

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 060209031–6031–01; I.D. 020606C]

RIN 0648–AU09

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Emergency Secretarial Action

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

ACTION: Proposed rule; emergency action; request for comment.

SUMMARY: NMFS proposes a temporary emergency rule under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to implement measures intended to immediately reduce the fishing mortality rate (F) on specific groundfish species to prevent overfishing and maintain the rebuilding program of the Northeast (NE) Multispecies Fishery Management Plan (FMP). This emergency action includes differential days-at-sea (DAS) counting, reduced trip limits for specific species, and recreational possession restrictions, among other provisions. In addition, this action would continue two programs that would otherwise expire by the end of the 2005 fishing year on April 30, 2006: The DAS Leasing Program and a modified Regular B DAS Program on Georges Bank (GB). Due to the impact of these proposed measures on the monkfish fishery, this temporary emergency action would also limit participation of monkfish Category C, D, or F permits in the proposed Regular B DAS Program and revise the method of calculating available monkfish-only DAS for Category C, D, F, G, or H monkfish vessels. This action is intended to prevent overfishing while maintaining specific programs designed to help mitigate the economic and social

impacts of effort reductions under the FMP until more permanent management measures can be implemented through Framework Adjustment (FW) 42 to the FMP.

DATES: Comments must be received on or before March 6, 2006.

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

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

Copies of this rule, its Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis (IRFA), and the Environmental Assessment (EA) are available from the Regional Administrator at the above address. The EA/RIR/IRFA is also accessible via the Internet at <http://www.nero.nmfs.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule should be submitted to the Regional Administrator at the address above and to David Rostker, Office of Management and Budget (OMB), by e-mail at David_Rostker@omb.eop.gov, 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 New England Fishery Management Council (Council) developed Amendment 13 in order to bring the FMP into conformance with

all Magnuson-Stevens Act requirements, including ending overfishing and rebuilding all overfished groundfish stocks. Amendment 13 was partially approved by the Secretary of Commerce on March 18, 2004. A final rule implementing the approved measures in the amendment was published on April 27, 2004 (69 FR 22906) and became effective May 1, 2004.

Amendment 13 established or clarified rebuilding programs for each stock managed under the FMP. Amendment 13 also established a biennial adjustment process to review the fishery and implement any changes necessary to ensure that the fishery continues to meet the rebuilding objectives, including meeting the F targets for each year of the rebuilding program. As part of the biennial adjustment process, the latest stock assessment, the Groundfish Assessment Review Meeting (GARM II), took place from August 15–19, 2005. This assessment provided updated information to evaluate the performance of the fishery in relation to the rebuilding program established by Amendment 13.

The Council’s Groundfish Plan Development Team (PDT) utilized the results of GARM II to calculate estimates of the 2005 calendar year F (F₂₀₀₅) for all groundfish stocks. These estimates indicate that F₂₀₀₅ for particular groundfish stocks, (i.e., GOM cod, Cape Cod (CC)/GOM yellowtail flounder, Southern New England (SNE)/Mid-Atlantic (MA) yellowtail flounder, SNE/MA winter flounder, GB winter flounder, white hake, and GB yellowtail flounder) is, in some cases, substantially less than that observed for 2004, but still higher than the 2006 target F specified in the rebuilding program established under Amendment 13. The PDT concluded that, with the exception of GB yellowtail flounder, management measures should be developed to further reduce F on these species for fishing year 2006 in order to maintain progress toward the FMP rebuilding objectives, as illustrated in Table 1:

TABLE 1.—MORTALITY REDUCTION NECESSARY TO ACHIEVE FISHING YEAR 2006 AMENDMENT 13 F TARGETS *

Stock	F ₂₀₀₄	Estimated F ₂₀₀₅	Amendment 13 fishing year 2006 target F	Mortality reduction necessary (percent)
GOM Cod	0.58	0.37	0.23	32
CC/GOM Yellowtail Flounder	0.75	0.48	0.26	46
SNE/MA Yellowtail Flounder	0.99	0.58	0.26	55
SNE/MA Winter Flounder	0.38	0.35	0.32	9
GB Winter Flounder	1.86	NA	** 1.0	46

TABLE 1.—MORTALITY REDUCTION NECESSARY TO ACHIEVE FISHING YEAR 2006 AMENDMENT 13 F TARGETS*—
Continued

Stock	F ₂₀₀₄	Estimated F ₂₀₀₅	Amendment 13 fishing year 2006 target F	Mortality reduction necessary (percent)
White Hake	1.18	NA	1.03	13

*F on GB yellowtail flounder also needs to be reduced, but new management measures do not need to be developed. See additional explanation in the paragraph below.

** Amendment 13 did not establish a 2006 F target for GB winter flounder. Rather, Amendment 13 established the value of F_{msy} as 0.32. However, because model estimates of relative F rate are more precise than estimates of actual F rates, GARM II presented the estimate of F rate for 2004 in relative terms. The threshold value for the relative F rate (F₂₀₀₄/F_{msy}) for GB winter flounder is 1.0.

NA: An estimate of F₂₀₀₅ for the stocks of GB winter flounder and white hake could not be developed because the assessments are index based. The necessary F reductions are based upon F₂₀₀₄.

No new management measures are necessary to reduce F on GB yellowtail flounder, since a hard TAC (i.e., fishing on the stock is prohibited when such a TAC is reached) is being proposed for this stock that will reduce F to the appropriate level. The Transboundary Management Guidance Committee (TMGC) concluded that the most appropriate combined U.S./Canada total allowable catch (TAC) for the 2006 fishing year is 3,000 mt (2,070 mt U.S.; 930 mt Canada), which corresponds to an F of 0.25 (F_{msy}). On September 15, 2005, the Council accepted the recommendations of the TMGC for the 2006 GB yellowtail flounder TAC. The proposed hard TAC of 2,070 mt represents a 51-percent reduction from the 2005 TAC, and would constrain fishing effort to the appropriate level to achieve the required F reduction. The 2006 GB yellowtail flounder hard TAC is being proposed through a separate management action currently under development by NMFS.

The rebuilding strategy implemented by Amendment 13 established two so-called default measures that would automatically reduce F on all groundfish species, particularly for American plaice and SNE/MA yellowtail flounder beginning in fishing year 2006. These default measures include a revision of the DAS allocation ratio of Category A:B DAS from 60:40 to 55:45, and differential DAS counting in the SNE/MA Regulated Mesh Area (RMA) at a rate of 1.5:1. Under the final rule implementing Amendment 13, these measures are scheduled to go into effect for the start of the 2006 fishing year on May 1, 2006, unless stocks meet or exceed specific criteria described at 50 CFR 648.82(d)(4) and NMFS implements measures to supercede the default measures. In addition to these criteria, all groundfish stocks must meet the target F rates specified for 2006 for these default measures to be deferred.

Data from GARM II indicate that none of these criteria have been met for SNE/

MA yellowtail flounder and that American plaice is still overfished. Given this, as well as the fact that other groundfish stocks are not meeting the target F rates for 2006 (see Table 1), the Amendment 13 default measures will automatically go into place on May 1, 2006, unless superseded by another action. Although these default measures would likely have positive impacts on all groundfish species (including a reduction in F), these measures are not likely to sufficiently reduce F for particular groundfish stocks to meet the 2006 fishing year F targets established by Amendment 13. Therefore, to ensure that the rebuilding program established under Amendment 13 remains on track to rebuild overfished groundfish stocks within the required time period, additional management measures are needed to reduce F on several groundfish stocks.

Framework Adjustment (FW) 42 to the FMP is currently being developed by the Council and is intended to serve as the first biennial adjustment process adopted under Amendment 13. FW 42 proposes management measures designed to achieve the necessary mortality reductions for all groundfish stocks requiring F reductions for the 2006 fishing year, as required by § 648.90(a)(2). However, at its November 15–17, 2005, meeting, the Council announced that it was not able to complete FW 42 in time for NMFS to implement these measures by the beginning of the fishing year on May 1, 2006. Although at its January 31–February 2, 2006, meeting the Council voted to adopt a suit of management measures under FW 42, it would not be possible to implement these measures by May 1, 2006.

Section 305(c) of the Magnuson-Stevens Act states that, if the Secretary of Commerce (Secretary) finds that an emergency or overfishing exists, or that interim measures are needed to reduce overfishing for any fishery, he may promulgate emergency measures to

address overfishing and address other management concerns while the Council prepares proposed regulations to stop overfishing and rebuild fish stocks on a more permanent basis. Such measures do not, by themselves, have to stop overfishing, but may be used to contribute to efforts to stop overfishing until the Council, after considering public input, can complete an appropriate framework adjustment or amendment to the FMP.

Emergency management actions authorized by section 305(c) of the Magnuson-Stevens Act may only be prepared under special circumstances. In accordance with NMFS policy guidelines for the use of emergency rules (62 FR 44421, August 21, 1997), emergency actions may be implemented to resolve “unforeseen events or recently discovered circumstances” that present “serious conservation or management problems” that “can be addressed through emergency regulations for which the immediate benefits outweigh the value of advanced notice.” These guidelines indicate that an emergency action might be justified based on one or more of the following reasons: Ecological (i.e., to prevent overfishing as defined in an FMP, or prevent other serious damage to the fishery resource or habitat), economic (i.e., to prevent significant direct economic loss or to preserve a significant economic opportunity that otherwise might be forgone), or social reasons (i.e., to prevent significant community impacts or conflict between user groups).

Applying the above criteria, NMFS has determined that the recent and unforeseen announcement by the Council that the implementation of FW 42 will be delayed beyond May 1, 2006, and the need to reduce F on specific groundfish stocks by the start of the 2006 fishing year, constitutes an emergency, as unforeseen events could cause serious conservation and management problems unless addressed

through immediate regulatory action. Although notice and comment rulemaking is being undertaken for this action, there is insufficient time to implement the proposed measures under the normal FMP amendment or framework process, leaving the sec. 305(c) emergency action process as the only means to implement such measures.

This emergency action is justified for ecological, economic, and social reasons. Despite the restrictive management measures currently in place for all sectors of the fishery, F for several groundfish stocks remains above the Amendment 13 target F levels for 2006. As a result, it is necessary to reduce F by constraining fishing effort by all sectors and in all areas managed by the FMP as quickly as possible. Failure to reduce or prevent overfishing by May 1, 2006, while the Council completes FW 42 would likely allow continued overfishing of several groundfish stocks, resulting in slower rebuilding, which would require even more stringent future management measures, resulting in additional economic and social consequences. In addition, the 2003 year class of GOM and GB cod must be carefully managed, particularly for the months when fishing effort and catch is typically high (i.e., May through July). Therefore, in order to come into full compliance with the requirements of the Magnuson-Stevens Act, as amended by the Sustainable Fisheries Act, this emergency action is necessary until a more comprehensive management action can be completed by the Council and implemented by NMFS (i.e., FW 42).

Two programs approved in Amendment 13 and FW 40A were intended to help mitigate the economic and social impacts of the effort reductions of the FMP (the DAS Leasing Program and the Regular B DAS Pilot Program). The DAS Leasing Program, approved in Amendment 13, expires on April 30, 2006, while the Regular B DAS Pilot Program, approved in FW 40A, expired on October 31, 2005. Continuation of these programs, in part or in whole, would help mitigate the potential economic and social impacts of Amendment 13 effort reductions as well as further effort reductions and other measures proposed in this action. Thus, this emergency action proposes maintaining the DAS Leasing Program, as well as a modified version of the Regular B DAS Program.

Although the management measures proposed under this emergency action do not, by themselves, achieve the necessary Amendment 13 F reductions for all stocks (i.e., GB winter flounder,

CC/GOM yellowtail flounder, and SNE/MA yellowtail flounder), it is anticipated that this action, in combination with measures proposed under FW 42, would achieve this objective, provided measures adopted under FW 42 are implemented as soon as possible. To ensure that the groundfish fishery meets the Amendment 13 rebuilding objectives, additional management measures through Secretarial action may be necessary during fishing year 2006.

Proposed Management Measures

All measures in effect prior to May 1, 2006, and not amended by this proposed emergency rule, would remain in effect after May 1, 2006. The current management measures include an Amendment 13 2006 fishing year default measure for the revision of the allocation ratio of Category A:B DAS from 60:40 to 55:45. This measure, therefore, is not discussed specifically in the description of the proposed measures that follows.

The following measures are proposed to be implemented on May 1, 2006, to reduce overfishing on particular groundfish stocks in need of F reductions.

1. Differential DAS Counting

Under this proposed emergency action, all NE multispecies Category A DAS used by a vessel issued a limited access NE multispecies DAS permit, with the exception noted below, would be charged at a rate of 1.4:1, regardless of area fished. Day gillnet vessels would be charged at a rate of 1.4:1 for the actual hours used for any trip of 0–3 hours in duration, and for any trip of greater than 11 hours. For Day gillnet trips between 3 and 11 hours duration, vessels would be charged a full 15 hours. For example, a trawl vessel fishing in the GOM for 5 hours would be charged for 7 hours (5 hours \times 1.4) of DAS use. A Day gillnet vessel fishing in the GOM for 5 hours would be charged for 15 hours of DAS use; a Day gillnet vessel fishing in the GOM for 12 hours would be charged for 16.8 hours of DAS use (12 hours \times 1.4).

A vessel issued a limited access monkfish Category C, D, F, G, or H permit fishing under a monkfish DAS would have its NE multispecies DAS charged at a rate of 1.4:1, but its monkfish DAS would continue to be charged at a rate of 1:1. Because differential DAS counting could result in a net allocation of NE multispecies Category A DAS that is less than the number of monkfish DAS allocated, some Category C, D, F, G, or H monkfish vessels would not have sufficient

groundfish DAS to ensure that they could fish their full allocation of monkfish DAS. To accommodate this, a Category C, D, F, G, or H monkfish vessel could fish under a monkfish-only DAS when groundfish DAS are no longer available, provided the vessel fishes under the provisions of the monkfish Category A or B permit. Such vessels would be limited to monkfish-only DAS equal to their net monkfish DAS allocations (including carry-over DAS) minus their net NE multispecies Category A DAS allocation (including carry-over DAS), divided by 1.4. For example, if a Category C monkfish vessel allocated 40 monkfish DAS has a net NE multispecies DAS allocation of 20 DAS, the maximum number of monkfish-only DAS that the vessel would be able to fish would be 25.7 DAS (40 monkfish DAS—14.3 NE multispecies DAS (20 NE multispecies DAS divided by 1.4)).

The proposed differential DAS counting under this emergency action would expand the Amendment 13 default measure (limited to the SNE/MA RMA only) throughout all RMAs managed by the FMP. In conjunction with the Amendment 13 fishing year 2006 default measure that changes the Category A:B DAS ratio from 60:40 to 55:45, differential DAS, as proposed in this action, would help achieve the necessary F reduction for GOM cod and white hake, as well as provide some measure of F reduction for the other stocks in need of further protection. Further, expanding differential DAS counting to include the GOM and GB RMAs would help prevent a redirection of effort into these areas, and would facilitate adaptation to measures being proposed by the Council for implementation in FW 42.

The proposed measure would charge Category A DAS at a rate of 1.4:1, but would not change the way Category B DAS are charged. Category A DAS represent relatively unregulated effort that could be directed anywhere within the NE Region. However, the use of Category B DAS in either approved SAPs or the Regular B DAS Program is highly regulated, with specific provisions (area restrictions, gear requirements, trip limits, etc.) to ensure that such effort does not jeopardize rebuilding programs for specific stocks. Fishing mortality attributed to Category B DAS is strictly controlled and limited by hard incidental catch TACs for stocks of concern that result in area/program closures, once reached. In addition, Category B (Regular) DAS used in the Regular B DAS Program proposed under this action would be charged at a higher rate (24 hours for any calendar day or

part of a calendar day fished) than Category A DAS, further limiting the impact of these DAS. As a result, there is little need to change the manner in which Category B DAS are charged, as F from these DAS is already highly restricted.

The application of differential DAS counting to Day gillnet trips proposed by this action was developed to ensure that the application of this measure would be consistent with the current system of counting DAS between Day gillnet vessels and vessels using other gear types.

2. GOM Cod Trip Limit

For vessels operating under a NE multispecies DAS, the possession limit of GOM cod would be reduced from 800 lb (363 kg) per DAS, up to 4,000 lb (1,814 kg) trip; to 600 lb (272 kg) per DAS, up to 4,000 lb (1,814 kg) per trip. For vessels operating under the limited access NE multispecies Handgear A permit regulations, the GOM cod possession limit would be reduced from 300 lb (136 kg) per trip to 250 lb (113 kg) per trip. The GOM cod trip limit for vessels operating under the open access Handgear B provisions would be maintained at 75 lb (34 kg) per trip.

The 600-lb (272-kg) per DAS trip limit for GOM cod strikes a balance between minimizing incentives to target this species and concerns over excessive discards. Preliminary analysis of recent trips indicates that a such a trip limit would result in decreased F at only a slightly higher discard rate. Further, a majority of trips within the GOM caught less than 600 lb (272 kg) of GOM cod per DAS.

The current regulations state that the GOM cod trip limit for vessels issued a limited access NE multispecies Handgear A or an open access NE multispecies Handgear B permit will be adjusted proportionally to the GOM cod trip limit for NE multispecies vessels fishing under a DAS. The regulations at § 648.82(b)(6) (suspended, with revised text at § 648.82(u)(6) under this proposed action) state that the adjusted GOM cod trip limit for Handgear A vessels would be rounded up to the nearest 50 lb (22.7 kg), while the regulations at § 648.88(a)(1) state that the adjusted GOM cod trip limit for Handgear B vessels would be rounded up to the nearest 25 lb (11.3 kg). Since this action proposes a 25-percent reduction in the GOM cod trip limit, a similar reduction, using the adjustment criteria specified in the regulations, results in the proposed trip limits for handgear vessels.

3. GB Yellowtail Flounder Trip Limit

Under this action, the GB yellowtail flounder trip limit would be reduced from an initial unlimited amount to 10,000 lb (4,536 kg) per trip. Based on the likelihood that the GB yellowtail flounder TACs will continue to remain relatively small over the next several years, there is an elevated risk that the small GB yellowtail flounder TAC for the U.S./Canada Management Area will be harvested before the end of the fishing year for the immediate future. This measure attempts to prolong the availability of the small 2006 GB yellowtail flounder TAC during the 2006 fishing year, minimizing the possibility that the TAC would be caught prior to the end of the 2006 fishing year, thereby increasing the chance of achieving optimum yield from the TACs of GB cod and GB haddock specified for the Eastern U.S./Canada Area.

4. CC/GOM and SNE/MA Yellowtail Flounder Trip Limit

The proposed emergency action would reduce the CC/GOM and SNE/MA yellowtail flounder trip limits as follows: 500 lb (227 kg) per DAS, up to 2,000 lb (907 kg) per trip during July, August, September, December, January, February, March, and April; 250 lb (113 kg) per trip during May, June, October, and November.

