



Federal Register

**Monday,
October 23, 2006**

Part II

Department of Commerce

**National Oceanic and Atmospheric
Administration**

50 CFR Part 648

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

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 060606150-6240-02; I.D. 053106A]

RIN 0648-AT24

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

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

ACTION: Final rule.

SUMMARY: This final rule implements Framework Adjustment (FW) 42 to the Northeast (NE) Multispecies Fishery Management Plan (FMP) and FW 3 to the Monkfish FMP (Joint Framework). FW 42, developed by the New England Fishery Management Council (Council), is a biennial adjustment to the NE Multispecies FMP that sets forth a rebuilding program for Georges Bank (GB) yellowtail flounder and modifies NE multispecies fishery management measures to reduce fishing mortality rates (F) on six other groundfish stocks in order to maintain compliance with the rebuilding programs of the FMP. FW 42 also modifies and continues specific measures to mitigate the economic and social impacts of Amendment 13 to the FMP and to allow harvest levels to approach optimum yield (OY).

DATES: The emergency rule published on April 13, 2006 (71 FR 19348), that was extended by a temporary rule published on October 6, 2006 (71 FR 59020), which is scheduled to expire on April 4, 2007, is instead superseded by this final rule and expires at 12:01 a.m. on November 22, 2006. The amendments in this final rule become effective at 12:02 a.m. on November 22, 2006.

ADDRESSES: Copies of FW 42 and FW 3, the Regulatory Impact Review (RIR), the Final Regulatory Flexibility Analysis (FRFA), and the Environmental Assessment (EA) are available from Paul

J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, The Tannery, B-Mill 2, Newburyport, MA 01950.

The FRFA consists of the Initial Regulatory Flexibility Analysis (IRFA), public comments and responses, and the summary of impacts and alternatives contained in the Classification section of the preamble of this final rule. Copies of the small entity compliance guide are available from Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930-2298. A copy of the EA/RIR/FRFA is accessible via the Internet at <http://www.nero.noaa.gov/nero/regs/com.html>.

Comments regarding the burden-hour estimates or other aspects of the collection of information requirements contained in this final rule may be submitted in writing to NMFS (see **ADDRESSES**), or to David Rostker, OMB, by e-mail at David_Rostker@omb.eop.gov, or by fax at (202) 395-7285.

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

SUPPLEMENTARY INFORMATION:

Background

Amendment 13, implemented on April 27, 2004 (69 FR 22906), brought the FMP into conformance with Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requirements, including measures to end overfishing and rebuild all overfished groundfish stocks. In addition, Amendment 13 established a biennial FMP adjustment process that requires the Council to review the fishery periodically using the most current scientific information available, recommend target total allowable catches (Target TACs), and recommend to the Regional Administrator any changes to management measures necessary to achieve the goals and objectives of the FMP.

A proposed rule was published on July 26, 2006 (71 FR 42522), that included a detailed description of the biennial adjustment process, the August 2005 regional peer-review of stock assessment updates (GARM II; Northeast

Fisheries Science Center Reference Document 05-13) completed for the 19 stocks managed under the FMP, proposed management measures, and timing issues related to the Joint Frameworks. Below is a brief summary of information published in the proposed rule.

The Council's Plan Development Team (PDT) performed an evaluation of the fishery based upon the results of GARM II and other available information. The primary goal of the PDT review was to determine the stocks for which an adjustment in management measures is required in order to ensure that the current F levels are consistent with the F's required under the rebuilding plans for overfished stocks managed under the FMP. Based on the information from GARM II and catch data, the PDT estimated F's for those stocks in need of reductions for calendar year (CY) 2005 (F₂₀₀₅), a time period during which the fishery operated under only one suite of regulations (Amendment 13). Specifically, the PDT utilized available information for a portion of CY 2005, projected landings for the remainder of the year (based on current and historic information), and then estimated the F for the entire CY (F₂₀₀₅).

To determine which of the 19 groundfish stocks were being fished at F's that were not in compliance with the Amendment 13 rebuilding target F's, the PDT compared the required F for 2006 to estimated F₂₀₀₅ for each stock. The PDT determined that, with one exception (GB yellowtail flounder), if F₂₀₀₅ exceeded the Amendment 13 target F for 2006, adjustment of management measures was necessary. These comparisons indicated that F₂₀₀₅ for some groundfish stocks was less than that estimated for 2004 (F₂₀₀₄), but still higher than the 2006 target F (F₂₀₀₆) specified in the rebuilding program established under Amendment 13. The groundfish stocks in need of additional F reductions to achieve the Amendment 13 F targets for fishing year (FY) 2006 are: Gulf of Maine (GOM) cod; Cape Cod (CC)/GOM yellowtail flounder; Southern New England (SNE)/Mid-Atlantic (MA) yellowtail flounder; SNE/MA winter flounder; GB winter flounder; and white hake (see Table 1 below).

TABLE 1.—F REDUCTIONS NECESSARY TO ACHIEVE FY 2006 AMENDMENT 13 F TARGETS

Stock	F ₂₀₀₄	Estimated F ₂₀₀₅	Amendment 13 F ₂₀₀₆	F reduction necessary (%)
GOM Cod	0.58	0.37	0.23	32

TABLE 1.—F REDUCTIONS NECESSARY TO ACHIEVE FY 2006 AMENDMENT 13 F TARGETS—Continued

Stock	F ₂₀₀₄	Estimated F ₂₀₀₅	Amendment 13 F ₂₀₀₆	F reduction necessary (%)
CC/GOM Yellowtail Flounder	0.75	0.48	0.26	46
SNE/MA Yellowtail Flounder	0.99	0.58	0.26	55
SNE/MA Winter Flounder	0.38	0.35	0.32	9
GB Winter Flounder	1.86	NA	1.0*	46
White Hake	1.18	NA	1.03	13

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

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

In addition to responding to the most recent information regarding F, the proposed measures were intended to continue and modify the management regime implemented by Amendment 13 and subsequent framework adjustments (FW 40–A, FW 40–B, and FW 41), and to replace measures implemented under Secretarial emergency authority at the beginning of FY 2006 (May 1, 2006, through April 30, 2007). The Council originally developed FW 42 with the intention of implementing the management measures on May 1, 2006 (the start of FY 2006), as specified by Amendment 13, and as required by the regulations. However, due to a delay in completion of FW 42 and the need to reduce F on specific groundfish stocks by the start of FY 2006, NMFS implemented emergency management measures (71 FR 19348; April 13, 2006) that went into effect on May 1, 2006, until such time that approved FW 42 measures could be implemented. This rule supercedes the emergency rule, and the regulatory text in this final rule is written to amend the regulations in 50 CFR part 648 as they appeared prior to implementation of the emergency rule.

Disapproved FW 42 Measure

FW 42 proposed that the Regional Administrator be given authority to adjust trip limits upward to facilitate harvest of the Target TACs, if it were projected that less than 90 percent of the Target TAC would be caught during the FY. Trip limit changes would have been allowed at any time during the FY, or before the start of the FY, if information was sufficient to make the necessary projections. This measure was disapproved, as explained below, because it is inconsistent with National Standard 2 and section 303(a)(8) of the Magnuson-Stevens Act.

This proposed measure would have expanded the Regional Administrator's authority to increase trip limits for six stocks (the regulations already provide authority for the Regional Administrator

to modify the haddock trip limit): GOM cod, GB cod, white hake, GB winter flounder, CC/GOM yellowtail flounder, and SNE/MA yellowtail flounder. Administratively, this measure is problematic in that data on the catch amount and location of affected stocks are not available on a real-time basis and, depending upon the size of the TAC and the rate of harvest, there would likely not be enough information to make an accurate projection. To monitor these stocks, NMFS would need to rely on Vessel Trip Report (VTR) data and dealer landings data to make projections and, although such data provide some useful information, sufficient information on both catch amount and catch location would not be available on a real-time basis. Furthermore, the composition of Target TACs for three of the affected stocks (GOM cod, CC/GOM yellowtail flounder, and SNE/MA yellowtail flounder) also include discard data and/or recreational data, which also would not be available on a real-time basis. Because of the lack of sufficient real-time data for a number of stocks to accurately monitor catch of particular species within the fishery, the data available to implement this measure would not constitute the best available scientific information, as required by National Standard 2. In addition, section 303(a)(8) of the Magnuson-Stevens Act requires that an FMP specify the nature and extent of scientific data needed for the effective implementation of the FMP. Because of the limitations of existing data sources, without additional real-time reporting requirements to provide reliable and timely catch and discard data from both the commercial and recreational sectors, NMFS does not have sufficient real-time data to implement this provision. Therefore, this measure is not consistent with National Standard 2 or the required provisions of the Magnuson-Stevens Act and NMFS has disapproved it.

Approved Joint Framework Measures

NMFS has approved the remainder of the measures proposed in the Joint Frameworks. A description of these approved measures follows.

1. Recreational Restrictions

Under this final rule, private recreational vessels and vessels fishing under the charter/party regulations of the NE Multispecies FMP are prohibited from possessing or retaining any cod from the GOM Regulated Mesh Area (RMA) from November 1–March 31. Also, the minimum size of cod for private recreational vessels and charter/party vessels fishing in the GOM is increased from 22 inches (56 cm) to 24 inches (61 cm). Private recreational and charter/party vessels may transit the GOM RMA with cod caught from outside this area, provided all bait and hooks are removed from fishing rods and all cod are stored in coolers or ice chests. These measures are designed to achieve a reduction in F for GOM cod caught by the recreational sector that is similar to the F reduction required of the commercial sector. The gear and cod stowage requirements are necessary to enforce these measures.

2. GB Yellowtail Flounder Rebuilding Plan

This final rule approves the FW 42 rebuilding plan for GB yellowtail flounder, whereby GB yellowtail flounder will be rebuilt from its current stock size to the biomass that can produce maximum sustainable yield (MSY) (B_{msy}) using an adaptive strategy that rebuilds the stock by 2014 with approximately a 75-percent probability of success. Under the adaptive strategy, the maximum F on the stock through 2008 will be set at F_{msy} (0.25), and subsequent changes to F required to complete rebuilding by 2014 (F_{rebuild}) will be developed in the 2009 biennial adjustment required by the FMP. This rebuilding strategy and 2014 timeline was selected by the Council to be

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

3. Target TACs

Target TACs are approved through this rule pursuant to § 648.90(a)(2), which requires the Council to develop

new Target TACs, based upon the most recent scientific information, as part of the biennial adjustment process. Thus, this final rule approves the Target TACs for all groundfish stocks for FY 2006, 2007, and 2008. The following Target TACs in Table 2 were developed by the Council's PDT and were calculated from projections of future catches, using recent assessment data and the Amendment 13 target F's. It is important to note that during the public comment period for this action, it was determined

that an incorrect F rate was used in the calculation of Target TACs for American plaice for FY 2006–2008. This error resulted in over-estimating the Target TAC that would achieve the rebuilding F targets for these years, but does not require a change in management measures needed to achieve the rebuilding objectives of this action. The Target TACs for American plaice in Table 2 reflect the corrected Target TACs.

TABLE 2.—APPROVED TARGET TACs FOR 2006 THROUGH 2008
[Mt, live weight]

Species	Stock	2006	2007	2008	Composition
Cod	GB	7,458	9,822	11,855	E*
	GOM	5,146	10,020	10,491	C*
Haddock	GB	49,829	103,329	121,681	E
	GOM	1,279	1,254	1,229	A
Yellowtail flounder	GB	2,070	see footnote		D*
	SNE/MA	146	213	312	B*
	CC/GOM	650	1,078	1,406	B*
		2,781	3,243	4,135	B*
American plaice		5,511	5,075	4,331	A*
Witch flounder		1,424	1,604	1,782	A*
Winter flounder	GB		see footnote		C
	GOM				
	SNE/MA	2,481	3,016	3,577	C*
Redfish		1,946	2,075	2,167	A
White hake		2,056	1,676	1,367	E*
Pollock		12,005	12,005	12,005	E
Windowpane flounder	North	389	389	389	A
	South	173	166	159	A
Ocean pout		38	38	38	A
Atlantic halibut		NA	NA	NA	NA

A = Commercial Landings.
 B = Commercial Landings and Discards.
 C = Commercial Landings, Discards, and Recreational Harvest.
 D = Commercial Landings and Discards (U.S. portion of U.S./Canada TAC).
 E = Commercial Landings (U.S. and Canada).
 *For Stocks of Concern: Incidental TAC is a subset of Target TAC.
 GARM II did not develop a TAC for GOM winter flounder because of uncertainties in the assessment.
 Note, proposed TACs for GB cod and GB haddock include Canadian landings.
 GB yellowtail flounder TACs are hard TACs, which are determined annually and cannot be specified in advance.
 2006 GB yellowtail flounder TAC was implemented on April 28, 2006 (71 FR 25095).

4. Incidental Catch TACs

The values of Incidental Catch TACs for FY 2006 through 2008 are implemented through this final rule pursuant to the regulations at § 648.85(b)(5), which require the Council to develop new Incidental Catch TACs based upon the most recent scientific information, as part of the biennial FMP adjustment process. Although Incidental Catch TACs for 2006 were specified in FW 41, this action modifies definitions of the Incidental Catch TACs with respect to the Target TACs, modifies the allocation of Incidental Catch TACs among Special Management Programs, and specifies

values of all Incidental Catch TACs, based upon the most recent scientific information (GARM II). As noted above, an error was discovered in the calculation of Target TACs for American plaice that resulted in over-estimating the Target TACs, and, therefore, the Incidental Catch TACs for this species. The corrected Incidental Catch TACs for American plaice are listed in Table 3 below.
 In addition to the actions described above that relate to the Incidental Catch TACs for the eight stocks of concern noted above, this final rule defines GB yellowtail flounder and GB winter flounder as additional stocks of concern, defines the size of the Incidental Catch

TACs (with respect to the Target TACs) that are likely to be caught in the Special Management Programs, specifies Incidental Catch TAC values for FYs 2006 through 2008, and allocates the Incidental Catch TACs among Special Management Programs.
 This final rule clarifies the relationship between Target TACs and Incidental Catch TACs; that is, Incidental Catch TACs are considered as a subset of the pertinent Target TACs (rather than as amounts in excess of the Target TACs). This clarification is intended to increase the utility of Target TACs as a tool used to evaluate the effectiveness of the management measure.

TABLE 3.—DEFINITION OF INCIDENTAL CATCH TACS (PERCENT) AND SPECIFICATION OF TARGET TACS FOR FY 2006 THROUGH 2008 (MT)

Stock of concern	Percentage of total target TAC	2006	2007	2008
GB cod	Two	122.6	(¹)	(¹)
GOM cod	One	49.9	99.0	103.9
GB yellowtail flounder	Two	41.4	(¹)	(¹)
CC/GOM yellowtail flounder	One	6.5	10.8	14.1
SNE/MA yellowtail flounder	One	1.5	2.1	3.1
American plaice	Five	139	162.1	206.7
Witch flounder	Five	275.6	253.8	216.6
SNE/MA winter flounder	One	24.8	30.2	35.6
GB winter flounder	Two	28.5	32.1	35.6
White hake	Two	41.1	33.5	27.3

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

TABLE 4.—ALLOCATION OF INCIDENTAL CATCH TACS AMONG CATEGORY B DAYS-AT-SEA (DAS) PROGRAMS
[Shown as a percentage of the Incidental Catch TAC]

Stock of concern	Regular B DAS program	Closed area I hook gear haddock SAP	Eastern U.S./Canada haddock SAP
GOM cod	100	NA	NA
GB cod	50	16	34
CC/GOM yellowtail flounder	100	NA	NA
American plaice	100	NA	NA
White hake	100	NA	NA
SNE/MA yellowtail flounder	100	NA	NA
SNE/MA winter flounder	100	NA	NA
Witch flounder	100	NA	NA
GB yellowtail flounder	50	NA	50
GB winter flounder	50	NA	50

5. Default DAS Allocations

Amendment 13 established two “default” measures that would automatically reduce F on multiple groundfish species, for American plaice and SNE/MA yellowtail flounder, beginning in FY 2006, unless certain criteria are met. Because these criteria have not been met, the Amendment 13 default DAS measure (a change in the Category A and B DAS ratio from 60:40 to 55:45) for FY 2006–2008 remains unchanged. This default measure represents an 8.3-percent reduction in the number of allocated Category A DAS. This final rule also modifies the default differential DAS counting measure in the SNE RMA, as described in Section 8 of this preamble.

6. Vessel Monitoring System (VMS) Requirement

All limited access NE multispecies DAS vessels using a groundfish DAS must be equipped with an approved VMS that meets the requirements of § 648.9. As of the effective date of this rule, it is illegal for a limited access NE multispecies DAS vessel to begin a fishing trip under a groundfish DAS without an approved VMS. A vessel owner with a limited access NE multispecies DAS permit who does not

intend to and does not fish any groundfish DAS during the FY is allowed to renew the vessel’s limited access permit without having an approved VMS, but may not fish any of the vessel’s groundfish DAS for that FY. A vessel owner that is not already equipped with an approved VMS must provide pertinent information (e.g., type of VMS unit, installation date, dealer, etc.) to NMFS prior to beginning a NE multispecies fishing trip after the effective date of this final rule. NMFS is sending letters to all limited access NE multispecies DAS permit holders in order to provide detailed information on the procedures pertaining to VMS purchase, installation, and use. If a vessel is subject to multiple, conflicting VMS regulations of different programs, the most restrictive requirement applies. For example, a vessel fishing in both the Eastern U.S./Canada Area and in one of the Differential DAS Areas (described in Sections 7 and 8 of this preamble) on the same trip is subject to the VMS restrictions that pertain to both programs (e.g., the requirement to declare into the Differential DAS Areas prior to leaving port or prior to leaving the Eastern U.S./Canada Area and the reporting requirements for the Eastern

U.S./Canada Area specified at § 648.85(a)(3)(v)).

Despite a mandatory VMS requirement, NE multispecies DAS vessels are still required to declare periods out of the fishery (spawning block out and Day Gillnet vessel blocks out) through the Interactive Voice Response (IVR) call-in system. The Regional Administrator may authorize limited access NE multispecies vessels to utilize the IVR system in lieu of the VMS system for the administration of DAS requirements should a vessel’s VMS become inoperable. In addition, if a vessel’s VMS is not operational, the Regional Administrator may require vessels to obtain a Letter of Authorization (LOA) as an alternate method of enforcing a possession limit.

7. Differential DAS Counting in GOM

Under this final rule, all NE multispecies Category A DAS used by a vessel that has declared (through VMS, or other means approved by the Regional Administrator), prior to leaving the dock, that it will be fishing within the GOM Differential DAS Area during any portion of its trip, with the exception noted below for a Day gillnet vessel, will be charged at a rate of 2:1, regardless of area fished. The GOM

Differential DAS Area (defined at § 648.82(e)(2)(i)(A) of the regulatory text portion of this document), includes most of the area west of 69°30' W. long. and between 41°30' and 43°30' N. lat. (between approximately Monomoy Island, MA, and Portland, ME). Day gillnet vessels will be charged DAS at a rate of 2:1 for the actual hours used for any trip of less than 3 hr in duration, and for any trip of greater than 7.5 hr. For Day gillnet trips between 3 and 7.5 hr duration, vessels will be charged a full 15 hr. To illustrate how DAS are charged in the GOM Differential DAS Area for different categories of vessels, the following examples are provided. A trawl vessel that has declared into the GOM Differential DAS Area on a trip that lasts 10 actual hr would be charged 20 hr (10 hr × 2) of DAS use, regardless of where the vessel fished. Conversely, a Day gillnet vessel that has declared into the GOM Differential DAS Area on a trip that lasts 5 actual hr would be charged for 15 hr of DAS use regardless of where the vessel fished (between 3 and 7.5 hr = 15 hr); a Day gillnet vessel fishing in the GOM Differential DAS Area on a trip that lasts 8 actual hr would be charged for 16 hr of DAS use regardless of where the vessel fished (8 hr × 2). On any trip in which a vessel declares, prior to leaving the dock, that it will be fishing in the GOM Differential DAS Area under a Category A DAS, the vessel will be charged at the differential DAS rate for the entire fishing trip, even if only a portion of the trip is spent fishing in the GOM Differential DAS Area. A vessel may not fish under a Category A DAS in the GOM Differential DAS Area, unless it has declared into this area prior to the start of the trip, or unless exempted, as described below. A vessel that does not declare its intent to fish in the GOM Differential DAS Area may still transit or be in the area, provided its fishing gear is properly stowed according to the regulations and, if the vessel is in the area for reasons other than transiting (e.g., to evade bad weather), the vessel immediately notifies NMFS that it is within the GOM Differential DAS Area, but not fishing through its VMS. This provision has been modified from the proposed rule, which allowed non-fishing and non-transiting vessels to be in the area "due to bad weather, or other circumstances beyond its control," based on Council comment and to ensure effective enforcement of this provision.

No changes to the Monkfish FMP regulations are implemented to accommodate the NE multispecies Differential DAS rules, but the following

is an explanation of how the proposed groundfish regulations would work with the current Monkfish FMP regulations. A vessel issued a limited access monkfish Category C or D permit that has declared into the GOM Differential DAS Area under a monkfish DAS (thereby using both a monkfish and NE multispecies DAS) will have its NE multispecies DAS charged at a rate of 2:1, but its monkfish DAS will continue to be charged at a rate of 1:1. The regulations will continue to allow a monkfish Category C and D vessel to fish under a monkfish-only DAS, when groundfish DAS are no longer available, to ensure that it can fish its full allocation of monkfish DAS. Monkfish Category C and D vessels that accrued monkfish-only DAS under the recent emergency regulations as a result of the use of NE multispecies DAS at the differential rate of 1.4 to 1 will be able to continue to use such monkfish only DAS under this final rule, during the remainder of this FY. Under this final rule, vessels fishing under a monkfish-only DAS will continue to be required to fish under the provisions of the monkfish Category A or B permit. Such a vessel is limited to monkfish-only DAS equal to its net monkfish DAS allocations (including carry-over DAS) minus its net NE multispecies Category A DAS allocation (including carry-over DAS). A monkfish vessel will continue to be allocated "monkfish only" DAS based upon its current allocations of monkfish and NE multispecies DAS. This allocation is not expanded to account for the effects on monkfish DAS due to the differential DAS measures implemented by this final rule. For example, if a Category C monkfish vessel allocated 40 monkfish DAS has a current NE multispecies DAS allocation of 15 DAS, the maximum number of monkfish-only DAS that the vessel would be able to fish would be 25 DAS (40 monkfish DAS – 15 NE multispecies DAS). However, for a vessel fishing under differential DAS, the overall amount of monkfish DAS that could be used is effectively reduced because the NE multispecies DAS are used at the differential rate. Using the example above, if the vessel fished all 15 NE multispecies DAS at the differential DAS rate, the vessel would use up its allocation of NE multispecies DAS after 7.5 days of actual time fished (7.5 days × 2.0 = 15 DAS). Therefore, even though the vessel only fished 7.5 actual NE multispecies DAS, it would be able to fish only up to 25 of its monkfish DAS as "monkfish-only" DAS.

