

**§ 585.43 Applicability.**

This subpart applies to manufacturers of passenger cars, multipurpose vehicles, trucks and buses with a GVWR of 4,536 kg or less.

**§ 585.44 Response to inquiries.**

During the production years ending August 31, 2007, August 31, 2008, and August 31, 2009, each manufacturer shall, upon request from the Office of Vehicle Safety Compliance, provide information identifying the vehicles (by make, model, and vehicle identification number) that have been certified as complying with the requirements of S6.2(b) of Standard No. 301. The manufacturer's designation of a vehicle as a certified vehicle is irrevocable.

**§ 585.45 Reporting requirements.**

(a) *General reporting requirements.* Within 60 days after the end of the production years ending August 31, 2007, August 31, 2008 and August 31, 2009, each manufacturer shall submit a report to the National Highway Traffic Safety Administration concerning its compliance with S6.2(b) of Standard No. 301 for its passenger cars, multipurpose passenger vehicles, trucks, and buses with a GVWR of less than 4,536 kg produced in that year. Each report shall provide the information specified in paragraph (b) of this section and in section 585.2 of this part.

(b) *Report content.* (1) Basis for statement of compliance. Each manufacturer shall provide the number of passenger cars, multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg or less manufactured for sale in the United States for each of the three previous production years, or, at the manufacturer's option, for the previous production year. A new manufacturer that has not previously manufactured these vehicles for sale in the United States must report the number of such vehicles manufactured during the current production year.

(2) Production. Each manufacturer shall report for the production year for which the report is filed the number of passenger cars, multipurpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg or less that meet S6.2(b) or S6.3(b) of Standard No. 301.

**§ 585.46 Records.**

Each manufacturer shall maintain records of the Vehicle Identification Number for each vehicle for which information is reported under § 585.45(b)(2) until December 31, 2010.

**Subpart F—Tires for Motor Vehicles with a GVWR of 10,000 Pounds or Less Phase-In Reporting Requirements****§ 585.51 Scope.**

This subpart establishes requirements for manufacturers of new pneumatic tires for motor vehicles with a GVWR of 4,536 kg (10,000 lb) or less to respond to NHTSA inquiries, to submit reports, and to maintain records related to the reports, concerning the number of such tires that meet the requirements of Standard No. 139, *New pneumatic tires for light vehicles* (49 CFR 571.139).

**§ 585.52 Purpose.**

The purpose of these requirements is to assist the National Highway Traffic Safety Administration in determining whether a manufacturer has complied with the requirements of Standard No. 139.

**§ 585.53 Applicability.**

This subpart applies to manufacturers of tires for motor vehicles with a GVWR of 4,536 kg or less.

**§ 585.54 Response to inquiries.**

Each manufacturer shall, upon request from the Office of Vehicle Safety Compliance, provide information identifying the tires (by make, model, brand and tire identification number) that have been certified as complying with the requirements of Standard No. 139. The manufacturer's designation of a tire as a certified tire is irrevocable.

**§ 585.55 Reporting requirements.**

(a) *General reporting requirements.* Within 60 days after the end of the production years ending August 31, 2006 and August 31, 2007, each manufacturer shall submit a report to the National Highway Traffic Safety Administration concerning its compliance with Standard No. 139 for its tires produced in that year for motor vehicles with a GVWR of 4,536 kg or less. Each report shall provide the information specified in paragraph (b) of this section and in section 585.2 of this part.

(b) *Report content.* (1) Basis for statement of compliance. Each manufacturer shall provide the number of tires for motor vehicles with a GVWR of 4,536 kg or less manufactured for sale in the United States for each of the three previous production years, or, at the manufacturer's option, for the production year for which the report is filed. A new manufacturer that has not previously manufactured these tires for sale in the United States shall report the number of such tires manufactured during the current production year.

