

subject to EO 13045 because it implements Section 604(d)(2) of the Clean Air Act which states that the Agency shall authorize essential use exemptions should the Food and Drug Administration determine that such exemptions are necessary.

*H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

*J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has concluded that it is not practicable to determine whether there would be disproportionately high and adverse human health or environmental effects on minority and/or low income populations from this proposed rule. EPA believes, however, that this action affects the level of environmental

protection equally for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. Any ozone depletion that results from this proposed rule will impact all affected populations equally because ozone depletion is a global environmental problem with environmental and human effects that are, in general, equally distributed across geographical regions.

**List of Subjects in 40 CFR Part 82**

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Imports, Methyl Chloroform, Ozone, Reporting and recordkeeping requirements.

Dated: January 12, 2009.

**Stephen L. Johnson,**  
*Administrator.*

40 CFR Part 82 is proposed to be amended as follows:

**PART 82—PROTECTION OF STRATOSPHERIC OZONE**

1. The authority citation for part 82 continues to read as follows:

**Authority:** 42 U.S.C. 7414, 7601, 7671–7671q.

**Subpart A—Production and Consumption Controls**

2. Section 82.8 is amended by revising the table in paragraph (a) to read as follows:

**§ 82.8 Grant of essential use allowances and critical use allowances.**

(a) \* \* \*

TABLE I.—ESSENTIAL USE ALLOWANCES FOR CALENDAR YEAR 2009

Company	Chemical	2009 Quantity (metric tons)
(i) Metered Dose Inhalers (for oral inhalation) for Treatment of Asthma and Chronic Obstructive Pulmonary Disease		
Armstrong	CFC-11 or CFC-12 or CFC-114.	63.0

\* \* \* \* \*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 080521698-8699-01]

**RIN 0648-AW87**

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

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

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

**SUMMARY:** NMFS proposes a temporary Secretarial interim action under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to implement measures intended to immediately reduce overfishing in the Northeast (NE) multispecies fishery, while addressing the need to help sustain fishing communities, without compromising rebuilding objectives. Measures proposed for the commercial fishery include the following: A differential days-at-sea (DAS) area north of 41°30' N. lat., whereby a vessel would be charged 2 days for every day fished; a large Southern New England (SNE) Closure Area; and modified groundfish trip limits. This action does not change the scheduled DAS reduction in the NE Multispecies Fishery Management Plan (FMP), which would result in an approximate 18-percent reduction in DAS. For private recreational vessels fishing in the Exclusive Economic Zone (EEZ) and for federally permitted charter/party vessels, this action would extend in time a seasonal prohibition on the possession of Gulf of Maine (GOM) cod, and prohibit the possession of SNE winter flounder. For federally permitted charter/party vessels, this action would implement a trip limit for Georges Bank (GB) cod. In addition, this action proposes to mitigate some of the negative short-term economic impacts of the FMP by making modifications to the DAS Leasing Program, the Regular B DAS Program, and the DAS Transfer Program; continuing the Eastern U.S./Canada Haddock Special Access Program (SAP); and implementing a reduction in the haddock minimum size to 18 inches (45 cm). Finally, this action would specify management measures for the U.S./Canada Management Area for fishing year (FY) 2009.

**DATES:** Comments must be received by February 17, 2009.

**ADDRESSES:** You may submit comments, identified by 0648-AW87, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the 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, 55 Great Republic Drive, Gloucester, MA 01930-2276. Mark the outside of the envelope: "Comments on NE Multispecies Interim Rule."
- Fax: (978) 281-9135.

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 (enter "N/A" in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF formats only.

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA), which is contained in the Classification section of this proposed rule. Copies of the Environmental Assessment (EA) prepared for this rule may be found at the following internet address: <http://www.nero.noaa.gov/nero/regs/frdoc/08/08MultiInterimEA.pdf>.

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

**SUPPLEMENTARY INFORMATION:** The FMP specifies the management measures for 12 species in Federal waters off the New England and Mid-Atlantic coasts, which are Atlantic cod, haddock, yellowtail flounder, pollock, American plaice, witch flounder, white hake, windowpane flounder, Atlantic halibut, winter flounder, ocean pout, and redfish, comprising a total of 19 individual stocks (groundfish). A major overhaul of the FMP occurred in 2004 with implementation of Amendment 13 and the establishment of rebuilding programs for all stocks managed by the FMP, including specification of status determination criteria for each stock.

Amendment 13 established two different strategies for rebuilding (an adaptive and a phased rebuilding

strategy), and a rebuilding plan for each overfished stock was developed in accordance with one of the two strategies. Under the "adaptive" rebuilding strategy, fishing mortality is held at Fmsy from 2004 through 2008, and then subsequently reduced to the level required to rebuild by the selected end-date of the rebuilding period. In 2008, the effectiveness of the management measures and the validity of the status determination criteria (biological reference points) were fully evaluated. Eight stocks (GOM cod, GB haddock, GOM haddock, SNE/Mid Atlantic (MA) winter flounder, GB yellowtail flounder, redfish, windowpane flounder (southern stock), and ocean pout) are managed under the adaptive rebuilding strategy. In contrast, under the "phased" rebuilding strategy, fishing mortality is allowed to remain above Fmsy at the start of the rebuilding period in 2004, and then reduced sequentially in 2006 and 2009. Five stocks (GB cod, Cape Cod (CC)/GOM yellowtail flounder, SNE/MA yellowtail flounder, American plaice, and white hake) are managed under the phased rebuilding strategy. The end of the rebuilding period for all stocks is 2014, with the exception of GB cod (2026), CC/GOM yellowtail flounder (2023), and redfish (2051).

Amendment 13 also implemented a process whereby the NE multispecies complex is routinely evaluated through a biennial adjustment. This adjustment process provides an update of the scientific information regarding the status of the stocks, and an evaluation of the effectiveness of the regulations. The biennial adjustment provides the New England Fishery Management Council (Council) with information to make adjustments to management measures necessary to modify fishing mortality to comply with the rebuilding schedules and approach optimum yield. The FMP further specified a benchmark stock assessment and review of the biological reference points (stock status determination criteria) in 2008. This planned assessment of the biological reference points (Groundfish Assessment Review Meeting, (GARM III) in 2008) was part of the biennial adjustment process, but was also part of the adaptive rebuilding strategy described above, which sought to evaluate the more fundamental scientific information mid-way through the rebuilding period for most stocks. Although, strictly speaking, the adaptive rebuilding strategy applies to only five stocks, the intent of the Council in scheduling a benchmark assessment in

2008 was an evaluation of the biological reference points for all stocks.

In order to implement these rebuilding strategies, Amendment 13 included default management measures for implementation in FY 2006 and FY 2009, which were designed to reduce fishing mortality on certain stocks, and established criteria to determine conditions under which the default measures would not be triggered. The default measure developed for FY 2009 is a modification to the Category A DAS and Category B DAS ratio from 55:45 to 45:55 (respectively). This decrease in the amount of A DAS represents an 18.2-percent decrease in the number of A DAS a vessel may fish. Amendment 13 noted the challenge of implementing the rebuilding program due to the difficulty of designing effort controls that would precisely achieve the desired fishing mortality reductions for all stocks.

The Council began development of Amendment 16 in 2006 to meet a required May 1, 2009, implementation date because it anticipated that new scientific information from the scheduled 2008 biennial review and benchmark assessment (GARM III) would indicate that additional fishing mortality reductions may be necessary for FY 2009 in order to continue rebuilding at the required rate. At the Council meeting on June 3, 2008, the Northeast Fisheries Science Center (NEFSC) presented preliminary estimates of stock size and fishing mortality in 2006, which indicated that draft effort control measures under development for Amendment 16 were not targeting the correct stocks. Based on this information, the Council decided to wait until receipt of the final GARM III assessment results in September 2008 to design appropriate management measures and hold public hearings.

The Council subsequently developed a revised schedule of development for Amendment 16, which, if approved, would be implemented on May 1, 2010. The Council voted on September 4, 2008, to request that NMFS implement an interim action for the duration of FY 2009 (May 1, 2009–April 30, 2010), and recommended a specific suite of management measures for the interim action. As explained fully under section 12 below, NMFS did not adopt the Council's recommendations for this proposed interim action because it was determined that the Council's recommended alternative was insufficient to end overfishing.

GARM III, completed in August 2008, was an extensive benchmark assessment. GARM III evaluated the

underlying data and models utilized for assessment of the groundfish stocks, evaluated the biological reference points, established new reference points, assessed the biomass and fishing mortality status of the groundfish stocks in 2007, and provided examples of fishing mortality rates that would be expected to rebuild overfished stocks.

Incorporation of new scientific information and revisions to management measures in the FMP, effective May 1, 2009, are necessary to continue rebuilding to comply with the intent of the FMP. However, due to the Council's revised Amendment 16 schedule, such revisions to the FMP would not be implemented, without this interim action.

Section 305(c) of the Magnuson-Stevens Act authorizes the Secretary of Commerce (Secretary) to amend an FMP if the appropriate Council fails to develop and submit to the Secretary any necessary amendment to an FMP if the fishery requires conservation and management. NMFS promulgated guidelines to further clarify how this authority to amend an FMP should be interpreted (63 FR 24212; May 1, 1998). The Secretary, on his/her own initiative,

or in response to a Council request, may implement interim measures to reduce overfishing under section 305(c), until such measures can be replaced by an FMP amendment or regulations taking remedial action. The measures may remain in place for 180 days, but may be extended for an additional 186 days if the public has had an opportunity to comment on the measures.

Because of the need to eliminate and reduce overfishing, as well as to reduce fishing mortality to more closely comply with the FMP rebuilding schedules, NMFS is proposing this interim action. To that end, this action would implement management measures that, as much as practicable, build upon the Amendment 13 default measures and include major elements of the Council's Amendment 16 alternatives, such as differential DAS. Measures that are similar to Amendment 16 would facilitate industry understanding, enable NMFS to administer such short-term measures, and allow vessels to adapt any measures implemented by Amendment 16 if they are adopted. Further, it is important that NMFS can enforce and administer the interim measures, and that such measures are

fair and simple. The proposed interim action management measures are more narrowly focused than what is currently under consideration in the Council's Amendment 16 draft document, which contains measures beyond those designed to reduce fishing mortality, such as inclusion of many new sectors and measures to address new Magnuson-Stevens Act requirements (e.g., annual catch limits and accountability measures). Failure to reduce or prevent overfishing by May 1, 2009, while the Council completes Amendment 16, would likely lead to continued overfishing of several groundfish stocks, resulting in slower rebuilding that would likely require more stringent future measures, with additional economic and social consequences.

A summary of the GARM III results that form the basis for this proposed interim rule is in Table 1 below. Overfishing is occurring on stocks when the fishing mortality to Fmsy ratio (F/Fmsy) is greater than 1.0, and a stock is overfished if the biomass level to Bmsy ratio (B/Bmsy) is equal to or less than 0.5.

TABLE 1. GARM III STOCK STATUS DETERMINATION CRITERIA AND 2007 STATUS

Species	Stock	Fmsy	Bmsy	2007 Fishing Mortality (2007 F/ Fmsy)	2007 Biomass (2007 B/ Bmsy)
Cod	GB	0.2466	148,084	1.2	0.12
	GOM	0.237	58,248	1.9	0.58
Haddock	GB	0.350	158,873	0.49	2.05
	GOM	0.430	5,900	0.8.	0.99
Yellowtail flounder	GB	0.254	43,200	1.1	0.22
	SNE/MA	0.254	27,400	1.6	0.13
	CC/GOM	0.239	7,790	1.7	0.25
American plaice		0.190	21,940	0.5	0.51
Witch flounder		0.200	11,447	1.5	0.30
Winter flounder	GB	0.260	16,000	1.1	0.31
	GOM	0.283	3,792	1.5	0.29
	SNE/MA	0.248	38,761	2.6	0.09
Redfish		0.038	271,000	0.1	0.64
White hake		0.125	56,254	1.2	0.35
Pollock		5.660	2.0	* 1.2	* 0.71
Windowpane	North	0.500	1.4	* 3.9	* 0.38
	South	1.470	0.34	* 1.3	* 0.62
Ocean pout		0.760	4.94	0.5	0.10

TABLE 1. GARM III STOCK STATUS DETERMINATION CRITERIA AND 2007 STATUS—Continued

Species	Stock	Fmsy	Bmsy	2007 Fishing Mortality (2007 F/ Fmsy)	2007 Biomass (2007 B/ Bmsy)
Atlantic halibut		0.073	49,000	0.9	0.03

\* Pollock and windowpane flounder information was revised subsequent to GARM III in order to utilize 3 yr averages. Pollock is approaching an overfished condition.

Because GARM III revised the biological reference points and the 2007 stock status determination, and the current status of stocks is different from the understanding of stock status based on GARM I and II, it is necessary to utilize new fishing mortality targets that are appropriate to the revised stock status. Therefore, this interim action would utilize the GARM III revised stock status determination as the basis for developing fishing mortality targets in order to be consistent with National Standard 2, which requires that conservation and management measures shall be based upon the best scientific information available.

New rebuilding plans for those stocks recently determined to be overfished or approaching an overfished condition, based on results from GARM III (windowpane flounder (northern stock), GOM and GB winter flounder, witch flounder, and pollock), are not proposed in this interim action, but rather are being considered by the Council in Amendment 16. For these five stocks, the fishing mortality target of the interim action is proposed to be Fmsy, although, as explained later in this preamble, the proposed measures would not achieve this objective for windowpane north.

For those stocks that are either rebuilt (GB haddock) or for stocks where Fmsy would rebuild the stock (GOM haddock, GOM cod, American plaice, redfish), the fishing mortality target for the interim action would be Fmsy. For these stocks, which are currently in rebuilding programs, Fmsy is the appropriate target fishing mortality rate because Fmsy is lower than Frebuild, and the stocks are projected to rebuild to Bmsy within their rebuilding periods.

For stocks currently under rebuilding programs and for which the fishing mortality rate required to rebuild the

stock (Frebuild) is less than Fmsy (GB cod, GB yellowtail, SNE yellowtail, CC yellowtail, SNE winter flounder, white hake), the fishing mortality target under this interim action would be Frebuild, with one exception (noted below).

For GB cod, fishing mortality under this interim action would be reduced to a level less than Fmsy, but would not achieve Frebuild. The two recent stock assessments that pertain to GB cod (GARM III for the entire stock; Transboundary Resource Assessment Committee 2008 for the eastern portion of the stock) were unable to be reconciled with each other, with the assessment of the size of the overall stock relatively low and the assessment of the size of the eastern portion of the stock relatively high. Given the scientific uncertainty, the fact that the fishing mortality of the eastern portion of the stock is strictly controlled through a hard total allowable catch (TAC), and the limited scope of this action, Fmsy is being proposed as the fishing mortality rate target for this stock. However, the fishing mortality rate that would be achieved by the proposed interim action is estimated to be between Fmsy and Frebuild.

