

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 648**

[Docket No. 060606150-6150-01; I.D. 053106A]

RIN 0648-AT24

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

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement measures in FW 42 to the NE Multispecies Fishery Management Plan (FMP) and FW 3 to the Monkfish FMP (Joint Framework). FW 42, which was developed by the New England Fishery Management Council (Council), is a biennial adjustment to the NE Multispecies FMP that would implement a rebuilding program for Georges Bank (GB) yellowtail flounder and modify NE multispecies fishery management measures to reduce fishing mortality rates (F) on six other groundfish stocks in order to maintain compliance with the rebuilding program of the FMP. FW 42 also proposes to modify and continue specific measures to mitigate the economic and social impacts of Amendment 13 to the NE Multispecies FMP and allow harvest levels to approach optimum yield (OY).

DATES: Comments must be received on or before August 25, 2006.

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

- E-mail: FW42FW3@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 Framework 42/3."

- Fax: (978) 281-9135.

Copies of FW 42/FW3, its Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis (IRFA), and the Environmental Assessment (EA) are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, The Tannery B Mill 2, Newburyport, MA 01950. A summary of the IRFA is provided in the Classification section of this proposed rule. The EA/RIR/IRFA is also accessible via the Internet at <http://www.nefmc.org/nemulti/index.html>.

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:

Thomas A. Warren, Fishery Policy Analyst, (978) 281-9347, fax (978) 281-9135.

SUPPLEMENTARY INFORMATION:

Background

The Council developed Amendment 13 to the NE Multispecies FMP in order to bring the FMP into conformance with Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requirements, including ending overfishing and implementing rebuilding plans for 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 also established a biennial FMP adjustment process that requires the Council to review the fishery periodically using the most current scientific information available, recommend target TACs, and recommend to the Regional Administrator any changes to

management measures necessary to achieve the goals and objectives of the FMP. As part of the biennial adjustment process, a regional peer-review of stock assessment updates (GARM II; Northeast Fisheries Science Center Reference Document 05-13) was completed for the 19 stocks managed under the NE Multispecies FMP during August 2005. Stock assessments were conducted using data through calendar year 2004, including evaluation of stock status relative to applicable Amendment 13 biological reference points (F_{msy} and B_{msy}). This resulted in estimates of F's and stock biomasses for calendar year 2004. The Council's Plan Development Team (PDT) performed an evaluation of the fishery based upon the results of GARM II and other available information. The primary goal of the PDT review was to determine the stocks for which an adjustment in management measures is required in order to ensure that the current F's levels are consistent with the F's required under the rebuilding plan.

Based on the information from GARM II and catch data, the PDT estimated F's for those stocks in need of reductions for calendar year 2005 (F_{2005}), a time period during which the fishery operated under one suite of regulations (Amendment 13). Specifically, the PDT utilized available information for a portion of 2005, projected landings for the remainder of the year (based on current and historic information), and then estimated the F for the entire calendar year (F_{2005}).

To determine which of the 19 groundfish stocks were not in compliance with the Amendment 13 rebuilding plans, for each stock the required F for 2006 was compared to F_{2005} . The PDT determined that, with one exception (GB yellowtail flounder), if F_{2005} exceeded the Amendment 13 target F for 2006, adjustment of management measures was necessary. These comparisons indicated that F_{2005} for some groundfish stocks was less than that estimated for 2004 (F_{2004}), but still higher than the 2006 target F (F_{2006}) specified in the rebuilding program established under Amendment 13. Table 1 includes the fishing mortality information discussed above, for stocks targeted by the proposed management measures in FW 42.

TABLE 1: MORTALITY REDUCTION NECESSARY TO ACHIEVE FISHING YEAR 2006 AMENDMENT 13 FISHING MORTALITY TARGETS

Stock	F2004	Estimated F2005	Amendment 13 F2006	Mortality Reduction Necessary
GOM Cod	0.58	0.37	0.23	32%
Cape Cod (CC)/GOM Yellowtail Flounder	0.75	0.48	0.26	46%
SNE/Mid-Atlantic (MA) Yellowtail Flounder	0.99	0.58	0.26	55%
SNE/MA Winter Flounder	0.38	0.35	0.32	9%
GB Winter Flounder	1.86	NA	1.0 *	46%
White Hake	1.18	NA	1.03	13%

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

Timing of FW 42 and Relationship to NMFS Secretarial Emergency Action for May 1, 2006

The Council originally developed FW 42 with the intention of implementing the management measures on May 1, 2006, as specified by Amendment 13 and as required by the regulations. However, at its November 15–17, 2005, meeting, the Council announced that it would not be able to complete FW 42 in time for NMFS to implement the measures by the beginning of the fishing year. NMFS determined that the unforeseen delay of FW 42 implementation beyond May 1, 2006, and the need to reduce F on specific groundfish stocks as a stop-gap measure, by the start of the 2006 fishing year, constituted an emergency, as the delay could cause serious conservation and management problems. Therefore, NMFS implemented emergency management measures (71 FR 19348; April 13, 2006) for the 2006 fishing year that went into effect on May 1, 2006, and will remain in effect, at least, until such time that FW 42, if approved, is implemented. At the time of FW 42 implementation, the emergency measures would be replaced by the approved FW 42 measures. The regulatory text in this proposed rule is written to amend the regulations in 50 CFR part 648 as they appeared prior to implementation of the emergency rule. The Secretarial emergency action is expected to have substantially reduced F on most groundfish stocks, but possibly not to the full extent necessary for all stocks. An analysis of the combined effects of the Secretarial emergency management measures and the proposed FW 42 measures (alternative 1) indicates that the combined measures will be more

effective in reducing F in 2006 if FW 42 is implemented soon after the Secretarial measures went into effect.

Proposed FW 42 Management Measures

The following measures are proposed to be implemented as soon as possible during the 2006 fishing year. The measures are intended to continue and modify the management regime implemented by Amendment 13 and subsequent framework adjustments (FW 40–A, FW 40–B, and FW 41), and to replace measures implemented under Secretarial emergency authority at the beginning of the 2006 fishing year.

Specifically, the Joint Frameworks would maintain the Amendment 13 default days-at-sea (DAS) reductions for the 2006 fishing year; specify target Total Allowable Catches (TACs) and Incidental Catch TACs for the 2006, 2007, and 2008 fishing years; implement a Vessel Monitoring System (VMS) requirement for NE multispecies DAS vessels; implement differential DAS counting in specific areas of the Gulf of Maine (GOM) and Southern New England (SNE); implement new commercial trip limits for several NE multispecies; renew and modify the Regular B DAS Program, including the rules pertaining to monkfish vessels; renew and modify the Eastern U.S./Canada Haddock Special Access Program (SAP); renew the DAS Leasing Program; modify the Closed Area (CA) I Hook Gear Haddock SAP; implement the GB Cod Fixed Gear Sector; provide flexibility for vessels to fish inside and outside of the Eastern U.S./Canada Management Area on the same trip; modify reporting requirements for Special Management Programs (The U.S./Canada Management Area; the Regular B DAS Pilot Program; CA I Hook Gear Haddock SAP; CA II

Yellowtail Flounder SAP, and the Eastern U.S./Canada Haddock SAP Pilot Program); modify the DAS Transfer Program; modify the trawl codend mesh size requirement in the SNE Regulated Mesh Area (RMA); modify the Regional Administrator's authority to adjust certain possession limits; and modify the recreational possession restrictions and size limits for GOM cod.

1. Recreational Restrictions

Under this proposed action, private recreational vessels and vessels fishing under the charter/party regulations of the NE Multispecies 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). 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 reduction in GOM cod F for fish caught by the recreational sector that is equivalent to the GOM cod F reduction required of the commercial sector. The gear and cod stowage requirements are necessary to properly enforce these measures. These measures are consistent with the Secretarial measures implemented on May 1, 2006.

2. GB yellowtail flounder rebuilding plan

Although F_{2004} for GB yellowtail flounder was above F_{msy} , adjustment of management measures for this stock is not necessary because F is limited by a

hard TAC (i.e., fishing on the stock is prohibited when such a TAC is reached). This TAC is specified on an annual basis through a process described at § 648.85(a)(2), in accordance with the U.S./Canada Resource Sharing Understanding. Two assessment approaches were used to evaluate the GB yellowtail flounder stock status. Both indicated that biomass increased since the mid 1990s and recent recruitment has improved, but that F has fishing mortality remained substantially above F_{msy} . Based on this review and the recommendation of the Transboundary Management Guidance Committee, the Council recommended a GB yellowtail flounder hard TAC of 2,070 mt for fishing year 2006; the U.S. portion of the shared TAC of 3,000 mt. The shared TAC of 3,000 mt represents a neutral risk, i.e., it has approximately a 50-percent chance of exceeding the F_{msy} of 0.25. NMFS implemented specification of the 2006 yellowtail flounder TAC on May 1, 2006 (71 FR 25095, April 28,

2006). The hard TAC of 2,070 mt for GB yellowtail flounder represents a 51-percent reduction from the 2005 TAC, and would constrain fishing effort to the appropriate level to achieve the required F reduction.

Based upon the scientific information from GARM II, GB yellowtail flounder is in an overfished condition (i.e., the stock biomass is less than 50 percent of the stock size associated with maximum sustainable yield (B_{msy})). To address this, FW 42 proposes a rebuilding plan for GB yellowtail flounder whereby GB yellowtail flounder would be rebuilt from its current stock size to B_{msy} using an adaptive strategy that rebuilds the stock by 2014 with approximately a 75-percent probability of success. Under the adaptive strategy, the maximum F on the stock through 2008 would be set at F_{msy} (0.25), and subsequent changes to F required to complete rebuilding by 2014 ($F_{rebuild}$) would be developed in the 2009 biennial adjustment required by the NE Multispecies FMP. This rebuilding strategy and 2014 timeline

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

3. Target TACs

Target TACs are proposed in this rule pursuant to § 648.90(a)(2), which requires the Council to develop new target TACs based upon the most recent scientific information, as part of the biennial adjustment process. Thus, this rule proposes necessary target TACs for all groundfish stocks for fishing years (FY) 2006, 2007, and 2008. The following proposed target TACs were developed by the Council's PDT and were calculated from projections of future catches, using recent assessment data, and the Amendment 13 target F's.

TABLE 2. PROPOSED TARGET TACs FOR 2006 THROUGH 2008 (MT, LIVE WEIGHT).

Species	Stock	2006	2007	2008	Composition
Cod	GB	7,458	9,822	11,855	E *
	GOM	5,146	10,020	10,491	C *
Haddock	GB	49,829	103,329	121,681	E
	GOM	1,279	1,254	1,229	A
Yellowtail flounder	GB	2,070	see footnote		D *
	SNE/Mid-Atlantic (MA)	146	213	312	B *
	Cape Cod (CC)/GOM	650	1,078	1,406	B *
American plaice	-	3,666	4,104	5,121	B *
Witch flounder	-	5,511	5,075	4,331	A *
Winter flounder	GB	1,424	1,604	1,782	A *
	GOM	see footnote			C
	SNE/MA	2,481	3,016	3,577	C *
Redfish	-	1,946	2,075	2,167	A
White hake	-	2,056	1,676	1,367	E *
Pollock	-	12,005	12,005	12,005	E
Windowpane flounder	North	389	389	389	A
	South	173	166	159	A
Ocean pout	-	38	38	38	A
Atlantic halibut	-	NA	NA	NA	NA

A - Commercial Landings

B - Commercial Landings and Discards

C - Commercial Landings, Discards, and Recreational Harvest

D - Commercial Landings and Discards (U.S. portion of U.S./Canada TAC)

E - Commercial Landings (U.S. and Canada)

* For Stocks of Concern: Incidental TAC is a subset of Target TAC.
 GARM II did not develop a TAC for GOM winter flounder because of uncertainties in the assessment.
 Note, proposed TACs for GB cod and GB haddock include Canadian landings.
 GB yellowtail flounder TACs are hard TACs, which are determined annually and cannot be specified in advance.
 2006 GB yellowtail flounder TAC was implemented on April 28, 2006 (71 FR 25095).

4. Incidental Catch TACs

The values of Incidental Catch TACs for fishing years 2006 through 2008 are proposed in this rule pursuant to the regulations at § 648.85(b)(5), which require the Council to develop new Incidental Catch TACs based upon the most recent scientific information, as part of the biennial FMP adjustment process. FW 40–A (69 FR 67780; November 14, 2004) initially implemented Incidental Catch TACs to limit the potential for the use of Category B DAS to cause excessive fishing mortality on stocks of concern that would likely be caught in the program. For the NE multispecies fishery, a stock of concern is defined as “a stock that is in an overfished condition, or that is subject to overfishing”. FW 40–A implemented Incidental Catch TACs for the following eight stocks, based upon the same stock status information that was used in the development of Amendment 13: GOM cod, GB cod, CC/GOM yellowtail flounder, American plaice, white hake, SNE/MA yellowtail flounder, SNE/MA winter flounder, and witch flounder.

FW 40–A also implemented percentage allocations of the Incidental Catch TACs among the Special Management Programs (with the exception of the U.S./Canada Management Area) and specified values for those Incidental Catch TACs for portions of the 2004 fishing year. FW 40–B (70 FR 31323; June 1, 2005) modified the percentage allocations of the Incidental Catch TACs among Special Management Programs (including allocations for the two Special Management Programs that were proposed but not approved by NMFS (i.e., the Western GOM Haddock SAP and Research Set-Aside Program) and specified values for Incidental Catch TACs for fishing years 2005 and 2006. FW 41 (70 FR 54302; September 14, 2005), modified the percentage allocation of the Incidental Catch TACs among Special Management Programs to include the CA I Hook Gear Haddock SAP, and specified values for the Incidental Catch TACs through the 2006 fishing year. Although Incidental Catch TACs for 2006 were specified in FW 41, this action proposes to modify definitions of the Incidental Catch TACs with respect to the target TACs, modify

the allocation of Incidental Catch TACs among Special Management Programs, and specify values of all Incidental Catch TACs, based upon the most recent scientific information (GARM II).

In addition to the actions described above that relate to the Incidental Catch TACs for the eight stocks of concern noted above, this action proposes to define GB yellowtail flounder and GB winter flounder as additional stocks of concern, define the size of the Incidental Catch TACs (with respect to the target TACs) that are likely to be caught in the Special Management Programs, specify values for the 2006 through 2008 fishing years, and allocate the Incidental Catch TACs among Special Management Programs.

This action would further clarify the relationship between target TACs and Incidental Catch TACs; that is, Incidental Catch TACs are considered as a subset of the pertinent target TACs (rather than as amounts in excess of the target TACs). This clarification would increase the utility of target TACs as a tool used to evaluate the effectiveness of the management measure.

TABLE 3. PROPOSED DEFINITION OF INCIDENTAL CATCH TACs (PERCENT) AND SPECIFICATION OF TACs FOR 2006 THROUGH 2008 (MT).

Stock of Concern	Percentage of Total Target TAC	2006	2007	2008
GB Cod	Two	122.6	*	*
GOM cod	One	49.9	99.0	103.9
GB yellowtail flounder	Two	41.4	*	*
CC/GOM yellowtail flounder	One	6.5	10.8	14.1
SNE/MA yellowtail flounder	One	1.5	2.1	3.1
American plaice	Five	183.3	205.2	256.1
Witch flounder	Five	275.6	253.8	216.6
SNE/MA winter flounder	One	24.8	30.2	35.6
GB winter flounder	Two	28.5	32.1	35.6
White hake	Two	41.1	33.5	27.3

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

TABLE 4. ALLOCATION OF INCIDENTAL CATCH TACs AMONG CATEGORY B DAS PROGRAMS (SHOWN AS A PERCENTAGE OF THE INCIDENTAL CATCH TAC).

Stock of Concern	Regular B DAS Program	Closed Area I Hook Gear Haddock SAP	Eastern U.S./Canada Haddock SAP
GOM cod	100%	NA	NA

TABLE 4. ALLOCATION OF INCIDENTAL CATCH TACS AMONG CATEGORY B DAS PROGRAMS (SHOWN AS A PERCENTAGE OF THE INCIDENTAL CATCH TAC).—Continued

Stock of Concern	Regular B DAS Program	Closed Area I Hook Gear Haddock SAP	Eastern U.S./Canada Haddock SAP
GB cod	50%	16%	34%
CC/GOM yellowtail flounder	100%	NA	NA
American plaice	100%	NA	NA
White hake	100%	NA	NA
SNE/MA yellowtail flounder	100%	NA	NA
SNE/MA winter flounder	100%	NA	NA
Witch flounder	100%	NA	NA
GB yellowtail flounder	50%	NA	50%
GB winter flounder	50%	NA	50%

5. Default Modifications to DAS Allocations

The Amendment 13 rebuilding strategy established two “default” measures that would automatically reduce F on multiple groundfish species, particularly for American plaice and SNE/MA yellowtail flounder, beginning in fishing year 2006, unless certain criteria are met. The criteria defined various conditions, indicating improvements to the fishery (i.e., fishing mortality and biomass status) that would have to be met in order for the default measures to be automatically voided. These default measures for FY 2006 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 RMA at a rate of 1.5:1. Based on the results of GARM II, the default criteria have not been met and further reductions in F are, therefore, required (as described above). This action does not change the Amendment 13 default measure DAS allocations (Category A and B DAS) for FY 2006–2008, but it would replace the default differential DAS counting measure in the SNE RMA. FW 42 proposes a FY 2006–2008 DAS ratio of 55:45 (Category A: B DAS), which represents an 8.3–percent reduction in the number of Category A DAS allocated by Amendment 13. This action would revise the Amendment 13 default differential DAS counting measure in the SNE/MA RMA, as described in section 8 of this preamble.

6. VMS Requirement

This proposed rule would implement a requirement that all limited access NE multispecies DAS vessels using a

groundfish DAS must be equipped with an approved VMS that meets the requirements of 50 CFR 648.9. Under FW 42, it would be illegal for a limited access NE multispecies DAS vessel to fish under a groundfish DAS without an approved VMS. A vessel owner with a limited access NE multispecies DAS permit who does not intend to and does not fish any of his/her groundfish DAS during the fishing year would be permitted to renew the vessel’s limited access permit without having an approved VMS, but would not be able to fish any of the vessel’s groundfish DAS for that fishing year. This VMS requirement would be implemented at the same time as the rest of the proposed FW 42 management measures, unless vessels are otherwise notified by NMFS. As required under current VMS regulations, a vessel owner would be required to provide pertinent information (e.g., type of VMS unit, installation date, dealer, etc.) to NMFS prior to being eligible to use VMS. NMFS would send letters to all limited access NE multispecies DAS permit holders and provide detailed information on the procedures pertaining to VMS purchase, installation, and use. This rule would clarify that when a vessel is subject to multiple, conflicting VMS regulations of different programs (within the NE Multispecies FMP, or by other FMPs), the most restrictive requirement would apply. For example, a vessel fishing in both the Eastern U.S./Canada Area and in one of the Differential DAS Areas (described in sections 7 and 8 of this preamble) on the same trip would be subject to the VMS restrictions that pertain to both programs.

Although this rule proposes a mandatory VMS requirement, NE multispecies DAS vessels would still be required to declare periods out of the fishery (spawning block out and Day Gillnet vessel blocks out) through the Interactive Voice Response (IVR) call-in system. As under current regulations, the Regional Administrator would retain the authority to require limited access NE multispecies vessels to utilize the IVR system in lieu of the VMS system for the administration of DAS requirements. In addition, the Regional Administrator would be authorized to require vessels to obtain a Letter of Authorization (LOA) as an alternate method of enforcing a possession limit, if the proposed VMS requirement is delayed or not operational.