The current trip limits for these two yellowtail flounder stocks are inconsistent with one another with respect to the time periods during which the 250-lb (113-kg) trip limit is in effect (currently April, May, Oct., Nov. for CC/GOM yellowtail flounder; and March, April, May, June for SNE/MA yellowtail flounder). The current trip limits for the other portion of the year is 750 lb (340 kg) per DAS, up to 3,000 lb (1,361 kg) per trip. The proposed reduction to 500 lb (227 kg) per DAS, up to 2,000 lb (907 kg) per trip for the duration of the emergency action would further reduce fishing mortality on these stocks and attempt to minimize regulatory discards, while simplifying industry understanding and enforcement of this trip limit.

5. Modified Regular B DAS Program

The Regular B DAS Pilot Program was originally implemented by FW 40A (69 FR 67780; November 19, 2004), and was intended to provide opportunities to use Regular B DAS outside of a SAP (and outside of closed areas) to target stocks that can withstand additional fishing effort. This program is regulated by a series of measures, including DAS limits, low trip limits, and incidental

catch TACs for stocks of concern (i.e., groundfish stocks that cannot withstand additional fishing effort). Because of uncertainties in the operation of this program, it was implemented only for 1 year, and expired on October 31, 2005. This proposed emergency rule would “reinstate” a Regular B DAS Program with measures similar to those originally implemented by FW 40A, but would modify specific measures to achieve the objectives of this emergency action, as specified below. Due to the limited duration of this proposed Secretarial action, this program would no longer be called a “pilot” program.

The Regular B DAS Pilot Program originally implemented by FW 40A allowed vessels issued a limited access monkfish Category C, or D permit to use a NE multispecies Regular B DAS to fulfill the requirements of the monkfish FMP, which requires such vessels to use a NE Multispecies DAS every time a monkfish DAS is used. Recent information indicates that Category C and D monkfish vessels were able to successfully target monkfish under the Regular B DAS Pilot Program during fishing years 2004 and 2005, and will likely increase this effort, as additional restrictions on groundfish are implemented under FW 42. A recent assessment of the monkfish resource in 2005, based upon the results of Stock Assessment Workshop 40 and an evaluation of the past three years of fall trawl surveys, indicates that the pace of monkfish rebuilding has slowed. Therefore, to reduce mortality on monkfish resulting from the use of Regular B DAS, this emergency action would restrict Category C, D, or F monkfish vessels (i.e., those monkfish vessels permitted to fish in the U.S./Canada Management Area) to the monkfish incidental catch limits when fishing under the Regular B DAS Program proposed by this action. Further, Category C, D, or F monkfish vessels may not use a NE multispecies Regular B DAS and a monkfish DAS under the Regular B DAS Program on the same trip. These vessels would still be able to participate in this program, but they would be required to fish under a NE multispecies DAS only and would be subject to the incidental catch limits for monkfish.

The proposed action would allow eligible vessels to fish under the Regular B DAS Program to target healthy groundfish stocks (primarily GB haddock, pollock, and redfish) within the U.S./Canada Management Area only. Vessels that have declared a Regular B DAS Program trip would not be allowed to fish on that trip in an approved SAP. In order to limit the potential biological

impacts of the program, only 500 Regular B DAS may be used during the first quarter of the calendar year (May through July), while 1,000 Regular B DAS may be used in subsequent quarters (August through October, November through January, and February through April). These DAS would not be allocated to individual vessels, but would be used by vessels on a first-come, first-served basis. Regular B DAS would accrue at the rate of 1 DAS for each calendar day, or part of a calendar day, fished. For example, a vessel that left on a trip 1 hour before midnight on one day, and fished until 1 hour after midnight on the next calendar day, would be charged 48 hours of B Regular DAS.

Vessels participating in this program would be required to be equipped with an approved Vessel Monitoring System (VMS). The vessel owner or operator would be required to notify the NMFS Observer Program at least 72 hours in advance of a trip in order to facilitate observer coverage. This notice would require reporting of the following information: Vessel name, contact name for coordination of observer deployment, telephone number of contact, date, time, and port of departure. Prior to departing on the trip, the vessel owner or operator would be required to notify NMFS via VMS that the vessel intends to participate in the Regular B DAS Program. Vessels fishing in the Regular B DAS Program would be required to report their catches of groundfish stocks of concern daily through VMS, including the amount of fish kept and discarded, by statistical area fished. Vessels fishing for species managed by other fishery management plans, and not landing groundfish would not be subject to this reporting requirement.

Vessels fishing in this program would be prohibited from discarding legal-sized regulated groundfish, and would be limited to landing 100 lb (45.4 kg) of each groundfish species of concern per DAS, unless further restricted (see below). Further, vessels would be required to use a haddock separator trawl when participating in this program. Possession of flounders (all species, combined); monkfish (whole weight), unless otherwise specified below; and skates would be limited to 500 lb (227 kg) each, and possession of lobsters would be prohibited to ensure the proper utilization of the haddock separator trawl; a properly configured haddock separator trawl should not catch large quantities of these species. To further reduce the targeting of monkfish under this program, Category C, D, and F monkfish vessels

participating in this program would be restricted by the monkfish incidental catch limits. In the Northern Fishery Management Area, the limit is 400 lb (181 kg) tail weight per DAS, or 50 percent of the total weight of fish on board, whichever is less. In the Southern Fishery Management Area, the incidental catch limit is 50 lb (23 kg) tail weight per DAS. Discarding of legal-sized monkfish would be prohibited when fishing under this program. If a vessel harvests and brings on board legal-sized groundfish species of concern or monkfish in excess of these landing limits, the vessel operator would be required to retain the excess catch, and immediately notify NMFS via VMS in order to change its DAS category from a Regular B DAS to a Category A DAS ("DAS flip"). If a vessel flips from a Regular B DAS to a Category A DAS, it would be charged Category A DAS at a rate of 1.4:1, and would be subject to the possession and landing restrictions that apply to the fishery as a whole (i.e., not the Regular B DAS Program limits).

In order to ensure that a vessel would always have the ability to flip to a Category A DAS while fishing under a Regular B DAS (should it catch a groundfish species of concern in an amount that exceeded the trip limit), the number of Regular B DAS that would be allowed to be used on a trip would be limited to the number of Category A DAS that the vessel has at the start of the trip divided by 1.4. For example, if a vessel plans a trip under the Regular B DAS Program and has 5 Category A DAS available, the maximum number of Regular B DAS that the vessel could fish on that trip under the Regular B DAS Program would be 5 divided by 1.4, or 3.6 days. Therefore if the vessel were fishing under a Regular B DAS for 3.6 days, but was required to flip, the balance of Category A DAS would be sufficient to account for the amount of time fished (3.6 days fished times 1.4 DAS = 5 Category A DAS). However, to ensure that there is an adequate amount of Category A DAS available should the vessel be required to "flip" its DAS, it is advisable that a vessel owner, when planning a Regular B DAS Program trip, fish a lower number of Regular B DAS than the required maximum number. In the above example, if the vessel had a Category A DAS balance of 5, and fished 3.6 days of Regular B DAS prior to flipping, the amount of Category A DAS necessary to account for the time already fished would be available, but no additional Category DAS would be available for use between the time of flipping and the end of the trip. The

proposed requirement would allow a vessel owner the potential to maximize the use of Regular B DAS.

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

In order to limit the potential impact on F that the use of Category B DAS (Regular or Reserve) may have on groundfish stocks of concern, a quarterly incidental catch TAC would be set for groundfish stocks of concern for each program allowing the use of Category B DAS (Regular or Reserve). This action would add GB winter flounder and GB yellowtail flounder to the list of groundfish stocks of concern, based on the results of the GARM II, and allocate a portion of the incidental TAC to the Regular B DAS Program. The Regular B DAS Program quarterly incidental catch TACs would be divided to correspond to the allocation of Regular B DAS among quarters, such that the 1st quarter (May–July) would receive 13 percent of the incidental TACs, and the remaining quarters (August–October, November–January, and February–April) would each receive 29 percent of the incidental TACs.

If the incidental TAC for any one of these species were caught during a quarter (landings plus discards), use of Regular B DAS in the Regular B DAS Program in the U.S./Canada Management Area would be prohibited for the remainder of that quarter. Vessels would be able to once again use Regular B DAS under this program at the beginning of the subsequent quarter. The Administrator, Northeast Region, NMFS (Regional Administrator) would have the authority to prohibit the use of Regular B DAS for the duration of a quarter or fishing year, if it is projected that continuation of the Regular B DAS Program would undermine the achievement of the objectives of the FMP or the Regular B DAS Program, or if the level of observer coverage were insufficient to make such a projection.

The provisions included in this measure are necessary to prevent additional fishing effort under the Regular B DAS Program from increasing F for stocks that are in need of the greatest F reductions for the 2006 fishing year (i.e., GOM cod, CC/GOM yellowtail flounder, and SNE/MA yellowtail flounder). Restricting this program to the U.S./Canada

Management Area facilitates the monitoring and enforcement of provisions of the Regular B DAS Program, as proposed incidental catch TACs for stocks of concern in the GOM and SNE/MA RMAs may be too small to be monitored effectively. Further, the current regulations of the U.S./Canada Management Area provide sufficient authority to the Regional Administrator to monitor and control fishing activity under this program to ensure that incidental catch TACs are not exceeded during the 2006 fishing year. Moreover, restricting this program to the U.S./Canada Management Area would not affect the majority of vessels participating in this program, as previous fishing practices indicate that very few trips under this program were taken in the GOM or SNE/MA RMA. As a result, this measure provides some assurance that additional F under this program would be controlled and would not be redirected into the GOM or SNE/MA RMAs, but it would also provide economic and social benefits without altering vessel behavior to any great degree.

6. Redefinition of Incidental Catch TACs and Allocation to Special Programs

Incidental catch TACs were first adopted in FW 40A in order to limit the catch of stocks of concern while vessels were using Category B DAS. As a result of groundfish assessments completed under GARM II, FW 42 would modify the number of incidental catch TACs, as well as the size and allocation of such

incidental catch TACs. FW 42 proposes two new stocks of concern (GB yellowtail flounder and GB winter flounder are either overfished and/or overfishing is occurring) and the creation of incidental catch TACs for these two stocks in order to limit the impact of the use of Category B DAS on such stocks. Secondly, FW 42 proposes modification of the size of the incidental catch TACs with respect to the target TACs from which they are calculated (see Table 2).

Because FW 42 has been delayed, the definition of the two new stocks of concern, the creation of two new incidental catch TACs, and the reallocation of incidental catch TACs among special programs are proposed in this action (Table 3). If the incidental TACs were not defined under this emergency, the use of Regular B DAS during the time this action is in place would undermine the achievement of the goals of the FMP (see discussion of Regular B Program in Section 4 of this preamble). If a change in the allocation of catch TACs among special programs were not proposed by this action, the special programs would be inconsistent with the intent of the Council. The programs that would be impacted by these proposed TACs are the Regular B DAS Pilot Program and potentially, the Eastern U.S./Canada Haddock SAP Program, if FW 42 implementation is delayed beyond August 1, 2006. Although this action would not impact many stocks of concern, in order to

simplify the process of TAC specification for the 2006 fishing year, as well as reduce confusion in the industry, this action defines the incidental catch TACs for all stocks of concern, and allocates TAC among programs consistent with FW 42 proposals. Note that this action does not specify values for TACs for the 2006 fishing year. A separate action is being developed by NMFS that will specify all TACs for the FMP for the 2006 fishing year (Incidental Catch TACs, Target TACs, and U.S./Canada Management Area TACs for GB).

TABLE 2.—DEFINITION OF INCIDENTAL CATCH TACs

Stock	Percentage of total
GB cod	2
GOM cod	1
GB yellowtail flounder	2
CC/GOM yellowtail flounder	1
SNE/MA yellowtail flounder	1
American plaice	5
Witch flounder	5
SNE/MA winter flounder	1
GB winter flounder	2
White hake	2

These incidental catch TACs would be distributed to the various programs that utilize Category B DAS and catch these stocks of concern. The incidental catch TACs are proposed to be distributed among the Category B DAS programs as indicated in Table 3:

TABLE 3.—DISTRIBUTION OF INCIDENTAL CATCH TACs FOR CATEGORY B DAS PROGRAMS

Stocks of concern	Regular B DAS program (percent)	Closed area I hook gear haddock SAP (percent)	Eastern U.S./Canada haddock SAP (percent)
GB cod	50	16	34
GB yellowtail flounder	50	NA	50
GB winter flounder	50	NA	50
Witch flounder	100	NA	NA
American plaice	100	NA	NA
White hake	100	NA	NA

7. DAS Leasing Program

The DAS Leasing Program was originally implemented by Amendment 13 to help mitigate the economic and social impacts of effort reductions in the fishery. The DAS Leasing Program was implemented for a duration of 2 years, and will expire on April 30, 2006. This action proposes to continue the DAS Leasing Program, as originally implemented by Amendment 13. The following briefly summarizes the provisions that form the basis of the

DAS Leasing Program. These provisions would be continued unchanged, as implemented by Amendment 13:

All vessels issued a valid limited access groundfish DAS permit would be eligible to lease groundfish Category A DAS to or from another such vessel. DAS associated with a certification of permit history could not be leased. Vessels issued a Small Vessel or Handgear A permit, i.e., vessels that do not require the use of groundfish DAS, would not be allowed to lease DAS, and vessels participating in an approved

sector under the proposed Sector Allocation Program would not be allowed to lease DAS to non-sector vessels during the fishing year in which the vessel is participating in the sector. An eligible vessel wanting to lease groundfish DAS would be required to submit a complete application to the Regional Administrator at least 45 days prior to the time that the vessel intends to fish the leased DAS. Upon approval of the application by NMFS, the lessor and lessee would be sent written confirmation of the approved

application. Leased DAS would be effective only during the fishing year for which they were leased. A vessel could lease to as many qualified vessels as desired, provided all DAS leasing requests are consistent with the restrictions and conditions of the DAS Leasing Program. No subleasing of groundfish DAS would be allowed (i.e., any leased DAS could not be leased a second time) and vessels would not be allowed to lease carry-over DAS. Only Category A DAS could be leased.

The maximum number of DAS that could be leased by a lessee is the lessee's vessel's DAS allocation for the 2001 fishing year (excluding any carryover DAS). The lessee would be able to utilize that number of DAS as Category A DAS, in addition to the Category A DAS balance the vessel had prior to acquiring the leased DAS. For example, if a vessel owner wants to lease additional DAS for a limited access multispecies, and that vessel had 88 DAS allocated to it in fishing year 2001, the maximum DAS it could lease would be 88. All leased DAS must be used in accordance with the DAS accounting regulations (i.e., differential DAS counting) proposed by this action. A lessor (vessel leasing DAS to another vessel) may not lease DAS to any vessel with a main engine horsepower rating that is 20 percent more than that of the lessor vessel, and may not lease DAS to any vessel that is 10 percent more than that of the lessor vessel's length overall. The vessel specifications used for the DAS Leasing Program are based on the permit baseline as of January 29, 2004, the publication date of the Amendment 13 proposed rule (69 FR 4362).

Because DAS use and landing history may be used to determine fishing rights in a future management action, the DAS Leasing Program includes a presumption for how such history would be accounted. For ease of administration, history of leased DAS use would be presumed to remain with the lessor vessel, and landings resulting from the use of the leased DAS would be presumed to be attributed to the lessee vessel (vessel receiving leased DAS). However, the history of used leased DAS would be presumed to remain with the lessor only if the lessee actually fished the leased DAS in accordance with the DAS notification program. For the purposes of DAS-use history, leased DAS would be considered to be the first DAS to be used, followed by the allocated DAS. Attributing landings history to the lessor would be inconsistent with the current vessel reporting system used for all other fisheries in the Northeast Region, and would be extremely difficult and

costly for NMFS to implement. In the case of multiple lessors, the leased DAS actually used would be attributed to the lessors based on the order in which such leases were approved by NMFS.

Limited access NE multispecies vessels that are also issued a limited access monkfish Category C, D, F, G, or H permit would be required to fish their available monkfish DAS in conjunction with their groundfish DAS, including leased DAS. If a monkfish Category C, D, F, G, or H vessel leases groundfish Category A DAS to another vessel, the lessor vessel would be required to forfeit a monkfish DAS for each groundfish A DAS that the vessel leases, equal in number to the difference between the number of remaining groundfish A DAS and the number of unused monkfish DAS at the time of the lease. For example, if a lessor vessel that had 40 unused monkfish DAS and 47 allocated groundfish A DAS leased 10 of its groundfish A DAS, the lessor would forfeit the use of 3 of its monkfish DAS (40 monkfish DAS - 37 groundfish A DAS = 3 DAS) because it would have 3 fewer groundfish A DAS than monkfish DAS after the lease. The Monkfish FMP specifies that monkfish Category C, D, F, G, or H vessels must fish a groundfish A DAS concurrently with a monkfish DAS. Not deducting monkfish DAS in a situation where groundfish A DAS are leased (transferred) would allow monkfish and groundfish A DAS to be fished independently.

Continuing the DAS Leasing Program in this emergency action would help mitigate the economic and social impacts resulting from the current FMP regulations that strictly limit fishing effort. The provisions detailed above for the DAS Leasing Program are proposed for implementation under this emergency action and are identical to those proposed for continuation under FW 42 in order to maintain consistency of the measures in this action with those adopted by the Council for implementation by FW 42 and to simplify the administration of this program.

8. Eastern U.S./Canada Haddock SAP

This proposed emergency action would delay the opening of the Eastern U.S./Canada Haddock SAP from May 1 to August 1. This measure would also allocate a portion of the GB yellowtail flounder and GB winter flounder incidental catch TAC to the Eastern U.S./Canada Haddock SAP (see Table 3). As explained above, the value of these new incidental catch TACs are being specified through a concurrent agency action for implementation by May 1, 2006. An incidental catch TAC

for GB cod for this SAP was previously allocated under FW 40A (November 19, 2004; 69 FR 67780). Once any of these incidental catch TACs are caught, the use of Category B (Regular or Reserve) DAS in this SAP would be prohibited. Finally, possession of flounders (all species, combined), monkfish (whole weight), and skates would be limited to 500 lb (227 kg) each, and possession of lobsters would be prohibited to ensure the proper utilization of the haddock separator trawl; a properly configured haddock separator trawl should not catch large quantities of these species.

This proposed measure would delay the opening of the SAP so that lower cod catch rates would allow more of the haddock TAC to be harvested while reducing the catch (and bycatch) of GB cod. This measure is based, in part, on recommendations of the Groundfish Advisory Panel and the Groundfish Committee. The Advisors suggested delaying the start date of this SAP to August 1, due to concerns over lower price for haddock, poor condition of the fish due to recent spawning, and to provide further protection for GB cod and GB yellowtail flounder by eliminating bycatch of these species under this SAP from May through July. The incidental catch TACs for GB yellowtail flounder and GB winter flounder would prevent this SAP from threatening mortality objectives for these stocks.