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

A vessel that fishes inside and outside of the Eastern U.S./Canada Area on the same trip (as described in section 15 of this preamble) may also fish in the GOM Differential DAS Area on the same trip, provided the vessel declares its intent to fish in the GOM Differential DAS Area via VMS prior to leaving the Eastern U.S./Canada Area. A vessel that has declared into both the GOM Differential DAS Area and the Eastern U.S./Canada Area on the same trip will be subject to the most restrictive DAS counting, trip limits, and reporting requirements applicable to the two areas for the entire trip.

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

8. Differential DAS Counting in SNE

All NE multispecies Category A DAS used by a vessel that has declared (through VMS, or other means approved by the Regional Administrator), prior to leaving the dock, that it will be fishing within the SNE Differential DAS Area during any portion of its trip, with the exception noted below, will be charged at a rate of 2:1 when fishing in a specific portion of the SNE RMA. A vessel may not fish, except as noted below, under a Category A DAS in the SNE Differential DAS Area, unless it has declared into the area prior to the start of the trip. The SNE Differential DAS Area (defined at § 648.82(e)(2)(i)(B) in the regulatory text portion of this document) is an irregular-shaped offshore area extending from 73°40' W. long., east to 69°30' W. long. (from south of western Long Island to north of the Nantucket Lightship Closed Area). On

any trip in which a vessel declares, prior to leaving the dock, via its VMS unit, that it will be harvesting fish in the SNE Differential DAS Area under a Category A DAS, the vessel will be charged at the differential DAS rate for that portion of the trip spent in the SNE Differential Area (as determined from VMS positional data). The time spent outside this area will be charged at the rate of 1:1. For example, if a trawl vessel declares into the SNE Differential DAS Area through its VMS unit on a trip that lasts 12 actual hr with only 4 hr actually spent in the SNE Differential DAS Area, the total DAS deducted for that trip would equal 16 hr (8 hr of actual time outside the SNE Differential DAS Area plus 8 hr (4 hr \times 2) of differential DAS time). A Day gillnet vessel that declares into the SNE Differential DAS Area through VMS will be charged according to the following formula for the actual time spent in the SNE Differential DAS Area: For hours accrued in the area less than 3 hr or greater than 7.5 hr, vessels will be charged at a rate of 2:1; for hours accrued in the area between 3 and 7.5 hr, vessels will be charged a full 15 hr. The DAS accrued outside of the SNE Differential DAS Area will accrue on a 1:1 basis. For example, if a Day gillnet vessel declared into the SNE Differential DAS Area on a trip that lasts 12 actual hours with only 5 hr actually spent in the SNE Differential DAS Area, the total DAS deducted for that trip would be 22 hr (7 hr of actual time outside of the SNE Differential DAS Area, plus 15 hr according to the above formula). For trips where a Day gillnet vessel declares into the SNE Differential DAS Area, the application of the DAS accrual formula described above does not supersede the DAS accrual formula that applies to all NE multispecies Day gillnet vessels. In other words, the net DAS charge for a Day gillnet vessel for a trip declared into the SNE Differential DAS Area may not be less than the DAS that would accrue on the same length trip by a Day gillnet vessel not declared into the SNE Differential DAS Area.

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

Further, if a vessel fishes in both the GOM and SNE Differential DAS Area on the same trip, the vessel will be charged at the rate of 2:1 for the entire trip.

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

A vessel that does not declare its intent to fish in the SNE Differential DAS Area under a Category A DAS, may still transit or be in the area, provided its fishing gear is properly stowed, according to the applicable regulations, and if the vessel is not in the area for transiting purposes, it immediately notifies NMFS through its VMS that it is in the SNE Differential DAS Area, but not fishing. This provision has been modified from the proposed rule, which allowed non-fishing and non-transiting vessels to be in the area "due to bad weather, or other circumstances beyond its control," based on Council comment and to ensure effective enforcement of this measure.

Similar to how trip limits are counted when fishing in the GOM Differential DAS Area, for trips declared into the SNE Differential DAS Area, all trip limits apply based on the actual days spent fishing, and not on the basis of the number of DAS charged. A vessel that begins and ends a fishing trip under the Regular B DAS Program is not be subject to differential DAS counting, regardless of where it fishes.

A vessel that fishes inside and outside of the U.S./Canada Management Area on the same trip (as described in section 15 of this preamble) may also fish in the SNE Differential DAS Area on the same trip, provided the vessel declares its intent to fish in the SNE Differential DAS Area via VMS prior to leaving the Eastern U.S./Canada Area. A vessel that has declared into both the SNE Differential DAS Area and the Eastern U.S./Canada Area on the same trip will be subject to the more restrictive DAS counting, trip limits, and reporting requirements applicable to the two areas for the entire trip.

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

9. Commercial Trip Limits

This final rule does not change the Amendment 13 GOM cod trip limit (800 lb (362.9 kg) per DAS, up to 4,000 lb

(1,818.2 kg) per trip). This final rule implements new trip limits for white hake and GB winter flounder, modifies the existing trip limits for the three yellowtail flounder stocks (CC/GOM, GB, and SNE/MA), and modifies the haddock trip limit and the GOM cod trip limit exemption and cod overage regulations.

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

NE multispecies DAS vessels fishing under Category A DAS, or any other vessel subject to the NE multispecies possession and trip limit regulations, may land up to 250 lb (113.6 kg) per DAS, or any part of a DAS, up to 1,000 lb (453.6 kg) per trip of CC/GOM or SNE/MA yellowtail flounder for the entire FY. Because the trip limits for CC/GOM and SNE/MA yellowtail flounder are the same, this final rule removes the requirement that vessels obtain and possess on board a yellowtail flounder LOA issued by the Regional Administrator in order to land yellowtail flounder from the CC/GOM or SNE/MA Yellowtail Flounder Areas.

This final rule expands the Regional Administrator's authority to modify the GB yellowtail flounder trip limit, removes the requirement that NMFS impose a GB yellowtail flounder trip limit when 70 percent of the TAC is reached, and removes the threshold harvest levels of 30 percent and 60 percent before other management measures can be adjusted. Instead, this final rule implements an initial GB yellowtail flounder trip limit of 10,000 lb (4,536.2 kg) per trip and allows the Regional Administrator to make adjustments to the GB yellowtail flounder trip limit at any time during the FY, and to eliminate or adjust the initial 10,000-lb (4,536.2-kg) trip limit before the start of the FY, in order to prevent exceeding or in order to facilitate harvesting the GB yellowtail flounder TAC, in a manner consistent

with the Administrative Procedure Act, as more fully described under Section 22 of this preamble. If no trip limit is specified for the beginning of a FY, the 10,000-lb (4,536.2-kg) yellowtail flounder trip limit will remain in effect. The Regional Administrator may specify

a yellowtail flounder trip limit for all of the U.S./Canada Management Area or for either of its two sub-areas (*i.e.*, the Western U.S./Canada Area or the Eastern U.S./Canada Area). This final rule also recognizes non-binding guidance developed by the Council to

assist the Regional Administrator regarding potential in-season modifications to the GB yellowtail flounder trip limit. Table 5 contains catch thresholds and associated trip limits offered as non-binding Council guidance for consideration.

TABLE 5.—GB YELLOWTAIL FLOUNDER TRIP LIMIT ADJUSTMENT GUIDANCE

FY quarter	If catch is projected to reach 30% of the TAC during the specified quarter, the suggested trip limit is as follows:	If catch is projected to reach 60% of the TAC during the specified quarter, the suggested trip limit is as follows:
Quarter 1 (May–July)	7,500 lb (3,402.1 kg)	3,000 lb (1,360.9 kg).
Quarter 2 (August–October)	10,000 lb (4,536.2 kg)	5,000 lb (2,268.1 kg).
Quarter 3 (November–January)	25,000 lb (11,340.4 kg)	10,000 lb (4,536.2 kg).
Quarter 4 (February–April)	Remove trip limits	25,000 lb (11,340.4 kg).

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

The requirement for NE multispecies DAS vessels to obtain a GB Cod Trip Limit Exemption LOA from the Regional Administrator when fishing outside of the GOM RMA, if the vessel operator desires to be exempt from the more restrictive cod trip limit in the GOM, is eliminated because this law enforcement tool is no longer necessary. Instead, with the exception of vessels declared into the U.S./Canada Management Area, a NE multispecies DAS vessel fishing south of the GOM RMA must declare through the VMS, prior to leaving the dock in accordance with instructions to be provided by the Regional Administrator, its intent to fish south of the GOM RMA in order to be subject to the less restrictive GB cod trip limits. Such a vessel is exempt from the GOM cod landing limit, but may not fish in the GOM RMA for the duration of the trip. Such a vessel may transit the GOM RMA, provided that its gear is properly stowed while in the GOM RMA. A vessel that has not declared through VMS that it will be fishing south of the GOM RMA, is subject to the most restrictive applicable cod trip limit, regardless of area fished for the entire trip.

The Regional Administrator retains the authority to require a vessel to obtain a GOM Cod Trip Limit Exemption LOA (as under pre-FW 42

regulations), if NMFS’s administration of the VMS program is not operational. If an LOA is required, such a vessel may not fish north of the exemption area for a minimum of 7 consecutive days (when fishing under the NE multispecies DAS program), and must carry the LOA on board.

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

10. Regular B DAS Program

This final rule renews the Regular B DAS Program, but modifies certain aspects in order to further reduce the potential risks associated with the use of a Regular B DAS and to minimize impacts to the monkfish fishery. The program will no longer be characterized as a “Pilot,” and will remain in effect indefinitely.

The Regular B DAS Program allows limited access NE multispecies DAS vessels with an allocation of Regular B DAS to fish under a Regular B DAS in order to harvest relatively healthy groundfish stocks (GB haddock, pollock, redfish, GOM winter flounder, and GOM haddock). GB winter flounder and GB yellowtail flounder are now considered “stocks of concern” that require additional reductions in F.

Vessels eligible to fish in the Regular B DAS Program may not fish in this program and in a Special Access Program (SAP) (*e.g.*, the Eastern U.S./Canada Haddock SAP, Closed Area (CA) I Hook Gear Haddock SAP, or CA II yellowtail flounder SAP) on the same trip. In order to limit the potential biological impacts of the program, only 500 Regular B DAS may be used during the first quarter of the CY (May through July), while 1,000 Regular B DAS may be used in subsequent quarters (August through October, November through January, and February through April). DAS that are not used in one quarter will not be available for use in subsequent quarters. As implemented previously under FW 40–A, Regular B DAS will accrue at the rate of 1 DAS for each calendar day, or part of a calendar day, fished.

A vessel participating in this program must be equipped with an approved VMS and must notify the NMFS Observer Program at least 72 hr in advance of a trip in order to facilitate observer coverage. This notification requires reporting of the following information: The general area or areas that will be fished (GOM, GB, or SNE), vessel name, contact name for coordination of observer deployment, telephone number of contact, date, time, and port of departure. Providing notice of the area that the vessel intends to fish does not restrict the vessel’s activity to fish only in that area on that trip, but will be used to plan observer coverage. Prior to departing on the trip, the vessel owner or operator must notify NMFS via VMS that the vessel intends to participate in the Regular B DAS Program. Vessels fishing in the Regular B DAS Program must report their catches of certain groundfish stocks of concern (cod, yellowtail flounder, winter flounder, witch flounder,

American plaice, and white hake) and haddock daily through VMS, including the amount of fish kept and discarded. These reporting requirements are consistent with the standardized reporting requirements that, as implemented by this final rule, apply to all Special Management Programs of the FMP, as explained in section 17 of this preamble.

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

A vessel fishing under a Category B DAS while in this program is prohibited from discarding legal-sized regulated NE multispecies, Atlantic halibut, ocean pout, and monkfish, and is limited to landing 100 lb (45.4 kg) per DAS, or any part of a DAS, of each of the following groundfish stocks: GOM cod, GB cod, GB yellowtail flounder, American plaice, witch flounder, white hake, SNE/MA winter flounder, GB winter flounder, southern windowpane flounder, and ocean pout, unless further restricted (see below). In addition, a vessel fishing in this program is limited to landing no more than one Atlantic halibut and 25 lb (11.3 kg) per DAS, or any part of a DAS, up to a maximum of 250 lb (113 kg) per trip, of CC/GOM or SNE/MA yellowtail flounder. A limited access monkfish DAS vessel fishing with gear other than trawl gear that is participating in this program under a NE multispecies DAS is subject to the monkfish Incidental Catch limit applicable to the monkfish Incidental Catch permit (Category E) (i.e., 400 lb (181.4 kg) tail weight/DAS, or 50 percent of the total weight of fish on board, whichever is less, when fishing in the monkfish Northern Fishery

Management Area (NFMA); and 50 lb (22.7 kg) tail weight/DAS when fishing in the monkfish Southern Fishery Management Area (SFMA)). A limited access monkfish DAS vessels fishing with trawl gear that is participating in this program under a NE multispecies DAS is subject to the monkfish Incidental Catch limit applicable to the monkfish Incidental Catch permit (Category E), as well as the monkfish restrictions associated with the required use of the haddock separator trawl (as described below). That is, vessels may not land more than 500 lb (226.8 kg) whole weight of monkfish per trip when fishing in the monkfish NFMA; and 500 lb (226.8 kg) whole weight per trip or 50 lb (22.7 kg) tail weight per DAS, whichever is less, when fishing in the monkfish SFMA.

If a vessel fishing under the Category B DAS Program harvests and brings on board a stock with an Incidental Catch TAC (cod, yellowtail, American plaice, witch flounder, white hake, SNE winter flounder, GB winter flounder), or southern windowpane flounder, ocean pout, Atlantic halibut, or monkfish, in excess of the landing limits, the vessel operator must retain on board the excess catch of these species, and immediately notify NMFS, via VMS, that it is changing its DAS category from a Regular B DAS to a Category A DAS (i.e., "DAS flip"). If a vessel flips from a Regular B DAS to a Category A DAS, it will be charged Category A DAS, which will accrue to the nearest minute, for the entire trip (i.e., not to the nearest day). Once the vessel flips, it is subject to the Category A trip limit restrictions. A vessel fishing in the Category B DAS Program must abide by all the reporting requirements described above for the duration of the trip, even if the vessel "flips" to a Category A DAS.

In order to ensure that a vessel will always have the ability to flip to a Category A DAS while fishing under a Regular B DAS (should it catch a groundfish species of concern in an amount that exceeded the trip limit), with the exception of vessels fishing in one of the differential DAS areas (as explained below), the number of Regular B DAS that may be used on a trip is limited to the number of Category A DAS that the vessel has at the start of the trip. For example, if a vessel plans a trip under the Regular B DAS Program and has 5 Category A DAS available, the maximum number of Regular B DAS that the vessel could fish on that trip under the Regular B DAS Program would be 5. If a vessel is fishing in either the GOM Differential DAS Area or the SNE Differential DAS Area, the number of Regular B DAS that may be

used on a trip is limited to the number of Category A DAS that the vessel has at the start of the trip divided by two. For example, if a vessel plans a trip under the Regular B DAS Program and has 10 Category A DAS available, the maximum number of Regular B DAS that the vessel could fish on that trip under the Regular B DAS Program would be 5.

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

The Pilot Program implemented by FW 40-A allowed a vessel issued a limited access monkfish Category C or D permit to use a NE multispecies Regular B DAS to fulfill the requirements of the Monkfish FMP, which requires such a vessel to use a NE multispecies DAS every time a monkfish DAS is used. To reduce fishing mortality on monkfish resulting from the use of Regular B DAS, this final rule implements the Monkfish FW 3 provision prohibiting a limited access monkfish DAS vessel that also possesses a limited access NE multispecies DAS permit from using a monkfish DAS (in conjunction with a NE multispecies Regular B DAS) when participating in the Regular B DAS Program. This vessel may still participate in this program and use a NE multispecies Regular B DAS, but it must fish under a NE multispecies DAS only and is subject to the monkfish trip limits. Discarding of legal-sized monkfish is prohibited when fishing under this program.

NMFS will administer the Regular B DAS Program quarterly DAS cap by monitoring the total number of Regular B DAS accrued on trips that begin and end under a Regular B DAS. Mere declaration of a Regular B DAS Program trip through VMS does not reserve a

vessel's right to fish under this program, because the vessel must also cross the demarcation line to begin a trip in this program. Once the maximum number of Regular B DAS are projected to be used in a quarter, the Regional Administrator will end the Regular B DAS Program for that quarter. In order to limit the potential impact of the Regular B DAS Program on the fishing mortality of groundfish stocks of concern, a

quarterly Incidental Catch TAC will be set for certain groundfish stocks of concern for this program. Based upon the definition of Incidental Catch TACs and the allocation of Incidental Catch TACs among Special Management Programs (Table 3 and 4, respectively), the proposed Incidental Catch TACs allocated to the Regular B DAS Program are calculated and divided into quarterly Incidental Catch TACs as

shown in Table 6. The quarterly Incidental Catch TACs are divided among quarters in order to correspond to the allocation of DAS among quarters. The 1st quarter (May–July) will receive 13 percent of the Incidental Catch TACs, and the remaining quarters (August–October, November–January, and February–April) will each receive 29 percent of the Incidental Catch TACs.

TABLE 6.—INCIDENTAL CATCH TACs FOR THE REGULAR B DAS PROGRAM
[mt, live weight]

	FY 2006		FY 2007		FY 2008	
	Qtr 1	Qtr 2–4	Qtr 1	Qtr 2–4	Qtr 1	Qtr 2–4
GB cod	8.0	17.8			See Note	
GOM cod	6.5	14.5	12.9	28.7	13.5	30.1
GB yellowtail flounder	2.7	6.0			See Note	
SNE/MA yellowtail	0.2	0.4	0.3	0.6	0.4	0.9
CC/GOM yellowtail	0.8	1.9	1.4	3.1	1.8	4.1
American plaice	18.1	40.3	21.1	47.0	26.9	60.0
Witch flounder	35.8	79.9	33.0	73.6	28.2	62.8
White hake	5.3	11.9	4.4	9.7	3.6	7.9
SNE/MA winter flounder	3.2	7.2	3.9	8.7	4.7	10.4
GB winter flounder	1.9	4.1	2.1	4.6	2.2	5.2

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

With the exception of white hake, CC/GOM yellowtail flounder, and SNE/MA yellowtail flounder, if the Incidental Catch TAC for any one of these species is caught (landings plus discards) during a quarter, use of Regular B DAS in the pertinent stock area will be prohibited for the remainder of that quarter. Vessels can once again use Regular B DAS at the beginning of the subsequent quarter. When the white hake Incidental Catch TAC is caught, the possession of white hake when fishing under the Regular B DAS Program will be prohibited. For the CC/GOM and SNE/MA stocks of yellowtail flounder, when the respective Incidental Catch TACs are caught, only a portion of the stock area where the species is predominantly caught will be closed to Regular B DAS Program participants. Upon attainment of the CC/GOM yellowtail flounder incidental Catch TAC, the following 30-minute square blocks will close: Blocks 98, 114, 123, 124, 125, 132, and 133. Upon attainment of the SNE/MA yellowtail flounder Incidental Catch TAC, the following 30-minute square blocks will close: Blocks 70 to 73, 82 to 88, 98, 99, and 101 to 103.

Under the Pilot Program, the Regional Administrator had the authority to prohibit the use of Regular B DAS for the duration of a quarter or FY, if it was

projected that continuation of the Regular B DAS Program would undermine the achievement of the objectives of the FMP or the Regular B DAS Program. This final rule continues this authority, but provides additional reasons for terminating the program. Additional reasons for terminating the program include, but are not limited to, the following: Inability to restrict catches to the Incidental Catch TACs; evidence of excessive discarding; evidence of a significant difference in flipping rates between observed and unobserved trips; and insufficient observer coverage to adequately monitor the program, particularly if coverage declines below the Council's recommendation of 36 percent (the same level of observer coverage as occurred during the original Pilot Program).

11. Renewal of DAS Leasing Program

This final rule continues the DAS Leasing Program, without change, to help mitigate the economic and social impacts resulting from the current FMP regulations that strictly limit fishing effort.

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

This final rule renews and modifies the Eastern U.S./Canada Haddock SAP for FY 2006 through 2008 as described

below, and no longer characterizes this SAP as a "Pilot Program."

The Eastern U.S./Canada Haddock SAP Program allows limited access NE multispecies DAS vessels fishing with an authorized haddock separator trawl to catch haddock using a Category B DAS, in a portion of the Eastern U.S./Canada Area, including the northernmost tip of CA II. The time period for the SAP is revised to August 1–December 31. Delaying the start date from May 1 to August 1 is intended to help prevent an early closure of this area and thereby prolong the period of time during which vessels have access to the haddock fishery in the area under a Category B DAS.

In a manner similar to the provision proposed under the Regular B DAS Program, this final rule provides the Regional Administrator authority to approve the use of additional gear specifically for this SAP based on approved gear standards recommended by the Council.

This final rule implements new restrictions for trips on which use of the haddock separator trawl is required (including this SAP). For trawl trips, possession of flounders (all species, combined); monkfish (whole weight), unless otherwise specified below; and skates is limited to 500 lb (227 kg) each per trip; and possession of lobsters is

prohibited to help ensure the proper utilization of the haddock separator trawl.

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

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

Under this final rule, many of the reporting requirements for this SAP are the same as the reporting requirements that are applicable to all Special Management Programs, as explained under Section 17 in this preamble. Finally, this rule restricts vessels that are fishing in this SAP while under a Category B DAS, from discarding regulated NE multispecies, Atlantic halibut, and ocean pout. All other measures for this SAP are consistent with the measures previously implemented.

13. Modification to CA I Hook Gear Haddock SAP

This final rule specifies a haddock TAC for the CA I Hook Gear Haddock SAP for FY 2006 through 2008, and provides the Regional Administrator the authority to adjust these TACs based on future stock assessments using a specified formula. The formula is based upon the size of the haddock TAC allocated for FY 2004 (1,130 mt live weight) and, based on new information, will be adjusted according to the growth/decline of the western GB (WGB) haddock exploitable biomass in relationship to its size in 2004. The size of the WGB component of the stock is currently considered to be 35 percent of the total stock size (unless modified by a new stock assessment). The formula is as follows: $TAC_{year\ x} = (1,130\ \text{mt live weight}) \times (\text{Projected WGB Haddock Exploitable Biomass}_{year\ x} / \text{WGB Haddock Exploitable Biomass}_{2004})$.