GARM III provided example estimates of Frebuild for overfished stocks, making assumptions about the rebuild period end-dates and the starting conditions at the beginning of the rebuilding periods. In doing so, GARM III assumed that the catch in FY 2008 will equal the catch in FY 2007. In contrast, for this interim action, an estimated catch in FY 2008 was used to recalculate the starting conditions in FY 2008, and the Frebuilds. For Amendment 16, the Plan Development Team (PDT) estimated catch for the entire FY 2008 year based upon an extrapolation of landings data for calendar year 2008 through June 2008.

This interim action relies on the PDT's estimated landings for FY 2008 and a derived estimate of fishing mortality for Calendar Year (CY) 2008 and the recalculated Frebuilds. The probabilities associated with the Frebuilds and rebuilding end dates are consistent with the current FMP. Stocks would rebuild with a 50-percent probability, with the exception of GB yellowtail flounder, which has a 75-percent probability of rebuilding by the end of the rebuilding period. The end of the rebuilding period for all stocks with rebuilding plans is 2014, with the exception of GB cod (2026), CC/GOM yellowtail flounder (2023), and redfish (2051). Because the measures to be implemented by this action would begin in FY 2009, an estimate of fishing mortality in CY 2008 more closely represents the starting conditions of the remainder of the rebuilding periods. For GB yellowtail flounder, Frebuild was calculated utilizing an assumed catch in CY 2008 of 2,500 mt.

In a similar manner, in order to calculate the amount of reduction in fishing mortality required for pertinent stocks, the estimated fishing mortality in CY 2008 was considered as the starting condition. For example, in order to calculate the required fishing mortality reduction for the CC/GOM stock of yellowtail flounder, Frebuild (0.238) was compared to F 2008 (0.289). An 18-percent reduction in fishing mortality is required to reduce F from 0.289 in CY 2008 to achieve an Frebuild of 0.238 in CY 2009. Table 2 below summarizes information on the CY 2008 fishing mortality, the fishing mortality goal of the interim action, and the percentage fishing reduction objective to reduce fishing mortality from the starting conditions (F 2008) to the fishing mortality rate goal.

TABLE 2. FISHING MORTALITY REDUCTION OBJECTIVES FOR THE PROPOSED INTERIM ACTION

Species	Stock	2008 F	Fishing Mortality Rate Goal	Value Associated with Fishing Mortality Rate Goal	Fishing Mortality Rate Reduction Objective
Cod	GB	0.410	Fmsy	0.2466	- 40 %
	GOM	0.300	Fmsy	0.237	- 21 %

TABLE 2. FISHING MORTALITY REDUCTION OBJECTIVES FOR THE PROPOSED INTERIM ACTION—Continued

Species	Stock	2008 F	Fishing Mortality Rate Goal	Value Associated with Fishing Mortality Rate Goal	Fishing Mortality Rate Reduction Objective
Haddock	GB	0.083	Fmsy	0.350	322 %
	GOM	0.250	Fmsy	0.430	72 %
Yellowtail flounder	GB	0.130	Frebuild	0.109	- 16 %
	SNE/MA	0.120	Frebuild	0.075	-386%
	CC/GOM	0.289	Frebuild	0.238	- 18 %
American plaice		0.099	Fmsy	0.190	92 %
Witch flounder		0.296	Fmsy	0.200	- 32 %
Winter flounder	GB	0.131	Fmsy	0.260	98 %
	GOM	0.317	Fmsy	0.283	- 11 %
	SNE/MA	0.265	Frebuild	0.000	- 100 %
Redfish		0.008	Fmsy	0.038	375 %
White hake		0.065	Frebuild	0.084	29 %
Pollock		NA	Fmsy	5.66	- 48 %
Windowpane		NA	Fmsy	0.50	- 74 %
		NA	Fmsy	1.47	- 21 %
Ocean pout		NA	Fmsy	0.760	NA
Atlantic halibut		0.060	Frebuild	0.044	- 27 %

NA - not available

### Proposed Management Measures

All measures in effect prior to May 1, 2009, including the default measures relating to DAS reductions scheduled to go into place and not amended by this proposed interim rule, would remain in effect on and after May 1, 2009. This proposed interim action would implement management measures to reduce fishing mortality on the commercial and recreational fisheries, without compromising rebuilding objectives, as well as revise various management programs in order to mitigate the negative economic and social impacts of the FMP to ensure consistency with National Standards and required provisions of the Magnuson-Stevens Act and to enhance the likelihood of compliance with the measures. Routine specification of TAC and annual specifications for the U.S./Canada Management Area are also proposed. As is more fully discussed later in this document, these measures would result in both quantifiable and non-quantifiable reductions in fishing mortality for virtually all of the NE multispecies stocks managed under the FMP.

The proposed interim measures are designed to work in conjunction with the current FMP to achieve the fishing mortality requirements of the FMP. The analysis of this action presumes that the proposed measures would be in effect throughout FY 2009, and that a subsequent management action (Amendment 16) will be implemented on May 1, 2010. The current FMP management measures include a FY 2009 default measure that will change the allocation ratio of Category A:B DAS from 60:40 to 55:45. This measure, therefore, is not discussed specifically in the description of the proposed interim measures that follows. NMFS anticipates that, if approved and implemented, this interim action may be renewed upon expiration for an additional 185 days, given that the Council does not anticipate the implementation of Amendment 16 until May 2010. The Council also recommended to NMFS that any interim action should be in effect for all of FY 2009. The following measures are proposed to be implemented on May 1, 2009, to reduce overfishing.

### Commercial Measures

#### 1. Differential DAS Counting

Under this proposed interim action, the existing differential DAS areas in the GOM and SNE would no longer apply, and a single, larger differential DAS area would be implemented in the entire GOM and in the northern portion of GB, north of 41° 30'N. lat. For the revised Interim Differential DAS Area, the DAS accrual rate would be 2:1. In other words, under this action, if a vessel declares into the Interim Differential DAS Area for 10 hr, the vessel's DAS balance would be debited 20 hr. A vessel would not be charged at the differential DAS rate if it declared and transited to another area outside of the Interim Differential DAS Area. For example, if a vessel steams through the Interim Differential DAS Area on its way to and from the fishing grounds in the southern portion of the U.S./Canada Management Area, where DAS are not counted differentially, it would not be charged at the 2:1 rate for part of the trip spend steaming through the Interim Differential DAS Area. If a vessel declared and fished both inside the Interim Differential DAS Area and

outside that area on the same trip, it would be charged differential DAS (2:1) for all the DAS accrued on that trip.

The interaction of current groundfish and non-groundfish regulatory programs and the different DAS counting rules would remain unchanged under this action (e.g., the cod running clock, Day Gillnet Category rules, the application of per DAS possession limits, the Eastern U.S./Canada Area rules, use of Regular B DAS, and monkfish/groundfish permitted vessels fishing under a NE multispecies DAS). For example, vessels fishing in the Interim Differential DAS Area and the Eastern U.S./Canada Management Area (exclusively) would be charged at the differential DAS rate of 2:1, but would not be charged steaming time to or from the area. For vessels fishing in multiple geographic areas where different rules apply to each area (such as differential DAS and trip limits), the most restrictive rule would apply for the entire trip. The current regulations that allow monkfish Category C and D vessels to fish as a monkfish Category A or B vessel, and land monkfish under certain conditions, would still apply.

As under the current regulations, vessels would be required to declare, prior to leaving port, their intent to fish in the Interim Differential DAS Area, via Vessel Monitoring System (VMS). The VMS declaration screens would be modified slightly to accommodate the fact that the southern border of the Interim Differential DAS Area divides the U.S./Canada Management Area into two portions. For example, a vessel intending to fish in the Eastern U.S./Canada Area would also have to specify whether it would also fish in the Interim Differential DAS Area.

The Interim Differential DAS Area is proposed as a means to reduce fishing mortality on multiple stocks instead of further reductions in DAS allocations in order to provide flexibility for vessel owners.

## 2. SNE Closure Area

The area in SNE between 40° 30' and 41° 30' N. lat., and west of 68° 30' W. long. to the shore, including Nantucket Sound (30-minute square blocks of 97–107 and 80–90) would be closed to federally permitted groundfish vessels (both open access and limited access) when fishing on groundfish, with the exception of NE multispecies vessels using hook gear, provided such vessels do not retain winter flounder, and provided the vessels have only hook gear on board. This interim rule proposes that groundfish vessels using only hook gear on a particular trip may fish in the SNE Closure Area because

the catch rate of winter flounder is likely to be very low. Non-groundfish commercial trips fishing in exempted fisheries (e.g., summer flounder, scallop, and skate exemptions), or using exempted gear, could also fish in the SNE Closure Area. NE multispecies vessels not fishing in the SNE Closure Area would be allowed to transit through the area, provided all fishing gear is properly stowed. The SNE Closure Area is proposed as a means to reduce fishing mortality on SNE winter flounder primarily, but would also reduce fishing mortality on other stocks such as SNE/MA yellowtail flounder.

## 3. Modified Trip Limits

Under this interim rule, the current white hake possession limit of 1,000 lb (454 kg) per DAS would be increased to 2,000 lb (907 kg) per DAS, with the same maximum of 10,000 lb (4,536 kg) per trip, and the trip limit for GB winter flounder, currently 5,000 lb (2,268 kg) per trip, would be removed. No retention of any fish would be allowed for SNE winter flounder, northern windowpane flounder, or ocean pout. Vessels fishing for winter flounder or windowpane flounder in multiple stock areas would be subject to the most restrictive possession limit for the pertinent species. In other words, if a vessel fishes in the SNE winter flounder stock area and the GB winter flounder stock area on the same trip, the vessel would be subject to the prohibition on retention for that trip. Lastly, as explained further under item 7 (“Annual Specifications for U.S./Canada Management Area”), a limit of 5,000 lb (2,268 kg) of GB yellowtail flounder per trip would be specified. Modifications to trip limits are proposed as a means to reduce fishing mortality or increase yield because they are a management tool that can effectively target particular stocks and are an important component of the current FMP.

## 4. Specification of Target TACs

Target TACs are utilized in the FMP as one method of evaluating the success of management measures and providing a way to make simple comparisons between different fishing years. Secondly, target TACs form the basis of calculating allocations of GB cod to sectors, and the basis of calculating the incidental catch TACs for the Special Management Programs. Table 3 lists the target TACs for FY 2009, based upon GARM III data and estimated CY 2008 fishing mortalities.

TABLE 3. TARGET TACs (MT) FOR FY 2009

Species	Stock	Target TAC
Cod	GB	3,506
Cod	GOM	10,327
Haddock	GB	86,520
Haddock	GOM	1,564
Yellowtail flounder	GB	1,617
Yellowtail flounder	SNE/MA	389
Yellowtail flounder	CC/GOM	860
Plaice		3,214
Witch flounder		928
Winter flounder	GB	2,004
Winter flounder	GOM	379
Redfish		8,614
White hake		2,376
Pollock		6,486
Windowpane flounder N.		299
Windowpane flounder S.		338
Halibut		68

\* A hard TAC, set through a separate process described in item 6.

## 5. Revisions to Incidental Catch TACs and Allocations to Special Management Programs

This proposed interim action would revise the specification of incidental catch TACs applicable to the Special Management Programs of the FMP based upon the most recent scientific information. Incidental catch TACs are specified for certain stocks of concern for Special Management Programs in order to limit the amount of catch of stocks of concern that can be caught under such programs, and to fully account for fishing mortality. The incidental catch TACs apply to catch (landings and discards) caught under Category B DAS (either Regular or Reserve B DAS) on trips that end on a Category B DAS. The catch of stocks for which incidental catch TACs are specified on trips that start under a Category B DAS and then flip to a Category A DAS do not accrue toward such TACs.

A stock of concern is defined as a stock that is in an overfished condition or subject to overfishing. Due to the revised status of stocks (GARM III) that would be adopted under this action, an incidental catch TAC would no longer be appropriate for American plaice, because it would no longer be considered a stock of concern. Further, new incidental catch TACs would be required for GOM winter flounder and pollock, because they would now be considered stocks of concern. The percentages that the TACs are currently based on would remain unchanged, with the exception of witch flounder, which would be reduced from 5-percent to 2-percent, due to its new

proposed status and the fact that the fishing mortality rate and total catch need to be reduced. The incidental catch TACs for GOM winter flounder would be set at 5-percent, based on the rationale described in Framework (FW) 40A to the FMP: If the recent catch levels are less than the expected future catch levels, and proposed management measures are likely to achieve more than the required reduction in fishing mortality, then the size of an incidental catch TAC relative to the size of the overall TAC is larger (set as a larger percent). The incidental catch TAC for pollock would be set at 5-percent because of the prevalence of pollock catch in the Special Management

Programs, and based upon the rationale cited above. The utility of the Special Management Programs would be severely constrained if the incidental catch TAC is set too low. The number of total incidental catch TACs would increase from the current number (8), to 10. Due to the severe fishing mortality reduction necessary for the SNE/MA stock of winter flounder, no retention of this stock would be allowed under this alternative, and there would be no incidental catch TAC specified (see additional discussion under item 10, Mitigating Measures). The calculation of incidental catch TACs by stock based on the target TACs is shown in Table 4.

TABLE 4. INCIDENTAL CATCH TACs FOR FY 2009

Stock	Percentage of Total TAC	Initial TAC	Incidental TAC
GB cod	2	3,506	70.1
GOM cod	1	10,327	103.3
GB yellowtail	2	1,617	32.3
CC/GOM yellowtail	1	860	8.6
SNE/MA yellowtail	1	389	3.9
Pollock	5	6,486	324.3
Witch flounder	2	928	18.6
GB winter flounder	2	2,004	40.1
White hake	2	2,376	47.5
GOM winter	5	379	19.0

This proposed rule would also modify the allocation of the incidental catch TACs to the various Special Management Programs due to the change in status of stocks, as well as to optimize the design of the programs based on the operation of the programs since their inception. For example, the Eastern U.S./Canada Haddock SAP was not used at all in FY 2007, and only two trips were taken in the area in FY 2006.

Therefore, the percent allocations to this SAP would be reduced for GB cod, GB yellowtail, and GB winter flounder, and the percent allocation to the Regular B DAS Program would be increased due to higher participation in that program historically. Secondly, this rule would provide the Administrator, Northeast Region, NMFS (Regional Administrator) the authority to modify the allocations among programs in-season, or prior to

the beginning of the season, because it is difficult to estimate the appropriate TAC since the level of participation and rate of catch of stocks of concern in the various programs is highly variable. The proposed changes to the allocations are summarized in Table 5. Table 6, contains the incidental catch TACs that result from applying the percentages in Table 5 to the incidental TACs in Table 4.