9. Eastern U.S./Canada Area Flexibility

This emergency action proposes to allow a vessel that begins a fishing trip in the Eastern U.S./Canada Area to choose to fish in other areas on the same trip. If a vessel chooses to fish outside of the Eastern U.S./Canada Area after fishing inside that area, the operator must notify NMFS via VMS prior to leaving the dock or prior to leaving the Eastern U.S./Canada Area on its return to port and must comply with the most restrictive possession limits for the areas fished. A vessel electing to fish inside and outside of the Eastern U.S./Canada Area would be charged Category A DAS for the entire trip and the vessel would not receive any steaming time credit. In addition, all cod and haddock caught on the entire trip would be applied against the Eastern U.S./Canada Area TACs for these species, all yellowtail flounder would be applied to the overall U.S./Canada Management Area TAC for this species. The vessel must comply with reporting requirements for the Eastern U.S./Canada Area for the entire trip. A vessel is prohibited from fishing outside of the Eastern U.S./Canada Area on the same trip if it has already exceeded the restrictive possession limits for a

particular species outside of the Eastern U.S./Canada Area. For example, if a vessel fishing in the Eastern U.S./Canada Area in June has already caught 500 lb (226.8 kg) of GB yellowtail flounder, the vessel operator would be prohibited from fishing in the GOM RMA or SNE/MA RMA on the same trip because the vessel has already exceeded the June SNE/MA and GOM yellowtail flounder possession limit of 250 lb per trip (113.4 kg per trip) proposed by this action. However, the vessel could continue to fish within the Western U.S./Canada Area for the remainder of the trip.

This measure addresses a potential safety concern which could arise out of the Amendment 13 restriction that vessels fishing in the Eastern U.S./Canada Area cannot fish in any other area. If worsening weather is forecast, a vessel captain fishing in the Eastern U.S./Canada Area currently has only two choices: End the trip early, or continue to fish in the Eastern U.S./Canada Area. The vessel operator cannot "hedge his bets" by choosing to fish closer to shore after leaving the Eastern U.S./Canada Area. The risk is that fishermen will keep fishing in the area until it is too late to evade a rapidly advancing storm. This measure would provide fishermen another option, which would reduce the chances of an economic loss for the trip, and therefore, reduce the economic incentive for a vessel operator to fish under unsafe weather conditions. In order to prevent misreporting of cod and haddock caught in the Eastern U.S./Canada Area, all cod, haddock, and yellowtail flounder caught on the trip would be applied to the species TACs for that area. This is a conservative approach that will help ensure the U.S./Canada Area TACs are not exceeded. Prohibiting a vessel from fishing outside of the Eastern U.S./Canada Area on the same trip if it has exceeded a possession limit for a specific stock is necessary to properly enforce the possession limit provisions of the FMP. These proposed measures are consistent with the measures adopted by the Council for implementation in FW 42.

10. Recreational Restrictions

Under this proposed action, private recreational vessels and vessels fishing under the charter/party regulations of the FMP would be prohibited from possessing or retaining any cod from the GOM RMA from November 1–March 31. Also, the minimum size of cod for private recreational vessels and charter/party vessels fishing in the GOM would be increased from 22 inches (56 cm) to 24 inches (61 cm) for the duration of

this emergency action. Private recreational and charter/party vessels would be allowed to transit the GOM RMA with cod caught from outside this area, provided all bait and hooks are removed from fishing rods and all cod are stored in coolers or ice chests.

These measures are intended to achieve a proportional share of the necessary F reductions for GOM cod from the recreational sector. These measures are designed to achieve the same reduction in F for GOM cod as that achieved by measures intended to reduce F for this species in the commercial fishery, as described above. The gear and cod stowage requirements are necessary to properly enforce these measures. These measures are consistent with the measures adopted by the Council for implementation in FW 42.

Classification

Because this action is a proposed rule, at this time, NMFS has not made a final determination that the emergency measures that this proposed rule would implement are consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making the final determination, will take into account the data, views, and comments received during the comment period.

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

This proposed rule does not contain policies with Federalism or "takings" implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

NMFS prepared an IRFA as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this proposed rule and in the Executive Summary and Sections 3.0 and 4.0 of the EA prepared for this action.

As described above, the proposed action would implement measures to immediately reduce fishing mortality on particular groundfish stocks for the start of the 2006 fishing year on May 1, 2006. This action is necessary to maintain efforts to continue the rebuilding programs established under Amendment 13. The DAS Leasing Program and a modified Regular B DAS Program would be continued in this action to help offset some of the economic and social impacts of

continued effort reductions in the groundfish fishery and to provide some means of regulating effort shifts caused by differential DAS counting proposed by this action.

Because this action largely builds on and amends Amendment 13 and subsequent framework actions, measures for which numerous alternatives were considered, NMFS only fully considered two alternatives for analysis: The proposed emergency action and the No Action alternative. Two other alternatives (area closures and a hard TAC alternative) were considered, but were rejected because they did not meet the objectives of this action. The area closure alternative included closing portions of the GOM RMA and was rejected because these alternatives could have forced fishing effort to move into other RMAs, would have prohibited a majority of the fishing industry from operating in the GOM and could have caused unnecessary impacts on healthy groundfish stocks. The hard TAC alternative included hard TACs for species requiring F reductions for 2006, but were rejected because current data collection mechanisms do not allow for the complete, real-time catch monitoring that would be necessary for a hard-TAC alternative and that such an alternative would be inconsistent with measures adopted in FW 42. Analysis of this proposed emergency action examined the impacts on the fishing industry that would result from the continuation of the current management measures (i.e., the set of measures currently in place for the NE multispecies fishery through the October 14, 2005, implementation of measures contained in FW 41 (70 FR 54302; September 14, 2005)), along with the measures proposed by this emergency action and described in the SUMMARY. The No Action alternative is defined as the current management measures, including the two default measures implemented by Amendment 13 (a change in the ratio of Category A to Category B DAS from 60:40 to 55:45, and differential DAS counting at a rate of 1.5:1 in the SNE/MA RMA). The No Action alternative would retain the current trip limits for GOM cod and CC/GOM, GB, and SNE/MA yellowtail flounder. In addition, under the No Action alternative, the DAS Leasing Program and the Regular B DAS Pilot Program would expire prior to May 1, 2006, and the Eastern U.S./Canada Haddock SAP would expire on November 18, 2006.

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

Any vessel that possesses a NE multispecies permit would be required to comply with the proposed regulatory action. However, for the purposes of determination of impact, only vessels that actually participated in an activity during fishing year 2004 that would be affected by the proposed action were considered for analysis. During fishing year 2004, 1,002 permit holders had an allocation of Category A DAS. Limited access permit holders may participate in both commercial and party/charter activity without having a party/charter permit. In fishing year 2004, 705 entities participated in the commercial groundfish fishery and 6 participated in the party/charter fishery for GOM cod. Four of these entities participated in both commercial and party/charter activities, leaving a total of 707 unique vessels with an allocation of Category A DAS that may be affected by the proposed action. Based on fishing year 2004 data, the proposed action would have a potential impact on a total of 3,216 limited or open access groundfish permit holders, of which less than one-third (976) actually participated in either a commercial or party/charter activity that would be affected by the proposed action. Of these, 858 commercial fishing vessels would be affected by this proposed action, including 132 limited access monkfish Category C or D vessels that fished in the Regular B DAS Pilot Program during fishing year 2004–2005.

The SBA size standard for small commercial fishing entities is \$4 million in gross sales, and the size standard for small party/charter operators is \$6.5 million. Available data for fishing year 2004 gross sales show that the maximum gross for any single commercial fishing vessel was \$1.8 million, and the maximum gross sales for any affected party/charter vessel was \$1.0 million. While an entity may own multiple vessels, available data make it difficult to determine which vessels may be controlled by a single entity. For this reason, each vessel is treated as a single entity for purposes of size determination and impact assessment. This means that all commercial and party/charter fishing entities would fall under the SBA size standard for small entities and, therefore, there is no differential impact between large and small entities.

Economic Impacts of the Proposed Action

The proposed action would continue the Amendment 13 default measure that would reduce the number of available Category A DAS. In addition, the proposed action would implement differential DAS counting for all Category A DAS used in all RMAs at a rate of 1.4:1, reduce trip limits for several species, continue the DAS Leasing Program and a modified Regular B DAS Program restricted to the U.S./Canada Management Area, delay the start date of the Eastern U.S./Canada Area Haddock SAP, allow vessels to fish inside and outside of the Eastern U.S./Canada Area on the same trip, and impose recreational fishing measures designed to reduce fishing mortality on GOM cod. The economic impacts of the proposed differential DAS counting and trip limits were able to be assessed using the Closed Area Model (CAM). Separate analyses were conducted for the impacts of the continuation of the DAS Leasing Program and a modified Regular B DAS Program, the delayed start date for the Eastern U.S./Canada Haddock SAP, and the recreational measures.

The results of the CAM indicate that the proposed action would have the greatest impact on vessels from Maine, New Hampshire, and Massachusetts. The proposed action would have a disproportionate impact on groundfish vessels in excess of 70 ft (21.3 m) length overall and would affect trawl vessels more than gillnet or hook gear vessels. Vessels with the highest yearly gross sales (i.e., more than \$320,000) would be more affected than vessels with lower yearly gross sales. Of the 858 participating commercial fishing vessels, more than 80 percent may be expected to incur at least some reduction in net return in fishing year 2006 compared to fishing year 2004–05 levels. One-half of all participating vessels would be expected to have net returns reduced by at least 12 percent from their 2004 net returns, and 25 percent (215) of all participating vessels may incur losses in net returns that exceed 22 percent. Overall, the proposed action is expected to result in a 28-percent reduction in fishing revenue, for an aggregate impact of \$30.5 million in gross sales. This loss represents less than 4 percent of total region-wide fishing revenues from all species. Total groundfish revenue is expected to be reduced by 32 percent, resulting in an estimate of \$53 million in the landed value of groundfish for fishing year 2006.

Because the proposed action would affect vessels that may participate in the Eastern U.S./Canada Haddock SAP and/or the Regular B DAS Program, and participation in these programs is voluntary, it is difficult to estimate the impact on any given small entity participating in these programs. During fishing year 2004, catch rates of cod in the Eastern U.S./Canada Area Haddock SAP during May and June were sufficient to close the SAP well before the allowable TAC for haddock could be harvested. Delaying the start date for the Eastern U.S./Canada Area Haddock SAP is expected to reduce the amount of cod taken in the SAP, and would allow for more trips to be taken to the SAP, resulting in an increase in the amount of harvested haddock. Therefore, this measure would likely provide greater economic opportunity to small commercial fishing entities than if the regulation were left unchanged.

The proposed action would continue a modified Regular B DAS Program. This program differs from that originally implemented by FW 40A in that the proposed program would restrict this program to the U.S./Canada Management Area, reduce the number of available Regular B DAS in this program between May and July to 500, require participating vessels to use a haddock separator trawl, and implement incidental catch TACs and restrictive possession limits for GB winter flounder and GB yellowtail flounder. Analysis of the impacts of the modified Regular B DAS Program in the U.S./Canada Management Area suggests that the proposed action changes may diminish the extent to which the program will improve economic opportunities for commercial fishing vessels compared to the Regular B DAS Pilot Program implemented under FW 40A. Restricting the program to the U.S./Canada Management Area under this proposed action may put smaller vessels (in terms of physical size) at a disadvantage relative to larger vessels, due to the distance from shore that vessels would have to traverse to access the area. The requirement to use the separator trawl or gear that meets specified standards means that, in order to participate, vessels would be required to bear the added cost of acquiring new gear, or incurring the expense of modifying existing gear. Vessels operating at the brink of break-even may not be able to afford this added expense. However, the implementation of incidental catch TACs for GB winter flounder and GB yellowtail flounder is expected to have the greatest economic impact to participating vessels. First, revenue

from the sale of these two species will be dramatically reduced, as the incidental TAC would be set at levels that would be nearly 10 times lower than observed landings during fishing year 2004. Second, available data indicate that catch rates of GB winter flounder may be sufficient to result in closure of the area to Regular B DAS well before the quarterly allocation of Regular B DAS has been used. Unless the separator trawl also reduces catches of winter and yellowtail flounders in addition to cod, the estimated revenues from the Regular B DAS Program in fishing year 2006 (about \$3 million) may be as much as two-thirds less than what was observed under the Regular B DAS Pilot Program during fishing years 2004 and 2005.

The continuation of the DAS Leasing Program through this proposed action would continue to offer economic benefits that help offset the impacts of the effort reductions of Amendment 13 and those proposed by this action. The DAS Leasing Program provided regulatory relief that allowed lessee vessels, on average, to fish enough DAS to cover their overhead and crew expenses. Assuming that the DAS Leasing Program would operate in a similar manner as previous years, the benefits of this program would likely accrue primarily to lessee vessels in Maine and Massachusetts.

This emergency action would delay the start date of the Eastern U.S./Canada Haddock SAP to August 1, 2006. Based on catch rates observed between May through July 2005, this delay could result in the loss of \$1.25 million based on revenue generated from the sale of landed catch during this period. However, this loss is expected to be offset by the potential for this delayed start date to prolong availability of the GB cod and GB yellowtail flounder TACs specified for the Eastern U.S./Canada Area and this program. In doing so, vessels may obtain higher prices for these species throughout the year than they would if they were allowed to land larger amounts early in the fishing year, creating a glut in the market.

By allowing vessels to fish inside and outside of the Eastern U.S./Canada Area on the same trip, the proposed action would allow fishermen more flexibility to adapt to weather conditions and to respond to potential economic advantages in cases where fishing may be poorer than anticipated. In these cases, vessel operators may find it to their advantage to leave the Eastern U.S./Canada Area and fish more profitably elsewhere. In doing so, vessels would be able to maximize the economic returns of trips into the

Eastern U.S./Canada Area. However, it is impossible to predict the behavior of vessels electing to fish inside and outside of the Eastern U.S./Canada Area on the same trip. As a result, quantitative estimates of economic impact of this measure are not possible. It is expected that the economic impacts of this measure would be positive.

This proposed action would implement a seasonal prohibition on retention of cod from November through March and would increase the minimum size from 22 to 24 inches (55.9 to 61 cm) for party/charter and private recreational vessels. A total of 143 different party/charter vessels took at least one trip in the GOM and landed cod. Small party/charter fishing businesses would be affected by these changes through any potential reductions in passenger demand for recreational party/charter fishing trips. The seasonal prohibition on possession of cod would likely affect passenger demand if cod is a preferred target species, even if fishing for alternative groundfish species (primarily haddock) would still be allowed. The economic impact of the seasonal prohibition would have no impact on most party/charter operators since only 25 of the 143 affected vessels actually took any trips during the proposed season. Of these 25 affected vessels, only 2 took passengers for hire exclusively during the duration of the proposed seasonal prohibition, and the reduction in passenger fees on the other 23 vessels was estimated to range from less than 1 percent to a high of 29 percent, with a median loss of 9 percent. However, the number of passengers carried by these vessels during the proposed seasonal prohibition represented only about 2 percent of the market for party/charter passengers that landed cod in the GOM during fishing year 2004 and would have only a small impact on the competitive market for recreational fishing passengers. Since a much larger proportion of private boat trips take place during these months, the adverse impact would be more for private boat anglers as compared to party/charter anglers.

Economic Impacts of Alternatives to the Proposed Action

The other alternative to the proposed action that was analyzed was the No Action alternative. The No Action alternative includes the default Amendment 13 reduction in the number of available Category A DAS. However, the No Action alternative does not include the DAS Leasing Program or the Regular B DAS Pilot Program, as these programs have or would expire before

the start of the 2006 fishing year on May 1, 2006. This alternative would also retain the current GOM cod trip limit of 800 lb (363 kg)/DAS, up to 4,000 lb (1,814 kg)/trip; no trip limit for GB yellowtail flounder; and a seasonal trip limit of 750 lb (340 kg)/DAS, up to 3,000 lb (1,361 kg)/trip and 250 lb (113 kg)/trip for CC/GOM and SNE/MA yellowtail flounder.

The No Action alternative would result in an estimated reduction in total groundfish revenue of 6 percent, resulting in an estimated landed value of groundfish for fishing year 2006 of \$73 million, while total revenue on trips where groundfish are landed would decrease by 7 percent. Compared to the landed value of all species landed in the NE region, the reduction in combined groundfish trip value represents about 0.7 percent of the total. The estimated reduction in groundfish trip revenue is highest in ports bordering the SNE/MA RMA, but the overall impact is expected to be greatest on ports in the GOM. Total net returns to the vessel owner and crew would decrease by an average of 3–4 percent. As with the proposed action, larger trawl vessels would be most affected by the No Action alternative, with the greatest impacts on those vessels with the greatest dependence on groundfish.

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

This proposed rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) that has been previously approved by OMB under control numbers 0648–0202, 0648–0212, and 0648–0475. Public reporting burden for these collections of information are estimated as follows:

1. GB cod research set-aside TAC request, OMB #0648–0202 (30 min/response);
2. VMS purchase and installation, OMB #0648–0202, (1 hr/response);
3. VMS proof of installation, OMB #0648–0202, (5 min/response);
4. Automated VMS polling of vessel position, OMB #0648–0202, (5 sec/response);
5. Declaration of intent to participate in the Regular B DAS Program or fish in the U.S./Canada Management Areas and associated SAPs and DAS to be used via VMS prior to each trip into the Regular B DAS Program or a particular SAP, OMB #0648–0202, (5 min/response);
6. Notice requirements for observer deployment prior to every trip into the Regular B DAS Program or the U.S./Canada Management Areas and

associated SAPs, OMB #0648-0202, (2 min/response);

7. Daily electronic reporting of kept and discarded catch of stocks of concern and GB cod, GB haddock, and GB yellowtail flounder while participating in the Regular B DAS Program or fishing in the U.S./Canada Management Areas and associated SAPs, respectively, OMB #0648-0212, (15 min/response);

8. Daily electronic catch and discard reports of GB yellowtail flounder when fishing on a combined trip into the Western U.S./Canada Area, OMB #0648-0212 (15 min/response);

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

10. DAS Leasing Program application, OMB #0648-0475 (10 min/response); and

11. Declaration of intent to fish inside and outside of the Eastern U.S./Canada Area on the same trip, OMB #0648-0202 (5 min/response).