7. Differential DAS Counting in GOM

Under this proposed rule, all NE multispecies Category A DAS used by a vessel that has declared (through VMS, or other means approved by the Regional Administrator), prior to leaving the dock, that it will be fishing, i.e., harvesting fish any portion of its trip in the GOM Differential DAS Area, with the exception noted below, (for a Day gillnet vessel), would be charged at a rate of 2:1, regardless of area fished. The proposed GOM Differential DAS Area (defined in the regulatory text portion of this document), includes most of the area west of 69° 30’ W. long. and between 41° 30’ and 43° 30’ N. lat (between approximately Monomoy Island, MA and Portland, ME). Day gillnet vessels would be charged DAS at a rate of 2:1 for the actual hours used for any trip of less than 3 hr in duration, and for any trip of greater than 7.5 hr. For Day gillnet trips between 3 and 7.5

hr duration, vessels would be charged a full 15 hr. For example, a trawl vessel that has declared into the GOM Differential DAS Area and accrued 2.5 hr to and from the VMS demarcation line would be charged 5 hr (2.5 hr x 2) of DAS use. Conversely, a Day gillnet vessel that has declared into the GOM Differential DAS Area and accrued 5 hr would be charged for 15 hr of DAS use (between 3 and 7.5 hr = 15 hr); a Day gillnet vessel fishing in the GOM Differential DAS Area for 8 hr would be charged for 16 hr of DAS use (8 hr x 2). On any trip in which a vessel declares, prior to leaving the dock, that it will be fishing, i.e., harvesting fish, in the GOM Differential DAS Area under a Category A DAS, the vessel would be charged at the differential DAS rate for the entire fishing trip, even if only a portion of the trip is spent fishing in the GOM Differential DAS Area. At no time may a vessel fish under a Category A DAS in the GOM Differential DAS Area, unless it has declared into this area prior to the start of the trip, or unless circumstances beyond a vessel's control exit, as described below. A vessel that did not declare its intent to fish in the GOM Differential DAS Area would be permitted to transit the area, provided its fishing gear is properly stowed according to the regulations. In addition, a vessel that has not declared its intent to fish in the GOM Differential DAS Area may also be in the area when not transiting due to bad weather, or other circumstances beyond its control, provided its fishing gear is properly stowed and provided the vessel immediately notifies NMFS through its VMS.

No changes to the Monkfish FMP are proposed to accommodate to the multispecies Differential DAS rules, but the following is an explanation of how the proposed groundfish regulations would work with the current Monkfish FMP. A vessel issued a limited access monkfish Category C, D, permit and that has declared into the GOM Differential DAS Area under a monkfish DAS (thereby using both a monkfish and NE multispecies DAS) would have its NE multispecies DAS charged at a rate of 2:1, but its monkfish DAS would continue to be charged at a rate of 1:1. The current regulations allow a monkfish Category C and D vessel to fish under a monkfish-only DAS, when groundfish DAS are no longer available, to ensure that it could fish its full allocation of monkfish DAS. Under this proposed rule, vessels fishing under a monkfish-only DAS would continue to be required to fish under the provisions of the monkfish Category A or B permit.

Such a vessel would be limited to monkfish-only DAS equal to its net monkfish DAS allocations (including carry-over DAS) minus its net NE multispecies Category A DAS allocation (including carry-over DAS). This proposed rule would continue to provide a monkfish vessel with an amount of "monkfish only" DAS based upon its current allocations of monkfish and NE multispecies DAS, but would not expand this number to account for the effects on monkfish DAS due to the differential DAS measures proposed under this rule. For example, if a Category C monkfish vessel allocated 40 monkfish DAS has a current NE multispecies DAS allocation of 15 DAS, the maximum number of monkfish-only DAS that the vessel would be able to fish would be 25 DAS (40 monkfish DAS - 15 NE multispecies DAS). However, for a vessel fishing under differential DAS, the overall amount of monkfish DAS that could be used is effectively reduced because the NE multispecies DAS are used at the differential rate. For instance, in the example above, if the vessel fished all 15 NE multispecies DAS at the differential DAS rate, the vessel would use up its allocation of NE multispecies DAS after 7.5 days of actual time fished (7.5 days x 2.0 = 15 DAS). Therefore, after the vessel fished all of its NE multispecies DAS at the differential rate, it would have a balance of 32.5 monkfish DAS (40 - 7.5 = 32.5), but the vessel would be able to fish only up to 25 of its monkfish DAS as "monkfish-only" DAS.

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

DAS counting rules of the Regular B DAS Program.

A vessel that fishes inside and outside of the Eastern U.S./Canada Area on the same trip (as described in section 15 of this preamble) may also fish in the GOM Differential DAS Area, provided the vessel declares its intent to fish in the area via VMS prior to leaving the Eastern U.S./Canada Area.

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

8. Differential DAS Counting in SNE

Under this proposed rule, all NE multispecies Category A DAS used by a vessel that has declared (through VMS, or other means approved by the Regional Administrator), prior to leaving the dock, that it will be fishing, i.e., harvesting fish, in any portion of its trip in the SNE Differential DAS Area, with the exception noted below, would be charged at a rate of 2:1, when fishing in a specific portion of the SNE RMA. At no time may a vessel fish, except for transiting purposes only, under a Category A DAS in the SNE Differential DAS Area, unless it has declared into the area prior to the start of the trip. The proposed SNE Differential DAS Area (defined in the regulatory text portion of this document) is an irregular shaped, offshore area extending from 73° 40' W. long., east to 69° 30' W. long. (from south of western Long Island to north of the Nantucket Lightship Closed Area). On any trip in which a vessel declares, prior to leaving the dock, via its VMS unit, that it will be fishing, i.e., harvesting fish, in the SNE Differential DAS Area under a Category A DAS, the vessel would be charged at the differential DAS rate for that portion of the trip spent in the SNE Differential Area (as determined from VMS positional data). The time spent outside this area would be charged at the rate of 1:1. For example, a trawl vessel that declared into the SNE Differential DAS Area through its VMS unit and for which 12 hr of actual time had elapsed from the time the vessel crossed the demarcation line at the beginning of its trip to the time the vessel crossed the demarcation line on its return home to port, 4 hr of which was spent fishing in the SNE Differential DAS Area, the total DAS for that trip would equal 16 hr (8 hr of actual time and 8 hr (4 x 2) of differential DAS time). A Day gillnet vessel that declared into the a SNE Differential DAS Area through VMS would be charged according to the following formula for the time fished in this area: For hours accrued in the area less than 3 hours or greater than 7.5

hours, vessels would be charged at a rate of 2:1; for hours accrued in the area between 3 and 7.5 hr, vessels would be charged a full 15 hr. For example, under this proposed rule, a Day gillnet vessel fishing in the SNE Differential DAS Area for 5 hr would be charged 15 hr of DAS (plus actual time for any time that the vessel fished outside the area). For trips where a Day gillnet vessel declares into the SNE Differential DAS Area, the application of the DAS accrual formula described above would not supersede the DAS accounting formula that applies to all NE multispecies Day gillnet vessels. In other words, the net DAS charge for a Day gillnet vessel for a trip declared into the SNE Differential DAS Area may not be less than the DAS that would accrue on the same length trip by a Day gillnet vessel not declared into the SNE Differential DAS Area.

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

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

A vessel that does not declare its intent to fish, i.e., harvest fish, in the SNE Differential DAS Area under a Category A DAS would be permitted to transit the area, provided its fishing gear is properly stowed while transiting the Area according to the regulations.

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

Similar to how trip limits would be counted when fishing in the GOM Differential DAS Area, for trips declared into the SNE Differential DAS Area, all trip limits would apply based on the

actual days spent fishing, and not on the basis of the number of DAS charged. A vessel fishing under the Regular B DAS Program (that ends its trip under a Regular B DAS) would not be subject to differential DAS counting, regardless of where it fishes.

A vessel that fishes inside and outside of the U.S./Canada Area on the same trip (as described in section 15 of this preamble) could also fish in the SNE Differential DAS Area, provided the vessel declares its intent to fish in the area via VMS prior to leaving the Eastern U.S./Canada Area.

9. Commercial Trip Limits

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

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

The Amendment 13 final rule implemented the following seasonal trip limits for the CC/GOM stock of yellowtail flounder: 250 lb (113.6 kg) per trip during April, May, October, and November, and 750 lb (340.2 kg) per DAS, up to 3,000 lb (1,364.0 kg) per trip, during June - September, and December - March. In addition, the Amendment 13 final rule implemented the following seasonal trip limit for the SNE/MA stock of yellowtail flounder: 250 lb (113.6 kg) per trip during March - June, and 750 lb (340.2 kg) per DAS, up to 3,000 lb (1,364.0 kg) per trip, during July - February. This proposed rule would modify these trip limits implemented through Amendment 13 for CC/GOM and SNE/MA stocks of yellowtail flounder by implementing the same trip limits for the entire year. Under this proposed rule, NE multispecies DAS

vessels fishing under Category A DAS (and vessels in other fisheries that are subject to the NE multispecies possession and trip limit regulations) could land only up to 250 lb (113.6 kg) per DAS, or any part of a DAS, up to 1,000 lb (453.6 kg) per trip of CC/GOM or SNE/MA yellowtail flounder for the entire fishing year. NMFS proposes to eliminate the current rule requiring vessels to obtain and possess on board a yellowtail flounder LOA issued by the Regional Administrator in order to land yellowtail flounder from either of these two stocks because enforceability of these proposed trip limits would be improved (because they would be the same under this proposed rule). The requirement for a LOA was implemented under Amendment 13 in order to enable enforcement of the yellowtail flounder trip limits.

This proposed rule would expand the Regional Administrator's authority to change the GB yellowtail flounder trip limit. In addition, guidance was developed in FW 42 to assist the Regional Administrator regarding potential in-season modifications to the trip limit (see Table 5 for suggested guidance offered by the Council). Under Amendment 13 regulations, there is no initial trip limit for GB yellowtail flounder. When it is projected that 70 percent of the yellowtail flounder will be harvested, current regulations require a trip limit of 1,500 lb (680.4 kg) per day, up to 15,000 lb (6,804.1 kg) per trip. However, the Regional Administrator may modify various management measures, including trip limits when it is projected that 30 and 60-percent of the GB yellowtail flounder TAC will be harvested.

This proposed rule would remove the required trip limit imposed at 70 percent of the TAC, and the threshold harvest levels of 30 percent and 60 percent before other management measures can be adjusted. In place of the current measures, this proposed rule would implement an initial GB yellowtail flounder possession limit of 10,000 lb (4,536.2 kg) per trip and allow the Regional Administrator to make adjustments to the GB yellowtail flounder trip limit at any time during the fishing year, including eliminating or adjusting the initial 10,000-lb (4,536.2-) trip limit before the start of the fishing year, in order to prevent exceeding the TAC or to facilitate harvesting the GB yellowtail flounder TAC, in a manner consistent with the Administrative Procedure Act (this is more fully described under section 22 of this preamble). If no trip limit were specified for the beginning of a fishing year, the 10,000 lb yellowtail flounder

trip limit would remain in effect. The Regional Administrator may specify yellowtail flounder trip limits for the whole U.S./Canada Management Area or

for either of the sub-areas (Western Area or Eastern Area). Following are catch thresholds and associated trip limits offered as guidance by the Council for

the Regional Administrator's consideration.

TABLE 5. GB YELLOWTAIL FLOUNDER TRIP LIMIT ADJUSTMENT GUIDANCE.

Fishing Year Quarter	If catch is projected to reach 30% of the TAC during the specified quarter, the suggested trip is as follows:	If catch is projected to reach 60% of the TAC during the specified quarter, the suggested trip is as follows:
Quarter 1	7,500 lb (3,402.1 kg)	3,000 lb (1,360.9 kg)
Quarter 2	10,000 lb (4,536.2 kg)	5,000 lb (2,268.1 kg)
Quarter 3	25,000 lb (11,340.4 kg)	10,000 lb (4,536.2 kg)
Quarter 4	remove trip limit	25,000 lb (11,340.4 kg)

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

With respect to monitoring and enforcing trip limits, NMFS is proposing changes that would eliminate administrative requirements that NMFS believes are no longer necessary in the context of FW 42. If VMS is approved and implemented as proposed in this rule (see section 6 of this preamble), NMFS would eliminate the requirement for NE multispecies DAS vessels to obtain a GB Cod Trip Limit Exemption Letter (LOA) from the Regional Administrator when fishing outside of the GOM RMA, if the vessel operator desires to be exempt from the more restrictive cod trip limit in the GOM, because this law enforcement tool would no longer be necessary. Instead, with the exception of vessels declared into the U.S./Canada Management Area, a NE multispecies DAS vessel fishing south of the GOM RMA must declare through the VMS, prior to leaving the dock in accordance with instructions to be provided by the Regional Administrator, its intent to fish south of the GOM RMA in order to be subject to the less restrictive GB cod trip limits. Such a vessel would be exempt from the GOM cod landing limit, but could not fish in the GOM RMA for the duration of the trip. Such a vessel could transit the GOM RMA, provided that its gear is properly stowed while in the GOM RMA. A vessel that has not declared

through VMS that it would be fishing south of the GOM RMA, would be subject to the most restrictive applicable cod trip limit, regardless of area fished.

The Regional Administrator would retain the authority to require a vessel to obtain a GOM Cod Trip Limit Exemption LOA (as under current regulations), should implementation of the VMS requirement be delayed or if NMFS's administration of the VMS program is not operational. If an LOA is required, such a vessel may not fish north of the exemption area for a minimum of 7 consecutive days (when fishing under the multispecies DAS program), and must carry the LOA on board.

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

10. Regular B DAS Program

The Regular B DAS Pilot Program was originally implemented by the FW 40—A final rule (69 FR 67780; November 19, 2004), and was intended to provide opportunities to use Regular B DAS outside of a SAP to catch stocks that can withstand additional fishing effort. This program included a variety of management measures designed to reduce the potential impacts of the use of Regular B DAS on stocks of concern

(e.g., DAS limits, low trip limits and Incidental Catch TACs for stocks of concern). Because of the uncertainties regarding the impacts of the Regular B DAS Program, this specialized fishery was characterized as a "Pilot" Program and a program expiration date of October 31, 2005, was specified. This proposed rule would renew the Regular B DAS Program, but modify certain aspects in order to further reduce the potential risks associated with the use a Regular B DAS and to minimize impacts to the monkfish fishery. The program would no longer be characterized as a APilot," and would remain in effect indefinitely. The full program is described below, with the changes from the previous Pilot Program noted.

The proposed action would allow limited access NE multispecies DAS vessels with an allocation of Regular B DAS to fish under the Regular B DAS Program to catch relatively healthy groundfish stocks (GB haddock, pollock, redfish, GOM winter flounder and GOM haddock). GB winter flounder and GB yellowtail flounder could no longer be considered healthy stocks under the Regular B DAS Program because they would be considered "stocks of concern" for which fishing mortality reductions are required under this proposed rule. Vessels eligible to fish in the Regular B DAS Program would not be allowed to fish in this program and in a SAP (e.g., the Eastern U.S./Canada Haddock SAP, CA I Hook Gear Haddock SAP, or CA II yellowtail flounder SAP) on the same trip. In order to limit the potential biological impacts of the program, only 500 Regular B DAS could be used during the first quarter of the calendar year (May through July), while 1,000 Regular B DAS could be used in subsequent quarters (August through October, November through January, and February through April). DAS that are not used in one quarter would not

be available for use in subsequent quarters. The limitation of 500 DAS during the first quarter would represent a modification from the Pilot Program, which allowed the use of 1,000 DAS during the first quarter, and would provide further protection for stocks of concern, especially GB winter flounder, which was caught in relatively large numbers during the first quarter of the 2005 fishing year. As implemented previously under FW 40–A, Regular B DAS would accrue at the rate of 1 DAS for each calendar day, or part of a calendar day, fished.

A vessel participating in this program would be required to be equipped with an approved VMS (this requirement would be separate from the general VMS requirement proposed for all groundfish DAS vessels). The vessel owner or operator would be required to notify the NMFS Observer Program at least 72 hr in advance of a trip in order to facilitate observer coverage. This notice would require reporting of the following information: The general area or areas that will be fished (GOM, GB, or SNE), vessel name, contact name for coordination of observer deployment, telephone number of contact, date, time, and port of departure. Providing notice of the area that the vessel intends to fish would not restrict the vessel's activity to fish only in that area on that trip, but would be used to plan observer coverage. Prior to departing on the trip, the vessel owner or operator would be required to notify NMFS via VMS that the vessel intends to participate in the Regular B DAS Program. Vessels fishing in the Regular B DAS Program would be required to report their catches of certain groundfish stocks of concern (cod, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake) and haddock, daily through VMS, including the amount of fish kept and discarded. The reporting requirements would be slightly different from those required in the Pilot Program and would be consistent with the standardized reporting requirements that would apply to all Special Management Programs of the FMP, as explained in Section 17 of this preamble.

A vessel fishing under a Category B DAS while in this program would be prohibited from discarding legal-sized regulated NE multispecies, Atlantic halibut, ocean pout, and monkfish, and would be limited to landing 100 lb (45.4 kg) per DAS, or any part of a DAS, of each of the following groundfish stocks: GOM cod, GB cod, GB yellowtail flounder, American plaice, witch flounder, white hake, SNE/MA winter flounder, GB winter flounder, southern

windowpane flounder, and ocean pout, unless further restricted (see below). In addition, a vessel fishing in this program would be limited to landing no more than one Atlantic halibut, and 25 lb (11.3 kg) per DAS, or any part of a DAS, up to a maximum of 250 lb (113 kg) per trip, of CC/GOM or SNE/MA yellowtail flounder. A limited access monkfish DAS vessel fishing with gear other than trawl gear that is participating in this program under a NE multispecies DAS would be subject to the monkfish Incidental Catch limit applicable to the monkfish Incidental Catch permit (Category E) (i.e., 400 lb (181.4 kg) tail weight/DAS, or 50 percent of the total weight of fish on board, whichever is less, when fishing in the monkfish Northern Fishery Management Area (NFMA); and 50 lb (22.7 kg) tail weight/DAS when fishing in the monkfish Southern Fishery Management Area (SFMA)). A limited access monkfish DAS vessels fishing with trawl gear that is participating in this program under a NE multispecies DAS would be subject to the monkfish Incidental Catch limit applicable to the monkfish Incidental Catch permit (Category E), as well as the monkfish restrictions associated with the required use of the haddock separator trawl (as described below). That is, vessels would be subject to 500 lb (226.8 kg) whole weight of monkfish per trip when fishing in the monkfish NFMA; and 500 lb (226.8 kg) whole weight per trip or 50 lb (22.7 kg) tail weight per DAS, whichever is less, when fishing in the monkfish SFMA.

In contrast to the Pilot Program, in which a trawl vessel was not required to utilize any particular gear type, under this proposed rule, a trawl vessel would be required to use an approved haddock separator trawl when participating in the Regular B DAS Program. Other trawl net configurations may be on board the vessel, provided they are properly stowed when the vessel is fishing under the Regular B DAS Program rules. The intent of this restriction is to further reduce the potential for vessels to catch stocks of concern, notably cod, yellowtail flounder, and winter flounder. Furthermore, for a trawl vessel fishing with the proposed haddock separator trawl, possession of flounders (all species, combined); monkfish (whole weight), unless otherwise specified below; and skates would be limited to 500 lb (227 kg) each, and possession of lobsters would be prohibited, to help ensure the proper utilization of the haddock separator trawl; a properly configured haddock

separator trawl should not catch large quantities of these species.