TABLE 5. MODIFICATIONS TO THE INCIDENTAL CATCH TAC ALLOCATIONS FOR FY 2009

Stock	Regular B DAS Program		Eastern U.S./Canada Haddock SAP		Closed Area I Hook Gear Haddock SAP	
	Current	New	Current	New	Current	New
	GB Cod	50 %	70 %	34 %	14 %	16 %
GB Yellowtail flounder	50 %	80 %	50 %	20 %		
GB Winter flounder	50 %	80 %	50 %	20 %		
Pollock	none	90 %	none	5 %	none	5 %

TABLE 5. MODIFICATIONS TO THE INCIDENTAL CATCH TAC ALLOCATIONS FOR FY 2009—Continued

Stock	Regular B DAS Program		Eastern U.S./Canada Haddock SAP		Closed Area I Hook Gear Haddock SAP	
	Current	New	Current	New	Current	New
GOM Winter flounder	none	100 %				
GOM Cod	100 %	100 %				
White hake	100 %	100 %				
CC/GOM Yellowtail flounder	100 %	100 %				
SNE/MA Yellowtail flounder	100 %	100 %				
Witch flounder	100 %	100 %				
Plaice	100 %	none				

TABLE 6. SPECIFICATION OF INCIDENTAL CATCH TACS FOR SPECIAL MANAGEMENT PROGRAMS (MT) FOR FY 2009

Stock	Regular B DAS Program	Eastern U.S./Canada Haddock SAP	Closed Area I Hook Gear Haddock SAP
GB Cod	49.1	9.8	11.2
GOM Cod	103.3	na	na
GB Yellowtail flounder	25.9	6.5	na
CC/GOM Yellowtail flounder	8.6	na	na
SNE/MA Yellowtail flounder	3.9	na	na
Pollock	291.9	16.2	16.2
Witch flounder	18.6	na	na
GB Winter flounder	32.1	8.0	na
White hake	47.5	na	na
GOM Winter flounder	19.0	na	na

#### 6. Annual Specifications for U.S./Canada Management Area

In consultation with the Council, NMFS annually implements management measures for the U.S./Canada Management Area through proposed and final rules. For FY 2009, because NMFS will also be proposing management measures for the entire fishery to reduce fishing mortality as described above and expects to implement measures for the entire FY 2009, NMFS is including the specification of the TACs and other measures for the U.S./Canada Management Area in this proposed rule in order to streamline the regulatory process.

The FMP specifies a procedure for setting annual hard TAC levels (i.e., the fishery or area closes when a TAC is reached) for Eastern GB cod, Eastern GB

haddock, and GB yellowtail flounder in the U.S./Canada Management Area. The regulations governing the annual development of TACs were implemented by Amendment 13 to the FMP in order to be consistent with the U.S./Canada Resource Sharing Understanding (Understanding), which is an informal (i.e., non-binding) understanding between the Northeast Region of NMFS and the Maritimes Region of the Department of Fisheries and Ocean of Canada (DFO) that outlines a process for the management of the shared GB groundfish resources. The Understanding specifies an allocation of TAC for these three stocks for each country, based on a formula that considers historical catch percentages and current resource distribution.

Annual TACs are determined through a process involving the Council, the

Transboundary Management Guidance Committee (TMGC), and the U.S./Canada Transboundary Resources Steering Committee. In September 2008, the TMGC approved the 2008 Guidance Document for Eastern GB cod, Eastern GB haddock, and GB yellowtail flounder, which included recommended U.S. TACs for these stocks. The recommended FY 2008 TACs were based upon the most recent stock assessments TRAC Status Reports for 2008), and the fishing mortality strategy shared by both NMFS and DFO. The strategy is to maintain a low to neutral (less than 50-percent) risk of exceeding the fishing mortality limit reference ( $F_{ref} = 0.18, 0.26, \text{ and } 0.25$  for cod, haddock, and yellowtail flounder, respectively). When stock conditions are poor, fishing mortality rates should be further reduced to promote rebuilding.

The TMGC concluded that the most appropriate combined U.S./Canada TAC for Eastern GB cod for FY 2009 is 1,700 mt. This corresponds to a low risk (less than 25-percent) of exceeding the Fref of 0.18 (i.e., Fmsy) in 2009. However, due to poor recruitment, there is a high risk (greater than 75-percent) that stock biomass will not increase from CY 2009 to CY 2010. The annual allocation shares between countries for FY 2009 are based on a combination of historical catches (15-percent weighting) and resource distribution based on trawl surveys (85-percent weighting). Combining these factors entitles the United States to 31-percent of the shared TAC and Canada to 69-percent, resulting in a national quota of 527 mt for the United States and 1,173 mt for Canada.

For Eastern GB haddock, the TMGC concluded that the most appropriate combined U.S./Canada TAC for FY 2009 fishing year is 30,000 mt. This represents a low to neutral risk (greater

than 25-percent but less than 50-percent) of exceeding the Fref of 0.26. Adult biomass is projected to peak at 158,000 mt in CY 2008 (reflecting the recruitment and growth of the exceptional 2003 year class), and decline to 131,000 mt in 2010. The annual allocation shares between countries for FY 2009 are based on a combination of historical catches (15-percent weighting) and resource distribution based on trawl surveys (85-percent weighting). Combining these factors entitles the United States to 37-percent of the shared TAC and Canada to 63-percent, resulting in a national quota of 11,100 mt for the United States and 18,900 mt for Canada.

For GB yellowtail flounder, the TMGC concluded that the most appropriate combined U.S./Canada TAC for the 2009 fishing year is 2,100 mt. This corresponds to an F of 0.11, lower than the Fref of 0.25, and is consistent with the fishing mortality required to rebuild GB yellowtail flounder by 2014. With a

catch of 2,100 mt in 2009, the age 3+ biomass is expected to increase by about 21-percent. The annual allocation shares between countries for 2008 are based on a combination of historical catches (15-percent weighting) and resource distribution based on trawl surveys (85-percent weighting). Combining these factors entitles the U.S. to 77-percent of the shared TAC and Canada to 23-percent, resulting in a national quota of 1,617 mt for the U.S. and 483 mt for Canada.

On October 8, 2009, the Council approved, consistent with the 2008 Guidance Document, the following U.S./TACs recommended by the TMGC: 527 mt of Eastern GB cod; 11,100 mt of Eastern GB haddock; and 1,617 mt of GB yellowtail flounder. The proposed 2009 fishing year TACs for the U.S./Canada Management Area represent a decrease for cod and yellowtail flounder, and an increase for haddock compared with those specified for the 2008 fishing year (Tables 7 and 8).

TABLE 7. 2009 U.S./CANADA TACS (MT) AND PERCENTAGE SHARES (IN PARENTHESES)

	GB Cod	GB Haddock	GB Yellowtail Flounder
Total Shared TAC	1,700	30,000	2,100
U.S. TAC	527 (31%)	11,100 (37%)	1,617 (77%)
Canada TAC	1,173 (69%)	18,900 (63%)	483 (23%)

TABLE 8. 2008 U.S./CANADA TACS (MT) AND PERCENTAGE SHARES (IN PARENTHESES)

	GB Cod	GB Haddock	GB Yellowtail Flounder
Total Shared TAC	2,300	23,000	2,500
U.S. TAC	667 (29%)	8,050 (35%)	* 1,950 (78%)
Canada TAC	1,633 (71%)	14,950 (65%)	550 (22%)

\* Adjusted downward to 1,868.7 mt due to overharvest of 2007 TAC

The 2009 TACs are based upon stock assessments conducted in June 2008 by the TRAC. The proposed TACs are consistent with the results of the TRAC and the TMGC's harvest strategy, as well as the GB yellowtail flounder rebuilding plan implemented by FW 42. The regulations for the Understanding, promulgated by the final rule implementing Amendment 13, state that "Any overages of the GB cod, haddock, or yellowtail flounder TACs that occur in a given fishing year will be subtracted from the respective TAC in the following fishing year."

Therefore, should an analysis of the catch of the shared stocks by U.S. vessels indicate that an over-harvest occurred during FY 2008, the pertinent TAC would be adjusted downward in order to be consistent with the FMP and Understanding. Although it is very unlikely, it is possible that a very large over-harvest could result in an adjusted

TAC of zero. If an adjustment to one of the FY 2008 TACs of cod, haddock, or yellowtail flounder is necessary, the public will be notified through publication in the **Federal Register** and through a letter to permit holders.

NMFS is also proposing, through the authority granted to the Regional Administrator by the FMP, measures to optimize the harvest of the shared resources. The regulations under § 648.85(a)(3)(iv)(D) provide the Regional Administrator the authority to implement in-season adjustments to various measures in order to prevent over-harvesting, or to facilitate achieving the TAC.

Based on the Council's vote to postpone the opening of the Eastern U.S./Canada Area for vessels fishing with trawl gear in FY 2008 from May 1, 2008, to August 1, 2008, and the success of this management measure in slowing the annual catch rate of cod during the

early part of the year, NMFS is proposing this same measure for FY 2009. Thus, the FY 2009 opening of the Eastern U.S./Canada Area for trawl vessels would be postponed from May 1, 2009, until August 1, 2009, while allowing more selective longline gear access during May through July. Such vessels would be limited to a cod catch of 5-percent of the cod TAC, or 26.4 mt of cod. The objective of the proposed action is to prevent trawl fishing in the Eastern U.S./Canada Area during the time period when cod bycatch is likely to be very high. The goal of this measure is to prolong access to this area in order to maximize the catch of available cod, haddock, and yellowtail flounder.

Secondly, the Regional Administrator is proposing implementation of a possession limit of 5,000 lb (2,268 kg) per trip for GB yellowtail flounder. Although the regulations under § 648.86(a)(3)(iv)(C) indicate an initial

trip limit of 10,000–lb (4,536 kg) at the beginning of a fishing year for GB yellowtail flounder, based on the yellowtail flounder catch rate from the U.S./Canada Management Area under a 5,000–lb (2,268–kg) trip limit during FY 2008, and analyses conducted by NMFS during FY 2007, a 5,000–lb (2,268–kg) trip limit would be an appropriate trip limit to allow harvesting of the TAC and increase the likelihood that further restrictions will not be necessary during the fishing year to slow the catch rate.

Third, the Regional Administrator is proposing to allow the use of the Ruhle Trawl in the Eastern U.S./Canada Area. Under current regulations, only a flounder net and the haddock separator trawl are permanently authorized for such use. The trawl, which is a modified trawl that substantially reduces the catch rate of most stocks of concern, was approved for use in the Regular B DAS Program and the Eastern U.S./Canada Haddock SAP (73 FR 40186, July 14, 2008). Approval of the use of the Ruhle trawl in the Eastern U.S./Canada Area would provide another alternative for trawl vessel operators and, therefore, provide additional flexibility. As detailed in the July 14, 2008 rule, the Ruhle trawl has been demonstrated to substantially reduce catch of many species of groundfish, and therefore its use would be consistent with the management objectives for the Eastern U.S./Canada Area.

Lastly, the Regional Administrator is proposing zero trips into the Closed Area (CA) II Yellowtail Flounder SAP during FY 2009, based on a determination that the available TAC of GB yellowtail flounder is insufficient to support a minimum level of fishing activity within the CA II SAP. The Regional Administrator has the authority to determine the allocation of the total number of trips into the CA II SAP based upon several criteria, including: GB yellowtail flounder TAC level and the amount of GB yellowtail flounder caught outside of the SAP. As implemented by FW 40B, zero trips to this SAP should be allocated if the available GB yellowtail flounder catch is not sufficient to support 150 trips with a 15,000–lb (6,804–kg) trip limit (i.e., if the available GB yellowtail flounder catch is less than 1,021 mt). This calculation takes into account the projected catch from the area outside of the SAP. Based on the estimate for catch outside of the SAP utilized for FY 2008 (1,376 mt), and the proposed GB yellowtail flounder TAC for FY 2009 (1,617 mt), there is insufficient available catch to allow the SAP to proceed (i.e.,  $1,617 - 1,376 = 241$ ;  $241 < 1,021$  mt).

#### 7. Haddock TAC for CA I Hook Gear Haddock SAP

Under this action, a haddock TAC for the CA I Hook Gear Haddock SAP would be specified based upon the GARM III stock assessment and a formula implemented in FW 42. The haddock TAC in a particular year is based upon the TAC that was specified for the SAP in 2004 (1,130 mt), and scaled according to the size of the exploitable biomass of western GB haddock compared to the biomass size in 2004 (35,317 mt). The size of the western component of the GB haddock stock is estimated as 35-percent of the size of the total GB haddock stock. Therefore, if the 2007 exploitable biomass of haddock is 321,870 mt, the formula and resultant TAC would be as follows:  $((.35)(321,870)/35,317) \times 1,130 = 3,604.5$  mt.

#### 8. Elimination of the SNE/MA Winter Flounder SAP

The SNE/MA Winter Flounder SAP currently allows a limited access NE multispecies vessel fishing for summer flounder west of 72° 30' W. long. to retain up to 200 lb (91 kg) of winter flounder while not under a NE multispecies DAS, provided the vessel complies with various restrictions. Due to the severely depleted status of SNE/MA winter flounder, and the goal of reducing fishing mortality to as close to zero as practicable, this SAP would be eliminated. Because the SAP could enable limited targeting of winter flounder, elimination of the SAP may prevent some catch of winter flounder from occurring.

#### 9. Elimination of the State Waters Winter Flounder Exemption

The State Waters Winter Flounder Exemption currently allows vessels issued a NE multispecies permit to fish in state waters for winter flounder using gear with mesh smaller than required for other vessels in the fishery (provided various requirements and criteria are met). Due to the severely depleted status of the SNE/MA winter flounder stock, and the goal of reducing fishing mortality to as close to zero as practicable, this SAP would be eliminated. Because the SAP could enable limited targeting of winter flounder, elimination of the SAP may prevent some catch of winter flounder from occurring.

#### 10. Mitigating Measures

*Reduction of Haddock Minimum Size.* Under this interim action, the haddock minimum size would be reduced to 18 inches (45 cm) for both the commercial and recreational fisheries in order to

increase yield and decrease bycatch (as defined by the Magnuson-Stevens Act). Information from GARM III indicates that the GB stock is very large and is rebuilt, while the GOM stock is 99-percent rebuilt. Furthermore, a portion of the large 2003 year class of haddock is still below the current 19-inch (47.5-cm) minimum size. A reduced minimum size for haddock would allow vessels to retain additional haddock, thereby increasing yield for this species. Other recreational measures are described under item 11.

*Extension of the Eastern U.S./Canada Haddock SAP.* The Eastern U.S./Canada Haddock SAP, which is set to expire at the end of FY 2008 on April 30, 2009, would be extended through this proposed interim action, in order to continue to facilitate access to GB haddock. This SAP allows vessels fishing with trawl gear to fish in a portion of the Eastern U.S./Canada Area, including a section of the northern portion of CA II (the “triangle”), under a Regular B DAS or a Reserve B DAS. This SAP allows a vessel to utilize a Category B DAS and fish in the “triangle” that is not otherwise accessible. The geographic area would remain unchanged, and the rules that apply would remain unchanged, with the exception of the reallocation of the incidental catch TACs (see Table 5).