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

The information collection for the declaration of the intent to fish inside and outside of the Eastern U.S./Canada Area is currently being interpreted as a modification of the DAS "flip" notification. When a vessel "flips" its DAS declaration from Category B DAS to Category A DAS, it is informing NMFS that it is changing the DAS being used for that trip. In a similar manner, a vessel would "flip" its area declaration from exclusively in the Eastern U.S./Canada Area to being able to fish inside and outside of the Eastern U.S./Canada Area on the same trip. Since the original information collection submission for the DAS flipping measure overestimated the number of DAS flips that would occur during a particular fishing year, this action proposes to reduce the burden associated with that measure and add a burden for the declaration of the intent to fish inside and outside of the Eastern U.S./Canada Area by the same amount. In this manner, the burdens of both information collections are appropriately accounted for and the information collection submissions would more accurately reflect vessel practices. To document this revision, the information collection previously approved by the OMB under OMB #0648-0202 is being revised by means of a worksheet, as authorized by consultation with the OMB. Send comments regarding this burden estimate, or any other aspect of this data

collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to *DavidRostker@omb.eop.gov*, or fax to (202) 395-7285.

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

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 24, 2006.

William T. Hogarth,

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

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

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

2. In § 648.4, paragraphs (a)(1)(i)(A), (B), (E), (G), and (J); (a)(2)(i)(B), (E), (G), and (J); (a)(3)(i)(B), (E), (G), and (J); (a)(4)(i)(B), (E), (G), and (J); (a)(5)(i)(B), (E), (G), and (J); (a)(6)(i)(B), (E), (G), and (J); (a)(7)(i)(B), (E), (G), and (J); (a)(9)(i)(E), (G), and (J); (a)(12)(i)(B)(2), (E), (G), and (J); (a)(13)(i)(B) and (G); and (c)(2)(iii)(A) are suspended and paragraphs (a)(1)(i)(N) through (R); (a)(2)(i)(N), (P), and (Q); (a)(3)(i)(M) through (P); (a)(4)(i)(N) through (Q); (a)(5)(i)(M) through (P); (a)(6)(i)(M) through (P); (a)(7)(i)(M) through (P); (a)(9)(i)(O) through (Q); (a)(12)(i)(N) through (Q); (a)(13)(i)(O) and (P); and (c)(2)(iii)(C) are added to read as follows:

§ 648.4 Vessel permits.

(a) * * *
(1) * * *
(i) * * *

(N) *Eligibility.* To be eligible to apply for a limited access NE multispecies permit, as specified in § 648.82, a vessel must have been issued a limited access NE multispecies permit for the preceding year, or be replacing a vessel that was issued a limited access NE multispecies permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history; unless otherwise specified in this paragraph (a)(1)(i)(N). For the fishing year beginning May 1, 2004, a vessel may apply for a limited access Handgear A permit described in § 648.82(u)(6), if

it meets the criteria described under paragraphs (a)(1)(i)(N)(1), (2), and (3) of this section.

(1) The vessel must have been previously issued a valid NE multispecies open access Handgear permit during at least 1 fishing year during the fishing years 1997 through 2002; and

(2) The vessel must have landed and reported to NMFS at least 500 lb (226.8 kg) of cod, haddock, or pollock, when fishing under the open access Handgear permit in at least 1 of the fishing years from 1997 through 2002, as indicated by NMFS dealer records (live weight), submitted to NMFS prior to January 29, 2004.

(3) *Application/renewal restrictions.*

The vessel owner must submit a complete application for an initial limited access handgear permit before May 1, 2005. For fishing years beyond the 2004 fishing year, the provisions of paragraph (a)(1)(i)(O) of this section apply.

(O) *Application/renewal restrictions.*

All limited access permits established under this section must be issued on an annual basis by the last day of the fishing year for which the permit is required, unless a Confirmation of Permit History (CPH) has been issued as specified in paragraph (a)(1)(i)(R) of this section. Application for such permits must be received no later than 30 days before the last day of the fishing year. Failure to renew a limited access permit in any fishing year bars the renewal of the permit in subsequent years.

(P) *Replacement vessels.* With the exception of vessels that have obtained a limited access Handgear A permit described in § 648.82(u)(6), to be eligible for a limited access permit under this section, the replacement vessel must meet the following criteria and any other applicable criteria under paragraph (a)(1)(i)(F) of this section:

(1) The replacement vessel's horsepower may not exceed by more than 20 percent the horsepower of the vessel's baseline specifications, as applicable; and

(2) The replacement vessel's length, GRT, and NT may not exceed by more than 10 percent the length, GRT, and NT of the vessel's baseline specifications, as applicable.

(Q) *Consolidation restriction.* Except as provided for in the NE Multispecies DAS Leasing Program, as specified in § 648.82(t), and the NE Multispecies DAS Transfer Program, as specified in § 648.82(l), limited access permits and DAS allocations may not be combined or consolidated.

(R) *Confirmation of permit history.* Notwithstanding any other provisions of

this part, a person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has sunk, been destroyed, or transferred to another person, must apply for and receive a CPH if the fishing and permit history of such vessel has been retained lawfully by the applicant. To be eligible to obtain a CPH, the applicant must show that the qualifying vessel meets the eligibility requirements, as applicable, in this part. Issuance of a valid CPH preserves the eligibility of the applicant to apply for a limited access permit for a replacement vessel based on the qualifying vessel's fishing and permit history at a subsequent time, subject to the replacement provisions specified in this section. If fishing privileges have been assigned or allocated previously under this part, based on the qualifying vessel's fishing and permit history, the CPH also preserves such fishing privileges. A CPH must be applied for in order for the applicant to preserve the fishing rights and limited access eligibility of the qualifying vessel. An application for a CPH must be received by the Regional Administrator no later than 30 days prior to the end of the first full fishing year in which a vessel permit cannot be issued. Failure to do so is considered abandonment of the permit as described in paragraph (a)(1)(i)(K) of this section. A CPH issued under this part will remain valid until the fishing and permit history preserved by the CPH is used to qualify a replacement vessel for a limited access permit. Any decision regarding the issuance of a CPH for a qualifying vessel that has applied for or been issued previously a limited access permit is a final agency action subject to judicial review under 5 U.S.C. 704. Information requirements for the CPH application are the same as those for a limited access permit. Any request for information about the vessel on the CPH application form refers to the qualifying vessel that has been sunk, destroyed, or transferred. Vessel permit applicants who have been issued a CPH and who wish to obtain a vessel permit for a replacement vessel based upon the previous vessel history may do so pursuant to paragraph (a)(1)(i)(P) of this section.

* * * * *

(2) * * *

(i) * * *

(N) *Application/renewal restrictions.* See paragraph (a)(1)(i)(O) of this section.

(O) *Replacement vessels.* See paragraph (a)(1)(i)(P) of this section.

(P) *Consolidation restriction.* See paragraph (a)(1)(i)(Q) of this section.

(Q) *Confirmation of Permit History.* See paragraph (a)(1)(i)(R) of this section.

* * * * *

(3) * * *

(i) * * *

(M) *Application/renewal restrictions.* See paragraph (a)(1)(i)(O) of this section.

(N) *Replacement vessels.* See paragraph (a)(1)(i)(P) of this section.

(O) *Consolidation restriction.* See paragraph (a)(1)(i)(Q) of this section.

(P) *Confirmation of Permit History.* See paragraph (a)(1)(i)(R) of this section.

* * * * *

(4) * * *

(i) * * *

(N) *Application/renewal restrictions.* See paragraph (a)(1)(i)(O) of this section.

(O) *Replacement vessels.* See paragraph (a)(1)(i)(P) of this section.

(P) *Consolidation restriction.* See paragraph (a)(1)(i)(Q) of this section.

(Q) *Confirmation of Permit History.* See paragraph (a)(1)(i)(R) of this section.

* * * * *

(5) * * *

(i) * * *

(M) *Application/renewal restrictions.* See paragraph (a)(1)(i)(O) of this section.

(N) *Replacement vessels.* See paragraph (a)(1)(i)(P) of this section.

(O) *Consolidation restriction.* See paragraph (a)(1)(i)(Q) of this section.

(P) *Confirmation of Permit History.* See paragraph (a)(1)(i)(R) of this section.

* * * * *

(6) * * *

(i) * * *

(M) *Application/renewal restrictions.* See paragraph (a)(1)(i)(O) of this section.

(N) *Replacement vessels.* See paragraph (a)(1)(i)(P) of this section.

(O) *Consolidation restriction.* See paragraph (a)(1)(i)(Q) of this section.

(P) *Confirmation of Permit History.* See paragraph (a)(1)(i)(R) of this section.

* * * * *

(7) * * *

(i) * * *

(M) *Application/renewal restrictions.* See paragraph (a)(1)(i)(O) of this section.

(N) *Replacement vessels.* See paragraph (a)(1)(i)(P) of this section.

(O) *Consolidation restriction.* See paragraph (a)(1)(i)(Q) of this section.

(P) *Confirmation of Permit History.* See paragraph (a)(1)(i)(R) of this section.

* * * * *

(9) * * *

(i) * * *

(O) *Replacement vessels.* (1) See paragraph (a)(1)(i)(P) of this section.

(2) A vessel ≥ 51 GRT that lawfully replaced a vessel < 51 GRT between February 27, 1995, and October 7, 1999, that meets the qualification criteria set forth in paragraph (a)(9)(i)(A) of this

section, but exceeds the 51 GRT vessel size qualification criteria as stated in paragraph (a)(9)(i)(A)(2) or (4) of this section, may qualify for and fish under the permit category for which the replaced vessel qualified.

(3) A vessel that replaced a vessel that fished for and landed monkfish between February 28, 1991, and February 27, 1995, may use the replaced vessel's history in lieu of or in addition to such vessel's fishing history to meet the qualification criteria set forth in paragraphs (a)(9)(i)(A)(1), (2), (3), or (4) of this section, unless the owner of the replaced vessel retained the vessel's permit or fishing history, or such vessel no longer exists and was replaced by another vessel according to the provisions in paragraph (a)(1)(i)(D) of this section.

(4) A vessel that replaced a vessel that fished for and landed monkfish between March 15 through June 15 in the years 1995 through 1998, may use the replaced vessel's history in lieu of, or in addition to, such vessel's fishing history to meet the qualification criteria set forth in paragraphs (a)(9)(i)(A)(6) and (7) of this section, unless the owner of the replaced vessel retained the vessel's permit or fishing history, or such vessel no longer exists and was replaced by another vessel according to the provision of paragraph (a)(1)(i)(D) of this section.

(P) *Consolidation restriction.* See paragraph (a)(1)(i)(Q) of this section.

(Q) *Confirmation of permit history.* See paragraph (a)(1)(i)(R) of this section.

* * * * *

(12) * * *

(i) * * *

(N) For fishing years beyond the initial application year, the provisions of paragraph (a)(1)(i)(O) of this section apply.

(O) *Replacement vessels.* The provisions of paragraph (a)(1)(i)(P) of this section apply.

(P) *Consolidation restriction.* The provisions of paragraph (a)(1)(i)(Q) of this section apply.

(Q) *Confirmation of permit history.* The provisions of paragraph (a)(1)(i)(R) of this section apply.

* * * * *

(13) * * *

(i) * * *

(O) *Fishing years 2003 and beyond.*

For fishing years beyond the initial year, the provisions of paragraph (a)(1)(i)(O) of this section apply.

(P) *Consolidation restriction.* The provisions of paragraph (a)(1)(i)(Q) of this section apply.

* * * * *

(c) * * *

(2) * * *
(iii) * * *

(C) For vessels fishing for NE multispecies with gillnet gear, with the exception of vessels fishing under the Small Vessel permit category, an annual declaration as either a Day or Trip gillnet vessel designation, as described in § 648.82(s). A vessel owner electing a Day or Trip gillnet designation must indicate the number of gillnet tags that he/she is requesting, and must include a check for the cost of the tags. A permit holder letter will be sent to the owner of each eligible gillnet vessel, informing him/her of the costs associated with this tagging requirement and providing directions for obtaining tags. Once a vessel owner has elected this designation, he/she may not change the designation or fish under the other gillnet category for the remainder of the fishing year. Incomplete applications, as described in paragraph (e) of this section, will be considered incomplete for the purpose of obtaining authorization to fish in the NE multispecies gillnet fishery and will be processed without a gillnet authorization.

* * * * *

3. In § 648.10, paragraphs (b)(1)(vii); (b)(2)(i), (iii), and (iv); (b)(3)(i)(A) and (C); (b)(3)(ii) and (iii); (c)(1) and (3); and (f)(2) are suspended and paragraphs (b)(1)(x); (b)(2)(v) through (vii); (b)(3)(i)(E) and (F); (b)(3)(iv) and (v); (c)(6) and (7); and (f)(3) are added to read as follows:

§ 648.10 DAS and VMS notification requirements.

* * * * *

(b) * * *
(1) * * *

(x) A vessel electing to fish under the Regular B DAS Program, as specified in § 648.85(b)(10);

* * * * *

(2) * * *

(v) A vessel that has crossed the VMS Demarcation Line specified under paragraph (a) of this section is deemed to be fishing under the DAS program, unless the vessel's owner or authorized representative declares the vessel out of the scallop, NE multispecies, or monkfish fishery, as applicable, for a specific time period by notifying the Regional Administrator through the VMS prior to the vessel leaving port, or unless the vessel's owner or authorized representative declares the vessel will be fishing in the Eastern U.S./Canada Area as described in § 648.85(a)(3)(viii) under the provisions of that program.

(vi) DAS counting for a vessel that is under the VMS notification requirements of this paragraph (b), with

the exception of vessels that have elected to fish exclusively in the Eastern U.S./Canada Area on a particular trip, pursuant to § 648.85(a), begins with the first location signal received showing that the vessel crossed the VMS Demarcation Line after leaving port. DAS end with the first location signal received showing that the vessel crossed the VMS Demarcation Line upon its return to port. For those vessels that have elected to fish in the Eastern U.S./Canada Area pursuant to § 648.85(a)(2)(i), the requirements of this paragraph (b) begin with the first 30-minute location signal received showing that the vessel crossed into the Eastern U.S./Canada and end with the first location signal received showing that the vessel crossed out of the Eastern U.S./Canada Area upon beginning its return trip to port, unless the vessel elects to also fish outside the Eastern Area on the same trip, in accordance with § 648.85(a)(3)(viii)(A).

(vii) If the VMS is not available or not functional, and if authorized by the Regional Administrator, a vessel owner must provide the notifications required by paragraphs (b)(2)(ii), (v), and (vi) of this section by using the call-in notification system described under paragraph (c) of this section, instead of using the VMS specified in this paragraph (b).

* * * * *

(3) * * *
(i) * * *

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

(F) Fish under the Regular B DAS Program specified at § 648.85(b)(10);

* * * * *

(iv) Unless otherwise required by paragraph (b)(1)(v) of this section, upon recommendation by the Council, the Regional Administrator may require, by notification through a letter to affected permit holders, notification in the **Federal Register**, or other appropriate means, that a NE multispecies vessel issued an Individual DAS or Combination Vessel permit install on board an operational VMS unit that meets the minimum performance criteria specified in § 648.9(b), or as modified as provided under § 648.9(a). An owner of such a vessel must provide documentation to the Regional Administrator that the vessel has installed on board an operational VMS unit that meets those criteria. If a vessel has already been issued a permit without the owner providing such documentation, the Regional Administrator shall allow at least 30

days for the vessel to install an operational VMS unit that meets the criteria and for the owner to provide documentation of such installation to the Regional Administrator. A vessel that is required to use a VMS shall be subject to the requirements and presumptions described under paragraphs (b)(2)(ii) through (vii) of this section.

(v) A vessel issued a limited access NE multispecies, monkfish, Occasional scallop, or Combination permit may be authorized by the Regional Administrator to provide the notifications required by this paragraph (b) using the VMS specified in this paragraph (b). The owner of such vessel becomes authorized by providing documentation to the Regional Administrator at the time of application for an Individual or Combination vessel limited access NE multispecies permit that the vessel has installed on board an operational VMS unit that meets the minimum performance criteria specified in § 648.9(b), or as modified as provided under § 648.9(a). Vessels that are authorized to use the VMS in lieu of the call-in requirement for DAS notification shall be subject to the requirements and presumptions described under paragraphs (b)(2)(ii) through (vii) of this section. Those who elect to use the VMS do not need to call in DAS as specified in paragraph (c) of this section. Vessels that do call in are exempt from the prohibition specified in § 648.14(c)(2).

* * * * *

(c) * * *

(6) Less than 1 hour prior to leaving port, for vessels issued a limited access NE multispecies DAS permit or, for vessels issued a limited access NE multispecies DAS permit and a limited access monkfish permit (Category C, D, F, G, or H), unless otherwise specified in this paragraph (c)(6), and, prior to leaving port for vessels issued a limited access monkfish Category A or B permit, the vessel owner or authorized representative must notify the Regional Administrator that the vessel will be participating in the DAS program by calling the Regional Administrator and providing the following information: Owner and caller name and phone number; vessel name and permit number; type of trip to be taken; port of departure; and that the vessel is beginning a trip. A DAS begins once the call has been received and a confirmation number is given by the Regional Administrator, or when a vessel leaves port, whichever occurs first, unless otherwise specified in paragraph (b)(2)(iv) of this section. Vessels issued a limited access

monkfish Category C, D, F, G, or H permit that are allowed to fish as a Category A or B vessel in accordance with the provisions of § 648.92(b)(2)(iv), are subject to the call-in notification requirements for limited access monkfish Category A or B vessels specified under this paragraph (c)(1) for those monkfish DAS where there is not a concurrent NE multispecies DAS.

(7) At the end of a vessel's trip, upon its return to port, the vessel owner or owner's representative must call the Regional Administrator and notify him/her that the trip has ended by providing the following information: Owner and caller name and phone number, vessel name, permit number, port of landing, and that the vessel has ended its trip. A DAS ends when the call has been received and confirmation has been given by the Regional Administrator, unless otherwise specified in paragraph (b)(2)(vi) of this section.

* * * * *

(f) * * *

(3) *Gillnet call-in.* Vessels subject to the gillnet restriction described in § 648.82(s)(1)(ii) must notify the Regional Administrator of the commencement date of their time out of the NE multispecies gillnet fishery using the procedure described in paragraph (f)(1) of this section.

4. In § 648.14, paragraph (a)(172), and paragraphs (c)(54) through (56) and (65) are suspended, and paragraphs (a)(173), through (178), (c)(81) through (98), and (g)(4) are added to read as follows:

§ 648.14 Prohibitions.

* * * * *

(a) * * *

(173) If, upon the end of a fishing trip as specified under § 648.10(b)(2)(vi) or (c)(3), fail to offload regulated species subject to a landing limit based on a DAS fished under § 648.85 or § 648.86, as required by § 648.86(i).

(174) Fail to comply with the reporting requirements under § 648.85(a)(3)(viii)(A)(2) when fishing inside and outside of the Eastern U.S./Canada Area on a trip.

(175) Fail to notify NMFS via VMS prior to departing the Eastern U.S./Canada Area, when fishing inside and outside of the area on the same trip, in accordance with § 648.85(a)(3)(viii)(A)(1).

(176) When fishing inside and outside of the Eastern U.S./Canada Area, fail to abide by the most restrictive regulations that apply as described in § 648.85(a)(3)(viii)(A).

