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

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

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

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

Dated: May 26, 2005.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 648

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

RIN 0648–AS33

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

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

ACTION: Final rule.

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

DATES: Effective June 1, 2005.

ADDRESSES: Copies of FW 40B, its Regulatory Impact Review (RIR) and the Environmental Assessment (EA) are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, The Tannery—Mill 2, Newburyport, MA 01950. NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is contained in the Classification section of this final rule. The EA/RIR/FRFA are also accessible via the Internet at *http://www.nero.nmfs.gov.* Copies of the Small Entity Compliance Guide are available from the Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298.

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

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

SUPPLEMENTARY INFORMATION:

Background

The Council developed Amendment 13 in order to bring the FMP into conformance with all Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requirements, including ending overfishing and rebuilding all overfished groundfish stocks. Amendment 13 was partially approved by the Secretary of Commerce on March 18, 2004. A final rule implementing the approved measures in the amendment was published April 27, 2004 (69 FR 22906) and became effective May 1, 2004. Because of the mixed-stock nature of the NE multispecies fishery, management measures to reduce mortality on overfished stocks adopted in Amendment 13, including effort reductions, are expected to reduce fishing mortality more than is necessary on other, healthy stocks. As a result, yield from healthy stocks may be sacrificed and the FMP may not provide for the fishery to harvest the optimum yield (OY), the amount of fish that will provide the greatest overall benefit to the Nation, from all stocks managed under the FMP for a given year.

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

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

Comments and Responses

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

DAS Transfer Program Modifications

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

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

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

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

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

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

DAS Leasing Program Modifications

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

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

Changes to Incidental Total Allowable Catches (TAC's)

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

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

Research Set-Aside TAC

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

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

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

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

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

WGOM Rod/Reel Haddock SAP

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CA II Yellowtail Flounder SAP

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

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

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

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

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

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

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

Minimum Effective Effort Allocation

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

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

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

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

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

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

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

GB Cod Hook Sector Revisions

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

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

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

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

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

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

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

DAS Credit for Standing by Entangled Whales

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

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

Herring Vessel Interactions With Regulated Groundfish

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

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

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

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

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

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

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

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

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

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

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

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

Trip Gillnet Net Limitations

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

limit pose operational difficulties to vessels.

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

Dumping Prohibition for Vessels Under a Category B DAS

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

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

General Comments

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

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

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

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

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

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

Disapproved Measures

GB Cod Research Set-Aside TAC

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

WGOM Closure Area Rod/Reel SAP

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

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

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

Minimum Effective Effort Allocation

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

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

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

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

Approved Measures

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

1. DAS Transfer Program Modifications

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

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

2. DAS Leasing Program Modifications

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

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

3. CA II Yellowtail Flounder SAP Modifications

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

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

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

4. GB Cod Hook Sector Revisions

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

5. DAS Credit for Standing by Entangled Whales

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

6. Herring Vessel Interactions With Regulated Groundfish

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

7. Trip Gillnet Net Limitations

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

8. Dumping Prohibition for Vessels Under a Category B DAS

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

9. Corrections

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

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

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

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

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

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

Changes From the Proposed Rule

NMFS has made several changes to the proposed rule as a result of public comment and because of the disapproval of several management measures proposed in FW 40B. Other changes are technical or administrative in nature and clarify or otherwise enhance enforcement and administration of the FMP. These changes are listed below in the order that they appear in the regulations.

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

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

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

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

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

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

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

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

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

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

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

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

Classification

The Regional Administrator determined that the management measures implemented by this final rule are necessary for the conservation and management of the NE multispecies fishery, and are consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for the purposes of Executive Order (E.O.) 12866.

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

An EA was prepared for this action that analyzed the environmental impacts of the measures being implemented, as well as alternatives to such measures. The EA considered the extent to which the impacts could be mitigated, and considered the objectives of the action in light of statutory mandates, including the Magnuson-Stevens Act. NMFS also considered public comments received during the comment period of the proposed rule. A copy of the Finding of No Significant Impact for FW 40B is available from the Regional Administrator (*see* **ADDRESSES**).

