

(5) Such other information as the Assistant Administrator, or authorized representative, may require.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 050314072-5072-01; I.D. 030705D]

RIN 0648-AS33

Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Framework Adjustment 40-B (FW 40B)

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement measures in FW 40B to the NE Multispecies Fishery Management Plan (FMP). FW 40B was developed by the New England Fishery Management Council (Council) to modify existing effort control programs implemented under Amendment 13 to the FMP to improve the effectiveness of these programs and to create additional opportunities for commercial fishing vessels in the fishery to target healthy groundfish stocks. In addition, this action includes measures that would increase the information available to assess groundfish bycatch in the herring fishery.

DATES: Comments must be received on or before April 18, 2005.

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

- E-mail: FW40B@NOAA.gov. Include in the subject line the following: "Comments on the Proposed Rule for Groundfish Framework 40B."

- Federal e-Rulemaking Portal: <http://www.regulations.gov>.

- Mail: Paper, disk, or CD-ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on the Proposed Rule for Groundfish Framework 40B."

- Fax: (978) 281-9135.

Copies of FW 40B, its Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis (IRFA), and the

Environmental Assessment (EA) are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, The Tannery - Mill 2, Newburyport, MA 01950.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule should be submitted to the Regional Administrator at the address above and to David Rostker, Office of Management and Budget (OMB), by e-mail at David_Rostker@omb.eop.gov, or fax to (202) 395-7285.

FOR FURTHER INFORMATION CONTACT:

Douglas W. Christel, Fishery Policy Analyst, (978) 281-9141, fax (978) 281-9135.

SUPPLEMENTARY INFORMATION:

Background

The Council developed Amendment 13 in order to bring the FMP into conformance with all Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requirements, including ending overfishing and rebuilding all overfished groundfish stocks. Amendment 13 was partially approved by the Secretary of Commerce on March 18, 2004. A final rule implementing the approved measures in the amendment was published April 27, 2004 (69 FR 22906) and became effective May 1, 2004. Amendment 13 contained a suite of management measures to reduce fishing mortality on stocks that are either overfished, or where overfishing is occurring. For several stocks, the mortality targets adopted in Amendment 13 represented substantial reductions from the previous levels. For other stocks, the Amendment 13 mortality targets were at or above previous levels. Because of the mixed-stock nature of the NE multispecies fishery, management measures to reduce mortality on overfished stocks adopted in Amendment 13 are expected to reduce fishing mortality more than is necessary on other, healthy stocks. As a result, yield from healthy stocks may be sacrificed and the FMP may not provide for the fishery to harvest the optimum yield (OY), the amount of fish that will provide the greatest overall benefit to the Nation, from all stocks managed under the FMP for a given year.

Amendment 13 categorized the DAS allocated to each NE multispecies permit as Category A, B (Regular), B (Reserve), or C DAS. Category A DAS can be used to target any regulated groundfish stock, while Category B DAS are to be used only to target healthy

groundfish stocks. Category C DAS cannot be used unless authorized some time in the future. The regulations implementing Amendment 13 created one opportunity to use Category B DAS: A SAP designed to target GB yellowtail flounder in CA II. Framework Adjustment 40A (FW 40A), implemented November 19, 2004 (69 FR 67780), provided additional opportunities to use Category B DAS by creating two SAP's to target GB haddock and a pilot program designed for using Category B (Regular) DAS outside of a SAP (i.e., the Regular B DAS Pilot Program). These programs are intended to allow vessels to target healthy groundfish stocks without compromising the rebuilding programs of other groundfish stocks, thus enabling the industry to harvest OY from the healthy stocks.

Since the implementation of Amendment 13 and submission of FW 40A, several issues have been raised concerning the overall approach to controlling effort. The primary purpose of FW 40B is to improve the effectiveness of the Amendment 13 effort control program, including the opportunities developed to target healthy stocks and other measures to facilitate adaptation to the Amendment 13 effort reductions.

Proposed Measures

FW 40B proposes 12 specific management measures, as described here.

1. DAS Transfer Program Modifications

Amendment 13 created a DAS Transfer Program, which allows for the permanent exchange of DAS between vessels with limited access NE multispecies permits. Exchanges of DAS through this program are subject to a number of restrictions that govern which vessels can exchange DAS, and what happens to the other permits of the vessel that is selling its DAS to another vessel. As adopted in Amendment 13, Category A and B DAS that are permanently exchanged through the DAS Transfer Program are reduced by 40 percent, while Category C DAS are reduced by 90 percent. This reduction in DAS exchanged through the DAS Transfer Program is commonly referred to as a conservation tax. FW 40B would reduce the conservation tax on Category A or B DAS that are permanently exchanged through the DAS Transfer Program to 20 percent. The conservation tax on Category C DAS exchanged under this program would not be affected by this action.

Under the existing DAS Transfer Program regulations, vessels involved in

selling and purchasing DAS must have permit baseline characteristics for length, horsepower, and gross tonnage that fall within the current size restrictions (i.e., the baseline characteristics of the vessel receiving DAS must be within 10 percent of the baseline length and gross tonnage, and within 20 percent of the baseline horsepower of the transferring vessel). The proposed action would remove the requirement that vessels transferring DAS must fall within the tonnage permit upgrade restrictions (i.e., the requirement that the vessel receiving DAS must be within 10 percent of the tonnage of the vessel selling the DAS). This action would make the size restrictions for the DAS Transfer Program consistent with the DAS Leasing Program.

The proposed provisions included in FW 40B are intended to make the DAS Transfer Program more attractive to vessels and facilitate their participation in the Program, which would result in reductions in overall fishing capacity.

2. DAS Leasing Program Modifications

Amendment 13 also implemented a DAS Leasing Program, which allows vessels to temporarily exchange DAS on a yearly basis. In order to lease DAS, the current regulations require that the permits involved in the transaction must have permit baseline characteristics for length and horsepower that fall within the current size restrictions (i.e., the baseline characteristics of the vessel receiving leased DAS must be within 10 percent of the baseline length and 20 percent of the baseline horsepower of the lessor vessel). The vessel baseline characteristics used for the DAS Leasing Program are the vessel baseline characteristics on file with NMFS as of January 29, 2004, the date of publication of the proposed rule for Amendment 13. In general, permits with smaller baseline characteristics have a larger pool of candidates with which to exchange DAS under the DAS Leasing Program.

Some permit holders have placed permits on vessels with physical characteristics that are smaller than the baseline characteristics of the permit. These vessels are, therefore, limited in the number of vessels that can be candidates for leasing DAS because they can only lease DAS that match up with the larger baseline. The proposed action would allow permit holders a one-time opportunity to downgrade the permit baseline characteristics for the DAS Leasing Program, established as of January 29, 2004, to the physical characteristics of the vessel currently

using the permit. This one-time downgrade would only apply to the DAS Leasing Program permit baseline and would not affect any other permit baselines currently specified for the permit (i.e., the baseline used for vessel upgrades or replacements). In effect, if a permit holder were to exercise this option, the permit would have two NE multispecies permit baselines: One for the DAS Leasing Program and another that applies to all other permit transactions (vessel upgrades or replacements or the DAS Transfer Program). If the permit were moved to another vessel during a vessel replacement, the downgraded DAS Leasing Program baseline would revert to the original DAS Leasing Program baseline established on January 29, 2004, and could not be downgraded again for the purposes of the DAS Leasing Program. This downgraded DAS Leasing Program baseline would remain valid until the permit is placed on a replacement vessel as specified above, or until the DAS Leasing Program expires.

3. Changes to Incidental TAC's

FW 40A implemented several programs that allow vessels to use Category B DAS to target healthy groundfish stocks without compromising the rebuilding of groundfish stocks of concern (i.e., those stocks that are currently overfished and/or are subject to overfishing). In order to limit the potential increase in fishing mortality resulting from the use of Category B (Regular and Reserve) DAS, FW 40A implemented incidental TAC amounts for each groundfish stock of concern caught by programs that allow the use of Category B DAS.

This action would modify several of the incidental TAC's established under FW 40A. First, this action would set aside up to 10 percent of the GB cod incidental TAC to allow for experimental fishing/research. This would create a research set-aside of 9.7 mt of GB cod for the 2005 fishing year and a 12.7 mt GB cod set-aside for the 2006 fishing year. Researchers could apply for this research TAC by submitting an application to the Regional Administrator by May 1. Since measures approved under FW 40B are not likely to be implemented before May 1, 2005, for the 2005 fishing year, applications would be required to be received by August 1, 2005. If no applications to use this TAC are received, the research setaside TAC of GB cod would be allocated among approved programs using Category B DAS and subject to an incidental TAC for GB cod. If applications received by

May 1, do not require the entire research setaside TAC of GB cod, the remaining setaside TAC would be distributed to the Regular B DAS Pilot Program.

As described in further detail below, FW 40B would implement a new SAP that would allow limited access NE multispecies vessels to target haddock in the WGOM Closure Area. In order to limit the potential fishing mortality on GOM cod from this SAP, this action would set an incidental TAC for GOM cod at 5 percent of the overall incidental catch TAC for GOM cod implemented under FW 40A. This would result in an incidental GOM cod TAC for the WGOM Closure Area Rod/Reel Haddock SAP of 6.3 mt for the 2005 fishing year and 7.5 mt for the 2006 fishing year. This percentage could be changed through a future management action.