If a vessel fishing under the Category B DAS Program harvests and brings on board a stock with an Incidental Catch TAC (cod, yellowtail, American plaice, witch flounder, white hake, SNE winter flounder, GB winter flounder), or southern windowpane flounder, ocean pout, Atlantic halibut, or monkfish, in excess of the landing limits, the vessel operator would be required to retain on board the excess catch of these species, and immediately notify NMFS, via VMS, that it is changing its DAS category from a Regular B DAS to a Category A DAS (i.e., "DAS flip"). If a vessel flips from a Regular B DAS to a Category A DAS, it would be charged Category A DAS, which would accrue to the nearest minute, for the entire trip (i.e., not to the nearest day). In contrast to the Pilot Program rules, the proposed requirement to flip must be executed immediately upon exceeding the landing limit of any of the pertinent species, instead of at any time prior to crossing the VMS demarcation line. This restriction is being proposed to enhance the effectiveness and enforceability of the flipping provision. Once the vessel flips, it would be subject to the Category A trip limit restrictions. A vessel fishing in the Category B DAS Program must abide by all the reporting requirements described above for the duration of the trip, even if the vessel "flips" to a Category A DAS.

In order to ensure that a vessel 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), with the exception of a vessel fishing in one of the two Differential DAS Areas, the number of Regular B DAS that would be allowed to be used on a trip would be limited to the number of Category A DAS that the vessel has at the start of the trip. For example, if a vessel plans a trip under the Regular B DAS Program and has 5 Category A DAS available, the maximum number of Regular B DAS that the vessel could fish on that trip under the Regular B DAS Program would be 5. If a vessel is fishing in either the GOM Differential DAS Area or the SNE Differential DAS Area, the number of Regular B DAS that 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 2. For example, if a vessel plans a trip under the Regular B DAS Program and has 10 Category A DAS available, the maximum number of Regular B DAS

that the vessel could fish on that trip under the Regular B DAS Program would be 5.

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

The Pilot Program implemented by FW 40-A allowed a vessel issued a

limited access monkfish Category C or D permit to use a NE multispecies Regular B DAS to fulfill the requirements of the Monkfish FMP, which requires such a vessel to use a NE multispecies DAS every time a monkfish DAS is used. To reduce fishing mortality on monkfish resulting from the use of Regular B DAS, FW 3 would prohibit a limited access monkfish DAS vessel that also possesses a limited access NE multispecies DAS permit from using a monkfish DAS (in conjunction with a NE multispecies Regular B DAS) when participating in the Regular B DAS Program. This vessel would still be able to participate in this program and use a NE multispecies Regular B DAS, but it would be required to fish under a NE multispecies DAS only and would be subject to the monkfish trip limits specified above under this section. Discarding of legal-sized monkfish would be prohibited when fishing under this program.

NMFS would administer the Regular B DAS Program quarterly DAS cap by monitoring the total number of Regular B DAS accrued on trips that begin and end under a Regular B DAS. Declaration of a Regular B DAS Program trip through VMS would not serve to reserve a vessel's right to fish under this

program, because the vessel must also cross the demarcation line to begin a trip in this program. Once the maximum number of Regular B DAS are projected to be used in a quarter, the Regional Administrator would end the Regular B DAS Program for that quarter.

In order to limit the potential impact of the Regular B DAS Program on the fishing mortality of groundfish stocks of concern, a quarterly Incidental Catch TAC would be set for certain groundfish stocks of concern for this program. Based upon the definition of Incidental Catch TACs and the allocation of Incidental Catch TACs among special programs (Table 3 and 4, respectively), the proposed Incidental Catch TACs allocated to the Regular B DAS Program are calculated and divided into quarterly Incidental Catch TACs as shown below in Table 6. The quarterly Incidental Catch TACs would be divided among quarters in order to correspond to the allocation of DAS among quarters. The 1st quarter (May-July) would receive 13 percent of the Incidental Catch TACs, and the remaining quarters (August-October, November-January, and February-April) would each receive 29 percent of the Incidental Catch TACs.

TABLE 6. PROPOSED INCIDENTAL CATCH TACs FOR THE REGULAR B DAS PROGRAM (MT, LIVE WEIGHT)

	FY 2006		FY 2007		FY 2008	
	Qtr 1	Qtr 2-4	Qtr 1	Qtr 2-4	Qtr 1	Qtr 2-4
GB cod	8.0	17.8	See NOTE			
GOM cod	6.5	14.5	12.9	28.7	13.5	30.1
GB yellowtail flounder	2.7	6.0	See NOTE			
SNE/MA yellowtail	0.2	0.4	0.3	0.6	0.4	0.9
CC/GOM yellowtail	0.8	1.9	1.4	3.1	1.8	4.1
American plaice	23.8	53.2	26.7	59.5	33.3	74.3
Witch flounder	35.8	79.9	33.0	73.6	28.2	62.8
White hake	5.3	11.9	4.4	9.7	3.6	7.9
SNE/MA winter flounder	3.2	7.2	3.9	8.7	4.7	10.4
GB winter flounder	1.9	4.1	2.1	4.6	2.2	5.2

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

With the exception of white hake, CC/GOM yellowtail flounder, and SNE/MA

yellowtail flounder, if the Incidental Catch TAC for any one of these species

were caught during a quarter (landings plus discards), use of Regular B DAS in

the pertinent stock area would be prohibited for the remainder of that quarter. Vessels would be able to once again use Regular B DAS under this program at the beginning of the subsequent quarter. When the white hake Incidental Catch TAC is caught, the possession of white hake when fishing under the Regular B DAS Program would be prohibited. For the CC/GOM and SNE/MA stocks of yellowtail flounder, when the respective Incidental Catch TACs are caught, only a portion of the stock area where the species is predominantly caught would be closed to Regular B DAS Program participants. Upon attainment of the CC/GOM yellowtail flounder incidental Catch TAC, the following 30-minute square blocks would close: Blocks 98, 114, 123, 124, 125, 132, and 133. Upon attainment of the SNE/MA yellowtail flounder Incidental Catch TAC, the following 30-minute square blocks would close: Blocks 70 to 73, 82 to 88, 98, 99, and 101 to 103. Closure of only a portion of the two yellowtail stock areas is a change from the original Pilot Program (which closed the whole stock areas). Given the very small Incidental Catch TACs for these two stocks, the intent of these smaller closures is to prevent closure of the whole stock area and allow continued fishing under the Regular B DAS Program in areas where little or no yellowtail flounder is likely to be caught.

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

11. *Renewal of DAS Leasing Program*

The DAS Leasing Program was first implemented by Amendment 13 to help mitigate the economic and social

impacts of effort reductions in the fishery, and expired on April 30, 2006. The Secretarial emergency rule, which will expire on October 10, 2006, without further action, continued this program from May 1, 2006, through October 10, 2006. This proposed rule would continue the DAS Leasing Program, without change, to help mitigate the economic and social impacts resulting from the current FMP regulations that strictly limit fishing effort.

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

The Eastern U.S./Canada Haddock SAP Pilot Program was promulgated by regulations implementing FW 40–A in order to enable haddock harvest to approach OY and to mitigate the economic and social impacts of effort reductions in the fishery. The Eastern U.S./Canada Haddock SAP Pilot Program was implemented for a duration of 2 years, and will expire on November 20, 2006. This action would renew and modify the Eastern U.S./Canada Haddock SAP for fishing years 2006 through 2008. The SAP was originally characterized as a "Pilot" Program due to the uncertainties regarding the impacts of the SAP. Because the best available information indicates that the SAP did not undermine the fishing mortality objectives of the FMP during the Pilot phase, under this proposed rule, the program would no longer be characterized as a "Pilot" Program. This proposed rule would continue the Eastern U.S./Canada Haddock SAP as originally implemented, with the proposed modifications to the SAP described below.

The Eastern U.S./Canada Haddock SAP Program would allow limited access NE multispecies DAS vessels fishing with an authorized haddock separator trawl to catch haddock using a Category B DAS, in a portion of the Eastern U.S./Canada Area, including the northern-most tip of CA II. The proposed time period for the SAP would be August 1 - December 31. This time period represents a modification from the previous start date of May 1, in order to reduce the likelihood of high cod catch rates (that typically occur in the late spring and summer), reduce potential impacts on GB yellowtail flounder, and reduce likelihood of early closure of the SAP triggered by the catch of the GB cod Incidental Catch TAC (described below). Delaying the start date to August 1, is intended to help prevent an early closure of this area and thereby prolong the period of time during which vessels have access to the

haddock fishery in the area under a Category B DAS.

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

New restrictions are proposed for trips on which use of the haddock separator trawl is required (including this SAP). For trawl trips, possession of flounders (all species, combined); monkfish (whole weight), unless otherwise specified below; and skates would be limited to 500 lb (227 kg) each per trip; and possession of lobsters would be prohibited to help ensure the proper utilization of the haddock separator trawl.

In order to limit the potential impact on fishing mortality that the use of Category B DAS may have on GB cod, an annual GB cod Incidental Catch TAC would be specified for this SAP that represents 34 percent of the overall Incidental Catch TAC for GB cod (19.6 mt for FY 2006). In addition to an Incidental Catch TAC for GB cod, this action would also establish two new Incidental Catch TACs for GB yellowtail flounder and GB winter flounder for this SAP. The Incidental Catch TACs for these two species in this SAP each represent 50 percent of the respective overall Incidental Catch TACs for these stocks allocated to Special Programs. The proposed 2006 GB yellowtail flounder Incidental Catch TAC would be 20.7 mt, and the proposed GB winter flounder Incidental Catch TACs for 2006–2008 would be 14.3, 16.1, and 17.8 mt, respectively. The GB yellowtail flounder Incidental Catch TAC is dependent upon the annual

specification of the U.S./Canada TACs, and therefore would be calculated on an annual basis for the 2007 and 2008 fishing years. Separate specification of this TAC would not be necessary, because it is calculated based upon an explicit formula. Participation in the SAP by vessels using a Category B DAS would be prohibited when any one of the three Incidental Catch TACs are projected to have been caught.

Many of the associated requirements proposed for this SAP would be the same as the proposed reporting requirement that would be applicable to all Special Programs, as explained under Section 17 in this preamble. The

last aspect of this SAP that represents a change from the Pilot Program is the proposed restriction on discarding while under a Category B DAS, which would apply to all regulated NE multispecies, Atlantic halibut, and ocean pout under this proposed rule, rather than applying only to cod. All other proposed measures for this SAP are consistent with the measures previously implemented.

13. Modification to CA I Hook Gear SAP

FW 42 proposes to specify a haddock TAC for this SAP for fishing years 2006 through 2008, and provide the Regional Administrator the authority to adjust these TACs based on future stock

assessments using a specified formula. The formula would be based upon the size of the haddock TAC allocated for the 2004 fishing year (1,130 mt live weight) and, based on new information, would be adjusted according to the growth/decline of the western GB (WGB) haddock exploitable biomass in relationship to its size in 2004. The size of the WGB component of the stock is currently considered to be 35 percent of the total stock size (unless modified by a new stock assessment). The formula is as follows: $TAC_{year\ x} = (1,130\ \text{mt live weight}) \times (\text{Projected WGB Haddock Exploitable Biomass}_{year\ x} / \text{WGB Haddock Exploitable Biomass}_{2004})$.

TABLE 7. PROPOSED CA I HADDOCK SAP TACs FOR FISHING YEARS 2006-2009, AND PERTINENT HISTORIC INFORMATION.

Fishing Year	Total GB Haddock Stock Exploitable Biomass (mt x 1,000)	WGB Haddock Exploitable Biomass (mt x 1,000)	Ratio of Total GB Haddock Stock to WGB Component	TAC (mt live weight)
2004	100.907	35.317	N/A	1,130
2005	137.341	48.069	1.361	1,538
2006	202.261	70.791	2.004	2,265
2007	442.427	154.849	4.385	4,955
2008	560.303	196.106	5.553	6,275

For example for 2006, based on the information in the table and the formula: $(202.261) \times (35\%) = 70.791$; $70.791/35.317=2.004$; and $(1,130) \times (2.004) = 2,265\ \text{mt}$.

When the haddock TAC is harvested, the SAP would close. The standardized reporting requirements as discussed in section 17 of this preamble would apply to this SAP.

14. GB Cod Fixed Gear Sector

This action would authorize the formation of a second sector in the FMP, the GB Cod Fixed Gear Sector (Fixed Gear Sector), in accordance with the procedures and requirements implemented by Amendment 13 (§ 648.87). Requirements under § 648.87(b) that apply to all sectors would apply to the proposed Fixed Gear Sector, including, but not limited to the following: Voluntary membership; an allocation based on a hard TAC or DAS usage; a maximum allocation of 20 percent of a stock's TAC; an allocation based upon landings histories for fishing years 1996 through 2001 (for sectors formed during the period 2004 through 2007 to harvest GB cod); a requirement that sector members must remain in the sector for the entire fishing year and must abide by the rules that apply to the sector for the entire fishing year; termination of sector operations for the remainder of the

fishing year once a hard TAC allocated to a sector is projected to be exceeded, and, if a hard TAC allocated to a sector is exceeded in a given fishing year, a required reduction (in the amount of the overage) from the sector's allocation the following fishing year.

The primary purpose of the proposed Fixed Gear Sector is to fish in an efficient manner, under customized managed measures, for the primary purpose of harvesting GB cod. A vessel fishing in the Fixed Gear Sector would be restricted to fishing with either jigs, non-automated demersal longline, hand gear, or sink gillnets. The Fixed Gear Sector, as required under § 648.87(b)(2), must submit an Operations Plan and Fixed Gear Sector Contract to the Regional Administrator at least 3 months prior to the beginning of each fishing year. This proposed rule would authorize the formation of the Fixed Gear Sector, but would not constitute approval of the operation of the Fixed Gear Sector during the 2006 fishing year. The proposed Sector would be authorized to operate during the 2006 fishing year only if the Sector is approved in FW 42, and if the Regional Administrator approves an initial

Operations Plan and Sector Contract for fishing year 2006. The Fixed Gear Sector submitted an Operations Plan and Sector Contract to the Regional Administrator on February 1, 2006. If the essential criteria for an Operations Plan and Sector Contract are met, the proposed Operations Plan, containing the rules under which the Fixed Gear Sector would operate, would be published in a separate **Federal Register** document and public comment solicited prior to making a final decision to authorize operation of the Sector in the 2006 fishing year. Because the Fixed Gear Sector could not be approved prior to the start of the May 1, 2006 fishing year, the Fixed Gear Sector's Operations Plan would need to provide an acceptable method for accounting for any groundfish DAS used or any GB cod caught in the 2006 fishing year prior to Regional Administrator approval.

As described above, a vessel fishing in the Fixed Gear Sector would be restricted to fishing with various gear, including jigs; however jigs are not defined in the regulations. This proposed rule includes a definition of jigging and jig as follows: Jigging, with respect to the NE multispecies fishery,

means fishing for groundfish with hook and line gear (hand line or rod and reel) using a jig, which is a weighted object attached to the bottom of the line used to sink the line and/or imitate a baitfish, which is moved ("jiggged") with an up and down motion.

15. Eastern U.S./Canada Area Flexibility

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

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

This proposed measure would address a potential safety concern that has resulted from the Amendment 13 restriction that vessels fishing in the Eastern U.S./Canada Area cannot fish in any other area on the same trip. If bad weather is forecast, a vessel operator fishing in the Eastern U.S./Canada Area under current rules has only two

choices: End the trip early, or continue to fish in the Eastern U.S./Canada Area. The concern is that fishermen, during inclement weather, would keep fishing in the Eastern U.S./Canada Area until it is too late to evade a rapidly advancing storm. This proposed measure would provide fishermen that have declared their intent to fish in the Eastern U.S./Canada Area the option of also fishing outside of the Eastern U.S./Canada Area on that same trip. This 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.

16. Modification of the DAS Transfer Program

The proposed action would modify several aspects of the DAS Transfer Program. The intent of these changes are to increase the utility of the program, provide clarification of program details that were not previously considered, and support effective administration of the program by NMFS.

The DAS Transfer Program was implemented by Amendment 13 in order to provide vessel owners an opportunity to mitigate the negative economic impacts of the regulations, enhance flexibility within the groundfish fleet, and provide opportunities for fleet rationalization. However, some industry members have commented that the DAS Transfer Program has not been used by vessel operators because the restrictions associated with the program are too severe. Therefore, this action would modify two fundamental aspects of the program in order to make the program rules less restrictive. Under this proposed rule, the vessel transferring its NE multispecies DAS permit (transferor) would no longer be required to exit all state and Federal fisheries, and would be allowed to acquire other fishing permits (i.e., other Federal limited access permits, Federal open access permits, and/or state permits) after the transfer. Secondly, other non-groundfish permits that the transferor vessel has would no longer automatically expire, but could be transferred as a bundle to the vessel receiving the NE multispecies DAS permit (subject to pertinent regulations regarding vessel replacement). Duplicate permits would expire, and a vessel would not be able to consolidate DAS or other allocations from non-groundfish permits. Non-groundfish permits would still be subject to all applicable regulations such as vessel replacement size restrictions. The program would maintain the conservation tax of 20 percent on Category A and Category B

DAS, as well as the conservation tax of 90 percent on Category C DAS, in order to support the program's goal of long-term reduction in fishing effort.

Because the execution of a DAS transfer is a process whereby two limited access NE multispecies permits (with two baselines, DAS allocations, and histories) become a single permit (with a single baseline, DAS allocation, and history), this action would also specify the rules that pertain to the resultant single permit. All history associated with the transferred NE multispecies DAS permit would be acquired by the recipient (transferee), and would subsequently be associated with the permit rights of the transferee. The pertinent history would include catch history, DAS use history, and permit rights history. Neither the individual elements of the history associated with the transferor vessel, nor the total history may be separated from the NE multispecies DAS being transferred. With respect to vessel baseline characteristics, the baseline of the transferee vessel would be the smaller baseline of the two vessels or, if the transferee vessel had not previously upgraded under the vessel replacement rules, it could choose to adopt the larger baseline of the two vessels, which would constitute the vessel's one-time upgrade, if such upgrade is consistent with the vessel replacement rules.

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

In order to simplify the DAS Transfer Program, the proposed action would clarify that, for the purposes of calculating the DAS conservation tax, the transferee would be required to specify which vessel's DAS are being acquired and are, therefore, subject to the conservation tax. If a conservation tax were to apply strictly to the DAS acquired from the transferor vessel, buyers would have a strong incentive to arrange the DAS Transfer Program transaction such that it would result in

the permit with the least number of DAS being designated as the transferor (seller) permit.

Lastly, for administrative purposes, the proposed action would prohibit a vessel from participating in the DAS Leasing Program as a lessee or lessor during a particular fishing year and then subsequently participating in the DAS Transfer Program as a transferor during the same fishing year. A vessel would be allowed to participate in the DAS Leasing Program as a lessor or as a lessee and then submit an application for a DAS transfer as a transferor, but the transfer, if approved, would not be effective until the beginning of the following fishing year. Vessels would not be prohibited from participating in the DAS Leasing Program after a DAS transaction has occurred.

17. Standardized Requirements for Special Management Programs

Under current regulations, the Special Management Programs under § 648.85 (U.S./Canada Resource Sharing Understanding, Regular B DAS Pilot Program, CA I Hook Gear Haddock SAP, CA II Yellowtail Flounder SAP, and Eastern U.S./Canada Haddock SAP Pilot Program) have many similar requirements. The proposed action would modify and standardize the requirements that apply to the Special Management Programs in order to improve the reporting of directed catch and bycatch, reduce discarding, enhance enforcement, simplify the administration of these programs, and reduce industry confusion regarding such rules. In some of these Programs, additional requirements apply that were previously implemented. The standardized requirements are described below, and any new requirement, or new application of an existing requirement is noted.

