundfish stocks of concern. Examination of recorded trips taken in fishing year 2001 indicate that there are opportunities to fish in several different stock areas with low catches of stocks of concern. Average daily revenues from the GB trawl fishery are estimated to be at least \$ 2,200. Revenue estimates range from a low of \$ 688 (GOM trawl fishery) to a high of nearly \$ 3,000 per day (GB trawl fishery). Although these estimates suggest the potential value of being able to use B Regular DAS, the actual economic gains may be very different if vessels pursue fisheries that were not identified in the analysis. In addition, even if these average revenues are accurate estimates, the full benefits from the Regular B DAS Pilot Program may not be realized for two reasons: (1) The incidental catch TACs may limit the duration of the program in each quarter by reducing or eliminating the opportunities to use Regular B DAS; and (2) the DAS flipping requirement may decrease trip profitability or negatively impact the availability of Category A DAS to be used by that vessel elsewhere.

The proposed action would implement the CA I Hook Gear Haddock SAP which would allow NE multispecies vessels fishing with hook gear the opportunity to access haddock in a portion of CA I from October through December. Approximately 50 Sector, and 10 non-Sector vessels may participate in this program. Based upon the proposed haddock TAC of 1,000 mt, and an average of 5,000 lb (2268 kg) of haddock kept per trip, approximately 441 trips could be taken into this SAP. At an average haddock price of \$ 1.05 per lb, and average variable costs of \$ 364 per day, the potential revenue from fishing in the SAP is \$ 2.5 million, with a vessel profit of \$ 1.5 million (after subtracting variable costs and crew share). Dividing this profit among 60 potential hook vessels results in a vessel profit of \$ 25,729. If all participating vessels needed to purchase a VMS system at a cost of \$ 3,995 installed, which is at the high end of the cost range for available VMS systems, the profit would be reduced to \$ 22,829 per vessel. Regardless of the precise split of the potential harvest between Sector and non-Sector vessels, all participating hook vessels could benefit from an economic surplus.

The proposed action would also implement the CA II Haddock SAP Pilot Program, which would allow limited access groundfish vessels the opportunity to use Category B DAS to target haddock in a designated portion of the Eastern U.S./Canada Area. Most of the benefits would be limited to relatively large vessels, due to the offshore location of the SAP Pilot Program. Participating vessels would be subject to the existing requirements of the Eastern U.S./Canada Area, including the requirement to use either a haddock separator trawl or flounder net, and use of a VMS. Total revenue would be limited by the GB cod and haddock TACs already set for the Eastern U.S./Canada Management Area. The potential revenue of participating vessels under the proposed pilot program was calculated based upon historic landings compositions. The average estimated revenue per vessel is \$ 32,095 per trip, and ranges from \$ 22,571 to \$ 34,586 per trip. Smaller vessels would generate less revenue than larger vessels. The average vessel revenue is estimated to be \$ 4,527 per day, and ranges from \$ 3,060 to \$ 4,751 per day. These averages are higher than the average revenues on groundfish trips reported in the break-even analysis in Amendment 13; one can infer that the proposed SAP would provide vessels with greater opportunity to remain profitable.

The proposed action would also relax current restrictions in order to allow vessels to fish both inside and outside of the Western U.S./Canada Area on the same trip. Although Vessel Trip Report data indicate that fishing in multiple statistical areas is not a common occurrence, observer data and fisher's comments indicate that some vessels do fish in multiple statistical areas on the same trip. Based upon industry comments, this proposed regulatory change would reduce the risk of an unprofitable trip into the Western U.S./Canada Area.

The aggregate economic benefits of the opportunities proposed in FW 40–A would include revenue from harvest of the targeted stocks, as well as from harvest under the incidental TACs.

#### *Economic Impacts of Alternatives to the Proposed Action*

The No Action alternative would provide no new opportunities for economic benefits above the current level. Under the No Action alternative, vessels would not be able to fish as many B DAS, or in currently closed areas, and would therefore forgo potential revenues. Selection of the No Action alternative would mean no

fishing opportunities under the Regular B DAS Pilot Program, and the loss of potential average revenues of \$ 2,000 per day. Selection of the No Action alternative would mean no fishing opportunities under the Closed Area I Hook Gear Haddock SAP, and the loss of potential profits of \$ 25,000 for each of approximately 60 participating vessels. Similarly, potential average revenue from the Eastern U.S./Canada Haddock SAP Pilot Program that would be unavailable under the No Action alternative is estimated to be \$ 4,500 per day absent.

The non-selected Regular B DAS Pilot Program alternative would implement the program for only two calendar quarters and, therefore, would provide less economic benefits than the proposed Regular B DAS Pilot Program. Secondly, due to the shorter duration of the non-selected program, less information would be obtained for the potential development of a future program. The non-selected CA I Hook Gear Haddock SAP would not require advance notice to the Observer Program, and would therefore be less burdensome to small entities, but would also fail to account for the logistical needs of the Observer Program. The non-selected Eastern U.S./Canada Haddock SAP Pilot Program proposes a different season for the SAP, a more restrictive cod possession limit, and no DAS flipping requirement. Taken as a whole, the proposed action may provide greater opportunity to retain cod, and may meet the conservation objectives of the FMP more effectively by not allowing fishing in the SAP during months that are important for GB cod spawning.

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

**Reporting and Recordkeeping Requirements**

The proposed measures in FW 40-A include the following provisions requiring either new or revised reporting and recordkeeping requirements: (1) VMS purchase and installation; (2) VMS proof of installation; (3) automated VMS polling of vessel position once per hour when fishing in the Regular B DAS Pilot Program; (4) revised automated VMS polling of vessel position twice per hour when fishing in the U.S./Canada Management Area or the Eastern U.S./Canada SAP Pilot Program; (5) automated VMS polling of vessel position twice per hour when fishing in the CA I Hookgear Haddock SAP; (6) SAP area and DAS use declaration via VMS prior to each trip into a SAP; (7)

revised estimate of the area and DAS use declaration via VMS prior to each trip into the CA I Hookgear Haddock SAP; (8) DAS "flip" notification via VMS for the Regular B DAS Pilot Program; (9) DAS "flip" notification via VMS for the Eastern U.S./Canada Haddock SAP Pilot Program; (10) notice requirements for observer deployment prior to every trip into the Regular B DAS pilot program; (11) revised estimate of the notice requirements for observer deployment prior to every trip into the CA I Hookgear Haddock SAP; (12) daily electronic catch and discard reports of stocks of concern when fishing under the Regular B DAS pilot program; (13) daily electronic catch and discard reports of GB cod and GB haddock for vessels not participating in the GB Cod Hook Sector when fishing under the CA I Hookgear Haddock SAP; and (14) daily electronic catch and discard reports of GB yellowtail flounder when fishing on a combined trip into the Western U.S./Canada Area.