(177) If fishing inside the Eastern U.S./Canada Area and in possession of fish in excess of what is allowed under more restrictive regulations that apply

outside of the Eastern U.S./Canada Area, fish within the CC/GOM or SNE/MA Yellowtail Flounder Areas on the same trip, as prohibited under § 648.85(a)(3)(viii)(A).

(178) Discard legal-sized yellowtail flounder prior to declaring the intent to fish inside and outside of the Eastern U.S./Canada Area on the same trip, in accordance with § 648.85(a)(3)(viii)(A).

* * * * *

(c) * * *

(81) If fishing in the Eastern U.S./Canada Haddock SAP Pilot Area, discard legal-sized cod, GB winter flounder, or GB yellowtail flounder while fishing under a Category B DAS, as described in § 648.85(b)(8)(vii)(F).

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

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

(84) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), fail to comply with the requirements and restrictions specified in § 648.85(b)(10)(iv)(A) through (F), and (I).

(85) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), fail to comply with the VMS requirement specified in § 648.85(b)(10)(iv)(A).

(86) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), fail to comply with the observer notification requirement specified in § 648.85(b)(10)(iv)(B).

(87) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), fail to comply with the VMS declaration requirement specified in § 648.85(b)(10)(iv)(C).

(88) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), fail to comply with the landing limits specified in § 648.85(b)(10)(iv)(D).

(89) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), fail to comply with the no discard and DAS flip requirements specified in § 648.85(b)(10)(iv)(E).

(90) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), fail to comply with the minimum Category A DAS and Category B DAS accrual requirements specified in § 648.85(b)(10)(iv)(F).

(91) Use a Regular B DAS in the Regular B DAS Program specified in § 648.85(b)(10), if the program has been closed as specified in § 648.85(b)(10)(iv)(H) or (b)(10)(vi).

(92) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), use a Regular B DAS in a stock area that has been closed, as specified in § 648.85(b)(10)(iv)(G).

(93) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), fail to comply with the reporting requirements specified in § 648.85(b)(10)(iv)(I).

(94) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), use a Regular B DAS outside the U.S./Canada Management Area specified under § 648.85(a)(1), or after the program has closed, as required under § 648.85(10)(iv)(G) or (H).

(95) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), fail to use a haddock separator trawl as required by § 648.85(b)(10)(iv)(J) and described under § 648.85(a)(3)(iii)(A).

(96) Use a Regular B DAS and a monkfish DAS on the same trip, if issued a limited access Category C, D, or F monkfish permit and fishing in the Regular B DAS Program specified in § 648.85(b)(10).

(97) If issued a limited access monkfish Category C, D, or F permit and fishing in the Regular B DAS Program specified in § 648.85(b)(10), possess more than the incidental catch amounts of monkfish, as specified at § 648.94(b)(7).

(98) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), discard legal-sized monkfish.

* * * * *

(g) * * *

(4) If the vessel is a private recreational fishing vessel, fail to comply with the seasonal cod prohibition described in § 648.89(c)(1)(v), or if the vessel has been issued a charter/party permit, or is fishing under charter/party regulations, fail to comply with the seasonal cod prohibition described in § 648.89(c)(2)(vi).

* * * * *

5. In § 648.53, paragraph (e) is suspended, and paragraph (i) is added to read as follows:

§ 648.53 DAS allocations.

* * * * *

(i) *End-of-year carry-over for open are DAS.* With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(1)(i)(R) for the entire fishing year preceding the carry-over year, limited access vessels that

have unused Open Area DAS on the last day of February of any year may carry over a maximum of 10 DAS, not to exceed the total Open Area DAS allocation by permit category, into the next year. DAS carried over into the next fishing year may only be used in Open Areas. DAS sanctioned vessels will be credited with unused DAS based on their unused DAS allocation, minus total DAS sanctioned.

6. In § 648.80, paragraphs (a)(3)(vi), (a)(4)(i) through (iv), (b)(2)(i) through (iii) and (vi), and (c)(2)(ii) and (iii) are suspended and paragraphs (a)(3)(viii), (a)(4)(vi) through (ix), (b)(2)(vii) through (x), and (c)(2)(vi) and (vii) are added to read as follows:

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

* * * * *

(a) * * *
(3) * * *

(vii) *Other restrictions and exemptions.* Vessels are prohibited from fishing in the GOM or GB Exemption Area as defined in paragraph (a)(17) of this section, except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (a)(5) through (7), (a)(9) through (14), (d), (e), (h), and (i) of this section; or if fishing under a NE multispecies DAS; or if fishing under the Small Vessel or Handgear A exemptions specified in § 648.82(u)(5) and (6), respectively; or if fishing under the scallop state waters exemptions specified in § 648.54 and paragraph (a)(11) of this section; or if fishing under a scallop DAS in accordance with paragraph (h) of this section; or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit, or if fishing as a charter/party or private recreational vessel in compliance with the regulations specified in § 648.89. Any gear on a vessel, or used by a vessel, in this area must be authorized under one of these exemptions or must be stowed as specified in § 648.23(b).

* * * * *

(4) * * *

(vi) *Vessels using trawls.* Except as provided in paragraph (a)(3)(viii) of this section, and this paragraph (a)(4)(vi), and unless otherwise restricted under paragraph (a)(4)(iii) of this section, the minimum mesh size for any trawl net, except midwater trawl, and the minimum mesh size for any trawl net when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for

immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the GB Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) diamond mesh or square mesh applied to the codend of the net as defined under paragraph (a)(3)(i) of this section, provided the vessel complies with the requirements of paragraph (a)(3)(vii) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 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.

(vii) *Vessels using Scottish seine, midwater trawl, and purse seine.* Except as provided in paragraph (a)(3)(viii) of this section, and this paragraph (a)(4)(vii), and unless otherwise restricted under paragraph (a)(4)(iii) of this section, the minimum mesh size for any Scottish seine, midwater trawl, or purse seine, and the minimum mesh size for any Scottish seine, midwater trawl, or purse seine, when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the GB Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied throughout the net, or any combination thereof, provided the vessel complies with the requirements of paragraph (a)(3)(vii) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 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.

(viii) *Large-mesh vessels.* When fishing in the GB Regulated Mesh Area, the minimum mesh size for any trawl net, or sink gillnet, and the minimum mesh size for any trawl net, or sink gillnet, when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(u)(5), is 8.5-inch (21.6-cm) diamond or square mesh throughout the

entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 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.

(ix) *Gillnet vessels.* Except as provided in paragraph (a)(3)(viii) of this section and this paragraph (a)(4)(iv), for Day and Trip gillnet vessels, the minimum mesh size for any sink gillnet, and the minimum mesh size for any roundfish or flatfish gillnet when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), when fishing under a DAS in the NE multispecies DAS program in the GB Regulated Mesh Area is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 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.

* * * * *

(b) * * *
(2) * * *

(vii) *Vessels using trawls.* Except as provided in paragraphs (b)(2)(i) and (x) of this section, and unless otherwise restricted under paragraph (b)(2)(iii) of this section, the minimum mesh size for any trawl net, not stowed and not available for immediate use in accordance with § 648.23(b), except midwater trawl, on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the SNE Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh, applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) square mesh or, 7-inch (17.8-cm) diamond mesh applied to the codend of the net, as defined under paragraph (a)(3)(i) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 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.

(viii) *Vessels using Scottish seine, midwater trawl, and purse seine.* Except as provided in paragraphs (b)(2)(ii) and (x) of this section, the minimum mesh size for any Scottish seine, midwater trawl, or purse seine, not stowed and not available for immediate use in accordance with § 648.23(b), on a vessel

or used by a vessel fishing under a DAS in the NE multispecies DAS program in the SNE Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied throughout the net, or any combination thereof. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 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.

(ix) *Large-mesh vessels.* When fishing in the SNE Regulated Mesh Area, the minimum mesh size for any trawl net vessel, or sink gillnet, not stowed and not available for immediate use in accordance with § 648.23(b) on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(u)(4), is 8.5-inch (21.6-cm) diamond or square mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 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.

(x) *Other restrictions and exemptions.* Vessels are prohibited from fishing in the SNE Exemption Area, as defined in paragraph (b)(10) of this section, except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (b)(3), (b)(5) through (9), (b)(11), (c), (e), (h), and (i) of this section, or if fishing under a NE multispecies DAS, if fishing under the Small Vessel or Handgear A exemptions specified in § 648.82(b)(u)(5) and (u)(6), respectively, or if fishing under a scallop state waters exemption specified in § 648.54, or if fishing under a scallop DAS in accordance with paragraph (h) of this section, or if fishing under a General Category scallop permit in accordance with paragraphs (a)(11)(i)(A) and (B) of this section, or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit, or if fishing as a charter/party or private recreational vessel in compliance with the regulations specified in § 648.89. Any gear on a vessel, or used by a vessel, in this area must be authorized under one of these exemptions or must be stowed as specified in § 648.23(b).

* * * * *

(c) * * *

(2) * * *

(vi) *Vessels using Scottish seine, midwater trawl, and purse seine.* Except as provided in paragraph (c)(2)(vii) of this section, the minimum mesh size for any sink gillnet, Scottish seine,

midwater trawl, or purse seine, not stowed and not available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the MA Regulated Mesh Area, shall be that specified in § 648.104(a). This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 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.

(vii) *Large-mesh vessels.* When fishing in the MA Regulated Mesh Area, the minimum mesh size for any trawl net vessel, or sink gillnet, not stowed and not available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(u)(4), is 7.5-inch (19.0-cm) diamond mesh or 8.0-inch (20.3-cm) square mesh, throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 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.

* * * * *

7. In § 648.82, paragraphs (a)(1), (b), (c)(1) and (2), (d) through (k), (l)(1)(iv) and (v), and (m) are suspended and paragraphs (a)(3), (c)(3) and (4), (d)(5) through (7), (l)(2)(viii) and (ix), and (n) through (w) are added to read as follows:

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

* * * * *

(a) * * *

(3) *End-of-year carry-over.* With the exception of vessels that held a Confirmation of Permit History, as described in § 648.4(a)(1)(i)(Q), for the entire fishing year preceding the carry-over year, limited access vessels that have unused DAS on the last day of April of any year may carry over a maximum of 10 DAS into the next year. Unused leased DAS may not be carried over. Vessels that have been sanctioned through enforcement proceedings will be credited with unused DAS based on their DAS allocation minus any total DAS that have been sanctioned through enforcement proceedings. For the 2004 fishing year only, DAS carried over from the 2003 fishing year will be classified as Regular B DAS, as specified under paragraph (v)(2) of this section. Beginning with the 2005 fishing year, for vessels with a balance of both unused Category A DAS and unused Category B DAS at the end of the

previous fishing year (e.g., for the 2005 fishing year, carry-over DAS from the 2004 fishing year), Category A DAS will be carried over first, then Regular B DAS, then Reserve B DAS. Category C DAS cannot be carried over.

* * * * *

(c) * * *

(3) *Calculation of used DAS baseline.* For all valid limited access NE multispecies DAS vessels, vessels issued a valid Small Vessel category permit, and NE multispecies Confirmation of Permit Histories, beginning with the 2004 fishing year, a vessel's used DAS baseline shall be based on the fishing history associated with its permit and shall be determined by the highest number of reported DAS fished during a single qualifying fishing year, as specified in paragraphs (c)(3)(i) through (iv) of this section, during the 6-year period from May 1, 1996, through April 30, 2002, not to exceed the vessel's annual allocation prior to August 1, 2002. A qualifying year is one in which a vessel landed 5,000 lb (2,268 kg) or more of regulated multispecies, based upon landings reported through dealer reports (based on live weights of landings submitted to NMFS prior to April 30, 2003). If a vessel that was originally issued a limited access NE multispecies permit was lawfully replaced in accordance with the replacement restrictions specified in § 648.4(a), then the used DAS baseline shall be defined based upon the DAS used by the original vessel and by subsequent vessel(s) associated with the permit during the qualification period specified in this paragraph (c)(3). The used DAS baseline shall be used to calculate the number and category of DAS that are allocated for use in a given fishing year, as specified in paragraph (v) of this section.

(i) Except as provided in paragraphs (c)(3)(ii) through (iv) of this section, the vessel's used DAS baseline shall be determined by calculating DAS use reported under the DAS notification requirements in § 648.10.

(ii) For a vessel exempt from, or not subject to, the DAS notification system specified in § 648.10 during the period May 1996 through June 1996, the vessel's used DAS baseline for that period will be determined by calculating DAS use from vessel trip reports submitted to NMFS prior to April 9, 2003.

(iii) For a vessel enrolled in a Large Mesh DAS category, as specified in paragraph (u)(4) of this section, the calculation of the vessel's used DAS baseline may not include any DAS allocated or used by the vessel pursuant

to the provisions of the Large Mesh DAS category.

(iv) Used DAS will be counted as described under paragraph (n) of this section.

(4) *Correction of used DAS baseline.*

(i) A vessel's used DAS baseline, as determined under paragraph (c)(3) of this section, may be corrected by submitting a written request to correct the DAS baseline. The request to correct must be received by the Regional Administrator no later than August 31, 2004. The request to correct must be in writing and provide credible evidence that the information used by the Regional Administrator in making the determination of the vessel's DAS baseline was based on incorrect data. The decision on whether to correct the DAS baseline shall be determined solely on the basis of written information submitted, unless the Regional Administrator specifies otherwise. The Regional Administrator's decision on whether to correct the DAS baseline is the final decision of the Department of Commerce.

(ii) *Status of vessel's pending request for a correction of used DAS baseline.* While a vessel's request for a correction is under consideration by the Regional Administrator, the vessel is limited to fishing the number of DAS allocated in accordance with paragraph (v) of this section.

* * * * *

(1) * * *

(2) * * *

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

(ix) Category C DAS, as defined under paragraph (v)(3) of this section, will be reduced by 90 percent upon transfer.

* * * * *

(n) *Accrual of DAS.*

(1) *Actual time.* Unless otherwise specified under this paragraph (n) and paragraph (s)(1)(iii) of this section, DAS shall accrue to the nearest minute and will be counted as actual time called, or logged into the DAS program.

(2) *Differential Category A DAS counting.* For all NE multispecies vessels fishing under a Category A DAS, unless otherwise specified in paragraph (s)(1)(iii) of this section, each Category A DAS, or part thereof, shall be counted at the ratio of 1.4 to 1.0. For example, if a vessel fishes for 24 hours (1 DAS), 33.6 hours (1.4 DAS) will be deducted from that vessel's DAS allocation.

(3) *Regular B DAS Program 24-hr clock.* For vessels electing to fish in the Regular B DAS Program, as specified at

§ 648.85(b)(10), and that remain fishing under a Regular B DAS for the entire fishing trip (without a DAS flip), DAS used will accrue at the rate of 1 full DAS for each calendar day, or part of a calendar day, fished. For example, a vessel that fished on one calendar day from 6 a.m. to 10 p.m. would be charged 24 hours of Regular B DAS, not 16 hours; a vessel that left on a trip at 11 p.m. on the first calendar day and returned at 10 p.m. on the second calendar day would be charged 48 hours of Regular B DAS instead of 23 hours, because the fishing trip would have spanned 2 calendar days. For the purpose of calculating trip limits specified under § 648.86, the amount of DAS deducted from a vessel's DAS allocation will determine the amount of fish the vessel could legally land.

(o) *Good Samaritan credit.* See § 648.53(f).

(p) *Spawning season restrictions.* A vessel issued a valid Small Vessel or Handgear A category permit specified under paragraphs (u)(5) or (6), respectively, of this section may not fish for, possess, or land regulated species from March 1 through March 20 of each year. Any other vessel issued a limited access NE multispecies permit must declare out and be out of the NE multispecies DAS program for a 20-day period between March 1 and May 31 of each calendar year, using the notification requirements specified in § 648.10. A vessel fishing under a Day gillnet category designation is prohibited from fishing with gillnet gear capable of catching NE multispecies during its declared 20-day spawning block, unless the vessel is fishing in an exempted fishery, as described in § 648.80. If a vessel owner has not declared and been out of the fishery for a 20-day period between March 1 and May 31 of each calendar year on or before May 12 of each year, the vessel is prohibited from fishing for, possessing or landing any regulated species or non-exempt species during the period May 12 through May 31, inclusive.

(q) *Declaring DAS and blocks of time out.* A vessel's owner or authorized representative shall notify the Regional Administrator of a vessel's participation in the DAS program, declaration of its 120 days out of the non-exempt gillnet fishery, if designated as a Day gillnet category vessel, as specified in paragraph (s)(1)(iii) of this section, and declaration of its 20-day period out of the NE multispecies DAS program, using the notification requirements specified in § 648.10.

(r) [Reserved]

(s) *Gillnet restrictions.* Vessels issued a limited access NE multispecies permit may fish under a NE multispecies DAS with gillnet gear, provided the owner of the vessel obtains an annual designation as either a Day or Trip gillnet vessel, as described in § 648.4(c)(2)(iii), and provided the vessel complies with the gillnet vessel gear requirements and restrictions specified in § 648.80.

(1) *Day gillnet vessels.* A Day gillnet vessel fishing with gillnet gear under a NE multispecies DAS is not required to remove gear from the water upon returning to the dock and calling out of the DAS program, provided the vessel complies with the restrictions specified in paragraphs (s)(1)(i) through (iii) of this section. Vessels electing to fish under the Day gillnet designation must have on board written confirmation, issued by the Regional Administrator, that the vessel is a Day gillnet vessel.

(i) *Removal of gear.* All gillnet gear must be brought to port prior to the vessel fishing in an exempted fishery.

(ii) *Declaration of time out of the gillnet fishery.*—(A) During each fishing year, vessels must declare, and take, a total of 120 days out of the non-exempt gillnet fishery. Each period of time declared and taken must be a minimum of 7 consecutive days. At least 21 days of this time must be taken between June 1 and September 30 of each fishing year. The spawning season time out period required by paragraph (p) of this section will be credited toward the 120 days time out of the non-exempt gillnet fishery. If a vessel owner has not declared and taken any or all of the remaining periods of time required to be out of the fishery by the last possible date to meet these requirements, the vessel is prohibited from fishing for, possessing, or landing regulated multispecies or non-exempt species harvested with gillnet gear, and from having gillnet gear on board the vessel that is not stowed in accordance with § 648.23(b), while fishing under a NE multispecies DAS, from that date through the end of the period between June 1 and September 30, or through the end of the fishing year, as applicable.

(B) Vessels shall declare their periods of required time through the notification procedures specified in § 648.10(f)(3).

(C) During each period of time declared out, a vessel is prohibited from fishing with non-exempted gillnet gear and must remove such gear from the water. However, the vessel may fish in an exempted fishery, as described in § 648.80, or it may fish under a NE multispecies DAS, provided it fishes with gear other than non-exempted gillnet gear.