The current requirement for the use of VMS and the advance notice to the observer program prior to each trip would continue. For all Special Management Programs, the catch location, which is required in order to accurately attribute catch to the appropriate stock area, would be determined by NMFS through the use of VMS positional data and other available data. For all Special Management Programs, the species that must be reported daily (catch and discards) would be haddock and all species for which a stock of concern has been identified as likely to be caught in a Special Management Program (currently, the species with stocks of concern identified as such are: Cod, yellowtail flounder, winter flounder,

witch flounder, white hake, and American plaice).

For all Special Management Programs, there would be a new requirement to report the date of the catch. Currently NMFS must infer which date the fish were caught on, based upon the time NMFS receives the VMS report (and in consideration of the requirement that states when a vessel must report). The proposed measure to require the vessel operator to explicitly state on which date the fish were caught would provide assurance of the collection of pertinent information and would help to improve the accuracy of the data. As under current regulations, the vessel may report catch for a particular day of fishing at any time of the day on which it was caught, up until 0900 hr the following day.

For all Special Management Programs, there would be a new requirement to report the serial number of the Vessel Trip Report (VTR). A vessel operator would be required to report the serial number from the first page of the logbook on the daily VMS catch report. Because the serial numbers are associated with individual vessels, a vessel operator would be prohibited from sharing logbooks with other vessel operators. The VTR serial number would serve as an important tool that would enable fishery managers to make better use of available data by linking VTR data with dealer and DAS data. The improved linkage of various data sources would allow a more integrated use of available data.

While participating in SAPs and the Regular B DAS Program, a vessel would be prohibited from discarding legal-sized regulated NE multispecies, Atlantic halibut, and ocean pout while fishing under a Category B DAS. The proposed action would also require a vessel that is participating in either the Regular B DAS Program or a SAP that exceeds any of the NE multispecies trip limits, to exit these respective programs. With the exception of the CA I Hook Gear Haddock SAP, a vessel would be required to exit the Special Management Program and “flip” to a Category A DAS as soon as the maximum trip limit is exceeded. Current regulations require flipping to occur prior to crossing the VMS demarcation line on a vessel’s return to port. Requiring a vessel to flip immediately would make the flipping provision more enforceable and reduce the likelihood that vessels may be tempted to delay flipping to Category A DAS in order to save more valuable Category A DAS. The requirement that vessels participating in the Special Management Programs report daily via

VMS would continue, even after a vessel is required to exit the program.

18. Gear Performance Incentives for Special Management Programs

The proposed action would require that, in times and areas when a Special Management Program requires a vessel to use a haddock separator trawl or other gear authorized by the program to reduce catches of stocks of concern, possession of flounders (all species combined), monkfish (live/whole weight), and skates (live/whole weight) would be limited to 500 lb (226.8 kg) each, per trip. Possession of lobsters would be prohibited. If a specific program includes a possession limit that conflicts with the Gear Performance Incentives, the most restrictive limit would apply. For example, a vessel fishing under a NE multispecies Category B DAS in the proposed Regular B DAS Program in the monkfish SFMA, that has a limited access monkfish Category C or D permit (and would not be able to fish under a monkfish DAS) would be limited to 50 lb (22.7 kg) of monkfish per trip. The intent of the proposed measure is to increase the incentive for vessels to configure the gear properly because only relatively small amounts of these species may be landed when using the gear. The proposed gear performance incentive requirement would apply to the Regular B DAS Program, NE multispecies SAPs, and the Eastern U.S./Canada Management Area (if/when the haddock separator trawl is the only allowable trawl net).

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

Currently, a vessel fishing in the Eastern U.S./Canada Area under a Category A DAS may not land more than 500 lb (226.8 kg) of cod per DAS, or any part of a DAS, up to 5,000 lb (2,268 kg) per trip, not to exceed 5-percent of the total catch on board, whichever is less. This proposed rule would remove the restriction pertaining to cod not exceeding 5-percent of the total weight of fish on board in order to eliminate a problem with the proposed regulations for vessels fishing in the Regular B DAS Program. A vessel fishing under a Regular B DAS in the Eastern U.S./Canada Area may possess no more than 100 lb (45.4 kg) of cod per DAS, up to 1,000 lb (453.6 kg) per trip. For such a vessel there is no restriction with respect to the percent of total catch, and the vessel may not discard regulated NE multispecies. If such a vessel is required to flip from a Category B to a Category A DAS, it is then subject to the rules that pertain to the Eastern

U.S./Canada Area and may immediately be in violation of the possession limit. Elimination of this 5-percent restriction would prevent a situation where a vessel operator would have no ability to avoid being in violation of the possession limit upon flipping (prior to flipping, the vessel is prohibited from discarding).

20. SNE/MA RMA Trawl Codend Mesh Requirement

The proposed action would modify the current trawl codend mesh requirement applicable to the SNE/MA RMA from 6.5-inch (15.2-cm) square or 7.0-inch (17.8-cm) diamond mesh to 6.5-inch (15.2-cm) square or 6.5-inch (15.2-cm) diamond mesh. The goal of this measure is to encourage the use of a 6.5-inch (15.2-cm) diamond mesh while fishing for yellowtail flounder in order to reduce yellowtail flounder discards. A 6.5-inch (15.2-cm) diamond mesh would provide more escapement for small yellowtail flounder than does the 6.5-inch (15.2-cm) square mesh, which the industry currently prefers to use instead of the 7.0-inch (17.8-cm) diamond mesh codend.

21. Regional Administrator Authority to Adjust Trip Limits for Target TAC Stocks

The proposed action would require the Regional Administrator to monitor the catch of all the groundfish species with trip limits (and target TACs) and adjust trip limits upwards for the purpose of facilitating harvest of the target TACs, if it is projected that less than 90 percent of the target TAC will be caught during the fishing year. Trip limit changes would be allowed at any time during the fishing year, or before the start of the fishing year, if information is sufficient to make the necessary projections.

22. Regional Administrator Authority to Adjust Measures in the U.S./Canada Management Area

The proposed action would expand the Regional Administrator's authority to adjust management measures in the U.S./Canada Management Area, after consultation with the Council, in order to more effectively prevent overharvesting or to facilitate harvesting of the hard TACs (and achieving OY). Current regulations limit the Regional Administrator authority's to adjusting the U.S./Canada Management Area measures when 30 percent and/or 60 percent of the hard TACs (for GB yellowtail flounder, Eastern GB haddock, and Eastern GB cod) are projected to be harvested. The proposed action would allow the Regional

Administrator to make adjustments to management measures at any time during the fishing year, as well as prior to the start of the fishing year for the subsequent fishing year, if information is sufficient to make the necessary projections.

This proposed rule would eliminate the required implementation of a trip limit for Eastern GB haddock (i.e., when 70 percent of the TAC is projected, the Regional Administrator must implement a possession limit of 1,500 lb (680.4 kg) per day, up to 15,000 lb (6,804.1 kg) per trip). Although the Council did not propose the elimination of this non-discretionary trip limit, NMFS is proposing its removal under authority of section 305(d) of the Magnuson-Stevens Act, which allows NMFS to promulgate regulations as necessary for the general responsibility of carrying out an FMP. Specifically, the required trip limit for Eastern GB haddock, in the context of the proposed expansion of Regional Administrator's authority to modify U.S./Canada Management Area regulations would be of little value. For example, if the required trip limit trigger remained in place, if the Regional Administrator projects that 70 percent of the Eastern GB haddock TAC will be harvested and implements the non-discretionary trip limit, the Regional Administrator would have the authority to immediately remove the trip limit. Under the proposed regulations, the Regional Administrator could implement such a trip limit, if appropriate, but would have to implement a specific haddock trip limit when 70 percent of the harvest is attained.

This proposed measure would also clarify that the Regional Administrator may implement different management measures for vessels using Category A DAS and Category B DAS, and require that the Regional Administrator, when determining in season adjustments, consider Council intent that opportunities for fishing on Category A DAS should take precedence over opportunities to fish under Category B DAS.

24. Other Measures

For vessels fishing under the proposed Regular B DAS Program, or for trips where vessels have declared that they will be fishing inside and outside of the Western U.S./Canada Area on the same trip, the current daily reporting of the statistical area fished (to determine catch location) would no longer be required. Because vessels that fish in these programs are required to have an operational VMS, NMFS is able to determine location fished using VMS

positional data. Further, on trips where a vessel fishes inside and outside of the Western U.S./Canada Area, the vessel operator would no longer be required to report catch as the vessel crosses into and out of the area, and would be subject only to the daily reporting requirement.

Request for Comments

The public is invited to comment on any of the measures proposed in this rule. NMFS is especially interested in receiving comment on one proposed measure over which the agency has concerns, particularly regarding whether the measures are consistent with achieving the objectives of the NE Multispecies FMP, whether such measures would be effective in achieving the objective of the measures, and whether such measures would be cost effective. The issue of concern is the following:

Regional Administrator Authority to Adjust Trip Limits for Target TAC Stocks

The proposed action would require the Regional Administrator to monitor the catch of the groundfish species that have trip limits associated with them (and target TACs), and adjust these trip limits upwards if it can be projected that less than 90 percent of the target TAC for this species will be caught (see item Section 21 above). This proposed measure would expand the Regional Administrator's authority to increase trip limits for five stocks (the current regulations already provide authority for the Regional Administrator to modify the haddock trip limit). The stocks with target TACs and trip limits that would be affected by this proposed measure are GOM cod, GB cod, white hake, GB winter flounder, CC/GOM yellowtail flounder, and SNE/MA yellowtail flounder.

Administratively, this measure would be problematic to implement. Data on the catch amount and location of affected stocks are not available on a real-time basis and, depending upon the size of the TAC and the rate of harvest, there may not be timely enough information to make an accurate projection. To monitor these stocks, NMFS would need to rely on VTR data and dealer data to make projections and, although such data provide some useful information, sufficient information on both catch amount and catch location would not be available on a real-time basis. If NMFS increased trip limits based upon data that underestimated the amount of catch, there would be the risk that the catch could exceed the target TAC. The proposed measure does

not include a corresponding mechanism for the Regional Administrator to decrease trip limits, therefore allowing no mechanism to lower trip limits based on revised or corrected information. In addition, the composition of target TACs for three of the affected stocks also include discard data or recreational data, which also would not be available on a real-time basis. In order to implement a trip limit adjustment for stocks with target TACs, additional reporting requirements and Regional Administrator authority would be necessary.

Classification

At this time, NMFS has not made a final determination that the measures 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.

An IRFA was prepared as required, which has been adopted by NMFS for this action, as required by section 603 of the Regulatory Flexibility Act (RFA). Below is a summary of the IRFA, which 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 section 3.0 of the EA prepared for this action. The Proposed Alternative would implement a fishery-wide modification to the DAS allocations (reduction in Category A DAS), differential DAS in two areas, recreational measures, and commercial trip limits as the principal means of reducing fishing effort in the NE multispecies fishery. In addition to the measures designed to reduce fishing mortality, FW 42 proposes modification and/or renewal of three Special Management Programs (Regular B DAS Program, Eastern U.S./Canada Haddock SAP, and CA I Hook Gear Haddock SAP), renewal of the DAS Leasing Program, approval of the GB Cod Fixed Gear Sector, and other relatively minor adjustments to the FMP.

In addition to the Proposed Alternative, the No Action Alternative

and six other alternatives were analyzed and considered. The No Action Alternative would result in the continuation of the management measures implemented by Amendment 13, and subsequent framework actions (FW 40-A, FW 40-B, and FW 41). More specifically, the No Action Alternative would continue most of the management measures that have been in place since May 2004 (as modified by frameworks), but would include changes to the regulatory regime as a result of default measures previously scheduled to be implemented in fishing year 2006, as well as Special Management Programs previously scheduled to expire. The default measures that would be implemented under the No Action Alternative would include a change to the DAS allocations, which results in an 8-percent reduction in Category A DAS (the same modification to the DAS allocations as the Proposed Alternative), and counting DAS in the SNE RMA at the rate of 1.5:1. The programs that would expire under the No Action Alternative include the DAS Leasing Program, the Regular B DAS Pilot Program, and the Eastern U.S./Canada Haddock SAP Pilot Program.

The other six alternatives are similar to each other and the Proposed Alternative with respect to the inclusion of commercial trip limits, recreational measures, renewal of the Special Management Programs and DAS Leasing Program, and approval of the Fixed Gear Sector. The substantive difference between the six alternatives, and the principal reason that the impacts of the alternatives are different, is that the reliance on different DAS strategies to control fishing effort. The alternatives are limited by the need to meet the conservation objectives of the FMP. Alternatives 1 and 2 utilize Category A DAS reductions and differential counting of DAS in areas of the GOM and SNE. The difference between the two alternatives is the size of the differential DAS area and the size of the Category A DAS reduction (22 percent and 23 percent, respectively). Alternatives 3 and 4 utilize Category A DAS reductions and revised DAS counting systems in the GOM. Alternative 3 would count DAS as a minimum of 12 hr and reduce Category A DAS by 38 percent, and Alternative 4 would count DAS as a minimum of 24 hr and reduce Category A DAS by 25 percent. Alternative 5 would rely on a 40-percent reduction in Category A DAS, and Alternative E utilizes the default DAS reduction (8 percent) with differential DAS counting in SNE and

counting of DAS as a minimum of 24 hr (in all areas).

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. Vessels that were inactive were not considered because it is not likely that the participation level will increase in the future under the proposed regulatory regime. During 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 years 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 sales 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 default DAS allocations that took effect on May 1, 2006; specify target TACs and Incidental Catch TACs for the 2006, 2007, and 2008 fishing years; implement a VMS requirement for groundfish DAS vessels; implement differential DAS counting in specific areas of the GOM and SNE; modify the recreational possession restrictions and size limits for GOM cod; modify current and implement new commercial trip limits for several species; renew and modify the Regular B DAS Program, including the rules pertaining to monkfish vessels; renew and modify the Eastern U.S./Canada Haddock SAP; renew the DAS Leasing Program; modify the CA I Hook Gear Haddock SAP; authorize the GB Cod Fixed Gear Sector; provide flexibility for vessels to fish inside and outside of the Eastern U.S./Canada Area on the same trip; modify reporting requirements for Special Management Programs; modify the DAS Transfer Program; modify the cod trip limit for the Eastern U.S./Canada Area; implement gear performance incentives for the haddock separator trawl; modify the trawl codend mesh size requirement in the SNE RMA; and modify the Regional Administrator's authority to adjust certain possession limits.

The economic impacts of the proposed DAS allocations, differential DAS counting, and trip limits were analyzed using the Closed Area Model (CAM). Separate analyses were conducted for the impacts of the recreational measures, continuation of the DAS Leasing Program, renewal and modification of the Regular B DAS Program, and renewal and modification of the Eastern U.S./Canada Haddock SAP.

The results of the CAM and economic analysis indicate that the proposed action would result in a reduction of approximately \$21 million, or 10 percent of total fishing revenue. With respect specifically to groundfish revenue, the losses would be \$15 million, or 19 percent of total groundfish revenue. The clearest measure of the distribution of impacts may be a given vessel's dependence on groundfish for total fishing income. Due primarily to a significant difference among vessels in terms of the importance of groundfish in total fishing revenue, the proposed action would have different impacts across vessels of varying sizes, gear types, and in

different ports or states. The median impact on vessels that rely on groundfish for less than 20 percent of sales would be a 4-percent reduction in sales. By contrast, the median impact on vessels that depend on groundfish trip income for 80-percent of total sales was estimated to be a 26-percent reduction in fishing revenue. The greatest impact on total fishing revenue would be for vessels with home ports in New Hampshire and Massachusetts. Adverse impact on vessels with a Maine home port would be less, but still substantial. The median reduction in revenue would be greatest for vessels less than 50 ft (15.2 m) in length overall, less for vessels between 50 and 70 feet (15.2 - 21.3 m), and even less for vessels greater than 70 feet (15.2 m) in length. The proposed action would have a similar impact on gillnet and trawl vessels, and less impact on hook vessels. Although the analysis indicated that the "Other New Hampshire port group" (the ports of Rye, Seabrook, Hampton, Hampton Beach, Hampton Falls and Newington) would experience the highest estimated reduction in groundfish sales, the impact on the port as a whole would be a 3.4-percent reduction (compared to 2004 sales) because the port group had low dependence on groundfish for total sales. Impacts on the fleet of vessels operating in the inshore GOM would be expected to be higher than those for vessels that fish elsewhere in the GOM, on GB, or in SNE.

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. The proposed action would reduce the economic value of recreational fishing trips and reduce demand for party/charter trips if cod is a preferred target species, despite that 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. The proposed action is likely to have a larger adverse impact on private boat anglers, because a much larger percentage of private boat trips take place during the proposed seasonal cod prohibition in

the GOM. However, a quantitative estimate of the reduced economic value to recreational anglers is not possible due to a lack of appropriate data. An upper bound estimate of the loss to charter/party businesses due to a loss of passenger sales would be \$154,000, assuming a complete loss of passenger demand for the duration of the closed season for cod.

Under the Proposed Alternative, limited access groundfish DAS vessels would be required to purchase, install, and operate a VMS in order to fish under a DAS. Depending upon the vendor selected by an individual vessel owner, the cost to purchase a VMS unit would range approximately from \$ 1,600 to \$ 3,000. The unit that sells for about \$ 1,600 requires a personal computer (PC), also, and, therefore, if the vessel operator needs to purchase a PC, the cost would be greater than \$ 1,600. The installation costs are approximately \$150 - 200 per unit, and the monthly service charges may be between \$25 and \$100 per vessel, depending upon the unit type. Some vessels may also need to make minor modifications to their vessel's electrical system components.

The proposed action includes renewal of several special programs designed to provide fishing opportunity and options to mitigate the negative impacts of the extensive current and proposed fishing effort restrictions. The utility and value of these programs in such mitigation has been demonstrated, but because participation in these programs is voluntary, it is difficult to estimate the impact on any given small entity participating in these programs. Based upon the location of the programs and the location of trips taken in the Regular B DAS Pilot Program, opportunities for mitigation of impacts through these programs may be better for vessels that can fish on GB.

The proposed action would renew and modified the Regular B DAS Program. This program differs from that originally implemented by FW 40-A in that the proposed program would 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 40–A. 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 Catch 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 (which it may), 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.

This proposed 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. Furthermore, 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, due to the greater availability of fish during the summer. 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. Secondly, 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 renewal 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. It is possible, however, that the differential DAS counting in the inshore GOM may negatively affect the ability of vessels that fish in the area to compete effectively in the DAS leasing 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 changing weather conditions and allow an additional fishing strategy, if fishing in the Eastern U.S./Canada Area is worse than anticipated. In these cases, vessel operators may find it to their advantage to leave the Eastern U.S./Canada Area and fish 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.

Economic Impacts of Alternatives to the Proposed Action

The No Action Alternative would reduce the Category A DAS by 8 percent and would implement differential DAS counting in the SNE/MA RMA at a rate of 1.5:1. At the median, the No Action Alternative would result in a 4–6–percent reduction in fishing income. The No Action Alternative would result in an estimated reduction of 7.0–percent in total groundfish revenue (resulting in an estimate of \$ 73 million in the landed value of groundfish for 2006). The reduction in value in groundfish trips represents about 0.7 percent of the total species landed in the Northeast Region. The impacts were similar for vessels from Maine, New Hampshire, and

Massachusetts-- a 2–9–percent reduction in fishing income. Vessels from home ports likely to be affected by the differential DAS counting were estimated to have total revenues reduced by as much as 18 percent. Overall adverse impacts would be largest for Connecticut vessels. The change in total fishing revenue would be similar for gillnet and trawl vessels, and lower for hook vessels. There would be no substantial differences among vessels based on their size. Across ports, the estimated reduction in groundfish trip revenue was highest in ports that are likely to be most affected by the differential DAS counting in the SNE RMA (Rhode Island, Connecticut, Eastern Long Island, New York, and New Jersey). Estimated impacts in these ports ranged from a 7- to 10–percent reduction in groundfish trip revenues. However, groundfish revenue in these ports represents only a small fraction (about 1 percent) of the total value of seafood product sales. Because the groundfish revenue in the ports of Boston, MA; Gloucester, MA; Portsmouth, NH; and Portland, ME; represents a larger portion of their revenue, the total impact on these ports would be greater.