The measures proposed under FW 40-A would require vessels to use VMS. Costs not previously authorized under the Paperwork Reduction Act (PRA) involved with VMS operation include monthly operational costs associated with fees charged by the individual VMS vendor for satellite connection, as well as service and maintenance charges. The cost of the purchase and installation of VMS units to vessels participating in the NE multispecies fishery were considered and approved in a previous PRA submission. NMFS has currently certified two vendors to provide VMS services. A conservative cost estimate, based on operational charges for the Boatrac VMS vendor, is approximately \$ 100 per month for each NE multispecies vessel. Therefore, the yearly operational costs, per vessel, for VMS usage under the proposed provisions in FW 40-A are \$1,200. This represents the only compliance costs associated with this action.

**Public Reporting Burden**

This proposed rule contains collection of information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval. Public reporting burden for these collections of information are estimated to average as follows:

1. VMS purchase and installation, OMB# 0648-0202 (1 hr/response);
2. VMS proof of installation, OMB# 0648-0202 (5 min/response);
3. Automated VMS polling of vessel position once per hour when fishing in

the Regular B DAS pilot program, OMB# 0648-0202 (5 sec/response);

4. Revised automated VMS polling of vessel position twice per hour when fishing in the U.S./Canada Management Area or the Eastern U.S./Canada Haddock SAP Pilot Program OMB# 0648-0202 (5 sec/response);

5. Revised automated VMS polling of vessel position twice per hour when fishing in the CA I Hookgear Haddock SAP, OMB# 0648-0202 (5 sec/response);

6. SAP area and DAS use declaration via VMS prior to each trip into a SAP, OMB# 0648-0202 (5 min/response);

7. Revised estimate of the area and DAS use declaration via VMS prior to each trip into the CA I Hookgear Haddock SAP, OMB# 0648-0202 (5 min/response);

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

9. DAS "flip" notification via VMS for the CA II Haddock SAP, OMB# 0648-0202 (5 min/response);

10. Notice requirements for observer deployment prior to every trip into the Regular B DAS Pilot Program OMB# 0648-0202, (2 min/response);

11. Revised estimate of the notice requirements for observer deployment prior to every trip into the CA I Hookgear Haddock SAP, OMB# 0648-0202 (2 min/response);

12. Daily electronic catch and discard reports of stocks of concern when fishing under the Regular B DAS Pilot Program OMB# 0648-0212, (0.25 hr/response);

13. Daily electronic catch and discard reports of GB cod and GB haddock for vessels not participating in the GB Cod Hook Sector when fishing under the CA I Hookgear Haddock SAP, OMB# 0648-0212 (0.25 hr/response); and

14. Daily electronic catch and discard reports of GB yellowtail flounder when fishing on a combined trip into the Western U.S./Canada Area, OMB# 0648-0212 (0.25 hr/response).

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

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of collection of information,

including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS and to OMB (see **ADDRESSES**).

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

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 8, 2004.

**William T. Hogarth,**

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

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

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

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

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

2. In § 648.2, new definitions for “DAS flip” and “Incidental Total Allowable Catch (TAC)” are added in alphabetical order, to read as follows:

##### § 648.2 Definitions.

\* \* \* \* \*

*DAS flip*, with respect to the NE multispecies fishery, means ending fishing under a Regular B DAS and beginning fishing under a Category A DAS.

\* \* \* \* \*

*Incidental Total Allowable Catch (TAC)*, with respect to the NE multispecies fishery, means the total amount of catch (both kept and discarded) of a regulated groundfish stock of concern that can be taken by vessels fishing under Category B DAS.

\* \* \* \* \*

3. In § 648.9, paragraph (c)(1)(ii) is revised to read as follows:

##### § 648.9 VMS requirements.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(ii) At least twice per hour, 24 hours a day, for all NE multispecies DAS vessels that elect to fish with a VMS specified in § 648.10(b) or that are required to fish with a VMS as specified in § 648.85(a), for each groundfish DAS trip that the vessel has elected to fish in the U.S./Canada Management Areas, and as specified in § 648.85(a)(1), for

each groundfish trip that the vessel has elected to fish in the CA I Hook Gear Haddock SAP.

\* \* \* \* \*

4. In § 648.10, paragraphs (b)(1)(vi) and (vii) are added, and paragraph (b)(3)(i) is revised to read as follows:

##### § 648.10 DAS notification requirements.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(vi) A vessel electing to fish under the Regular B DAS Pilot Program, as specified in § 648.85(b)(6).

(vii) A vessel electing to fish in the CA I Hook Gear Haddock SAP, as specified in § 648.85(b)(7).

\* \* \* \* \*

(3) \* \* \*

(i) A vessel issued a limited access NE multispecies, monkfish, occasional scallop, or Combination permit must use the call-in system specified in paragraph (c) of this section, unless the owner of such vessel has elected to one or more of the following activities:

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

(B) Fish in the Eastern U.S./Canada Area or Western U.S./Canada Area as described in § 648.85(a)(2)(i); or

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

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

\* \* \* \* \*

5. In § 648.14, paragraphs (a)(39), (a)(104), (a)(130), and (a)(142)–(152), and paragraphs (c)(8) and (c)(50) are revised; and paragraphs (c)(51)–(c)(78) are added to read as follows:

##### § 648.14 Prohibitions.

(a) \* \* \*

(39) Enter or be in the area described in § 648.81(b)(1) on a fishing vessel, except as provided in § 648.81(b)(2) and (i).

\* \* \* \* \*

(104) Fish for, harvest, possess, or land regulated species in or from the closed areas specified in § 648.81(a) through (f), unless otherwise specified in § 648.81(c)(2)(iii), (f)(2)(i), (f)(2)(iii), or as authorized under § 648.85.

\* \* \* \* \*

(130) If declared into one of the areas specified in § 648.85(a)(1), fish during that same trip outside of the declared area, unless in compliance with the restrictions under § 648.85(a)(3)(ii), or enter or exit the declared area more than once per trip.

\* \* \* \* \*

(142) If the vessel has been issued a limited access NE multispecies DAS permit and is in the area specified in § 648.85(b)(8)(ii), fail to comply with the VMS requirements in § 648.85(b)(8)(v)(B).

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

(144) Enter or fish in the Eastern U.S./Canada Haddock SAP Pilot Program outside of the season specified in § 648.85(b)(8)(iv).

(145) If fishing under a NE multispecies DAS in the Eastern U.S./Canada Haddock SAP Pilot Program, exceed the possession limits specified in § 648.85(b)(8)(v)(H).

(146) If fishing under the Eastern U.S./Canada Haddock SAP Pilot Program, fish for, harvest, possess or land any regulated NE multispecies from the area specified in § 648.85(b)(8)(ii), unless in compliance with the restrictions and conditions specified in § 648.85(b)(8)(v)(A) through (G).