TABLE 7.—CA I HADDOCK GEAR HADDOCK SAP TACS FOR FY 2006–2009, AND PERTINENT HISTORIC INFORMATION

FY	Total GB haddock stock exploitable biomass (mt × 1,000)	WGB haddock exploitable biomass (mt × 1,000)	Ratio of total GB haddock stock to WGB component	TAC (mt live weight)
2004	100.907	35.317	N/A	1,130
2005	137.341	48.069	1.361	1,538
2006	202.261	70.791	2.004	2,265
2007	442.427	154.849	4.385	4,955
2008	560.303	196.106	5.553	6,275

For example for FY 2006, based on the information in the table and the formula: $202.261 \times 35\% = 70.792$; $70.792/35.317 = 2.004$; and $1,130 \times 2.004 = 2,265$ mt.

When the haddock TAC is projected to be harvested, the SAP will close. The standardized reporting requirements as discussed in Section 17 of this preamble apply to this SAP.

14. GB Cod Fixed Gear Sector

This final rule authorizes the formation of a second sector in the FMP, the GB Cod Fixed Gear Sector (Fixed Gear Sector), in accordance with the procedures and requirements implemented by Amendment 13 (§ 648.87). Requirements under § 648.87(b) that apply to all sectors apply to the Fixed Gear Sector. This final rule implements a requirement that the Fixed Gear Sector fish only in the geographic area defined as the GB Cod Hook Gear Sector Area, which is that portion of the GB cod stock area north of 39°00' N. lat. and east of 71°40' W. long. Because the FW 42 document was silent with respect to the geographic area to be associated with the proposed Fixed Gear Sector, NMFS proposed,

based on the inferred intent of the Council, the above geographic area in the FW 42 proposed rule, due to the fact that the goals of the GB Cod Fixed Gear Sector are very similar the goals of the GB Cod Hook Gear Sector. However, the Fixed Gear Sector's 2006 Operations Plan has proposed that this area be expanded. A proposed rule (71 FR 48903, August 22, 2006) soliciting comment on this Operations Plan is currently under review. Depending on the outcome of that proposed rulemaking, this area could be revised through a separate final rule.

The primary purpose of the Fixed Gear Sector is to fish in an efficient manner, under customized managed measures, for the primary purpose of harvesting GB cod. A vessel fishing in the Fixed Gear Sector is restricted to fishing with either jigs, non-automated demersal longline, hand gear, or sink gillnets. The Fixed Gear Sector, as required under § 648.87(b)(2), must submit an Operations Plan and Fixed

Gear Sector Contract to the Regional Administrator at least 3 months prior to the beginning of each FY. As described above, a vessel fishing in the Fixed Gear Sector would be restricted to fishing with various gear, including jigs; however jigs are not defined in the regulations. This final rule includes a definition of jigging and jig as follows: Jigging, with respect to the NE multispecies fishery, means fishing for groundfish with hook and line gear (hand line or rod and reel) using a jig, which is a weighted object attached to the bottom of the line used to sink the line and/or imitate a baitfish, which is moved ("jigged") with an up and down motion.

This final rule authorizes the formation of the Fixed Gear Sector, but neither approves nor disapproves the 2006 Operations Plan of the Fixed Gear Sector. Approval or disapproval of the Fixed Gear Sector's 2006 Operation Plan will be announced through publication

of a separate final rule in the **Federal Register**.

15. Eastern U.S./Canada Area Flexibility

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

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

16. Modification of the DAS Transfer Program

This final rule modifies several aspects of the DAS Transfer Program. The intent of these changes are to increase the utility of the program, provide clarification of program details that were not previously considered, and support effective administration of the program by NMFS. The vessel transferring its NE multispecies DAS

permit (transferor) is no longer required to exit all state and Federal fisheries, and may acquire other fishing permits (i.e., other Federal limited access permits, Federal open access permits, and/or state permits) after the transfer. Secondly, other non-groundfish permits that the transferor vessel has no longer automatically expire, and may be transferred as a bundle to the vessel receiving the NE multispecies DAS permit (subject to pertinent regulations regarding vessel replacement). Duplicate permits must expire, and a vessel may not consolidate DAS or other allocations from non-groundfish permits. Non-groundfish permits are subject to all applicable regulations such as vessel replacement size restrictions. The program maintains the conservation tax of 20 percent on Category A and Category B DAS, as well as the conservation tax of 90 percent on Category C DAS, in order to support the program's goal of long-term reduction in fishing effort.

Because the execution of a DAS transfer is a process whereby two limited access NE multispecies permits (with two baselines, DAS allocations, and histories) become a single permit (with a single baseline, DAS allocation, and history), this action also specifies the rules that pertain to the resultant single permit. All history associated with the transferred NE multispecies DAS permit is acquired by the recipient (transferee), and is subsequently associated with the permit rights of the transferee. The pertinent history includes catch history, DAS use history, and permit rights history. Neither the individual elements of the history associated with the transferor vessel, nor the total history may be separated from the NE multispecies DAS being transferred. With respect to vessel baseline characteristics, the baseline of the transferee vessel will be the smaller baseline of the two vessels or, if the transferee vessel has not previously upgraded under the vessel replacement rules, the vessel owner may choose to adopt the larger baseline of the two vessels, which would constitute the vessel's one-time upgrade, if such upgrade is consistent with the vessel replacement rules. For a vessel involved in a DAS transfer that was granted a one-time downgrade of its DAS Leasing Program baseline specifications, as described in § 648.82(k)(4)(xi), the DAS leasing specifications would revert to those specifications prior to the one-time downgrade, except in the case when the downgrade was made by the transferee vessel and the transferee's

vessel baseline specifications were adopted during the DAS transfer.

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

In order to simplify the DAS Transfer Program, this final rule clarifies that, for the purposes of calculating the DAS conservation tax, the transferee vessel must specify which vessel's DAS are being acquired and are, therefore, subject to the conservation tax. If a conservation tax were to apply strictly to the DAS acquired from the transferor vessel, buyers would have a strong incentive to arrange the DAS Transfer Program transaction such that it would result in the permit with the least number of DAS being designated as the transferor (seller) permit. Lastly, this final rule prohibits a vessel from participating in the DAS Leasing Program as a lessee or lessor during a particular FY and then subsequently participating in the DAS Transfer Program as a transferor during the same FY. A vessel may participate in the DAS Leasing Program as a lessor or as a lessee and then submit an application for a DAS transfer as a transferor, but the transfer, if approved, will not be effective until the beginning of the following FY. Vessels are not prohibited from participating in the DAS Leasing Program after a DAS transaction has occurred.

17. Standardized Requirements for Special Management Programs

This final rule modifies and standardizes the requirements that apply to the Special Management Programs. The standardized requirements are described below, and any new requirement, or new application of an existing requirement is noted.

The requirement for the use of VMS and the advance notice to the observer program prior to each trip is continued. For all Special Management Programs, the species that must be reported daily (catch and discards) will be haddock

and all species for which a stock of concern has been identified as likely to be caught in a Special Management Program (currently, the species with stocks of concern identified as such are: Cod, yellowtail flounder, winter flounder, witch flounder, white hake, and American plaice).

For all Special Management Programs, there is a new requirement for the vessel operator to report the date of the catch. The vessel operator may report catch for a particular day of fishing at any time of the day on which it was caught, up until 0900 hr. the following day.

For all Special Management Programs, there is a new requirement to report the serial number of the VTR. A vessel operator must report the serial number from the first page of the logbook on the daily VMS catch report. Because the serial numbers are associated with individual vessels, a vessel operator is prohibited from sharing logbooks with other vessel operators. The VTR serial number serves as an important tool that enables fishery managers to make better use of available data by linking VTR data with dealer and DAS data.

While participating in SAPs and the Regular B DAS Program, a vessel is prohibited from discarding legal-sized regulated NE multispecies, Atlantic halibut, and ocean pout while fishing under a Category B DAS. This final rule also requires a vessel that is participating in either the Regular B DAS Program or a SAP that exceeds any of the NE multispecies trip limits, to exit these respective programs. With the exception of the CA I Hook Gear Haddock SAP, a vessel must exit the Special Management Program and "flip" to a Category A DAS as soon as the maximum trip limit is exceeded. The requirement that vessels participating in the Special Management Programs report daily via VMS continues, even after a vessel is required to exit the program.

18. Gear Performance Incentives for Special Management Programs

In times and areas when a Special Management Program requires a vessel to use a haddock separator trawl or other gear authorized by the program to reduce catches of stocks of concern, possession of flounders (all species combined), monkfish (live/whole weight), and skates (live/whole weight) is limited to 500 lb (226.8 kg) each, per trip, and possession of lobsters is prohibited. If a specific program includes a possession limit that conflicts with these Gear Performance Incentives, the most restrictive limit will apply. For example, a vessel fishing under a NE multispecies Category B

DAS in the proposed Regular B DAS Program in the monkfish SFMA, and that has a limited access monkfish Category C or D permit (and is therefore prohibited from fishing under a monkfish DAS), is limited to 50 lb (22.7 kg) of monkfish per trip. The intent of this measure is to increase the incentive for vessels to configure the gear properly, because only small amounts of these species may be landed when using the gear. This Gear Performance Incentive requirement applies to the Regular B DAS Program, NE multispecies SAPs, and the Eastern U.S./Canada Management Area (if/when the haddock separator trawl is the only allowable trawl net).

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

For vessels fishing in the Eastern U.S./Canada Area under a Category A DAS, this final rule removes the restriction that the amount of cod not exceed 5 percent of the total weight of fish on board.

20. SNE/MA RMA Trawl Codend Mesh Requirement

The trawl codend mesh requirement applicable to the SNE/MA RMA is modified from 6.5-inch (15.2-cm) square or 7.0-inch (17.8-cm) diamond mesh to 6.5-inch (15.2-cm) square or 6.5-inch (15.2-cm) diamond mesh.

21. Regional Administrator Authority To Adjust Measures in the U.S./Canada Management Area

This final rule expands the Regional Administrator's authority to adjust management measures in the U.S./Canada Management Area at any time during the FY, as well as prior to the start of the FY for the subsequent FY, if information is sufficient to make the necessary projections, and after consultation with the Council, in order to more effectively prevent overharvesting or to facilitate harvesting of the hard TACs (and achieving OY).

This final rule eliminates the required implementation of a trip limit for Eastern GB haddock (i.e., when 70 percent of the TAC is projected, the Regional Administrator must implement a possession limit of 1,500 lb (680.4 kg) per day, up to 15,000 lb (6,804.1 kg) per trip).

This final rule clarifies that the Regional Administrator may implement different management measures for vessels using Category A DAS and Category B DAS, and requires that the Regional Administrator, when determining in-season adjustments, consider Council intent that opportunities for fishing on Category A

DAS should take precedence over opportunities to fish under Category B DAS.

Comments and Responses for FW 42 and FW 3

Eighty-three comments were received during the comment period on the proposed rule for this action from 61 individuals, 10 fishing industry groups, 1 conservation group, 1 research institution, 3 shoreside processors, 5 elected officials, and 2 state resource management agencies (Massachusetts Division of Marine Fisheries (DMF) and the Maine Department of Marine Resources (DMR)). Only comments that were applicable to the proposed measures, including the analyses used to support these measures, are addressed in this preamble. It is important to note in considering the responses to comments herein that, in the context of implementing a framework adjustment measures such as FW 42, NMFS may only approve or disapprove substantive measures, and, may not unilaterally modify any measure in a substantive way pursuant to section 304(a)(3) to the Magnuson-Stevens Act.

Recreational Restrictions

Comment 1: One commenter questioned the effectiveness of the proposed seasonal GOM cod possession prohibition for the charter/party sector, as few vessels would be affected by this measure, suggesting that more effective measures are necessary. This commenter also doubted that the seasonal (i.e., November through March) cod possession prohibition would affect private anglers as much as indicated in the FW 42 document, stating that weather and vessel size often limit their ability to fish during this period.

Response: The analysis prepared for FW 42 indicates that the seasonal GOM cod possession prohibition, in conjunction with an increase in the minimum size for GOM cod, would achieve the reduction in F for GOM cod deemed necessary from the charter/party and private recreational fishing sector. Therefore, additional recreational management measures are not necessary.

GB Yellowtail Flounder Rebuilding Plan

Comment 2: The DMR strongly supported the proposed GB yellowtail flounder rebuilding plan due to the high probability of rebuilding the stock by 2014, especially considering the negative retrospective patterns observed in recent biomass and mortality estimates.

Response: NMFS agrees and implements the proposed rebuilding program through this final rule.

Target TACs

Comment 3: One commenter suggested that all of the groundfish Target TACs specified for 2007 and 2008 should be reduced by 50 percent. Another commenter was concerned that increased Target TACs in 2007 do not reflect observed increases in F on particular stocks since 2004. A third commenter indicated that the Target TAC increases in 2007 and 2008 are overly optimistic and suggested that NMFS reevaluate Target TACs on a yearly basis using updated data. Finally, a fourth commenter cautioned that the Target TACs should not be reduced too quickly and that there should be a mechanism to increase these TACs.

Response: As specified in the EA prepared for this action, the PDT estimated F rates for CY 2005 using the best information available. While additional preliminary landings data have become available since the submission of the FW 42 EA for final review and the implementation of emergency measures on May 1, 2006, these data are not sufficient to adequately determine whether drastic changes have occurred in the fishery that would require revision of the objectives and measures proposed by FW 42. Specifically, this preliminary information is not sufficient to determine whether the measures implemented to date during CY 2006, including the emergency measures, have, in fact, achieved the necessary F reductions for specific stocks during CY 2006. Although the analysis prepared for FW 42 indicates that reductions in the Target TACs for several species are necessary, a 50-percent reduction in Target TACs is not warranted at this time because only six stocks require F reductions to maintain the Amendment 13 rebuilding programs. Finally, Amendment 13 established a process whereby Target TACs for each species are established through the Council's biennial adjustment process. The next adjustment is scheduled to be developed in 2008, and implemented on May 1, 2009. That adjustment will take into account the best scientific information available at the time, and use that information to determine whether additional adjustments to F are necessary.

Comment 4: One commenter expressed concern that the recent revelation that an incorrect F rate was used during the calculation of Target TACs for American plaice (see description of approved measure 3

above) could affect the determination whether FW 42 meets the Amendment 13 mortality objectives for 2006. This commenter suggested that NMFS should adjust these TACs to prevent overfishing.

Response: The revised Target TAC does not alter the determination that the proposed action meets the mortality targets for all stocks managed by the FMP. The most recent stock assessment (GARM II) and analysis prepared for this action indicate that American plaice is achieving the mortality reductions necessary under the Amendment 13 rebuilding program for this stock notwithstanding the error in the calculation of the Target TAC for this stock. Due to the Amendment 13 default DAS reductions, as well as other measures proposed to reduce F for overfished stocks, the FW 42 analysis indicates that F on American plaice will be reduced by an additional 11 percent which is expected to constrain landings from exceeding the revised Target TAC specified in this final rule.

Default DAS Allocations

Comment 5: Five commenters supported the Amendment 13 default DAS allocation reductions proposed to be continued through FW 42. However, six commenters asserted that this default measure is unnecessary because the triggers for this measure have not been met, as F for American plaice is below the Amendment 13 target F rate for 2006 and existing measures for SNE/MA yellowtail flounder already reduce F on this species to comply with the Amendment 13 rebuilding program. These commenters suggest that an evaluation of completed FY 2005 and preliminary 2006 data would further support this assertion. One commenter pointed out that Alternatives 1–5 were analyzed without the default DAS reduction measure and they still met the necessary F reductions for this action. One commenter opposed the suggestion in the proposed rule that the default DAS reduction was necessary for white hake.

Response: The regulations implementing Amendment 13 established three criteria to determine whether the default measures are necessary; these criteria are specified in the current regulations at § 648.82(d)(4): (1) Target stocks (SNE/MA yellowtail flounder and American plaice) are projected to be at the target biomass in the year the measures are to be implemented, and, overfishing is not occurring; or (2) biomass estimates show rebuilding is on track and the best available estimate of the fishing mortality rate for these stocks meets the

target F_{MSY} , and (3) all other stocks that would be affected by the default measures are meeting their target F rates. Based on the results of GARM II and updated information reflecting the estimated F rate for these stocks in CY 2005, American plaice meet both the first and the second criteria. However, the third criterion for eliminating the default measures is not satisfied because the target F rates are not being achieved for five other stocks that would be subject to the default measures. Because the stock area defined for American plaice includes the stock areas of all other stocks managed by the FMP, the default measures, in conjunction with other measures proposed in FW 42, are still needed to reduce F on other stocks caught within the broadly defined American plaice stock area. Further, in 2006, SNE/MA yellowtail flounder is not projected to achieve its target biomass, is not meeting the target F rate, and, therefore, continues to experience overfishing. Any new data available at this time is still preliminary and insufficient to change the approved FW 42 measures.

It is true that Alternatives 1–5 considered by the Council in FW 42 did not include the Amendment 13 default DAS reduction, yet still achieved the necessary F reductions for this action. However, in order to achieve the necessary F reductions for this action, these alternatives required a greater reduction in the overall DAS allocation than the Amendment 13 default measure. For example, Alternative 5 proposed a 40-percent reduction in allocated Category A DAS by reducing the Category A:B DAS allocation ratio to 36:64 rather than the 55:45 allocation ratio of the default measure. In other words, these alternatives would have resulted in a greater overall reduction in available Category A DAS than the Amendment 13 default measure to achieve the necessary F reductions for this action.

According to analysis prepared for this action, the Amendment 13 default DAS reduction, as demonstrated by the analysis of the No Action alternative, will reduce F on SNE/MA yellowtail flounder by 46.6 percent and white hake by 2.5 percent. However, F on these stocks must be reduced by 55 percent and 13 percent, respectively, to maintain the Amendment 13 rebuilding programs for these stocks. As a result, the default measures alone are insufficient to achieve the necessary F reductions for these stocks. Therefore, the additional measures included in this final rule, as proposed in FW 42, are needed in order to maintain the Amendment 13 rebuilding programs for

these and other stocks. Further, the EA prepared for FW 42 indicates that additional F reductions beyond the measures proposed in this action and the subsequent Amendment 13 default measures scheduled for implementation in 2009 may be necessary to fully rebuild these stocks by the end of the rebuilding programs for these stocks.

The Council had the opportunity to revise the Amendment 13 default measures and did so by choosing to revise the differential DAS counting rate for SNE/MA yellowtail flounder to achieve the necessary F reduction for this stock. Because the Council chose not to revise the Amendment default DAS reduction, and because criteria to eliminate this default measure were not met, the default DAS reduction will remain effective upon implementation of this final rule. Measures proposed by FW 42, combined with the default DAS reduction, are expected to achieve the necessary F reductions for several groundfish stocks to maintain the Amendment 13 rebuilding programs.

VMS Requirement

Comment 6: Seven commenters supported the mandatory VMS requirement proposed by FW 42, recommending that FW 42 be implemented before September 30, 2006, to ensure reimbursement for the purchase of VMS units outlined in a recent notice in the **Federal Register** (71 FR 41425, July 21, 2006). One commenter indicated that a mandatory VMS requirement would facilitate the development of future area-specific measures. However, three commenters suggested that a VMS requirement offers little benefit to the industry and recommended deferring implementation unless the differential DAS counting rate is reduced.

Response: The increasing complexity of the management measures implemented or proposed by FW 42, including area-specific regulations such as differential DAS counting and real-time reporting requirements, necessitate an increased reliance on VMS to accurately and efficiently monitor vessel operations under the FMP. A mandatory VMS requirement for vessels fishing under a NE multispecies DAS allows NMFS to accurately count DAS used in the proposed differential DAS counting areas and monitor catch from Special Management Programs. Without the use of VMS, NMFS would be hindered in effectively administering many of the measures proposed in FW 42, or any of the existing Special Management Programs. Many of these programs provide at least some means of mitigating recent effort reductions in the

fishery by facilitating the use of Category B DAS and access to SAPs within closed areas. In addition, because a vessel's DAS charge only starts once a vessel crosses the VMS demarcation line, rather than at the dock, as under the previous call-in system, a mandatory VMS requirement also provides some benefit to the fishing industry by reducing the DAS charged on most fishing trips.

Comment 7: One commenter requested that NMFS implement a power-down mechanism for periods when groundfish vessels participate in other non-VMS regulated fisheries. This commenter suggested a minimum participation period of 30 days to facilitate enforcement of this provision.

Response: Although the Council did not consider modifying the existing VMS power-down provision or implementing a new VMS power-down provision, NMFS does not support the commenter's request because it would compromise efforts to enforce proposed and existing regulations by preventing NMFS from monitoring vessel activity away from the dock.

Differential DAS Counting in GOM

Comment 8: Six commenters indicated that the proposed GOM Differential DAS Area restrictions are unjustified, that they do not strike a balance between conservation and economics, and that such restrictions will result in economic failure of the fishing industry; while eight other commenters expressed general opposition to this proposed measure and the economic impacts that it will cause.

Response: As discussed in further detail in the responses below, NMFS believes the GOM Differential DAS Counting Area is consistent with all of the National Standards, including National Standards 1 (measures shall prevent overfishing and achieve OY), 2 (measures shall be based on the best scientific information available), 4 (measures shall not discriminate among fishermen), 8 (measures shall minimize economic impacts to the extent practicable), and 10 (measures shall promote safety to the extent practicable). The National Standards indicate that management measures shall minimize adverse economic impacts to fishing communities to the extent practicable, provided the measures meet the conservation requirements of the Magnuson-Stevens Act. Analysis prepared for this action indicates that the GOM Differential DAS Area is necessary to achieve the required F reductions for GOM cod and CC/GOM yellowtail flounder. In

addition, this analysis also indicates that this measure is part of the alternative that results in the least decrease in fishing revenue compared to the other alternatives considered by the Council for this action, while still achieving the F targets necessary to meet the rebuilding objectives of the FMP. As a result, this measure achieves not only the necessary conservation objectives of this action, but it also minimizes the economic impacts to fishing communities, thereby achieving the economic and social objectives of this action and balancing, to the extent possible and practicable, the requirements of the National Standards.

Comment 9: Nine commenters suggested that the GOM Differential DAS Area is too big and would exceed the necessary F reductions for both GOM cod and CC/GOM yellowtail flounder. Six of these commenters suggested that the area should not extend beyond 70° W. long. (an area that would include approximately 70 percent of the landings of GOM cod and CC/GOM yellowtail flounder), as landings from 30' squares 115, 116, 123, 138, and 139 account for very little of the F for these stocks.

