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- Via the Federal eRulemaking Portal: <http://www.regulations.gov>;

- Fax: 301-427-2521, Attn: Chief, Permits, Conservation and Education Division (Permit Regulations ANPR); or

- Mail: Chief, Permits, Conservation and Education Division, Attn: Permit Regulations ANPR, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910.

Instructions: All comments received are part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Amy Sloan at (301) 713-2289.

SUPPLEMENTARY INFORMATION: The ANPR, published on September 13, 2007 (72 FR 52339), is available upon request and can be found on the NMFS Office of Protected Resources web site: http://www.nmfs.noaa.gov/pr/permits/mmpa_anpr.htm.

Dated: October 9, 2007

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 070808450-7540-01]

RIN 0648-AV83

Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Regulatory Amendment to Adopt Fishing Gear Standards for the NE Multispecies Regular B Day-At-Sea (DAS) Program and the Eastern U.S./Canada Haddock Special Access Program (SAP)

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to amend the regulations governing minimum performance standards of fishing gear proposed for use in both the NE multispecies Regular B DAS Program and the Eastern U.S./Canada Haddock SAP. Under the current regulations, the only fishing gear allowed for use in the Eastern U.S./Canada Haddock SAP and the only trawl gear allowed for use in the Regular B DAS Program is a properly configured haddock separator trawl. The purpose of this rule is to ultimately provide greater flexibility to fishermen participating in these programs.

DATES: Written comments must be received no later than 5 p.m. local time on November 14, 2007.

ADDRESSES: You may submit comments, identified by RIN 0648-AV83, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>

- Fax: (978) 281-9135, Attn: Douglas Potts

- Mail: Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930-2298. Please write on the envelope: Comments on Proposed B-DAS Gear Standard (RIN 0648-AV83).

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not

submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT:

Douglas Potts, Fishery Management Specialist, (978) 281-9341, FAX (978) 281-9135.

SUPPLEMENTARY INFORMATION:

Background

Amendment 13 to the NE Multispecies Fishery Management Plan (FMP) differentiated DAS into three categories: Category A DAS; Category B (regular and reserve) DAS; and Category C DAS. Category B DAS (regular and reserve) were intended to allow effort on stocks that could support additional harvest while avoiding stocks of concern. The final rule implementing Framework Adjustment (FW) 40-A (November 19, 2004, 69 FR 67780) created two programs that allow vessels to use their allocation of Category B DAS, i.e., the Eastern U.S./Canada Haddock SAP Program and the Regular B DAS Program.

FW 40-A specified that vessels fishing in the Eastern U.S./Canada Haddock SAP must use gear that has been demonstrated not to catch significant amounts of cod. Upon implementation of FW 40-A, the only gear authorized for participation in this SAP was a haddock separator trawl, as described in 50 CFR 648.85(a)(3)(iii)(A). The FW 42 final rule (October 23, 2006, 71 FR 62156) modified the requirements for approval of other fishing gear for use in the Regular B DAS Program and the Eastern U.S./Canada Haddock SAP, as specified in § 648.85(b)(6)(iv)(j)(2) and (b)(8)(v)(E)(2), respectively. Specifically, this action authorized the Regional Administrator to approve the use of additional fishing gear in the Regular B DAS Program and the Eastern U.S./Canada Haddock SAP, provided the gear met performance standards to be proposed by the Council.

On June 21, 2007, the Council approved a motion to recommend that the Regional Administrator approve the following gear performance standards when considering additional gear for the Eastern U.S./Canada Haddock SAP, or additional trawl gear for the Regular B DAS Program: New gear must demonstrate a statistically significant reduction in catch of each regulated NE multispecies, and other stocks of concern, of at least 50 percent (by weight, on a trip-by-trip basis); or the

catch of each regulated NE multispecies, and other stocks of concern, in the new gear must be less than 5 percent of the total catch of regulated NE multispecies (by weight, on a trip-by-trip basis).

The Council further recommended that: These standards must be met in a completed experiment, where comparisons of new gear would be made to an appropriately selected control gear, that has been reviewed according to the standards established by the Council's research policy before the gear can be considered and approved by the Regional Administrator; and that the requests for additional gear in the Regular B DAS Program and the Eastern U.S./Canada Haddock SAP would be made by either the Council or Executive Committee.

The proposed rule seeks public comment on these standards and NMFS's interpretation of them. After review of the proposed performance standards, NMFS interprets that the phrase "... reduction in each regulated NE multispecies" would exclude any NE multispecies stock, identified by the Council as not being subject to the gear performance standard (e.g., Georges Bank haddock in the Eastern U.S./Canada Haddock SAP). Further, the term "stock of concern" is only defined in the regulations for species managed under the NE Multispecies FMP. However, in the proposed performance standards submitted by the Council, the term "stock of concern" is specific to non-groundfish stocks. Thus, the Council or the Council's Executive Committee, when considering prospective gear for the Eastern U.S./Canada Haddock SAP or the Regular B DAS Program, would need to consider what species of concern, in addition to non-excluded NE multispecies, e.g., monkfish or skates, should meet the criteria specified in the proposed performance standards before the Council or the Council's Executive Committee submits a request to the Regional Administrator for approval. The performance standards, as interpreted by NMFS, and as proposed in this rule, would therefore read as follows: "The Regional Administrator may authorize additional gear for use in the Regular B DAS Program (or the Eastern U.S./Canada Haddock SAP, as applicable) through notice consistent with all applicable law. The new gear must demonstrate a statistically significant reduction in catch of regulated NE multispecies, other than regulated NE multispecies identified by the Council as not being subject to this gear performance standard, and other non-groundfish stocks of concern identified by the Council, of at least 50

percent (by weight, on a trip-by-trip basis), or the catch of each non-targeted regulated NE multispecies and other stocks of concern identified by the Council in the new gear must be less than 5 percent of the total catch of regulated NE multispecies (by weight, on a trip-by-trip basis)."