Alternative 1 proposes Category A DAS reductions (22–percent) and differential counting of DAS in areas of the GOM and SNE as the primary effort reduction tools. The alternative would result in estimated losses of 24 percent of groundfish revenue and a reduction of 13 percent in total fishing income (\$26 million). Boston and Portsmouth would experience the largest percent reductions in total port revenue (16–percent). The median reduction in fishing revenue for New Hampshire vessels would be 24 percent. There was not a consistent pattern with respect to the impacts on vessels of difference size classes. Alternative 1 would have similar impacts on vessels using gillnet gear and trawl gear, although impacts on trawl vessels would generally be higher. Median impacts for gillnet and hook gear would be the same (a 12–percent reduction in total fishing revenue). Vessels that fish predominantly in the inshore GOM and that are subject to differential DAS counting would have a larger loss in revenue than vessels that fish in other areas. The median loss in total fishing revenues for these vessels is estimated to be 27 percent, compared to 13 percent for vessels that fish less than 75 percent of their time in this area.

Alternative 2, in a manner similar to Alternative 1, proposes Category A DAS reductions (23–percent) and differential counting of DAS in areas of the GOM

and SNE as the primary effort reduction tools, but both the differential DAS areas would be larger than under alternative 1. Alternative 2 would result in estimated losses of \$21 million in groundfish revenue (approximately 26 percent of groundfish revenue) and a reduction in total revenue of 14 percent. The ports of Portsmouth, Boston, and Gloucester would experience the greatest percent declines in total port revenue (19 percent, 16 percent, and 13 percent, respectively). There was not consistent pattern with respect to the impacts on vessels of difference size classes. Alternative 2 would have consistently larger impacts on vessels using trawl gear, and median impacts would be the same for both gillnet gear and hook gear. Vessels that depend on groundfish for at least 54-percent of their revenue would experience an estimated 21-percent reduction in total fishing revenue (median reduction). For vessels that fish predominantly in the inshore GOM and that are subject to differential DAS counting, the median reduction in total fishing revenues would be 28-percent.

Alternative 3 proposes Category A DAS reductions (38 percent) and counting DAS as a minimum of 12 hr (in the GOM) as the primary effort reduction tools. Alternative 3 would result in estimated losses of \$ 27 million in groundfish revenue (approximately 34 percent of groundfish revenue) and a reduction in total revenue of 18 percent. The ports of Boston, Portsmouth, and Portland would experience the greatest percent declines in total port revenue (24 percent, 22 percent, and 18 percent, respectively). Adverse impacts by vessel length were consistently greater for vessels above 70 ft (21.3 m) and lowest on vessels less than 50 ft (15.2 m) length overall. Alternative 3 would have consistently larger impacts on vessels using trawl gear, and median impacts on gillnet vessels would exceed that of hook gear vessels. Vessels that depend on groundfish for at least 54-percent of their revenue would experience an estimated 30-percent reduction in total fishing revenue (median reduction). For vessels that fish predominantly in the inshore GOM, the median reduction in total fishing revenues would be 26-percent.

Alternative 4 proposes Category A DAS reductions (25 percent) and counting DAS as a minimum of 24 hr (in the GOM) as the primary effort reduction tools. Alternative 4 would result in estimated losses of \$ 23 million in groundfish revenue (approximately 29-percent of groundfish revenue) and a reduction in total revenue of 15 percent. The ports of Portsmouth,

Boston, and Gloucester would experience the greatest percent declines in total port revenue (23 percent, 18 percent, and 15 percent respectively). Adverse impacts by vessel length were generally the same. Alternative 4 would generally have larger impacts on vessels using trawl gear than on gillnet vessels, and hook gear vessels would experience the least impact. Vessels that depend on groundfish for at least 54-percent of their revenue would experience an estimated 25-percent reduction in total fishing revenue (median reduction). For vessels that fish predominantly in the inshore GOM, the median reduction in total fishing revenues would be 35 percent.

Alternative 5 proposes Category A DAS reductions (40 percent) as the principal effort reduction tool. Alternative 4 would result in estimated losses of \$ 28 million in groundfish revenue (approximately 35 percent of groundfish revenue) and a reduction in total revenue of 18 percent. The ports of Boston, Portsmouth, and Portland would experience the greatest percent declines in total port revenue (26 percent, 23 percent, and 19 percent, respectively). Adverse impacts on vessels greater than 70 ft (21.3 m) were consistently greater than on smaller vessels. Alternative 5 would have consistently larger impacts on vessels using trawl gear than on gillnet vessels, and hook gear vessels would experience the least impact. Vessels that depend on groundfish for at least 54-percent of their revenue would experience an estimated 30-percent reduction in total fishing revenue (median reduction). For vessels that fish predominantly in the inshore GOM, the median reduction in total fishing revenues would be 24 percent.

Alternative E proposes the default Category A DAS reductions (8 percent) and counting DAS as a minimum of 24 hr (in all areas) as the primary effort reduction tools. Alternative E would result in estimated losses of \$ 16 million in groundfish revenue (approximately 20-percent of groundfish revenue) and a reduction in total revenue of 10 percent. The ports of Chatham, Portsmouth, and Boston, would experience the greatest percent declines in total port revenue (11-percent, 10 percent, and 10 percent, respectively). Adverse impacts on vessels greater than 70 feet (21.3 m) were consistently greater than for vessels in the size range from 50–70 ft (15.2–21.3 m), but impacts on small vessels less than 50 ft (15.2 m) were estimated to be greatest (at the median) would. Alternative E would generally have larger impacts on vessels using hook gear, and adverse impacts on

gillnet vessels would be greater than on trawl vessels. Vessels that depend on groundfish for at least 54 percent of their revenue would experience an estimated 10-percent reduction in total fishing revenue (median reduction). For vessels that fish predominantly in the inshore GOM, the median reduction in total fishing revenues would be 28 percent.

The alternatives are limited by the need to meet the conservation objectives of the FMP, and the differential impacts of all alternatives on ports and vessels is due in part to the geographic proximity to where the stocks of concern are located.

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, and 0648–0212. Public reporting burdens for these collections of information are estimated as follows:

1. VMS purchase and installation, OMB# 0648–0202, (1 hr/response);
2. VMS proof of installation, OMB# 0648–0202, (5 min/response);
3. Spawning block declaration, OMB# 0648–0202, (2 min/response);
4. Automated VMS polling of vessel position, OMB# 0648–0202, (5 sec/response);
5. Declaration of intent to participate in the Regular B DAS Program or fish in the U.S./Canada Management Areas, associated SAPs, and CA I SAP, and DAS to be used via VMS prior to each trip into the Regular B DAS Program or a particular SAP, 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 associated SAPs, and CA I SAP OMB#0648–0202, (2 min/response);
7. Standardized catch reporting requirements while participating in the Regular B DAS Program or fishing in the U.S./Canada Management Areas, associated SAPs, and CA I SAP, respectively, OMB# 0648–0212, (15 min/response);
8. Standardized reporting of Universal Data I.D. while participating in the Regular B DAS Program or fishing in the U.S./Canada Management Areas, associated SAPs, and CA I SAP, OMB#0648–0212, (15 min/response);
9. Sector Manager daily reports for Closed Area I SAP, OMB#0648–0212, (2 hr/ response);

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

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

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

13. Vessel baseline downgrade request for the DAS Leasing Program, OMB#0648-0202, (1 hr/response);

14. Annual declaration of participation in the CA I Hook Gear Haddock SAP, OMB control number 0648-0202 (2 min/response);

15. Declaration of area and gear via VMS when fishing under a NE multispecies DAS, OMB#0648-0202 (5 min/response); and

16. Declaration of entry into the GOM Differential DAS Area for circumstances beyond its control via VMS, OMB#0648-0202 (5 min/response).

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

Send comments regarding 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: July 18, 2006.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

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

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

2. In § 648.2, a new definition for "Jigging" is added and the definition for "Regulated species" is revised to read as follows:

§ 648.2 Definitions.

* * * * *

Jigging, with respect to the NE multispecies fishery, means fishing for groundfish with handgear, handline, or rod and reel using a jig, which is a weighted object attached to the bottom of the line used to sink the line and/or imitate a baitfish, which is moved ("jigged") with an up and down motion.

* * * * *

Regulated species, means the subset of NE multispecies that includes Atlantic cod, witch flounder, American plaice, yellowtail flounder, haddock, pollock, winter flounder, windowpane flounder, redfish, and white hake, also referred to as regulated NE multispecies.

* * * * *

3. In § 648.10, paragraphs (b)(1)(vii) and (viii) are removed and reserved; paragraphs (b)(1)(v), (b)(1)(vi), (b)(2) and (3), the introductory text to paragraph (c), and paragraphs (c)(5), (d), and (f) are revised to read as follows:

§ 648.10 DAS and VMS notification requirements.

* * * * *

(b) * * *

(1) * * *

(v) A vessel issued a limited access monkfish, Occasional scallop, or Combination permit, whose owner elects to provide the notifications required by this paragraph (b), unless otherwise authorized or required by the Regional Administrator under paragraph (d) of this section;

(vi) A vessel issued a limited access NE multispecies permit that fishes under a NE multispecies Category A or B DAS; and

* * * * *

(2) The owner of such a vessel specified in paragraph (b)(1) of this section, with the exception of a vessel issued a limited access NE multispecies permit, as specified in paragraph (b)(1)(vi) of this section, must provide documentation to the Regional Administrator at the time of application for a limited access permit that the vessel has an operational VMS unit installed on board that meets the minimum performance criteria, unless otherwise allowed under this paragraph (b). If a vessel has already been issued a limited access permit without the owner providing such documentation, the Regional Administrator shall allow at least 30 days for the vessel to install an operational VMS unit that meets the criteria and for the owner to provide documentation of such installation to the Regional Administrator. The owner of a vessel issued a limited access NE multispecies permit that fishes or

intends to fish under a Category A or B DAS, as specified in paragraph (b)(1)(vi) of this section, must provide documentation to the Regional Administrator that the vessel has an operational VMS unit installed on board that meets those criteria prior to fishing under a groundfish DAS. NMFS shall send letters to all limited access NE multispecies DAS permit holders and provide detailed information on the procedures pertaining to VMS purchase, installation, and use.

(i) A vessel that has crossed the VMS Demarcation Line specified under paragraph (a) of this section is deemed to be fishing under the DAS program, unless the vessel's owner or authorized representative declares the vessel out (i.e., not fishing under the applicable DAS program) of the scallop, NE multispecies, or monkfish fishery, as applicable, for a specific time period by notifying the Regional Administrator through the VMS prior to the vessel leaving port, or unless the vessel's owner or authorized representative declares the vessel will be fishing exclusively in the Eastern U.S./Canada Area, as described in § 648.85(a)(3)(ii), under the provisions of that program.

(ii) Notification that the vessel is not under the DAS program must be received prior to the vessel leaving port. A vessel may not change its status after the vessel leaves port or before it returns to port on any fishing trip.

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

(iv) The Regional Administrator may authorize or require the use of the call-in system instead of using the use of

VMS, as described under paragraph (d) of this section. Furthermore, the Regional Administrator may authorize or require the use of letters of authorization as an alternative means of enforcing possession limits, if VMS cannot be used for such purposes.

(3)(i) A vessel issued a limited access monkfish, occasional scallop, or Combination permit must use the call-in system specified in paragraph (c) of this section, unless the owner of such vessel has elected to provide the notifications required by this paragraph (b), through VMS as specified under paragraph (b)(3)(iii) of this section.

(ii) [Reserved]

(iii) A vessel issued a limited access monkfish or Occasional scallop permit may be authorized by the Regional Administrator to provide the notifications required by this paragraph (b) using the VMS specified in this paragraph (b). For the vessel to become authorized, the vessel owner must provide documentation to the Regional Administrator at the time of application for a limited access permit that the vessel has installed on board an operational VMS as provided under § 648.9(a). A vessel that is authorized to use the VMS in lieu of the call-in requirement for DAS notification shall be subject to the requirements and presumptions described under paragraphs (b)(2)(i) through (v) of this section. Vessels electing to use the VMS do not need to call in DAS as specified in paragraph (c) of this section. A vessel that calls in is exempt from the prohibition specified in § 648.14(c)(2).

* * * * *

(c) *Call-in notification.* The owner of a vessel issued limited access monkfish or red crab permit-holders who is participating in a DAS program and who is not required to provide notification using a VMS, and a scallop vessel qualifying for a DAS allocation under the Occasional category and who has not elected to fish under the VMS notification requirements of paragraph (b) of this section, and any vessel that may be required by the Regional Administrator to use the call-in program under paragraph (d) of this section, are subject to the following requirements:

* * * * *

(5) Any vessel that possesses or lands per trip more than 400 lb (181 kg) of scallops; any vessel issued a limited access NE multispecies permit subject to the NE multispecies DAS program requirements that possesses or lands regulated NE multispecies, except as provided in §§ 648.10(b)(2)(iii), 648.17, and 648.89, any vessel issued a limited access monkfish permit subject to the

monkfish DAS program and call-in requirement that possess or lands monkfish above the incidental catch trip limits specified in § 648.94(c); and any vessel issued a limited access red crab permit subject to the red crab DAS program and call-in requirement that possesses or lands red crab above the incidental catch trip limits specified in § 648.263(b)(1); shall be deemed to be in its respective DAS program for purposes of counting DAS, regardless of whether the vessel's owner or authorized representative provides adequate notification as required by paragraphs (b) or (c) of this section.

* * * * *

(d) *Temporary authorization for use of the call-in system.* The Regional Administrator may authorize or require, on a temporary basis, the use of the call-in system of notification specified in paragraph (c) of this section, instead of the use of the VMS. If use of the call-in system is authorized or required, the Regional Administrator shall notify affected permit holders through a letter, notification in the **Federal Register**, e-mail, or other appropriate means.

* * * * *

(f) *Additional NE multispecies call-in requirements—(1) Spawning season call-in.* With the exception of a vessel issued a valid Small Vessel category permit, or the Handgear A permit category, vessels subject to the spawning season restriction described in § 648.82 must notify the Regional Administrator of the commencement date of their 20-day period out of the NE multispecies fishery through the IVR system (or through VMS, if deemed feasible by the Regional Administrator) and provide the following information: Vessel name and permit number, owner and caller name and phone number, and the commencement date of the 20-day period.

(2) *Gillnet call-in.* A vessel subject to the gillnet restriction described in § 648.82 must notify the Regional Administrator of the commencement of its time out of the NE multispecies gillnet fishery using the procedure described in paragraph (f)(1) of this section.

4. In § 648.14, paragraphs (a)(130), (145), (146), (148), (151), (152), and (156); the introductory text of paragraph (c); and paragraphs (c)(7), (23), (25), (33), (49) through (53), (55) through (65) and (78) are revised; paragraphs (c)(48), (c)(54), and (c)(79) are removed and reserved; and paragraphs (a)(173) through (177), (c)(81) through (89), and paragraphs (g)(4) and (5) are added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(130) If declared into one of the areas specified in § 648.85(a)(1), fish during that same trip outside of the declared area, unless in compliance with the applicable restrictions specified under § 648.85(a)(3)(ii)(A) or (B).

* * * * *

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

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

* * * * *

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

* * * * *

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

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

* * * * *

(156) If fishing under an approved Sector, as authorized under § 648.87, fish in the NE multispecies DAS program in a given fishing year or, if fishing under a NE multispecies DAS, fish in an approved Sector in a given fishing year, unless otherwise provided under § 648.87(b)(1)(xii).

* * * * *

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

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

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

Area on the same trip, as prohibited under § 648.85(a)(3)(ii)(A).

(176) If fishing under the GB Fixed Gear Sector specified under § 648.87(d)(2), fish with gear other than jigs, non-automated demersal longline, handgear, or sink gillnets.

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

* * * * *

(c) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a) and (b) of this section, it is unlawful for any owner or operator of a vessel issued a valid limited access multispecies permit or letter under § 648.4(a)(1)(i), unless otherwise specified in § 648.17, to do any of the following:

* * * * *

(7) Possess or land per trip more than the possession or landing limits specified under § 648.86(a), (e), (g), (h), and (j), and under § 648.82(b)(5) or (6), if the vessel has been issued a limited access NE multispecies permit or open access NE multispecies permit, as applicable.

* * * * *

(23) Fail to declare through VMS, its intent to be exempt from the GOM cod trip limit under § 648.86(b)(1), as required under § 648.86(b)(4), or fish north of the exemption line if in possession of more than the GOM cod trip limit specified under § 648.86(b)(1).

* * * * *

(25) For vessels fishing in the NE multispecies DAS program under the provisions of § 648.10(c), the call-in system, fail to remain in port for the appropriate time specified in § 648.86(b)(1)(ii)(A), except for transiting purposes, provided the vessel complies with § 648.86(b)(3). For vessels fishing in the NE multispecies DAS program under the provisions of § 648.10(b), the VMS system, fail to declare through VMS that insufficient DAS have elapsed in order to account for the amount of cod on board the vessel as required under § 648.86(b)(1)(ii)(B).

* * * * *

(33) For vessels fishing in the NE multispecies DAS program under the provisions of § 648.10(c), the call-in system, fail to remain in port for the appropriate time specified in § 648.86(b)(2)(ii)(A), except for transiting purposes, provided the vessel complies with § 648.86(b)(3). For vessels fishing in the NE multispecies DAS program under the provisions of § 648.10(b), the VMS system, fail to

declare through VMS that insufficient DAS have elapsed in order to account for the amount of cod on board the vessel as required under § 648.86(b)(2)(ii)(B).

* * * * *

(48) [Reserved]

(49) Discard legal-sized NE regulated multispecies, ocean pout, or Atlantic halibut while fishing under a Special Access Program, as described in § 648.85(b)(3)(xi), § 648.85(b)(7)(iv)(H) or § 648.85(b)(8)(v)(I).

(50) Discard legal-sized NE regulated multispecies, ocean pout, Atlantic halibut, or monkfish while fishing under a Regular B DAS in the Regular B DAS Program, as described in § 648.85(b)(6)(iv)(E).

(51) If fishing under a Regular B DAS in the Regular B DAS Program, fail to comply with the DAS flip requirements of § 648.85(b)(6)(iv)(E) if the vessel harvests and brings on board more than the landing limit for a groundfish stock of concern specified in § 648.85(b)(6)(iv)(D), other groundfish specified under § 648.86, or monkfish under § 648.94.

(52) If fishing in the Regular B DAS Program, fail to comply with the restriction on DAS use specified in § 648.82(d)(2)(i)(A).

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

(54) [Reserved]

(55) If fishing in the Eastern U.S./Canada Haddock SAP Area under a Category B DAS, fail to comply with the DAS flip requirements of § 648.85(b)(8)(v)(I), if the vessel possesses more than the applicable landing limit specified in § 648.85(b)(8)(v)(F) or under § 648.86 .

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

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

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

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

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

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

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

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

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

(65) If fishing in the Regular B DAS Program specified in § 648.85(b)(6), use a Regular B DAS after the program has closed, as required under § 648.85(b)(6)(iv)(G) or (H).

* * * * *

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

(79) [Reserved]

* * * * *

(81) If fishing in the Regular B DAS Program specified in § 648.85(b)(6), fail to use a haddock separator trawl as described under § 648.85(a)(3)(iii)(A).

(82) If fishing under a NE multispecies Category A DAS in either the GOM Differential DAS Area, or the SNE Differential DAS Area defined under § 648.82(e)(2)(i), fail to declare into the area through VMS as required under § 648.82(e)(2)(ii).