4. WGOM Closure Area Rod/Reel SAP

FW 40B proposes a new SAP that would allow all limited access NE multispecies vessels to target haddock in the WGOM Closure Area using hand-operated rod-and-reel gear. Vessels issued a limited access NE multispecies permit and subject to the DAS requirements could use Category A or B (Regular or Reserve) DAS to fish in this SAP. DAS would be charged beginning when the vessel crosses the Vessel Monitoring System (VMS) demarcation line when starting a trip into the SAP, and ending when the vessel crosses the VMS demarcation line on its return to port. Vessels issued a limited access Handgear A or a Small Vessel exemption permit and not subject to the DAS requirements could also participate in this SAP without the use of DAS. Vessels fishing with bait would be required to use circle hooks, and any jigs used in this SAP could not have treble hooks.

The SAP would only be authorized for 2 months, March and April, and would expire 2 years after implementation, unless extended by the Regional Administrator. The Regional Administrator would extend this SAP if the monitoring and enforcement provisions prove sufficient to reliably document the catch of cod and haddock, if the cod and haddock TAC's specified for this SAP are not exceeded during each year of implementation; and the ratio of cod to haddock catch is less than 1:2 by weight. The total catch (kept and discarded) of GOM haddock would be limited to 50 mt, while the catch of GOM cod would be limited to five percent of the GOM cod incidental catch TAC (6.3 mt and 7.5 mt for the 2005 and 2006 fishing years, respectively). This SAP would close once the Regional Administrator projects that either the

GOM haddock or GOM cod TAC specified for this SAP has been caught. In addition, the Regional Administrator could close this SAP if the catch of cod to haddock exceeds a ratio of 1:2, by weight.

In order to enable the NMFS Observer Program to deploy the appropriate amount of observers to accurately monitor catch in this SAP, a vessel intending to participate in this SAP would be required to notify the NMFS Observer Program by telephone at least 72 hours prior to leaving port. Vessels would be required to provide the following information: Vessel name; contact name for coordination of observer deployment; telephone number of contact; and date, time, and port of departure.

All vessels participating in this SAP would be required to use an approved VMS. Vessels would be required to declare their intent to fish in this SAP via VMS and specify the type of DAS that would be used, if appropriate, prior to leaving port on a trip into the SAP. Once declared into this SAP, vessels would not be allowed to fish in any other area on the same trip. Vessels would be required to submit daily catch reports via VMS specifying the amount of haddock caught and discarded and the amount of cod discarded. Vessels would be subject to the landing limits for haddock and other species as specified in the regulations. All cod caught would have to be discarded.

Vessels with a limited access NE multispecies DAS permit that elect to fish in this SAP would be required to participate in this SAP for a minimum of 7 days by obtaining a letter of authorization from the Regional Administrator. While enrolled to participate in this SAP, limited access NE multispecies DAS vessels would not be allowed to fish for groundfish or monkfish, including setting gear capable of catching groundfish or monkfish, in any other area.

5. CA II Yellowtail Flounder SAP

Amendment 13 created a SAP to target GB yellowtail flounder in the southern half of CA II from June 1 through December 31. A total of 320 trips was authorized, with vessels limited to two trips per month. The possession limit for yellowtail flounder was set at 30,000 lb (13,608 kg) per trip.

This SAP is regulated by the maximum number of trips and by the availability of the GB yellowtail flounder TAC allocated to the U.S./Canada Management Area. During the 2004 fishing year, the total number of trips allowed into this SAP was used by September 3, 2004, prompting NMFS to

close the SAP for the remainder of the fishing year (69 FR 54593, September 9, 2004). In addition, the high rate of GB yellowtail flounder caught in this SAP triggered reductions in the GB yellowtail flounder trip limit and the eventual closure of the Eastern U.S./Canada Area by October 1, 2004 (69 FR 59815, October 6, 2004). This area has since been reopened under a restrictive GB yellowtail flounder trip limit of 15,000 lb (6,804 kg) per trip (70 FR 2820, January 18, 2005), which was then reduced to 5,000 lb (2,268 kg) per trip (70 FR 7050, February 10, 2005).

FW 40B would modify this SAP by changing the start date for the SAP and enabling the Regional Administrator to adjust SAP provisions to adapt to changing stock and fishery conditions. Specifically, this action would change the start date for this SAP from June 1 to July 1. June is a spawning month for yellowtail flounder on GB and the fish are in relatively poor condition and bring low prices during that period. In addition, FW 40B would limit vessels to one trip per month, reduce the possession limit to 10,000 lb (4,536 kg), and establish criteria by which the Regional Administrator may set the GB yellowtail flounder landing limit (not to exceed 30,000 lb (13,608 kg)) and the total number of trips into this SAP based upon the amount of GB yellowtail flounder TAC (set in accordance with the U.S./Canada Resource Sharing Understanding) and the amount of GB yellowtail flounder caught outside of the SAP.

Using specific criteria, a formula was developed in FW 40B to assist the Regional Administrator in determining the appropriate number of trips for this SAP on a yearly basis. The suggested formula offered by the Council is as follows: Number of trips = (GB yellowtail flounder TAC - 4,000 mt) / 4.54 mt. Note that 4.54 mt is equivalent to 10,000 lb. This formula assumes that approximately 4,000 mt of GB yellowtail flounder would be caught by vessels operating in the U.S./Canada Management Area outside of the CA II Yellowtail Flounder SAP. FW 40B would authorize the Regional Administrator to not allow any trips into this SAP if the available GB yellowtail flounder catch (i.e., the GB yellowtail flounder TAC - 4,000 mt) is not sufficient to support 150 trips with a 15,000-lb (6,804-kg) GB yellowtail flounder trip limit. Based on the preliminary GB yellowtail flounder TAC recommended by the Transboundary Management Guidance Committee and the Council for the 2005 fishing year (4,260 mt), and using the formula proposed in FW 40B to determine the

appropriate number of trips for fishing year 2005, there would be insufficient GB yellowtail flounder TAC to support the CA II Yellowtail Flounder SAP for the 2005 fishing year.

These measures are intended to allow the SAP to be adjusted for changing stock conditions to help achieve OY for GB yellowtail flounder. These changes would help increase product quality by beginning the SAP after the spawning season and help reduce the possibility that a derby fishery would occur, resulting in low prices and an early closure of the Eastern U.S./Canada Area.

6. Minimum Effective Effort Allocation

Amendment 13 categorized the DAS allocated to each permit based on recent fishing history. Under Amendment 13, about 400 vessels did not receive any Category A or B DAS, and thus have no opportunity to fish for groundfish with their limited access permit. The proposed action would re-categorize 10 Category C DAS as Category B (Reserve) DAS for these permits. These DAS can only be used in approved SAP's that do not have a DAS flipping requirement. Only the WGOM Closure Area Rod/Reel Haddock SAP as proposed in FW 40B would not have a DAS flipping requirement. Therefore, vessels allocated 10 Category B (Reserve) DAS under this proposed action would only be able to participate in the WGOM Closure Area Rod/Reel Haddock SAP, if approved.

7. GB Cod Hook Sector Revisions

Amendment 13 established the GB Cod Hook Sector and allocated GB cod to the Sector based on the history of the Sector participants. As implemented, only permitted vessels with a past history of using hook gear can join the Sector, and only GB cod landed using hook gear is used to determine the Sector's GB cod allocation. The proposed action would modify these requirements by allowing any vessel to join the Sector and allow all GB cod landings of Sector participants, regardless of gear, to be used to determine the Sector's GB cod allocation. Sector participants are required to use hook gear once in the Sector. The maximum share of the GB cod TAC that the Sector could obtain would remain 20 percent of the overall GB cod TAC.

8. DAS Credit for Standing By Entangled Whales

Rescue teams that attempt to free entangled whales are often frustrated by an inability to relocate the whale after the initial report. In order to encourage fishing vessels to report entangled

whales, the proposed action would provide a mechanism for a limited access groundfish vessel to obtain DAS credit for the time spent standing by an entangled whale. Vessels requesting such a credit would be required to notify the USCG and the appropriate organization of the entangled whale (currently, the Center for Coastal Studies); remain in contact with the Center for Coastal Studies; be available to answer questions on the condition of the animal, including, but not limited to, possible species identification, severity of entanglement, and gear entangling the animal; and request the Regional Administrator to issue a DAS credit.

9. Herring Vessel Interactions With Regulated Groundfish

Recent reports of the catch of regulated groundfish by herring fishing vessels (most notably mid-water trawl vessels) have prompted an interest in gaining a better understanding of the scope of this problem. To date, very few data are available to adequately document groundfish bycatch from the herring fishery. The proposed action would require vessels with a Category I herring permit that intend to fish in the GOM or GB RMA's to notify the NMFS Observer Program at least 72 hours before beginning a trip. In addition, if an observer is not provided for the trip, the vessel must notify NMFS Office of Law Enforcement via VMS of the time and place of landing prior to crossing the VMS demarcation line on returning to port. These provisions are intended to improve the ability to place an observer on herring vessels to monitor groundfish bycatch.

10. Trip Gillnet Net Limitations

Prior to May 1, 2002, Trip gillnet vessels did not have a regulatory limit on the number of nets that could be fished, but rather were limited by the number of nets that could be physically carried on board the vessel. Effort was thus limited by the size of the vessel, as well as the number of DAS allocated to that vessel, similar to the approach used for trawl gear. Net limits were first adopted for Trip gillnet vessels under the interim regulations implemented on August 1, 2002 (67 FR 50292) in response to the Settlement Agreement in the case *Conservation Law Foundation, et al., v. Evans*. Amendment 13 revised the number of nets that could be carried aboard and fished, but did not remove the new limit completely. The proposed action would remove the limit on the number of nets that could be carried onboard by Trip gillnet vessels, because this measure is now considered

unnecessary. Thus, this measure would restore the net limits for Trip gillnet vessels that were in place prior to the Settlement Agreement. In doing so, this action would also remove the tagging requirements for Trip gillnet vessels.