(iii) *Method of counting DAS.* Unless electing to fish in the Regular B DAS Program specified in § 648.85(a)(6), and therefore subject to the DAS accrual provisions of paragraph (n)(3) of this section, Day gillnet vessels fishing with gillnet gear under a NE multispecies Category A DAS, or under a NE multispecies Category B DAS in an approved SAP specified at § 648.85(b), will accrue 15 hours of DAS for each trip of more than 3 hours, but less than or equal to 11 hours. For trips less than or equal to 3 hours, or more than 11 hours, the ratio of Category A DAS used to time called into the DAS program will be 1.4 to 1.0.

(2) *Trip gillnet vessels.* When fishing under a NE multispecies DAS, a Trip gillnet vessel is required to remove all gillnet gear from the water before calling out of a NE multispecies DAS under § 648.10(c)(7). When not fishing under a NE multispecies DAS, Trip gillnet vessels may fish in an exempted fishery with gillnet gear, as authorized under the exemptions in § 648.80. Vessels electing to fish under the Trip gillnet designation must have on board written confirmation issued by the Regional Administrator that the vessel is a Trip gillnet vessel.

(t) *NE Multispecies DAS Leasing Program—(1) Program description.* Eligible vessels, as specified in paragraph (t)(2) of this section, may lease Category A DAS to and from other eligible vessels, in accordance with the restrictions and conditions of this section. The Regional Administrator has final approval authority for all NE multispecies DAS leasing requests.

(2) *Eligible vessels.*—(i) A vessel issued a valid limited access NE multispecies permit is eligible to lease Category A DAS to or from another such vessel, subject to the conditions and requirements of this part, unless the vessel was issued a valid Small Vessel or Handgear A permit specified under paragraphs (u)(5) and (6) of this section, respectively, or is a valid participant in an approved Sector, as described in § 648.87(a). Any NE multispecies vessel that does not require use of DAS to fish for regulated multispecies may not lease any NE multispecies DAS.

(ii) DAS associated with a Confirmation of Permit History may not be leased.

(3) *Application to lease NE multispecies DAS.* To lease Category A DAS, the eligible Lessor and Regional Office at least 45 days before the date on which the applicants desire to have the leased DAS effective. The Regional Administrator will notify the applicants of any deficiency in the application pursuant to this section. Applications

may be submitted at any time prior to the start of the fishing year or throughout the fishing year in question, up until March 1. Eligible vessel owners may submit any number of lease applications throughout the application period, but any DAS may only be leased once during a fishing year.

(i) *Application information requirements.* An application to lease Category A DAS must contain the following information: Lessor's owner name, vessel name, permit number and official number or state registration number; Lessee's owner name, vessel name, permit number and official number or state registration number; number of NE multispecies DAS to be leased; total price paid for leased DAS; signatures of Lessor and Lessee; and date form was completed. Information obtained from the lease application will be held confidential, according to applicable Federal law. Aggregate data may be used in the analysis of the DAS Leasing Program.

(ii) *Approval of lease application.* Unless an application to lease Category A DAS is denied according to paragraph (t)(3)(iii) of this section, the Regional Administrator shall issue confirmation of application approval to both Lessor and Lessee within 45 days of receipt of an application.

(iii) *Denial of lease application.* The Regional Administrator may deny an application to lease Category A DAS for any of the following reasons, including, but not limited to: The application is incomplete or submitted past the March 1 deadline; the Lessor or Lessee has not been issued a valid limited access NE multispecies permit or is otherwise not eligible; the Lessor's or Lessee's DAS are under sanction pursuant to an enforcement proceeding; the Lessor's or Lessee's vessel is prohibited from fishing; the Lessor's or Lessee's limited access NE multispecies permit is sanctioned pursuant to an enforcement proceeding; the Lessor or Lessee vessel is determined not in compliance with the conditions and restrictions of this part; or the Lessor has an insufficient number of allocated or unused DAS available to lease. Upon denial of an application to lease NE multispecies DAS, the Regional Administrator shall send a letter to the applicants describing the reason(s) for application rejection. The decision by the Regional Administrator is the final agency decision.

(4) *Conditions and restrictions on leased DAS*—(i) *Confirmation of Permit History.* DAS associated with a confirmation of permit history may not be leased.

(ii) *Sub-leasing.* In a fishing year, a Lessor or Lessee vessel may not sub-lease DAS that have already been leased to another vessel. Any portion of a vessel's DAS may not be leased more than one time during a fishing year.

(iii) *Carry-over of leased DAS.* Leased DAS that remain unused at the end of the fishing year may not be carried over to the subsequent fishing year by the Lessor or Lessee vessel.

(iv) *Maximum number of DAS that can be leased.* A Lessee may lease Category A DAS in an amount up to such vessel's 2001 fishing year allocation (excluding carry-over DAS from the previous year, or additional DAS associated with obtaining a Large Mesh permit). For example, if a vessel was allocated 88 DAS in the 2001 fishing year, that vessel may lease up to 88 Category A DAS. The total number of Category A DAS that the vessel could fish would be the sum of the 88 leased DAS and the vessel's 2004 allocation of Category A DAS. Any leased DAS used are subject to differential DAS accounting as described under paragraphs (n) and (t) of this section.

(v) *History of leased DAS use and landings.* Unless otherwise specified in this paragraph (t)(4)(v), history of leased DAS use will be presumed to remain with the Lessor vessel. Landings resulting from a leased DAS will be presumed to remain with the Lessee vessel. For the purpose of accounting for leased DAS use, leased DAS will be accounted for (subtracted from available DAS) prior to allocated DAS. In the case of multiple leases to one vessel, history of leased DAS use will be presumed to remain with the Lessor in the order in which such leases were approved by NMFS.

(vi) *Monkfish Category C, D, F, G and H vessels.* A vessel that possesses a valid limited access NE multispecies DAS permit and a valid limited access monkfish Category C, D, F, G or H permit and leases NE multispecies DAS to or from another vessel is subject to the restrictions specified in § 648.92(b)(2).

(vii) *DAS Category restriction.* A vessel may lease only Category A DAS, as described under paragraph (v)(1) of this section.

(viii) *Duration of lease.* A vessel leasing DAS may only fish those leased DAS during the fishing year in which they were leased.

(ix) *Size restriction of Lessee vessel.* A Lessor 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 (t)(4)(xi) of this section.

(x) *Leasing by vessels fishing under a Sector allocation.* A vessel fishing under the restrictions and conditions of an approved Sector allocation, as specified in § 648.87(b), may not lease DAS to or from vessels that are not participating in such Sector during the fishing year in which the vessel is a member of that Sector.

(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 (t)(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)(P) and (F), or any other provision, respectively.

(u) *Permit categories.* All limited access NE multispecies permit holders shall be assigned to one of the following permit categories, according to the criteria specified. Permit holders may request a change in permit category, as specified in § 648.4(a)(1)(i)(I)(2). Each fishing year shall begin on May 1 and extend through April 30 of the following year. Beginning May 1, 2004, with the exception of the limited access Small Vessel and Handgear A vessel categories described in paragraphs (u)(5) and (6) of this section, respectively, NE multispecies DAS available for use will be calculated pursuant to paragraphs (c) and (v) of this section.

(1) *Individual DAS category.* This category is for vessels allocated individual DAS that are not fishing under the Hook Gear, Combination, or Large-mesh individual categories. Beginning May 1, 2004, for a vessel fishing under the Individual DAS category, the baseline for determining the number of NE multispecies DAS available for use shall be calculated based upon the fishing history associated with the vessel's permit, as specified in paragraph (c)(3) of this section. The number and categories of DAS that are allocated for use in a given fishing year are specified in paragraph (v) of this section.

(2) *Hook Gear category.* To be eligible for a Hook Gear category permit, the vessel must have been issued a limited access multispecies permit for the preceding year, be replacing a vessel that was issued a Hook Gear category permit for the preceding year, or be replacing a vessel that was issued a Hook Gear category permit that was issued a Confirmation of Permit History. Beginning May 1, 2004, for a vessel fishing under the Hook Gear category, the baseline for determining the number of NE multispecies DAS available for use shall be calculated based upon the fishing history associated with the vessel's permit, as specified in paragraph (c)(3) of this section. The number and categories of DAS that are allocated for use in a given fishing year are specified in paragraph (v) of this section. A vessel fishing under this category in the DAS program must meet or comply with the gear restrictions specified under § 648.80(a)(3)(v), (a)(4)(v), (b)(2)(v) and (c)(2)(iv) when

fishing in the respective regulated mesh areas.

(3) *Combination vessel category.* To be eligible for a Combination vessel category permit, a vessel must have been issued a Combination vessel category permit for the preceding year, be replacing a vessel that was issued a Combination vessel category permit for the preceding year, or be replacing a vessel that was issued a Combination vessel category permit that was also issued a Confirmation of Permit History. Beginning May 1, 2004, for a vessel fishing under the Combination vessel category, the baseline for determining the number of NE multispecies DAS available for use shall be calculated based upon the fishing history associated with the vessel's permit, as specified in paragraph (c)(3) of this section. The number and categories of DAS that are allocated for use in a given fishing year are specified in paragraph (v) of this section.

(4) *Large Mesh Individual DAS category.* This category is for vessels allocated individual DAS that are not fishing under the Hook Gear, Combination, or Individual DAS categories. Beginning May 1, 2004, for a vessel fishing under the Large Mesh Individual DAS category, the baseline for determining the number of NE multispecies DAS available for use shall be calculated based upon the fishing history associated with the vessel's permit, as specified in paragraph (c)(3) of this section. The number and categories of DAS that are allocated for use in a given fishing year are specified in paragraph (v) of this section. The number of Category A DAS shall be increased by 36 percent. To be eligible to fish under the Large Mesh Individual DAS category, a vessel, while fishing under this category, must fish under the specific regulated mesh area minimum mesh size restrictions, as specified in paragraphs (a)(3)(iii), (a)(4)(iii), (u)(2)(iii), and (c)(4)(ii) of § 648.80.

(5) *Small Vessel category—(i) DAS allocation.* A vessel qualified and electing to fish under the Small Vessel category may retain up to 300 lb (136.1 kg) of cod, haddock, and yellowtail flounder, combined, and one Atlantic halibut per trip, without being subject to DAS restrictions, provided the vessel does not exceed the yellowtail flounder possession restrictions specified under § 648.86(g). Such vessel is not subject to a possession limit for other NE multispecies. Any vessel may elect to switch into this category, as provided in § 648.4(a)(1)(i)(I)(2), if the vessel meets or complies with the following:

(A) The vessel is 30 ft (9.1 m) or less in length overall, as determined by

measuring along a horizontal line drawn from a perpendicular raised from the outside of the most forward portion of the stem of the vessel to a perpendicular raised from the after most portion of the stern.

(B) If construction of the vessel was begun after May 1, 1994, the vessel must be constructed such that the quotient of the length overall divided by the beam is not less than 2.5.

(C) Acceptable verification for vessels 20 ft (6.1 m) or less in length shall be USCG documentation or state registration papers. For vessels over 20 ft (6.1 m) in length overall, the measurement of length must be verified in writing by a qualified marine surveyor, or the builder, based on the vessel's construction plans, or by other means determined acceptable by the Regional Administrator. A copy of the verification must accompany an application for a NE multispecies permit.

(D) Adjustments to the Small Vessel category requirements, including changes to the length requirement, if required to meet fishing mortality goals, may be made by the Regional Administrator following framework procedures of § 648.90.

(i) [Reserved]

(6) *Handgear A category.* A vessel qualified and electing to fish under the Handgear A category, as described in § 648.4(a)(1)(i)(N), may retain, per trip, up to 250 lb (113.4 kg) of cod, one Atlantic halibut, and the daily limit for other regulated species as specified under § 648.86. The cod trip limit will be adjusted proportionally to the trip limit for GOM cod (rounded up to the nearest 50 lb (22.7 kg)), as specified in § 648.86(i)). For example if the GOM cod trip limit specified at § 648.86(i) doubled, then the cod trip limit for the Handgear A category would double. Qualified vessels electing to fish under the Handgear A category are subject to the following restrictions:

(i) The vessel must not use or possess on board gear other than handgear while in possession of, fishing for, or landing NE multispecies, and must have at least one standard tote on board.

(ii) A vessel may not fish for, possess, or land regulated species from March 1 through March 20 of each year.

(iii) Tub-trawls must be hand-hauled only, with a maximum of 250 hooks.

(v) *DAS categories and allocations.*

For all valid limited access NE multispecies DAS permits, and NE multispecies Confirmation of Permit Histories, beginning with the 2004 fishing year, DAS shall be allocated and available for use for a given fishing year according to the following DAS

Categories (unless otherwise specified, "NE multispecies DAS" refers to any authorized category of DAS):

(1) *Category A DAS.* Unless determined otherwise, as specified under paragraph (v)(4) of this section, calculation of Category A DAS for each fishing year is specified in paragraphs (v)(1)(i) through (iii) of this section. An additional 36 percent of Category A DAS will be added and available for use for participants in the Large Mesh Individual DAS permit category, as described in paragraph (u)(4) of this section, provided the participants comply with the applicable gear restrictions. Category A DAS may be used in the NE multispecies fishery to harvest and land regulated multispecies stocks, in accordance with all of the conditions and restrictions of this part.

(i) For the 2004 and 2005 fishing years, Category A DAS are defined as 60 percent of the vessel's used DAS baseline specified under paragraph (c)(3) of this section.

(ii) For the 2006 through 2008 fishing years, Category A DAS are defined as 55 percent of the vessel's used DAS baseline specified under paragraph (c)(3) of this section.

(iii) Starting in fishing year 2009, Category A DAS are defined as 45 percent of the vessel's used DAS baseline specified under paragraph (c)(3) of this section.

(2) *Category B DAS.* Category B DAS are divided into Regular B DAS and Reserve B DAS. Calculation of Category B DAS for each fishing year, and restrictions on use of Category B DAS, are specified in paragraphs (v)(2)(i) and (ii) of this section.

(i) *Regular B DAS—(A) Restrictions on use.* Regular B DAS can only be used by NE multispecies vessels in an approved SAP or in the Regular B DAS Program as specified in § 648.85(b)(10). Unless otherwise restricted under the Regular B DAS Program as described in § 648.85(b)(10)(i), vessels may fish under both a Regular B DAS and a Reserve B DAS on the same trip (*i.e.*, when fishing in an approved SAP as described in § 648.85(b)).

(B) *Calculation.* Unless determined otherwise, as specified under paragraph (v)(4) of this section, Regular B DAS are calculated as follows:

(1) For the 2004 and 2005 fishing years, Regular B DAS are defined as 20 percent of the vessel's DAS baseline specified under paragraph (c)(3) of this section.

(2) For the 2006 through 2008 fishing years, Regular B DAS are defined as 22.5 percent of the vessel's DAS baseline specified under paragraph (c)(3) of this section.

(3) Starting in fishing year 2009, and thereafter, Regular B DAS are defined as 27.5 percent of the vessel's DAS baseline specified under paragraph (c)(3) of this section.

(ii) *Reserve B DAS—(A) Restrictions on use.* Reserve B DAS can only be used in an approved SAP, as specified in § 648.85.

(B) *Calculation.* Unless determined otherwise, as specified under paragraph (v)(4) of this section, Reserve B DAS are calculated as follows:

(1) For the 2004 and 2005 fishing years, Reserve B DAS are defined as 20 percent of the vessel's DAS baseline specified under paragraph (c)(3) of this section.

(2) For the 2006 through 2008 fishing years, Reserve B DAS are defined as 22.5 percent of the vessel's DAS baseline specified under paragraph (c)(3) of this section.

(3) Starting in fishing year 2009, and thereafter, Reserve B DAS are defined as 27.5 percent of the vessel's DAS baseline specified under paragraph (c)(3) of this section.

(3) *Category C DAS—(i) Restriction on use.* Category C DAS are reserved and may not be fished.

(ii) *Calculation.* Category C DAS are defined as the difference between a vessel's used DAS baseline, as described in paragraph (c)(3) of this section, and the number of DAS allocated to the vessel as of May 1, 2001.

(4) *Criteria and procedure for not reducing DAS allocations and modifying DAS accrual.* The schedule of reductions in NE multispecies DAS, and the modification of DAS accrual specified under paragraph (n)(2) of this section, shall not occur if the Regional Administrator:

(i) Determines that one of the following criteria has been met:

(A) That the Amendment 13 projected target biomass levels for stocks targeted by the default measures, based on the 2005 and 2008 stock assessments, have been or are projected to be attained with at least a 50-percent probability in the 2006 and 2009 fishing years, respectively, and overfishing is not occurring on those stocks (*i.e.*, current information indicates that the stocks are rebuilt and overfishing is not occurring); or

(B) That biomass projections, based on the 2005 and 2008 stock assessments, show that rebuilding will occur by the end of the rebuilding period with at least a 50-percent probability, and the best available estimate of the fishing mortality rate for the stocks targeted by the default measures indicates that overfishing is not occurring (*i.e.*, current information indicates that rebuilding

will occur by the end of the rebuilding period and the fishing mortality rate is at or below Fmsy).

(ii) Determines that all other stocks meet the fishing mortality rates specified in Amendment 13; and

(iii) Publishes such determination in the **Federal Register**, consistent with Administrative Procedure Act requirements for proposed and final rulemaking.

(w) *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.

8. In § 648.85, paragraphs (a)(3)(ii); (a)(3)(iv)(C)(1), (2) and (4); (a)(3)(v); (b)(5) and (6); (b)(7)(iv)(A); (b)(7)(v)(A); (b)(7)(vi)(A); and (b)(8)(i), (iv), and (v) are suspended; the introductory text of paragraph (a)(3)(iii) is revised; and paragraphs (a)(3)(iv)(C)(5) through (7), (a)(3)(viii) and (ix), (b)(7)(iv)(J), (b)(7)(v)(F), (b)(7)(vi)(G), (b)(8)(vi), (vii) and (viii), and (b)(9) and (10) are added to read as follows:

§ 648.85 Special management programs.

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

(iii) NE multispecies vessels fishing with trawl gear in the Eastern U.S./Canada Area defined in paragraph (a)(1)(ii) of this section must fish with a haddock separator trawl or a flounder trawl net, as described in paragraphs (a)(3)(iii)(A) and (B) of this section (both nets may be onboard the fishing vessel simultaneously). Other types of fishing gear may be on the vessel during a trip to the Eastern U.S./Canada Area, provided they are stowed according to the regulations at § 648.23(b). The description of the haddock separator trawl and flounder trawl net in paragraph (a)(3)(iii) of this section may be further specified by the Regional Administrator through publication of such specifications in the **Federal Register**, consistent with the requirements of the Administrative Procedure Act.