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

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

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

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

Public Reporting Burden

This final rule contains five new collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The collection of this information has been approved by OMB. The public's reporting burden for the collection-of-information requirements includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information requirements. The new reporting requirements and the estimated average time for a response are as follows:

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

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

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

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

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

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

Final Regulatory Flexibility Analysis

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), prepared this FRFA in support of the approved measures in FW 40B. The FRFA describes the economic impacts that this final rule will have on small entities.

The FRFA incorporates the economic impacts summarized in the Initial Regulatory Flexibility Analysis (IRFA) for the proposed rule to implement FW 40B based upon the corresponding economic analysis prepared for FW 40B (FW 40B RIR), the comment and response section of this final rule, and the analysis contained in FW 40B. For the most part, those impacts are not repeated here. A copy of the IRFA, the FRFA, the RIR, and FW 40B are available from NMFS, Northeast Regional Office and are available on the Northeast Regional Office Web site (see **ADDRESSES**). A description of why this action was considered, the objectives of, and the legal basis for this final rule are contained in the preamble to this final rule and in the FW 40B document and are not repeated here.

A Summary of the Issues Raised by the Public Comments in Response to the IRFA, a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

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

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

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

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

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

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

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

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

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

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

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

Only the minimum data to meet the requirements of the above data needs are requested from all participants. Since all of the respondents are small businesses, separate requirements based on the size of the business have not been developed.

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

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

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

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

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

Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities Was Rejected

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) states that for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule

or group of rules. In conjunction with this rule making process, a small entity complaince guide was prepared. Copies of the guide will be sent to all holders of limited access multispecies permits and Category 1 herring permits. The guide will be available on the Internet at *http://www.nero.noaa.gov.* Copies of the guide can also be obtained from the Regional Administrator (see **ADDRESSES**).

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 25, 2005.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

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

15 CFR Chapter IX

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

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

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

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

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

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

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

* * * * *

(b) *Display.*

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

50 CFR Chapter VI

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

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

§ 648.2 Definitions.

* * * * *

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

* * * * *

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

§ 648.10 DAS notification requirements.

* * * * *

(b) * * *

(1) * * *

(vi) A vessel issued a limited access NE multispecies permit electing to fish under the U.S./Canada Resource Sharing Understanding, as specified in § 648.85(a);

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

(viii) A vessel electing to fish in the Closed Area I Hook Gear Haddock SAP, as specified in § 648.85(b)(7); and

* * * * *

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

§ 648.14 Prohibitions.

(a) * * *

(136) If fishing under the Closed Area II Yellowtail Flounder SAP, fish for, harvest, possess or land any regulated NE multispecies from the area specified in § 648.85(b)(3)(ii), unless in compliance with the restrictions and conditions specified in §§ 648.85(b)(3)(i) through (xi).

* * * * *

(139) If fishing in the Closed Area II Yellowtail Flounder SAP specified in § 648.85(b)(3), exceed the number of trips specified under § 648.85(b)(3)(vi) or (vii).

* * * * *

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

* * * * *

(c) * * *

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

* * * * *

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

* * * * *

(bb) * * *

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

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

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

* * * * *

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

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

* * * * *

(a) * * *

(3) * * *

(iv) * * *

(A) * * *

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

* * * * *

(4) * * *

(iv) * * *

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

* * * * *

(b) * * *

(2) * * *

(iv) *Gillnet vessels.* For Day and Trip gillnet vessels, the minimum mesh size for any sink gillnet not stowed and not available for immediate use in accordance with § 648.23(b), when fishing under a DAS in the NE multispecies DAS program in the SNE Regulated Mesh Area, is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters. Day gillnet vessels must also abide by the tagging requirements in paragraph (a)(3)(iv)(C) of this section.