11. Dumping Prohibition for Vessels Under a Category B DAS

FW 40A implemented two programs (the Eastern U.S./Canada Haddock SAP Pilot Program and the Regular B DAS Pilot Program) that allow vessels to use Category B DAS to target healthy groundfish stocks without compromising the rebuilding objectives of the FMP. To minimize the mortality on stocks of concern from vessel activities in these new programs, as well as the CA II Yellowtail Flounder SAP implemented under Amendment 13, FW 40A implemented measures that prohibit vessels from discarding legal-sized cod and other regulated groundfish when fishing under a Category B DAS. These measures also require vessels to initiate a DAS flip (i.e., change the category of DAS used on that trip to Category A DAS) if vessels harvest more legal-sized cod or other regulated groundfish than the applicable maximum landing limits per trip under a Category B DAS. The current regulations, however, do not explicitly address whether dumping the contents of a net before bringing the net on board constitutes discarding. Through this action, NMFS proposes to implement an explicit measure to clarify that dumping of the contents of a net when operating under a Category B DAS in the CA II Yellowtail Flounder SAP, the Eastern U.S./Canada Haddock SAP Pilot Program, or the Regular B DAS Pilot Program is prohibited because it is considered to be discarding as defined at 50 CFR 600.10.

12. Corrections

In addition to the proposed measures described here, the following changes are proposed to correct inaccurate references in the regulations. The proposed changes listed below are in the order in which they currently appear in the regulations.

In § 648.10, the periods ending paragraphs (b)(1)(vi) and (b)(1)(vii) would be corrected to semicolons.

In § 648.14, the reference to the restrictions and conditions for the CA II Yellowtail Flounder SAP in paragraph (a)(136) would be expanded to include § 648.85(b)(3)(xi).

In § 648.14, under paragraph (a)(139), the reference to the number of trips specified under § 648.85(b)(3)(vii) would be expanded to include the

monthly trip limits for vessels specified in § 648.85(b)(3)(vi).

In § 648.82, paragraphs (k)(4)(ix) and (l)(1)(ii) would be revised to clarify that vessels can lease or transfer DAS to a vessel with a baseline length overall and horsepower that is no more than 10 percent and 20 percent greater than the baseline length overall and horsepower of the lessor or transferor vessel, respectively. This revision would correct the regulations to maintain consistency with the intent of Amendment 13 as outlined in the FSEIS.

Request for Comments

The public is invited to comment on any of the measures proposed in this rule. NMFS is especially interested in receiving comments on several proposed measures for which the agency has concern, particularly regarding whether these measures are consistent with achieving the objectives of the FMP and the fishing mortality reduction objectives established in Amendment 13, whether there is sufficient analysis in the EA to support the proposed measures, and whether there are equity concerns involving specific measures. The reasons for these concerns are described below:

WGOM Closure Area Rod/Reel Haddock SAP

FW 40B proposes to implement a SAP in the WGOM Closure Area. Amendment 13 states that the purpose of a SAP is to enable vessels to target regulated groundfish while minimizing impacts of fishing on overfished stocks. The proposed WGOM Closure Area Rod/Reel Haddock SAP would allow rod/reel vessels to target GOM haddock in the WGOM Closure Area while minimizing the bycatch of GOM cod (GOM cod is currently considered overfished). However, the analysis in the EA, based on the best scientific information available, indicates that rod/reel vessels may not be able to target GOM haddock in the WGOM Closure Area without also catching substantial amounts of GOM cod. In addition, available catch information used for this analysis is not consistent with vessel operations as proposed in FW 40B. Although this action proposes several measures that would limit the potential impact of this SAP (e.g., limited season, 2-year pilot program duration, small incidental cod TAC, and the authority for the Regional Administrator to close this SAP, etc.), there may not be sufficient data to justify this SAP given the Amendment 13 objective to minimize bycatch and the potential impacts of SAP's on overfished stocks.

Furthermore, the WGOM Closure Area Rod/Reel Haddock SAP appears to represent substantial administrative and industry burdens without significant benefits to the fishery.

GB Cod Research Set-aside

FW 40B proposes to set aside up to 10 percent of the GB cod incidental catch TAC to facilitate research. This TAC would be distributed to research proposals submitted to NMFS by May 1 of every year. However, the FW 40B document does not specify criteria for determining which proposals should be allocated this setaside research TAC. Further, the document does not describe a mechanism by which this TAC should be distributed to researchers. Without sufficient detail about how to administer this provision, including the process and mechanism by which proposals to use the GB incidental cod TAC research set-aside will be considered and TAC distributed, there may not be sufficient information to implement this provision.

Minimum Effective Effort Allocation

FW 40B would re-categorize 10 Category C DAS to Category B Reserve DAS for any vessel allocated zero Category A or B (Regular and Reserve) DAS under Amendment 13. This would result in approximately 400 vessels with a minimum of 10 Category B Reserve DAS. However, there are a number of vessels that have been allocated Category A and B (Regular and Reserve) DAS under Amendment 13, but were allocated less than 10 Category B Reserve DAS. Therefore, not every vessel in the NE multispecies fishery would have an equal minimum number of Category B Reserve DAS under this provision. NMFS raises this issue due to concerns over whether this provision is fair and equitable as required under National Standard 4 of the Magnuson-Stevens Act.

Finally, NMFS specifically invites comments on whether NMFS should post vessels' DAS allocation information on the Northeast Regional Office website for the purposes of facilitating participation in the DAS Leasing/Transfer Programs.

Classification

At this time, NMFS has not determined that the framework adjustment that this proposed rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for the purposes of Executive Order (E.O.) 12866.

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

NMFS prepared an IRFA as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this proposed rule and in the Executive Summary and Section 3.2 of FW 40B.

As described above, the proposed action would implement one new SAP and modify existing effort control programs implemented under Amendment 13 to help mitigate the economic impacts resulting from effort reductions in Amendment 13 and to improve the effectiveness of these effort control programs, respectively. The proposed alternative was compared to the No Action alternative and four other non-selected alternatives. In this analysis, the baseline (No Action alternative) is the set of measures currently in place for the NE multispecies fishery through the November 19, 2004, implementation of measures contained in FW 40A. The non-selected alternatives contained in FW 40B include various combinations of the measures proposed in this action, as well as other provisions that are not included in the proposed alternative. The provisions in these non-selected alternatives that are not included in the proposed alternative are described in further detail below.

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

The proposed action would affect any vessel currently issued a limited access NE multispecies permit, vessels issued a Category 1 herring permit, and researchers interested in conducting research impacting GB cod. Currently, there are approximately 1,500 vessels issued a limited access NE multispecies permit and 105 vessels issued a Category 1 herring permit. However, it is very unlikely that every vessel issued a limited access NE multispecies permit or a Category 1 herring permit would be affected by this proposed action because of past and recent participation in the fishery, the voluntary nature of specific programs proposed in this action, and the associated regulatory and economic cost burdens for some of the proposed

provisions. Except for the notification requirements for Category 1 herring vessels, all of the provisions in the proposed rule are voluntary. Therefore, vessels that participate in these programs would likely have determined that the benefits of their participation outweigh costs associated with these programs. Based upon the information in the EA prepared for FW 40B, all 1,500 vessels issued a limited access NE multispecies permit would be eligible to participate in the DAS Leasing and DAS Transfer Programs, up to 91 vessels may participate in the WGOM Closure Area Rod/Reel Haddock SAP, up to 1,409 vessels (i.e., vessels issued a limited access NE multispecies DAS permit) may participate in the CA II Yellowtail Flounder SAP or elect to stand by an entangled whale; and up to 1,351 vessels issued a limited access NE multispecies DAS permit that are currently not members of the GB Cod Hook Sector would be eligible to enter the GB Cod Hook Sector. Currently, the 53 vessels designated as Trip gillnet vessels would be affected by the removal of the net limit proposed in this action.

The Small Business Administration (SBA) size standard for small commercial fishing entities is \$ 3.5 million in gross receipts and would apply to limited access NE multispecies permit holders and vessels issued a Category 1 herring permit. Data analyzed for Amendment 13 indicated that the maximum gross receipt for any single commercial fishing vessel for the period 1998 to 2001 was \$ 1.3 million. Data analyzed in FW 40B indicate that Category 1 herring vessels averaged approximately \$1.26 million in gross sales. For this reason, each vessel in this analysis is treated as a single entity for the purposes of size determination and impact assessment. All commercial fishing entities affected by this proposed rule would fall under the SBA size standard for small commercial fishing entities, and there would be no disproportionate impacts between small and large entities.

Economic Impacts of the Proposed Action

The proposed action would reduce the conservation tax for Category A and B DAS exchanged through the DAS Transfer Program to facilitate consolidation of the groundfish fleet through market-based incentives. Currently, Category A and B DAS exchanged through the DAS Transfer Program are subject to a 40 percent conservation tax, while Category C DAS are subject to a 90-percent conservation tax. In addition, the vessel selling its

DAS must exit all fisheries. This action would reduce the conservation tax for Category A and B DAS exchanged to 20 percent, but would retain the 90-percent conservation tax for Category C DAS. This reduction would increase the potential value of a DAS exchanged under the DAS Transfer Program, but it is not known whether the conservation tax itself prohibits vessels from participating in this program. Unless the selling vessel holds no other limited access permits, the selling vessel may not be able to recoup the full value of the permit by selling the NE multispecies DAS alone. This is because the opportunity cost to the seller may be quite high if the vessel is required to retire from all other fisheries. However, overall, this action would be expected to increase the potential return to both buyers and sellers and have a beneficial impact on small entities of uncertain magnitude.