Response: The proposed size of the GOM Differential DAS Area is necessary to achieve the required F reductions for both GOM cod and CC/GOM yellowtail flounder based on the analysis of the Northeast Fisheries Science Center's Closed Area Model (CAM). Although catch from additional blocks identified by the commenters is low, it is expected that fishing effort would increase in these blocks, should differential DAS counting be limited to a smaller area within the GOM. The Council considered another alternative that included differential DAS counting within a smaller area of the GOM, but chose to adopt the larger area contained in the preferred Alternative B2 (modified) because the proposed area included a more substantial portion of the GOM cod and CC/GOM yellowtail flounder landings (approximately 85 percent of the landings from both stocks) and would effectively achieve the conservation objectives of this action when combined with the other proposed measures. Because the GOM Differential DAS Counting Area recommended by the commenters was not analyzed during the development of FW 42, it is uncertain whether this area would achieve the necessary F reductions for this action.

Comment 10: Eight commenters requested that NMFS only charge DAS at the differential counting rate of 2:1 when vessels are actually fishing within the GOM Differential DAS Area,

suggesting that the regulations governing vessel operations in this area should mirror those for the SNE/MA Differential DAS Area.

Response: Unlike the SNE/MA Differential DAS Area, the GOM Differential DAS Area is situated along the coast and vessels must transit through this area to return to port. During the development of FW 42, Council members expressed concern that vessels may elect to "top off" their trips by fishing within this area on their return to port if there were no differential DAS rate in effect. This would greatly undermine the effectiveness of this measure, as detailed in an example provided in Section 4.2.2 of the EA prepared to support FW 42. Charging DAS at the differential rate for the entire trip minimizes incentives to circumvent the intention of the GOM Differential DAS Area and increases the effectiveness of this measure towards reducing F and achieving the rebuilding objectives for GOM cod and CC/GOM yellowtail flounder by reducing effort in the inshore GOM.

Comment 11: Thirteen commenters argued that the proposed GOM Differential DAS Area compromises safety of fishing vessels by forcing vessels to fish farther offshore to avoid the higher DAS charge, thereby violating National Standard 10.

Response: The EA prepared for this action considered issues relating to safety within the alternatives considered. Of the alternatives considered in FW 42, including a minimum 24-hr DAS charge and more extensive DAS reductions for all vessels, the proposed action is described as being the best option for achieving the necessary conservation objectives of the action while having the least negative impact on vessel safety. In terms of practicability, this alternative is estimated to have the least reduction in revenues which, in turn, is thought to have the least impact on vessel safety. NMFS acknowledges that the GOM Differential DAS Area may influence vessels to fish farther offshore. However, the safe operation of a fishing vessel is ultimately the responsibility of the master of the vessel. FW 42 proposes a provision that allows vessels to be within the GOM Differential DAS Area without being charged DAS at the differential rate, provided the vessel notifies NMFS that it is not fishing and the gear is properly stowed. This provision will allow vessels fishing outside of the GOM Differential DAS Area to seek the safety of coastal waters should weather conditions deteriorate and was intended to mitigate the impacts to safety from the proposed

GOM Differential DAS Area without compromising the conservation objectives of this measure. As a result, the Council and NMFS have determined that the measure promotes safety to the extent practicable, as specified in National Standard 10.

Comment 12: Five commenters supported the proposed provision that would allow vessels to be within the GOM Differential DAS Area without being charged DAS at the differential rate, provided the vessel notifies NMFS that it is in the area and that the gear is properly stowed.

Response: NMFS agrees with the Council that it is important to allow vessels to be within the GOM Differential DAS Area without being charged DAS at the differential rate to minimize safety concerns associated with the size of the differential DAS Area (see response to Comment 10 above) and has approved this provision. This final rule also implements a similar provision in the SNE/MA Differential DAS Area.

Comment 13: Four commenters suggested that the differential DAS counting measure was never intended to reduce F for white hake. These commenters argued that the proposed trip limits for this stock are sufficient to achieve the necessary F reductions for this species, while another commenter indicated that such F reductions have already taken place, based on 2005/2006 catch data. Two commenters supported the proposed trip limit for white hake.

Response: NMFS acknowledges that, according to the EA prepared for FW 42, the proposed GOM Differential DAS Area was not intended to specifically reduce F on white hake. However, the GOM Differential DAS Area is an integral component of a suite of measures necessary to achieve the necessary F reduction for this species and other species caught in conjunction with white hake. This suite of alternatives was selected as part of a targeted approach to reduce F on specific stocks, in specific areas, without unnecessarily reducing catch of other healthier stocks by imposing across-the-board reductions in DAS allocations included in five of the other alternatives considered in FW 42. Further, because the white hake stock area encompasses the stock areas of all other stocks managed by the FMP, measures necessary to reduce F on other overfished stocks, such as the GOM Differential DAS Area, also contribute towards achieving the necessary F reductions for white hake. The primary analytical tool used to evaluate the impacts of the proposed measures (i.e., the CAM) takes into consideration all of

the proposed measures, including both the white hake trip limit and differential DAS counting. As a result, it is impossible to attribute the expected F reductions resulting from one specific measure from the CAM results, as vessel behavior is influenced by all of the proposed measures combined.

Therefore, all of these measures, including differential DAS counting in the GOM, are necessary to maintain the Amendment 13 rebuilding program for this species, as well as other overfished stocks.

It is possible that the emergency management measures implemented by the April 13, 2006, emergency interim final rule could reduce F for white hake more than is necessary for the entire FY 2006. However, data regarding the realized effectiveness of the emergency measures are not available at this time and were not available at the time FW 42 was submitted by the Council for final review by NMFS. Even assuming that the emergency measures resulted in reducing F for white hake more than is required for 2006, similar reductions in F would not be realized during FY 2007 and 2008, because the emergency measures are superseded by this final rule. As a result, differential DAS counting in the GOM, in addition to the Amendment 13 default DAS reduction and the trip limits in FW 42 are necessary to achieve the necessary F reductions for white hake for the expected duration of this action (i.e., through 2009). Because white hake is overfished and overfishing is still occurring, a precautionary approach potentially resulting in a greater reduction in F for white hake than is necessary in FY 2006 is consistent with the National Standard 1 guidelines at § 600.310(f)(5), and would increase the likelihood that these stocks would meet the Amendment 13 rebuilding objectives.

Comment 14: Eight commenters stated that the proposed differential DAS counting measure in the GOM is inconsistent with National Standard 4 because it denies reasonable access to healthy groundfish stocks for vessels operating out of ports in Massachusetts and New Hampshire, and discriminates against such vessels by disproportionately imposing the conservation burden on these states. Five of these commenters argued that this measure is also inconsistent with National Standard 8 because it does not provide for the sustained participation by fishing communities in Massachusetts and New Hampshire and does not minimize economic impact, as vessels cannot afford to lease DAS if

fishing within the GOM Differential DAS Area.

Response: The proposed GOM Differential DAS Area applies to any vessel intending to fish under a NE multispecies DAS in this area, regardless of principal port or home port. Area-specific measures such as this are necessary if the management strategy in FW 42 is to selectively reduce F on overfished stocks, while facilitating greater access to healthier stocks in an attempt to help achieve OY in the fishery. As detailed further in the response to Comment 15 below, differential DAS counting in the inshore GOM is necessary to achieve the necessary F reductions for GOM cod and CC/GOM yellowtail flounder and to maintain the Amendment 13 rebuilding programs for these stocks. Vessels that fish primarily in this area are necessarily more negatively affected than vessels that fish outside of this area, but there is neither discriminatory intent to this measure, nor direct or deliberate distribution of DAS or access to the fishery among individual vessels based on principal or home port. Any disproportionate impact is an unavoidable consequence of geography, not a result of intent to discriminate. As specified in the National Standard 4 guidelines, allocation of fishing privileges may disadvantage one group over another if it is necessary to achieve the objectives of the FMP. As a result, the GOM Differential DAS Area is reasonably calculated as necessary to promote conservation and is consistent with the guidelines developed for National Standard 4 and the objectives of the FMP.

As required by National Standard 8, the EA prepared to support this action analyzes and fully takes into account the social and economic impacts of the proposed GOM Differential DAS Area. This analysis indicates that the alternative adopted by the Council not only meets the conservation objectives of this action, but it would also result in the least reduction in fishing revenues of all of the alternatives considered. The proposed measure minimizes the adverse economic impacts to fishing communities and provides the greatest potential for sustained participation of such communities among the alternatives considered. Therefore, the GOM Differential DAS Area measure is fully consistent with National Standard 8.

Comment 15: Ten commenters suggested that the GOM Differential DAS Area in particular, and the suite of measures proposed by FW 42, in general, are inconsistent with National Standard 1 because they fail to achieve

OY on many healthy stocks or provide the greatest overall benefit to the nation. They based their claim on the fact that recently observed landings are lower than the Target TACs established for several species. Further, eight commenters argued that the GOM Differential DAS Area will fail to prevent overfishing of GOM cod, but will actually increase F on this species by providing incentives for vessels that traditionally fish within this area to concentrate fishing effort on the highest-valued species, primarily GOM cod. Finally, four commenters suggested that, because some vessels will be unable to steam outside of this area due to their vessel size, these vessels will be forced to fish within this area, therefore, increasing discards of GOM cod and CC/GOM yellowtail flounder.

Response: The model used to evaluate the impacts of the differential DAS counting areas (i.e., the CAM) attempts to predict vessel behavior to maximize fishing profit in response to the suite of proposed measures. As a result, the CAM attempts to capture any change in fishing behavior to target the highest-valued species. Therefore, the results of the CAM reflect anticipated behavior changes in response to the GOM Differential DAS Area and indicate that the proposed measure still meets the mortality objectives of this action. In addition, because the CAM incorporates trip limits, the model's results incorporate any changes in F attributable to discards of GOM cod and CC/GOM yellowtail flounder, although it is not possible to isolate the direction and degree of change with respect to discards from these results.

As acknowledged many times in Amendment 13 and FW 42, it is difficult to achieve an exact balance of measures that will achieve the necessary conservation objectives for all stocks while ensuring OY at the same time in a fishery as diversified and complex as the groundfish fishery. Due to the comingled nature of the groundfish fishery and the reliance upon non-selective measures such as DAS reductions to manage the fishery, effort and subsequent F reductions on one stock will likely result in effort and F reductions on other stocks. Because several stocks managed by the FMP require F reductions to comply with the Amendment 13 rebuilding programs, the consequence of measures such as the GOM Differential DAS Area result in decreased catch of other, including healthier, groundfish stocks. FW 42 attempts to balance out and mitigate the impacts of such unavoidable reductions in catch by proposing the continuation of programs that facilitate the harvest of

healthier stocks. Examples of such programs include approved SAPs and the Regular B DAS Program. Further, the DAS Leasing Program attempts to allow vessels to obtain additional DAS to pursue other stocks. Should vessels take advantage of these programs, it is likely that the fishery will better achieve OY while overfished stocks rebuild according to the Amendment 13 rebuilding programs.

As highlighted in the response to Comment 39 below, it is important to point out that Target TACs are an imprecise indicator of whether the fishery is achieving OY. As originally defined by Amendment 9, and described in Section 3.1.4 of Amendment 13, "OY for a stock is achieved when fishing at the target F for a given stock size." Therefore, the important factor determining OY is not whether the fishery harvests the Target TACs for each stock, but whether the fishery is achieving the F targets established for each stock. The rebuilding programs established under Amendment 13 were designed to end overfishing and achieve OY for the fishery. These rebuilding programs comply with National Standard 1 and other applicable law in that they end overfishing on all stocks managed by the FMP and rebuild overfished groundfish stocks within the required timeframe. Measures proposed by FW 42 are necessary to end overfishing for some stocks and to continue to achieve the F targets established by the Amendment 13 rebuilding programs. This rebuilding strategy was designed to achieve OY, as reduced by social, economic, and ecological factors, in order to provide the greatest benefit to the nation, once all stocks are rebuilt, consistent with the National Standard 1 guidelines at § 600.310. Because the measures proposed by FW 42, including the GOM Differential DAS Area, ensure that several groundfish stocks remain on the Amendment 13 rebuilding trajectory, they are also consistent with National Standard 1.

Comment 16: One commenter argued that vessels within both the gillnet and hook gear sectors of the fishery should be exempt from the GOM Differential DAS Area restrictions, citing the recent decision by NMFS to exempt members of the GB Cod Hook Sector from differential DAS counting because they do not land very much yellowtail flounder (71 FR 42087, July 25, 2006).

Response: NMFS does not believe it is appropriate to exempt vessels fishing with gillnets or hook gear from the requirements of the GOM Differential DAS Area for several reasons. First, these vessels are not required to use

gillnets or hook gear for the entire FY and may elect to fish with trawl gear at any time during the FY. However, members of the GB Cod Hook Sector are required to fish with hook gear throughout the year. Further, the Sector demonstrated through catch reports that Sector vessels caught only minimal amounts of flatfish, including yellowtail flounder. It has not been demonstrated that gillnets are capable of avoiding yellowtail flounder; in fact, some gillnet gear specifically targets flatfish. Second, members of the GB Cod Hook Sector are restricted by a hard TAC on the amount of cod that such vessels can land, whereas non-Sector vessels, including non-Sector vessels using hook gear, would have no such limitation on the amount of cod catch and would only be restricted by DAS use and daily possession limits. Thus, the intent of the GOM Differential DAS Area could be easily undermined and F could actually increase on GOM cod. Third, the GB Cod Hook Sector Area is entirely outside of the GOM cod stock area and these vessels target GB cod, not GOM cod. Therefore, it would be inappropriate and inconsistent with the goals and objectives of this action and the FMP to allow vessels using gillnet gear and hook gear outside of the GB Cod Hook Sector to be exempt from the requirements of the GOM Differential DAS Area.

Comment 17: Eight commenters suggested that the differential DAS counting rate should be kept at 1.4:1 within the GOM Differential DAS Area. Some claimed that incorrect data for CC/GOM yellowtail flounder was used in the analysis for FW 42 and that, if corrected data were used for this stock, the need to implement a differential DAS rate of 2:1 to reduce F would be eliminated. Others claimed that updated data describing the effects of the emergency measures implemented by the April 13, 2006, emergency interim final rule will indicate that the fishery has already met the necessary F reductions for CC/GOM yellowtail flounder for 2006, eliminating the need for additional F reductions for this stock. One other commenter claimed that updated data for FY 2005 will reveal that the Amendment 13 measures were more effective at reducing F for most stocks than previously estimated. Commenters suggested that differential DAS counting within the GOM should be limited to FY 2006 only, and that the Council should substitute this with another measure for FY 2007 and 2008, including either eliminating differential DAS counting entirely or by substituting differential DAS counting with the

industry proposal offered by the Northeast Seafood Coalition during the development of FW 42.

Response: Data used to evaluate whether additional measures proposed by FW 42 are necessary to meet the F targets for 2006 represent the best scientific information available. Additional catch data identified by the commenters were not available at the time the Council adopted FW 42 and submitted it to NMFS for final review. The National Standard 2 guidelines indicate that new information that becomes available between the initial drafting of the action and its submission for final review should be incorporated into the final action where practicable, but only if the information indicates that drastic changes have occurred in the fishery that could require the revision of the proposed action. The catch data identified by the commenters did not become available until after the Council submitted FW 42 to NMFS for final review. As a result, no analysis was conducted to determine the effects of incorporating this information into the analysis of the FW 42 measures. Because no analysis of the impact of this information was provided by the commenters, it is uncertain whether this additional information would be sufficient to indicate that the existing management measures, including those implemented by the April 13, 2006, emergency interim final rule, achieved the necessary F reductions for all stocks. Further, because the catch data referred to by the commenters is preliminary information, these data are not sufficient to evaluate whether drastic changes have occurred in the fishery that could require revision of the measures proposed by FW 42. However, NMFS has no reason to believe that drastic changes in the fishery have occurred. Because F is evaluated on a CY basis instead of a FY basis, it is not appropriate to use final landings from FY 2005, or even preliminary landings from FY 2006, to evaluate whether the F targets for CY 2005 were achieved, or whether the measures implemented by the emergency action were sufficient to reduce F for particular stocks for CY 2006, respectively. Although additional data may provide a more accurate depiction of catch and effort in the fishery during the entire FY 2005 and the first portion of FY 2006, as it would be in hindsight of any action, consideration of such preliminary data would further delay FW 42. Because measures in the emergency action do not fully achieve the necessary F reductions in FY 2006 for CC/GOM yellowtail flounder, it is critical that FW

42 be implemented as soon as possible in order to prevent overfishing on this stock and other stocks and prevent delaying the Amendment 13 rebuilding programs for all stocks. For a discussion regarding the validity of the data used to support measures proposed by FW 42, see the response to Comment 42 below. Therefore, FW 42 measures are based on the best scientific information available, consistent with National Standard 2.

The Council never considered a differential DAS counting rate of 1.4:1 within the GOM Differential DAS Area, but rather adopted a differential DAS counting rate of 2:1 because it met the mortality objectives of this action for FY 2006 through 2008 within a small geographic area. In contrast to the emergency action that implemented a differential DAS counting rate of 1.4:1 throughout the entire GOM RMA, FW 42 proposed to implement a higher differential DAS counting rate of 2:1 within a smaller inshore GOM Differential DAS Area as part of a targeted approach to reduce F on overfished stocks while minimizing reductions in F for other healthier stocks. Under the emergency action, a differential DAS counting rate of 1.4:1 was able to meet the necessary F reductions for GOM cod because it was applied to the entire GOM RMA, not just the inshore portion of the area. However, even over this expanded area, this lower differential rate was unable to achieve the necessary F reduction for CC/GOM yellowtail flounder. Therefore, it is unlikely that such a revision would achieve the necessary F reductions for GOM cod and CC/GOM yellowtail flounder over the much smaller area proposed by the GOM Differential DAS Area. The Council did not specify an end date for this measure, implying that this measure would remain in place until changed by a subsequent action. The Council may elect to modify or revise this measure through a future management action. Substituting the GOM Differential DAS measure proposed in FW 42 with the Northeast Seafood Coalition's proposal, as submitted at the March 2006 Council meeting, would not be approvable since the PDT found that the proposal, as proposed, would not achieve the necessary F reductions for several stocks.

Comment 18: One commenter suggested that NMFS allow vessels to declare into the GOM Differential DAS Area while at sea in a manner similar to the "flex" options.

Response: In general, NMFS requires that vessels declare their intent to fish in a particular area via VMS prior to

leaving port to ensure effective administration, monitoring, and enforcement of the area-specific provisions such as DAS counting and trip limits. Because FW 42 would allow a vessel fishing in the Eastern U.S./Canada Area to elect to fish outside of this area on the same trip via declaring a "flex" trip, NMFS has determined that it would be appropriate to also provide the industry with an option to declare their intent to fish in the GOM Differential DAS Area via the "flex" options, as recommended by this commenter. Therefore, a vessel could elect to "Flex into the GOM Differential DAS Area" while at sea to enable it to fish in the Eastern U.S./Canada Area and the GOM Differential DAS Area on the same trip. Alternatively, the vessel could declare into this area prior to leaving port. More information regarding area declarations and available "flex" options will be detailed in a permit holder letter sent to all groundfish vessels.

Commercial Trip Limits

Comment 19: Eight commenters supported the proposed GB yellowtail flounder trip limit.

Response: NMFS also supports the proposed trip limit for GB yellowtail flounder and implements this limit through this final rule.

Comment 20: Four commenters supported the proposed trip limits for CC/GOM and SNE/MA yellowtail flounder, while one other commenter suggested that such trip limits would increase discards.

Response: FW 42 indicates that, although the proposed trip limits may increase discard rates for CC/GOM and SNE/MA yellowtail flounder, the amount of discards should actually decrease due to effort reductions in the form of the default DAS reduction and GOM and SNE Differential DAS Areas also proposed in FW 42. Further, the proposed mesh revision in the SNE/MA RMA should also decrease discards of SNE/MA yellowtail flounder. The proposed trip limits for CC/GOM and SNE/MA yellowtail flounder may also decrease discards by standardizing the trip limits between the two stock areas and throughout the FY. Analysis conducted for this action accounts for discard mortality when evaluating the efficacy of the proposed trip limits on F. Based on this analysis, the proposed trip limits are necessary to achieve the rebuilding objectives of this action.

Comment 21: Three commenters supported the proposed trip limit of 5,000 lb/trip (2,268 kg/trip) for GB winter flounder, while four commenters supported a trip limit of 7,500 lb/trip

(3,402 kg/trip) and one commenter thought it should be 10,000 lb/trip (4,536 kg/trip) instead. Those supporting a higher trip limit suggest that the higher trip limit is supported by the FW 42 analysis.

Response: Two of the alternatives considered by the Council during the development of FW 42, Alternative B2 and E (modified), included a GB winter flounder trip limit of 750 lb/DAS (340 kg/DAS), up to 7,500 lb/trip (3,402 kg/trip). However, the Council modified the GB winter flounder trip limit in Alternative B2 to 5,000 lb/trip (2,268 kg/trip) by unanimous consent and subsequently adopted this revised alternative as its preferred alternative for FW 42. Council members expressed concern that excessive discards would result under a daily possession limit for this stock, suggesting that an overall trip limit of 5,000 lb/trip (2,268 kg/trip) would more effectively reduce discards by minimizing the time necessary to catch the GB winter flounder trip limit. The proposed trip limit of 5,000 lb/trip (2,268 kg/trip) was selected based on the average trip duration of seven DAS multiplied by the proposed daily trip limit of 750 lb/DAS (340 kg/DAS) ($7 \text{ DAS} \times 750 \text{ lb/DAS (340 kg/DAS)} = 5,250 \text{ lb/trip (2,381.4 kg/trip)}$). Because the Council did not analyze the 10,000 lb/trip (4,536 kg/trip) limit suggested by one commenter, it is unknown whether this trip limit would achieve the necessary F reductions for this stock, given the other measures proposed by FW 42. Therefore, implementation of the proposed GB winter flounder trip limit of 5,000 lb/trip (2,268 kg/trip), which was demonstrated to achieve the necessary F reductions, is justified.

Regular B DAS Program

Comment 22: Seven commenters, including the DMR, supported the proposed revisions to the Regular B DAS Program. One of these commenters stated that this program was important to help mitigate the economic impacts of recent effort reductions.

Response: NMFS agrees that this program is an important way for vessels to mitigate the economic impacts of recent effort reductions and that the proposed revisions to this program would allow vessels to use Regular B DAS to target healthy stocks without compromising the rebuilding efforts of overfished stocks.

Comment 23: Two commenters suggested that NMFS should maximize the observer coverage to improve the effectiveness of this program. One commenter indicated that the 3-day Observer Program notice is

unreasonable and unfairly limits the flexibility of vessel operations.