(2) Production. Each manufacturer shall report for the production year for which the report is filed the number of new pneumatic tires for motor vehicles with a GVWR of 4,536 kg or less that meet Standard No. 139.

**§ 585.56 Records.**

Each manufacturer shall maintain records of the tire identification number for each vehicle for which information is reported under § 585.55(b)(2) until December 31, 2008.

**PART 586—[REMOVED AND RESERVED]**

■ 7. Part 586 is removed and the part is reserved.

**PART 589—[REMOVED AND RESERVED]**

■ 8. Part 589 is removed and the part is reserved.

**PART 590—[REMOVED AND RESERVED]**

■ 9. Part 590 is removed and the part is reserved.

**PART 596—[REMOVED AND RESERVED]**

■ 10. Part 596 is removed and the part is reserved.

**PART 597—[REMOVED AND RESERVED]**

■ 11. Part 597 is removed and the part is reserved.

Jeffrey W. Runge,  
Administrator.

[FR Doc. 04-26874 Filed 12-3-04; 3:59 pm]

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

[Docket No. 041018283-4340-02; I.D. 102204C]

RIN 0648-AS81

**Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery**

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

**ACTION:** Final interim rule.

**SUMMARY:** NMFS is implementing the days-at-sea (DAS) allocation procedure contained in the final rule implementing Amendment 13 to the NE Multispecies Fishery Management Plan (FMP) under Magnuson-Stevens Act interim rule authority. This DAS allocation procedure establishes a DAS baseline allocation based on historic participation in the NE multispecies DAS fishery, and caps a vessel's annual DAS usage at the vessel's DAS allocation prior to August 1, 2002, the annual DAS allocation for the 2001 fishing year (May 1, 2001 - April 30, 2002).

**DATES:** Effective January 7, 2005.

**ADDRESSES:** Copies of the Final Supplemental Environmental Impact Statement (FSEIS) and Regulatory Impact Review (RIR) prepared for Amendment 13 and supporting this action are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, The Tannery Mill 2, Newburyport, MA 01950. The FSEIS and RIR are also accessible via the internet at <http://www.nefmc.org/nemulti/>. NMFS prepared a Final Regulatory Flexibility Analysis (FRFA) for this action, which is contained in the Classification section of this rule.

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

**SUPPLEMENTARY INFORMATION:**

**Background**

A proposed rule for this action was published on October 28, 2004 (69 FR 62844), with public comments accepted through November 12, 2004. Details regarding the development of the DAS baseline allocation are in Amendment 13 and the need for this final interim rule are the same as those contained in the preamble of the proposed rule and are not repeated here.

Amendment 13 established a DAS baseline allocation based on historic participation in the NE multispecies DAS fishery. The proposed rule for Amendment 13 (69 FR 4362, January 29, 2004) stated that a vessel's DAS baseline allocation would be determined by the highest number of reported DAS fished during a single qualifying fishing year in which the vessel landed at least 5,000 lb (2,268 kg) of regulated multispecies during the 6-year period from May 1, 1996, through April 30, 2002. The proposed rule to implement Amendment 13 did not include an explicit provision that would have capped a vessel's annual DAS usage at

the vessel's DAS allocation prior to August 1, 2002, the annual DAS allocation for the 2001 fishing year (May 1, 2001 - April 30, 2002). To rectify the omission of the DAS usage cap in the proposed rule, NMFS added language to include the cap in the regulatory text of the final rule implementing Amendment 13 to ensure that the DAS baseline procedure complied with NMFS' understanding of the New England Fishery Management Council's (Council) intent. To implement the Amendment 13 final rule without an explicit cap would have been inconsistent with the Council's stated objective of reducing DAS to a level necessary to meet fishing mortality objectives.

The validity of the DAS usage cap provision in the final rule implementing Amendment 13 was questioned by certain members of the fishing industry because there was no explicit language in Amendment 13 referring to a cap on DAS usage [for the particular option selected]. One industry group filed a lawsuit asking a court to order removal of the cap.