FW 40B would also remove the tonnage criterion for the DAS Transfer Program. This would make the DAS Transfer Program subject to the same baseline size conditions as the DAS Leasing Program. Removal of the tonnage criterion is expected to make it more likely that vessels would be able to find compatible vessels to exchange DAS under the DAS Transfer Program. It is unknown if this provision would facilitate additional DAS transfers, but it is likely that economic impacts from this provision would be positive.

FW 40B proposes to allow vessels a one-time opportunity to downgrade the permit baseline characteristics established for the DAS Leasing Program to reflect the physical characteristics of the vessel currently using the permit. This is expected to increase the potential pool of vessels available to lease DAS. The economic impact of this provision is likely to be positive, though the number of vessels that might downgrade their DAS Leasing Program baseline and the economic value of that downgrade is not quantifiable.

The proposed action would set aside 10 percent of the GB cod incidental catch TAC to facilitate research. In addition, this action would change the allocation of incidental catch TAC's to accommodate the proposed bycatch of GOM cod in the WGOM Closure Area Rod/Reel Haddock SAP. Although this action would reduce the allocation of incidental catch TAC's to the Category B DAS programs implemented under FW 40A (i.e., the Regular B DAS Pilot Program and the approved SAP's), the overall target TAC's for the fishery, and therefore the incidental catch TAC's, would be higher in fishing year 2005

than in fishing year 2004 (as specified in Amendment 13). As a result, despite the reallocation of the incidental catch TAC's, the amount of catch available to the Category B DAS programs would actually increase, thereby increasing the economic opportunities of both the previously approved programs and the SAP proposed under this action.

FW 40B proposes to implement the WGOM Closure Area Rod/Reel Haddock SAP, which would allow all limited access NE multispecies vessels to target haddock in the GOM in fishing years 2005 and 2006. This SAP would help mitigate some of the economic impacts resulting from the effort reductions in Amendment 13 and provide an opportunity for vessels, particularly small vessels in the GOM, to use Category B DAS to target healthy groundfish stocks. This SAP would be able to use hand-tended rod/reel gear to fish for haddock within the WGOM Closure Area during March and April. SAP participants could catch up to 50 mt of GOM haddock and up to 6.3 mt GOM cod, though vessels would not be able to retain any cod. Once these TAC's are caught, the SAP would be closed. The 50 mt TAC for haddock caught in this SAP would limit economic benefits to \$140,000, based on the value of \$1.27 per pound, the average price for the 2003 fishing year. Given that hook gear primarily catches cod and haddock, there is unlikely to be sufficient other catch to contribute to potential trip income. Limited information is available that would accurately assess whether vessels could selectively catch haddock without also catching substantial amounts of cod. Therefore, there is the potential that the 6.3-mt GOM cod bycatch TAC could limit the achievement of the full economic benefits from this SAP.

The CA II Yellowtail Flounder SAP was implemented under Amendment 13. The proposed action would revise the season, adjust the trip limit, limit the number of trips that could be taken, and establish a process that would allow the Regional Administrator to help achieve OY from the yellowtail flounder TAC and ensure that the SAP does not conflict with the management objectives outside of the SAP. In general, most of the proposed changes to the SAP would help mitigate the derby effects by spreading out landings over time and help ensure that the GB yellowtail flounder TAC is available throughout the fishing year. Limiting the number of trips that could be taken, in addition to lowering the trip limit to 10,000 lb (4,536 kg), could potentially avoid dramatic drops in ex-vessel price that result when large amounts of yellowtail

flounder are landed at one time. Beginning the SAP in July instead of June would also contribute to higher landings prices, as prices for yellowtail flounder have historically been lower in June than other months. While regulating the supply of yellowtail flounder may offer vessels higher landings prices, these restrictions could also increase costs by increasing the number of trips necessary to harvest the available TAC. However, the proposed measures could help avoid the premature closing of the Eastern U.S./Canada Area due to the achievement of the GB yellowtail flounder TAC. This would enable vessels greater opportunity to fully harvest the available GB cod and GB haddock TAC allocated to the Eastern U.S./Canada Area and achieve the full economic benefit from the U.S./Canada Management Area for vessels operating under a Category A DAS.

This action proposes to re-categorize 10 Category C DAS as Category B (Reserve) DAS for vessels allocated zero Category A or B DAS under Amendment 13. These DAS could only be used in a SAP that does not include a DAS flipping provision (currently, only the WGOM Closure Area Rod/Reel SAP proposed in this action). The economic impact of this provision is expected to be positive for vessels receiving a minimum allocation. However, this provision could adversely affect other vessels that were allocated Category A or B DAS under Amendment 13 by increasing the number of potential participants in SAP's and spreading the limited potential benefits of these SAP's among more vessels.

FW 40B would also change the manner in which the GB Cod Hook Sector allocation is calculated by allowing all vessels and all landings, regardless of gear, to count towards the Sector's GB cod allocation. This could increase the Sector's share of the overall GB cod TAC. While Sector vessels would be able to increase overall fishing revenues from the increased allocation of GB cod, this provision would subsequently reduce the amount of GB cod TAC available to non-Sector vessels. Even though the TAC available to non-Sector vessels is a target TAC and would not result in area closures, the diminished non-Sector GB cod TAC could potentially result in a small increase in the probability that the GB cod target TAC would be exceeded.

The proposed action would provide an incentive for vessels to report and stand by an entangled whale by allowing vessels to receive a DAS credit for the time spent standing by an entangled whale. Increasing the

possibility that an entangled whale could be successfully tracked and disentangled would result in positive existence and non-consumptive use values to the public.

Under the proposed action, Category 1 herring vessels would be required to notify the NMFS Observer Program at least 72 hours prior to fishing for herring in the GOM or GB RMA's. In addition, if an observer is not provided for the trip, the vessel must notify NMFS Office of Law Enforcement via VMS prior to offloading the catch. These requirements are likely to impose some costs associated with reduced trip flexibility. However, it is now known the extent to which this provision would compromise economic efficiency of herring vessel operations.

Finally, this action would remove the net limit for Trip gillnet vessels. Removing the net limit would eliminate the need for gillnet tags for groundfish gillnets (a reduction in costs of \$180 per vessel), reducing time required to switch tags over to different sized nets during vessel operations. This would provide greater flexibility in vessel operations, resulting in unknown positive economic benefits. This provision could increase the number of gillnets used by Trip gillnet vessels leading to potential increases in vessel revenue associated with higher landings.

Economic Impacts of Alternatives to the Proposed Action

The No Action alternative would provide no new opportunities for economic benefits above the current level. Under the No Action alternative, the economic impacts likely to result are those specified in the analysis for FW 40A as implemented on November 19, 2004. By selecting the No Action alternative, incentives to participate in the DAS Leasing or DAS Transfer Programs proposed under this action, such as the reduction in the conservation tax, removal of the tonnage criterion, and the opportunity to downgrade the DAS Leasing Program baseline, would not be available. This could continue to limit vessel participation in these programs and the associated potential economic benefits associated with increased fleet efficiency. Under the No Action alternative, vessels would not be able to participate in the WGOM Closure Area Rod/Reel Haddock SAP and would forego potential associated revenues. Selection of the No Action alternative would mean that the derby effects in the CA II Yellowtail Flounder SAP would continue and the GB yellowtail flounder TAC could be harvested before the end

of the fishing year. This could result in decreased prices for yellowtail flounder and reduced economic opportunities for the U.S./Canada Management Area by limiting the potential for vessels to fully harvest the GB cod and GB haddock TAC's in the Eastern U.S./Canada Area. In addition, vessels allocated zero Category A or B DAS would not be allocated additional DAS and would therefore not be able to increase revenue through participation in the NE multispecies fishery. Vessels that have previously used gear other than hook gear would have fewer incentives to join the GB Cod Hook Sector and Sector vessels would continue to fish under the current lower GB cod TAC level under the No Action alternative. Finally, Trip gillnet vessels would continue to be restricted to net limitations and the gillnet tag requirements, resulting in increased operational costs and reduced efficiency.

FW 40B considered four other non-selected alternatives. These alternatives consisted of various combinations of all of the provisions described in FW 40B, including some that were not specified in the proposed alternative. The first non-selected alternative, Alternative 1, includes every provision described in FW 40B. Alternative 1 differs from the proposed alternative by including additional options for the DAS Leasing and Transfer Programs conservation tax, modifications to the non-groundfish permit transfer provisions of the DAS Transfer Program, the GB Haddock SAP North of CA I, an option that would allow only NE multispecies DAS vessels to participate in the WGOM Closure Area Rod/Reel Haddock SAP, options to recalculate the baseline DAS allocation implemented under Amendment 13, options to prohibit herring vessels from fishing in the NE multispecies closed areas, and a minimum observer requirement for vessels to participate in Category B DAS programs. Alternative 2 is identical to the proposed alternative without identifying specific options for several of the proposed measures. Alternative 3 differs from the proposed alternative in that it would not change the current conservation tax for the DAS Leasing and Transfer Programs, includes modifications to the non-groundfish permit transfer provisions of the DAS Transfer Program, and does not include modifications to the GB Cod Hook Sector allocation calculation. Alternative 4 differs from the proposed alternative in that it includes the GB Haddock SAP North of CA I, but does not include modifications to the GB Cod Hook Sector allocation calculation. For this analysis, the economic impacts of

the provisions not included in the preferred alternative are considered and described below.