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

* * * * *

(c) * * *

(2) * * *

(v) * * *

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

* * * * *

(d) * * *

(2) When fishing under this exemption in the GOM/GB Exemption Area, as defined in paragraph (a)(17) of this section, and in the area described in § 648.81(c)(1), the vessel has on board a letter of authorization issued by the Regional Administrator, and complies with all restrictions and conditions thereof;

* * * * *

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

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

(6) To fish for herring under this exemption in the GOM/GB Exemption Area as defined in paragraph (a)(17) of this section, vessels issued a Category 1 herring permit pursuant to § 648.205(b) must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; and the date, time, and port of departure, at least 72 hours prior to beginning any trip into these areas for the purposes of observer deployment; and

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

* * * * *

(e) * * *

(2) When fishing under this exemption in the GOM/GB Exemption Area, as defined in paragraph (a)(17) of this section, the vessel has on board a letter of authorization issued by the Regional Administrator;

(3) The vessel only fishes for, possesses, or lands Atlantic herring, blueback herring, mackerel, or menhaden;

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

(5) To fish for herring under this exemption in the GOM/GB Exemption Area as defined in paragraph (a)(17) of this section, vessels issued a Category 1 herring permit pursuant to § 648.205(b) must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; and the date, time, and port of departure, at least 72 hours prior to beginning any trip into these areas for the purposes of observer deployment; and

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

* * * * *

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

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

* * * * *

(k) * * *

(4) * * *

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

* * * * *

(xi) *One-time downgrade of DAS Leasing Program baseline.* For the purposes of determining eligibility for leasing DAS only, a vessel owner may elect to make a one-time downgrade to the vessel's DAS Leasing Program baseline length and horsepower as specified in paragraph (k)(4)(ix) of this section to match the length overall and horsepower specifications of the vessel that is currently issued the permit.

(A) *Application for a one-time DAS Leasing Program baseline downgrade.*

To downgrade the DAS Leasing Program baseline, eligible NE multispecies vessels must submit a completed application form obtained from the Regional Administrator. An application to downgrade a vessel's DAS Leasing Program baseline must contain at least the following information: Vessel owner's name, vessel name, permit number, official number or state registration number, current vessel length overall and horsepower specifications, an indication whether additional information is included to document the vessel's current specifications, and the signature of the vessel owner.

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

(l) * * *

(1) * * *

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

* * * * *

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

* * * * *

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

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

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

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

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

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

§ 648.85 Special management programs.

* * * * *

(b) * * *

(3) * * *

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

* * * * *

(vi) *Number of trips per vessel.* Unless otherwise authorized by the Regional Administrator as specified in paragraph (a)(3)(iv)(D) of this section, eligible vessels are restricted to one trip per month, during the season described in paragraph (b)(3)(iii) of this section.

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

authorize any trips into the SAP during a fishing year.

(viii) *Trip limits*—(A) *Yellowtail flounder trip limit.* Unless otherwise authorized by the Regional Administrator as specified in paragraph (a)(3)(iv)(D) of this section, a vessel fishing in the CA II Yellowtail Flounder SAP may fish for, possess, and land up to 10,000 lb (4,536 kg) of yellowtail flounder per trip. The Regional Administrator may adjust this limit to a maximum of 30,000 lb (13,608 kg) per trip after considering the factors listed in paragraph (b)(3)(vii) of this section for the maximum number of trips.

(B) *Cod and haddock trip limit.* Unless otherwise restricted, a NE multispecies vessel fishing any portion of a trip in the Closed Area II Yellowtail Flounder SAP may not fish for, possess, or land more than 1,000 lb (453.6 kg) of cod per trip, regardless of trip length. A NE multispecies vessel fishing in the Closed Area II Yellowtail Flounder SAP is subject to the haddock requirements described under § 648.86(a), unless further restricted under paragraph (a)(3)(iv) of this section.

* * * * *

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

§ 648.87 Sector allocation.

* * * * *

(d) * * *

(1) * * *

(ii) *Eligibility.* All vessels issued a valid limited access NE multispecies DAS permit are eligible to participate in the GB Cod Hook Sector, provided they have documented landings through valid dealer reports submitted to NMFS of GB cod during the fishing years 1996 to 2001, regardless of gear fished.

(iii) * * *

(A) Sum of the total accumulated landings of GB cod by vessels identified in the Sector's Operation Plan specified under paragraph (b)(2) of this section, for the fishing years 1996 through 2001, regardless of gear used, as reported in the NMFS dealer database.

* * * * *

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

BILLING CODE 3510–22–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[T.D. TTB–27; Notice No. 21]

RIN 1513–AA58

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

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

ACTION: Final rule; Treasury decision.

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

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

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

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

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

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

Definition

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

Requirements

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

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

Ribbon Ridge Petition

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

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