When fishing in this SAP, vessels must currently fish with either a haddock separator trawl or a Ruhle Trawl, and are subject to restrictive possession limits in order to provide an incentive to correctly use the specialized trawl gear to help minimize bycatch of stocks of concern. Catch of stocks of concern on trips that end under a B DAS count toward the incidental catch TACs specified for pollock, GB cod, GB winter flounder, and GB yellowtail flounder (see Table 6). The total amount of these stocks of concern caught is limited by these incidental catch TACs and the program is typically subject to a higher level of observer coverage than the NE multispecies fishery at large. Furthermore, there are specialized rules that are required when fishing in this SAP, including those regarding observer notification, VMS declaration, reporting requirements, and a no discard provision.

*Modifications to the Regular B DAS Program.* The Regular B DAS Program was designed to provide opportunities to target healthy stocks without threatening stocks for which a mortality reduction is required. The program allows the use of Regular B DAS, provided the Program requirements designed to minimize impacts of stocks

of concern are met. Under this proposed rule, in addition to the modifications proposed under item 5 (Revisions to Incidental Catch TACs and Allocations to Special Management Programs), several revisions would be made to the Regular B DAS Program in order to address the current status of stocks and necessary reductions to fishing mortality, as well as to maintain the usefulness of the Regular B DAS Program. Under current regulations, the Regional Administrator has the authority to close the Regular B DAS Program if it is projected that continuation of the Regular B DAS Program would undermine the achievement of the objectives of the FMP. In addition to monitoring the incidental TACs proposed under item 5, NMFS would closely monitor the level of discarding of stocks that are proposed to have zero retention, but for which there is no incidental TAC proposed (i.e., SNE/MA winter flounder, northern windowpane flounder, and ocean pout) to ensure that fishing mortality objectives for all stocks are not jeopardized.

In order to prevent the quarterly incidental catch TACs from limiting the usefulness of the program, any quarterly incidental catch TAC that remains uncaught from quarters one, two, and three would roll over into the subsequent quarter.

Due to the number of flatfish stocks that need reductions in fishing mortality, the use of low profile (tie-down) gillnets under this interim action would be prohibited on trips fishing under the Regular B DAS Program. Within the NE multispecies fishery, flatfish are traditionally targeted by reducing the vertical height of bottom-set gillnets by tying the floatline of a gillnet to the leadline, or modifying the construction of the floatline to reduce or eliminate its buoyancy. Thus, because most stocks of concern are flatfish and targeting stocks of concern is not consistent with the goals of the Regular B DAS Program, the use of low profile gillnet gear would be prohibited under this Program. The use of gillnet gear to catch haddock would still be allowed.

Under current regulations, when 100 percent of the Incidental Catch TAC for white hake has been harvested, vessels fishing under a Regular B DAS are prohibited from retaining white hake. This is in contrast to the rules pertaining to the other Incidental Catch TACs in the Regular B DAS Program, whereby when the TAC is projected to be harvested, the use of Regular B DAS are prohibited in the pertinent stock area for the duration of the quarter. This proposed interim rule would treat

pollock and witch flounder in the same manner as white hake. Therefore, when 100 percent of the Incidental Catch TAC for white hake, pollock, or witch flounder has been harvested, vessels fishing under a Regular B DAS would be prohibited from retaining white hake, pollock, or witch flounder, respectively. Because white hake, pollock, and witch flounder have stock areas that cover the GOM, GB, and SNE/MA areas, if the harvest of the TAC were to trigger a shutdown of the pertinent stock area, the entire Regular B DAS Program would be shut down. The Regional Administrator would be provided the authority to modify the pertinent possession restriction, or implement other measures, including a partial closure for the Regular B DAS Program, in order to prevent excessive discarding of the stock.

*DAS Leasing Program Modifications.* Under this proposed rule, the current prohibition on leasing DAS between sector and common pool vessels would be eliminated in order to increase flexibility and efficiency in the DAS leasing market. Secondly, the limit on the maximum number of DAS that a vessel sector and common-pool vessels may lease would be eliminated. Amendment 13 implemented a restriction that a lessee may lease Category A DAS in an amount up to the vessel's FY 2001 allocation (excluding carry-over DAS from the previous year, or additional DAS associated with obtaining a Large Mesh permit). This restriction would be removed in order to increase flexibility and efficiency in the DAS leasing market. These mitigation measures, including the DAS Transfer Program modifications described below, would also enhance the likelihood of compliance with the measures by providing additional fishing opportunities.

*DAS Transfer Program Modifications.* Under this proposed rule, the DAS conservation tax would be removed from the DAS Transfer Program. Specifically, the mandatory reduction of Category A and B DAS (20 percent), and Category C DAS (90 percent), would no longer apply when vessels participate in the DAS Transfer Program. The Council, is expected to propose modifications to the DAS Transfer Program in Amendment 16 in order to provide an additional incentive to permanently transfer groundfish DAS, provide for parity of the DAS Transfer Program with the DAS Leasing Program, facilitate consolidation of permits, and provide flexibility for vessels to mitigate the negative impacts of DAS reductions and other management measures. NMFS is proposing this temporary modification

to the program for the same reasons the Council is expected to propose such changes. The limited duration of the tax-free period (due to the limited duration of the proposed interim action) would limit the amount of any effect the change may have on increasing the overall DAS use rate. NMFS is not proposing a DAS tax refund, because it would be counter to the regulations that have been in place.

#### 11. Recreational Measures

This action proposes to reduce fishing mortality on the GOM cod, GB cod, and SNE winter flounder fisheries for private recreational vessels fishing in the EEZ and for federally permitted charter/party vessels, commensurate with the reduction proposed for the commercial fishery. Following are the recreational measures proposed under this action: The current seasonal prohibition on the possession of GOM cod for both private recreational and charter/party vessels would be extended from its current duration of November through March, to November through April 15. Secondly, this action would implement a GB cod trip limit of 10 cod per person per day for charter/party vessels, consistent with the GB cod trip limit for private recreational vessels. Retention of winter flounder caught in the SNE/MA stock area would be prohibited for both private recreational and charter/party vessels. Recreational vessels in possession of winter flounder caught outside of the SNE/MA winter flounder stock area could transit this area, provided all bait and hooks are removed from fishing rods, and any winter flounder on board has been gutted and stored. Lastly, as a mitigation measure as further described above, the minimum size for haddock caught by recreational vessels fishing in the EEZ and federally permitted charter/party vessels would be reduced to 18–inches (45.7–cm).

#### 12. Council's Recommended Measures for Interim Action Considered, but Rejected

At its September 4, 2008, meeting, the Council recommended that NMFS implement an interim action for the duration of FY 2009 and proposed specific management measures. The Council's alternative proposed an 18–percent default DAS reduction; and target TACs for GB yellowtail flounder, SNE/MA yellowtail flounder, CC/GOM yellowtail flounder, American plaice, witch flounder, GB winter flounder, GOM winter flounder, redfish, white hake, pollock, GB cod, and GOM cod. The Council's proposed TACs were those associated with Frebuild for all

stocks except for the two cod stocks, which would be the TACs associated with Fmsy, and the TAC for SNE/MA winter flounder, which would be lower than that associated with Fmsy. The Council's proposal also included a 5,000-lb (2,268-kg) trip limit for SNE/MA winter flounder, and a 1,000-lb (454-kg)/DAS and 5,000-lb (2,268-kg)/trip limit for witch flounder. TAC overharvests in FY 2009 would be deducted from the FY 2010 TACs, and sectors would not be held responsible for FY 2009 over-harvests that they were not responsible for. Amendment 16 was proposed as the means by which the FY 2009 TAC overharvests would be reconciled in FY 2010.

In addition, the Council recommended mitigation measures, as follows: An 18-inch (45-cm) haddock minimum fish size; extension of the Eastern U.S./Canada Haddock SAP; expansion of the CA I Hook Gear Haddock SAP; removal of the DAS Transfer Program's conservation tax; and removal of the restriction that prohibits sector members from leasing to and from common pool vessels.

Although, for some stocks, the appropriate amount of catches in FY 2009 (i.e., the projected TACs associated with Fmsy or F rebuild) would be similar to or larger than recent catch levels, because of the large fishing mortality reductions necessary to end overfishing NMFS has determined that the Council's recommended measures to reduce fishing mortality are insufficient to meet NMFS' objectives.

To estimate the amount of fishing mortality that can be expected from a given allocation of DAS, NMFS utilizes the Closed Area Model (CAM), which incorporates multiple factors, and provides indications of relative changes in fishing exploitation. NMFS could not adopt the Council's alternative because CAM analyses of a similar alternative (i.e., the no action alternative), indicated that fishing mortality reductions would be insufficient for a number of stocks (7 of 11 requiring fishing mortality reductions). Even if the trip limits associated with the Council's alternative achieved the witch flounder objective, the fishing mortality associated with six stocks would have been excessive. Further, deductions of TAC overharvests in the subsequent fishing year would compound the challenge of rebuilding stocks (depending upon the biomass trend, stock structure, and recruitment) in the time required by the Magnuson-Stevens Act and the FMP. Finally, an interim action cannot implement measures that would go into place in a subsequent fishing year, such as a TAC deduction for over-harvest that

could occur in 2009, because of the statutory limitations on its duration.

NMFS explored whether the Council's recommended measures could be modified to meet the objectives of the interim action, and developed a hard TAC alternative in order to reduce the risk that appropriate catch levels would be exceeded. As detailed in the EA developed for this proposed action, NMFS ultimately rejected the hard TAC alternative for two principal reasons: 1) It is likely that the TACs for at least two stocks (GB cod and pollock) would have resulted in fishery closures relatively early in each trimester, thereby causing severe economic costs to the industry; and 2) the complexity of a hard TAC management system and the associated cost and difficulties in its implementation to both the fishing industry and NMFS would make it impractical to successfully implement in the short period of an interim action and possibly inconsistent with Magnuson-Stevens Act National Standards and required provisions.

This proposed interim action would adopt the following mitigation measures proposed by the Council: Extension of the Eastern U.S./Canada Haddock SAP; revision of the DAS Leasing Program; revision of the DAS Transfer Program; and reduction of the haddock minimum size limit.

NMFS considered but rejected the Council's Amendment 16 proposed mitigating measures that would modify the CA I Hook Gear Haddock SAP, and the extension of the CA II Yellowtail Flounder SAP to include haddock. The Amendment 16 proposal to modify the CA I Hook Gear Haddock SAP would expand the geographic and temporal scope of the SAP. The expansion of the CA I Hook Gear Haddock SAP is not supported by relevant research. The data relied upon for the approval of the CA I Hook Gear Haddock SAP in FW 40A were from the months of October through December. These data supported the determination that the SAP would have minimal impacts on stocks of concern (notably cod). In contrast, the SAP, as expected to be proposed in Amendment 16, would be open for a 9-month period from May through January. NMFS is unaware of pertinent research that would support the conclusion that the expansion would have minimal impacts on stocks of concern. Although the expansion of the SAP may provide some mitigating effect for some members of the fishery, only one gear type would be affected and the measures would represent an expansion of effort into a closed area. Such an expansion may not be fully consistent with the intent of this action.

Similarly, the Council's proposal for the CA II Yellowtail Flounder SAP, which would allow targeting of either haddock or yellowtail flounder in this area, would represent a major modification to this SAP. NMFS is unaware of pertinent research that would support the conclusion that the expansion would have minimal impacts on stocks of concern. Therefore, the Council's proposed SAP modification may have potential adverse impacts on stocks of concern, and could undermine the utility of CA II.

### Classification

Because this action is a proposed rule, at this time, NMFS has not made a final determination that the interim measures that this proposed rule would implement are consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making this 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. This proposed rule does not contain any new recordkeeping or reporting requirements.

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

As described above, this action is necessary to comply with the fish stock rebuilding requirements of the FMP and the Magnuson-Stevens Act. In response to new scientific information, this action would reduce fishing mortality on all groundfish stocks and provide flexibility to the fishing industry to adapt to the new regulations and help mitigate negative economic impacts. The principal goal of this interim action is to eliminate or reduce overfishing and achieve the rebuilding fishing mortality rates to the extent practicable for an interim period, while the Council develops more comprehensive, permanent measures. The Preferred Alternative would achieve an appropriate balance of short-term costs

and benefits that would strictly maintain adherence to rebuilding plans for most stocks, and reduce fishing mortality to Fmsy or below for all stocks except northern windowpane flounder.

NMFS fully analyzed and considered three principal alternatives (plus the No Action Alternative), and considered, but did not fully analyze, several additional alternatives characterized as considered but rejected. Alternative 1 relies upon an 18-percent DAS reduction combined with two different configurations of differential DAS areas; Alternative 2 is based upon a 40-percent DAS reduction; and Alternative 3, the Preferred Alternative relies on an 18-percent DAS reduction and one large differential DAS area. Fishing mortality reductions for all three alternatives include management measures for the commercial and recreational portions of the fishery. The No Action Alternative consists of the management measures currently in effect for the FMP, as well as the May 1, 2009, default measures specified under Amendment 13. Under the default measures, Category A DAS would be reduced by approximately 18-percent, and all other management measures would remain the same. Under all alternatives (except the No Action Alternative) the trip limit for white hake would be modified from 1,000-lb (454-kg) per DAS, to 2,000-lb (907-kg) per DAS (with the maximum per trip remaining at 10,000-lb (4,536-kg)); the current trip limit of 5,000-lb (2,268-kg)/trip for GB winter flounder would be removed; and the retention of ocean pout, SNE winter flounder, and the northern stock of windowpane flounder would be prohibited. Also, under all alternatives, a SNE Closure Area is being proposed to protect SNE winter flounder. Furthermore, the two current regulatory programs that allow vessels to retain winter flounder (that would otherwise be prohibited from retaining winter flounder) would be eliminated, i.e., the SNE Winter Flounder SAP and the State Waters Winter Flounder Exemption.

The following measures for the recreational sector would be implemented under the Preferred Alternative, as well as the other two principal alternatives considered: The current seasonal prohibition on the retention of GOM cod (for both private recreational vessels fishing in the EEZ and federally permitted party/charter vessels) would be lengthened by 2 weeks, with the resulting seasonal closure of November through April 15; persons fishing on federally permitted party/charter vessels would be prohibited from possessing more than 10 cod per day (caught anywhere), a

more restrictive limit than the current limit of 10 cod per day when fishing only in the GOM; and private recreational vessels fishing in the EEZ and federally permitted party/charter vessels would not be allowed to retain SNE winter flounder.

In addition, the following mitigation measures would be implemented under the proposed rule and other alternatives considered: The DAS Transfer Program would be modified to remove the DAS tax on transferred DAS; the Eastern U.S./Canada Haddock SAP, which is scheduled to expire, would be renewed; the DAS Leasing Program rules would be modified to remove the cap on the number of DAS that can be leased and to allow leasing between sector and common pool vessels; the minimum size for haddock would be reduced from 19 inches (47.5 cm) to 18 inches (45 cm) for both the recreational and commercial fisheries; and modifications would be made to the Regular B DAS Program, including roll-over of quarterly incidental catch TACs. A more detailed description of the proposed and other two principal alternatives analyzed and considered may be found in the preamble of this proposed rule and in the EA, respectively.