(83) If fishing under a NE multispecies Category A DAS in one of the Differential DAS Areas defined in § 648.82(e)(2)(i), and under the restrictions of one or more of the Special Management Programs under § 648.85, fail to comply with the most restrictive regulations.

(84) Fail to comply with the GB yellowtail flounder trip limit specified under § 648.85(a)(3)(iv)(C).

(85) For vessels fishing inside and outside the Eastern U.S./Canada Area on the same trip, fail to comply with the most restrictive regulations that apply on the trip as required under § 648.85(a)(3)(ii)(A).

(86) For vessels fishing inside and outside the Eastern U.S./Canada Area on the same trip, fail to notify NMFS via

VMS that it is electing to fish in this manner, as required by § 648.85(a)(3)(ii)(A)(1).

(87) For vessels fishing with trawl gear in the NE multispecies Regular B DAS Program, fail to use a haddock separator trawl as required under § 648.85(b)(6)(iv)(j).

(88) Possess or land more white hake than allowed under § 648.86(e).

(89) Possess or land more GB winter flounder than allowed under § 648.86(j).

* * * * *

(g) * * *

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

(5) If fishing under the recreational or party/charter regulations, fish for or possess cod caught in the GOM Regulated Mesh Area during the seasonal GOM cod possession prohibition under § 648.89(c)(1)(v) or (c)(2)(v) or, fail to abide by the appropriate restrictions if transiting with cod on board.

* * * * *

5. In § 648.80, paragraph (b)(2)(i) is revised to read as follows:

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

* * * * *

(b) * * *

(2) * * *

(i) *Vessels using trawls.* Except as provided in paragraphs (b)(2)(i) and (vi) of this section, and unless otherwise restricted under paragraph (b)(2)(iii) of this section, the minimum mesh size for

any trawl net, not stowed and not available for immediate use in accordance with § 648.23(b), except midwater trawl, on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the SNE Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh, applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) square or diamond mesh applied to the codend of the net, as defined under paragraph (a)(3)(i) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

* * * * *

6. In § 648.82, paragraph (c)(1)(iv) is removed; paragraphs (d)(2)(i)(A), the introductory text to paragraph (d)(4), paragraphs (e), (j)(1)(iii), (k)(1), (k)(3), (k)(4)(iv), (l) introductory text, and (l)(1)(i) through (v) are revised; and paragraphs (l)(1)(viii), and (l)(1)(ix) are added to read as follows:

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

* * * * *

(d) * * *

(2) * * *

(i) * * *

(A) *Restrictions on use.* Regular B DAS can only be used by NE multispecies vessels in an approved SAP or in the Regular B DAS Program as specified in § 648.85(b)(6). Unless otherwise restricted under the Regular B DAS Program as described in § 648.85(b)(6)(i), vessels may fish under both a Regular B DAS and a Reserve B DAS on the same trip (i.e., when fishing

in an approved SAP as described in § 648.85(b)). Vessels that are required by the Monkfish Fishery Management Plan to utilize a NE multispecies DAS, as specified under § 648.92(b)(2), may not elect to use a NE multispecies Category B DAS to satisfy that requirement.

* * * * *

(4) *Criteria and procedure for not reducing DAS allocations.* The schedule of reductions in NE multispecies DAS shall not occur if the Regional Administrator:

* * * * *

(e) *Accrual of DAS.* (1) DAS shall accrue to the nearest minute, and with the exceptions described under this paragraph (e) and paragraph (j)(1)(iii) of this section, shall be counted as actual time called, or logged into the DAS program.

(2) *Differential DAS.* For a NE multispecies DAS vessel that intends to fish some or all of its trip, or fishes, some or all of its trip other than for transiting purposes, under a Category A DAS in the GOM Differential DAS Area, as defined in paragraph (e)(2)(i)(A) of this section, or in the SNE Differential DAS Area, as defined in paragraph (e)(2)(i)(B) of this section, with the exception of Day gillnet vessels, which accrue DAS in accordance with paragraph (j)(1)(iii) of this section, each Category A DAS, or part thereof, shall be counted at the differential DAS rate described in paragraph (e)(2)(iii) of this section, and be subject to the restrictions defined in this paragraph (e).

(i) *GOM Differential DAS Areas.* (A) The GOM Differential DAS Area is defined by straight lines connecting the following points in the order stated:

GOM DIFFERENTIAL DAS AREA

Point	N. lat.	W. long.
GMD1	43 ° 30'	Intersection with Maine Coastline.
GMD2	43 ° 30'	69 ° 30'.
GMD3	43 ° 00'	69 ° 30'.
GMD4	43 ° 00'	69 ° 55' eastern boundary, WGOM Closed Area.
GMD5	42 ° 30'	69 ° 55'.
GMD6	42 ° 30'	69 ° 30'.
GMD7	41 ° 30'	69 ° 30'.
GMD8	41 ° 30'	70 ° 00'.
GMD9		North to intersection with Cape Cod, Massachusetts, coast and 70 ° 00' W.

(B) *SNE Differential DAS Area.* The SNE Differential DAS Area is defined by straight lines connecting the following points in the order stated:

SNE DIFFERENTIAL DAS AREA

Point	N. lat.	W. long.
SNED1	41 ° 05'	71 ° 45'
SNED2	41 ° 05'	70 ° 00'
SNED3	41 ° 00'	70 ° 00'

SNE DIFFERENTIAL DAS AREA—Continued

Point	N. lat.	W. long.
SNED4	41 ° 00'	69 ° 30'
SNED5	40 ° 50'	69 ° 30'

SNE DIFFERENTIAL DAS AREA—
Continued

Point	N. lat.	W. long.
SNED6	40 ° 50'	70 ° 20'
SNED7	40 ° 40'	70 ° 20'
SNED8	40 ° 40'	70 ° 30'
SNED9	40 ° 30'	72 ° 30'
SNED10	40 ° 10'	73 ° 00'
SNED11	40 ° 00'	73 ° 15'
SNED12	40 ° 00'	73 ° 40'
SNED13	40 ° 15'	73 ° 40'
SNED14	40 ° 30'	73 ° 00'
SNED15	40 ° 55'	71 ° 45'
SNED16	41 ° 05'	71 ° 45'

(ii) *Declaration.* With the exception of vessels fishing in the Eastern U.S./Canada Area, as described in § 648.85(a)(3)(ii)(A), a NE multispecies DAS vessel that intends to fish, or fishes under a Category A DAS in the GOM Differential DAS Area or the SNE Differential DAS Area, as described in paragraph (e)(2)(i) of this section, must, prior to leaving the dock, declare through the VMS, in accordance with instructions to be provided by the Regional Administrator, which specific differential DAS area the vessel will fish in on that trip. A DAS vessel that fishes in the Eastern U.S./Canada Area and intends to fish subsequently in the GOM Differential DAS Area or the SNE Differential DAS Area under Category A DAS Area must declare its intention to do so through its VMS prior to leaving the Eastern U.S./Canada Area, as specified in § 648.85(a)(3)(ii)(A)(3).

(iii) *Differential DAS counting—(A) Differential DAS counting when fishing in the GOM Differential DAS Area.* For a NE multispecies vessel that intend to fish, or fishes for some or all of its trip other than for transiting purposes under a Category A DAS in the GOM Differential DAS Area, each Category A DAS, or part thereof, shall be counted at the ratio of 2 to 1 for the entire trip, even if only a portion of the trip is spent fishing in the GOM Differential DAS Area. A vessel that has not declared its intent to fish in the GOM Differential DAS Area and that is not transiting, as specified in paragraph (e)(2)(v) of this section, may be in the GOM Differential DAS Area due to bad weather or other circumstances beyond its control, provided the vessel's fishing gear is stowed in accordance with the provisions of § 648.23(b) and the vessel declares immediately upon entering the GOM Differential DAS Area, via VMS, that it is neither fishing nor transiting. A vessel that fishes in both the GOM Differential Area and the SNE Differential DAS Area on the same trip will be charged DAS at the rate of 2 to 1 for the entire trip.

(B) *Differential DAS counting when fishing in the SNE Differential DAS Area.* For a NE multispecies DAS vessel that intends to fish or fishes some or all of its trip other than for transiting purposes under a Category A DAS in the SNE Differential DAS Area, each Category A DAS, or part thereof, shall be counted at the ratio of 2 to 1 for the duration of the time spent in the SNE Differential DAS Area, as determined from VMS positional data. A vessel that fishes in both the GOM Differential Area and the SNE Differential DAS Area on the same trip will be charged DAS at the rate of 2:1 for the entire trip. If the Regional Administrator requires the use of the DAS call-in, as described under § 648.10(b)(2)(iv), a vessel that fishes any portion of its trip in the SNE Differential DAS Area will be charged DAS at the rate of 2 to 1 for the entire trip.

(iv) *Restrictions.* A NE multispecies vessel fishing under a Category A DAS in one of the Differential DAS Areas defined in paragraph (e)(2)(i) of this section, under the restrictions of paragraph (e)(2) of this section and under the restrictions of one or more of the Special Management Programs under § 648.85 is required to comply with the most restrictive regulations, as described in § 648.85 under the pertinent Special Management Program.

(v) *Transiting.* A vessel may transit the GOM Differential DAS Area and the SNE Differential DAS Area, as defined in paragraph (e)(2)(i) of this section, provided the gear is stowed in accordance with the provisions of § 648.23(b).

(3) *Regular B DAS Program 24-hr clock.* For a vessel electing to fish in the Regular B DAS Program, as specified at § 648.85(b)(6), and that remains fishing under a Regular B DAS for the entire fishing trip (without a DAS flip), DAS used shall accrue at the rate of 1 full DAS for each calendar day, or part of a calendar day fished. For example, a vessel that fished on one calendar day from 6 a.m. to 10 p.m. would be charged 24 hr of Regular B DAS, not 16 hr; a vessel that left on a trip at 11 p.m. on the first calendar day and returned at 10 p.m. on the second calendar day would be charged 48 hr of Regular B DAS instead of 23 hr, because the fishing trip would have spanned 2 calendar days. For the purpose of calculating trip limits specified under § 648.86, the amount of DAS deducted from a vessel's DAS allocation shall determine the amount of fish the vessel can legally land. For a vessel electing to fish in the Regular B DAS Program, as specified at § 648.85(b)(6), while also fishing in one of the Differential DAS Areas, defined in

(e)(2)(i) of this section, Category B DAS shall accrue at the rate described in this paragraph (e)(3), unless the vessel flips to a Category A DAS, in which case the vessel is subject to the pertinent DAS accrual restrictions of paragraph (e)(2)(iii) of this section for the entire trip.

* * * * *

(j) * * *

(1) * * *

(iii) *Method of counting DAS.* A Day gillnet vessel fishing with gillnet gear under a NE multispecies DAS shall accrue DAS as follows:

(A) A Day gillnet vessel fishing with gillnet gear that has elected to fish in the Regular B DAS Program, as specified in § 648.85(b)(6), under a Category B DAS, is subject to the DAS accrual provisions of paragraph (e)(3) of this section.

(B) A Day gillnet vessel fishing with gillnet gear under a NE multispecies Category A DAS, when not subject to differential DAS counting as specified under paragraph (e)(2) of this section, shall accrue 15 hr of DAS for each trip of more than 3 hr, but less than or equal to 15 hr. Such vessel shall accrue actual DAS time at sea for trips less than or equal to 3 hr, or more than 15 hr.

(C) A Day gillnet vessel fishing with gillnet gear under a NE multispecies Category A DAS that is fishing in the GOM Differential DAS Area and, therefore, subject to differential DAS counting as specified under paragraph (e)(2)(iii)(A) of this section, shall accrue DAS at a differential DAS rate of 2 to 1 for the actual hours used for any trip of 0–3 hr in duration, and for any trip of greater than 7.5 hr. For such vessels fishing from 3 to 7.5 hr duration, vessels will be charged a full 15 hr. For example, a Day gillnet vessel fishing in the GOM Differential Area for 8 hr would be charged 16 hours of DAS, or if fishing for 5 hr would be charged 15 hr of DAS.

(D) A Day gillnet vessel fishing with gillnet gear under a NE multispecies Category A DAS that is fishing in the SNE Differential DAS Area and, therefore, subject to differential DAS counting as specified under paragraph (e)(2)(iii)(B) of this section, shall accrue DAS at a differential DAS rate of 2 to 1 for the actual hours that are in the SNE Differential DAS Area that are from 0–3 hr in duration and greater than 7.5 hr. For hours in the SNE Differential DAS Area that are over 3 and less than or equal to 7.5 hr duration, a vessel shall be charged a full 15 hr. For a Day gillnet vessel that fishes both inside and outside of the SNE Differential DAS Area on the same trip, time fished outside the area shall accrue on the

basis of actual time, unless otherwise specified in this paragraph (j)(1)(iii). A Day gillnet vessel fishing inside and outside of the SNE Differential DAS Area on the same trip, shall not accrue less DAS for the entire trip than would a Day gillnet vessel fishing the same amount of time outside of the SNE Differential DAS Area for the entire trip (accruing DAS as specified under paragraph (j)(1)(iii)(B) of this section).

* * * * *

(k) * * *

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

* * * * *

(3) *Application to lease NE multispecies DAS.* To lease Category A DAS, the eligible Lessor and Lessee vessel must submit a completed application form obtained from the Regional Administrator. The application must be signed by both Lessor and Lessee and be submitted to the Regional Office at least 45 days before the date on which the applicants desire to have the leased DAS effective. The Regional Administrator will notify the applicants of any deficiency in the application pursuant to this section. Applications may be submitted at any time prior to the start of the fishing year or throughout the fishing year in question, up until the close of business on March 1. Eligible vessel owners may submit any number of lease applications throughout the application period, but any DAS may only be leased once during a fishing year.

(4) * * *

(iv) *Maximum number of DAS that can be leased.* A Lessee may lease Category A DAS in an amount up to such vessel's 2001 fishing year allocation (excluding carry-over DAS from the previous year, or additional DAS associated with obtaining a Large Mesh permit). For example, if a vessel was allocated 88 DAS in the 2001 fishing year, that vessel may lease up to 88 Category A DAS. The total number of Category A DAS that the vessel could fish would be the sum of the 88 leased DAS and the vessel's current allocation of Category A DAS.

* * * * *

(l) *DAS Transfer Program.* Except for vessels fishing under a sector allocation as specified in § 648.87, or a vessel that acted as a lessee or lessor in the DAS Leasing Program transaction, a vessel

issued a valid limited access NE multispecies permit may transfer all or its NE multispecies DAS for an indefinite time to another vessel with a valid NE multispecies permit, in accordance with the conditions and restrictions described under this section. The Regional Administrator has final approval authority for all NE multispecies DAS transfer requests.

(1) *DAS transfer conditions and restrictions.* (i) The transferor vessel must transfer all of its DAS. Upon approval of the DAS transfer, all history associated with the transferred NE multispecies DAS (moratorium right history, DAS use history, and catch history) shall be associated with the permit rights of the transferee. Neither the individual permit history elements, nor total history associated with the transferred DAS may be retained by the transferor.

(ii) NE multispecies DAS may be transferred only to a vessel with a baseline main engine horsepower rating that is no more than 20 percent greater than the baseline engine horsepower of the transferor vessel. NE multispecies DAS may be transferred only to a vessel with a baseline length overall that is no more than 10 percent greater than the baseline length overall of the transferor vessel. For the purposes of this program, the baseline horsepower and length overall are those associated with the permit as of January 29, 2004. Upon approval of the transfer, the baseline of the transferee vessel would be the smaller baseline of the two vessels or, if the transferee vessel had not previously upgraded under the vessel replacement rules, the vessel owner could choose to adopt the larger baseline of the two vessels, which would constitute the vessel's one-time upgrade, if such upgrade is consistent with the vessel replacement rules.

(iii) The transferor vessel must transfer all of its Federal limited access permits for which it is eligible to the transferee vessel in accordance with the vessel replacement restrictions under § 648.4, or permanently cancel such permits. When duplicate permits exist, i.e. those permits for which both the transferor and transferee vessel are eligible, one of the duplicate permits must be permanently cancelled.

(iv) For the purpose of calculating the DAS conservation tax as described in this paragraph (l), the applicants must specify which DAS (the transferor's DAS or the transferee's DAS) are subject to the DAS reduction. NE multispecies Category A and Category B DAS, as defined under paragraphs (d)(1) and (2) of this section, shall be reduced by 20 percent upon transfer. Category C DAS,

as defined under paragraph (d)(3) of this section, will be reduced by 90 percent upon transfer.

(v) In a particular fishing year, a vessel may not execute a DAS transfer as a transferor if it previously participated in the DAS Leasing Program as either a lessee or a lessor, as described under paragraph (k) of this section. A vessel may participate in DAS lease transaction (as a lessee or a lessor) and submit an application for a DAS transfer (as a transferor) during the same fishing year, but the transfer, if approved, would not be effective until the beginning of the following fishing year. Other combinations of activities under the DAS Leasing and DAS Transfer programs are permissible during the same fishing year (i.e., act as a transferee, or act as transferor and subsequently conduct a DAS lease).

* * * * *

(viii) A vessel with a NE multispecies limited access Category D permit may transfer DAS only to a vessel with a NE multispecies limited access Category D permit, but may receive transferred DAS from any eligible NE multispecies vessel.

(ix) A vessel with a DAS allocation resulting from a DAS Transfer in accordance with this paragraph (l) may acquire, through leasing, up to the sum of the DAS allocations for the 2001 fishing year, associated with the transferred and original DAS (excluding carry-over DAS from the previous year, or additional DAS associated with obtaining a Large Mesh permit), in accordance with the restrictions of paragraph (k) of this section.

* * * * *

7. In § 648.85, paragraphs (a)(3)(ii)(A); (a)(3)(iv)(A); (a)(3)(iv)(C)(1) and (2); (a)(3)(iv)(D); (a)(3)(v); (b)(3)(xi); (b)(5); (b)(6)(iii); (b)(6)(iv)(C) through (F), (H), and (I), (b)(6)(v)(C) and (E); (b)(6)(vi); (b)(7)(iv)(F) through (H); (b)(7)(v)(D); (b)(7)(vi)(D); the introductory text of paragraph (b)(8); and paragraphs (b)(8)(i) and (b)(8)(iv); (b)(8)(v)(A) introductory text; (b)(8)(v)(A)(2) through (4); (b)(8)(v)(E), (F), (H), (I) and (K) are revised; and paragraphs (b)(6)(ii) and (b)(8)(iii) are removed and reserved; and paragraph (b)(6)(iv)(J) is added to read as follows:

§ 648.85 Special Management Programs.

* * * * *

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

(A) A vessel fishing under a NE multispecies DAS in the Eastern U.S./Canada Area may fish both inside and outside of the Eastern U.S./Canada Area

on the same trip, provided it complies with the more restrictive regulations, including possession limits, for the areas fished for the entire trip, and provided it complies with the restrictions specified in paragraphs (a)(3)(ii)(A)(1) through (4) of this section. On a trip when the vessel operator elects to fish both inside and outside of the Eastern U.S./Canada Area, all cod, haddock, and yellowtail flounder caught on the trip will count toward the applicable hard TAC specified for the U.S./Canada Management Area.

(1) The vessel operator must notify NMFS via VMS any time prior to leaving the Eastern U.S./Canada Area (including at the time of initial declaration into the Eastern U.S./Canada Area) that it is also electing to fish, i.e., harvest fish, outside the Eastern U.S./Canada Area. With the exception of vessels participating in the Regular B DAS Program and fishing under a Regular B DAS, once a vessel that has elected to fish outside of the Eastern U.S./Canada Area leaves the Eastern U.S./Canada Area, Category A DAS will accrue from the time the vessel crosses the VMS demarcation line at the start of its fishing trip until the time the vessel crosses the demarcation line on its return to port, in accordance with § 648.10 (b)(2)(iii).