To provide the public with the opportunity to comment on the DAS usage cap and to avoid the possibility of overfishing if the cap is removed, NMFS published the DAS allocation procedure including the cap, as a proposed interim rule. After fully considering public comment on the proposed rule, NMFS is implementing this final rule to avoid the possibility of overfishing if the cap is removed and to continue the allocation of DAS in this fishery in a manner consistent with NMFS' understanding of Council intent in approving Amendment 13.

**Comments and Responses:**

A total of thirteen comments on the proposed interim rule were received by the close of business on November 12, 2004. Eleven of these comments were from individuals, and two comments were from fishing industry associations. All of the issues raised in the comments are addressed below in the responses to comments.

*Comment 1:* Twelve commenters did not support inclusion of the DAS cap. They commented that the Amendment 13 DAS baseline provision that the Council adopted did not include a DAS cap, and cited various Amendment 13 documents that describe the DAS baseline provisions selected by the Council (Option 9) in support of their contention (i.e., the Council motion that was passed, the public hearing document, the SEIS, the proposed rule, and a March 2004 letter from NMFS to NE multispecies DAS permit holders).

One commenter stated that the Council explicitly removed the cap, and one commenter did not believe that Council intent was pertinent, and stated that only what the Council votes on is relevant. One commenter stated that NMFS should provide evidence from the administrative record that would document the view that the Council's intent was inclusion of a cap. Two commenters believed that the cap resulted from analytical errors by NMFS, and one commenter stated there is no basis for NMFS to conclude that Option 9 included a DAS cap.

*Response:* NMFS agrees that several Amendment 13 documents (e.g., DSEIS, FSEIS, and proposed rule) do not include the DAS baseline language capping a vessel's maximum DAS baseline allocation at its DAS allocation in fishing year 2001. However, this rule is being promulgated under 50 U.S.C. 1855(c) of the Magnuson-Stevens Act which gives NMFS authority to implement interim rules to reduce overfishing without regard to whether particular measures are included in the FMP. The decision to implement this final rule, therefore, does not necessarily hinge upon the Council's intent in Amendment 13. Nevertheless, NMFS believes that the Council intended to include the cap in Amendment 13, and that this rule is consistent with that intent.

NMFS' understanding of the intent of the Council is based upon several facts. For some vessels, a DAS baseline option without a cap would result in a DAS baseline that is higher than the vessels' DAS allocation in recent years, which NMFS believes is not consistent with the stated goal of the DAS baseline Options in Amendment 13 (i.e., to reduce latent effort). The original motion passed by the Groundfish Oversight Committee on January 22, 2003, and by the Council on January 28, 2003, which was the basis of DAS baseline Option 9, was as follows: "To include an option defining effective effort as the maximum days-at-sea used in any single year for the 1996 through 2001 fishing years not to exceed the vessels current (FY 2001) allocation. Only days-at-sea associated with a trip where at least one pound of fish was landed will be counted."

Subsequently, the phrase pertaining to the cap was not included in pertinent documents, yet all of the other DAS baseline options include a DAS cap, and there is no documentation of any discussion at the Committee or Council to explicitly remove the cap or modify the motion. The fact that the analysis in Amendment 13 included the cap is indicative that the Plan Development

Team, which is chaired by Council staff, understood that Option 9 included a DAS cap. Finally, on November 17, 2004, the Council took an action consistent with NMFS' understanding of Council intent by voting to include in Framework Adjustment 40-B a measure that would implement the DAS baseline allocation cap established under the final rule implementing Amendment 13 and this final interim rule on a permanent basis.

*Comment 2:* Eight commenters believed that the proposed interim rule is not appropriate or lawful, because it makes a substantive modification to Amendment 13, and was not approved by the Council.