Response: A relatively high rate of observer coverage (a target observer coverage rate of approximately 36 percent based on previous observer coverage) is specified for this program. During the recent pilot phase of this program, approximately 36 percent of trips into this program were observed. NMFS believes the current observer coverage rate is sufficient to effectively monitor this program without compromising efforts to observe vessel operations in the rest of the fishery. A 3-day notice is necessary to allow the Observer Program to deploy observers and ensure that the proper amount of coverage for this program is achieved throughout the FY.

Comment 24: One commenter observed that the overall Target TACs and resulting Incidental Catch TACs for several species are too small to support an active Regular B DAS Program in the GOM. Three other commenters contended that the program offers little value to vessels unless they are capable of fishing on GB for haddock.

Response: Because of the need to reduce F for several stocks in the GOM and SNE RMAs, the Target TACs and Incidental Catch TACs for several species are necessary to achieve the F objectives in FW 42. Therefore, participation in the Regular B DAS Program will likely be limited by the availability of the incidental catch TACs for specific stocks of concern, in particular GOM cod and CC/GOM yellowtail flounder, which have quarterly Incidental Catch TACs as low as 6.7 mt (14,771 lb, or 6,700 kg) and 0.8 mt (1,764 lb, or 800 kg), respectively. FW 42 identifies several healthy groundfish stocks that may be targeted by vessels participating in the Regular B DAS Program: GB haddock, redfish, pollock, GOM winter flounder, and GOM haddock. Therefore, although limited, this program offers benefits to participating vessels in both the GOM and GB, to the extent practicable, provided vessels can selectively target these stocks without catching large quantities of the stocks of concern.

Comment 25: Three commenters, including the DMF, stated that it is impossible for gillnet vessels and small trawl vessels to effectively participate in this program, given the proposed small possession limits and the haddock separator trawl requirement. One commenter specifically requested a special Regular B DAS Program for gillnet vessels, stating that these vessels cannot fish with the haddock separator trawl.

Response: The proposed measures outlined for the Regular B DAS Program only require trawl vessels to fish with a haddock separator trawl when participating in this program. Gillnet vessels may fish with gillnet gear under this program. Gillnet vessels will be limited to 100 lb/DAS (45.4 kg/DAS) for each stock of concern and will not be limited to the restrictive trip limits for monkfish, flounders, skates, and lobsters required by the haddock separator trawl performance standards proposed for trawl vessels fishing in the Regular B DAS Program. The intent of this program is to selectively target healthy stocks (primarily haddock) while avoiding stocks of concern. The restrictive possession limits are necessary to reduce incentives to catch stocks of concern, which would compromise the effectiveness of the haddock separator trawl.

Comment 26: Three commenters requested that NMFS make several revisions to the proposed requirements for the Regular B DAS Program, as follows: (1) Remove the haddock separator trawl requirement; (2) eliminate the restrictive trip limits of 500 lb/trip (227 kg/trip) for flatfish and monkfish outlined in the Gear Performance Incentives; (3) increase the possession limits of groundfish stocks of concern proportionate to the Incidental Catch TACs for these stocks; and (4) increase the number of Regular B DAS allocated in each quarter, using catch rates from the Regular B DAS Pilot Program. These commenters stated that the proposed gear requirement would eliminate the incentive to test and improve the effectiveness of other gear under this program. Further, they question the effectiveness of the haddock separator trawl. These commenters contend that the proposed trip limits are confusing, are not supported by any identified conservation or management objectives, and that the quarterly Incidental Catch TACs and DAS limits provide sufficient protection for stocks of concern. Although the commenters supported the concept of gear performance standards, they contested that the proposed standards are arbitrary since the performance of the separator trawl to date indicates that this gear is not capable of achieving these standards. Three other commenters, including the DMR, supported the proposed Gear Performance Incentives for Special Management Programs, stating that they minimize incentives to compromise the effectiveness of the haddock separator trawl.

Response: The intent of the proposed haddock separator trawl requirement

was to facilitate the harvest of healthy stocks such as haddock and pollock, while reducing the catch of overfished stocks such as cod, yellowtail flounder, and winter flounder. When properly configured, the haddock separator trawl is capable of effectively reducing the catches of cod, flounders, and other bottom-dwelling species such as monkfish, skates, and lobsters when targeting haddock. However, when improperly configured, the net is capable of catching larger amounts of these species, as observed in the recent performance of the haddock separator trawl in the NE multispecies fishery. The proposed Gear Performance Incentives, reflected in the trip limits associated with the use of the haddock separator trawl in the Regular B DAS Program and the Eastern U.S./Canada Haddock SAP, were developed by the Council to increase incentives to configure the gear properly to avoid catching cod, flounder, skates, monkfish, and lobsters, thereby minimizing bycatch and time sorting catch on deck. These performance incentives were first proposed by the Groundfish Advisory Panel and later modified by the Groundfish Oversight Committee to provide a minimal allowance of bycatch of these other species. The proposed performance incentives are similar to the results achieved by a 1992 experiment by the Canadian Department of Fisheries and Oceans to test the performance of a haddock separator trawl. These standards are necessary to help promote and help ensure that the haddock separator trawl is used as intended in order to reduce catches of stocks of concern and prolong the availability of Incidental Catch TACs and access to this program. FW 42 does provide a mechanism whereby additional gears can be authorized in this program. The Council did not increase the number of Regular B DAS allocated to each quarter, as suggested by the commenter, but instead chose to reduce the number of Regular B DAS allocated to the first quarter to reduce the impact of this program on spawning fish. NMFS finds, therefore, that the suggested revisions to the Regular B DAS Program are not justified.

Comment 27: The Council recommended that NMFS consider requiring vessels participating in the Regular B DAS Program within the proposed differential DAS Areas to declare their intent to fish in these areas prior to leaving port to accurately count DAS, should the vessel be required to flip its DAS, in order to simplify

enforcement and administration of this measure.

Response: As proposed, vessels would only be charged DAS at the differential DAS counting rate of 2:1 when declared into either the GOM or the SNE Differential DAS Areas and fishing under a Category A DAS. Because a vessel participating in this program is not subject to differential DAS counting while under a Regular B DAS, NMFS is requiring vessels to declare their intent to fish within the differential DAS Areas only when flipping to a Category A DAS. NMFS believes that the measure, as proposed, is sufficient to simplify administration and enforcement of this provision.

Renewal of DAS Leasing Program

Comment 28: Nine commenters, including the DMR, supported the extension of the DAS Leasing Program, as it mitigates the economic impacts of recent and continuing effort reductions. Six commenters, including the DMF, contest this belief and suggest that the leasing program will not mitigate the economic impacts of recent effort reductions, but will instead increase effort, and therefore F, on GOM cod, and result in further effort reductions and economic impacts in the future.

Response: The DAS Leasing Program provides benefits to fishermen that help offset some of the economic and social impacts resulting from continued effort reductions in the fishery. Analysis of the impacts of the DAS Leasing Program indicates that it is difficult to isolate the impacts of the DAS Leasing Program from the impacts of other management measures. However, an estimation of the impact from this program indicated that landings of most stocks by lessee vessels increased during CY 2004 when compared to their landings in CY 2003, suggesting that the leasing program is responsible for nominal increases in landings and F for these stocks. Although landings of GOM cod increased by approximately 3 percent, the stocks for which the DAS Leasing Program contributed the highest increase in landings (GB haddock, pollock, redfish, witch flounder, and American plaice) are all considered healthy stocks that do not need F reductions to maintain the Amendment 13 rebuilding program. This suggests that the DAS Leasing Program actually increases landings of these healthy species, thereby increasing the likelihood that the fishery will harvest OY from these stocks. The analysis further indicated that the DAS Leasing Program provided regulatory relief that allowed lessee vessels, on average, to fish enough DAS to cover their overhead

and crew expenses, resulting in economic benefits to the fishery. As a result, the DAS Leasing Program does, in fact, help mitigate the economic impacts of recent effort reductions. National Standards 5 and 8 require that management measures consider efficiency in the utilization of fishery resources, where practicable, and provide for the sustained participation of fishing communities, respectively, consistent with the conservation objectives of the FMP. Consistent with these national standards, this final rule continues the DAS Leasing Program in order to increase the efficient utilization of fishery resources and help provide a means of mitigating some of the economic impacts of effort reductions in the fishery to promote continued participation. FW 42 concludes that the DAS Leasing Program, in light of other measures in FW 42, will not undermine conservation objectives of this action or the FMP.

Comment 29: Five commenters, including the DMF, asserted that the DAS Leasing Program is discriminatory because it consolidates DAS onto fewer vessels, preventing other vessels from gaining access to the fishery, suggesting an inconsistency with National Standard 4. Further, they claimed that smaller vessels that fish within the GOM are effectively restricted from participating in the DAS Leasing Program due to the proposed differential DAS counting in the inshore GOM and the higher cost to lease DAS to fish in this area.

Response: The DAS Leasing Program was designed with several provisions that limit the potential for consolidation of DAS within the fleet, including a cap on the number of DAS that a vessel could lease and limiting leases to vessels that are within specific size restrictions of the lessor vessel. As specified above, the DAS Leasing Program allows active groundfish vessels to continue to participate in the fishery by acquiring additional DAS from other vessels. An evaluation of the DAS Leasing Program reveals that this program allowed lessee vessels, including small trawl vessels, to fish enough DAS to cover overhead and crew expenses. This analysis also points out that the DAS Leasing Program resulted in a net increase in DAS for vessels operating out of Massachusetts, a state bordering the GOM. The FW 42 analysis acknowledges that vessels that have traditionally fished within the GOM Differential DAS Area may have a difficult time acquiring sufficient DAS through the DAS Leasing Program to fish in this area due to differential DAS counting. However, as noted above,

differential DAS counting is necessary to achieve the conservation objectives of this action. Should a vessel determine that it is not profitable to fish within the GOM, given the impact of differential DAS counting, the DAS Leasing Program would enable such vessels to earn some revenue by leasing DAS to other vessels. Because the DAS Leasing Program does not contain any provision that discriminates among participants based on state of residence or any other criteria and makes no direct or deliberate distribution of DAS among individuals, the continuation of the DAS Leasing Program is consistent with the guidelines developed for National Standard 4 and contributes towards achieving goals 4 and 5 and objective 7 of the FMP as defined in Amendment 13.

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

Comment 30: Six commenters, including the DMR, expressed general support for the renewal and proposed modifications to the Eastern U.S./Canada Area Haddock SAP.

Response: NMFS has also approved the proposed modifications to this SAP and continues it through FY 2008.

GB Cod Fixed Gear Sector

Comment 31: Thirty commenters expressed support for the proposed GB Cod Fixed Gear Sector, as it facilitates responsibility and accountability in the fishery, protects cod, and limits effort shifts within the fishery. Twenty-five commenters suggested that NMFS should correct the Fixed Gear Sector Area to reflect the larger area proposed by the Sector Operations Plan, rather than the existing GB Cod Hook Gear Sector Area, as this could facilitate pursuit of an offshore monkfish fishery while accounting for GB cod caught.

Response: NMFS agrees that the proposed Sector facilitates responsibility and accountability within the fishery. In addition, NMFS agrees that the proposed measure limits effort shifts within the fishery by requiring that Sector vessels fish with specific gear within a specific area. Further, by limiting catches of cod to a hard TAC, the proposed Sector ensures that F on GB cod from this Sector will not exceed its F targets. Because the catches of other species are regulated by DAS, NMFS believes that the proposed Sector is consistent with the F objectives of this action for other species and the overall objectives of the FMP.

Because the FW 42 document did not identify a geographic area associated with the proposed GB Cod Fixed Gear Sector, NMFS proposed that the GB Cod

Fixed Gear Sector Area be the same as the GB Cod Hook Gear Sector Area, based on the fact that the goals of the GB Cod Fixed Gear Sector are very similar to those of the GB Cod Hook Gear Sector. The GB Cod Fixed Gear Sector submitted an Operations Plan requesting that Sector participants be allowed to fish in an area larger than the GB Cod Hook Sector Area identified in the FW 42 proposed rule in order to pursue an offshore gillnet fishery for monkfish. A proposed rule (August 22, 2006, 71 FR 48903) soliciting public comment on this Operations Plan is currently under review.

Comment 32: One commenter opposed the proposed Fixed Gear Sector, stating that NMFS should not encourage distribution of public resources into the control of private groups for their exclusive use. This commenter indicated that the proposed Sector neither advances rebuilding objectives, nor mitigates economic or social impacts of Amendment 13, and recommends that NMFS should expand participation in the fishery consistent with the 14th Amendment to the U.S. Constitution. Two commenters expressed concern that an exemption from the gillnet limits for the proposed Sector will allow vessels to exclusively target cod and then shift effort to other species, thereby reducing the effectiveness of the existing limit on the number of gillnets that may be fished by Day gillnet vessels and increasing effort on pollock and monkfish.

Response: Amendment 13 created the mechanism by which sectors can be formed. The objective of sectors is to provide incentives for groups of similar vessels (by port, gear type, size, etc.) to regulate themselves in an efficient and effective manner (see Section 3.4.16 of Amendment 13). Sectors also provide a mechanism for capacity reduction through consolidating effort onto fewer vessels, thereby “reducing the cost of operations and possibly facilitating the profitable exit of some individual vessel owners from the fishery.” The creation of a sector does not deprive other vessels from participating in the fishery, or from other fishing opportunities. Rather, it limits the fishing activities of a specific group of vessels to their historic participation in the fishery. Amendment 13 also requires that a sector stay within its allocation of GB cod and/or other hard TACs, which ensure that the sectors achieve the goals of the FMP for these species. Further, sectors provide substantial benefits to participants by creating incentives to regulate themselves in an effective and efficient manner.

The proposed Sector is limited by both a hard TAC on GB cod and by DAS for all other species. Therefore, Sector vessels would be required to use a NE multispecies DAS and/or monkfish DAS on every fishing trip and would be required to abide by all other regulations, unless specifically exempted by the Regional Administrator. As a result, the concern that Sector vessels could reduce the effectiveness of the gillnet limitation on pollock and monkfish by shifting effort onto these species appears unfounded.

Section 303(b) of the Magnuson-Stevens Act allows the establishment of a limited access system in a fishery to achieve OY. NMFS believes that it would be inappropriate to expand participation in the fishery beyond its current capacity, as this would compromise the Amendment 13 rebuilding programs and prevent the groundfish fishery from achieving OY.

Comment 33: Seven commenters recommended that NMFS only approve the proposed Sector if it would be allocated hard TACs for all stocks. Another commenter indicated that the proposed Sector should have hard TACs for bycatch species and monkfish. One other commenter opposed the approval of Sectors with a combination of both DAS and hard TACs as the primary management measures and indicated that the proposed Sector could cause effort to be redirected, having a significant impact on the rest of the fleet.

Response: Section 3.4.16 of Amendment 13 describes the mechanism by which sectors may be formed, indicating that "Allocations to each sector may be based on catch (hard TACs) or effort (DAS) with target TACs specified for each sector." Although there has been some debate whether new sectors should be managed exclusively by either hard TACs or DAS restrictions, NMFS approved the GB Cod Hook Sector Operations Plan with a combination of both hard TACs and DAS limits after determining that DAS limits provide sufficient protection of stocks not subject to the hard TACs specified for a particular sector. In FW 42, the Council approved the GB Cod Fixed Gear Sector, which explicitly included a combination of hard TAC management for GB cod and DAS to manage all other groundfish stocks. It was unclear from the comment received how such sectors could cause effort to be redirected and what impact it would have on the rest of the fleet. As discussed in the response to Comment 32, the proposed Sector should not result in significant effort shifts, as Sector vessels would be limited to

specific gear and area restrictions. By staying within these restrictions, Sector operations should not affect whether the rest of the fishery achieves the conservation objectives for GB cod and would have a minimal impact on potential future effort reductions in the fishery.

Eastern U.S./Canada Area Flexibility

Comment 34: Ten commenters, including the DMR, supported the proposed measure to allow vessels to fish inside and outside of the Eastern U.S./Canada Area on the same trip, as it provides important flexibility in vessel operations in the event of bad weather or poor fishing opportunities.

Response: NMFS has approved this measure and implements it through this final rule.

Modification of the DAS Transfer Program

Comment 35: Eleven commenters, including the DMR, expressed support for the proposed modifications to the DAS Transfer Program, as they would increase the utility and effectiveness of the program. One commenter opposed allowing vessels to fish commercially after transferring its DAS, believing instead that the vessel should be permanently removed from all fisheries.

Response: Previous requirements to permanently exit all fisheries upon transferring DAS contributed to dissuading any vessel from participating in this program. This undermined the purpose and effectiveness of the program and neither reduced capacity in the NE multispecies fishery, nor increased the efficiency of the fleet, as intended. NMFS believes that the proposed modifications would provide incentives for vessels to participate in the program, thereby permanently reducing capacity and increasing efficiency in the NE multispecies fishery and has, therefore, approved this program as proposed in FW 42.

Standardized Requirements for Special Management Programs

Comment 36: Three commenters, including the DMR and the Council, believe that NMFS should continue to require vessels to declare the statistical area in which fish were caught via VMS. These commenters state that there has been no analysis to demonstrate that VMS location can be reliably used to assign catch to a particular statistical area, especially considering that some stocks are not uniformly distributed within all stock areas. In addition, the DMR suggested that NMFS require vessels to report catch by 30' squares.

Response: The proposed elimination of this reporting requirement was intended to reduce the reporting burden on vessels participating in the Regular B DAS Program and for vessels fishing inside and outside of the Western U.S./Canada Area on the same trip. However, NMFS acknowledges that because some stocks are not uniformly distributed within all stock areas, it would be difficult to utilize VMS to accurately assign catch to a particular statistical area and reinserts this requirement into the final rule, thereby maintaining the requirement to report the statistical area in which fish were caught when participating in these programs. If appropriate, the Council may recommend that vessels report catch by 30' squares by proposing such requirements in a subsequent action.

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

Comment 37: Nine commenters supported the modification to the GB cod trip limit in the Eastern U.S./Canada Area.

Response: NMFS has approved the proposed trip limit modification for GB cod and implements it through this final rule.

SNE/MA RMA Trawl Codend Mesh Requirement

Comment 38: Four commenters supported the proposed revision of the SNE/MA RMA trawl mesh requirements because it maintains consistency with mesh requirements in other areas and provides an incentive to use diamond mesh to reduce discards of yellowtail flounder.

Response: NMFS has approved the proposed measure and implements it through this final rule.

Regional Administrator Authority To Adjust Trip Limits for Target TAC Stocks

Comment 39: Eleven commenters, including the Council, expressed support for the proposed Regional Administrator authority to adjust trip limits upwards to facilitate the harvest of the Target TACs specified for six species, stating that it would facilitate the harvest of OY in these fisheries. Two of these commenters contested concerns expressed in the proposed rule that this measure would be problematic to administer, stating that the Regional Administrator has sufficient real-time data to effectively project whether the Target TAC would be harvested to allow trip limits to be increased. One commenter opposed this provision, indicating that the proposed Target TACs are set too high, that there is

limited real-time monitoring capability, that the proposed measure does not also include a provision to reduce Target TACs, and that Target TACs are not effective for determining whether the management program is meeting F targets.

Response: Contrary to assertions made by several commenters, sufficient data are not available to adequately assess total catch for these six species on a real-time basis. The Target TAC for GOM cod is based on commercial landings, discards, and recreational harvest. Data on the recreational harvest of GOM cod are not available on a real-time basis and are only available at the end of the FY. Because recreational harvest of GOM cod is a substantial component of the overall catch of this stock (approaching 43 percent of the total catch in 2004) and has varied considerably within the past 10 years, it is not possible to accurately project the total harvest of this stock throughout the fishery on a real-time basis. Further, discard estimates are generated in several ways. For some stocks (e.g., GOM cod), discard estimates are derived from observer data on a quarterly basis. However, the availability of these data would be inadequate for real-time projections of total catch. For other stocks (e.g., CC/GOM and SNE/MA yellowtail flounder, in particular), discards are estimated using VTRs. However, discard data from VTRs are not considered reliable and are subject to change. Therefore, there is considerable uncertainty regarding the data available to project total harvest of particular stocks on a real-time basis. Because of these limitations, the data available to implement this measure would not constitute the best available scientific information, as required by National Standard 2. In addition, section 303(a)(8) of the Magnuson-Stevens Act requires that an FMP specify the nature and extent of scientific data needed for the effective implementation of the FMP. As detailed above, without additional real-time reporting requirements to provide reliable and timely catch and discard data from both the commercial and recreational sectors, NMFS would not have sufficient real-time data to accurately monitor catch of particular species within the fishery. Therefore, this measure is not consistent with National Standard 2 or the required provisions of the Magnuson-Stevens Act and NMFS has disapproved it.

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

Comment 40: Five commenters expressed general support for the Regional Administrator authority to adjust measures in the U.S./Canada Management Area.

Response: NMFS believes that this measure increases the flexibility of the Regional Administrator to adjust the measures regulating vessel operations in the U.S./Canada Management Area to facilitate harvesting or prevent the fishery from exceeding specified U.S./Canada Management Area TACs for GB cod, GB haddock, and GB yellowtail flounder, or to prevent these TACs from being exceeded at any time during the FY. Such flexibility eases the administration and monitoring of these TACs and allows more effective and efficient management of the resources within this area without compromising the conservation objectives of the FMP.

General Comments

Comment 41: One commenter suggested that NMFS extend the emergency action and eight commenters requested that NMFS implement the measures proposed by FW 42 as soon as possible, arguing that the measures implemented by the April 13, 2006, emergency interim final rule do not meet the conservation objectives, but that FW 42 would meet these objectives. Four of these commenters expressed their preference for another alternative considered by the Council during the development of FW 42, Alternative E (modified).

Response: The emergency measures implemented by the April 13, 2006, emergency interim final rule were meant as a stop-gap measure to immediately reduce F on specific stocks, but they were never meant to achieve the full conservation objectives for 2006 without subsequent implementation of additional measures proposed by FW 42. Because the emergency measures are not intended to achieve the necessary F reductions in 2006 for all stocks, it is not appropriate to continue these measures. Therefore, NMFS agrees that it is important to implement approved FW 42 measures as quickly as possible to ensure that the conservation objectives are fully met for 2006. Alternative E was considered, but not adopted by the Council during the development of FW 42 because the underlying conservation measure to reduce F was based on charging DAS used in 24-hr increments. Several Council members expressed concern that this alternative would pose greater

risk to vessel safety than the alternative adopted in FW 42.