The non-selected options for revising the conservation tax for the DAS Leasing and Transfer Programs in FW 40B would have adopted either a 10 or a 20-percent conservation tax for both the DAS Leasing and Transfer Programs. This would represent reductions in the conservation tax for the DAS Transfer Program, but an increase in the conservation tax for the DAS Leasing Program. Reducing the conservation tax for the DAS Transfer Program would increase the value of DAS exchanged through this program. Conversely, increasing the conservation tax for the DAS Leasing Program would likely decrease the market value of DAS exchanged through this program. The conservation tax on leased DAS would likely result in greater adverse economic impact on small entities as compared to any economic gains resulting from greater incentives to participate in the DAS Transfer Program. Since the proposed alternative would reduce the conservation tax for the DAS Transfer Program, but not implement a conservation tax for the DAS Leasing Program, greater economic benefits are expected from the proposed measure than the non-selected measures for this provision.

Non-selected measures to modify non-groundfish permit transfers under the DAS Transfer Program include allowing vessels receiving DAS under this program to also accept other non-groundfish permits, allowing vessels to refuse other non-groundfish permits in lieu of a conservation tax on DAS exchanged, and allowing for the removal of a proxy vessel instead of requiring the transferring vessel to retire from all fisheries. These options would likely increase the potential value of DAS exchanged under the DAS Transfer Program. The economic impact of each of these non-selected measures is uncertain, but expected to be positive compared to the current DAS Transfer Program restrictions and, therefore, the proposed alternative. While the economic benefits of these non-selected measures would likely be greater than the proposed alternative, a lack of sufficient detail regarding the application of these measures and the implications of these measures on catch history and other FMP's prevented further consideration.

Another SAP to target GB cod in an area north of CA I was not selected for this proposed action. This SAP would allow all NE multispecies vessels equipped with a VMS to fish for up to 2,000 mt of haddock using a haddock

separator trawl. Information detailing the performance of the haddock separator trawl is not available. However, previous landings by vessels fishing in the area encompassed by the SAP with conventional trawl gear provides an estimate of the potential economic benefits from this provision. Using an average revenue of \$5,700 per day and assuming that the 1,000 mt haddock TAC would be caught in 238 DAS, the potential revenue from this SAP is estimated at \$1.4 million. Increasing the haddock TAC to 2,000 mt through the authority of the Regional Administrator would generate approximately \$2.4 million in potential revenues. Current regulations allow vessels to fish in the area defined for this SAP. As a result, given the restrictive measures and monitoring requirements involved with this SAP, this measure would likely provide few additional opportunities for fishermen at the cost of considerable additional complexity in the fishery.

The non-selected option for the eligible participants in the WGOM Closure Area Rod/Reel Haddock SAP would have limited participation in this SAP to only limited access NE multispecies DAS vessels. This would exclude vessels issued a limited access Handgear A or a Small Vessel Exemption permit from participating in this SAP, resulting in unknown impacts on small entities.

Two options for changing the effective effort calculation (i.e., DAS baselines) implemented under Amendment 13 were considered for this action. One option would calculate effective effort based on the maximum number of DAS between 1996–2001 without being limited by the 2001 DAS allocation, but including carry-over DAS. The other option would calculate effective effort in the same manner, without considering carry-over DAS. These options would increase the total baseline allocation for the fishery. However, to remain consistent with the conservation objectives of Amendment 13, the split between Category A and B DAS would need to be adjusted. These options would reduce Category A DAS for at least 80 percent of all vessels with a non-zero effective effort baselines, resulting in an average loss of \$5,200 per vessel. For the remaining vessels that would gain Category A DAS under these options, the average revenue gains would total \$35,000 per vessel. As a result, the net economic benefits for these options total \$2.8 million and \$2.2 million, respectively. These benefits would have distributive effects as benefits would accrue to larger vessels and would shift between states. Given

the distributive effects of these options and the fact that an overwhelming majority of small entities would be negatively affected by these options, neither option was selected for this action.

Three options were considered to prohibit herring vessels from fishing in groundfish closed areas. Option 1 would prohibit only herring mid-water trawl vessel access to the closed areas, Option 2 would prohibit herring mid-water and purse seine vessel access to the closed areas, and Option 3 would prohibit only herring purse seine vessel access to the closed areas. Aggregate economic impacts were only estimated for Option 2, as confidentiality concerns prevent reporting the economic impacts of Options 1 and 3. Option 2 would result in an average revenue loss of \$52,000 per vessel affected. Although the economic impacts for Option 1 and 3 are not specified, these options would likely result in smaller adverse economic impacts to affected vessels. As a result, these options would have larger adverse economic impacts on small entities fishing for herring than the proposed alternative.

Finally, FW 40B considered a measure that would prevent a vessel that is not capable of carrying aboard an observer from participating in an approved SAP. This would likely result in greater costs to smaller vessels that do not have the required safety equipment necessary to carry an observer.

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

Reporting and Recordkeeping Requirements

The proposed measures in FW 40B include the following provisions requiring either new or revised reporting and recordkeeping requirements: (1) GB cod research set-aside TAC request; (2) VMS purchase and installation; (3) VMS proof of installation; (4) automated VMS polling of vessel position; (5) declaration of intent to participate in the WGOM Closure Area Rod/Reel Haddock SAP and DAS to be used via VMS prior to each trip into this SAP; (6) LOA request to participate in the WGOM Closure Area Rod/Reel Haddock SAP; (7) notice requirements for observer deployment prior to every trip into the WGOM Closure Area Rod/Reel Haddock SAP; (8) notice requirements for observer deployment prior to every trip for Category 1 herring vessels intending to fish in the GOM or GB RMA's; (9) NMFS Office of Law Enforcement landings

notice requirement for Category 1 herring vessels operating with an observer waiver; (10) Notification and communication with USCG and Center for Coastal Studies for standing by an entangled whale; (11) Request for DAS Credit for standing by an entangled whale; (12) daily VMS catch reports for vessels participating in the WGOM Closure Area Rod/Reel Haddock SAP; and (13) vessel baseline downgrade request for the DAS Leasing Program.

The measures proposed under FW 40B would result in several costs to participants. Researchers would be subject to postage costs of \$2 per year for submitting requests for portions of the GB cod research set-aside TAC. To participate in the WGOM Closure Area Rod/Reel Haddock SAP, vessels would be required to use VMS. Costs not previously authorized under the Paperwork Reduction Act (PRA) involved with VMS operation include monthly operational costs associated with fees charged by the individual VMS vendor for satellite connection, as well as service and maintenance charges. The cost of the purchase and installation of VMS units to vessels participating in the NE multispecies fishery have already been considered and approved in a previous PRA submission. NMFS has currently certified two vendors to provide VMS services. A conservative cost estimate, based on operational charges for the Boatracs VMS vendor, is approximately \$150 per month for each NE multispecies vendor. These monthly operational costs have previously been considered and approved in a previous PRA submission for most of the NE multispecies fishery. However, for this action, an additional 50 vessels are likely to use VMS that were not considered previously. Therefore, for this action, the yearly VMS operational costs, per vessel, for VMS usage under the proposed provisions in FW 40B are \$1,800. Costs associated with VMS notifications to NMFS Office of Law Enforcement for Category 1 herring vessels not issued an observer waiver total approximately \$3 per vessel, assuming a 50– percent observer coverage rate and a total of 1,337 trips per year. There would be no costs associated with communicating with the USCG or the Center for Coastal Studies regarding standing by an entangled whale. Written requests to receive a DAS credit for standing by an entangled whale would cost the public \$3.70 for postage, assuming 10 such requests would be submitted per year. Daily catch reports submitted for the WGOM Closure Area Rod/Reel Haddock SAP

total approximately \$116 per year for all vessels participating in this SAP. The costs associated with vessel baseline downgrade requests for the DAS Leasing Program total \$518, assuming every vessel would downgrade their DAS Leasing Program baseline in one year.

Public Reporting Burden

This proposed rule contains collection-of-information requirements subject to review and approval by OMB under the PRA. This requirement has been submitted to OMB for approval. Public reporting burden for these collections of information are estimated as specified below.

1. GB cod research set-aside TAC request, OMB# 0648-0202 (30 min/response);

2. VMS purchase and installation, OMB# 0648-0202, (1 hr/response);

3. VMS proof of installation, OMB# 0648-0202, (5 min/response);

Automated VMS polling of vessel position, OMB# 0648-0202, (5 sec/response);

4. Declaration of intent to participate in the WGOM Closure Area Rod/Reel Haddock SAP and DAS to be used via VMS prior to each trip into this SAP, OMB# 0648-0202, (5 min/response);

5. LOA request to participate in the WGOM Closure Area Rod/Reel Haddock SAP, OMB# 0648-0202, (5 min/response);

6. Notice requirements for observer deployment prior to every trip into the WGOM Closure Area Rod/Reel Haddock SAP, OMB# 0648-0202, (2 min/response);

7. Notice requirements for observer deployment prior to every trip for Category 1 herring vessels intending to fish in the GOM or GB RMA's, OMB# 0648-0202, (2 min/response);

8. NMFS Office of Law Enforcement landings notice requirement for Category 1 herring vessels operating with an observer waiver, OMB# 0648-0202, (5 min/response);

9. Notification and Communication with USCG and Center for Coastal Studies, OMB# 0648-0202, (10 min/response);

10. Written requests to receive a DAS credit for standing by an entangled whale, OMB# 0648-0202, (30 min/response);

11. Daily electronic reporting of kept and discarded catch while participating in the WGOM Closure Area Rod/Reel Haddock SAP, OMB# 0648-0212, (15 min/response); and

12. Vessel baseline downgrade request for the DAS Leasing Program, OMB# 0648-0475, (1 hr/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 information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS and to OMB (see **ADDRESSES**).