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

The Preferred Alternative would affect regulated entities engaged in commercial fishing for groundfish and entities that provide recreational fishing services to anglers. These entities include any vessel that has been issued either an open access or a limited access Federal permit under the FMP. The size standard for commercial fishing entities is \$4 million in sales, while the size standard for party/charter operators is \$7 million in sales. Available data indicate that, based on 2005–2007 average conditions, median gross sales by commercial fishing vessels were just over \$200,000 and no single fishing entity earned more than \$2 million. Available data are not adequate to identify affiliated vessels, so each operating unit is considered a small entity for purposes of the RFA. For regulated party/charter operators, the median value of gross receipts from passengers was just over \$9,000 and did not exceed \$500,000 in any year during 2001 to 2007. Therefore, all regulated commercial fishing and all regulated party/charter operators are determined to be small entities under the RFA, and, accordingly, there are no differential impacts between large and small entities under his proposed rule. The remaining discussion describes the number of

regulated entities, the number of participating regulated entities, and the potential economic impacts on participating regulated entities for party/charter operators and for commercial fishing vessels.

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

The Preferred Alternative contains several different measures that may affect regulated vessels holding either an open access or limited access NE multispecies permit. During FY 2007, there were a total of 1,292 commercial open access permits (Handgear B) and a total of 1,530 limited access permits issued. Of these permits, 664 limited access permit holders and 123 open access permit holders participated in the groundfish fishery during FY 2007. The principal proposed management measures include a reduction in DAS; specification of differential DAS in the entire GOM, as well as a portion of GB; a SNE Closure Area; and modifications to trip limits. Because of statutory and regulatory requirements to meet certain conservation objectives, the overall short term economic impact of the proposed action and any alternative considered would be negative.

Region-wide, the impact on revenue received on trips where groundfish were landed was estimated to fall by 31 percent, while sales of all species was estimated to be reduced by 20 percent (from \$156 million to \$126 million). Among individual vessels, a small number of regulated entities, primarily from NJ, may be able to increase sales due to the location of the SNE Closure Area relative to taking no action (i.e., the SNE Differential DAS Area would remain in place under the No Action Alternative). That is, fishing opportunities in the area that would now be opened to these vessels would more than offset the changes in trip limits and DAS reduction. However, for the overwhelming majority of regulated small entities, the economic impacts would be negative. The impact on total revenue would vary depending on a port's dependence on groundfish, with the greatest reductions for ME and MA (34 percent and 27 percent, respectively). For vessels that fish exclusively in the GOM, the 2:1 differential DAS counting, coupled with the default 18-percent reduction in DAS, is equivalent to a 36-percent reduction in DAS. For vessels with a low dependence on groundfish, even this reduction in DAS may not result in a large reduction in total catch. The combination of where vessels fish, and higher dependence on groundfish trip

income, results in the highest impacts on fishing revenue.

The estimated reduction in total revenue to NH and CT home port vessels was 16 percent, and 17 percent, respectively. For the other states, the expected reduction ranged from 6 percent in NY to 8 percent in RI.

In relative terms, the proposed measures would have similar impacts among vessels of different sizes. Among the most affected vessels (the 20 percent that would experience the greatest impacts), the adverse impact on small vessels was less (39 percent) than for either medium or large vessels. For those vessels least affected by the Preferred Alternative, with respect to impacts by primary fishing gear, the reduction in total revenue was similar for vessels using gillnet or trawl gear. However, for those vessels more highly impacted by the Preferred Alternative, trawl gear impacts were higher than for either gillnet or hook gear vessels. For trawl vessels, an average of above average level of severity of impacts would mean a 30 percent reduction in total revenue, whereas gillnet and hook gear vessels would experience a 19 percent and 12 percent reduction, respectively.

Although analyses of the anticipated impacts of past management actions and subsequent comparison with the realized impacts of such actions suggests that realized revenue losses have been lower than estimated, the proposed restrictions would make it more difficult for vessels to cover fixed costs on available groundfish trips and would place greater pressure on vessels to earn additional income from non-groundfish fishing opportunities. The proposed action would implement some mitigating measures, but not all vessels would be able to take advantage of these opportunities; some would still require financial outlays that may not be supportable, given the reduced fishing opportunities that would be available.

The proposed measures would affect not only regulated entities engaged in commercial fishing for groundfish, but also entities that provide recreational fishing services to anglers. Available data indicate that, of the 92 federally permitted charter/party vessels that reported keeping cod, haddock, or winter flounder, approximately one-third would be adversely affected by one or more of the proposed measures, and about two-thirds of participating party/charter operators would not be adversely affected. Party/charter receipts may be expected to be reduced by approximately 6 percent. The impact of extending the closed season for recreationally caught GOM cod is

difficult to predict due to the highly variable catch during the month of April. Reducing the size limit for haddock would increase the number of opportunities to keep haddock on all fishing trips.

The overall economic impact of the FY 2009 U.S./Canada TACs would likely be similar or slightly negative, compared to the economic impacts of the TACs specified for FY 2008. The specification of the proposed U.S./Canada TACs would result in a similar, or slightly reduced level of income from trips into the U.S./Canada Management Area. The FY 2009 cod and yellowtail flounder TACs would represent a decrease from the FY 2008 TAC levels. The changes in TAC reflect changes in stock size and the U.S. percentage share.

The principal effort reduction measures may reduce monkfish fishing effort due to the requirement that limited access monkfish Category C and D vessels that also hold a NE multispecies DAS permit use a NE multispecies DAS in conjunction with a monkfish DAS. The proposed measures would particularly impact those vessels with relatively few multispecies DAS. Monkfish vessels with a Category C or D permit may experience revenue loss if they previously fished in the proposed SNE Closure Area and cannot catch a similar amount of monkfish from outside of this area. The current regulations that allow limited access monkfish Category C and D vessels with fewer allocated NE multispecies DAS than allocated monkfish DAS to fish the difference between these two allocations, as monkfish-only DAS would still apply and would help mitigate the impact of the proposed measures (in particular, the reduction in NE multispecies DAS and the SNE Closure Area) on monkfish fishing effort.

The two primary skate fisheries, a wing fishery and a lobster bait fishery, are largely interwoven with the NE multispecies fishery. The regulations require that vessels must be fishing on a NE multispecies, monkfish, or scallop DAS, or fish in an exempted fishery, in order to possess skates. The vast majority of skate landings are landed on NE multispecies Category A DAS, and the DAS restrictions and SNE Closure Area of the Preferred Alternative would reduce fishing effort on skates. Thus, the proposed measures would have a negative economic impact on the skate fishery. The SNE Closure Area may have a greater negative impact on the skate bait fishery than the skate wing fishery, because the SNE Closure Area encompasses the bulk of the area fished in the skate bait fishery. If vessels were

able to catch skate outside of the SNE Closure Area, the impacts would be mitigated.

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

Under the No Action Alternative the estimated groundfish trip revenue would decline by 12.1 percent to \$89 million, and total fishing revenue would decline by 7.7 percent to \$145 million. The relative reduction in groundfish trip revenue varied little by home port state ranging from 10.3 percent to 12.8 percent. However, the change in total trip revenue varied among home port states primarily based on the relative contribution of groundfish trip revenue to total revenue. For example, total trip revenue declined by approximately 10 percent in ME, NH, and MA, but declined by no more than 6 percent in any other state. The change in revenue for individual vessels depends upon DAS use rate, as well as dependence upon groundfish. Under No Action, any vessel whose current DAS use rate was low would be unaffected, since their allocated A DAS under No Action would still be greater than the DAS they used. In relative terms, the No Action alternative would have similar impacts among vessels of different sizes. Among primary gears, the relative distribution of adverse impact on total revenue was nearly identical for vessels using gillnet or trawl gear, and less for most hook vessels.

Under Alternative 1 (inshore and offshore GOM differential DAS areas, with a relative high rate), the estimated groundfish trip revenue would decline by 28 percent to \$72 million, and total fishing revenue would decline by 18 percent to \$129 million. Alternative 1 would have an adverse impact on 477 of the 509 vessels included in the analysis. With a few exceptions, Alternative 1 would have similar impacts among vessels of different sizes. Compared to all other states, adverse impact on fishing revenue for ME home port vessels was much higher for vessels up to the 20th percentile (12 percent), and was higher for vessels between the 20th percentile and the median (21 percent). At intervals above the median, the impacts on ME home port vessels were similar to those on MA home port vessels. Vessels with high dependence on groundfish trip revenue may be expected to be more adversely affected by Alternative 1 than less dependent vessels.

Alternative 1 reduces fishing effort, and therefore reduces opportunities to catch and land skates. Compared to the No Action alternative, Alternative 1 would have negative economic impacts

on skate fishing vessels. The SNE Closure Area may have greater negative economic impacts on the skate bait fishery than on the skate wing fishery. Skate vessels potentially impacted by the SNE Closure Area may be able to mitigate some of their revenue losses by fishing in exempted fisheries. In general terms, Alternative 1 could have greater negative economic impacts on skate vessels than the other alternatives due to the 2.25:1 differential DAS area in the western GOM, where a great deal of skate fishing occurs.

Under Alternative 1, the 18-percent DAS reduction may reduce monkfish fishing effort, due to the requirement that limited access monkfish Category C and D vessels that also hold a NE multispecies DAS permit use a NE multispecies DAS in conjunction with a monkfish DAS. However, the existing regulation that allows limited access monkfish Category C and D vessels with fewer allocated NE multispecies DAS than allocate monkfish DAS to use the difference between these two allocations as monkfish-only DAS will help mitigate such impact on monkfish fishing effort. The SNE year-round closure, although smaller in size than the SNE Differential DAS Area currently in effect, would likely impact inshore monkfish gillnet vessels that fish in this region, reducing monkfish fishing effort overall in this area with a subsequent negative economic impact to the monkfish fishery. The extent of this potential negative social and economic impact would depend on the number of limited access monkfish Category C and D vessels actively fishing in the statistical areas encompassed by the closure, how much monkfish is landed from these areas, and whether or not these vessels could move their fishing operations into an open area in an effort to mitigate the impacts of the closure.

Under Alternative 2 (40-percent DAS reduction), the estimated groundfish trip revenue would decline by 33 percent to \$68 million and total fishing revenue would decline by 21 percent to \$124 million. Reflecting the relatively larger share of groundfish trip income in total revenue, the expected reduction in total fishing revenue was estimated to be at least 25 percent in ME (27 percent), and MA (27 percent). Across all vessels, gross revenues for only eight of the vessels included in the analysis would not change relative to status quo conditions, while for the remaining vessels the estimated reduction in total revenue ranged from 3 percent to 37 percent. In relative terms, Alternative 2 would have somewhat similar impacts among vessels of different sizes. Among primary gears the relative distribution of

adverse impact on total revenue was similar for vessels using gillnet or trawl gear. The relative distribution of adverse impacts differed between states that border the GOM (ME, NH, and MA) and those that do not. Vessels with high dependence on groundfish trip revenue may be expected to be more adversely affected by Alternative 2 than less dependent vessels.

Alternative 2 reduces fishing effort, and therefore reduces opportunities to catch and land skates. Compared to the No Action alternative, Alternative 2 would be expected to have negative economic impacts on skate fishing vessels. The SNE Closure Area may have greater negative economic impacts on the skate bait fishery than on the skate wing fishery. Skate vessels potentially impacted by the SNE closure area may be able to mitigate some of their revenue losses by fishing in exempted fisheries. Alternatives 2 and 3 are difficult to differentiate from an economic impact standpoint.

Under Alternative 2, the 40-percent DAS reduction may reduce monkfish fishing effort due to the requirement that limited access monkfish Category C and D vessels that also hold a NE multispecies DAS permit use a NE multispecies DAS in conjunction with a monkfish DAS. However, the existing regulation that allows limited access monkfish Category C and D vessels with fewer allocated NE multispecies DAS than allocate monkfish DAS to use the difference between these two allocations as monkfish-only DAS will help mitigate such impact on monkfish fishing effort. The SNE year-round closure, although smaller in size than the SNE Differential DAS Area currently in effect, would likely impact inshore monkfish gillnet vessels that fish in this region, reducing monkfish fishing effort overall in this area with a subsequent negative economic impact to the monkfish fishery. The extent of this potential negative social and economic impact would depend on the number of limited access monkfish Category C and D vessels actively fishing in the statistical areas encompassed by the closure, how much monkfish is landed from these areas, and whether or not these vessels could move their fishing operations into an open area in an effort to mitigate the impacts of the closure.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: January 9, 2009

**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 “low profile gillnet” is added, in alphabetical order, to read as follows:

#### **§ 648.2 Definitions.**

\* \* \* \* \*

*Low profile gillnet*, with respect to the NE multispecies fishery, means a bottom-set gillnet with reduced vertical height achieved by tying the floatline to the leadline or by modifying the construction of the floatline, or through other means, to reduce or eliminate its buoyancy.

\* \* \* \* \*

3. In § 648.10, paragraph (b)(5) is suspended, and paragraph (b)(6) is added to read as follows:

#### **§ 648.10 DAS and VMS notification requirements.**

\* \* \* \* \*

(b) \* \* \*

(6) *VMS notification requirements for other fisheries.* Unless otherwise specified in this part, or via letters sent to affected permit holders under paragraph (b)(2) of this section, the owner or authorized representative of a vessel that is required to use VMS, as specified in paragraph (b)(1) of this section, must notify the Regional Administrator of the vessel's intended fishing activity by entering the appropriate VMS code prior to leaving port at the start of each fishing trip. Notification of a vessel's intended fishing activity includes, but is not limited to, gear and DAS type to be used; area to be fished; and whether the vessel will be declared out of the DAS fishery, or will participate in the NE multispecies and monkfish DAS fisheries, including approved special management programs. A vessel cannot change any aspect of its VMS activity code outside of port, except that a NE multispecies vessel is authorized to change the category of DAS used (i.e., flip its DAS), as provided at § 648.85(b), or change the area declared to be fished so that the vessel may fish both inside and outside of the Eastern U.S./Canada Area on the same trip, as provided

at § 648.85(a)(3)(viii)(A). VMS activity codes and declaration instructions are available from the Regional Administrator upon request.

\* \* \* \* \*

4. In § 648.14:

A. Paragraphs (a)(50), (53), (121), (129), (130), (132), (146), (153), (165), (173) through (175), and (177) are suspended.

B. Paragraphs (c)(7), (23) through (26), (33), (39), (50), (51), (57) through (60), (62) through (66), (70), (76), (81) through (83), and (85) through (89) are suspended.

C. Paragraphs (g)(4) and (5) are suspended.

D. Paragraphs (a)(183) through (192), (c)(90) through (122), and (g)(6) and (7) are added.

The additions read as follows:

§ 648.14 Prohibitions.

\* \* \* \* \*

(a) \* \* \*

(183) Enter, or be on a fishing vessel with a NE multispecies permit in the area described in § 648.81(n), except as provided for in § 648.81(n).

(184) Fish for, harvest, possess, or land regulated species in or from the closed area specified in § 648.81(n), unless otherwise allowed under § 648.81(n).