This proposed rule would also correct an inadvertent omission by reinserting relevant regulatory text specific to the U.S./Canada Management Area gear requirements that was inadvertently removed through the final rule implementing FW 42. The Amendment 13 final rule (April 27, 2004, 69 FR 22906) established gear requirements for vessels participating in the Eastern U.S./Canada Area. Trawl vessels participating in this area are required to use either a haddock separator trawl or one of two flatfish nets defined in the regulations at § 648.85(a)(3)(iii)(A) and (B). These gear requirements were intended to allow vessels to harvest either haddock or flatfish without catching cod and other groundfish stocks not capable of supporting higher catch rates. An April 13, 2006, emergency final rule (71 FR 19348) revised the introductory text of the regulations at § 648.85(a)(3)(iii) to accommodate revised regulatory references associated with emergency measures. However, due to an error in the regulatory text of that rule, the emergency final rule inadvertently and indefinitely removed the introductory text at § 648.85(a)(3)(iii) from the regulations. This regulation was not reinserted in the FW 42 final rule, so the current regulations do not accurately reflect the original gear requirements implemented under Amendment 13, as contained in the original introductory text of § 648.85(a)(3)(iii). To correct this omission, this action would reinsert the introductory text at § 648.85(a)(3)(iii) that was inadvertently removed by the April 13, 2006, emergency final rule as revised by this rule to allow additional fishing gear that may be approved for use in the Regular B DAS Program and the Eastern U.S./Canada Haddock SAP.

Classification

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the NE Multispecies FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Regional Administrator has determined that this proposed rule is a minor technical addition, correction, or change to a management plan and is therefore categorically excluded from the requirement to prepare an Environmental Impact Statement or equivalent document under the National Environmental Policy Act.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. This amendment does not specifically change any gear requirements. It provides standards that must be met before a new gear can be proposed for use in these programs. Once a gear is proposed by the Council under these standards, then a fuller analysis of the environmental and/or economic impacts of its adoption may be necessary at that time. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 9, 2007.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 648 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 § 648.14, paragraphs (a)(132) and (c)(81) are revised to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(132) If fishing with trawl gear under a NE multispecies DAS in the Eastern U.S./Canada Area defined in § 648.85(a)(1)(ii), fail to fish with a haddock separator trawl or a flounder trawl net, as specified in § 648.85(a)(3)(iii); unless using other gear as authorized under § 648.85 (b)(6) or (b)(8).

* * * * *

(c) * * *

(81) If fishing with trawl gear 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); or other gear as authorized under § 648.85(b)(6)(iv)(J).

* * * * *

3. In § 648.85, paragraphs (a)(3)(iii) introductory text is added and paragraphs (b)(6)(iv)(J)(2) and (b)(8)(v)(E)(2) are revised to read as follows:

§ 648.85 Special management programs.

(a) * * *

(3) * * *

(iii) *Gear requirements.* NE

multispecies vessels fishing with trawl gear in the Eastern U.S./Canada Area defined in paragraph (a)(1)(ii) of this section, unless otherwise provided in paragraphs (b)(6) and (b)(8) of this section, must fish with a haddock separator trawl or a flounder trawl net, as described in paragraphs (a)(3)(iii)(A) and (B) of this section (both nets may be onboard the fishing vessel simultaneously). Gear other than the haddock separator trawl or the flounder trawl net as described in paragraph (a)(3)(iii) of this section, or gear authorized under paragraphs (b)(6) and (b)(8) of this section, may be on board the vessel during a trip to the Eastern U.S./Canada Area, provided the gear is stowed according to the regulations at § 648.23(b). The description of the haddock separator trawl and flounder

trawl net in this paragraph (a)(3)(iii) may be further specified by the Regional Administrator through publication of such specifications in the **Federal Register**, consistent with the requirements of the Administrative Procedure Act.

* * * * *

(b) * * *

(6) * * *

(iv) * * *

(J) * * *

(2) *Approval of additional gear.* At the request of the Council or the Council's Executive Committee, the Regional Administrator may authorize additional gear for use in the Regular B DAS Program, through notice consistent with the Administrative Procedure Act. The proposed gear must satisfy standards specified in paragraph (b)(6)(iv)(J)(2)(i) or (ii) of this section in a completed experiment that has been reviewed according to the standards established by the Council's research policy before the gear can be considered and approved by the Regional Administrator. Comparisons of the criteria specified in this paragraph (b)(6)(iv)(J)(2) will be made to an appropriately selected control gear.

(i) The gear must show a statistically significant reduction in catch of at least

50 percent (by weight, on a trip-by-trip basis) of regulated species, unless otherwise specified in this paragraph, and other stocks of concern identified by the Council. This does not apply to regulated species identified by the Council as not being subject to gear performance standards; or

(ii) The catch of each regulated species, unless otherwise specified in this paragraph, and other stocks of concern identified by the Council, must be less than five percent of the total catch of regulated NE multispecies (by weight, on a trip-by-trip basis). This does not apply to regulated species identified by the Council as not being subject to gear performance standards.

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(8) * * *

(v) * * *

(E) * * *

(2) *Approval of additional gear.* The Regional Administrator may authorize additional gear for use in the Eastern U.S./Canada Haddock SAP in accordance with the standards and requirements specified at § 648.85(b)(6)(iv)(J)(2).

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