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

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 23, 2005.

Rebecca Lent,

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

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

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

2. In § 648.9, paragraph (c)(1)(ii) is revised to read as follows:

§ 648.9 VMS requirements.

* * * * *

(c) * * *

(1) * * *

(ii) NMFS may initiate, at its discretion, the transmission of a signal indicating the vessel's accurate position, at least twice per hour, 24 hours a day, for all NE multispecies DAS vessels that elect to fish with a VMS specified in § 648.10(b) or that are required to fish with a VMS as specified in § 648.85(a), for each groundfish DAS trip that the vessel has elected to fish in the U.S./Canada Management Areas, and as specified in § 648.85(b) for each groundfish trip that the vessel has elected to fish in either the CA II

Yellowtail Flounder SAP, the CA I Hook Gear Haddock SAP, the Regular B DAS Pilot Program, the Eastern U.S./Canada Haddock SAP Pilot Program, or the WGOM Closure Area Rod/Reel Haddock SAP.

* * * * *

3. In § 648.10, paragraphs (b)(1)(vi) through (viii) and (b)(3)(i)(D) are revised, and paragraphs (b)(1)(ix) and (b)(3)(i)(E) are added to read as follows:

§ 648.10 DAS notification requirements.

* * * * *

(b) * * *

(1) * * *

(vi) A vessel issued a limited access NE multispecies permit electing to fish under the U.S./Canada Resource Sharing Understanding, as specified in § 648.85(a);

(vii) A vessel electing to fish under the Regular B DAS Pilot Program, as specified in § 648.85(b)(6);

(viii) A vessel electing to fish in the Closed Area I Hook Gear Haddock SAP, as specified in § 648.85(b)(7); and

(ix) A vessel electing to fish in the WGOM Closure Area Rod/Reel Haddock SAP, as specified in § 648.85(b)(9).

* * * * *

(3) * * *

(i) * * *

(D) Fish in the CA I Hook Gear Haddock SAP specified in § 648.85(a)(7); or

(E) Fish in the WGOM Closure Area Rod/Reel Haddock SAP specified in § 648.85(b)(9).

* * * * *

4. In § 648.14, paragraphs (a)(136), (a)(139), and (c)(14) are revised; and paragraphs (a)(165) through (a)(176), (c)(80), (bb)(19), and (bb)(20) are added to read as follows:

§ 648.14 Prohibitions.

* * * * *

(a) * * *

(136) If fishing under the Closed Area II Yellowtail Flounder SAP, fish for, harvest, possess or land any regulated NE multispecies from the area specified in § 648.85(b)(3)(ii), unless in compliance with the restrictions and conditions specified in § 648.85(b)(3)(i) through (xi).

* * * * *

(139) If fishing in the Closed Area II Yellowtail Flounder SAP specified in § 648.85(b)(3), exceed the number of trips specified under § 648.85(b)(3)(vi) or (vii).

* * * * *

(165) Fish for, harvest, possess or land any regulated NE multispecies from the WGOM Closure Area specified in § 648.81(e)(1), unless in compliance

with the restrictions and conditions specified in § 648.85(b)(9)(v)(A) through (G), or unless fishing under the recreational or charter/party regulations specified in § 648.89.

(166) Enter or fish in the WGOM Closure Area Rod/Reel Haddock SAP outside of the season specified in § 648.85(b)(9)(iv) except when fishing under the recreational or charter/party regulations specified in § 648.89.

(167) If declared into the WGOM Closure Area Rod/Reel Haddock SAP in accordance with § 648.85(b)(9)(v)(D), fish for or set gear capable of catching NE multispecies outside of the WGOM Closure Area as described in § 648.81(e)(1) during the same trip.

(168) If the vessel has been issued a limited access NE multispecies DAS permit and is fishing in the WGOM Closure Area under the provisions of the WGOM Closure Area Rod/Reel Haddock SAP specified in § 648.85(b)(9), fail to comply with the minimum participation requirements in § 648.85(b)(9)(v)(A).

(169) If the vessel has been issued a limited access NE multispecies permit and is fishing in the WGOM Closure Area under the provisions of the WGOM Closure Area Rod/Reel Haddock SAP specified in § 648.85(b)(9), fail to comply with the VMS requirements in § 648.85(b)(9)(v)(B).

(170) If the vessel has been issued a limited access NE multispecies permit and is fishing in the WGOM Closure Area under the provisions of the WGOM Closure Area Rod/Reel Haddock SAP specified in § 648.85(b)(9), fail to comply with the observer notification requirements in § 648.85(b)(9)(v)(C).

(171) Enter or fish in the WGOM Closure Area under the provisions of the WGOM Closure Area Rod/Reel Haddock SAP as specified in § 648.85(b)(9), unless declared into the area in accordance with § 648.85(b)(9)(v)(D).

(172) If the vessel has been issued a limited access NE multispecies permit and is fishing in the WGOM Closure Area under the provisions of the WGOM Closure Area Rod/Reel Haddock SAP specified in § 648.85(b)(9), fail to comply with the gear requirements in § 648.85(b)(9)(v)(E).

(173) If the vessel has been issued a limited access NE multispecies permit and is fishing in the WGOM Closure Area under the provisions of the WGOM Closure Area Rod/Reel Haddock SAP specified in § 648.85(b)(9), fail to comply with the landing restrictions in § 648.85(b)(9)(v)(F).

(174) If the vessel has been issued a limited access NE multispecies permit and is fishing in the WGOM Closure Area under the provisions of the WGOM Closure Area Rod/Reel Haddock SAP

specified in § 648.85(b)(9), fail to comply with the catch reporting requirements in § 648.85(b)(9)(v)(G).

(175) If the vessel has been issued a limited access NE multispecies permit, fish under the provisions of the WGOM Closure Area Rod/Reel Haddock SAP specified in § 648.85(b)(9) if the area is closed as described in § 648.85(b)(9)(v)(I).

(176) If a vessel is fishing under a Category B DAS in the Closed Area II Yellowtail Flounder SAP specified in § 648.85(b)(3), the Regular B DAS Pilot Program specified in § 648.85(b)(6), or the Eastern U.S./Canada Haddock SAP Pilot Program specified in § 648.85(b)(8), dump the contents of a net except on board the vessel.

* * * * *

(c) * * *

(14) If the vessel has been issued a limited access NE multispecies permit and fishes under a NE multispecies DAS with gillnet gear, fail to comply with gillnet tagging requirements specified in § 648.80(a)(3)(iv)(B)(4), (a)(3)(iv)(C), (a)(4)(iv)(B)(3), (b)(2)(iv)(B)(3), and (c)(2)(v)(B)(3), or fail to produce, or cause to be produced, gillnet tags when requested by an authorized officer.

* * * * *

(80) Provide false information on the application to downgrade the DAS Leasing Program baseline, as required under § 648.82(k)(4)(xi).

* * * * *

(bb) * * *

(19) If the vessel has been issued a Category 1 herring permit and is fishing for herring in the GOM/GB Exemption Area specified in § 648.80(a)(17), fail to notify NMFS at least 72 hours prior to departing on a trip for the purposes of observer deployment.

(20) If the vessel has been issued a Category 1 herring permit and is fishing for herring in the GOM/GB Exemption Area specified in § 648.80(a)(17), fail to notify the NMFS Office of Law Enforcement of the time and date of landing via VMS prior to crossing the VMS demarcation line on its return trip to port if issued an observer waiver pursuant to § 648.80(e)(6).

* * * * *

5. In § 648.80, paragraphs (a)(3)(iv)(A)(2), (a)(4)(iv)(A), (b)(2)(iv), (b)(2)(iv)(A), (c)(2)(v)(A), (d)(2), (d)(4), (d)(5), and (e)(2) through (e)(4) are revised; paragraphs (a)(3)(iv)(A)(3) and (4) are removed; and paragraphs (d)(6), (d)(7), (e)(5), and (e)(6) are added to read as follows:

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

* * * * *

(a) * * *

(3) * * *

(iv) * * *

(A) * * *

(2) *Net size requirements.* Nets may not be longer than 300 ft (91.4 m), or 50 fathoms (91.4 m) in length.

* * * * *

(4) * * *

(iv) * * *

(A) *Trip gillnet vessels.* A Trip gillnet vessel fishing under a NE multispecies DAS and fishing in the GB Regulated Mesh Area may not fish with nets longer than 300 ft (91.4 m), or 50 fathoms (91.4 m) in length.

* * * * *

(b) * * *

(2) * * *

(iv) *Gillnet vessels.* For Day and Trip gillnet vessels, the minimum mesh size for any sink gillnet not stowed and not available for immediate use in accordance with § 648.23(b), when fishing under a DAS in the NE multispecies DAS program in the SNE Regulated Mesh Area, is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) 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. Day gillnet vessels must also abide by the tagging requirements in paragraph (a)(3)(iv)(c) of this section.

(A) *Trip gillnet vessels.* A Trip gillnet vessel fishing under a NE multispecies DAS and fishing in the SNE Regulated Mesh Area may not fish with nets longer than 300 ft (91.4 m), or 50 fathoms (91.4 m) in length.

* * * * *

(c) * * *

(2) * * *

(v) * * *

(A) *Trip gillnet vessels.* A Trip gillnet vessel fishing under a NE multispecies DAS and fishing in the MA Regulated Mesh Area may not fish with nets longer than 300 ft (91.4 m), or 50 fathoms (91.4 m) in length.