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

(3) If the vessel fishes or intend to fish in one of the Differential DAS Areas defined under § 648.82(e)(2)(i) it must declare its intent to fish, i.e., harvest fish, in the specific Differential DAS Area prior to leaving the Eastern U.S./Canada Area, and must not have exceeded the CC/GOM or SNE/MA yellowtail flounder trip limits, specified in § 648.86(g) for the respective areas.

(4) If a vessel possesses yellowtail flounder in excess of the trip limits for CC/GOM yellowtail flounder or SNE/MA yellowtail flounder, as specified in § 648.86(g), the vessel may not fish in either the CC/GOM or SNE/MA yellowtail flounder stock area during that trip (i.e., may not fish outside of the U.S./Canada Management Area).

* * * * *

(iv) * * *

(A) *Cod landing limit restrictions.* Notwithstanding other applicable possession and landing restrictions under this part, a NE multispecies vessel fishing in the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) of this section may not land

more than 500 lb (226.8 kg) of cod per DAS, or any part of a DAS, up to 5,000 lb (2,268 kg) per trip. A vessel fishing in the Eastern U.S./Canada Area may be further restricted by participation in other Special Management Programs as required under this section.

* * * * *

(C) * * *

(1) *Initial yellowtail flounder landing limit.* Unless further restricted under paragraph (a)(3)(iv)(D) of this section (gear performance incentives), or, modified pursuant to paragraph (a)(3)(iv)(D), the initial yellowtail flounder landing limit for each fishing year is 10,000 lb (4,536.2 kg) per trip.

(2) *Regional Administrator authority to adjust the yellowtail flounder landing limit mid-season.* If, based upon available information, the Regional Administrator projects that the yellowtail flounder catch may exceed the yellowtail flounder TAC for a fishing year, the Regional Administrator may implement, adjust, or remove the yellowtail flounder landing limit at any time during that fishing year in order to prevent yellowtail flounder catch from exceeding the TAC, in a manner consistent with the Administrative Procedure Act. If, based upon available information, the Regional Administrator projects that the yellowtail flounder catch is less than 90 percent of the TAC, the Regional Administrator may adjust, or remove the yellowtail flounder landing limit at any time during the fishing year in order to facilitate the harvest of the TAC (in a manner consistent with the Administrative Procedure Act). The Regional Administrator may specify yellowtail flounder trip limits that apply to the whole U.S./Canada Management Area or to either the Western or Eastern Area.

* * * * *

(D) *Other restrictions or in-season adjustments.* In addition to the possession restrictions specified in paragraph (a)(3)(iv) of this section, the Regional Administrator, in a manner consistent with the Administrative Procedure Act, may modify the gear requirements, modify or close access to the U.S./Canada Management Areas, modify the trip limits specified under paragraphs (a)(3)(iv)(A) through (C) of this section, or modify the total number of trips into the U.S./Canada Management Area, to prevent over-harvesting or under-harvesting the TAC. Such adjustments may be made at any time during the fishing year, or prior to the start of the fishing year. If necessary to give priority to using Category A DAS versus using Category B DAS, the Regional Administrator may implement

different management measures for vessels using Category A DAS than for vessels using Category B DAS. If the Regional Administrator, under this authority, requires use of a particular gear type in order to reduce catches of stocks of concern, unless further restricted elsewhere in this part, the following gear performance incentives will apply: Possession of flounders (all species combined), monkfish, and skates is limited to 500 lb (226.8 kg)(whole weight) each (i.e., no more than 500 lb (226.8 kg) of all flounders, no more than 500 lb (226.8 kg) of monkfish, and no more than 500 lb (226.8 kg) of skates), and possession of lobsters is prohibited.

* * * * *

(v) *Reporting.* The owner or operator of a NE multispecies DAS vessel must submit reports via VMS, in accordance with instructions provided by the Regional Administrator, for each day of the fishing trip when declared into either of the U.S./Canada Management Areas. The vessel must continue to report daily even after exiting the U.S./Canada Management Area. The reports must be submitted in 24-hr intervals for each day, beginning at 0000 hr and ending at 2400 hr, and must be submitted by 0900 hr of the following day, or as instructed by the Regional Administrator. The reports must include at least the following information:

(A) Total pounds of cod, haddock, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake kept; and total pounds of cod, haddock, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake discarded;

(B) Date fish were caught; and

(C) Vessel Trip Report (VTR) serial number, as instructed by the Regional Administrator.

* * * * *

(b) * * *

(3) * * *

(xi) *No-discard provision and DAS flips.* A vessel fishing in the CA II Yellowtail Flounder SAP, may not discard legal-sized regulated NE multispecies, Atlantic halibut, or ocean pout. If a vessel fishing in the CA II Yellowtail Flounder SAP exceeds an applicable trip limit, the vessel must exit the SAP. If a vessel operator fishing in the CA II Yellowtail Flounder SAP under a Category B DAS harvests and brings on board more legal-sized regulated NE multispecies, ocean pout, or Atlantic halibut than the maximum landing limits allowed per trip, specified under paragraph (b)(3)(iv) or (viii) of this section, or under § 648.86,

the vessel operator must immediately notify NMFS via VMS to initiate a DAS flip (from a Category B DAS to a Category A DAS). Once this notification has been received by NMFS, the vessel's entire trip will accrue as a Category A DAS trip. For a vessel that notifies NMFS of a DAS flip, the Category B DAS that have accrued between the time the vessel started accruing Category B DAS (i.e., either at the beginning of the trip, or at the time the vessel crossed into the Eastern U.S./Canada Area) and the time the vessel declared its DAS flip will be accrued as Category A DAS, and not Category B DAS.

* * * * *

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

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

(ii) *GB cod.* The Incidental Catch TAC for GB cod specified under this paragraph (b)(5) shall be subdivided as follows: 50 percent to the Regular B DAS Program, described in paragraph (b)(6) of this section; 16 percent to the CA I Hook Gear Haddock SAP described in paragraph (b)(7) of this section; and 34 percent to the Eastern U.S./Canada Haddock SAP, described in paragraph (b)(8) of this section.

(iii) *GB yellowtail flounder and GB winter flounder.* Each of the Incidental Catch TACs for GB yellowtail flounder and GB winter flounder specified under this paragraph (b)(5) shall be subdivided as follows: 50 percent to the Regular B DAS Program, described in paragraph (b)(6) of this section; and 50 percent to the Eastern U.S./Canada Haddock SAP, described in paragraph (b)(8) of this section.

* * * * *

(6) * * *

(ii) [Reserved]

(iii) *Quarterly Incidental Catch TACs.* The Incidental Catch TACs specified in accordance with paragraph (b)(5) of this section will be divided into quarterly catch TACs as follows: The first quarter will receive 13 percent of the Incidental Catch TACs and the remaining quarters will each receive 29 percent of the Incidental Catch TACs. NMFS will send letters to all limited access NE multispecies permit holders notifying them of such TACs.

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

(D) *Landing limits.* Unless otherwise specified in this paragraph (b)(6)(iv)(D), a NE multispecies vessel fishing in the Regular B DAS Program described in this paragraph (b)(6), and fishing under a Regular B DAS, may not land more than 100 lb (45.5 kg) per DAS, or any part of a DAS, up to a maximum of 1,000 lb (454 kg) per trip, of any of the following species/stocks: Cod, American plaice, white hake, witch flounder, SNE/MA winter flounder, GB winter flounder, GB yellowtail flounder, southern windowpane flounder, and ocean pout, and may not land more than 25 lb (11.3 kg) per DAS, or any part of a DAS, up to a maximum of 250 lb (113 kg) per trip of CC/GOM or SNE/MA yellowtail flounder. In addition, trawl vessels, which are required to fish with a haddock separator trawl, as specified under paragraph (b)(6)(iv)(f) of this section, and other gear that may be required in order to reduce catches of stocks of concern as described under paragraph (b)(6)(iv)(j) of this section, are restricted to the following trip limits: 500 lb (227 kg) of all flatfish species (American plaice, witch flounder, winter flounder, windowpane flounder, and GB yellowtail flounder), combined, 500 lb (227 kg) of monkfish (whole weight), 500 lb (227 kg) of skates (whole weight), and zero possession of lobsters, unless otherwise restricted by § 648.94(b)(7).

(E) *No-discard provision and DAS flips.* A vessel fishing in the Regular B DAS Program under a Regular B DAS may not discard legal-sized regulated groundfish, ocean pout, Atlantic halibut, or monkfish. This prohibition on discarding does not apply in areas or

times where the possession or landing of groundfish is prohibited. If such a vessel harvests and brings on board legal-sized regulated NE multispecies, or Atlantic halibut in excess of the allowable landing limits specified in paragraph (b)(6)(iv)(D) of this section or § 648.86, the vessel operator must notify NMFS immediately via VMS to initiate a DAS flip from a B DAS to A DAS. Once this notification has been received by NMFS, the vessel will automatically be switched by NMFS to fishing under a Category A DAS for its entire fishing trip. Thus, any Category B DAS that accrued between the time the vessel declared into the Regular B DAS Program at the beginning of the trip (i.e., at the time the vessel crossed the demarcation line at the beginning of the trip) and the time the vessel declared its DAS flip will be accrued as Category A DAS, and not Regular B DAS. After flipping to a Category A DAS, the vessel is subject to the trip limits specified under § 648.86.

(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 that the vessel has at the start of the trip. If a vessel is fishing in the GOM Differential DAS Area or the SNE Differential DAS Area, as described in § 648.82(e)(2)(i), the number of Regular B DAS that can be used on a trip cannot exceed the number of Category A DAS that the vessel has at the start of the trip divided by 2. For example, if a vessel plans a trip under the Regular B DAS Program into the GOM Differential DAS Area and has 10 Category A DAS available at the start of the trip, the maximum number of Regular B DAS that the vessel may fish under the Regular B Program is 5. A vessel fishing in the Regular B DAS Program for its entire trip will accrue DAS in accordance with § 648.82(e)(3).

* * * * *

(H) *Closure of Regular B DAS Program and quarterly DAS limits.* Unless otherwise closed as a result of the harvest of an Incidental Catch TAC as described in paragraph (b)(6)(iv)(G) of this section, or as a result of an action by the Regional Administrator under paragraph (b)(6)(vi) of this section, the use of Regular B DAS shall, in a manner consistent with the Administrative Procedure Act, be prohibited when 500 Regular B DAS have been used during the first quarter of the fishing year (May-July), or when 1,000 Regular B DAS have been used during any of the remaining quarters of the fishing year, in accordance with § 648.82(e)(3).

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

and VTR serial number, as instructed by the Regional Administrator. Daily reporting must continue even if the vessel operator is required to flip, as described under paragraph (b)(6)(iv)(E) of this section.

(J) *Gear requirement—*(1) Vessels fishing with trawl gear in the Regular B DAS Program must use a haddock separator trawl as described under paragraph (a)(3)(iii)(A) of this section, or other type of gear if approved as described under this paragraph (b)(6)(iv)(J). Other gear may be on board the vessel, provided it is stowed when the vessel is fishing under the Regular B DAS Program.

(2) The Regional Administrator may authorize the use of additional gear for this program if it has been demonstrated to reduce the catch of groundfish stocks of concern based on approved gear

standards implemented pursuant to paragraph (b)(6)(iv)(J)(3) of this section.

(3) The Regional Administrator may not authorize additional gear unless the Council first recommends to the Regional Administrator, and the Regional Administrator approves, gear standards in a manner consistent with the Administrative Procedure Act. If the Regional Administrator does not approve any gear standards recommended by the Council for use in the Regular B DAS Program, NMFS must provide a written rationale to the Council regarding its decision not to do so.

(v) * * *

(C) *CC/GOM yellowtail flounder stock area.* The CC/GOM yellowtail flounder stock area for the purposes of the Regular B DAS Program is the area defined by straight lines connecting the following points in the order stated:

CC/GOM YELLOWTAIL FLOUNDER STOCK AREA

Point	N. lat.	W. long.
CCGOM1	43 ° 00'	Intersection with New Hampshire Coastline.
CCGOM2	43 ° 00'	70 ° 00'.
CCGOM3	42 ° 30'	70 ° 00'.
CCGOM4	42 ° 30'	69 ° 30'.
CCGOM5	41 ° 30'	69 ° 30'.
CCGOM6	41 ° 30'	69 ° 00'.
CCGOM7	41 ° 00'	69 ° 00'.
CCGOM8	41 ° 00'	69 ° 30'.
CCGOM5	41 ° 30'	69 ° 30'.
CCGOM9	41 ° 30'	70 ° 00'.
CCGOM10	1	70 ° 00'.
CCGOM11	42 ° 00'	Intersection with east facing shoreline of Cape Cod, Massachusetts.
CCGOM12	42 ° 00'	Intersection with west facing shoreline of Massachusetts.
CCGOM13	2	70 ° 00'.

1 Intersection with south facing shoreline of Cape Cod, Massachusetts
 2 Intersection with east facing shoreline of Cape Cod, Massachusetts

* * * * *

(E) *SNE/MA yellowtail flounder stock area.* The SNE/MA yellowtail flounder

stock area for the purposes of the Regular B DAS Program is the area bounded on the north, east, and south

by straight lines connecting the following points in the order stated:

SNE/MA YELLOWTAIL FLOUNDER STOCK AREA

Point	N. lat.	W. long.
SNEMA1	40 ° 00'	74 ° 00'.
SNEMA2	40 ° 00'	72 ° 00'.
SNEMA3	40 ° 30'	72 ° 00'.
SNEMA4	40 ° 30'	69 ° 30'.
SNEMA5	41 ° 00'	69 ° 30'.
SNEMA6	41 ° 00'	69 ° 00'.
SNEMA7	41 ° 30'	69 ° 00'.
SNEMA8	41 ° 30'	70 ° 00'.
SNEMA9	41 ° 00'	70 ° 00'.
SNEMA10	41 ° 00'	70 ° 30'.
SNEMA11	41 ° 30'	70 ° 30'.
SNEMA12	1	72 ° 00'.
SNEMA13	2	72 ° 00'.
SNEMA14	3	73 ° 00'.
SNEMA15	40 ° 30'	73 ° 00'.
SNEMA16	40 ° 30'	74 ° 00'.

SNE/MA YELLOWTAIL FLOUNDER STOCK AREA—Continued

Point	N. lat.	W. long.
SNEMA17	40 ° 00'	74 ° 00'

- 1 South facing shoreline of Connecticut
- 2 North facing shoreline of Long Island, New York
- 3 South facing shoreline of Long Island, New York

* * * * *

(vi) *Closure of the Regular B DAS Program.* The Regional Administrator, based upon information required under §§ 648.7, 648.9, 648.10, or 648.85, and any other relevant information may, in a manner consistent with the Administrative Procedure Act, prohibit the use of Regular B DAS for the duration of a quarter or fishing year, if it is projected that continuation of the Regular B DAS Program would undermine the achievement of the objectives of the FMP or Regular B DAS Program. Reasons for terminating the program include, but are not limited to the following: Inability to constrain catches to the Incidental Catch TACs; evidence of excessive discarding; a significant difference in flipping rates between observed and unobserved trips; or insufficient observer coverage to adequately monitor the program.

(7) * * *

(iv) * * *

(F) *Haddock TAC.* The maximum total amount of haddock that may be caught (landings and discards) in the Closed Area I Hook Gear SAP Area in any fishing year is based upon the size of the TAC allocated for the 2004 fishing year (1,130 mt live weight), adjusted according to the growth or decline of the western GB (WGB) haddock exploitable biomass (in relationship to its size in 2004), according the following formula: Biomass YEAR X = (1,130 mt live weight) x (Projected WGB Haddock Exploitable Biomass_{YEAR X} / WGB Haddock Exploitable Biomass₂₀₀₄). The size of the western component of the stock is considered to be 35 percent of the total stock size, unless modified by a stock assessment. The Regional Administrator is authorized to specify the haddock TAC for the SAP, in a manner consistent with the Administrative Procedure Act, based on the best available scientific information.

(G) *Trip restrictions.* A vessel is prohibited from deploying fishing gear outside of the Closed Area I Hook Gear Haddock SAP Area on the same fishing trip on which it is declared into the Closed Area I Hook Gear Haddock SAP, and must exit the SAP if the vessel exceeds the applicable landing limits described in paragraph (b)(7)(iv)(H) of this section.

(H) *Landing limits.* For all eligible vessels declared into the Closed Area I Hook Gear Haddock SAP described in paragraph (b)(7)(i) of this section, landing limits for NE multispecies other than cod, which are specified at paragraphs (b)(7)(v)(C) and (b)(7)(vi)(C) of this section, are as specified at § 648.86. Such vessels are prohibited from discarding legal-sized regulated NE multispecies, Atlantic halibut, and ocean pout, and must exit the SAP and cease fishing if any trip limit is achieved or exceeded.

* * * * *

(v) * * *

(D) *Reporting requirements.* The owner or operator of a Sector vessel declared into the Closed Area I Hook Gear Haddock SAP must submit reports to the Sector Manager, with instructions to be provided by the Sector Manager, for each day fished in the Closed Area I Hook Gear Haddock SAP Area. The Sector Manager will provide daily reports to NMFS, including at least the following information: Total pounds of haddock, cod, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake kept; total pounds of haddock, cod, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake discarded; date fish were caught; and VTR serial number, as instructed by the Regional Administrator. Daily reporting must continue even if the vessel operator is required to exit the SAP as required under paragraph (b)(7)(iv)(G) of this section.

* * * * *

(vi) * * *

(D) *Reporting requirements.* The owner or operator of a non-Sector vessel declared into the Closed Area I Hook Gear Haddock SAP must submit reports via VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished in the Closed Area I Hook Gear Haddock SAP Area. The reports must be submitted in 24-hr intervals for each day fished, beginning at 0000 hr and ending at 2400 hr. The reports must be submitted by 0900 hr of the day following fishing. The reports must include at least the following information: Total pounds of haddock, cod, yellowtail flounder, winter

flounder, witch flounder, American plaice, and white hake kept; total pounds of haddock, cod, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake discarded; date fish were caught; and VTR serial number, as instructed by the Regional Administrator. Daily reporting must continue even if the vessel operator is required to exit the SAP as required under paragraph (b)(7)(iv)(G) of this section.

* * * * *

(8) *Eastern U.S./Canada Haddock SAP—(i) Eligibility.* Vessels issued a valid limited access NE multispecies DAS permit, and fishing with trawl gear as specified in paragraph (b)(8)(v)(E) of this section, are eligible to participate in the Eastern U.S./Canada Haddock SAP, and may fish in the Eastern U.S./Canada Haddock SAP Area, as described in paragraph (b)(8)(ii) of this section, during the season specified in paragraph (b)(8)(iv) of this section, provided such vessels comply with the requirements of this section, and provided the SAP is not closed according to the provisions specified in paragraphs (b)(8)(v)(K) or (L) of this section, or the Eastern U.S./Canada Area is not closed as described under paragraph (a)(3)(iv)(E) of this section.

* * * * *

(iii) [Reserved]

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

(v) * * *

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

* * * * *

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

(3) A vessel may choose, on the same trip, to fish in either/both the Eastern U.S./Canada Haddock SAP Program and the Closed Area II Yellowtail Flounder Access Area, and in the portion of the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) of this section that lies outside of these two SAPs, provided the vessel fishes under a Category A DAS and abides by the VMS restrictions of paragraph (b)(8)(v)(D) of this section. Such a vessel may also elect to fish outside of the Eastern U.S./Canada Area on the same trip, in accordance with the restrictions of paragraph (a)(3)(ii)(A) of this section.