(147) If fishing under a NE multispecies DAS in the Eastern U.S./Canada Area specified in § 648.85(a)(1), both outside and inside of the areas specified for a SAP under § 648.85(b)(3) and (8), fail to abide by the DAS and possession restrictions under § 648.85(b)(8)(v)(A)(2) through (4).

(148) If fishing under a NE multispecies DAS in the Eastern U.S./Canada Haddock SAP Area specified in § 648.85(b)(8)(ii), during the season specified in § 648.85(b)(8)(iv), fail to comply with the restrictions specified in § 648.85(b)(8)(v).

(149) If fishing under a NE multispecies DAS in the Eastern U.S./Canada Area specified in § 648.85(a)(1)(ii), and not in a SAP specified in § 648.85(b) on the same trip, fail to comply with the requirements specified in § 648.85(a)(3).

(150) If fishing under a NE multispecies DAS in the Eastern U.S./Canada Area specified in § 648.85(a)(1)(ii), and in one of the SAPs specified in § 648.85(b)(3) or (8), fail to comply with the no discard and DAS flip provisions specified in § 648.85(b)(8)(v)(I) or the minimum Category A DAS requirement specified in § 648.85(b)(8)(v)(J).

(151) If fishing in the Eastern U.S./Canada Haddock SAP Pilot Program specified in § 648.85(b)(8), fail to comply with the reporting requirements specified in § 648.85(b)(8)(v)(G).

(152) If fishing under the Eastern U.S./Canada Haddock SAP Pilot Program specified in § 648.85(b)(8), fail to comply with the observer notification requirements specified in § 648.85(b)(8)(v)(C).

\* \* \* \* \*

(c) \* \* \*

(8) Fail to comply with the restrictions on fishing and gear specified in § 648.80(a)(3)(v), (a)(4)(v), (b)(2)(v), and (c)(2)(iv) if the vessel has been issued a limited access NE multispecies permit and fishes with hook-gear in areas specified in § 648.80(a), (b), or (c), unless allowed under § 648.85(b)(7)(iv)(F).

\* \* \* \* \*

(50) Discard legal-sized regulated multispecies while fishing under a Regular B DAS in the Regular B DAS Pilot Program, as described in § 648.85(b)(6).

(51) If fishing under a Regular B DAS in the Regular B DAS Pilot Program, fail to comply with the DAS flip requirements of § 648.85(b)(6)(iv)(E) if the vessel harvests and brings on board more than the landing limit for a groundfish stock of concern specified in § 648.85(b)(6)(iv)(D).

(52) If declared to fish under a Regular B DAS in the Regular B DAS Pilot Program, fail to have the minimum number of Category A DAS available as required in § 648.85(b)(6)(iv)(F).

(53) If fishing in the Eastern U.S./Canada Haddock SAP Pilot Area, and other portions of the Eastern U.S./Canada Area on the same trip, fail to comply with the restrictions in § 648.85(b)(8)(v)(A).

(54) If fishing in the Eastern U.S./Canada Haddock SAP Pilot Area, discard legal-sized cod while fishing under a Category B DAS, as described in § 648.85(b)(8)(v)(I).

(55) If fishing in the Eastern U.S./Canada Haddock SAP Pilot Area under a Category B DAS, fail to comply with the DAS flip requirements of § 648.85(b)(8)(v)(I), if the vessel possesses more than the landing limit for cod specified in § 648.85(b)(8)(v)(F).

(56) If fishing in the Eastern U.S./Canada Haddock SAP Pilot Area under a Category B DAS, fail to have the minimum number of Category A DAS available as required under § 648.85(b)(8)(v)(J).

(57) If fishing in the Regular B DAS Pilot Program specified in § 648.85(b)(6), fail to comply with the requirements and restrictions specified in § 648.85(b)(6)(iv)(A) through (F), and (I).

(58) If fishing in the Regular B DAS Pilot Program specified in

§ 648.85(b)(6), fail to comply with the VMS requirement specified in § 648.85(b)(6)(iv)(A).

(59) If fishing in the Regular B DAS Pilot Program specified in § 648.85(b)(6), fail to comply with the observer notification requirement specified in § 648.85(b)(6)(iv)(B).

(60) If fishing in the Regular B DAS Pilot Program specified in § 648.85(b)(6), fail to comply with the VMS declaration requirement specified in § 648.85(b)(6)(iv)(C).

(61) If fishing in the Regular B DAS Pilot Program specified in § 648.85(b)(6), fail to comply with the landing limits specified in § 648.85(b)(6)(iv)(D).

(62) If fishing in the Regular B DAS Pilot Program specified in § 648.85(b)(6), fail to comply with the no discard and DAS flip requirements specified in § 648.85(b)(6)(iv)(E).

(63) If fishing in the Regular B DAS Pilot Program specified in § 648.85(b)(6), fail to comply with the minimum Category A DAS and Category B DAS accrual requirements specified in § 648.85(b)(6)(iv)(F).

(64) Use a Regular B DAS in the Regular B DAS Pilot Program specified in § 648.85(b)(6), if the program has been closed as specified in § 648.85(b)(6)(iv)(H) or (b)(6)(vi).

(65) If fishing in the Regular B DAS Pilot Program specified in § 648.85(b)(6), use a Regular B DAS in a stock area that has been closed, as specified in § 648.85(b)(6)(iv)(G).

(66) If fishing in the Regular B DAS Pilot Program specified in § 648.85(b)(6), fail to comply with the reporting requirements specified in § 648.85(b)(6)(iv)(I).

(67) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the requirements and conditions specified in § 648.85(b)(7)(iv)(A) through (H).

(68) If fishing in the CA I Hook Gear Haddock Access Area specified in § 648.85(b)(7)(ii), fail to comply with the requirements and conditions specified in § 648.85(b)(7)(i) and (b)(7)(iv)(A) through (H).

(69) Fish in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), outside of the season specified in § 648.85(b)(7)(iii).

(70) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the DAS use restrictions specified in § 648.85(b)(7)(iv)(A).

(71) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the VMS requirements specified in § 648.85(b)(7)(iv)(B).

(72) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the observer notification requirements specified in § 648.85(b)(7)(iv)(C).

(73) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the VMS declaration requirement specified in § 648.85(b)(7)(iv)(E).

(74) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the gear restrictions specified in § 648.85(b)(7)(iv)(F).

(75) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the landing limits specified in § 648.85(b)(7)(iv)(G).

(76) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the reporting requirement specified in § 648.85(b)(7)(iv)(H).

(77) Fish in the CA I Hook Gear Haddock Access Area specified in § 648.85(b)(7)(ii), if that area is closed as specified in § 648.85(b)(7)(iv)(K) or (b)(7)(v).

(78) Fish in the U.S./Canada Haddock SAP Pilot Program specified in § 648.85(b)(8), if the SAP Pilot Program is closed as specified in § 648.85(b)(8)(v)(K) or (L).