(185) Enter or fish in the Western U.S./Canada Area or Eastern U.S./Canada Area specified in § 648.85(a)(1), unless declared into the area in accordance with § 648.85(a)(3)(viii).

(186) 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)(viii)(A) or (B).

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

(188) When fishing inside and outside of the Eastern U.S./Canada Area on the same trip, fail to abide by the most restrictive DAS counting, trip limits, and reporting requirements that apply, as described in § 648.85(a)(3)(viii)(A).

(189) If fishing inside the Eastern U.S./Canada Area and in possession of fish in excess of what is allowed under most restrictive regulations that apply outside of the Eastern U.S./Canada Area on the same trip, as prohibited under § 648.85(a)(3)(viii)(A).

(190) Fail to comply with the reporting requirements under § 648.85(a)(3)(viii)(A)(2) when fishing

inside and outside of the Eastern U.S./Canada Area on a trip.

(191) 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, flounder trawl net, or Ruhle trawl, as specified in § 648.85(a)(3)(ix) and (b)(10)(iv)(j)(3), unless otherwise allowed under the Eastern U.S./Canada Haddock SAP rules in § 648.85(b)(8)(v)(E).

(192) Possess, land, or fish for regulated species while in possession of scallop dredge gear on a vessel not fishing under the scallop DAS program as described in § 648.53, or fishing under a general scallop permit, unless the vessel and the dredge gear conform with the stowage requirements of § 648.23(b), or unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters.

\* \* \* \* \*

(c) \* \* \*

(90) 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 (M).

(91) If fishing under a Category B DAS in the Closed Area II Yellowtail Flounder SAP specified in § 648.85(b)(3), the Regular B DAS Pilot Program specified in § 648.85(b)(10), or the Eastern U.S./Canada Haddock SAP Pilot Program specified in § 648.85(b)(8), remove any fish caught with any gear, including dumping the contents of a net, except on board the vessel.

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

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

(94) Enter port, while on a NE multispecies DAS trip, in possession of more than the allowable limit of cod specified in § 648.86(l)(1), unless the vessel is fishing under the cod exemption specified in § 648.86(l)(4).

(95) 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(l)(1)(ii)(A), except for transiting purposes, provided the vessel complies with § 648.86(l)(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(l)(1)(ii)(B).

(96) Enter port, while on a NE multispecies DAS trip, in possession of more than the allowable limit of cod specified in § 648.86(l)(2).

(97) 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(l)(2)(ii)(A), except for transiting purposes, provided the vessel complies with § 648.86(l)(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(l)(2)(ii)(B).

(98) If fishing under the party/charter or private recreational regulations in the SNE Closure Area defined under § 648.81(n)(1), fish for or retain winter flounder.

(99) 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)(10)(iv)(E).

(100) 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)(10)(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)(10)(iv)(D), other groundfish specified under § 648.86, or monkfish under § 648.94.

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

(102) 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).

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

(104) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), fail

to comply with the VMS declaration requirement specified in § 648.85(b)(10)(iv)(C).

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

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

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

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

(109) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), use a Regular B DAS after the program has closed, as required under § 648.85(b)(10)(iv)(G) or (H).

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

(111) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the DAS use restrictions specified in § 648.85(b)(7)(iv)(J), and (b)(7)(v)(A) or (b)(7)(vi)(A), whichever is applicable.

(112) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the reporting requirement specified in § 648.85(b)(7)(v)(F) or (b)(7)(vi)(D), whichever is applicable.

(113) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), fail to use a haddock separator trawl as described under § 648.85(a)(3)(iii)(A), or other approved gear as described under § 648.85(b)(10)(iv)(J).

(114) If fishing under a NE multispecies Category A DAS in the Interim Differential DAS Area, defined under § 648.82(e)(4)(i), fail to declare into the area through VMS as required under § 648.82(e)(4)(ii).

(115) If fishing under a NE multispecies Category A DAS in the Interim Differential DAS Area defined in § 648.82(e)(4)(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.

(116) Possess or land more white hake than allowed under § 648.86(m).

(117) Retain or land zero retention stocks as specified under § 648.86(n).

(118) If possessing a Ruhle Trawl, either at sea or elsewhere, as allowed under § 648.85(b)(10)(iv)(J)(1) or (b)(8)(v)(E)(1), fail to comply with the net specifications under § 648.85(b)(10)(iv)(J)(3).

(119) If fishing as a private recreational and charter/party vessel in the SNE/MA winter flounder stock area defined in § 648.85(b)(10)(v)(E), fish for or retain winter flounder or transit this area in possession of winter flounder caught outside this area, unless all bait and hooks are removed from fishing rods and any winter flounder on board has been gutted and stored.

(120) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), fail to use a haddock separator trawl as described under § 648.85(a)(3)(ix)(A), or other approved gear as described under § 648.85(b)(10)(iv)(J).

(121) 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)(viii)(A).

(122) For vessels fishing inside and outside the Eastern U.S./Canada Area on the same trip, fail to notify NMFS via VMS that the vessel is electing to fish in this manner, as required by § 648.85(a)(3)(viii)(A)(1).

(g) \* \* \*

(6) 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)(vi) 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)(5)(v).

(7) If fishing under the recreational or charter/party 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)(vi) or (c)(5)(v) or, fail to abide by the appropriate restrictions if transiting with cod on board.

**§ 648.80 [Amended]**

5. In § 648.80, paragraph (i) is suspended.

6. In § 648.81, paragraph (b)(2)(iv)(B) is suspended, and paragraphs (b)(2)(iv)(C) and (n) are added to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(iv) \* \* \*

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

\* \* \* \* \*

(n) *Southern New England (SNE) Closure Area.* (1) No fishing vessel, or person on such vessel, may enter, fish in, or be in; and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in, or on board a vessel, in the area known as the SNE Closure Area, as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (n)(2) and (3) of this section (a chart depicting this area is available from the Regional Administrator upon request).

**SNE CLOSURE AREA**

Point	N. lat.	W. long.
SNECA1	( <sup>1</sup> )	70°00'
SNECA2	41°30'	70°00'
SNECA3	41°30'	68°30'
SNECA4	40°30'	68°30'
SNECA5	40°30'	( <sup>2</sup> )

(<sup>1</sup>) Intersection of the shoreline of Cape Cod, Massachusetts and 70°00' W. long.

(<sup>2</sup>) Intersection of the shoreline of Staten Island, New York, and 40°30' N. lat.

(2) Paragraph (n)(1) of this section does not apply to persons on fishing vessels or fishing vessels:

(i) Fishing with exempted gear, as defined in this part, or under the exemptions specified in § 648.80(b)(2)(vi) and (b)(3);

(ii) Fishing with hook gear, provided that no gear other than hook gear is on board, and the vessel abides by the NE multispecies possession restrictions under § 648.86; or

(iii) Fishing under the charter/party or private recreational regulations, provided that vessel abides by the recreational restrictions under § 648.89, and:

(A) With the except of tuna, fish harvested or possessed by the vessel are not sold or intended for trade, barter or sale, regardless of where the regulated species are caught; and

(B) The vessel has no gear other than rod and reel or handline on board.

(3) NE multispecies permitted vessels possessing NE multispecies on board the vessel and transiting through the SNE Closure Area, provided gear other than hook gear is stowed in accordance with § 648.23(b).

7. In § 648.82:

A. Paragraphs (e)(2) and (3); (j)(1)(iii)(A) through (D); (k)(4)(iv) and (x); and (l)(1)(iv) and (ix) are suspended.

B. Paragraphs (e)(4) and (5), and (j)(1)(iii)(E), (F), and (G) are added. The additions read as follows:

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

\* \* \* \* \*

(e) \* \* \*

(4) *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 Interim Differential DAS Area, as defined in paragraph (e)(4)(i) 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)(4)(iii) of this section, and be subject to the restrictions defined in this paragraph (e).

(i) *Interim Differential DAS Area*. The Interim Differential DAS Area is defined as that area bounded on the west by the coast of Massachusetts, New Hampshire, and Maine, on the east by the U.S.-Canada maritime boundary, and by straight lines connecting the following points in the order stated (a chart depicting this area is available from the Regional Administrator upon request):

Point	N. lat.	W. long.
ID10	41°30'	66°35' <sup>(1)</sup>
ID8	41°30'	70°00'
ID9	( <sup>2</sup> )	70°00'

<sup>(1)</sup> The U.S.-Canada Maritime Boundary.

<sup>(2)</sup> The intersection of the Cape Cod, Massachusetts, shoreline and 70°00' W. long.

(ii) *Declaration*. A NE multispecies DAS vessel that intends to fish, or fishes under a Category A DAS in the Interim Differential DAS Area, as described in paragraph (e)(4)(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, that the vessel will fish in the Interim Differential DAS Area. A DAS vessel that fishes in the Eastern U.S./Canada Area and intends to fish, or fishes, subsequently in the Interim Differential DAS Area under a Category A DAS, must declare its intention to do so through its VMS prior to leaving the dock at the start of the trip or prior to leaving the Eastern U.S./Canada Area, as specified in § 648.85(a)(3)(viii)(A)(3).

(iii) *Differential DAS counting*. For a NE multispecies DAS vessel that intends to fish, or fishes for some or all of its trip other than for transiting purposes under a Category A DAS in the Interim 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 Interim Differential DAS Area. A vessel that has not declared its intent to fish in the Interim Differential DAS Area and that is not transiting, as specified in paragraph (e)(4)(v) of this section, may be in the Interim Differential DAS Area, provided the vessel's fishing gear is stowed in accordance with the provisions of § 648.23(b) for the entire time the vessel is in the area, and the vessel declares immediately upon entering the Interim Differential DAS Area, via VMS, that it is in the area.

(iv) *Restrictions*. A NE multispecies vessel fishing under a Category A DAS in the Interim Differential DAS Area defined in paragraph (e)(4)(i) of this section, under the restrictions of this paragraph (e)(4) and under the restrictions of one or more of the Special Management Programs under § 648.85, must comply with the most restrictive DAS counting, trip limits, and reporting requirements, specified in this paragraph (e)(4) and in § 648.85, under the pertinent Special Management Program.

(v) *Transiting*. A vessel may transit the Interim Differential DAS Area, as defined in paragraph (e)(4)(i) of this section, provided the gear is stowed in accordance with the provisions of § 648.23(b).

(5) *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)(10), 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)(10), while also fishing in the Interim Differential DAS Area, defined in paragraph (e)(4)(i) of this section, Category B DAS shall accrue at the rate described in this paragraph (e)(5), 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)(4)(iii) of this section for the entire trip. For vessels electing to fish in both the Regular B DAS Program, as specified in § 648.85(b)(10), and in the Eastern U.S./Canada Area, as specified in § 648.85(a), DAS counting will begin and end according to the DAS accounting rules specified in § 648.10(b)(2)(iii).

\* \* \* \* \*

(j) \* \* \*

(1) \* \* \*

(iii) \* \* \*

(E) 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)(10), under a Category B DAS, is subject to the DAS accrual provisions of paragraph (e)(5) of this section.

(F) 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)(4) 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.

(G) A Day gillnet vessel fishing with gillnet gear under a NE multispecies Category A DAS that is fishing in the Interim Differential DAS Area and, therefore, subject to differential DAS counting as specified under paragraph (e)(4)(iii) of this section, shall accrue DAS at a differential DAS rate of 2 to 1 for the actual hours used for any trip of less than or equal to 3 hr in duration, and for any trip of greater than 7.5 hr. For such vessels fishing on any trip of more than 3 hr, but less than or equal to 7.5 hr duration, vessels will be charged a full 15 hr. For example, a Day gillnet vessel fishing in the Interim Differential DAS Area for 8 actual hr would be charged 16 hours of DAS, or if fishing for 5 actual hr, would be charged 15 hours of DAS.

\* \* \* \* \*

8. In § 648.83, paragraph (a)(1) is suspended and paragraph (a)(3) is revised to read as follows:

**§ 648.83 Multispecies minimum fish sizes.**

(a) \* \* \*

(3) Minimum fish sizes for recreational vessels and charter/party vessels that are not fishing under a NE multispecies DAS are specified in § 648.89. Except as provided in § 648.17, all other vessels are subject to the following minimum fish sizes, determined by total length (TL):

MINIMUM FISH SIZES (TL) FOR  
COMMERCIAL VESSELS

Species	Sizes (inches)
Cod	22 (55.9 cm)
Haddock	18 (45.7 cm)
Pollock	19 (48.3 cm)
Witch flounder (gray sole)	14 (35.6 cm)
Yellowtail flounder	13 (33.0 cm)
American plaice	14 (35.6 cm)
Atlantic halibut	36 (91.4 cm)
Winter flounder (blackback)	12 (30.5 cm)
Redfish	9 (22.9 cm)

\* \* \* \* \*

9. In § 648.85:

A. Paragraphs (a)(3)(ii) and (iii); and (a)(3)(v)(A), (B), and (C) are suspended.

B. Paragraphs (b)(4), (5), and (6); (b)(7)(iv)(A); (b)(7)(v)(D); (b)(7)(vi)(E); (b)(8)(v)(E)(2); and (b)(8)(v)(H) are suspended.

C. Paragraphs (a)(3)(v)(D), (E), and (F); (a)(3)(viii) and (ix); (b)(7)(iv)(J); (b)(7)(v)(F); and (b)(7)(vi)(G); (b)(8)(v)(E)(3); (b)(8)(v)(M); and (b)(9) and (10) are added.

The additions read as follows:

**§ 648.85 Special management programs.**

\* \* \* \* \*

(a) \* \* \*

(3) \* \* \*

(v) \* \* \*

(D) Total pounds of cod, haddock, yellowtail flounder, winter flounder, witch flounder, pollock, windowpane flounder, and white hake kept;

(E) Date fish were caught and statistical area in which fish were caught; and

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

\* \* \* \* \*

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

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

outside of the Eastern U.S./Canada Area on the same trip, provided it complies with the most restrictive DAS counting, trip limits, and reporting requirements for the areas fished for the entire trip, and provided it complies with the restrictions specified in paragraphs (a)(3)(viii)(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 shall 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 dock at the start of the trip or 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 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 shall 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 paragraph (a)(3)(v) of this section for the duration of the trip.

(3) If the vessel fishes or intends to fish in the Interim Differential DAS Area defined under § 648.82(e)(4)(i), it must declare its intent to fish in the Interim Differential DAS Area prior to leaving the Eastern U.S./Canada Area (including at the time of initial declaration into 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).

(B) A vessel fishing under a NE multispecies DAS in the Western U.S./Canada Area may fish inside and outside the Western U.S./Canada Area on the same trip, provided it complies with the most restrictive regulations

applicable to the area fished for the entire trip (e.g., the possession restrictions specified in paragraph (a)(3)(iv)(C)(4) of this section), and the reporting requirements specified in paragraph (a)(3)(v) of this section.