* * * * *

(d) * * *

(2) When fishing under this exemption in the GOM/GB Exemption Area, as defined in paragraph (a)(17) of this section, and in the area described in § 648.81(c)(1), the vessel has on board a letter of authorization issued by the Regional Administrator, and complies with all restrictions and conditions thereof;

* * * * *

(4) The vessel does not fish for, possess, or land NE multispecies;

(5) The vessel must carry a NMFS-approved sea sampler/observer, if

requested by the Regional Administrator;

(6) Vessels issued a Category 1 herring permit pursuant to § 648.4(a)(10) and intending to fish for herring under this exemption in the GOM/GB GOM Exemption Area as defined in paragraph (a)(17) of this section must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; and the date, time, and port of departure, at least 72 hours prior to beginning any trip into these areas for the purposes of observer deployment; and

(7) Any vessel issued an observer waiver pursuant to paragraph (d)(6) of this section must notify NMFS Office of Law Enforcement through VMS of the time and place of offload prior to crossing the VMS demarcation line at the end of a trip.

* * * * *

(e) * * *

(2) When fishing under this exemption in the GOM/GB Exemption Area, as defined in paragraph (a)(17) of this section, the vessel has on board a letter of authorization issued by the Regional Administrator;

(3) The vessel only fishes for, possesses, or lands Atlantic herring, blueback herring, mackerel, or menhaden;

(4) The vessel does not fish for, possess, or land NE multispecies; and

(5) Vessels issued a Category 1 herring permit pursuant to § 648.4(a)(10) and intending to fish for herring under this exemption in the GOM/GB Exemption Area as defined in paragraph (a)(17) of this section must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; and the date, time, and port of departure, at least 72 hours prior to beginning any trip into these areas for the purposes of observer deployment; and

(6) Any vessel issued an observer waiver pursuant to paragraph (e)(5) of this section must notify NMFS Office of Law Enforcement through VMS of the time and place of offload prior to crossing the VMS demarcation line on its return trip to port.

* * * * *

6. In § 648.81, paragraph (e)(2) is revised to read as follows:

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

* * * * *

(e) * * *

(2) Unless otherwise restricted under paragraph (h) of this section, paragraph (e)(1) of this section does not apply to

persons on fishing vessels or fishing vessels—

(i) That meet the criteria in paragraphs (f)(2)(ii) and (iii) of this section consistent with the requirements specified under § 648.80(a)(5); or

(ii) Fishing in the WGOM Closure Area Rod/Reel Haddock SAP as specified in § 648.85(b)(9).

* * * * *

7. In § 648.82, paragraphs (d)(2)(ii)(B) introductory text, (d)(3)(ii), (k)(4)(ix), (l)(1)(ii), and (l)(1)(iv) are revised, and paragraphs (d)(2)(ii)(B)(4), (k)(4)(xi), and (m) are added to read as follows:

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

* * * * *

(d) * * *

(2) * * *

(ii) * * *

(B) *Calculation.* Unless determined otherwise, as specified under paragraph (d)(2)(ii)(B)(4) or paragraph (d)(4) of this section, Reserve B DAS are calculated as follows:

* * * * *

(4) Notwithstanding the other provisions of this part, starting in fishing year 2005, any vessel allocated zero Category A or B (Regular and Reserve) DAS as specified under paragraph (d) of this section shall be allocated 10 Reserve B DAS. These DAS can only be used in approved SAP's specified at § 648.85(b) that do not contain a DAS flipping provision.

(3) * * *

(ii) *Calculation.* Category C DAS are defined as the difference between a vessel's used DAS baseline, as described in paragraph (c)(1) of this section, and the number of DAS allocated to the vessel as of May 1, 2001, unless otherwise modified according to paragraph (d)(2)(ii)(B)(4) of this section.

* * * * *

(k) * * *

(4) * * *

(ix) *Size restriction of Lessee vessel.* A Lessor only may lease DAS to a Lessee vessel with a baseline main engine horsepower rating that is no more than 20 percent greater than the baseline engine horsepower of the Lessor vessel. A Lessor vessel may only lease DAS to a Lessee vessel with a baseline length overall that is no more than 10 percent greater than the baseline length overall of the Lessor vessel. For the purposes of this program, the baseline horsepower and length overall specifications of vessels are those associated with the permit as of January 29, 2004, unless otherwise modified according to paragraph (k)(4)(xi) of this section.

* * * * *

(xi) *One-time downgrade of leasing baseline.* A vessel owner may elect to make a one-time downgrade to the vessel's DAS Leasing Program baseline length and horsepower as specified in paragraph (k)(4)(ix) of this section to match the length overall and horsepower specifications of the vessel that is currently issued the permit.

(A) *Application for a one-time DAS Leasing Program baseline downgrade.* To downgrade the DAS Leasing Program baseline, eligible NE multispecies vessels must submit a completed application form obtained from the Regional Administrator. An application to downgrade a vessel's DAS Leasing Program baseline must contain at least the following information: Vessel owner's name, vessel name, permit number, official number or state registration number, current vessel length overall and horsepower specifications, an indication whether additional information is included to document the vessel's current specifications, and the signature of the vessel owner.

(B) *Duration of one-time DAS Leasing Program baseline downgrade.* The downgraded DAS Leasing Program baseline remains in effect until the DAS Leasing Program expires or the permit is transferred to another vessel via a vessel replacement. Once the permit is transferred to another vessel, the DAS Leasing Program baseline reverts to the baseline horsepower and length overall specifications associated with the permit prior to the one-time downgrade. Once the DAS Leasing Program baseline is downgraded for a particular permit, no further downgrades may be authorized for that permit. The downgraded DAS Leasing Program baseline may only be used to determine eligibility for the DAS Leasing Program and does not affect or change the baseline associated with the DAS Transfer Program specified in paragraph (l)(1)(ii) of this section, or the vessel replacement or upgrade restrictions specified at § 648.4(a)(1)(i)(E) and (F), respectively.

* * * * *

(l) * * *

(1) * * *

(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.

* * * * *

(iv) 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.

* * * * *

(m) *DAS credit for standing by entangled whales.* Limited access vessels fishing under the DAS program that report and stand by an entangled whale may request a DAS credit for the time spent standing by the whale. The following conditions and requirements must be met to receive this credit:

(1) At the time the vessel begins standing by the entangled whale, the vessel operator must notify the USCG and the Center for Coastal Studies or another organization as authorized by the Regional Administrator of the location of the entangled whale and that the vessel is going to stand by the entangled whale until the arrival of an authorized response team;

(2) Only one vessel at a time may receive credit for standing by an entangled whale. A vessel standing by an entangled whale may transfer its stand-by status to another vessel while waiting for an authorized response team to arrive, provided it notifies the USCG and the Center for Coastal Studies or another organization authorized by the Regional Administrator of this transfer and comply with the conditions and restrictions of this part;

(3) The stand-by vessel must be available to answer questions on the condition of the animal, possible species identification, severity of entanglement, etc., and take photographs of the whale, if possible, regardless of the species of whale or whether the whale is alive or dead, during its stand-by status and after terminating its stand-by status. The stand-by vessel must remain on scene until the USCG or an authorized response team arrives, or the vessel is informed that an authorized response team will not arrive. If the vessel receives notice that a response team is not available, the vessel may discontinue standing-by the entangled whale and continue fishing operations; and

(4) To receive credit for standing by an entangled whale, a vessel must submit a written request to the Regional

Administrator. This request must include at least the following information: Date and time when the vessel began its stand-by status, date of first communication with the USCG, and date and time when the vessel terminated its stand-by status. DAS credit shall not be granted for the time a vessel fishes when standing by an entangled whale. Upon a review of the request, NMFS shall consider granting the DAS credit based on information available at the time of the request, regardless of whether an authorized response team arrives on scene or a rescue is attempted. NMFS shall notify the permit holder of any DAS adjustment that is made or explain the reasons why an adjustment will not be made.

8. In § 648.85, paragraphs (b)(3)(iii), (b)(3)(vi) through (b)(3)(viii), (b)(5)(i), and (b)(5)(ii) are revised; and paragraphs (b)(5)(iii), (b)(5)(iv), and (b)(9) are added to read as follows:

§ 648.85 Special management programs.

* * * * *

(b) * * *

(3) * * *

(iii) *Season.* Eligible vessels may fish in the Closed Area II Yellowtail Flounder SAP during the period July 1 through December 31.

* * * * *

(vi) *Number of trips per vessel.* Unless otherwise authorized by the Regional Administrator as specified in paragraph (a)(3)(iv)(D) of this section, eligible vessels are restricted to one trip per month, during the season described in paragraph (b)(3)(iii) of this section.

(vii) *Maximum number of trips.* (A) Unless otherwise authorized by the Regional Administrator as specified in paragraph (a)(3)(iv)(D) of this section, the total number of trips by all vessels combined that may be declared into the Closed Area II Yellowtail Flounder SAP shall be as announced by the Regional Administrator, after consultation with the Council, for each fishing year, prior to June 1, through rulemaking consistent with the Administrative Procedure Act. The total number of trips by all vessels combined that may be declared into this SAP shall not exceed 320 trips per year. When determining the number of trips, the Regional Administrator shall consider the available yellowtail flounder TAC under the U.S./Canada Resource Sharing Understanding, the potential catch of GB yellowtail flounder by all vessels fishing outside of the SAP, recent discard estimates in all fisheries that catch yellowtail flounder, and the expected number of SAP participants.

(B) If the Regional Administrator determines that the available catch is insufficient to support 150 trips with a possession limit of 15,000 lb (6,804 kg) of yellowtail flounder per trip, the Regional Administrator may choose not to authorize any trips into the SAP during a fishing year.