\* \* \* \* \*

6. In § 648.81, paragraphs (b)(2)(iii), (b)(2)(iv) and (i) are revised to read as follows:

**§ 648.81 NE multispecies closed areas and measures to protect EFH.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(iii) Fishing in the CA II Yellowtail Flounder SAP or the Eastern U.S./Canada Haddock SAP Pilot Program as specified in § 648.85(b)(3) and (8), respectively; or

(iv) Transiting the area, provided the vessel's fishing gear is stowed in accordance with the provisions of § 648.23(b); and

(A) The operator has determined, and a preponderance of available evidence indicates, that there is a compelling safety reason; or

(B) The vessel has declared into the Eastern U.S./Canada Area as specified in § 648.85(a)(3)(ii) and is transiting CA II in accordance with the provisions of § 648.85(a)(3)(vii).

\* \* \* \* \*

(i) *Transiting*. A vessel may transit CA I, the Nantucket Lightship Closed Area, the Cashes Ledge Closed Area, the Western GOM Closure Area, the GOM Rolling Closure Areas, the GB Seasonal

Closure Area, and the EFH Closure Areas, as defined in paragraphs (a)(1), (c)(1), (d)(1), (e)(1), (f)(1), (g)(1), and (h)(1), respectively, of this section, unless otherwise restricted, provided that its gear is stowed in accordance with the provisions of § 648.23(b). A vessel may transit CA II, as defined in paragraph (b)(2) of this section, in accordance with paragraph (b)(2)(iv) of this section.

\* \* \* \* \*

7. In § 648.82, paragraphs (d)(2)(i)(A) and (j)(1)(iii) are revised, and paragraph (e)(3) is added to read as follows:

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

\* \* \* \* \*

- (d) \* \* \*
- (2) \* \* \*
- (i) \* \* \*

(A) *Restrictions on use.* Regular B DAS can only be used by NE multispecies vessels in an approved SAP or in the Regular B DAS Pilot Program as specified in § 648.85(a)(6). Vessels may not fish under both a Regular B DAS and a Reserve B DAS on the same trip. Vessels that are required by another fishery management plan (i.e., not the NE multispecies FMP) to utilize a multispecies DAS, as specified under § 648.92(b)(2), may elect to use a Category B DAS to satisfy that requirement.

\* \* \* \* \*

- (e) \* \* \*

(3) For vessels electing to fish in the Regular B DAS Pilot Program, as specified at § 648.85(a)(6), and that remain fishing under a Regular B DAS for the entire fishing trip (without a DAS flip), DAS used will accrue at the rate of 1 full DAS for each calendar day, or part of a calendar day, fished. For example, a vessel that fished on one calendar day from 6 a.m. to 10 p.m. would be charged 24 hours of Regular B DAS, not 16 hours; a vessel that left on a trip 1 hour before midnight on the first calendar day and that fished until 1 hour after midnight of the next calendar day would be charged 48 hours of Regular B DAS because the fishing trip would have spanned 2 calendar days.

\* \* \* \* \*

- (j) \* \* \*
- (1) \* \* \*

(iii) *Method of counting DAS.* Unless electing to fish in the Regular B DAS Pilot Program specified in § 648.85(a)(6), and therefore subject to the DAS accrual provisions of § 648.82(e)(3), Day gillnet vessels fishing with gillnet gear under a NE multispecies DAS will accrue 15 hours of DAS for each trip of more than

3 hours, but less than or equal to 15 hours. Such vessels will accrue actual DAS time at sea for trips less than or equal to 3 hours, or more than 15 hours.

\* \* \* \* \*

8. In § 648.85, paragraphs (a)(3)(ii), (a)(3)(iv)(A), (a)(3)(v), and (b)(3)(viii) are revised; and paragraphs (a)(3)(iv)(C)(4), (a)(3)(v)(A) and (B), (a)(3)(vii), and (b)(5) through (b)(8) are added to read as follows:

**§ 648.85 Special management programs.**

\* \* \* \* \*

- (a) \* \* \*
- (3) \* \* \*

(ii) *Declaration.* A NE multispecies DAS vessel that intends to fish in the U.S./Canada Management Area under a groundfish DAS must, prior to leaving the dock, declare the specific U.S./Canada Management Area described in paragraphs (a)(1)(i) or (ii) of this section, or the specific SAP, described in paragraph (b) of this section, within the U.S./Canada Management Area, through the VMS, in accordance with instructions to be provided by the Regional Administrator and comply with the restrictions and conditions in paragraphs (a)(3)(ii)(A) through (C) of this section. Vessels other than NE multispecies DAS vessels are not required to declare into the U.S./Canada Areas.

(A) A vessel fishing under a NE multispecies DAS in the Eastern U.S./Canada Area may not fish, during the same trip, outside of the Eastern U.S./Canada Area, and may not enter or exit the Eastern U.S./Canada Area more than once on any trip.

(B) A vessel fishing under a NE multispecies DAS in the Western U.S./Canada Area may fish inside and outside the Western U.S./Canada Area on the same trip, provided it does not enter or exit the area more than once on any trip, and complies with the possession restrictions specified in paragraph (a)(3)(iv)(C)(4) of this section, and the reporting requirements specified in § 648.85(a)(3)(v).

(C) For the purposes of selecting vessels for observer deployment, a vessel fishing in either of the U.S./Canada Management Areas specified in paragraph (a)(1) of this section must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; and the date, time, and port of departure, at least 72 hr prior to the beginning of any trip that it declares into the U.S./Canada Management Area as required under this paragraph (a)(3)(ii).

\* \* \* \* \*

- (iv) \* \* \*

(A) *Cod landing limit restrictions.*

Notwithstanding other applicable possession and landing restrictions under this part, a NE multispecies vessel fishing in the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) of this section may not land more than 500 lb (226.8 kg) of cod per DAS, or any part of a DAS, up to 5,000 lb (2,268 kg) per trip, not to exceed 5 percent of the total catch on board, whichever is less, unless otherwise restricted under this part. A vessel fishing in both the Eastern U.S./Canada Area and either the CA II Yellowtail Flounder SAP or the Eastern U.S./Canada Haddock SAP Pilot Program on the same trip must comply with the cod possession restrictions for those programs, as specified in paragraphs (b)(3) and (8) of this section, respectively.

\* \* \* \* \*

- (C) \* \* \*

(4) *Yellowtail flounder landing limit for vessels fishing both inside and outside the Western U.S./Canada Area on the same trip.* A vessel fishing both inside and outside of the Western U.S./Canada Area on the same trip, as allowed under paragraph (a)(3)(ii)(B) of this section, is subject to the most restrictive landing limits that apply to any of the areas fished.

\* \* \* \* \*

(v) *Reporting.* The owner or operator of a NE multispecies DAS vessel must submit reports via the VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished when declared into either of the U.S./Canada Management Areas. The reports must include at least the information specified in paragraphs (a)(3)(v)(A) and (B) of this section, depending on area fished. The reports must be submitted in 24-hr intervals for each day, beginning at 0000 hr and ending at 2400 hr, and must be submitted by 0900 hr of the following day.