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

(ix) *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)(8) and (b)(10) of this section, must fish with a Ruhle trawl, as described in paragraph (b)(10)(iv)(J)(1) of this section, or a haddock separator trawl or a flounder trawl net, as described in paragraphs (a)(3)(ix)(A) and (B) of this section (all three nets may be onboard the fishing vessel simultaneously). Gear other than the Ruhle trawl, haddock separator trawl, or the flounder trawl net as described in paragraph (a)(3)(ix) of this section, or gear authorized under paragraphs (b)(8) and (b)(10) 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 Ruhle trawl, the haddock separator trawl and flounder trawl net in paragraph (b)(10)(iv)(J)(1) of this section and in this paragraph (a)(3)(ix) 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.

(A) *Haddock separator trawl.* A haddock separator trawl is defined as a groundfish trawl modified to a vertically oriented trouser trawl configuration, with two extensions arranged one over the other, where a codend shall be attached only to the upper extension, and the bottom extension shall be left open and have no codend attached. A horizontal large-mesh separating panel constructed with a minimum of 6.0-inch (15.2-cm) diamond mesh must be installed between the selvages joining the upper and lower panels, as described in this paragraph (a)(3)(ix)(A) and in paragraph (B) of this section,

extending forward from the front of the trouser junction to the aft edge of the first belly behind the fishing circle.

(1) *Two-seam bottom trawl nets.*—For two-seam nets, the separator panel will be constructed such that the width of the forward edge of the panel is 80–85 percent of the width of the after edge of the first belly of the net where the panel is attached. For example, if the belly is 200 meshes wide (from selvedge to selvedge), the separator panel must be no wider than 160–170 meshes.

(2) *Four-seam bottom trawl nets.*—For four-seam nets, the separator panel will be constructed such that the width of the forward edge of the panel is 90–95 percent of the width of the after edge of the first belly of the net where the panel is attached. For example, if the belly is 200 meshes wide (from selvedge to selvedge), the separator panel must be no wider than 180–190 meshes. The separator panel will be attached to both of the side panels of the net along the midpoint of the side panels. For example, if the side panel is 100 meshes tall, the separator panel must be attached at the 50th mesh.

(B) *Flounder trawl net.* A flounder trawl net is defined as bottom trawl gear meeting one of the following two net descriptions:

(1) A two-seam, low-rise net constructed with mesh size in compliance with § 648.80(a)(4), where the maximum footrope length is not greater than 105 ft (32.0 m) and the headrope is at least 30-percent longer than the footrope. The footrope and headrope lengths shall be measured from the forward wing end.

(2) A two-seam, low-rise net constructed with mesh size in compliance with § 648.80(a)(4), with the exception that the top panel of the net contains a section of mesh at least 10 ft (3.05 m) long and stretching from selvedge to selvedge, composed of at least 12-inch (30.5-cm) mesh that is inserted no farther than 4.5 meshes behind the headrope.

(b) \* \* \*

(7) \* \* \*

(iv) \* \* \*

(J) *DAS use restrictions.* A vessel fishing in the CA I Hook Gear Haddock SAP may not initiate a DAS flip. A vessel is prohibited from fishing in the CA I Hook Gear Haddock SAP while making a trip under the Regular B DAS Program described under paragraph (b)(10) of this section. DAS will be charged as described in § 648.10.

(v) \* \* \*

(F) *Reporting requirements.* The owner or operator of a Sector vessel declared into the CA 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 CA I Hook Gear Haddock SAP Area. The Sector Manager shall provide daily reports to NMFS, including at least the following information: Total pounds of cod, haddock, yellowtail flounder, winter flounder, witch flounder, pollock, windowpane flounder, and white hake kept; 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)(F) of this section.

(vi) \* \* \*

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

(8) \* \* \*

(v) \* \* \*

(E) \* \* \*

(3) *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 paragraph (b)(10)(iv)(J)(2) of this section.

\* \* \* \* \*

(M) *Incidental TACs.* The maximum amount of GB cod, and the amount of GB yellowtail flounder, GB winter flounder, and pollock, 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) of this section, is the amount specified in paragraphs (b)(9)(ii), (iii), and (iv) of this section, respectively.

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

(i) *Stocks other than GB cod, GB yellowtail flounder, GB winter flounder, and pollock.* With the exception of GB cod, GB yellowtail flounder, GB winter flounder, and pollock, the Incidental

Catch TACs specified under this paragraph (b)(9) shall be allocated to the Regular B DAS Program described in paragraph (b)(10) of this section.

(ii) *GB cod.* The Incidental TAC for GB cod specified under this paragraph (b)(9) shall be subdivided as follows: 70-percent to the Regular B DAS Program described in paragraph (b)(10) of this section; 16-percent to the CA I Hook Gear Haddock SAP described in paragraph (b)(7) of this section; and 14-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)(9) shall be subdivided as follows: 80-percent to the Regular B DAS Program described in paragraph (b)(10) of this section; and 20-percent to the Eastern U.S./Canada Haddock SAP described in paragraph (b)(8) of this section.

(iv) *Pollock.* The Incidental TAC for pollock specified under this paragraph (b)(9) shall be subdivided as follows: 90-percent to the Regular B DAS Program described in paragraph (b)(10) of this section; 5-percent to the CA I Hook Gear Haddock SAP described in paragraph (b)(7) of this section; and 5-percent to the Eastern U.S./Canada Haddock SAP described in paragraph (b)(8) of this section.

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

(ii) [Reserved]

(iii) *Quarterly Incidental Catch TACs.* The Incidental Catch TACs specified in accordance with paragraph (b)(9) of this section shall be divided into quarterly catch TACs as follows: The first quarter shall received 13 percent of the

Incidental Catch TACs and the remaining three quarters shall each receive 29 percent of the Incidental Catch TACs. When the Regional Administrator projects that there is uncaught TAC in quarters one, two, or three, the uncaught TAC will be added to the TAC allocated for the subsequent quarter. Uncaught TAC at the end of the fishing year will not be added to allocations in subsequent fishing years. NMFS shall send letters to all limited access NE multispecies permit holders notifying them of such TACs and any adjustments to such TACs.

(iv) *Program requirements*—(A) *VMS requirement*. A NE multispecies DAS vessel fishing in the Regular B DAS Program described in paragraph (b)(10)(i) of this section must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(B) *Observer notification*. For the purposes of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; the date, time, and port of departure; and the planned fishing area or areas (GOM, GB, or SNE/MA) at least 72 hr prior to the beginning of any trip that it declares into the Regular B DAS Program, as required under paragraph (b)(10)(iv)(C) of this section, and in accordance with instructions provided by the Regional Administrator. Providing notice of the area that the vessel intends to fish does not restrict the vessel's activity to only that area on that trip (i.e., the vessel operator may change his/her plans regarding planned fishing area).

(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. Mere declaration of a Regular B DAS Program trip does not reserve a vessel's right to fish under the Program, if the vessel has not crossed the VMS demarcation line.

(D) *Landing limits*. Unless otherwise specified in this paragraph (b)(10)(iv)(D), a NE multispecies vessel fishing in the Regular B DAS Program described in this paragraph (b)(10), and fishing under a Regular B DAS, may not land more than 100 lb (45.5 kg) per DAS, or any part of a DAS, up to a maximum of 1,000 lb (454 kg) per trip of any of the following species/stocks

from the areas specified in paragraph (b)(10)(v) of this section: Cod, pollock, white hake, witch flounder, GB winter flounder, GB yellowtail flounder, and southern windowpane flounder; 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 that are required to fish with a haddock separator trawl or Ruhle trawl, as specified under paragraph (b)(10)(iv)(J) of this section, and other gear that may be required in order to reduce catches of stocks of concern as described under paragraph (b)(10)(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 (GOM or GB), windowpane flounder (south), and yellowtail flounder), combined; 500 lb (227 kg) of monkfish (whole weight); 500 lb (227 kg) of skates (whole weight); and zero possession of lobsters, ocean pout, SNE/MA winter flounder, and windowpane (north), unless otherwise restricted by § 648.94(b)(3).

(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 species, Atlantic halibut, or monkfish, unless otherwise specified in this paragraph (b)(10)(iv)(E). This prohibition on discarding does not apply to ocean pout, windowpane (north), or SNE winter flounder, or in areas or times where the possession or landing of regulated species is prohibited. If such a vessel harvests and brings on board legal-sized regulated NE multispecies, or Atlantic halibut (unless exempted above) in excess of the allowable landing limits specified in paragraph (b)(10)(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 an A DAS. Once this notification has been received by NMFS, the vessel shall 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 shall be accrued as Category A DAS, and not Regular B DAS. After flipping to a Category A DAS, the vessel is subject to the applicable trip limits specified under § 648.86 or paragraph (a) of this section and may discard fish in excess of the applicable trip limits.

(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 may 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 Interim Differential DAS area, as described in § 648.82(e)(4)(i), the number of Regular B DAS that may 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 Interim 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 DAS Program is 5. A vessel fishing in the Regular B DAS Program for its entire trip shall accrue DAS in accordance with § 648.82(e)(4).

(G) *Restrictions when 100 percent of the incidental catch TAC is harvested*. With the exception of white hake, witch flounder, and pollock, when the Regional Administrator provides notification through methods consistent with the Administrative Procedure Act, that 100 percent of one or more of quarterly incidental TACs specified under paragraph (b)(10)(iii) of this section has projected to have been harvested, the use of Regular B DAS shall be prohibited in the pertinent stock area(s) as defined under paragraph (b)(10)(v) of this section for the duration of the calendar quarter. The closure of a stock area to all Regular B DAS use shall occur even if the quarterly incidental catch TACs for other stocks in that stock area have not been completely harvested. When the Regional Administrator projects that 100 percent of the quarterly white hake, witch flounder, or pollock incidental catch TAC specified under paragraph (b)(10)(iii) of this section has been harvested, vessels fishing under a Regular B DAS, or that complete a trip under a Regular B DAS, shall be prohibited from retaining white hake, witch flounder, or pollock, respectively.

(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)(10)(iv)(G) of this section, or as a result of an action by the Regional Administrator under paragraph (b)(10)(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)(5).

(I) *Reporting requirements.* The owner or operator of a NE multispecies DAS vessel must submit catch reports via VMS in accordance with instructions provided by the Regional Administrator, for each day fished when declared into the Regular B DAS Program. The reports must be submitted in 24-hr intervals for each day, beginning at 0000 hr and ending at 2400 hr. The reports must be submitted by 0900 hr of the following day. For vessels that have declared into the Regular B DAS Program in accordance with paragraph (b)(10)(iv)(C) of this section, the reports must include at least the following information: Statistical area fished; total pounds of cod, haddock, yellowtail flounder, winter flounder, witch flounder, pollock, and white hake kept; 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)(10)(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 or Ruhle trawl, as described under paragraphs (a)(3)(iii)(A) and (b)(10)(iv)(J)(3) of this section, respectively, or other type of gear, if approved as described under this paragraph (b)(10)(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. Vessels fishing with gillnet gear in the Regular B DAS Program may not use a low profile (“tie-down” type) gillnet.

(2) Approval of additional gear. At the request of the Council or 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 paragraphs (b)(10)(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)(10)(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 each regulated species stock of concern, unless otherwise allowed in this paragraph (b)(10)(iv)(J)(2)(i), or

other non-groundfish stocks that are overfished or subject to overfishing identified by the Council. This requirement 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 stock of concern, unless otherwise allowed in this paragraph (b)(10)(iv)(J)(2)(ii), or other non-groundfish stocks that are overfished or subject to overfishing identified by the Council, must be less than 5 percent of the total catch of regulated groundfish by weight, on a trip-by-trip basis. This requirement does not apply to regulated species identified by the Council as not being subject to gear performance standards.

(3) *Ruhle Trawl.* The Ruhle Trawl is a four-seam bottom groundfish trawl designed to reduce the bycatch of cod while retaining or increasing the catch of haddock, when compared to traditional groundfish trawls. A Ruhle Trawl must be constructed in accordance with the standards described and referenced in this paragraph (b)(10)(iv)(J)(3). The mesh size of a particular section of the Ruhle Trawl is measured in accordance with § 648.80(f)(2), unless insufficient numbers of mesh exist, in which case the maximum total number of meshes in the section will be measured (between 2 and 20 meshes).

(i) The net must be constructed with four seams (i.e., a net with a top and bottom panel and two side panels), and include at least the following net sections as depicted in Figure 1 of this part A “Nomenclature for 4-seam Ruhle Trawl” (this figure is also available from the Administrator, Northeast Region): Top jib, bottom jib, jib side panels (x 2), top wing, bottom wing, wing side panels (x 2), square, bunt, square side panels (x 2), first top belly, first bottom belly, first belly side panels (x 2), second top belly, second bottom belly, second belly side panels (x 2), and third bottom belly.

(ii) The first bottom belly, bunt, the top and bottom wings, and the top and bottom jibs, jib side panels, and wing side panels (the first bottom belly and all portions of the net in front of the first bottom belly, with the exception of the square and the square side panels) must be at least two meshes long in the fore and aft direction. For these net sections, the stretched length of any single mesh must be at least 7.9 ft (240 cm), measured in a straight line from knot to knot.

(iii) Mesh size in all other sections must be consistent with mesh size requirements specified under § 648.80 and meet the following minimum

specifications: Each mesh in the square, square side panels, and second bottom belly must be 31.5 inches (80 cm); each mesh in the first and second top belly, the first belly side panels, and the third bottom belly must be at least 7.9 inches (20 cm); and 6 inches (15.24 cm) or larger in sections following the second top belly and third bottom belly sections, all the way to the codend. The mesh size requirements of the top sections apply to the side panel sections.

(iv) The trawl must have a fishing circle of at least 398 ft (121.4 m). This number is calculated by separately counting the number of meshes for each section of the net at the wide, fore end of the first bottom belly, and then calculating a stretched length as follows: For each section of the net (first bottom belly, two belly side panels and first top belly) multiply the number of meshes times the length of each stretched mesh to get the stretched mesh length for that section, and then add the sections together. For example, if the wide, fore end of the bottom belly of the Ruhle Trawl is 22 meshes (and the mesh is at least 7.9 ft (240 cm)), the stretched mesh length for that section of the net is derived by multiplying 22 times 7.9 ft (240 cm) and equals 173.2 ft (52.8 m). The top and sides (x 2) of the net at this point in the trawl are 343 meshes (221 + 61 + 61, respectively) (each 7.9 inches (20 cm)), which equals 225.1 ft (68.6 m) stretched length. The stretched lengths for the different sections of mesh are added together (173.2 ft + 225.1 ft (52.8 + 68.6 m)) and result in the length of the fishing circle, in this case 398.3 ft (121.4 m).

(v) The trawl must have a single or multiple kite panels with a total surface area of at least 29.1 sq. ft. (2.7 sq. m) on the forward end of the square to help maximize headrope height, for the purpose of capturing rising fish. A kite panel is a flat structure, usually semi-flexible used to modify the shape of trawl and mesh openings by providing lift when a trawl is moving through the water.