- * * * * *
- (iv) * * *
- (C) * * *

(5) *Initial yellowtail flounder landing limit.* The initial yellowtail flounder possession limit for the U.S./Canada Area is 10,000 lb (4,536 kg) per trip. A separate yellowtail flounder trip limit for the Closed Area II Yellowtail Flounder SAP is specified under paragraph (b)(3)(viii) of this section. The trip limits specified under this

paragraph, or paragraph (b)(3)(viii) of this section, may be adjusted by the Regional Administrator pursuant to paragraphs (a)(3)(iv)(C)(3) and (6) of this section.

(6) *Authority to further restrict yellowtail flounder landing limits.* Unless further restricted by the initial yellowtail flounder landing limit as specified by paragraph (a)(3)(iv)(C)(5) of this section, when the Regional Administrator projects that 70 percent of the TAC allocation for yellowtail flounder specified under paragraph (a)(2) of this section will be harvested, NMFS shall implement and/or adjust, through rulemaking consistent with the Administrative Procedure Act, the yellowtail flounder trip limit for vessels fishing in both the Western and Eastern U.S./Canada Area to 1,500 lb (680.4 kg) per day, and 15,000 lb (6,804.1 kg) per trip.

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

* * * * *

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

(A) A vessel fishing under a NE multispecies DAS in the Eastern U.S./Canada Area may fish both inside and outside the Eastern U.S./Canada Area on the same trip, provided it complies with the most restrictive regulations applicable to the area fished for the entire trip and the restrictions of paragraphs (a)(3)(viii)(A)(1) and (2) of this section and does not discard legal-sized yellowtail flounder. If a vessel is fishing inside the Eastern U.S./Canada Area, and possesses yellowtail flounder in excess of what is allowed in either

the CC/GOM Yellowtail Flounder Area or the SNE/MA Yellowtail Flounder Area, as defined § 648.86(g), it may not fish outside of the Eastern U.S./Canada Area on the same trip. On trips when the vessel operator elects to fish both inside and outside of the Eastern U.S./Canada Area all cod, haddock, and yellowtail flounder caught on the trip will count toward the applicable hard TAC specified for the U.S./Canada Management Area.

(1) The vessel operator must notify NMFS via VMS that it is electing to fish outside the Eastern U.S./Canada Area either prior to leaving the dock, or prior to leaving the Eastern U.S./Canada Area. Category A DAS will accrue in accordance with paragraph § 648.10(b)(2)(v), regardless whether the vessel began its trip under a Category A or Category B DAS.

(2) The vessel must comply with the reporting requirements of the U.S./Canada Management Area specified under § 648.85(a)(3)(ix) for the duration of the trip.

(B) A vessel fishing under a NE multispecies DAS in the Western U.S./Canada Area may fish inside and outside the Western U.S./Canada Area on the same trip, provided it complies with the most restrictive regulations applicable to the area fished for the entire trip (e.g., the possession restrictions specified in paragraph (a)(3)(iv)(C)(4) of this section), and the reporting requirements specified in § 648.85(a)(3)(ix).

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

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

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

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

* * * * *

(b) * * *

(7) * * *

(iv) * * *

(J) *DAS use restrictions.* A vessel fishing in the CA I Hook Gear Haddock SAP may not initiate a DAS flip. A vessel is prohibited from fishing in the CA I Hook Gear Haddock SAP while making a trip under the Regular B DAS Program described under paragraph (b)(10) of this section.

(v) * * *

(F) *DAS use restrictions.* Sector vessels fishing in the CA I Hook Gear Haddock SAP may use Category A, Regular B, or Reserve B DAS, in accordance with § 648.82(v).

(vi) * * *

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

(H) *GB cod incidental catch TAC.* The maximum amount of GB cod (landings and discards) that may be cumulatively caught by non-Sector vessels from the CA I Hook Gear Haddock Access Area in a fishing year is the amount specified under paragraph (b)(9)(ii) of this section.

(I) *Mandatory closure of CA I Hook Gear Haddock Access Area due to catch of GB cod incidental catch TAC.* When

the Regional Administrator determines that the GB cod incidental catch TAC specified in paragraph (b)(7)(vi)(H) of this section has been caught, NMFS shall close, through rulemaking consistent with the Administrative Procedure Act, the CA I Hook Gear Haddock Access Area to all non-Sector fishing vessels.

(8) * * *

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

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

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

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

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

(3) A vessel may choose, on the same trip, to fish in either/both the Eastern U.S./Canada Haddock SAP Program and the CA II Yellowtail Flounder Access Area, and in that portion of the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) of this section that lies outside of these two SAPs, provided the vessel fishes under a Category A

DAS and abides by the VMS restrictions of paragraph (b)(8)(viii)(D) of this section.

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

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

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

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

(E) *Gear restrictions.* A NE multispecies vessel fishing in the Eastern U.S./Canada Haddock SAP Pilot Program must use one of the haddock separator trawl nets authorized for the Eastern U.S./Canada Area, as specified in paragraph (a)(3)(iii)(A) of this section. Other types of fishing gear may be on the vessel when participating on a trip in the Eastern U.S./Canada Haddock SAP Program, provided the other gear is stowed in accordance with § 648.23(b).

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

requirements described under § 648.86(a), unless further restricted under paragraph (a)(3)(iv) of this section. A NE multispecies vessel fishing in the Eastern U.S./Canada Haddock SAP Pilot Program, and fishing under a Category B DAS, may not land more than 100 lb (45.5 kg) per DAS, or any part of a DAS, of GB yellowtail flounder or GB winter flounder, and no more than 500 lb (227 kg) of all flounder species, combined. Possession of monkfish (whole weight), and skates is limited to 500 lb (227 kg) each and possession of lobsters is prohibited.

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

(H) *Incidental TACs.* The maximum amount of GB cod, GB yellowtail flounder, and GB winter flounder (landings and discards) that may be caught when fishing in the Eastern U.S./Canada Haddock SAP Program in a fishing year, by vessels fishing under a Category B DAS, as authorized in paragraph (b)(8)(viii)(A) is the amount specified in paragraph (b)(9)(ii) and (iii), respectively.

(I) *No discard provision and DAS flips.* A vessel fishing in the Eastern U.S./Canada Haddock SAP Pilot Program under a Category B DAS may not discard legal-sized cod, yellowtail flounder, or winter flounder. If a vessel fishing under a Category B DAS harvests and brings on board more legal-sized cod, yellowtail flounder, winter flounder, or monkfish than the landing limits specified under paragraph (b)(8)(viii)(F) of this section, the vessel operator must notify NMFS immediately via VMS to initiate a DAS flip to Category A DAS. For a vessel that notifies NMFS of a DAS flip, the Category B DAS that have accrued between the time the vessel started accruing Category B DAS at the beginning of the trip (i.e., at the time the vessel crossed into the Eastern U.S./Canada Area at the beginning of the trip) and the time the vessel declared its DAS flip will be accrued as Category A DAS, and not Category B DAS, according to the regulations at § 648.82(n)(2). Once such vessel has initiated the DAS flip and is fishing under a Category A DAS, the prohibition on discarding legal-sized cod, yellowtail flounder, and winter flounder no longer applies.

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

available Category A DAS that the vessel has at the start of the trip divided by 1.4.

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

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

(9) *Incidental TACs.* Unless otherwise specified in this paragraph (b)(9), incidental TACs shall be specified through the periodic adjustment process described in § 648.90, and allocated as described in paragraph (b)(9) of this section, for each of the following stocks: GOM cod, GB cod, GB yellowtail flounder, GB winter flounder, CC/GOM yellowtail flounder, American plaice, white hake, SNE/MA yellowtail flounder, SNE/MA winter flounder, and witch flounder. NMFS shall send letters to limited access NE multispecies permit holders notifying them of such TACs.

(i) *Stocks other than GB cod, GB yellowtail flounder and GB winter flounder.* With the exception of GB cod, GB yellowtail flounder and GB winter flounder, the incidental TACs specified under this paragraph (b)(9) shall be allocated to the Regular B DAS Program described in paragraph (b)(10) of this section.

(ii) *GB cod.* The incidental TAC for GB cod specified in this paragraph (b)(9), shall be subdivided as follows: 50 percent to the Regular B DAS Program, described in paragraph (b)(10) of this section; 16 percent to the CA I Hook Gear Haddock SAP, described in paragraph (b)(7) of this section; and 34

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

(iii) *GB yellowtail flounder and GB winter flounder.* The incidental TACs for GB yellowtail flounder and GB winter flounder specified under this paragraph (b)(9) shall be subdivided as follows: 50 percent to the Regular B DAS Program, described in paragraph (b)(10) of this section; and 50 percent to the Eastern U.S./Canada Haddock SAP Pilot Program, described in paragraph (b)(8) of this section.

(10) *Regular B DAS Program—(i) Eligibility.* Vessels issued a valid limited access NE multispecies DAS permit and allocated Regular B DAS are eligible to participate in the Regular B DAS Program in the area specified in paragraph (b)(10)(ii) of this section, and may elect to fish under a Regular B DAS, provided they comply with the requirements and restrictions of this paragraph (b)(10), and provided the use of Regular B DAS is not restricted according to paragraphs (b)(10)(iv)(G) or (H), or paragraph (b)(10)(vi) of this section. Vessels are required to comply with the no discarding and DAS flip requirements specified in paragraph (b)(10)(iv)(E) of this section, and the DAS balance and accrual requirements specified in paragraph (b)(10)(iv)(F) of this section. Vessels may fish under the Regular B DAS Program and in the U.S./Canada Management Area on the same trip, but may not fish under the Regular B DAS Program and in a SAP on the same trip. Category C, D, or F monkfish vessels may only participate in this program if fishing under a NE multispecies DAS only (i.e., Category C, D, or F monkfish vessels may not use a Regular B DAS and a monkfish DAS on the same trip under the Regular B DAS Program).

(ii) *Scope of the program.* Fishing under this program may occur only in the geographic area defined for the U.S./Canada Management Areas, described under paragraph (a)(1), of this section.

(iii) *Quarterly incidental catch TACs.* The incidental catch TACs specified in accordance with paragraph (b)(9) of this section shall be divided into quarterly catch TACs, as follows: The first quarter shall receive 13 percent of the incidental TACs and the remaining quarters shall receive 29 percent of the quarterly TACs each. NMFS shall send letters to limited access NE multispecies permit holders notifying them of such TACs.

(iv) *Program requirements—(A) VMS requirement.* A NE multispecies DAS vessel fishing in the Regular B DAS Program described in paragraph (b)(10)(i) of this section must have

installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(B) *Observer notification.* For the purposes of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; the date, time, and port of departure; at least 72 hr prior to the beginning of any trip that it declares into the Regular B DAS Program as required under paragraph (b)(10)(iv)(C) of this section, and in accordance with instructions provided by the Regional Administrator.

(C) *VMS declaration.* To participate in the Regular B DAS Program under a Regular B DAS, a vessel must declare into the Program via the VMS prior to departure from port, in accordance with instructions provided by the Regional Administrator. A vessel declared into the Regular B DAS Program cannot fish in an approved SAP described under this section on the same trip.

(D) *Landing limits.* A NE multispecies vessel fishing in the Regular B DAS Program described in this paragraph (b)(10), and fishing under a Regular B DAS, may not land more than 100 lb (45.5 kg) per DAS, or any part of a DAS, up to a maximum of 1,000 lb (454 kg) per trip, of any of the following species: Cod, American plaice, white hake, witch flounder, ocean pout, winter flounder, yellowtail flounder and windowpane flounder, with a maximum limit of 500 lb (227 kg) of all flatfish species (American plaice, witch flounder, winter flounder, windowpane flounder and yellowtail flounder), combined. Possession of monkfish (whole weight), and skates is limited to 500 lb (227 kg) per trip each and possession of lobsters is prohibited, unless otherwise restricted by § 648.94(b)(7).

(E) *No-discard provision and DAS flips.* A vessel fishing in the Regular B DAS Program under a Regular B DAS may not discard legal-sized regulated groundfish or monkfish. This prohibition on discarding does not apply in areas or times where the possession or landing of such groundfish or monkfish is prohibited. If such a vessel harvests and brings on board more legal-sized regulated groundfish or monkfish than the applicable maximum landing limit per trip specified under paragraph (b)(10)(iv)(D) of this section, the vessel operator must notify NMFS immediately via VMS to initiate a DAS flip. Once this notification has been received by NMFS, the vessel will automatically be

switched by NMFS to fishing under a Category A DAS. For a vessel that notifies NMFS of a DAS flip, the Category B DAS that have accrued between the time the vessel started accruing Regular B DAS at the beginning of the trip (i.e., at the time the vessel crossed the demarcation line at the beginning of the trip) and the time the vessel declared its DAS flip will be accrued as Category A DAS, and not Regular B DAS. Once such vessel has initiated the DAS flip and is fishing under a Category A DAS, the prohibition on discarding legal-sized regulated groundfish and monkfish no longer applies. A vessel that has declared a DAS flip will be subject to the most restrictive landing restrictions specified under paragraph (a)(3)(iv) of this section and paragraph § 648.86. Category C, D, or F monkfish vessels that have declared a DAS flip will be subject to the monkfish possession limits at § 648.94(b)(3).

(F) *Minimum Category A DAS and B DAS accrual.* For a vessel fishing under the Regular B DAS Program, the number of Regular B DAS that can be used on a trip cannot exceed the number of Category A DAS divided by 1.4 that the vessel has available at the start of the trip. The vessel will accrue DAS in accordance with § 648.82(n)(3).

(G) *Restrictions when 100 percent of the incidental catch TAC is harvested.* When the Regional Administrator determines, and provides notification through rulemaking consistent with the Administrative Procedure Act, that 100 percent of one or more of the quarterly incidental TACs specified under paragraph (b)(10)(iii) of this section is projected to have been harvested, Regular B DAS may not be used in the Regular B DAS Program for the duration of the calendar quarter. The closure of a the Regular B DAS Program will occur even if the quarterly incidental TACs for other stocks have not been completely harvested.

(H) *Closure of Regular B DAS program and quarterly DAS limits.* Unless otherwise closed as a result of the harvest of an incidental TAC as described in paragraph (b)(10)(iv)(G) of this section, or as a result of an action by the Regional Administrator under paragraph (b)(10)(v) of this section, when the Regional Administrator determines, and provides notification through rulemaking consistent with the Administrative Procedure Act, that 500 Regular B DAS have been used during the May–July quarter, or when 1,000 Regular B DAS have been used during any other calendar quarter of the fishing year, in accordance with § 648.82(n)(3),

Regular B DAS may not be used for the duration of the calendar quarter.

(I) *Reporting requirements.* The owner or operator of a NE multispecies DAS vessel must submit catch reports via VMS in accordance with instructions provided by the Regional Administrator, for each day fished when declared into the Regular B DAS Program. The reports must be submitted in 24-hr intervals for each day, beginning at 0000 hr and ending at 2400 hr. The reports must be submitted by 0900 hr of the following day. For vessels that have declared into the Regular B DAS Program in accordance with paragraph (b)(10)(iv)(c) of this section, the reports must include at least the following information: Statistical area fished, total weight (lb/kg) of cod, yellowtail flounder, American plaice, white hake, winter flounder, and witch flounder kept; and total weight (lb/kg) of cod, yellowtail flounder, American plaice, white hake, winter flounder, and witch flounder discarded. All NE multispecies permit holders will be sent a letter informing them of the statistical areas.

(J) *Trawl Gear Requirement.* Vessels fishing with trawl gear in the Regular B DAS Program must use a haddock separator trawl as described under paragraph (a)(3)(iii)(A) of this section.

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

* * * * *

9. In § 648.86, paragraphs (b) and (g)(1) and (2) are suspended, and paragraphs (g)(4) and (5), and (i) are added to read as follows:

§ 648.86 Multispecies possession restrictions.

* * * * *

(g) * * *

(4) *Cape Cod/GOM yellowtail flounder possession limit restrictions.* Except when fishing under the recreational and charter/party restrictions specified under § 648.89, or unless otherwise restricted as specified in §§ 648.82(u)(5), and 648.88(c), a qualified vessel issued a NE multispecies permit and fishing with a limited access Handgear A permit, under a NE multispecies DAS, or under a monkfish DAS when fishing under the limited access monkfish

Category C or D permit provisions, may fish for, possess and land yellowtail flounder in or from the Cape Cod/GOM Yellowtail Flounder Area described in paragraph (g)(4)(i) of this section, subject to the requirements and trip limits specified in paragraph (g)(4)(ii) of this section.

(i) *Cape Cod/GOM Yellowtail Flounder Area.* The Cape Cod/GOM Yellowtail Flounder Area (copies of a chart depicting the area is available from the Regional Administrator upon request), is the area defined by straight lines connecting the following points in the order stated:

CAPE COD/GOM YELLOWTAIL FLOUNDER AREA

Point	N. lat.	W. long.
SYT13	(1)	70°00'
SYT12	41°20'	70°00'
SYT11	41°20'	69°50'
SYT10	41°10'	69°50'
SYT9	41°10'	69°30'
SYT8	41°00'	69°30'
SYT7	41°00'	68°50'
USCA1	42°20'	68°50'
USCA12	42°20'	67°40'
NYT1	43°50'	67°40'
NYT2	43°50'	66°50'
NYT3	44°20'	66°50'
NYT4	44°20'	67°00'
NYT5	(2)	67°00'

¹ South facing shoreline of Cape Cod, MA.
² East facing shoreline of Maine.

(ii) *Requirements.* Vessels fishing in the Cape Cod/GOM Yellowtail Flounder Area are bound by the following requirements:

(A) The vessel must possess on board a yellowtail flounder possession/landing authorization letter issued by the Regional Administrator. To obtain this exemption letter the vessel owner must make a request in writing to the Regional Administrator.

(B) The vessel may not fish inside the SNE/MA Yellowtail Flounder Area, for a minimum of 7 consecutive days (when fishing with a limited access Handgear A permit, under the NE multispecies DAS program, or under the monkfish DAS program if the vessels is fishing under the limited access monkfish Category C or D permit provisions), unless otherwise specified in paragraph (g)(3) of this section. Vessels subject to these restrictions may fish any portion of a trip in the portion of the GB, SNE, and MA Regulated Mesh Areas outside of the SNE/MA Yellowtail Flounder Area, provided the vessel complies with the possession restrictions specified under this paragraph (g). Vessels subject to these restrictions may transit the SNE/MA Yellowtail Flounder Area,

provided the gear is stowed in accordance with § 648.23(b).

(C) During the periods May through June, and October through November, the vessel may land or possess on board only up to 250 lb (113.6 kg) of yellowtail flounder per trip.

(D) During the periods July through September, and December through April, the vessel may land or possess on board only up to 500 lb (226.8 kg) of yellowtail flounder per DAS, or any part of a DAS, up to a maximum possession limit of 2,000 lb (907.2 kg) per trip.