Comment 42: Two individuals questioned the validity of the science used to support measures proposed by FW 42. Sixteen other commenters, including the DMF, argued that the analysis supporting FW 42 is inconsistent with National Standard 2. They assert that the CAM used to evaluate the proposed measures is not considered the best available science because it assumes a "linear relationship between catch-per-unit-effort (CPUE) and effort" without sufficient supporting evidence that such a relationship exists. Also, they suggest that the assumptions used by the CAM are invalid, including overestimating the CPUE for CC/GOM yellowtail flounder, and that the model does not have sufficient resolution to predict individual vessel behavior.

Response: The CAM is the primary tool used to evaluate the effectiveness of the proposed measures at achieving the necessary F reductions for this action. In 2001, the fundamental structure of the CAM was reviewed and endorsed by the Social Sciences Advisory Committee of the Council. In addition, a second review of this model was conducted by a panel of independent experts in January 2004. Based upon this second review, slight modifications to the CAM were performed to enhance the effectiveness of the model. Comparing the results of the CAM to the change in F between CY 2001 and CY 2004 observed by GARM II indicates that the CAM results were a reasonable approximation of the effectiveness of the Amendment 13 measures in terms of realized F for most stocks. Although the commenters highlight additional and ongoing evaluations of the performance and adequacy of the CAM, to date these reviews have yet to be completed and submitted to the Northeast Fisheries Science Center for review.

Commenters offered several criticisms of the CAM that have been determined to be inaccurate. First, the CAM is a non-linear model based on profit, not catch. The marginal profit of a particular vessel is considered non-linear, affecting where and when the vessel is expected to fish to maximize profit. However, CPUE is assumed to be constant and does not change regardless of how much effort is attributed to a particular block fished in an effort to maximize profit.

Assertions that changes in the CC/GOM yellowtail flounder CPUE used in the model would affect whether the proposed measures are able to achieve the necessary F reductions are also inaccurate. The CAM evaluates the

changes in exploitation from the proposed measures relative to status-quo measures. Therefore, if the same CPUE for CC/GOM yellowtail flounder is used to evaluate exploitation for both status-quo and proposed measures, then the relative change in exploitation between the two sets of measures would be the same, regardless of the value of the CC/GOM yellowtail flounder CPUE used by the model. The end result is that the fishery requires a 40-percent reduction in exploitation (or 46-percent reduction in F) to maintain the Amendment 13 rebuilding program for this stock. In addition, applying the same logic used to argue that the CPUE for CC/GOM yellowtail flounder was overestimated in the evaluation of FW 42 (that the absence of trip limits for this stock during the 2001–2004 period used to calculate the average CPUE for the CAM overestimate the actual CPUE for this stock) would suggest that the CPUE for GOM cod was underestimated in the evaluation of FW 42, as the proposed trip limit of 800 lb/DAS (363 kg/DAS) is substantially higher than the 400–800 lb/DAS (181 kg–363 kg/DAS) trip limits implemented between 2001–2004 and used as the average CPUE in the CAM.

The commenters repeatedly infer that catch is an adequate measure of the performance of the fishery. They state that the small reductions in Target TAC signify that only small F reductions are necessary, eliminating the need for draconian management measures. However, the reason the Target TACs are not as large as the required F reductions is because the projection model used to calculate Target TACs assumes that biomass increases because F is reduced to the necessary levels upon implementation of the proposed measures. As discussed in the response to Comment 39, the true indicator of the performance of the fishery is F, not catch. Even though the fishery may underharvest the Target TAC for a particular stock during the FY, the F may still be too high for that CY. The CAM does not evaluate the proposed measures based on expected catch, but rather relative changes in exploitation, which is then converted into F. Because F is evaluated on a CY basis and not a FY basis, it is inaccurate to compare catch from a particular FY with F for a particular CY.

One of the commenters stated that the CAM only evaluates the impacts on 10 of the 20 stocks managed by the FMP. This is not correct, as the CAM assesses the impacts of proposed measures on 19 of the 20 stocks managed by the fishery (Atlantic halibut is not included in the CAM).

Finally, contrary to assertions made by the commenters, the CAM uses the fishing locations of similarly-configured vessels from their fishing ports to determine whether vessels would shift effort into areas that they had never fished previously. Because the CAM uses data from VTRs, the CAM is limited in its resolution regarding time and area fished. However, the CAM is able to sufficiently predict individual vessel behavior to maximize profits based on the available data. Additional reporting requirements would need to be implemented to improve the data available to, and the resolution of, the existing model. The commenters did not question the validity of the economic analysis conducted for FW 42, despite the fact that the economic analysis relies upon the output from the CAM to estimate impacts on the fleet and fishing communities. In summary, NMFS has determined that the information relied on, and the analysis conducted, including analysis using the CAM, represents the best scientific information available, consistent with National Standard 2.

Comment 43: One commenter recommended that the GOM cod possession limit remain at 600 lb/DAS (272 kg/DAS) during FY 2006 to minimize incentives to target GOM cod and then increase the trip limit to 800 lb/DAS (363 kg/DAS) in FY 2007, once the stock starts to improve.

Response: Emergency measures implemented by the April 13, 2006, emergency interim final rule established a GOM cod trip limit of 600 lb/DAS (272 kg/DAS) to minimize incentives to target GOM cod in the short term under that action. However, in light of the other measures proposed in FW 42, the Council decided that it was not necessary to change the proposed trip limit of 800 lb/DAS (363 kg/DAS) in FW 42. The analysis for FW 42 concluded that a change in the trip limit was not necessary to achieve the necessary F reductions for GOM cod, given the suite of measures proposed by FW 42, including the default DAS reduction and the GOM Differential DAS Area. By leaving the trip limit at 800 lb/DAS (363 kg/DAS) bycatch is reduced and economic impacts on the fishing industry is mitigated.

Comment 44: Some commenters believed that the development of FW 42 was rushed and that the Council was not given enough time to develop a workable solution to address the conservation objectives of the action. Fifteen commenters argued that the public were not given adequate opportunity to evaluate the alternatives considered by Council because the

social and economic analysis of two of the alternatives developed by the PDT (Alternative E (modified) and Alternative B2—the preferred alternative adopted by the Council) was not available for public review prior to the Council's vote to adopt a preferred alternative in FW 42. Twelve commenters believed that the social and economic impacts of the proposed measures were not given meaningful consideration during the development of FW 42, while four other commenters specifically stated that a full environmental impact statement (EIS) should have been prepared for this action because socio-economic impacts and sacrificed OY resulted from an inadequate range of alternatives. Finally, two commenters advocated that NMFS should disapprove FW 42 and remit it to the Council for further evaluation and consideration in order to reconsider whether effort controls are adequate in this fishery.

Response: The timeline available to develop FW 42 was based on the Amendment 13 requirement to implement any modifications to the management measures necessary to achieve the Amendment 13 F targets for each species and maintain the Amendment 13 rebuilding programs by the start of FY 2006 on May 1, 2006. The development of FW 42 began in January 2005 and involved more than 10 public meetings, including 5 Groundfish Oversight Committee and 5 Council meetings. In addition, the PDT held more than 19 conference calls and meetings that were often attended by members of the public. To ensure that these rebuilding programs remain on track, the Council needed to complete FW 42 by its November 2005 meeting to ensure a May 1, 2006, implementation date. Unfortunately, the Council was unable to adopt FW 42 at its November meeting, prompting NMFS to implement emergency measures through the April 13, 2006, emergency interim final rule in time for the start of FY 2006. This delay afforded the Council 2 additional months to develop and refine measures included in FW 42. In addition, the emergency interim final rule provided another mechanism to comment on the measures implemented by the April 13, 2006, emergency interim final rule. Therefore, there was ample opportunity for public input during the development of a workable solution to the management issues addressed by FW 42.

The commenters are correct that analysis of two additional alternatives (Alternatives B2 and E (modified)) were first presented to the public at the January 26, 2006, Groundfish Oversight

Committee meeting. These alternatives were originally developed by the PDT at the request of the Council at its November 15–17, 2006, meeting to analyze two separate areas for differential DAS counting. In fact, the PDT developed nine other alternatives in response to the Council's request, but only forwarded Alternatives B2 and E to the Groundfish Oversight Committee for further consideration, as they more effectively achieved the conservation objectives of the action. A table summarizing the measures included within these new alternatives, as well as tables comparing the biological and economic impacts of these new alternatives with the other alternatives fully analyzed within the draft FW 42 document (Alternatives 1–5), were presented to the Groundfish Oversight Committee on January 26, 2006, and later to the Council at its February 1, 2006, meeting. The full economic and social impacts analyses of these two new alternatives were still being written and, therefore, were not available at this meeting, however. Although more detailed information regarding the economic impacts of the other alternatives in the draft document (Alternatives 1–5) was available for the Council's February 1, 2006, meeting, the Council focused its discussion on the new Alternatives B2 and E because they would avoid the sweeping reductions in DAS allocations proposed in Alternatives 1–5. The public and the Council were provided with a summary of the primary biological and economic impacts (expected F and exploitation rates for each stocks along with changes in revenues by port) for each alternative at the earliest opportunity and could compare the alternatives under consideration prior to the Council vote to adopt a preferred alternative for FW 42. Therefore, the public and the Council had all of the necessary information and time to make an informed decision about the overall impacts of the alternatives considered. Once completed, the final EA was posted on the NMFS Northeast Regional Office Web site and made available to the public. Moreover, the public has had the benefit of fully considering FW 42 measures and their analysis since the proposed rule was published in July.

According to the NOAA guidelines for complying with the National Environmental Policy Act (NEPA) (NOAA Administrative Order 216–6), an EA must consider a reasonable range of alternatives, including the preferred action and the no action alternative. The eight alternatives considered in the EA prepared for FW 42 represent a

reasonable range of alternatives. These alternatives included a wide range of options to reduce F in the fishery, including DAS allocation reductions, a minimum DAS charge, and differential DAS counting. In addition, as specified in the response to Comment 17, the Council considered an additional alternative, the industry proposal, that was offered for the first time at the February 1, 2006, Council meeting. The Council requested that the PDT evaluate the impacts of this industry proposal and debated whether to substitute it for the preferred alternative in FW 42 if analysis suggested that it would meet the necessary F reductions. Subsequent analysis presented at the April 5, 2006, Council meeting revealed that this alternative would not achieve the necessary F reductions for this action and the alternative was not considered further. All of the alternatives considered were designed to meet the purpose and need identified for this action. Other alternatives that did not meet the purpose and need for this action were not pursued. Therefore, NMFS asserts that a reasonable range of alternatives were considered for this action, consistent with the requirements of the NAO 216–6 and the NEPA.

Both NAO 216–6 and NEPA specify that significant economic and social impacts, by themselves, do not trigger the need to prepare an EIS. Further, the biological analysis prepared for this action indicates that the proposed FW 42 measures would not result in a significant impact to the human environment. Thus, an EA is appropriate and sufficient to support FW 42. Finally, this action is necessary to ensure that overfishing is stopped and that the stocks continue to rebuild according to the Amendment 13 rebuilding programs. The Council may reconsider whether DAS controls are effective in the groundfish fishery, or whether alternative management regimes would better meet the objectives of the FMP during the development of a subsequent action.

Comment 45: Three commenters specifically questioned whether FW 42 is consistent with National Standard 3 requirements to manage a group of interrelated stocks as a unit or in sufficiently close coordination. These commenters suggested that the fishery is instead managed through a series of individual stock-specific F targets and management measures that attempt to achieve MSY from each stock simultaneously, which may not be possible due to the interrelation of stocks in an ecosystem.

Response: All of the 19 groundfish stocks in the FMP are managed in close

coordination with one another and as one unit to the extent practicable, as required by National Standard 3. Many of the primary management measures of this fishery are shared across the entire stock complex, including DAS limits, gear restrictions, limited access, and size limits. The National Standard 3 guidelines indicate management measures do not need to be identical for each geographic area within the management unit, provided that the FMP justifies these differences. Both the proposed GOM and SNE Differential DAS Area include different regulations that would only apply to portions of the entire geographic range of a individual stock and the stock complex as a whole. The EA prepared for FW 42 justifies these proposed measures by indicating that a targeted approach was taken to reduce F on GOM cod and CC/GOM and SNE/MA yellowtail flounder by charging DAS at a higher rate within discrete areas responsible for the majority of the catch of these stocks. This was intended to effectively reduce F on these stocks while maintaining opportunities to harvest other stocks within the GOM and SNE RMAs. While it is true that the FMP establishes individual stock-specific F targets, these targets are necessary to maintain the rebuilding programs established under Amendment 13, as each individual stock is at a different point along its rebuilding trajectory. These rebuilding programs are intended to rebuild the stocks to B_{MSY} , as required by the Magnuson-Stevens Act.

Comment 46: Four commenters, including the DMF, requested that NMFS use the mixed-stock exemption provided in the guidelines for National Standard 1 to allow the fishery to overfish CC/GOM yellowtail flounder in order to avoid unnecessarily sacrificing OY from other healthy stocks through the implementation of drastic effort reductions such as the proposed GOM Differential DAS Area.

Response: The guidelines for National Standard 1 at § 600.310(d)(6) indicate that a Council may construct an FMP such that it allows overfishing of one stock in a multispecies complex to achieve OY for another stock in the multispecies complex, provided three criteria are met: (1) Analysis indicates that overfishing one stock to achieve OY for another stock will result in net benefits to the Nation; (2) analysis indicates that similar long-term net benefits cannot be achieved by modifying fleet behavior, gear selection/configuration, or other technical characteristic in a manner that no overfishing would occur; and (3) the F rate would not cause any stock to

require protection under the Endangered Species Act. The commenters have not provided any analysis that suggest that the three criteria necessary to implement this exemption would be met. Although this alternative was discussed by the Council in developing FW 42, it was not seriously considered and not analyzed, given the time constraints necessary to complete FW 42 and uncertainty that the necessary criteria could be met. Moreover, the mixed-stock exemption alternative would be such a radical departure from the current management regime that an amendment to the FMP, rather than a framework adjustment, would be necessary to implement it.

Comment 47: One commenter was concerned that the proposed measures may cause redirection of effort onto GB.

Response: Based on the CAM, the proposed measures are not predicted to cause effort shifts that would result in increases in F on GB stocks. Analysis prepared for FW 42 indicates that the proposed measures will meet the necessary F reductions for all stocks, including those on GB. In addition, because most of GB is governed by the provisions of the U.S./Canada Management Area, the Regional Administrator has the authority to revise specific measures to ensure that vessel operations within this area do not exceed specified TACs for GB yellowtail flounder, and GB cod and GB haddock in the Eastern U.S./Canada Area. Any revisions to management measures to protect these stocks will likely also result in protection for other groundfish stocks.

Changes From the Proposed Rule

NMFS has made several changes to the proposed rule, including changes as a result of public comment and the disapproval of the measure that would have provided the Regional Administrator with the authority to adjust trip limits for specific stocks. Some of these changes are administrative in nature, clarify the new or existing management measures, or correct inadvertent omissions in the proposed rule. These changes are listed below in the order that they appear in the regulations.

The Council indicated that the PDT recently discovered that there was a mistake in the projection for American plaice that over-estimated the Target TACs and Incidental Catch TACs for this species for FYs 2006–2008. The Target TACs and Incidental Catch TACs specified in Tables 2 and 3 above, respectively, were corrected to rectify this error.

In § 648.14, paragraph (a)(174) has been revised to clarify that the most restrictive measures pertain to DAS counting, trip limits, and reporting requirements.

In § 648.82, paragraph (e)(2)(iii)(A) has been revised, in response to comment and in order to be consistent with Council intent, by removing language specifying that a vessel may be in the GOM Differential DAS Area due to bad weather or circumstances beyond a vessel's control.

In § 648.82, paragraph (e)(2)(iii)(B) has been revised, in response to comment and in order to be consistent with Council intent and FW 42, by adding language that allows a vessel to be in the SNE Differential DAS Area when not fishing or transiting.

In § 648.82, paragraph (e)(2)(iv) has been revised to clarify that the most restrictive measures pertain to DAS counting, trip limits, and reporting requirements.

In § 648.82, paragraph (e)(3) has been revised to clarify that, for vessels fishing in both the Eastern U.S./Canada Area and the Regular B DAS Program on the same trip, the applicable DAS accounting rules for both areas apply.

In § 648.82, paragraph (k)(4)(xi)(B) has been revised to clarify the rules regarding the DAS Leasing Program baseline downgrade in the context of a DAS Transfer.

In § 648.82, paragraph (l)(1)(ii) has been revised to insert a cross reference to § 648.82(k)(4)(xi)(B) pertaining to the rules regarding the DAS Leasing Program baseline downgrade in the context of a DAS Transfer.

In § 648.85, paragraph (a)(3)(ii)(A) has been revised to clarify that the most restrictive measures pertain to DAS counting, trip limits, and reporting requirements.

In § 648.85, paragraph (a)(3)(iv)(C)(2) has been revised, in response to comment and in order to be consistent with Council intent, by inserting language specifying that the Regional Administrator may also adjust the GB yellowtail flounder landing limit to facilitate harvesting the GB yellowtail flounder TAC.

In § 648.85, paragraph (a)(3)(v)(B) has been revised, in response to comment and in order to be consistent with Council intent, to reinstate language requiring vessels to report the statistical area in which fish were caught.

In § 648.85, paragraph (b)(6)(iv)(E) has been revised order to insert cross references to applicable trip limits in § 648.85(a) that were omitted from the proposed rule.

In § 648.85, paragraph (b)(8)(v)(I) has been revised to insert cross references to

applicable trip limits in § 648.85(a) that were omitted from the proposed rule.

In § 648.87, paragraph (d)(2)(ii)(C), has been revised to replace a reference to the GB Cod Hook Gear Sector with the GB Cod Fixed Gear Sector.

Classification

The Regional Administrator determined that the management measures implemented by this final rule are necessary for the conservation and management of the NE multispecies fishery, and are consistent with the Magnuson-Stevens Act and other applicable laws. This final rule has been determined to be significant for the purposes of Executive Order (E.O.) 12866.

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

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), prepared this FRFA in support of the approved measures in FW 42. The FRFA incorporates the economic impacts summarized in the IRFA and the corresponding RIR in the FW 42 document, and this final rule document. The IRFA was published in the proposed rule for this action and is not repeated here. A description of why this action was considered, the objectives of, and the legal basis for this rule are contained in the preamble to the proposed and this final rule and are not repeated here.

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

Comment A: One commenter disputed the determination in the IRFA that the economic loss to groundfish fishery will only be \$21 million. This commenter claimed that the economic impact will be much more. This commenter suggested that the estimate of lost groundfish revenue is not 19 percent of groundfish revenue, as claimed in the IRFA, but rather 25–30 percent of 2005 groundfish revenue, as he suspected that the total fishing revenue for FY 2005 was only \$80 million.

Response: The commenter did not provide any specific information to explain the basis for the disputed level of impacts and, therefore, as summarized below, NMFS supports the conclusion of the FRFA. The impacts on revenue in the IRFA are detailed in

Section 7.2.4 of the EA prepared for this action. As noted in the EA, the economic impacts were compared to FY 2004, not FY 2005, because complete FY 2005 data were not available at the time the analysis was completed. During FY 2004, the value of the total catch of groundfish, not total fishing revenue, was approximately \$78 million. Of the estimated loss of \$21 million attributable to measures proposed by FW 42, \$15 million is due to a reduction in groundfish landings, while the remaining \$6 million is due to reduced landings of other species. As a result, compared to the estimated \$78 million in groundfish revenue landed in FY 2004, the estimated revenue loss of \$15 million from FW 42 reflects a 19-percent reduction in groundfish revenue from FY 2004. It should be noted, however, that these economic impacts are the result of modeled impacts and may not accurately reflect the realized impacts of measures proposed by FW 42. Realized impacts may be higher or lower than these estimates, depending on how vessels adapt to the regulations implemented and how markets adjust to the resulting changes in seafood supply.

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

Any vessel that possesses a NE multispecies permit would be required to comply with the proposed regulatory action. However, for the purposes of determination of impacts, only vessels that actually participated in an activity during FY 2004 that would be affected by the proposed action were considered for analysis. Vessels that were inactive were not considered because it is not likely that the participation level will increase in the future under the proposed regulatory regime. During FY 2004, 1,002 permit holders had an allocation of Category A DAS. Limited access NE multispecies permit holders may participate in both commercial and charter/party activity without having an open access NE multispecies charter/party permit. In FY 2004, 705 entities participated in the limited access commercial groundfish fishery, and 6 participated in the open access charter/party fishery for GOM cod. Four of these entities participated in both commercial and charter/party activities, leaving a total of 707 unique vessels with an allocation of Category A DAS that may be affected by the proposed action. Based on FY 2004 data, the proposed action would have a potential impact on a total of 3,216 limited and open access groundfish permit holders, of which less than one-third (976) actually participated in either a commercial or

charter/party activity that would be affected by the proposed action. Of these, 858 commercial fishing vessels would be affected by this proposed action, including 132 limited access monkfish Category C or D vessels that fished in the Regular B DAS Pilot Program during FY 2004–2005.

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

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

The reporting requirements for this final rule are as follows: This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) that has been previously approved by OMB under control numbers 0648–0202, and 0648–0212. Public reporting burdens for these collections of information are as follows: (1) VMS purchase and installation; (2) VMS proof of installation; (3) spawning block declaration; (4) automated VMS polling of vessel position; (5) declaration of intent to participate in the Regular B DAS Program or fish in the U.S./Canada Management Areas, associated SAPs, and CA I SAP, and DAS to be used via VMS prior to each trip into the Regular B DAS Program or a particular SAP; (6) notice requirements for observer deployment prior to every trip into the Regular B DAS Program or the U.S./Canada Management Areas, associated SAPs, and CA I SAP; (7) standardized catch reporting requirements while participating in the Regular B DAS Program or fishing in the U.S./Canada Management Area, associated SAPs, and CA I SAP, respectively; (8) standardized reporting of Universal Data I.D. while participating in the Regular B DAS Program or fishing in the U.S./Canada Management Area, associated SAPs, and

CA I SAP; (9) Sector Manager daily reports for CA I SAP; (10) DAS “flip” notification via VMS for the Regular B DAS Program; (11) DAS Leasing Program application; (12) declaration of intent to fish inside and outside of the Eastern U.S./Canada Area on the same trip; (13) vessel baseline downgrade request for the DAS Leasing Program; (14) annual declaration of participation in the CA I Hook Gear Haddock SAP; (15) declaration of area and gear via VMS when fishing under a NE multispecies DAS; and (16) declaration of entry into the GOM and SNE Differential DAS Areas when not fishing or transiting. The burdens associated with these information collections include the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Description of Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes

The alternative selected will continue the Amendment 13 default DAS allocations that took effect on May 1, 2006, under the emergency action; specify Target TACs and Incidental Catch TACs for FYs 2006, 2007, and 2008; implement a VMS requirement for limited access groundfish DAS vessels; implement differential DAS counting in specific areas of the GOM and SNE; modify the recreational possession restrictions and size limits for GOM cod; modify current and implement new commercial trip limits for several species; renew and modify the Regular B DAS Program, including the rules pertaining to monkfish vessels; renew and modify the Eastern U.S./Canada Haddock SAP; renew the DAS Leasing Program; modify the CA I Hook Gear Haddock SAP; authorize the formation of the Fixed Gear Sector; provide flexibility for vessels to fish inside and outside of the Eastern U.S./Canada Area on the same trip; modify reporting requirements for Special Management Programs; modify the DAS Transfer Program; modify the cod trip limit for the Eastern U.S./Canada Area; implement Gear Performance Incentives for the haddock separator trawl; and modify the trawl codend mesh size requirement in the SNE RMA.