(vi) The sweep must include rockhoppers of various sizes, which are arranged along the sweep in size order, graduated from 16-inch (40-cm) diameter in the sweep center down to 12-inch (30-cm) diameter at the wing ends. There must be six or fewer 12- to 16-inch (30- to 40-cm) rockhopper discs over any 10-ft (3.0-m) length of the sweep. The 12- to 16-inch (30- to 40-cm) discs (minimum size) must be spaced evenly, with one disc placed approximately every 2 ft (60 cm) along the sweep. The 12- to 16-inch (30- to 40-cm) discs must be separated by

smaller discs, no larger than 3.5 inches (8.8 cm) in diameter.

(vii) *Definition of incidental TAC stock areas.* For the purposes of the Regular B DAS Program, including the stocks that may not be retained by vessels as specified under § 648.86, the species stock areas are defined below. Copies of a chart depicting these areas are available from the Regional Administrator upon request.

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

#### GULF OF MAINE COD STOCK AREA

Point	N. lat.	W. long.
GOM1	( <sup>1</sup> )	70°00'
GOM2	42°20'	70°00'
GOM3	42°20'	67°40'
GOM4	43°50'	67°40'
GOM5	43°50'	66°50'
GOM6	44°20'	66°50'
GOM7	44°20'	67°00'
GOM8	( <sup>2</sup> )	67°00'

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

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

(B) *GB cod stock area.* The GB cod 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:

#### GEORGES BANK COD STOCK AREA

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

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

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

(C) *CC/GOM yellowtail flounder stock area.* The CC/GOM yellowtail flounder stock area 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'	( <sup>1</sup> )
CCGOM2	42°20'	70°00'
CCGOM3	42°20'	66°00'
CCGOM4	42°10'	66°00'
CCGOM5	42°10'	65°50'
CCGOM6	42°00'	65°50'
CCGOM7	42°00'	65°40'
CCGOM8	40°30'	65°40'
CCGOM9	39°00'	65°40'
CCGOM10	( <sup>2</sup> )	
CCGOM11	35°00'	( <sup>3</sup> )
CCGOM12	35°00'	( <sup>4</sup> )
CCGOM13	( <sup>3</sup> )	

<sup>1</sup> Intersection with the New Hampshire coastline.

<sup>2</sup> Intersection of the south-facing shoreline of Cape Cod, Massachusetts.

<sup>3</sup> Intersection with the east-facing shoreline of Cape Cod, Massachusetts.

<sup>4</sup> Intersection with the west-facing shoreline of Massachusetts

(D) *SNE/MA yellowtail flounder stock area.* The SNE/MA 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'	70°00'
SNEMA8	39°00'	70°00'
SNEMA9	41°00'	70°00'
SNEMA10	41°00'	70°30'
SNEMA11	41°30'	70°30'
SNEMA12	( <sup>1</sup> )	72°00'
SNEMA13	( <sup>2</sup> )	72°00'
SNEMA14	( <sup>3</sup> )	73°00'
SNEMA15	40°30'	73°00'
SNEMA16	40°30'	74°00'
SNEMA17	40°00'	74°00'

(<sup>1</sup>) South-facing shoreline of Connecticut.

(<sup>2</sup>) North-facing shoreline of Long Island, New York.

(<sup>3</sup>) South-facing shoreline of Long Island, New York.

(E) *SNE/MA winter flounder stock area.* The SNE winter flounder stock area, for the purposes of the Regular B DAS Program and the prohibition on retention of winter flounder specified under § 648.86, is the area defined by straight lines connecting the following points in the order stated:

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

Point	N. lat.	W. long.
SNEW1	( <sup>1</sup> )	70°00'
SNEW2	42°20'	70°00'
SNEW3	42°20'	68°50'
SNEW4	39°50'	68°50'
SNEW5	39°50'	71°40'
SNEW6	39°00'	71°40'
SNEW7	39°00'	70°40'
SNEW8	35°00'	70°00'
SNEW9	35°00'	( <sup>2</sup> )

(<sup>1</sup>) Intersection of the north-facing Coastline of Cape Cod, MA, and 70° 00' W. Long.

(<sup>2</sup>) The intersection of the east-facing coastline of Outer Banks, NC, and 35° 00' N. Lat.

(F) *Windowpane flounder northern stock area.* The windowpane flounder northern stock area, for the purposes of prohibition on retention of northern windowpane flounder specified under § 648.86, is the area defined by straight lines connecting the following points in the order stated:

#### WINDOWPANE FLOUNDER NORTHERN STOCK AREA:

Point	N. lat.	W. long.
G12	( <sup>1</sup> )	70°00'
WIN1	41°20'	70°00'
WIN2	41°20'	69°50'
WIN3	41°10'	69°50'
WIN4	41°10'	69°50'
WIN5	41°00'	69°30'
WIN6	41°00'	68°50'
WIN7	39°50'	68°50'
WIN8	39°50'	69°00'
WIN9	39°00'	69°00'
WIN10	39°00'	( <sup>2</sup> )

(<sup>1</sup>) South-facing coastline of Cape Cod, MA.

(<sup>2</sup>) Intersection of 39° 00' N. Lat. and the boundary of the EEZ.

(viii) *Closure and in-season modification to the Regular B DAS Program.* The Regional Administrator, based upon information required under §§ 648.7, 648.9, 648.10, or this paragraph 648.85, and any other relevant information, may, in a manner consistent with the Administrative Procedure Act, may prohibit the use of Regular B DAS, modify possession restrictions, or implement other measures, including a partial closure for the Regular B DAS Program, 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 modification or termination of 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.

\* \* \* \* \*

10. In § 648.86, paragraphs (b), (e), and (j) are suspended, and paragraphs (l), (m), and (n) are added to read as follows:

**§ 648.86 NE multispecies possession restrictions.**

\* \* \* \* \*

(l) *Cod*—(1) *GOM cod landing limit.*  
(i) Except as provided in paragraphs (l)(1)(ii) and (l)(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 (1,814.4 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 (l)(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 the Interim Differential DAS Area under the restrictions of § 648.82(e)(4)(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 (l)(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 (725.7 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 (l)(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 the provisions of paragraph (l)(2)(ii) of this section, or unless exempt from the landing limit under paragraph (l)(1) of this section as authorized under the Sector provisions of § 648.87, a NE multispecies DAS vessel may land up to 1,000 lb (453.6 kg) of cod per DAS, or part of a DAS, provided it complies with the requirements specified at paragraph (l)(4) of this section and this paragraph (l)(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) of cod 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) of cod 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 (l)(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 the Interim Differential DAS Area under the restrictions of § 648.82(e)(4)(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 (l)(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 (l)(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.)

(3) *Transiting.* A vessel that has exceeded the cod landing limit as specified in paragraphs (l)(1) and (2) of this section, and that is, therefore, subject to the requirement to remain in port for the period of time described in paragraphs (l)(1)(ii)(A) and (l)(2)(ii)(A) of this section, may transit to another port during this time, provided that the vessel operator notifies the Regional

Administrator, either at the time the vessel reports its hauled weight of cod, or at a later time prior to transiting, and provides the following information: Vessel name and permit number, destination port, time of departure, and estimated time of arrival. A vessel transiting under this provision must stow its gear in accordance with one of the methods specified in § 648.23(b) and may not have any fish on board the vessel.

(4) *Exemption.* A vessel fishing under a NE multispecies DAS is exempt from the landing limit described in paragraph (l)(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 (l)(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 this paragraph (l)(4), under the cod trip limits described under paragraph (l)(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 NE 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 this paragraph (l)(4) 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.

(m) *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 2,000 lb (907.2 kg) of white hake per DAS, or any part of a DAS, up to 10,000 lb (4,536 kg) per trip.

(n) *Zero retention stocks*—(1) *SNE winter flounder.* Private recreational vessels fishing in the EEZ, and vessels issued a NE multispecies permit, may not fish for, possess, or land winter

flounder caught in the SNE/MA winter flounder stock area, defined in § 648.85(b)(10)(v)(E). Vessels may transit this area with GOM or GB winter flounder on board the vessel, provided that gear is stowed in accordance with the provisions of § 648.23(b). Vessels fishing for winter flounder in multiple stock areas would be subject to the most restrictive possession limit.

(2) *Northern windowpane flounder.* Vessels issued a NE multispecies permit may not fish for, possess, or land windowpane flounder caught in the northern windowpane flounder stock area, defined in § 648.85(b)(10)(v)(F). Vessels may transit this area with southern windowpane flounder on board, provided that gear is stowed in accordance with the provisions of § 648.23(b) or § 648.89(f), as appropriate. Vessels fishing for windowpane flounder in multiple stock areas would be subject to the most restrictive possession limit.

(3) *Ocean pout.* Vessels issued a NE multispecies permit may not fish for, possess or land ocean pout.

11. In § 648.89, paragraphs (b)(1), (c)(1)(v), and (c)(2) are suspended, and paragraphs (b)(5), (c)(1)(vi), (c)(5), and (f) are added to read as follows:

**§ 648.89 Recreational and charter/party vessel restrictions.**

\* \* \* \* \*

(b) \* \* \*

(5) *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:

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

Species	Sizes
Cod	22in (58.4 cm)
Haddock	18in (45.7 cm)
Pollock	19in (48.3 cm)
Witch flounder (gray sole)	14in (35.6 cm)
Yellowtail flounder	13in (33.0 cm)
Atlantic halibut	36in (91.4 cm)
American plaice	14in (35.6 cm)
Winter flounder (blackback)	12in (30.5 cm)
Redfish	9in (22.9 cm)

(c) \* \* \*

(1) \* \* \*

(vi) *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, possess, or land any cod from November 1 through April 15. 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.

\* \* \* \* \*

(5) *Charter/party vessels.* Charter/party vessels fishing any part of a trip in the GOM Regulated Mesh Area, as defined in § 648.80(a)(1), are subject to the following possession limit restrictions:

(i) Unless further restricted by the Seasonal GOM Cod Possession Prohibition, specified under paragraph (c)(5)(v) of this section, each person on a charter/party vessel may possess no more than 10 cod per day in, or harvested from, the EEZ.

(ii) For purposes of counting fish, fillets shall be converted to whole fish at the place of landing by dividing the number of fillets by two. If fish are filleted into a single (butterfly) fillet, such fillet shall be deemed to be from one whole fish.

(iii) Cod harvested by charter/party vessels with more than one person aboard may be pooled in one or more containers. Compliance with the possession limits will be determined by dividing the number of fish on board by the number of persons on board. If there is a violation of the possession limits on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner or operator of the vessel.

(iv) Cod must be stored so as to be readily available for inspection.

(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 April 15. 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.

\* \* \* \* \*

(f) *SNE/MA winter flounder retention prohibition.* Private recreational and charter/party vessels fishing in the SNE/MA winter flounder stock area as defined in § 648.85(b)(10)(v)(E), may not fish for, possess, or land winter flounder. Recreational vessels in possession of winter flounder caught outside of the

SNE/MA winter flounder may transit this area, provided all bait and hooks are removed from fishing rods and any winter flounder on board has been stored.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 080612764-8801-01]

RIN 0648-AW94

#### Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish Fisheries of the Bering Sea and Aleutian Islands Management Area and Gulf of Alaska, Seabird Avoidance Requirements Revisions for International Pacific Halibut Commission Regulatory Area 4E

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

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

**SUMMARY:** NMFS issues a proposed rule that would revise the seabird avoidance requirements for the hook-and-line groundfish and halibut fisheries in International Pacific Halibut Commission Area 4E. The proposed rule would eliminate seabird avoidance requirements for hook-and-line vessels less than or equal to 55 ft (16.8 m) length overall in portions of Area 4E in the eastern Bering Sea. This action is necessary to revise seabird avoidance measures based on the latest scientific information and to reduce unnecessary regulatory burdens and associated costs.

**DATES:** Written comments must be received by February 17, 2009.

**ADDRESSES:** Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by 0648-AW94, by any one of the following methods:

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

- Mail: P. O. Box 21668, Juneau, AK 99802.

- Fax: (907) 586-7557.

- Hand delivery to the Federal Building: 709 West 9<sup>th</sup> Street, Room 420A, Juneau, AK.

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 (e.g., name, address) 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 (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

Copies of the map of the seabird avoidance measures in Area 4E, and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) for this action may be obtained from the Alaska Region NMFS address above or from the Alaska Region NMFS website at <http://www.alaskafisheries.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Melanie Brown, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fisheries in the exclusive economic zone (EEZ) off Alaska are managed under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). The North Pacific Fishery Management Council (Council) prepared the FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801, *et seq.* Regulations implementing the FMPs appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

Management of the Pacific halibut fisheries in and off Alaska is governed by an international agreement between Canada and the United States. This agreement, entitled the "Convention Between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea" (Convention), was signed at Ottawa, Canada, on March 2, 1953, and was amended by the "Protocol Amending the Convention," signed at Washington, D.C., March 29, 1979. The Convention is implemented in the United States by the Northern Pacific Halibut Act of 1982 (Halibut Act). The directed commercial Pacific halibut fishery in Alaska is managed under an individual fishing quota (IFQ) program, as is the fixed gear sablefish fishery. The IFQ Program is a limited

access management system. This program is codified at 50 CFR part 679.

### Background

The purpose of this proposed action is to revise the seabird avoidance measures currently implemented for the hook-and-line groundfish and halibut fisheries based on the best available information regarding seabird occurrence and potential fishing vessel interactions. Seabird avoidance measures reduce the incidental mortality of seabirds in the hook-and-line fisheries off Alaska. Since 1997, NMFS has implemented and revised seabird avoidance measures to mitigate interactions between the federal hook-and-line fisheries and seabirds (62 FR 23176, April 29, 1997; 63 FR 11161, March 6, 1998; 69 FR 1930, January 13, 2004; and 72 FR 71601, December 18, 2007).

NMFS compiled seabird sightings data from the following sources: from 1988-2004 records from seabird observers on the U.S. Fish and Wildlife Service's (FWS) research vessel M/V TIGLAX; from incidental sightings by biologists, fishermen, seamen, fisheries observers, and birdwatchers provided to the FWS; from the International Pacific Halibut Commission (IPHC); from the Alaska Natural Heritage Program; from historical sightings documented in published literature; from satellite tagging data; and from the North Pacific Pelagic Seabird Database. The EA/RIR/IRFA for this action describes this information (see **ADDRESSES**). This information showed that seabird species of concern are not likely to occur in portions of Area 4E where fishing vessels using hook-and-line gear may operate; and therefore, it is not likely that interactions between the fishing vessels and these seabird species of concern would occur in those portions of Area 4E. Thus, the Council recommended revisions to the seabird avoidance measures in a portion of Area 4E. These revisions would eliminate seabird avoidance measures in the portion of Area 4E where seabird species of concern are not likely to occur. The revisions would apply to vessels greater than 26 ft (7.9 m) to less than or equal to 55 ft (16.8 m) length overall (LOA) fishing in the EEZ. Vessels less than or equal to 26 ft (7.9 m) LOA are not required to use seabird avoidance measures. Vessels greater than 55 ft (16.8 m) LOA would continue to be required to use seabird avoidance measures in all of Area 4E. Vessels this size and larger are more likely to interact with other seabirds because of the greater amount of offal discharge and greater number of hooks fished