(A) *Eastern U.S./Canada Area.* For a vessel declared into the Eastern U.S./Canada Area in accordance with paragraph (a)(3)(ii) of this section, the reports must include at least the following information: Total pounds of cod, haddock and yellowtail flounder kept; and total pounds of cod, haddock, and yellowtail flounder discarded.

(B) *Western U.S./Canada Area.* For a vessel declared into the Western U.S./Canada Area in accordance with paragraph (a)(3)(ii) of this section, the reports must include at least the following information: Total pounds of yellowtail flounder kept and total

pounds of yellowtail flounder discarded. In addition to these reporting requirements, a vessel that has declared that it intends to fish both inside and outside of the Western U.S./Canada Area on the same trip, in accordance with paragraph (a)(3)(ii) of this section, must report via VMS the following information when crossing the boundary into or out of the Western U.S./Canada Area: Total pounds of yellowtail flounder kept, by statistical area, and total pounds of yellowtail flounder discarded, by statistical area, since the last daily catch report.

\* \* \* \* \*

(vii) *Transiting*. A multispecies DAS vessel declared into the Eastern U.S./Canada Area as defined in paragraph (a)(1)(ii) of this section, and not fishing in the CA II Yellowtail Flounder SAP described in paragraph (b)(3) of this section, may transit the CA II Yellowtail Flounder SAP as described in paragraph (b)(3)(ii) of this section, provided all fishing gear is stowed in accordance with the regulations at § 648.23(b).

(b) \* \* \*

(3) \* \* \*

(viii) *Trip limits*. Unless otherwise authorized by the Regional Administrator as specified in paragraph (a)(3)(iv)(D) of this section, a vessel fishing in the CA II Yellowtail Flounder SAP may fish for, possess, and land up to 30,000 lb (13,608 kg) of yellowtail flounder per trip, and may not fish for, possess, or land more than 1,000 lb (453.6 kg) of cod per trip, regardless of trip length.

\* \* \* \* \*

(5) *Incidental TACs*. Unless otherwise specified in this paragraph (b)(5), incidental TACs will be specified through the periodic adjustment process described in § 648.90, and allocated as described in paragraph (b)(5) of this section, for each of the following stocks: GOM cod, GB cod, CC/GOM yellowtail flounder, American plaice, white hake, SNE/MA yellowtail flounder, SNE/MA winter flounder, and witch flounder. NMFS will send letters to limited access NE multispecies permit holders notifying them of such TACs.

(i) *Stocks other than GB cod*. With the exception of GB cod, the incidental TACs specified under this paragraph (b)(5) shall be allocated to the Regular B DAS Pilot Program described in paragraph (b)(6) of this section.

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

paragraph (b)(7) of this section; and 34 percent to the Eastern U.S./Canada Haddock SAP Pilot Program, described in paragraph (b)(8) of this section.

(6) *B Regular DAS Pilot Program*—(i) *Eligibility*. Vessels issued a valid limited access NE multispecies DAS permit and allocated Regular B DAS are eligible to participate in the Regular B DAS Pilot Program for the period specified in paragraph (b)(6)(ii) of this section, and may elect to fish under a Regular B DAS, provided they comply with the requirements and restrictions of this paragraph (b)(6), and provided the use of Regular B DAS is not restricted according to paragraphs (b)(6)(iv)(G) or (H), or paragraph (b)(6)(vi) of this section. Vessels are required to comply with the no discarding and DAS flip requirements specified in paragraph (b)(6)(iv)(E) of this section, and the DAS balance and accrual requirements specified in paragraph (b)(6)(iv)(F) of this section. Vessels may not fish under the B Regular DAS Pilot program in the Eastern U.S./Canada Area.

(ii) *Duration of program*. Fishing under this program may only occur from November 1, 2004, through October 31, 2005.

(iii) *Quarterly incidental catch TACs*. The incidental catch TACs specified in accordance with paragraph (b)(5) of this section shall be divided into quarterly catch TACs.

(iv) *Program requirements*—(A) *VMS requirement*. A NE multispecies DAS vessel fishing in the Regular B DAS Pilot Program described in paragraph (b)(6)(i) of this section must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(B) *Observer notification*. For the purposes of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; the date, time, and port of departure; and the planned fishing area or areas (GOM, GB, or SNE/MA) at least 72 hr prior to the beginning of any trip that it declares into the Regular B DAS Pilot Program as required under paragraph (b)(6)(iv)(C) of this section, and in accordance with instructions provided by the Regional Administrator.

(C) *VMS declaration*. Prior to departure from port, a vessel intending to participate in the Regular B DAS Pilot Program and to fish under a Regular B DAS must declare into the Program via the VMS, in accordance with instructions provided by the Regional Administrator. A vessel declared into the Regular B DAS Pilot Program cannot

fish in an approved SAP described under this section on the same trip.

(D) *Landing limits*. A NE multispecies vessel fishing in the Regular B DAS Pilot Program described in this paragraph (b)(6), and fishing under a Regular B DAS, may not land more than 100 lb (45.5 kg) per DAS, or any part of a DAS, up to a maximum of 1,000 lb (454 kg) per trip, of any of the following species: Cod, American plaice, white hake, witch flounder, ocean pout, winter flounder and windowpane flounder. Such vessels may not land more than 25 lb (11.3 kg) per DAS, or any part of a DAS, up to a maximum of 250 lb (113 kg) per trip of yellowtail flounder, unless fishing the entire trip in the U.S./Canada Management Area as specified under paragraph (a) (1) of this section.

(E) *No-discard provision and DAS flips*. A vessel fishing in the Regular B DAS Pilot Program under a Regular B DAS may not discard legal-sized regulated groundfish. If such a vessel harvests and brings on board more legal sized regulated groundfish than the applicable maximum landing limit per trip specified under paragraph (b)(6)(iv)(D) of this section, the vessel operator must notify NMFS immediately via VMS to initiate a DAS flip. Once this notification has been received by NMFS, the vessel will automatically be switched by NMFS to fishing under a Category A DAS. For a vessel that notified NMFS of a DAS flip, the B DAS that have accrued between the time the vessel started accruing Regular B DAS at the beginning of the trip (i.e., at the time the vessel crossed the demarcation line at the beginning of the trip) and the time the vessel declared its DAS flip will be accrued as Category A DAS, and not Regular B DAS. Once such vessel has initiated the DAS flip and is fishing under a Category A DAS, the prohibition on discarding legal-sized regulated groundfish no longer applies. A vessel that has declared a DAS flip will be subject to the landing restrictions specified under § 648.86.

(F) *Minimum Category A DAS and B DAS accrual*. For a vessel fishing under the Regular B DAS Pilot Program, the number of Regular B DAS that can be used on a trip cannot exceed the number of Category A DAS the vessel has available at the start of the trip. The vessel will accrue DAS in accordance with § 648.82(e)(3).