The primary purpose of this action is to implement a rebuilding program for GB yellowtail flounder and modify NE multispecies fishery management measures to reduce F on six other groundfish stocks in order to maintain compliance with the rebuilding program

of the FMP. FW 42 also modifies and continues specific measures to mitigate the economic and social impacts of the FMP and allow harvest levels to approach OY.

The alternative that was adopted and implemented achieves the biological goals of FW 42, while minimizing the negative economic and social impacts. The principal feature that distinguishes one alternative from another is the strategy each alternative proposes to reduce F. As such, this discussion focuses on the measures designed to reduce F. Although all alternatives, with the exception of the No Action alternative, would have complied with the legal requirement to reduce F, the alternatives were not equal with respect to their compliance with the mandate to minimize negative social and economic impacts. The FW 42 analyses (Table 193 in the FW 42 document) indicate that the selected alternative will result in the least amount of reduction in total revenue for affected vessels (in dollars), and result in the least percentage decline in groundfish revenue, when compared with other alternatives. In addition, based on public testimony, the selected alternative was believed to promote safety better than another alternative that also had relatively low economic impacts when compared with all of the alternatives. The conclusion that the selected alternative was superior with respect to the potential estimated negative economic impacts was the primary reason this particular alternative was selected and approved. Implementation of the selected alternative will result in minimization of negative impacts on small entities. Although the No Action alternative would have resulted in less negative economic impact, the No Action alternative does not comply with the legal requirements of the Magnuson-Stevens Act regarding conservation since F would not be sufficiently reduced.

The GB yellowtail flounder rebuilding program implements a strategy and timeline for rebuilding this stock and complies with the legal requirements of the Magnuson-Stevens Act. Because the current regulations implementing the U.S./Canada Resource Sharing Understanding (Understanding) effectively control F on this stock, the rebuilding program does not represent a new restriction that has a negative impact on small entities. However, the rebuilding program is binding, in a manner in which the Understanding is not. The No Action alternative would not be in compliance with the Magnuson-Stevens Act. The GB yellowtail flounder rebuilding strategy

implemented through this final rule was preferred over the non-selected alternatives because it is consistent with the rebuilding time periods of most of the stocks in the FMP, and has a higher probability associated with rebuilding. This is an adaptive rebuilding plan, effectively balancing the need to minimize impacts to the fishing industry while rebuilding the stock, and therefore minimizing impacts to small entities to the extent practicable.

Implementation of Target and Incidental TACs provide important tools for the functioning of the FMP by enabling harvest of various stocks in a manner consistent with the goals of the FMP. The No Action alternative would not enable the revised Target and Incidental TACs based on the best scientific information available to be used to informally evaluate the fishery. Furthermore, because revised Incidental Catch TACs were not proposed under the No Action alternative, that alternative would not have provided the necessary protection for stocks of concern. Without Incidental Catch TACs, either the Special Management Programs would not be allowed to open (and the associated revenue would be lost), or such programs would operate without the necessary restrictions that ensure compliance with the biological objectives of the FMP.

The implemented measure that allows flexibility for vessels to fish both inside and outside of the Eastern U.S./Canada Area on the same trip decreases the chance that vessels fishing in the Eastern U.S./Canada Area will have an unprofitable trip and, therefore, serves to further minimize negative impacts on small entities.

The requirement that all limited access groundfish DAS vessels using a groundfish DAS must be equipped with an approved VMS was selected in order to support the monitoring, reporting, and enforcement of the increasingly complex measures under the FMP. Although implementation of the VMS requirement will result in additional costs to the active members of the groundfish fleet (all of which are small entities), one of the primary reasons the regulations are so complex is to accommodate the extremely diverse characteristics and interests of the fishery. For example, in the SNE and GOM RMAs the use of VMS enables NMFS to administer and enforce complex rules that charge vessels DAS at different rates depending upon where the vessel fishes. Vessels that do not fish in the geographic areas associated with the stocks that require the largest reduction in fishing effort are not subject to the same restrictions as those

vessels that do fish in such areas. The differential DAS system is designed to reduce F on several fish stocks, while allowing vessel owners choices regarding where to fish and the amount of DAS costs to incur. Although it is not possible to precisely quantify economic gains that result from the use of VMS, selection of the VMS alternative supports the complex regulations that are designed to allow the fishery to approach OY. For example, it may have been possible to implement Alternative 5 without a VMS requirement, because Alternative 5 does not include differential DAS counting by areas, but relies instead on a larger reduction in allocated Category A DAS. However, economic impacts of Alternative 5 are greater than those associated with either of the differential DAS alternatives.

Although all the alternatives for recreational and charter/party measures were designed to achieve the same percentage in F reductions for GOM cod as for the commercial sector, the preferred alternative was selected in order to minimize impacts on the recreational and charter/party fisheries. Although impacts on charter/party operators depend on how their potential clients react to the regulatory changes, the analysis suggests that the selected alternative will have less harmful economic impacts than the two non-selected alternatives. Part of the reason for the different economic impacts is the different months encompassed by the alternatives and the traditional seasonality of the recreational and charter/party fisheries. The No Action alternative is not justified because the recreational and charter/party fisheries have contributed to the excessive F rate on GOM cod, and therefore must contribute to the necessary reductions in F under FW 42. If the No Action alternative were selected, the commercial sector would have had to adopt even more restrictive regulations to reduce fishing mortality on GOM cod than those implemented by the final rule.

All of the alternatives, with the exception of the No-Action alternative, include various trip limits for some of the stocks in need of F reductions. Such trip limits, in conjunction with the DAS strategies in the various alternatives, serve to mitigate the amount of DAS restrictions necessary. The no action alternative, which proposes no change to the trip limits, would not have met the biological requirements of the FMP.

All of the alternatives, with the exception of the No-Action alternative, include the renewal and/or modification of the Special Management Programs (CA I Hook Gear Haddock SAP, Eastern

U.S./Canada Haddock SAP, Regular B DAS Program). These programs were renewed and/or modified in order to continue to mitigate the negative economic impacts of the FMP and enable the fishery to approach OY. By renewing and modifying these Special Management Programs, vessels are allowed to access fish stocks in a restricted manner that protects stocks of concern. In contrast, yield and revenue from the fishery would have been reduced under the No Action alternative because that alternative would not have provided enhanced access to various stocks. The DAS Leasing Program provides additional economic opportunity for vessels, as it may have an important role in maintaining profitability for small entities, and the revision of the DAS Transfer Program provides additional incentive to participate in the program and, therefore, provides different types of economic opportunities for vessel owners. Both of these programs minimize the negative impacts of FW 42 by providing economic opportunities for the groundfish fleet, which the No Action alternative would not provide.

Other management measures implemented by this final rule, such as standardization of reporting requirements, modification of Regional Administrator Authority, Gear Performance Incentives, modification to the cod trip limit for the Eastern U.S./Canada Area, and the change in the minimum trawl mesh requirement when fishing in the SNE RMA, serve to improve and facilitate the functioning of the FMP and increase the likelihood that the regulations will have the intended effects. As such, the alternative selected and implemented has a beneficial economic impact on small entities when compared with the No Action Alternative.

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

1. VMS purchase and installation, OMB# 0648-0202 (1 hr/response);
2. VMS proof of installation, OMB# 0648-0202 (5 min/response);
3. Spawning block declaration, OMB# 0648-0202 (2 min/response);
4. Automated VMS polling of vessel position, OMB# 0648-0202 (5 sec/response);
5. Declaration of intent to participate in the Regular B DAS Program or fish in the U.S./Canada Management Area, associated SAPs, and CA I SAP, and DAS to be used via VMS prior to each trip into the Regular B DAS Program or a particular SAP, OMB# 0648-0202 (5 min/response);

6. Notice requirements for observer deployment prior to every trip into the Regular B DAS Program or the U.S./Canada Management Area, associated SAPs, and CA I SAP, OMB# 0648-0202 (2 min/response);

7. Standardized catch reporting requirements while participating in the Regular B DAS Program or fishing in the U.S./Canada Management Area, associated SAPs, and CA I SAP, respectively, OMB# 0648-0212 (15 min/response);

8. Standardized reporting of Universal Data I.D. while participating in the Regular B DAS Program or fishing in the U.S./Canada Management Area, associated SAPs, and CA I SAP, OMB# 0648-0212 (15 min/response);

9. Sector Manager daily reports for CA I Hook Gear Haddock SAP, OMB# 0648-0212 (2 hr/response);

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

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

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

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

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

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

16. Declaration of entry into the GOM and SNE Differential DAS Area when not fishing or transiting via VMS, OMB# 0648-0202 (5 min/response).

These estimates include the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to David_Rostker@omb.eop.gov, or fax to 202-395-7285.

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

Section 212 of the Small Business Regulatory Enforcement Fairness Act of

1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Northeast Regional Office, and the guide, i.e., permit holder letter, will be sent to all holders of permits for the multispecies and monkfish fisheries. The guide and this final rule will be available upon request.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 16, 2006.

William T. Hogarth,

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

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

**PART 648—FISHERIES OF THE
NORTHEASTERN UNITED STATES**

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

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

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

§ 648.2 Definitions.

* * * * *

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

* * * * *

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

* * * * *

■ 3. In § 648.10, paragraphs (b)(1)(vii) and (viii) are removed and reserved; paragraphs (b)(1)(v), (vi), (b)(2) and (3), the introductory text to paragraph (c),

and paragraphs (c)(5), (d), and (f) are revised to read as follows:

§ 648.10 DAS and VMS notification requirements.

* * * * *

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

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

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

* * * * *

(2) The owner of such a vessel specified in paragraph (b)(1) of this section, with the exception of a vessel issued a limited access NE multispecies permit as specified in paragraph (b)(1)(vi) of this section, must provide documentation to the Regional Administrator at the time of application for a limited access permit that the vessel has an operational VMS unit installed on board that meets the minimum performance criteria, unless otherwise allowed under this paragraph (b). If a vessel has already been issued a limited access permit without the owner providing such documentation, the Regional Administrator shall allow at least 30 days for the vessel to install an operational VMS unit that meets the criteria and for the owner to provide documentation of such installation to the Regional Administrator. The owner of a vessel issued a limited access NE multispecies permit that fishes or intends to fish under a Category A or B DAS as specified in paragraph (b)(1)(vi) of this section, must provide documentation to the Regional Administrator that the vessel has an operational VMS unit installed on board that meets those criteria prior to fishing under a groundfish DAS. NMFS shall send letters to all limited access NE multispecies DAS permit holders and provide detailed information on the procedures pertaining to VMS purchase, installation, and use.

(i) A vessel that has crossed the VMS Demarcation Line specified under paragraph (a) of this section is deemed to be fishing under the DAS program, unless the vessel's owner or authorized representative declares the vessel out (i.e., not fishing under the applicable DAS program) of the scallop, NE multispecies, or monkfish fishery, as applicable, for a specific time period by notifying the Regional Administrator

through the VMS prior to the vessel leaving port, or unless the vessel's owner or authorized representative declares the vessel will be fishing exclusively in the Eastern U.S./Canada Area, as described in § 648.85(a)(3)(ii), under the provisions of that program.

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

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

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

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

(ii) [Reserved].

(iii) A vessel issued a limited access monkfish or Occasional scallop permit may be authorized by the Regional Administrator to provide the notifications required by this paragraph (b) using the VMS specified in this paragraph (b). For the vessel to become

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

* * * * *

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

* * * * *

(5) Any vessel that possesses or lands per trip more than 400 lb (181 kg) of scallops; any vessel issued a limited access NE multispecies permit subject to the NE multispecies DAS program requirements that possesses or lands regulated NE multispecies, except as provided in §§ 648.10(b)(2)(iii), 648.17, and 648.89; any vessel issued a limited access monkfish permit subject to the monkfish DAS program and call-in requirement that possess or lands monkfish above the incidental catch trip limits specified in § 648.94(c); and any vessel issued a limited access red crab permit subject to the red crab DAS program and call-in requirement that possesses or lands red crab above the incidental catch trip limits specified in § 648.263(b)(1) shall be deemed to be in its respective DAS program for purposes of counting DAS, regardless of whether the vessel's owner or authorized representative provides adequate notification as required by paragraphs (b) or (c) of this section.

* * * * *

(d) *Temporary authorization for use of the call-in system.* The Regional Administrator may authorize or require, on a temporary basis, the use of the call-in system of notification specified in paragraph (c) of this section, instead of the use of the VMS. If use of the call-

in system is authorized or required, the Regional Administrator shall notify affected permit holders through a letter, notification in the **Federal Register**, e-mail, or other appropriate means.

* * * * *

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

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

■ 4. In § 648.14, paragraphs (a)(130), (145), (146), (148), (151), (152), and (156); the introductory text of paragraph (c); paragraphs (c)(7), (25), (33), (49) through (53), (55) through (65) and (78) are revised; paragraphs (c)(48), (c)(54), and (c)(79) are removed and reserved; and paragraphs (a)(173) through (177), (c)(23), (c)(81) through (88), (g)(4), and (g)(5) are added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

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

* * * * *

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

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

* * * * *

(148) If fishing under a NE multispecies DAS in the Eastern U.S./

Canada Haddock SAP specified in § 648.85(b)(8), in the area specified in § 648.85(b)(8)(ii), and during the season specified in § 648.85(b)(8)(iv), fail to comply with the restrictions specified in § 648.85(b)(8)(v).

* * * * *

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

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

* * * * *

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

* * * * *

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

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

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

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

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

* * * * *

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

* * * * *

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

* * * * *

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

* * * * *

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

* * * * *

(33) For vessels fishing in the NE multispecies DAS program under the provisions of § 648.10(c), the call-in system, fail to remain in port for the appropriate time specified in § 648.86(b)(2)(ii)(A), except for transiting purposes, provided the vessel complies with § 648.86(b)(3). For vessels fishing in the NE multispecies DAS program under the provisions of § 648.10(b), the VMS system, fail to declare through VMS that insufficient DAS have elapsed in order to account for the amount of cod on board the vessel as required under § 648.86(b)(2)(ii)(B).

* * * * *

(48) [Reserved]

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

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

(51) If fishing under a Regular B DAS in the Regular B DAS Program, fail to comply with the DAS flip requirements of § 648.85(b)(6)(iv)(E) if the vessel

harvests and brings on board more than the landing limit for a groundfish stock of concern specified in § 648.85(b)(6)(iv)(D), other groundfish specified under § 648.86, or monkfish under § 648.94.

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

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

(54) [Reserved]

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

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

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

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

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

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

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

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

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

(64) Use a Regular B DAS in the Regular B DAS Program specified in § 648.85(b)(6), if the program has been

closed as specified in § 648.85(b)(6)(iv)(H) or (b)(6)(vi).

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

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

(79) [Reserved]

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

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

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

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

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

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

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

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

(g) * * *

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

(5) If fishing under the recreational or 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)(v) or (c)(2)(v) or, fail to abide by the appropriate restrictions if transiting with cod on board.

* * * * *

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

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

* * * * *

(b) * * *

(2) * * *

(i) *Vessels using trawls.* Except as provided in paragraphs (b)(2)(i) and (vi) of this section, and unless otherwise restricted under paragraph (b)(2)(iii) of this section, the minimum mesh size for any trawl net, not stowed and not available for immediate use in accordance with § 648.23(b), except midwater trawl, on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the SNE Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh, applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) square or diamond mesh applied to the codend of the net, as defined under paragraph (a)(3)(i) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

* * * * *

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

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

* * * * *

(d) * * *

(2) * * *

(i) * * *

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

to utilize a NE multispecies DAS, as specified under § 648.92(b)(2), may not elect to use a NE multispecies Category B DAS to satisfy that requirement.

* * * * *

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

* * * * *

(e) *Accrual of DAS.* (1) DAS shall accrue to the nearest minute, and with the exceptions described under this paragraph (e) and paragraph (j)(1)(iii) of this section, shall be counted as actual time called, or logged into the DAS program, consistent with the DAS notification requirements specified at § 648.10(c)(5).

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

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

GOM DIFFERENTIAL DAS AREA

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

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

SNE DIFFERENTIAL DAS AREA

Point	N. lat.	W. long.
SNED1	41°05'	71°45'
SNED2	41°05'	70°00'
SNED3	41°00'	70°00'
SNED4	41°00'	69°30'
SNED5	40°50'	69°30'
SNED6	40°50'	70°20'
SNED7	40°40'	70°20'
SNED8	40°40'	70°30'
SNED9	40°30'	72°30'
SNED10	40°10'	73°00'
SNED11	40°00'	73°15'
SNED12	40°00'	73°40'
SNED13	40°15'	73°40'
SNED14	40°30'	73°00'
SNED15	40°55'	71°45'
SNED16	41°05'	71°45'

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

(iii) *Differential DAS counting—(A) Differential DAS counting when fishing in the GOM Differential DAS Area.* For a NE multispecies vessel that intends to fish, or fishes for some or all of its trip other than for transiting purposes under a Category A DAS in the GOM Differential DAS Area, each Category A DAS, or part thereof, shall be counted at the ratio of 2 to 1 for the entire trip, even if only a portion of the trip is spent fishing in the GOM Differential DAS Area. A vessel that has not declared its intent to fish in the GOM Differential DAS Area and that is not transiting, as specified in paragraph (e)(2)(v) of this section, may be in the GOM Differential DAS Area, 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 GOM Differential DAS Area, via VMS, that it is in the area. A vessel that fishes in both the GOM Differential Area and the SNE

Differential DAS Area on the same trip will be charged DAS at the rate of 2 to 1 for the entire trip.

(B) *Differential DAS counting when fishing in the SNE Differential DAS Area.* For a NE multispecies DAS vessel that intends to fish or fishes some or all of its trip other than for transiting purposes under a Category A DAS in the SNE Differential DAS Area, each Category A DAS, or part thereof, shall be counted at the ratio of 2 to 1 for the duration of the time spent in the SNE Differential DAS Area, as determined from VMS positional data. A vessel that has not declared its intent to fish in the SNE Differential DAS Area and that is not transiting, as specified in paragraph (e)(2)(v) of this section, may be in the SNE 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 SNE Differential DAS Area, via VMS, that it is in the area. A vessel that fishes in both the GOM Differential Area and the SNE Differential DAS Area on the same trip will be charged DAS at the rate of 2:1 for the entire trip. If the Regional Administrator requires the use of the DAS call-in, as described under § 648.10(b)(2)(iv), a vessel that fishes any portion of its trip in the SNE Differential DAS Area will be charged DAS at the rate of 2 to 1 for the entire trip.

(iv) *Restrictions.* A NE multispecies vessel fishing under a Category A DAS in one of the Differential DAS Areas defined in paragraph (e)(2)(i) of this section, under the restrictions of paragraph (e)(2) of this section and under the restrictions of one or more of the Special Management Programs under § 648.85 must comply with the most restrictive DAS counting, trip limits, and reporting requirements, specified in this paragraph (e)(2) and in § 648.85, under the pertinent Special Management Program.

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

(3) *Regular B DAS Program 24-hr clock.* For a vessel electing to fish in the Regular B DAS Program, as specified at § 648.85(b)(6), and that remains fishing under a Regular B DAS for the entire fishing trip (without a DAS flip), DAS used shall accrue at the rate of 1 full DAS for each calendar day, or part of a calendar day fished. For example, a vessel that fished on one calendar day

from 6 a.m. to 10 p.m. would be charged 24 hr of Regular B DAS, not 16 hr; a vessel that left on a trip at 11 p.m. on the first calendar day and returned at 10 p.m. on the second calendar day would be charged 48 hr of Regular B DAS instead of 23 hr, because the fishing trip would have spanned 2 calendar days. For the purpose of calculating trip limits specified under § 648.86, the amount of DAS deducted from a vessel's DAS allocation shall determine the amount of fish the vessel can legally land. For a vessel electing to fish in the Regular B DAS Program, as specified at § 648.85(b)(6), while also fishing in one of the Differential DAS Areas, defined in (e)(2)(i) of this section, Category B DAS shall accrue at the rate described in this paragraph (e)(3), unless the vessel flips to a Category A DAS, in which case the vessel is subject to the pertinent DAS accrual restrictions of paragraph (e)(2)(iii) of this section for the entire trip. For vessels electing to fish in both the Regular B DAS Program, as specified in § 648.85(b)(8), 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) *Method of counting DAS.* A Day gillnet vessel fishing with gillnet gear under a NE multispecies DAS shall accrue DAS as follows:

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

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

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

example, a Day gillnet vessel fishing in the GOM Differential Area for 8 actual hr would be charged 16 hours of DAS, or if fishing for 5 actual hr would be charged 15 hr of DAS.

(D) A Day gillnet vessel fishing with gillnet gear under a NE multispecies Category A DAS that is fishing in the SNE Differential DAS Area and, therefore, subject to differential DAS counting as specified under paragraph (e)(2)(iii)(B) of this section, shall accrue DAS at a differential DAS rate of 2 to 1 for the actual hours that are in the SNE Differential DAS Area that are from 0–3 hr in duration and greater than 7.5 hr. For hours in the SNE Differential DAS Area that are over 3 hr and less than or equal to 7.5 hr duration, a vessel shall be charged a full 15 hr. For a Day gillnet vessel that fishes both inside and outside of the SNE Differential DAS Area on the same trip, time fished outside the area shall accrue on the basis of actual time, unless otherwise specified in this paragraph (j)(1)(iii). A Day gillnet vessel fishing inside and outside of the SNE Differential DAS Area on the same trip shall not accrue less DAS for the entire trip than would a Day gillnet vessel fishing the same amount of time outside of the SNE Differential DAS Area for the entire trip (accruing DAS as specified under paragraph (j)(1)(iii)(B) of this section).

* * * * *

(k) * * *

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

* * * * *

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

any DAS may only be leased once during a fishing year.