(5) *SNE/MA yellowtail flounder possession limit restrictions.* Except when fishing under the recreational and charter/party restrictions specified in § 648.89, or unless otherwise restricted as specified in § 648.82(u)(3) and (u)(5), and § 648.88(c), a vessel issued a NE multispecies permit and fishing with a limited access Handgear A permit, under a NE multispecies DAS, or under a monkfish DAS when fishing under the limited access monkfish Category C or D permit provisions, in the SNE/MA Yellowtail Flounder Area, described in paragraph (g)(5)(i) of this section, is subject to the requirements and trip limits specified in paragraph (g)(5)(ii) of this section, in order to fish for, possess, or land yellowtail flounder.

(i) *SNE/MA Yellowtail Flounder Area.* The SNE/MA Yellowtail Flounder Area (copies of a chart depicting the area is available from the Regional Administrator upon request), is the area defined by straight lines connecting the following points in the order stated:

SNE/MID-ATLANTIC YELLOWTAIL FLOUNDER AREA

Point	N. lat.	W. long.
SYT1	38°00'	(1)
SY2	38°00'	72°00'
SY3	39°00'	72°00'
SY4	39°00'	71°40'
SY5	39°50'	71°40'
USCA2	39°50'	68°50'
SYT7	41°00'	68°50'
SYT8	41°00'	69°30'
SYT9	41°10'	69°30'
SYT10	41°10'	69°50'
SYT11	41°20'	69°50'
SYT12	41°20'	70°00'
SYT13	(2)	70°00'

¹ East facing shoreline of Virginia.
² South facing shoreline of Cape Cod, MA.

(ii) *Requirements.* Vessels fishing in the SNE/MA Yellowtail Flounder Area are bound by the following requirements:

(A) The vessel must possess on board a yellowtail flounder possession/landing authorization letter issued by the Regional Administrator. To obtain

this exemption letter the vessel owner must make a request in writing to the Regional Administrator.

(B) The vessel may not fish in the Cape Cod/GOM Yellowtail Flounder Area for a minimum of 7 consecutive days (when fishing with a limited access Handgear A permit, under the NE multispecies DAS program, or under the monkfish DAS program if the vessels are fishing under the limited access monkfish Category C or D permit provisions), unless otherwise specified in paragraph (g)(3) of this section.

Vessels subject to these restrictions may fish any portion of the GB, SNE, and MA Regulated Mesh Areas outside of the Cape Cod/GOM Yellowtail Flounder Area, provided the vessel complies with the possession restrictions specified under this paragraph (g). Vessels subject to these restrictions may transit the Cape Cod/GOM Yellowtail Flounder Area, provided gear is stowed in accordance with § 648.23(b).

(C) During the periods May through June, and October through November, the vessel may land or possess on board only up to 250 lb (113.6 kg) of yellowtail flounder per trip.

(D) During the periods July through September, and December through April, the vessel may land or possess on board only up to 500 lb (226.8 kg) of yellowtail flounder per DAS, or any part of a DAS, up to a maximum possession limit of 2,000 lb (907.2 kg) per trip.

* * * * *

(i) *Cod*—(1) *GOM cod landing limit.* (i) Except as provided in paragraphs (i)(1)(ii) and (i)(4) of this section, or unless otherwise restricted under § 648.85, a vessel fishing under a NE multispecies DAS may land only up to 600 lb (272.2 kg) of cod during the first 24-hr period after the vessel has started a trip on which cod were landed (e.g., a vessel that starts a trip at 6 a.m. may call out of the DAS program at 11 a.m. and land up to 600 lb (272.2 kg), but the vessel cannot land any more cod on a subsequent trip until at least 6 a.m. on the following day). For each trip longer than 24-hr, a vessel may land up to an additional 600 lb (272.2 kg) for each additional 24-hr block of DAS fished, or part of an additional 24-hr block of DAS fished, up to a maximum of 4,000 lb (1,818.2 kg) per trip (e.g., a vessel that has been called into the DAS program for more than 24 hr, but less than 48 hr, may land up to, but no more than 1,200 lb (544.4 kg) of cod). A vessel that has been called into only part of an additional 24-hr block of a DAS (e.g., a vessel that has been called into the DAS program for more than 24 hr, but less than 48 hr) may land up to an additional

600 lb (272.2 kg) of cod for that trip, provided the vessel complies with the provisions of paragraph (i)(1)(ii) of this section. Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) A vessel that has been called into only part of an additional 24-hr block may come into port with and offload cod up to an additional 600 lb (272.2 kg), provided that the vessel operator does not call out of the DAS program as described under § 648.10(c)(7) and does not depart from a dock or mooring in port, unless transiting, as allowed in paragraph (i)(3) of this section, until the rest of the additional 24-hr block of the DAS has elapsed, regardless of whether all of the cod on board is offloaded (e.g., a vessel that has been called into the DAS program for 25 hr, at the time of landing, may land only up to 1,200 lb (544.4 kg) of cod, provided the vessel does not call out of the DAS program or leave port until 48 hours have elapsed from the beginning of the trip).

(2) *GB cod landing and maximum possession limits.* (i) Unless as provided under § 648.85, or under the provisions of paragraph (i)(2)(iii) of this section for vessels fishing with hook gear, for each fishing year, a vessel that is exempt from the landing limit described in paragraph (i)(1) of this section, and fishing under a NE multispecies DAS may land up to 1,000 lb (453.6 kg) of cod during the first 24-hr period after the vessel has started a trip on which cod were landed (e.g., a vessel that starts a trip at 6 a.m. may call out of the DAS program at 11 a.m. and land up to 1,000 lb (453.6 kg)), but the vessel cannot land any more cod on a subsequent trip until at least 6 a.m. on the following day). For each trip longer than 24 hr, a vessel may land up to an additional 1,000 lb (453.6 kg) for each additional 24-hr block of DAS fished, or part of an additional 24-hr block of DAS fished, up to a maximum of 10,000 lb (4536 kg) per trip (e.g., a vessel that has been called into the DAS program for 48 hr or less, but more than 24 hr, may land up to, but no more than 2,000 lb (907.2 kg) of cod). A vessel that has called into only part of an additional 24-hr block of a DAS (e.g., a vessel that has called into the DAS program for more than 24 hr, but less than 48 hr) may land up to an additional 1,000 lb (453.6 kg) of cod for that trip of cod provided the vessel complies with paragraph (i)(2)(ii) of this section. Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) A vessel that has been called into only part of an additional 24 hr block,

may come into port with and offload cod up to an additional 1,000 lb (453.6 kg), provided that the vessel operator does not call-out of the DAS program as described under § 648.10(c)(7) and does not depart from a dock or mooring in port, unless transiting as allowed in paragraph (i)(3) of this section, until the rest of the additional 24-hr block of the DAS has elapsed regardless of whether all of the cod on board is offloaded (e.g., a vessel that has been called into the DAS program for 25 hr, at the time of landing, may land only up to 2,000 lb (907.2 kg) of cod, provided the vessel does not call out of the DAS program or leave port until 48 hr have elapsed from the beginning of the trip).

(iii) [Reserved]

(3) *Transiting.* A vessel that has exceeded the cod landing limit as specified in paragraphs (i)(1) and (2) of this section, and that is, therefore, subject to the requirement to remain in port for the period of time described in paragraphs (i)(1)(ii)(A) and (i)(2)(ii)(A) of this section, may transit to another port during this time, provided that the vessel operator notifies the Regional Administrator, either at the time the vessel reports its hailed weight of cod, or at a later time prior to transiting, and provides the following information: Vessel name and permit number, destination port, time of departure, and estimated time of arrival. A vessel transiting under this provision must stow its gear in accordance with one of the methods specified in § 648.23(b) and may not have any fish on board the vessel.

(4) *Exemption.* A vessel fishing under a NE multispecies DAS is exempt from the landing limit described in paragraph (i)(1) of this section when fishing south of a line beginning at the Cape Cod, MA, coastline at 42°00' N. lat. and running eastward along 42°00' N. lat. until it intersects with 69°30' W. long., then northward along 69°30' W. long. until it intersects with 42°0' N. lat., then eastward along 42°20' N. lat. until it intersects with 67°20' W. long., then northward along 67°20' W. long. until it intersects with the U.S.-Canada maritime boundary, provided that it does not fish north of this exemption area for a minimum of 7 consecutive days (when fishing under the NE multispecies DAS program), and has on board an authorization letter issued by the Regional Administrator. Vessels exempt from the landing limit requirement may transit the GOM/GB Regulated Mesh Area north of this exemption area, provided that their gear

is stowed in accordance with one of the provisions of § 648.23(b).

* * * * *

10. In § 648.89, paragraphs (b)(1), (c)(1)(i) and (c)(2)(i) are suspended and paragraphs (b)(3) and (4), (c)(1)(v) and (vi), and (c)(2)(v) and (vi) are added to read as follows:

§ 648.89 Recreational and charter/party vessel restrictions.

* * * * *

(b) * * *

(3) *Minimum fish sizes.* Unless further restricted under paragraph (b)(4) of this section, persons aboard charter or party vessels permitted under this part and not fishing under the NE multispecies DAS program, and recreational fishing vessels in or possessing fish from the EEZ, may not possess fish smaller than the minimum fish sizes, measured in total length (TL) as follows:

MINIMUM FISH SIZES (TL) FOR CHARTER, PARTY, AND PRIVATE RECREATIONAL VESSELS

Species	Sizes
Cod	22 (58.4 cm).
Haddock	19 (48.3 cm).
Pollock	19 (48.3 cm).
Witch flounder (gray sole)	14 (35.6 cm).
Yellowtail flounder	13 (33.0 cm).
Atlantic halibut	36 (91.4 cm).
American plaice (dab)	14 (35.6 cm).
Winter flounder (blackback) ..	12 (30.5 cm).
Redfish	9 (22.9 cm).

(4) *GOM cod.* Private recreational vessels and charter party vessels described in paragraph (b)(3) of this section, may not possess cod smaller than 24 inches (63.7 cm) in total length when fishing in the GOM Regulated Mesh Area specified under § 648.80(a)(1).

(c) * * *

(1) * * *

(v) Unless further restricted by the Seasonal GOM Cod Possession Prohibition specified under paragraph (c)(1)(vi) of this section, each person on a private recreational vessel may possess up to 10 cod per day, in, or harvested from the EEZ.

(vi) *Seasonal GOM Cod Possession Prohibition.* Persons on board private recreational fishing vessels may not fish for or possess any cod in or from the GOM Regulated Mesh Area from November 1 through March 31. Private recreational vessels in possession of cod caught outside the GOM Regulated Mesh Area may transit this area, provided all bait and hooks are removed from fishing rods and the cod has been gutted and stored.

(2) * * *

(v) Unless further restricted under paragraph (c)(2)(vi) of this section, each person on the vessel may possess up to 10 cod per day.

(vi) *Seasonal GOM Cod Possession Prohibition.* Persons on board charter/party fishing vessels may not fish for or possess any cod in the GOM Regulated Mesh Area from November 1 through March 31. Charter/party vessels in or from possession of cod caught outside the GOM Regulated Mesh Area may transit this area, provided all bait and hooks are removed from fishing rods and the cod has been gutted and stored.

* * * * *

11. In § 648.91, paragraphs (c)(1)(i), (ii), and (iv) are suspended, and paragraphs (c)(1)(v) through (vii) are added to read as follows:

§ 648.91 Monkfish regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(c) * * *

(1) * * *

(v) *Trawl nets while on a monkfish DAS.* Except as provided in paragraph (c)(1)(vi) of this section, the minimum mesh size for any trawl net, including beam trawl nets, used by a vessel fishing under a monkfish DAS is 10-inch (25.4-cm) square or 12-inch (30.5-cm) diamond mesh throughout the codend for at least 45 continuous meshes forward of the terminus of the net. The minimum mesh size for the remainder of the trawl net is the regulated mesh size specified under § 648.80(a)(3), (a)(4), (b)(2)(vii), or (c)(2)(I) of the Northeast multispecies regulations, depending upon, and consistent with, the NE multispecies regulated mesh area being fished.

(vi) *Trawl nets while on a monkfish and NE Multispecies DAS.* Vessels issued a Category C, D, F, G, or H limited access monkfish permit and fishing with trawl gear under both a monkfish and NE multispecies DAS are subject to the minimum mesh size allowed under regulations governing mesh size at § 648.80(a)(3), (a)(4), (b)(2)(vii), or (c)(2)(I) of the Northeast multispecies regulations, depending upon, and consistent with, the NE multispecies regulated mesh area being fished, unless otherwise specified in this paragraph (c)(1)(vi). Trawl vessels participating in the Offshore Fishery Program, as described in § 648.95, and that have been issued a Category F monkfish limited access permit, are subject to the minimum mesh size specified in paragraph (c)(1)(v) of this section.

(vii) *Authorized gear while on a monkfish and scallop DAS.* Vessels

issued a Category C, D, F, G, or H limited access monkfish permit and fishing under a monkfish and scallop DAS may only fish with and use a trawl net with a mesh size no smaller than that specified in paragraph (c)(1)(v) of this section.

* * * * *

12. In § 648.92, paragraphs (a)(1), (b)(2)(i) through (iii) are suspended, and paragraphs (a)(3), (b)(2)(iv) and (v) are added to read as follows:

§ 648.92 Effort-control program for monkfish limited access vessels.

(a) * * *

(3) *End-of-year carry-over.* With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(1)(i)(R) for the entire fishing year preceding the carry-over year, limited access vessels that have unused DAS on the last day of April of any year may carry over a maximum of 10 unused DAS into the next fishing year. Any DAS that have been forfeited due to an enforcement proceeding will be deducted from all other unused DAS in determining how many DAS may be carried over.

* * * * *

(b) * * *

(2) * * *

(iv) Unless otherwise specified in paragraph (b)(2)(ii) of this section, each monkfish DAS used by a limited access NE multispecies or scallop DAS vessel holding a Category C, D, F, G, or H limited access monkfish permit shall also be counted as a NE multispecies or scallop DAS, as applicable, except when a Category C, D, F, G, or H vessel with a limited access NE multispecies DAS permit has a net allocation of NE Category A multispecies DAS, after accounting for differential DAS counting as specified at § 648.82(n)(2), that is less than the number of monkfish DAS allocated for a fishing year. Under this circumstance, a Category C, D, F, G, or H monkfish vessel could fish under a monkfish-only DAS when groundfish DAS are no longer available, provided the vessel fishes under the provisions of the monkfish Category A or B permit. Such vessels would be limited to monkfish-only DAS equal to their net monkfish DAS allocations (including carry-over DAS) minus their net NE multispecies Category A DAS allocation (including carry-over DAS) divided by 1.4. For example, if a Category C monkfish vessel had a net NE multispecies DAS allocation of 20 DAS, the maximum number of monkfish-only DAS that the vessel would be able to fish would be 25.7 DAS (40 monkfish DAS—(20 NE multispecies DAS allocated ÷ 1.4)).

(v) *Category C, D, F, G, or H vessels that lease NE multispecies DAS.* (A) A monkfish Category C, D, F, G, or H vessel that has “monkfish-only” DAS, as specified in paragraph (b)(2)(iv) of this section, and that leases NE multispecies DAS from another vessel pursuant to § 648.82(t), is required to fish its available “monkfish-only” DAS in conjunction with its leased NE multispecies DAS, to the extent that the vessel has NE multispecies DAS available.

(B) A monkfish Category C, D, F, G, or H vessel that leases DAS to another vessel(s), pursuant to § 648.82(t), is required to forfeit a monkfish DAS for each NE multispecies DAS that the vessel leases, equal in number to the difference between the number of remaining NE multispecies DAS and the number of unused monkfish DAS at the time of the lease. For example, if a lessor vessel, which had 40 unused monkfish DAS and 47 allocated NE multispecies DAS, lease 10 of its NE multispecies DAS, the lessor would forfeit 3 of its monkfish DAS (40 monkfish DAS – 37 NE multispecies DAS = 3) because it would have 3 fewer multispecies DAS than monkfish DAS after the lease.

* * * * *

13. In § 648.94, paragraphs (b)(3) and (c)(3)(i) are suspended, and paragraphs (b)(7) and (c)(3)(iii) are added to read as follows:

§ 648.94 Monkfish possession and landing restrictions.

* * * * *

(b) * * *

(7) *Category C, D, F, G, and H vessels fishing under the multispecies DAS program—(i) NFMA—(A) Category C and D vessels.* There is no monkfish trip limit for a Category C or D vessel that

is fishing under a NE multispecies DAS exclusively in the NFMA, except for vessels participating in the Regular B DAS Program, as specified in § 648.85(b)(10)(iv)(D). Category C and D vessels participating in the Regular B DAS Program are subject to the incidental catch limit specified in paragraph (c)(1)(i) of this section.

(B) *Category F, G, and H vessels.* Vessels issued a Category F, G, or H permit that are fishing under a NE multispecies DAS in the NFMA are subject to the incidental catch limit specified in paragraph (c)(1)(i) of this section.

(ii) *SFMA—(A) Category C, D, and F vessels.* If any portion of a trip is fished only under a NE multispecies DAS, and not under a monkfish DAS, in the SFMA, a Category C, D, or F vessel may land up to 300 lb (136 kg) tail weight or 996 lb (452 kg) whole weight of monkfish per DAS if trawl gear is used exclusively during the trip, or 50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight per DAS if gear other than trawl gear is used at any time during the trip, except for vessels participating in the Regular B DAS Program, as specified in § 648.85(b)(10)(iv)(D). Category C and D vessels participating in the Regular B DAS Program are subject to the incidental catch limit specified in paragraph (c)(1)(ii) of this section.

(B) *Category G and H vessels.* Vessels issued a Category G or H permit that are fishing under a NE multispecies DAS in the SFMA are subject to the incidental catch limit specified in paragraph (c)(1)(ii) of this section. Category G and H vessels participating in the Regular B DAS Program are subject to the incidental catch limit specified in paragraph (c)(1)(ii) of this section.

(iii) *Transiting.* A vessel that harvested monkfish in the NFMA may

transit the SFMA and possess monkfish in excess of the SFMA landing limit provided such vessel complies with the provisions of § 648.94(e).

* * * * *

(c) * * *

(3) * * *

(iii) A vessel issued a valid monkfish incidental catch (Category E) permit or a limited access monkfish permit (Category A, B, C, D, F, G, or H) fishing in the GOM or GB RMAs, or the SNE RMA east of the MA Exemption Area boundary with mesh no smaller than specified at §§ 648.80(a)(3)(i), (a)(4)(vi), and (b)(2)(vii), respectively, while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land monkfish (whole or tails) only up to 5 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board. For the purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 3.32.

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14. In § 648.95, paragraph (e)(3) is suspended, and paragraph (e)(5) is added to read as follows:

§ 648.95 Offshore Fishery Program in the SFMA.

* * * * *

(e) * * *

(5) A vessel issued a Category F permit that is fishing on a monkfish DAS is subject to the minimum mesh size requirements applicable to limited access monkfish Category A and B vessels, as specified under § 648.91(c)(1)(v) and (c)(1)(iii), as well as the other gear requirements specified in paragraphs (c)(2) and (c)(3).

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