(G) *Restrictions when 100 percent of the incidental catch TAC is harvested*. With the exception of white hake, when the Regional Administrator projects that 100 percent of one or more of incidental TACs specified under paragraph (b)(6)(iii) of this section has been

harvested, the use of Regular B DAS will be prohibited in the pertinent stock area(s) as defined under paragraph (b)(6)(v) of this section for the duration of the calendar quarter. The closure of a stock area to all Regular B DAS use will occur even if the incidental catch TACs for other stocks in that stock area have not been completely harvested. When the Regional Administrator projects that 100 percent of the white hake incidental catch TAC specified under paragraph (b)(6)(iii) of this section has been harvested, vessels fishing under a Regular B DAS, or that complete a trip under a Regular B DAS, will be prohibited from retaining white hake.

(H) *Closure of Regular B DAS program and quarterly DAS limit.* Unless otherwise closed as a result of the harvest of all incidental TACs as described in paragraph (b)(6)(iv)(G) of this section, or as result of an action by the Regional Administrator under paragraph (b)(6)(vi) of this section, the use of Regular B DAS will, through rulemaking consistent with the Administrative Procedure Act, be prohibited when 1,000 Regular B DAS have been used during the calendar quarter, in accordance with § 648.82(e)(3).

(I) *Reporting requirements.* The owner or operator of a NE multispecies DAS vessel must submit catch reports via VMS in accordance with instructions provided by the Regional Administrator, for each day fished when declared into the Regular B DAS Pilot Program. The reports must be submitted in 24-hr intervals for each day, beginning at 0000 hr and ending at 2400 hr. The reports must be submitted by 0900 hr of the following day. For vessels that have declared into the Regular B DAS Pilot Program in accordance with paragraph (b)(6)(iv)(C) of this section, the reports must include at least the following information: Statistical area fished, total weight (lb/kg) of cod, yellowtail flounder, American plaice, white hake, winter flounder, and witch flounder kept; and total weight (lb/kg) of cod, yellowtail flounder, American plaice, white hake, winter flounder, and witch flounder discarded.

(v) *Definition of incidental TAC stock areas.* For the purposes of the Regular B DAS Pilot Program, the species stock areas associated with the incidental TACs are defined in the following charts. Copies of a chart depicting these areas are available from the Regional Administrator upon request.

(A) *GOM cod stock area.* The GOM cod stock area is the area defined by straight lines connecting the following points in the order stated:

**GULF OF MAINE COD STOCK AREA**

Point	N. Lat.	W. Long.
GOM1 .....	(1)	70° 00'
GOM2 .....	42° 20'	70° 00'
GOM3 .....	42° 20'	67° 40'
GOM4 .....	43° 50'	67° 40'
GOM5 .....	43° 50'	66° 50'
GOM6 .....	44° 20'	66° 50'
GOM7 .....	44° 20'	67° 00'
GOM8 .....	(2)	67° 00'

(1) Intersection of the north-facing coastline of Cape Cod, MA, and 70° 00' W. Long.

(2) Intersection of the south-facing Maine coastline and 67° 00' W. Long.

(B) *GB cod stock area.* The GB cod stock area is the area defined by straight lines connecting the following points in the order stated:

**GEORGES BANK COD STOCK AREA**

Point	N. Lat.	W. Long.
GB1 .....	(1)	70° 00'
GB2 .....	42° 20'	70° 00'
GB3 .....	42° 20'	66° 00'
GB4 .....	42° 10'	66° 00'
GB5 .....	42° 10'	65° 50'
GB6 .....	42° 00'	65° 50'
GB7 .....	42° 00'	65° 40'
GB8 .....	40° 30'	65° 40'
GB9 .....	39° 00'	65° 40'
GB10 .....	39° 00'	70° 00'
GB11 .....	35° 00'	70° 00'
GB12 .....	35° 00'	(2)

(1) Intersection of the north-facing coastline of Cape Cod, MA, and 70° 00' W. Long.

(2) Intersection of east-facing coastline of Outer Banks, NC, and 35° 00' N. Lat.

(C) *CC/GOM yellowtail flounder stock area.* The CC/GOM yellowtail flounder stock area is the area defined by straight lines connecting the following points in the order stated:

**CAPE COD/GULF OF MAINE YELLOWTAIL FLOUNDER STOCK AREA**

Point	N. Lat.	W. Long.
CCGOM1 .....	(1)	70° 00'
CCGOM2 .....	41° 20'	(2)
CCGOM3 .....	41° 20'	69° 50'
CCGOM4 .....	41° 10'	69° 50'
CCGOM5 .....	41° 10'	69° 30'
CCGOM6 .....	41° 00'	69° 30'
CCGOM7 .....	41° 00'	68° 50'
CCGOM8 .....	42° 20'	68° 50'
CCGOM9 .....	42° 20'	67° 40'
CCGOM10 .....	43° 50'	67° 40'
CCGOM11 .....	43° 50'	66° 50'
CCGOM12 .....	44° 20'	66° 50'
CCGOM13 .....	44° 20'	67° 00'
CCGOM14 .....	(3)	67° 00'

(1) Intersection of the south-facing coastline of Cape Cod, MA, and 70° 00' W. Long.

(2) Intersection of the east-facing coastline of Nantucket, MA and 41° 20' N. Lat. and 67° 00' W. Long.

(3) Intersection of south-facing Maine coastline and 67° 00' W. Long.

(D) *American plaice stock area.* The American plaice stock area is the area defined by straight lines connecting the following points in the order stated:

**AMERICAN PLAICE STOCK AREA**

Point	N. Lat.	W. Long.
AMP1 .....	(1)	67° 00'
AMP2 .....	44° 20'	67° 00'
AMP3 .....	44° 20'	66° 50'
AMP4 .....	43° 50'	66° 50'
AMP5 .....	43° 50'	67° 40'
AMP6 .....	42° 30'	67° 40'
AMP7 .....	42° 30'	66° 00'
AMP8 .....	42° 10'	66° 00'
AMP9 .....	42° 10'	65° 50'
AMP10 .....	42° 00'	65° 50'
AMP11 .....	42° 00'	65° 40'
AMP12 .....	40° 30'	65° 40'
AMP13 .....	39° 00'	65° 40'
AMP14 .....	39° 00'	70° 00'
AMP15 .....	35° 00'	70° 00'
AMP16 .....	35° 00'	(2)

(1) Intersection of the south-facing Maine coastline and 67° 00' W. Long.

(2) Intersection of the east-facing coastline of Outer Banks, NC and 35° 00' N. Lat.