*Response:* NMFS is implementing this interim rule under the authority of 50 U.S.C. 1855(c) of the Magnuson-Stevens Act, which provides that the Secretary of Commerce may implement interim rules on a temporary basis, without Council approval and without regard to whether particular measures are included in the FMP, in order to reduce overfishing. This final interim rule is necessary to avoid the possibility of overfishing if the cap were removed and is substantively consistent with the goals and analytical methods of Amendment 13, as well as Council intent, as understood by NMFS, regarding Amendment 13.

*Comment 3:* Six commenters stated that if the analysis was done without the cap, the Council would have selected a different baseline option, and not Option 9. Several commenters believe that the analysis of Option 9 underestimated the effect of including the 2001 fishing year. One commenter stated that removal of the cap helps to cushion the impact of the inclusion of the 2001 fishing year on full-time vessels.

*Response:* Even if these comments were correct, as explained in previous responses, this rule is being implemented under the authority of 50 U.S.C. 1855(c) which does not require Council approval. Nevertheless, the Council's recent vote in connection with Framework Adjustment 40-B to retain the cap does not support the commenter's thesis. In any event, the analysis of Option 9, which assumed the cap was in place, was done correctly, and the effectiveness of this alternative in establishing a DAS baseline was one of the reasons that the alternative was selected by the Council. The effect of the inclusion of the 2001 fishing year is accurately reflected in the DAS baseline implemented by Amendment 13, and continued by this final interim rule.

*Comment 4:* Four commenters stated that the interim rule would have large,

negative economic effects due to loss of DAS, a reduction in income for fishermen, and an impact to related industries. Some commenters stated that the combined effect of a DAS cut with the rising costs of insurance, fuel, and ice would cause economic disaster, especially for larger offshore vessels. One commenter disagreed with the IRFA in the proposed interim rule that concluded that implementation of a final interim rule to maintain a cap on the DAS baseline would not affect the cost of current fishing operations, and stated that the DAS baseline option creates winners and losers.

*Response:* Implementation of this final interim rule will not cause economic impacts beyond the impacts analyzed in Amendment 13 which were incorporated into this rulemaking. The NE multispecies fleet has been operating under a DAS usage cap for the past two years as a result of a series of interim and emergency action. NMFS acknowledges that inclusion of the DAS cap in the final rule implementing Amendment 13, and in this final interim rule, results in DAS baseline allocations that are different than they would be under a DAS baseline alternative that did not include a cap. However, Amendment 13 analyzed the effect of allocating DAS assuming the cap was in place. Therefore, the impacts of this rule on affected vessels is the same as those specified for Amendment 13. The FRFA analysis in the preamble of this final rule states that 390 vessels would benefit from the increase in the number of Category A DAS that would result from the removal of the cap, but that such a benefit would come at the cost of undermining Amendment 13 conservation objectives, and possibly long-term economic objectives.

*Comment 5:* Two commenters stated that it is not fair to let one group of vessels select their best year and limit other groups to their lowest DAS history.

*Response:* Any rule that allocates fishing rights among participants based upon recent fishing activity may result in different impacts on different vessels. But, the Magnuson-Stevens Act does not prohibit differential impacts as long as the allocation is designed to maximize overall benefits and promotes conservation objectives, consistent with the National Standard 4 guidelines, without deliberately discriminating among parties or groups. The DAS baseline allocation implemented by this final interim rule fairly distributes DAS based on recent groundfish activity, while successfully reducing latent effort. All vessels are subject to the same criteria for the calculation of their DAS

baseline. No vessel may have a DAS baseline allocation that exceeds its DAS allocation in fishing year 2001, prior to August 1, 2001.

*Comment 6:* One commenter disagreed with a statement in the proposed interim rule that removal of the DAS cap could significantly increase the possibility of overfishing, and noted that there has been a relatively low DAS use rate during the 2004 fishing year. A second commenter stated that there is currently no resource emergency due to the current low rate of DAS use and the low amount of haddock that has been harvested.