(viii) *Trip limits—(A) Yellowtail flounder trip limit.* Unless otherwise authorized by the Regional Administrator as specified in paragraph (a)(3)(iv)(D) of this section, a vessel fishing in the CA II Yellowtail Flounder SAP may fish for, possess, and land up to 10,000 lb (4,536 kg) of yellowtail flounder per trip. The Regional Administrator may adjust this limit to a maximum of 30,000 lb (13,608 kg) per trip after considering the factors listed in paragraph (b)(3)(vii)(A) of this section for the maximum number of trips.

(B) *Cod and haddock trip limit.* Unless otherwise restricted, a NE multispecies vessel fishing any portion of a trip in the Closed Area II Yellowtail Flounder 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 Closed Area II Yellowtail Flounder SAP is subject to the haddock requirements described under § 648.86(a), unless further restricted under paragraph (a)(3)(iv) of this section.

* * * * *

(5) * * *

(i) *Stocks other than cod.* With the exception of GB cod and GOM cod, the incidental TAC's specified under this paragraph (b)(5) shall be allocated to the Regular B DAS Pilot Program described in paragraph (b)(6) of this section.

(ii) *GB cod.* The incidental TAC for GB cod specified in paragraph (b)(5) of this section shall be subdivided as follows: 59.4 percent to the Regular B DAS Pilot Program as described in paragraph (b)(6) of this section; 30.6 percent to the Eastern U.S./Canada Haddock SAP Pilot Program as described in paragraph (b)(8) of this section; and 10 percent to the GB cod research set-aside program specified in paragraph (b)(5)(iv) of this section. If no applications to use the GB cod research set-aside TAC have been received by May 1, the incidental TAC for GB cod shall be subdivided as follows: 66 percent to the Regular B DAS Pilot Program and 34 percent to the Eastern U.S./Canada Haddock SAP Pilot Program. If applications received by May 1, do not require the entire research set aside TAC of GB cod, the remaining set aside TAC of GB cod would be distributed to the Regular B DAS Pilot Program.

(iii) *GOM cod*. The incidental TAC for GOM cod specified in paragraph (b)(5) of this section shall be subdivided as follows: 95 percent to the Regular B DAS Pilot Program and 5 percent to the WGOM Closure Area Rod/Reel Haddock SAP described in paragraph (b)(9) of this section.

(iv) *Research set-aside TAC's*. Beginning in fishing year 2005, 10 percent of the incidental TAC for GB cod as specified in paragraph (b)(5)(ii) of this section shall be set aside to allow for the conduct of research experiments. Applications to use this research set-aside TAC must be sent to the Northeast Regional Office by May 1 of the year which the TAC is requested, except for applications for the 2005 fishing year. For the 2005 fishing year, applications must be received by August 1, 2005. If no applications to use this TAC have been received by the date specified in this paragraph, the GB cod research set-aside TAC shall be proportionally released to the Regular B DAS Pilot Program and the Eastern U.S./Canada Haddock SAP Pilot Program on May 1, as specified in paragraph (b)(5)(ii) of this section. If applications received by the date specified in this paragraph do not require the entire research set aside TAC of GB cod, the remaining set aside TAC of GB cod will be distributed to the Regular B DAS Pilot Program.

* * * * *

(9) *WGOM Closure Area Rod/Reel Haddock SAP*—(i) *Eligibility*. Vessels that have been issued a valid limited access NE multispecies permit are eligible to participate in the WGOM Closure Area Rod/Reel Haddock SAP and may fish in the WGOM Closure Area, as described in § 648.81(c), during the program duration and season specified in paragraphs (b)(9)(iii) and (b)(9)(iv) of this section, provided such vessels comply with the requirements of this section, and provided the SAP is not closed according to the provisions specified in paragraphs (b)(8)(v)(L) or (M) of this section.

(ii) *WGOM Closure Area Rod/Reel Haddock SAP Area*. The WGOM Closure Area Rod/Reel Haddock SAP Area is defined as the entire WGOM Closure Area as defined in § 648.82(c). Copies of a chart depicting this area are available from the Regional Administrator upon request. Vessels participating in this SAP may not fish outside of the SAP area, and no gear may be set outside the SAP area when participating in this SAP.

(iii) *Duration of program*. The WGOM Closure Area Rod/Reel Haddock SAP is in effect from [date of implementation of FW 40B] through [date 2 years from the

date of implementation of FW 40B], unless extended by the Regional Administrator as specified in paragraph (b)(9)(iv)(J) of this section.

(iv) *Season*. Eligible vessels may fish in the WGOM Closure Area Rod/Reel Haddock SAP from March 1 through April 30.

(v) *Program restrictions*. Vessels fishing in the WGOM Closure Area Rod/Reel Haddock SAP must comply with the following conditions and restrictions:

(A) *Minimum participation requirement*. Limited access NE multispecies DAS vessels intending to participate in the WGOM Closure Area Rod/Reel Haddock SAP must elect to fish in this SAP for a minimum of 7 consecutive days. Vessels subject to this requirement must obtain and carry aboard a Letter of Authorization from the Regional Administrator documenting participation in this SAP. To obtain a Letter of Authorization, vessel owners must call the NE Region Permit Office and provide at least the following information: The vessel name, owner name, permit number, and the desired period of time that the vessel will be enrolled.

(B) *VMS requirement*. A NE multispecies vessel fishing in the WGOM Closure Area Rod/Reel Haddock SAP Area specified under paragraph (b)(9)(ii) of this section must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10. A vessel participating in this SAP is responsible for the cost of one positional poll of the VMS unit per hour.

(C) *Observer notification*. For the purposes of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; and date, time, and port of departure at least 72 hr prior to the beginning of any trip which it declares into the WGOM Closure Area Rod/Reel Haddock SAP Area as specified under paragraph (b)(9)(v)(D) of this section, and in accordance with instructions provided by the Regional Administrator.

(D) *VMS declaration*. Prior to departure from port, a vessel intending to participate in the WGOM Closure Area Rod/Reel Haddock SAP must declare into the SAP via VMS. Any vessel subject to the DAS use requirements specified at § 648.82(b) and fishing in the WGOM Closure Area Rod/Reel Haddock SAP must declare that it intends to fish under a Category A or Category B DAS, in accordance

with § 648.82(d)(2)(i)(A) before beginning the fishing trip.

(E) *Gear restrictions*. Any NE multispecies vessel participating in the WGOM Closure Area Rod/Reel Haddock SAP may only use hand-tended rod and reel gear. In addition, circle hooks must be used if using bait and no treble hooks can be used with jigs.

(F) *Landing limits*. Unless otherwise restricted, NE multispecies vessel fishing in the WGOM Closure Area Rod/Reel Haddock SAP may not fish for, possess, or land cod. A NE multispecies vessel fishing in the WGOM Closure Area Rod/Reel Haddock SAP must comply with the landing limits for haddock and other regulated species specified in § 648.86.

(G) *Reporting requirements*. The owner or operator of a vessel declared into the WGOM Closure Area Rod/Reel Haddock SAP, as described in paragraph (b)(9)(v)(D) of this section, must submit catch reports via VMS in accordance with instructions provided by the Regional Administrator for each day fished when declared into the WGOM Closure Area Rod/Reel Haddock SAP. 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. These reports must include at least the following information: Total weight (lb/kg) of GOM haddock kept, and total weight (lb/kg) of GOM haddock and GOM cod discarded.

(H) *TAC allocation*. Beginning with the 2005 fishing year, the amount of GOM cod that may be caught from the WGOM Closure Area Rod/Reel Haddock SAP Area is the amount specified in paragraph (b)(5)(iii) of this section. The amount of GOM haddock that may be caught from this SAP may not exceed 50 mt (including catch kept and discarded).

(I) *Closure of the WGOM Closure Area Rod/Reel Haddock SAP*. When the Regional Administrator projects that either the GOM cod or GOM haddock TAC allocation specified in paragraph (b)(9)(v)(H) of this section has been caught or is projected to be caught by vessels participating in the WGOM Closure Area Rod/Reel Haddock SAP, NMFS shall close, through rulemaking consistent with the Administrative Procedure Act, the WGOM Closure Area Rod/Reel Haddock SAP to all limited access NE multispecies vessels intending to participate in this SAP as described in paragraph (d)(9) of this section. In addition, the Regional Administrator may close, through rulemaking consistent with the Administrative Procedure Act, the WGOM Closure Area Rod/Reel Haddock

SAP if the catch of cod to haddock caught in this SAP exceeds a ratio of 1:2, by weight.

(J) *Extension of the WGOM Closed Area Rod/Reel Haddock SAP.* The Regional Administrator shall extend, in accordance with the Administrative Procedure Act, the WGOM Closure Area Rod/Reel Haddock SAP beyond the date in paragraph (b)(9)(iii) of this section if all of the following conditions are met: Monitoring and enforcement provisions prove sufficient to reliably document the catch of cod and haddock, the catch of cod and haddock does not exceed the respective TAC's for these species in

each of the 2 years that the SAP is authorized, and the ratio of cod to haddock catch is less than 1:2, by weight.

* * * * *

9. In § 648.87, paragraphs (d)(1)(ii) and (d)(1)(iii)(A) are revised to read as follows:

§ 648.87 Sector allocation.

* * * * *

(d) * * *

(1) * * *

(ii) *Eligibility.* All vessels with a valid limited access NE multispecies DAS permit are eligible to participate in the

GB Cod Hook 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.

(iii) * * *

(A) Sum of the total accumulated landings of GB cod by vessels identified in the Sector's Operation 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.

* * * * *

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