(E) *SNE/MA yellowtail flounder stock area.* The SNE/MA yellowtail flounder stock area is the area defined by straight lines connecting the following points in the order stated:

**SOUTHERN NEW ENGLAND/MID-ATLANTIC YELLOWTAIL FLOUNDER STOCK AREA**

Point	N. Lat.	W. Long.
SNE1 .....	35° 00'	(1)
SNE2 .....	35° 00'	70° 00'
SNE3 .....	39° 00'	70° 00'
SNE4 .....	39° 00'	71° 40'
SNE5 .....	39° 50'	71° 40'
SNE6 .....	39° 50'	68° 50'
SNE7 .....	41° 00'	68° 50'
SNE8 .....	41° 00'	69° 30'
SNE9 .....	41° 10'	69° 30'
SNE10 .....	41° 10'	69° 5'
SNE11 .....	41° 20'	69° 50'
SNE12 .....	(2)	70° 00'
SNE13 .....	(3)	70° 00'
SNE14 .....	(4)	70° 00'

(1) Intersection of east-facing coastline of Outer Banks, NC, and 35° 00' N. Lat.

(2) Intersection of south-facing coastline of Nantucket, MA, and 70° 00' W. Long.

(3) Intersection of north-facing coastline of Nantucket, MA, and 70° 00' W. Long.

(4) Intersection of south-facing coastline of Cape Cod, MA, and 70° 00' W. Long.

(F) *SNE/MA winter flounder stock area.* The SNE/MA winter flounder stock area is the area defined by straight lines connecting the following points in the order stated:

**SOUTHERN NEW ENGLAND/MID-ATLANTIC WINTER FLOUNDER STOCK AREA**

Point	N. Lat.	W. Long.
SNEW1 .....	(1)	70°00'
SNEW2 .....	42°20'	70°00'
SNEW3 .....	42°20'	68°50'
SNEW4 .....	39°50'	68°50'
SNEW5 .....	39°50'	71°40'
SNEW6 .....	39°50'	70°00'
SNEW7 .....	35°00'	70°00'
SNEW8 .....	35°00'	(2)

(1) Intersection of north-facing coastline of Cape Cod, MA, and 70° 00' W. Long.

(2) Intersection of east-facing coastline of Outer Banks, NC, and 35° 00' N. Lat.

(G) *Witch flounder stock area.* The witch flounder stock area is the area defined by straight lines connecting the following points in the order stated:

**WITCH FLOUNDER STOCK AREA**

Point	N. Lat.	W. Long.
WF1 .....	(1)	67°00'
WF2 .....	44°20'	67°00'
WF3 .....	44°20'	66°50'
WF4 .....	43°50'	66°50'
WF5 .....	43°50'	67°40'
WF6 .....	42°20'	67°40'
WF7 .....	42°20'	66°00'
WF8 .....	42°10'	66°00'
WF9 .....	42°10'	65°50'
WF10 .....	42°00'	65°50'
WF11 .....	42°00'	65°40'
WF12 .....	40°30'	65°40'
WF13 .....	40°30'	66°40'
WF14 .....	39°50'	66°40'
WF15 .....	39°50'	70°00'
WF16 .....	(2)	70°00'
WF17 .....	(3)	70°00'
WF18 .....	(4)	70°00'

(1) Intersection of south-facing Maine coastline and 67°00' W. Long.

(2) Intersection of south-facing coastline of Nantucket, MA, and 70°00' W. Long.

(3) Intersection of north-facing coastline of Nantucket, MA, and 70°00' W. Long.

(4) Intersection of south-facing coastline of Cape Cod, MA, and 70°00' W. Long.

(vi) *Closure of the Regular B DAS Pilot Program.* The Regional Administrator, based upon information required under §§ 648.7, 648.9, 648.10, or 648.85, and any other relevant information, may prohibit, through rulemaking consistent with the Administrative Procedure Act, the use of Regular B DAS for the duration of a quarter or fishing year, if it is projected that continuation of the Regular B DAS Pilot Program would undermine the achievement of the objectives of the FMP or Regular B DAS Pilot Program, or if the level of observer coverage is insufficient to make such a projection.

(7) *CA I Hook Gear Haddock SAP—(i) Eligibility.* Vessels issued a valid limited access NE multispecies DAS

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

(ii) *CA I Hook Gear Haddock Access Area.* The CA I Hook Gear Haddock Access Area is the area defined by straight lines connecting the following points in the order stated:

**CLOSED AREA I HOOK GEAR HADDOCK ACCESS AREA**

Point	N. Lat.	W. Long.
Hook 1 .....	41°25.6'	69°20.2'
Hook 2 .....	41°29.2'	69°08.1'
Hook 3 .....	41°08.5'	68°50.2'
Hook 4 .....	41°06.4'	69°03.3'

(iii) *Season.* Eligible vessels may fish in the CA I Hook Gear Haddock SAP from October 1 through December 31.

(iv) *Program restrictions—(A) DAS use restrictions.* Vessels fishing in the CA I Hook Gear Haddock SAP may use Category A, Regular B or Reserve B DAS, in accordance with § 648.82(d)(2)(i)(A). A vessel fishing in the CA I Hook Gear Haddock SAP may not initiate a DAS flip. With the exception of vessels legally participating in the GB Cod Hook Sector, as authorized under § 648.87(d)(1), a vessel fishing in the CA I Hook Gear Haddock SAP, under either a Category A or Category B DAS, may fish a maximum of 4 DAS in the SAP per trip. A vessel fishing both inside and outside of the SAP on the same trip may only use a Category A DAS on such a trip, may only enter or exit the CA I Hook Gear Haddock SAP described in paragraph (b)(7)(ii) of this section once per trip, and is subject to the gear and reporting requirements specified in paragraphs (b)(7)(iv)(F) and (H), respectively.

(B) *VMS requirement.* A NE multispecies DAS vessel fishing in the CA I Hook Gear Haddock SAP specified in this paragraph (b)(7) must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(C) *Observer notifications.* With the exception of the 2004 fishing year, a vessel intending to participate in the CA I Hook Gear Haddock SAP must notify the NMFS Observer Program by telephone by September 1 of its intent to participate. This notification need not include specific information about the date of the trip. For the 2004 fishing year, a vessel must notify NMFS by a date set by the Regional Administrator. For the purposes of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; and date, time, and port of departure at least 72 hr prior to the beginning of any trip that it declares into the CA I Hook Gear Haddock SAP, as required in paragraph (b)(7)(iv)(B) of this section, and in accordance with instructions provided by the Regional Administrator.

(D) *Observer program funding.* The Regional Administrator may authorize the funding of observers by Sector vessels (for Sector vessels), consistent with applicable law, based upon the estimated participation level of vessels in the CA I Hook Gear Haddock SAP, if it is determined that the funding is inadequate to provide sufficient observer coverage for total number of vessels (both the non-Sector and GB Cod Hook Sector vessels).

(E) *VMS declaration.* Prior to departure from port, a vessel intending to participate in the CA I Hook Gear Haddock SAP must declare into the SAP via VMS, and provide information on the type of DAS (Category A, Regular B, or Reserve B) that it intends to fish, and whether it intends to fish outside of the SAP on the same trip, in accordance with instructions provided by the Regional Administrator. A vessel declared into the CA I Hook Gear Haddock SAP cannot fish in another SAP specified under this section on the same trip.