(4) Vessels that elect to fish in multiple areas, as described in this paragraph (b)(8)(v)(A), must fish under the most restrictive trip provisions of the areas fished for the entire trip, including those in paragraph (a)(3)(ii)(A)(3) of this section.

(E) *Gear restrictions*—(1) A NE multispecies vessel fishing in the Eastern U.S./Canada Haddock SAP must use 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, or other type of gear if approved as described under this paragraph (b)(8)(v)(E). No other type of fishing gear may be on the vessel when on a trip in the Eastern U.S./Canada Haddock SAP, with the exception of a flounder net, as described in paragraph (a)(3)(iii) of this section, provided that the flounder net is stowed in accordance with § 648.23 (b).

(2) The Regional Administrator may authorize the use of additional gear for this program if it has been demonstrated to reduce the catch of groundfish stocks of concern based on approved gear standards implemented pursuant to paragraph (b)(8)(v)(E)(3) of this section.

(3) The Regional Administrator may not authorize additional gear unless the Council first recommends to the Regional Administrator, and the Regional Administrator approves, gear standards in a manner consistent with the Administrative Procedure Act. If the Regional Administrator does not approve any gear standards recommended by the Council for use in the Eastern U.S./Canada Haddock SAP, NMFS must provide a written rationale to the Council regarding its decision not to do so.

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

multispecies vessel fishing in the Eastern U.S./Canada Haddock SAP is subject to the haddock requirements described under § 648.86(a), unless further restricted under paragraph (a)(3)(iv) of this section. A NE multispecies vessel fishing in the Eastern U.S./Canada Haddock SAP under a Category B DAS may not land more than 100 lb (45.5 kg) per DAS, or any part of a DAS, of GB yellowtail flounder and 100 lb (45.5 kg) of GB winter flounder, up to a maximum of 500 lb (227 kg) of all flatfish species, combined. Possession of monkfish (whole weight), and skates (whole weight) is limited to 500 lb (227 kg) each, and possession of lobsters is prohibited.

(H) *Incidental TACs*. The maximum amount of GB cod, and the amount of GB yellowtail flounder and GB winter flounder, both landings and discards, that may be caught when fishing in the Eastern U.S./Canada Haddock SAP Program in a fishing year by vessels fishing under a Category B DAS, as authorized in paragraph (b)(8)(v)(A), is the amount specified in paragraphs (b)(5)(ii) and (iii), respectively.

(I) *No discard provision and DAS flips*. A vessel fishing in the Eastern U.S./Canada Haddock SAP Program may not discard legal-sized regulated NE multispecies, Atlantic halibut, and ocean pout. If a vessel fishing in the Eastern U.S./Canada Haddock SAP under a Category B DAS exceeds the applicable maximum landing limit per trip specified under paragraph (b)(8)(v)(F) of this section, or under § 648.86, the vessel operator must retain the fish and immediately notify NMFS via VMS to initiate a DAS flip (from a Category B DAS to a Category A DAS). After flipping to a Category A DAS the vessel is subject to all landing limits specified under § 648.86. If a NE multispecies vessel fishing in this SAP, while under a Category B DAS or a Category A DAS exceeds a trip limit specified under paragraph (b)(8)(v)(F) of this section or § 648.86, or other applicable trip limit, the vessel must immediately exit the SAP area defined under paragraph (b)(8)(ii) of this section, for the remainder of the trip. For a vessel that notifies NMFS of a DAS flip, the Category B DAS that have accrued between the time the vessel started accruing Category B DAS and the time the vessel declared its DAS flip will be accrued as Category A DAS, and not Category B DAS.

(K) *Mandatory closure of Eastern U.S./Canada Haddock SAP*. When the

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

8. In § 648.86, the section heading, paragraphs (a)(1), (b)(1), (b)(2), (b)(4), (e), and (g) are revised, and paragraph (j) is added, to read as follows:

§ 648.86 NE Multispecies possession restrictions.

(a) *NE multispecies DAS vessels*—(i) Implementation and adjustments to the haddock trip limit to prevent exceeding the target TAC. At any time prior to or during the fishing year, if the Regional Administrator projects that the target TAC for haddock will be exceeded in that fishing year, NMFS may implement or adjust, in a manner consistent with the Administrative Procedure Act, a per DAS possession limit and/or a maximum trip limit in order to prevent exceeding the target TAC in that fishing year.

(ii) Implementation and adjustments to the haddock trip limit to facilitate harvest of the target TAC. At any time prior to or during the fishing year, if the Regional Administrator projects that less than 90 percent of the target TAC for that fishing year will be harvested, NMFS may remove or adjust, in a manner consistent with the Administrative Procedure Act, a per DAS possession limit and/or a maximum trip limit in order to facilitate haddock harvest and enable the total catch to approach the target TAC for that fishing year.

(b) *GOM cod landing limit*. (i) Except as provided in paragraphs (b)(1)(ii) and (b)(4) of this section, or unless otherwise restricted under § 648.85, a vessel fishing under a NE multispecies DAS may land only up to 800 lb (362.9 kg) of cod during the first 24-hr period after the vessel has started a trip on which cod were landed (e.g., a vessel that starts a trip at 6 a.m. may call out of the DAS program at 11 a.m. and land up to 800 lb (362.9 kg), but the vessel cannot land any more cod on a subsequent trip until at least 6 a.m. on the following day). For

each trip longer than 24 hr, a vessel may land up to an additional 800 lb (362.9 kg) for each additional 24-hr block of DAS fished, or part of an additional 24-hr block of DAS fished, up to a maximum of 4,000 lb (1,818.2 kg) per trip (e.g., a vessel that has been called into the DAS program for more than 24 hr, but less than 48 hr, may land up to, but no more than, 1,600 lb (725.7 kg) of cod). A vessel that has been called into only part of an additional 24-hr block of a DAS (e.g., a vessel that has been called into the DAS program for more than 24 hr, but less than 48 hr) may land up to an additional 800 lb (362.9 kg) of cod for that trip, provided the vessel complies with the provisions of paragraph (b)(1)(ii) of this section. Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) A vessel that has been called into or declared into only part of an additional 24-hr block may come into port with and offload cod up to an additional 800 lb (362.9 kg), provided that the vessel operator, with the exception of vessels fishing in one of the two Differential DAS Areas under the restrictions of § 648.82(e)(2)(i), complies with the following:

(A) For a vessel that is subject to the VMS provisions specified under § 648.10(b), the vessel declares through VMS that insufficient DAS have elapsed in order to account for the amount of cod onboard and, after returning to port, does not depart from a dock or mooring in port, unless transiting as allowed under paragraph (b)(3) of this section, until the rest of the additional 24-hr block of the DAS has elapsed, regardless of whether all of the cod on board is offloaded (e.g., a vessel that has been in the DAS program for 25 hr prior to crossing the VMS demarcation line on the return to port) may land only up to 1,600 lb (725.6 kg) of cod, provided the vessel does not declare another trip or leave port until 48 hr have elapsed from the beginning of the trip).

(B) For a vessel that has been authorized by the Regional Administrator to utilize the DAS call-in system, as specified under § 648.10(c), in lieu of VMS, the vessel does not call out of the DAS program as described under § 648.10(c)(3) and does not depart from a dock or mooring in port, unless transiting as allowed in paragraph (b)(3) of this section, until the rest of the additional 24-hr block of DAS has elapsed, regardless of whether all of the cod on board is offloaded (e.g., a vessel that has been called into the DAS program for 25 hr at the time of landing may land only up to 1,600 lb (725.6 kg)

of cod, provided the vessel does not call out of the DAS program or leave port until 48 hr have elapsed from the beginning of the trip.

(2) *GB cod landing and maximum possession limits.* (i) Unless otherwise restricted under § 648.85, or under the provisions of paragraph (b)(2)(ii) of this section, or unless exempt from the landing limit under paragraph (b)(1) as authorized under the Sector provisions of § 648.87, a NE multispecies DAS vessel may land up to 1,000 pounds of cod per DAS, or part of a DAS, provided it complies with the requirements specified at paragraph (b)(4) of this section and this paragraph (b)(2). A NE multispecies DAS vessel may land up to 1,000 lb (453.6 kg) of cod during the first 24-hr period after such vessel has started a trip on which cod were landed (e.g., a vessel that starts a trip at 6 a.m. may call out of the DAS program at 11 a.m. and land up to 1,000 lb (453.6 kg) of cod, but the vessel cannot land any more cod on a subsequent trip until at least 6 a.m. on the following day). For each trip longer than 24 hr, a vessel may land up to an additional 1,000 lb (453.6 kg) for each additional 24-hr block of DAS fished, or part of an additional 24-hr block of DAS fished, up to a maximum of 10,000 lb (4,536 kg) per trip (e.g., a vessel that has been called into the DAS program for more than 24 hr, but less than 48 hr, may land up to, but no more than, 2,000 lb (907.2 kg) of cod). A vessel that has been called into only part of an additional 24-hr block of a DAS (e.g., a vessel that has been called into the DAS program for more than 24 hr, but less than 48 hr) may land up to an additional 1,000 lb (453.6 kg) of cod for that trip, provided the vessel complies with the provisions of paragraph (b)(2)(ii) of this section. Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) A vessel that has been called into or declared into only part of an additional 24-hr block may come into port with and offload cod up to an additional 1,000 lb (453.6 kg), provided that the vessel operator, with the exception of vessels fishing in one of the two Differential DAS Areas under the restrictions of § 648.82(e)(2)(i), complies with the following:

(A) For a vessel that has been authorized by the Regional Administrator to utilize the DAS call-in system as specified under § 648.10(c), in lieu of VMS, the vessel does not call out of the DAS program as described under § 648.10(c)(3) and does not depart from a dock or mooring in port, unless transiting, as allowed in paragraph (b)(3)

of this section, until the rest of the additional 24-hr block of DAS has elapsed, regardless of whether all of the cod on board is offloaded (e.g., a vessel that has been called into the DAS program for 25 hr at the time of landing may land only up to 2,000 lb (907.2 kg) of cod, provided the vessel does not call out of the DAS program or leave port until 48 hr have elapsed from the beginning of the trip.)

(B) For a vessel that is subject to the VMS provisions specified under § 648.10(b), the vessel declares through VMS that insufficient DAS have elapsed in order to account for the amount of cod onboard, and after returning to port does not depart from a dock or mooring in port, unless transiting, as allowed under paragraph (b)(3) of this section, until the rest of the additional 24-hr block of the DAS has elapsed, regardless of whether all of the cod on board is offloaded (e.g., a vessel that has been in the DAS program for 25 hr prior to crossing the VMS demarcation line on the return to port may land only up to 2,000 lb (907.2 kg) of cod, provided the vessel does not declare another trip or leave port until 48 hr have elapsed from the beginning of the trip.)

* * * * *

(4) *Exemption.* A vessel fishing under a NE multispecies DAS is exempt from the landing limit described in paragraph (b)(1) of this section when fishing south of the Gulf of Maine Regulated Mesh Area, defined in § 648.80(a)(1), provided that it complies with the requirement of this paragraph (b)(4).

(i) *Declaration.* With the exception of vessels declared into the U.S./Canada Management Area, as described under § 648.85(a)(3)(ii), a NE multispecies DAS vessel that fishes or intends to fish south of the line described in paragraph (b)(4) of this section, under the cod trip limits described under paragraph (b)(2) of this section, must, prior to leaving the dock, declare its intention to do so through the VMS, in accordance with instructions to be provided by the Regional Administrator. In lieu of a VMS declaration, the Regional Administrator may authorize such vessels to obtain a letter of authorization. If a letter of authorization is required, such vessel may not fish north of the exemption area for a minimum of 7 consecutive days (when fishing under the multispecies DAS program), and must carry the authorization letter on board.

(ii) A vessel exempt from the GOM cod landing limit may not fish north of the line specified in paragraph (b)(4) of this section for the duration of the trip, but may transit the GOM Regulated

Mesh Area, provided that its gear is stowed in accordance with the provisions of § 648.23(b). A vessel fishing north and south of the line on the same trip is subject to the most restrictive applicable cod trip limit.

* * * * *

(e) *White hake*. Unless otherwise restricted under this part, a vessel issued a NE multispecies DAS permit, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions may land up to 500 lb (226.8 kg) of white hake per DAS, or any part of a DAS, up to 5,000 lb (2,268.1 kg) per trip.

* * * * *

(g) *Yellowtail flounder*—(1) *CC/GOM and SNE/MA yellowtail flounder landing limit*. Unless otherwise restricted under this part, a vessel issued a NE multispecies DAS permit, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions, and fishing exclusively outside of the U.S./Canada Management Area, as defined under § 648.85(a)(1), may land or possess on board only up to 250 lb (113.6 kg) of yellowtail flounder per DAS, or any part of a DAS, up to a maximum possession limit of 1,000 lb (453.6 kg) per trip. A vessel fishing outside and inside of the U.S./Canada Management Area on the same trip is subject to the more restrictive yellowtail flounder trip limit (i.e., that specified by this paragraph (g) or § 648.85(a)(3)(iv)(C)).

(2) *GB Yellowtail Flounder Landing Limit*. Unless otherwise restricted under this part, a vessel issued a NE multispecies DAS permit, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions, and fishing in the U.S./Canada Management Area defined under § 648.85(a)(1) is subject to the GB yellowtail flounder limit described under § 648.85(a)(3)(iv)(C).

* * * * *

(j) *GB winter flounder*. Unless otherwise restricted under this part, a vessel issued a NE multispecies DAS permit, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access

permit and fishing under the monkfish Category C or D permit provisions, and fishing in the U.S./Canada Management Area defined under § 648.85(a)(1), may not possess or land more than 5,000 lb (2,268.1 kg) of GB winter flounder per trip.

9. In § 648.87, paragraph (d)(2) is added to read as follows:

§ 648.87 Sector allocation.

* * * * *

(d) * * *

(2) *GB Cod Fixed Gear Sector*. Eligible NE multispecies DAS vessels, as specified in paragraph (d)(2)(i) of this section, may participate in the GB Cod Fixed Gear Sector within the area defined as the GB Cod Hook Sector Area, as specified under paragraph (d)(1)(i) of this section, under the GB Cod Fixed Gear Sector's Operations Plan, provided the Operations Plan is approved by the Regional Administrator in accordance with paragraph (c) of this section, and provided that each participating vessel and vessel operator and/or vessel owner complies with the requirements of the Operations Plan, the requirements and conditions specified in the Letter of Authorization issued pursuant to paragraph (c) of this section, and all other requirements specified in this section.

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

(ii) *TAC allocation*. For each fishing year, the Sector's allocation of that fishing year's GB cod TAC, up to a maximum of 20 percent of the GB cod TAC, will be determined as follows:

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

(B) Sum of total accumulated landings of GB cod made by all NE multispecies vessels for the fishing years 1996 through 2001, as reported in the NMFS dealer database.

(C) Divide the sum of total landings of Sector participants calculated in paragraph (d)(2)(ii)(A) of this section by the sum of total landings by all vessels

calculated in paragraph (d)(2)(ii)(B) of this section. The resulting number represents the percentage of the total GB cod TAC allocated to the GB Cod Hook Sector for the fishing year in question.

(iii) *Requirements*. A vessel fishing under the GB Cod Fixed Gear Sector may not fish with gear other than jigs, non-automated demersal longline, hand gear, or sink gillnets.

10. In § 648.88, paragraph (c) is revised to read as follows:

§ 648.88 Multispecies open access permit restrictions.

* * * * *

(c) *Scallop NE multispecies possession limit permit*. With the exception of vessels fishing in the Sea Scallop Access Areas as specified in § 648.59(b) through (d), a vessel that has been issued a valid open access scallop NE multispecies possession limit permit may possess and land up to 300 lb (136.1 kg) of regulated NE multispecies when fishing under a scallop DAS allocated under § 648.53, provided the vessel does not fish for, possess, or land haddock from January 1 through June 30, as specified under § 648.86(a)(2)(i), and provided that the amount of regulated NE multispecies on board the vessel does not exceed any of the pertinent trip limits specified under § 648.86, and provided the vessel has at least one standard tote on board. A vessel fishing in the Sea Scallop Access Areas as specified in § 648.59(b) through (d) is subject to the possession limits specified in § 648.60(a)(5)(ii).

* * * * *

11. In § 648.89, paragraphs (b)(1), (c)(1)(i), and (c)(2)(i) are revised, and paragraphs (b)(3), (c)(1)(v), and (c)(2)(v) are added to read as follows:

§ 648.89 Recreational and charter/party vessel restrictions.

* * * * *

(b) * * *

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

GPO, insert Table Minimum Fish Sizes (TL) for Charter, Party, and Private Recreational Vessels here.

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

Species	Sizes
Cod	22 (58.4 cm)

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

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

* * * * *

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

* * * * *

(c) * * *

(1) * * *

(i) Unless further restricted by the Seasonal GOM Cod Possession Prohibition, specified under paragraph (c)(1)(v) of this section, each person on a private recreational vessel may possess no more than 10 cod per day in, or harvested from, the EEZ.

* * * * *

(v) *Seasonal GOM cod possession prohibition*. Persons aboard private recreational fishing vessels fishing in the GOM Regulated Mesh Area specified under § 648.80(a)(1), may not fish for or possess any cod from November 1 through March 31. Private recreational vessels in possession of cod caught outside the GOM Regulated Mesh Area may transit this area, provided all bait and hooks are removed from fishing rods and any cod on board has been gutted and stored.

(2) * * *

(i) Unless further restricted by the Seasonal GOM Cod Possession Prohibition, specified under paragraph (c)(2)(v) of this section, each person on

a private recreational vessel may possess no more than 10 cod per day.

* * * * *

(v) *Seasonal GOM cod possession prohibition*. Persons aboard charter/party fishing vessels fishing in the GOM Regulated Mesh Area specified under ' 648.80(a)(1) may not fish for or possess any cod from November 1 through March 31. Charter/party vessels in possession of cod caught outside the GOM Regulated Mesh Area may transit this area, provided all bait and hooks are removed from fishing rods and any cod on board has been gutted and stored.

* * * * *

12. In § 648.92, paragraph (b)(2)(i) is revised to read as follows:

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

* * * * *

(b) * * *

(2) * * *

(i) Unless otherwise specified in paragraph (b)(2)(ii) of this section, each monkfish DAS used by a limited access NE multispecies or scallop DAS vessel holding a Category C, D, F, G, or H limited access monkfish permit shall also be counted as a NE multispecies or scallop DAS, as applicable, except when a Category C, D, F, G, or H vessel with a limited access NE multispecies DAS permit has an allocation of NE multispecies Category A DAS, specified under § 648.82(d)(1), that is less than the number of monkfish DAS allocated

for the fishing year May 1 through April 30. Under this circumstance, the vessel may fish under the monkfish limited access Category A or B provisions, as applicable, for the number of DAS that equal the difference between the number of its allocated monkfish DAS and the number of its allocated NE multispecies Category A DAS. For such vessels, when the total allocation of NE multispecies Category A DAS has been used, a monkfish DAS may be used without concurrent use of a NE multispecies DAS. For example, if a monkfish Category D vessel's NE multispecies Category A DAS allocation is 30, and the vessel fished 30 monkfish DAS, 30 NE multispecies Category A DAS would also be used. However, after all 30 NE multispecies Category A DAS are used, the vessel may utilize its remaining 10 monkfish DAS to fish on monkfish, without a NE multispecies DAS being used, provided that the vessel fishes under the regulations pertaining to a Category B vessel and does not retain any regulated NE multispecies. A vessel holding a Category C, D, F, G, or H limited access monkfish permit may not use a NE multispecies Category B DAS in order to satisfy the requirement of this paragraph (b)(2)(i) to use a NE multispecies DAS concurrently with a monkfish DAS.

* * * * *

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