(4) * * *

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

* * * * *

(xi) * * *

(B) *Duration and applicability of one-time DAS Leasing Program baseline downgrade.* The downgraded DAS Leasing Program baseline remains in effect until the DAS Leasing Program expires or the permit is transferred to another vessel via a vessel replacement, or through a DAS transfer unless otherwise specified in this paragraph (k)(4)(xi)(B). Once the permit is transferred to another vessel, the DAS Leasing Program baseline reverts to the baseline horsepower and length overall specifications associated with the permit prior to the one-time downgrade, unless otherwise specified. Once the DAS Leasing Program baseline is downgraded for a particular permit, no further downgrades may be authorized for that permit. The downgraded DAS Leasing Program baseline may only be used to determine eligibility for the DAS Leasing Program and does not affect or change the baseline associated with the DAS Transfer Program specified in paragraph (l)(1)(ii) of this section, or the vessel replacement or upgrade restrictions specified at § 648.4(a)(1)(i)(E) and (F), or any other provision respectively. For vessels involved in a DAS Transfer Program transaction as described in paragraph (l) of this section, if the transferee vessel baseline is adopted, consistent with the regulations under paragraph (l)(1)(ii) of this section, and the DAS Leasing Program baseline of the transferee vessel was previously downgraded, consistent with the regulations under this paragraph (k)(4)(xi), the downgraded DAS Leasing Program baseline specifications remain valid.

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

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

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

(ii) NE multispecies DAS may be transferred only to a vessel with a baseline main engine horsepower rating that is no more than 20 percent greater than the baseline engine horsepower of the transferor vessel. NE multispecies DAS may be transferred only to a vessel with a baseline length overall that is no more than 10 percent greater than the baseline length overall of the transferor vessel. For the purposes of this program, the baseline horsepower and length overall are those associated with the permit as of January 29, 2004. Upon approval of the transfer, the baseline of the transferee vessel would be the smaller baseline of the two vessels or, if the transferee vessel had not previously upgraded under the vessel replacement rules, the vessel owner could choose to adopt the larger baseline of the two vessels, which would constitute the vessel's one-time upgrade, if such upgrade is consistent with the vessel replacement rules. A vessel that has executed a one-time downgrade of a DAS Leasing Program baseline in accordance with paragraph (k)(4)(xi) is subject to the restrictions of paragraph (k)(4)(xi)(B) of this section.

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

(iv) For the purpose of calculating the DAS conservation tax as described in this paragraph (l), the applicants must specify which DAS (the transferor's DAS or the transferee's DAS) are subject to the DAS reduction. NE multispecies

Category A and Category B DAS, as defined under paragraphs (d)(1) and (2) of this section, shall be reduced by 20 percent upon transfer. Category C DAS, as defined under paragraph (d)(3) of this section, shall be reduced by 90 percent upon transfer.

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

* * * * *

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

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

* * * * *

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

§ 648.85 Special Management Programs.

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

(A) A vessel fishing under a NE multispecies DAS in the Eastern U.S./Canada Area may fish both inside and outside of the Eastern U.S./Canada Area on the same trip, provided it complies with the 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)(ii)(A)(1) through (4) of this section. On a trip when the vessel operator elects to fish both inside and outside of the Eastern U.S./Canada Area, all cod, haddock, and yellowtail flounder caught on the trip 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 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 § 648.85(a)(3)(v) for the duration of the trip.

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

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

* * * * *

(iv) * * *

(A) *Cod landing limit restrictions.* Notwithstanding other applicable possession and landing restrictions

under this part, a NE multispecies vessel fishing in the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) of this section may not land more than 500 lb (226.8 kg) of cod per DAS, or any part of a DAS, up to 5,000 lb (2,268 kg) per trip. A vessel fishing in the Eastern U.S./Canada Area may be further restricted by participation in other Special Management Programs as required under this section.

* * * * *

(C) * * *

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

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

* * * * *

(D) *Other restrictions or in-season adjustments.* In addition to the possession restrictions specified in paragraph (a)(3)(iv) of this section, the Regional Administrator, in a manner consistent with the Administrative Procedure Act, may modify the gear requirements, modify or close access to the U.S./Canada Management Areas, modify the trip limits specified under paragraphs (a)(3)(iv)(A) through (C) of this section, or modify the total number of trips into the U.S./Canada Management Area, to prevent over-harvesting or facilitate achieving the TAC. Such adjustments may be made at

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

* * * * *

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

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

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

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

* * * * *

(b) * * *

(3) * * *

(xi) *No-discard provision and DAS flips.* A vessel fishing in the CA II Yellowtail Flounder SAP, may not discard legal-sized regulated NE multispecies, Atlantic halibut, or ocean pout. If a vessel fishing in the CA II Yellowtail Flounder SAP exceeds an applicable trip limit, the vessel must exit the SAP. If a vessel operator fishing in the CA II Yellowtail Flounder SAP

under a Category B DAS harvests and brings on board more legal-sized regulated NE multispecies, ocean pout, or Atlantic halibut than the maximum landing limits allowed per trip, specified under paragraph (b)(3)(iv) or (viii) of this section, or under § 648.86, the vessel operator must immediately notify NMFS via VMS to initiate a DAS flip (from a Category B DAS to a Category A DAS). Once this notification has been received by NMFS, the vessel's entire trip will accrue as a Category A DAS trip. For a vessel that notifies NMFS of a DAS flip, the Category B DAS that have accrued between the time the vessel started accruing Category B DAS (i.e., either at the beginning of the trip, or at the time the vessel crossed into the Eastern U.S./Canada Area) and the time the vessel declared its DAS flip will be accrued as Category A DAS, and not Category B DAS.

* * * * *

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

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

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

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

the Eastern U.S./Canada Haddock SAP described in paragraph (b)(8) of this section.

* * * * *

(6) * * *

(ii) [Reserved].

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

(iv) * * *

(C) *VMS declaration.* To participate in the Regular B DAS Program under a Regular B DAS, a vessel must declare into the Program via VMS prior to departure from port, in accordance with instructions provided by the Regional Administrator. A vessel declared into the Regular B DAS Program cannot fish in an approved SAP described under this section on the same trip. 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)(6)(iv)(D), a NE multispecies vessel fishing in the Regular B DAS Program described in this paragraph (b)(6), and fishing under a Regular B DAS, may not land more than 100 lb (45.5 kg) per DAS, or any part of a DAS, up to a maximum of 1,000 lb (454 kg) per trip, of any of the following species/stocks: Cod, American plaice, white hake, witch flounder, SNE/MA winter flounder, GB winter flounder, GB yellowtail flounder, southern windowpane flounder, and ocean pout, and may not land more than 25 lb (11.3 kg) per DAS, or any part of a DAS, up to a maximum of 250 lb (113 kg) per trip of CC/GOM or SNE/MA yellowtail flounder. In addition, trawl vessels, which are required to fish with a haddock separator trawl as specified under paragraph (b)(6)(iv)(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)(6)(iv)(J) of this section, are restricted to the following trip limits: 500 lb (227 kg) of all flatfish species (American plaice, witch flounder, winter flounder, windowpane flounder, and GB yellowtail flounder), combined; 500 lb (227 kg) of monkfish (whole weight); 500 lb (227 kg) of skates (whole weight); and zero possession of lobsters, unless otherwise restricted by § 648.94(b)(7).

(E) *No-discard provision and DAS flips.* A vessel fishing in the Regular B DAS Program under a Regular B DAS may not discard legal-sized regulated species, ocean pout, Atlantic halibut, or monkfish. This prohibition on discarding does not apply 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 in excess of the allowable landing limits specified in paragraph (b)(6)(iv)(D) of this section or § 648.86, the vessel operator must notify NMFS immediately via VMS to initiate a DAS flip from a B DAS to 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 § 648.85(a) 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 GOM Differential DAS Area or the SNE Differential DAS Area, as described in § 648.82(e)(2)(i), the number of Regular B DAS that 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 GOM Differential DAS Area and has 10 Category A DAS available at the start of the trip, the maximum number of Regular B DAS that the vessel may fish under the Regular B Program is 5. A vessel fishing in the Regular B DAS Program for its entire trip shall accrue DAS in accordance with § 648.82(e)(3).

* * * * *

(H) *Closure of Regular B DAS Program and quarterly DAS limits.* Unless otherwise closed as a result of the harvest of an Incidental Catch TAC as described in paragraph (b)(6)(iv)(G) of this section, or as a result of an action by the Regional Administrator under

paragraph (b)(6)(vi) of this section, the use of Regular B DAS shall, in a manner consistent with the Administrative Procedure Act, be prohibited when 500 Regular B DAS have been used during the first quarter of the fishing year (May-July), or when 1,000 Regular B DAS have been used during any of the remaining quarters of the fishing year, in accordance with § 648.82(e)(3).

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

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

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

(v) * * *

(C) *CC/GOM yellowtail flounder stock area.* The CC/GOM yellowtail flounder stock area for the purposes of the

Regular B DAS Program is the area defined by straight lines connecting the following points in the order stated:

CC/GOM YELLOWTAIL FLOUNDER STOCK AREA

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

¹ Intersection with south facing shoreline of Cape Cod, Massachusetts.

² Intersection with east facing shoreline of Cape Cod, Massachusetts.

* * * * *

(E) SNE/MA yellowtail flounder stock area. The SNE/MA yellowtail flounder stock area for the purposes of the Regular B DAS Program is the area bounded on the north, east, and south by straight lines connecting the following points in the order stated:

SNE/MA YELLOWTAIL FLOUNDER STOCK AREA

Point	N. lat.	W. long.
SNEMA1	40°00'	74°00'
SNEMA2	40°00'	72°00'
SNEMA3	40°30'	72°00'
SNEMA4	40°30'	69°30'
SNEMA5	41°00'	69°30'
SNEMA6	41°00'	69°00'
SNEMA7	41°30'	69°00'
SNEMA8	41°30'	70°00'
SNEMA9	41°00'	70°00'
SNEMA10	41°00'	70°30'
SNEMA11	41°30'	70°30'
SNEMA12	(1)	72°00'
SNEMA13	(2)	72°00'
SNEMA14	(3)	73°00'
SNEMA15	40°30'	73°00'
SNEMA16	40°30'	74°00'
SNEMA17	40°00'	74°00'

¹ South facing shoreline of Connecticut.

² North facing shoreline of Long Island, New York.

³ South facing shoreline of Long Island, New York.

* * * * *

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

(7) * * *

(iv) * * *

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

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

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

cease fishing if any trip limit is achieved or exceeded.

* * * * *

(v) * * *

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

* * * * *

(vi) * * *

(D) *Reporting requirements.* The owner or operator of a non-Sector vessel declared into the Closed Area I Hook Gear Haddock SAP must submit reports via VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished in the Closed Area I Hook Gear Haddock SAP Area. The reports must be submitted in 24-hr intervals for each day fished, beginning at 0000 hr and ending at 2400 hr. The reports must be submitted by 0900 hr of the day following fishing. The reports must include at least the following information: Total pounds of haddock, cod, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake kept; total pounds of haddock, cod, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake discarded; date fish were caught; and VTR serial number, as instructed by the Regional Administrator. Daily reporting must continue even if the vessel operator is required to exit the SAP as required under paragraph (b)(7)(iv)(G) of this section.

* * * * *

(8) *Eastern U.S./Canada Haddock SAP—(i) Eligibility.* A vessel issued a valid limited access NE multispecies DAS permit, and fishing with trawl gear as specified in paragraph (b)(8)(v)(E) of this section, is eligible to participate in the Eastern U.S./Canada Haddock SAP, and may fish in the Eastern U.S./Canada

Haddock SAP Area, as described in paragraph (b)(8)(ii) of this section, during the season specified in paragraph (b)(8)(iv) of this section, provided such vessel complies with the requirements of this section, and provided the SAP is not closed according to the provisions specified in paragraphs (b)(8)(v)(K) or (L) of this section, or the Eastern U.S./Canada Area is not closed as described under paragraph (a)(3)(iv)(E) of this section.

* * * * *

(iii) [Reserved].

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

(v) * * *

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

* * * * *

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

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

(4) A vessel that elects to fish in multiple areas, as described in this paragraph (b)(8)(v)(A), must fish under the most restrictive DAS counting, trip limits, and reporting requirements of the areas fished for the entire trip, including those in paragraph (a)(3)(ii)(A)(3) of this section.

* * * * *

(E) *Gear restrictions*—(1) A NE multispecies vessel fishing in the Eastern U.S./Canada Haddock SAP must use the haddock separator trawl nets authorized for the Eastern U.S./Canada Area, as specified in paragraph

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

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

(F) *Landing limits*. Unless otherwise restricted, a vessel fishing any portion of a trip in the Eastern U.S./Canada Haddock SAP may not fish for, possess, or land more than 1,000 lb (453.6 kg) of cod, per trip, regardless of trip length. A NE multispecies vessel fishing in the Eastern U.S./Canada Haddock SAP is subject to the haddock requirements described under § 648.86(a), unless further restricted under paragraph (a)(3)(iv) of this section. A NE multispecies vessel fishing in the Eastern U.S./Canada Haddock SAP under a Category B DAS may not land more than 100 lb (45.5 kg) per DAS, or any part of a DAS, of GB yellowtail flounder and 100 lb (45.5 kg) of GB winter flounder, up to a maximum of 500 lb (227 kg) of all flatfish species, combined. Possession of monkfish (whole weight), and skates (whole weight) is limited to 500 lb (227 kg) each, and possession of lobsters is prohibited.

* * * * *

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

(I) *No discard provision and DAS flips*. A vessel fishing in the Eastern U.S./Canada Haddock SAP Program may not discard legal-sized regulated NE multispecies, Atlantic halibut, and ocean pout. If a vessel fishing in the Eastern U.S./Canada Haddock SAP

under a Category B DAS exceeds the applicable maximum landing limit per trip specified under paragraph (b)(8)(v)(F) of this section, or under § 648.86, the vessel operator must retain the fish and immediately notify NMFS via VMS to initiate a DAS flip (from a Category B DAS to a Category A DAS). After flipping to a Category A DAS, the vessel is subject to all applicable landing limits specified under § 648.85(a) or § 648.86. If a vessel fishing in this SAP while under a Category B DAS or a Category A DAS exceeds a trip limit specified under paragraph (b)(8)(v)(F) of this section or § 648.86, or other applicable trip limit, the vessel must immediately exit the SAP area defined under paragraph (b)(8)(ii) of this section for the remainder of the trip. For a vessel that notifies NMFS of a DAS flip, the Category B DAS that have accrued between the time the vessel started accruing Category B DAS and the time the vessel declared its DAS flip will be accrued as Category A DAS, and not Category B DAS.

* * * * *

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

* * * * *

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

§ 648.86 NE Multispecies possession restrictions.

* * * * *

(a) * * *

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

exceeding the Target TAC in that fishing year.

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

* * * * *

(b) * * *

(1) *GOM cod landing limit.* (i) Except as provided in paragraphs (b)(1)(ii) and (b)(4) of this section, or unless otherwise restricted under § 648.85, a vessel fishing under a NE multispecies DAS may land only up to 800 lb (362.9 kg) of cod during the first 24-hr period after the vessel has started a trip on which cod were landed (e.g., a vessel that starts a trip at 6 a.m. may call out of the DAS program at 11 a.m. and land up to 800 lb (362.9 kg), but the vessel cannot land any more cod on a subsequent trip until at least 6 a.m. on the following day). For each trip longer than 24 hr, a vessel may land up to an additional 800 lb (362.9 kg) for each additional 24-hr block of DAS fished, or part of an additional 24-hr block of DAS fished, up to a maximum of 4,000 lb (1,818.2 kg) per trip (e.g., a vessel that has been called into the DAS program for more than 24 hr, but less than 48 hr, may land up to, but no more than, 1,600 lb (725.7 kg) of cod). A vessel that has been called into only part of an additional 24-hr block of a DAS (e.g., a vessel that has been called into the DAS program for more than 24 hr, but less than 48 hr) may land up to an additional 800 lb (362.9 kg) of cod for that trip, provided the vessel complies with the provisions of paragraph (b)(1)(ii) of this section. Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

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

(A) For a vessel that is subject to the VMS provisions specified under

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

(B) For a vessel that has been authorized by the Regional Administrator to utilize the DAS call-in system, as specified under § 648.10(c), in lieu of VMS, the vessel does not call out of the DAS program as described under § 648.10(c)(3) and does not depart from a dock or mooring in port, unless transiting as allowed in paragraph (b)(3) of this section, until the rest of the additional 24-hr block of DAS has elapsed, regardless of whether all of the cod on board is offloaded (e.g., a vessel that has been called into the DAS program for 25 hr at the time of landing may land only up to 1,600 lb (725.6 kg) of cod, provided the vessel does not call out of the DAS program or leave port until 48 hr have elapsed from the beginning of the trip).

(2) *GB cod landing and maximum possession limits.* (i) Unless otherwise restricted under § 648.85 or the provisions of paragraph (b)(2)(ii) of this section, or unless exempt from the landing limit under paragraph (b)(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 (b)(4) of this section and this paragraph (b)(2). A NE multispecies DAS vessel may land up to 1,000 lb (453.6 kg) of cod during the first 24-hr period after such vessel has started a trip on which cod were landed (e.g., a vessel that starts a trip at 6 a.m. may call out of the DAS program at 11 a.m. and land up to 1,000 lb (453.6 kg) of cod, but the vessel cannot land any more cod on a subsequent trip until at least 6 a.m. on the following day). For each trip longer than 24 hr, a vessel may land up to an additional 1,000 lb (453.6 kg) 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 (b)(2)(ii) of this section. Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

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

(A) For a vessel that has been authorized by the Regional Administrator to utilize the DAS call-in system as specified under § 648.10(c), in lieu of VMS, the vessel does not call out of the DAS program as described under § 648.10(c)(3) and does not depart from a dock or mooring in port, unless transiting, as allowed in paragraph (b)(3) of this section, until the rest of the additional 24-hr block of DAS has elapsed, regardless of whether all of the cod on board is offloaded (e.g., a vessel that has been called into the DAS program for 25 hr at the time of landing may land only up to 2,000 lb (907.2 kg) of cod, provided the vessel does not call out of the DAS program or leave port until 48 hr have elapsed from the beginning of the trip.)

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

* * * * *

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

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

(ii) A vessel exempt from the GOM cod landing limit may not fish north of the line specified in paragraph (b)(4) of this section for the duration of the trip, but may transit the GOM Regulated Mesh Area, provided that its gear is stowed in accordance with the provisions of § 648.23(b). A vessel fishing north and south of the line on the same trip is subject to the most restrictive applicable cod trip limit.

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

(g) *Yellowtail flounder.* (1) *CC/GOM and SNE/MA yellowtail flounder landing limit.* Unless otherwise restricted under this part, a vessel issued a NE multispecies DAS permit, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions, and fishing exclusively outside of the U.S./Canada Management Area, as defined under § 648.85(a)(1), may land or possess on

board only up to 250 lb (113.6 kg) of yellowtail flounder per DAS, or any part of a DAS, up to a maximum possession limit of 1,000 lb (453.6 kg) per trip. A vessel fishing outside and inside of the U.S./Canada Management Area on the same trip is subject to the more restrictive yellowtail flounder trip limit (i.e., that specified by this paragraph (g)) or § 648.85(a)(3)(iv)(C).

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

(j) *GB winter flounder.* Unless otherwise restricted under this part, a vessel issued a NE multispecies DAS permit, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions, and fishing in the U.S./Canada Management Area defined under § 648.85(a)(1), may not possess or land more than 5,000 lb (2,268.1 kg) of GB winter flounder per trip.

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

§ 648.87 Sector allocation.

(d) * * *

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

(i) *Eligibility.* All vessels issued a limited access NE multispecies DAS

permit are eligible to participate in the GB Cod Fixed Gear Sector, provided they have documented landings through valid dealer reports submitted to NMFS of GB cod during the fishing years 1996 to 2001, regardless of gear fished.

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

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

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

(C) Divide the sum of total landings of Sector participants calculated in paragraph (d)(2)(ii)(A) of this section by the sum of total landings by all vessels calculated in paragraph (d)(2)(ii)(B) of this section. The resulting number represents the percentage of the total GB cod TAC allocated to the GB Cod Fixed Gear Sector for the fishing year in question.

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

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

§ 648.88 NE multispecies open access permit restrictions.

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

* * * * *

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

§ 648.89 Recreational and charter/party vessel restrictions.

* * * * *

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

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

Table with 2 columns: Species and Sizes. Rows include Cod, Haddock, Pollock, Witch flounder, Yellowtail flounder, Atlantic halibut, American plaice, Winter flounder, and Redfish with their respective sizes in inches and centimeters.

* * * * *

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

* * * * *

(c) * * * (1) * * *

(i) Unless further restricted by the Seasonal GOM Cod Possession Prohibition specified under paragraph

(c)(1)(v) of this section, each person on a private recreational vessel may possess no more than 10 cod per day in, or harvested from, the EEZ.

* * * * *

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

(2) * * *

(i) Unless further restricted by the Seasonal GOM Cod Possession Prohibition, specified under paragraph (c)(2)(v) of this section, each person on a private recreational vessel may possess no more than 10 cod per day.

* * * * *

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

* * * * *

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

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

* * * * *

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

(i) Unless otherwise specified in paragraph (b)(2)(ii) of this section, each

monkfish DAS used by a limited access NE multispecies or scallop DAS vessel holding a Category C, D, F, G, or H limited access monkfish permit shall also be counted as a NE multispecies or scallop DAS, as applicable, except when a Category C, D, F, G, or H vessel with a limited access NE multispecies DAS permit has an allocation of NE multispecies Category A DAS, specified under § 648.82(d)(1), that is less than the number of monkfish DAS allocated for the fishing year May 1 through April 30. Under this circumstance, the vessel may fish under the monkfish limited access Category A or B provisions, as applicable, for the number of DAS that equal the difference between the number of its allocated monkfish DAS and the number of its allocated NE multispecies Category A DAS. For such vessels, when the total allocation of NE multispecies Category A DAS has been used, a monkfish DAS may be used without concurrent use of a NE multispecies DAS. For example, if a monkfish Category D vessel's NE multispecies Category A DAS allocation is 30, and the vessel fished 30 monkfish DAS, 30 NE multispecies Category A DAS would also be used. However, after all 30 NE multispecies Category A DAS are used, the vessel may utilize its remaining 10 monkfish DAS to fish on monkfish, without a NE multispecies DAS being used, provided that the vessel fishes under the regulations pertaining to a Category B vessel and does not retain any regulated NE multispecies. A vessel holding a Category C, D, F, G, or H limited access monkfish permit may not use a NE multispecies Category B DAS in order to satisfy the requirement of this paragraph (b)(2)(i) to use a NE multispecies DAS concurrently with a monkfish DAS.

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[FR Doc. 06-8811 Filed 10-17-06; 4:22 pm]

BILLING CODE 3510-22-P