(F) *Gear restrictions.* A vessel fishing exclusively in the CA I Hook Gear Haddock SAP is exempt from the maximum number of hook restriction specified in § 648.80(a)(4)(v). Unless otherwise exempted by a Sector letter of authorization, as described under § 648.87(c)(3), a vessel fishing both inside and outside of the SAP on the same trip is subject to the maximum number of hooks fished specified under § 648.80(a)(4)(v).

(G) *Landing limits.* Unless otherwise exempted by a Sector letter of authorization, as described under § 648.87(c)(3), a NE multispecies vessel fishing in the CA I Hook Gear Haddock Access Area described in paragraph

(b)(7)(ii) of this section may not land more than 500 lb (226.8 kg) of cod per DAS, or any part of a DAS, up to 2,000 lb (4,403 kg) per trip.

(H) *Reporting requirements.* With the exception of vessels participating in the Sector, as described under § 648.87(d)(1), the owner or operator of a vessel declared into the CA I Hook Gear Haddock Area, as described in paragraph (b)(7)(ii) of this section, must submit reports via VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished when declared into the CA I Hook Gear Haddock Access Area. The reports must be submitted in 24-hr intervals for each day, beginning at 0000 hr and ending at 2400 hr. The reports must be submitted by 0900 hr of the following day. When such vessel fishes both inside and outside the Closed Area I Hook Gear Haddock Area on the same trip, as allowable under paragraph (b)(7)(iv)(A) of this section, the owner or operator must also submit a report when the vessel leaves or enters the area, as appropriate. The owner or operator of a vessel participating in the Sector, as described under § 648.87(d)(1), and declared into the CA I Hook Gear Haddock Area, must submit reports to the Sector Manager, with instructions to be provided by the Sector Manager, for each day fished, when declared into the CA I Hook Gear Haddock Area. For all vessels that have declared into the CA I Hook Gear Haddock Access Area in accordance with paragraph (b)(7)(iv)(B) of this section, the reports must include at least the following information: Total weight (lb/kg) of cod and haddock kept, and total weight (lb/kg) of cod and haddock discarded.

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

(J) *Haddock TAC.* The maximum amount of haddock (landings and discards) that may be harvested in a fishing year from the CA I Hook Gear Haddock Access Area by vessels fishing under a Category B DAS is 1,000 mt.

(K) *Mandatory closure of CA I Hook Gear Haddock Access Area.* When the Regional Administrator projects that the haddock TAC specified in paragraph (b)(7)(iv)(J) of this section has been caught by vessels fishing under Category B DAS, NMFS will close, through rulemaking consistent with the Administrative Procedure Act, the CA I Hook Gear Haddock Access Area to all NE multispecies vessels. When the Regional Administrator projects that the

incidental cod TAC specified in paragraph (b)(7)(iv)(I) of this section has been caught, NMFS shall, through rulemaking consistent with the Administrative Procedure Act, prohibit the use of Category B DAS in the CA I Hook Gear Haddock Access Area.

(v) *General Closure of the CA I Hook Gear Haddock Access Area.* The Regional Administrator, based upon information required under §§ 648.7, 648.9, 648.10, or 648.85, and any other information, may, through rule-making consistent with the Administrative Procedure Act, close the CA I Hook Gear Haddock Access Area for the duration of the season, if the level of observer coverage is insufficient to project whether continuation of the SAP will undermine the achievement of the objectives of the FMP or the CA I Hook Gear Haddock SAP.

(8) *Eastern U.S./Canada Haddock SAP Pilot Program—(i) Eligibility.* Vessels issued a valid limited access NE multispecies DAS permit, and fishing with trawl gear, are eligible to participate in the Eastern U.S./Canada Haddock SAP Pilot Program, and may fish in the Eastern U.S./Canada Haddock SAP Area, as described in paragraph (b)(8)(ii) of this section, during the program duration and season specified in paragraphs (b)(8)(iii) and (iv) of this section, provided such vessels comply with the requirements of this section, and provided the SAP is not closed according to the provisions specified in paragraphs (b)(8)(v)(K) or (L) of this section. Copies of a chart depicting this area are available from the Regional Administrator upon request.

(ii) *Eastern U.S./Canada Haddock SAP Area.* The Eastern U.S./Canada Haddock SAP Area is the area defined by straight lines connecting the following points in the order stated:

#### EASTERN U.S./CANADA HADDOCK SAP AREA

Point	N. Lat.	W. Long.
CAII3 .....	42°22'	( <sup>1</sup> ) 67°20'
SAP1 .....	42°20'	67°20'
SAP2 .....	42°20'	67°40'
SAP3 .....	41°10'	67°40'
SAP4 .....	41°10'	67°20'
SAP5 .....	42°10'	67°20'
SAP6 .....	42°10'	67°10'
CAII8 .....	42°22'	( <sup>1</sup> ) 67°20'

(<sup>1</sup>) U.S./Canada maritime boundary.

(iii) *Duration of program.* The Eastern U.S./Canada Haddock SAP Pilot Program is in effect from [date of implementation of FW 40–A] through [date 2 years from the date of implementation of FW 40–A].

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

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

(1) If fishing under a Category B DAS, a vessel is required to comply with the n°discarding and DAS flip requirements specified in paragraph (b)(8)(v)(I) of this section, and the minimum Category A DAS requirements of paragraph (b)(8)(v)(J) of this section.

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

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

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

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

(C) *Observer notifications.* For the purposes of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; areas to be fished; and date, time, and port of departure at least 72 hr prior to the beginning of any trip which it declares into the Eastern U.S./Canada Haddock SAP Area specified in

paragraph (b)(8)(ii) of this section, as required under paragraph (b)(8)(v)(D) of this section, and in accordance with instructions provided by the Regional Administrator.

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

(E) *Gear restrictions.* A NE multispecies vessel fishing in the Eastern U.S./Canada Haddock SAP Pilot Program must use one of the haddock separator trawl nets or flounder trawl nets authorized for the Eastern U.S./Canada Area, as specified in paragraph (a)(3)(iii) of this section.

(F) *Landing limits.* A NE multispecies vessel fishing any portion of a trip in the Eastern U.S./Canada Haddock SAP Pilot Program may not fish for, possess, or land more than 1,000 lb (453.6 kg) of cod per trip, regardless of trip length. A NE multispecies vessel fishing in the Eastern U.S./Canada Haddock SAP Pilot Program is subject to the haddock requirements described under § 648.86(a).

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

accordance with the reporting requirements described in paragraph (a)(3)(v) of this section.

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

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

the landing restrictions specified under § 648.86.

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

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

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

[FR Doc. 04-20693 Filed 9-9-04; 3:26 pm]

BILLING CODE 3510-22-S