*Response:* According to the Amendment 13 analyses which were incorporated into this rulemaking, the DAS allocation, in conjunction with the other Amendment 13 management measures, is consistent with the rebuilding plans for overfished stocks. Table 81 in the FSEIS indicates that, for some stocks, the fishing mortality reductions that are likely to be achieved by the management measures exceed the necessary fishing mortality reductions to achieve rebuilding. However, for other stocks, the fishing mortality reductions that are likely to be achieved by the management measures only exceed the necessary fishing mortality reductions by a narrow margin. NMFS agrees that the number of DAS used to date in the 2004 fishing year has been less than the DAS used during the 2003 fishing year. Because the fishing year is not yet over, however, it is premature to conclude that the DAS use rate assumptions that were relied upon in Amendment 13 are too high. Furthermore, if the DAS cap were removed, the additional allocated DAS may spur an increase in the total number of DAS used, despite the fact that some sectors of the fishery may be reducing their rate of DAS use.

*Comment 7:* Two commenters stated that the proposed interim rule should have considered the other baseline options that the Council considered in November 2003.

*Response:* The purpose of the proposed interim rule was not to reconsider all of the DAS baseline options within Amendment 13. It is NMFS' understanding that the Council selected DAS baseline Option 9 with a cap. The Council took an action consistent with this understanding at its November 16–18, 2004, Council meeting by voting to include a measure in Framework Adjustment 40-B that would implement the DAS baseline allocation cap established under the final rule for Amendment 13. The preamble to the proposed interim rule explained, in

detail, the reasons for soliciting comment on Option 9.

*Comment 8:* Two commenters stated that NMFS does not intend to consider the comments on the proposed rule, but is taking interim action only to remedy a legal challenge. Two commenters stated that the interim rule serves only the interests of NMFS.

*Response:* NMFS is considering and responding to all comments on the proposed interim rule. NMFS is implementing the final interim rule for the reasons stated in the preamble to the proposed interim rule. The interim rule serves the interest of the public, including the fishing industry by promulgating regulations in full accordance with the Administrative Procedure Act, and by implementing a DAS baseline that is consistent with the Council's goal of fishing capacity reduction and the Amendment 13 rebuilding plan.

*Comment 9:* The Northeast Seafood Coalition stated that their organization developed capacity Option 9, and that part of the intent of that option was to cap the DAS at the vessel's DAS allocation for fishing year 2001. The commenter clarified that they had used capacity Option 8 as the template for developing capacity Option 9, and stated that capacity Option 8 included a cap "not to exceed the current allocation," as did Option 9 when initially discussed. The commenter stated that the preamble of the proposed interim rule accurately characterized the intent of the Council. The Northeast Seafood Coalition strongly supported the purpose of the proposed interim rule, stated their belief that all the relevant analyses had included the DAS cap and that they were not aware of any discussion suggesting that capacity Option 9 not include the cap, until after the Amendment 13 final rule published. Further, The Northeast Seafood Coalition stated that removal of the DAS cap would undermine the conservation objectives and the balance of social and economic cost and benefits achieved by Amendment 13. They stated that removal of the DAS cap would produce very different DAS baseline allocation results and would be inconsistent with the fishing mortality objectives of Amendment 13.

*Response:* The rationale set forth by this commenter is consistent with the reasons for promulgating this final interim rule as explained in the preamble to the proposed interim rule.

#### Classification

NMFS determined that this final interim rule is consistent with the FMP

and with the Magnuson-Stevens Act and other applicable laws.

The action implements the DAS allocation procedure adopted in the final rule implementing Amendment 13, but not explicitly recommended in that amendment. The impacts of this DAS allocation procedure were thoroughly analyzed in the FSEIS prepared for Amendment 13. Specifically, the biological impacts were analyzed in sections 5.2.5.6, 5.2.6.1, and 5.2.8.4, the economic impacts were analyzed in section 5.4.9.4.5, the social impacts were analyzed in section 5.6.2.2.1.1, and the cumulative impacts were analyzed in section 5.7.7.2 of the FSEIS. A notice of availability for the FSEIS prepared for Amendment 13 was published in the **Federal Register** on February 6, 2004 (69 FR 5856), with a 30-day delay in effectiveness. NMFS decided to partially approve Amendment 13 on March 18, 2004, and, in the record of decision (ROD) signed on March 18, 2004, concluded that all practicable means to avoid, minimize, or compensate for environmental harm resulting from the measures contained in the amendment had been adopted. This action implements the DAS allocation procedure analyzed in the Amendment 13 FSEIS. Therefore, because this action does not change the determinations made in the FSEIS for Amendment 13 and in the corresponding ROD, further environmental review under the National Environmental Policy Act is not necessary.

The Office of Management and Budget has determined that this final interim rule is not significant for purposes of Executive Order 12866.

NMFS acknowledges that the inclusion of the DAS cap in the final rule implementing Amendment 13 did not provide the public with an opportunity to comment on this provision. The proposed and final interim rule for this action solicited public comment on the DAS cap to address this procedural infirmity. Implementing the DAS allocation procedure contained in the final rule implementing Amendment 13 with the DAS cap would avoid the potential economic and biological impacts that would result should the DAS cap be removed. Removal of the DAS cap would have the potential of slowing rebuilding efforts by allowing additional DAS to be used in the fishery. This could, in turn, result in exceeding the mortality targets established in Amendment 13. Exceeding the mortality targets would require additional DAS reductions in future years, thus resulting in greater adverse economic impacts to the fishing industry. Finally,

operating the fishery without a DAS usage cap and inserting the extra effort back into the fishery would not be consistent with Amendment 13 and the goals and objectives the Magnuson-Stevens Act and its national standards.

NMFS prepared a FRFA which incorporates the IRFA and the comments and responses herein, as required by section 603 of the Regulatory Flexibility Act, that describes the economic impact this rule will have on small entities. This FRFA is incorporated entirely within the Classification section of this final interim rule. A description of the action, why it is necessary, and the legal basis for the action are contained in the preamble to the proposed interim rule (69 FR 62844, October 28, 2004). This final interim rule does not duplicate, overlap, or conflict with any relevant Federal rules. The universe of small entities to which this rule applies is contained in the IRFA of the proposed rule implementing Amendment 13 and is not repeated here. This rule does not impose any additional reporting, recordkeeping or other compliance requirements that are not already in existence as a result of the final rule implementing Amendment 13.

As mentioned above, this final interim rule is being promulgated under the authority of section 305(c) of the Magnuson-Stevens Act. The proposed rule to implement Amendment 13 omitted the DAS usage cap from the DAS baseline procedures, but NMFS added regulatory language to the Amendment 13 final rule to implement such a cap. This action establishes the DAS baseline allocation procedure contained in the Amendment 13 final rule consistent with the rulemaking procedures set forth under the APA.

Two alternatives were considered for purposes of the final regulatory flexibility analysis: (1) The groundfish fishery without a DAS usage cap for the 2004 fishing year; and (2) a DAS usage cap as analyzed in Amendment 13. Additional alternatives were not considered as the two alternatives considered for this action described above are the only two feasible alternatives within the context of this final interim rule, as specified in the preamble to the proposed interim rule. The analysis suggests that the lack of a DAS usage cap would increase the number of Category A DAS by 8.9 percent (approximately 3,900 A DAS) over the original allocation of A DAS under Amendment 13. The allocation of A DAS would therefore rise to approximately 47,689 days from the present level of 43,773 days. This increase in A DAS would benefit 390

vessels with an average increase of 10.8 A DAS (ranging from 0.02 to 52.69 A DAS) per vessel. Amendment 13 analyzed the average daily returns by vessel category and concluded that average daily returns while fishing on a DAS would range from \$1,139 to \$2,683 depending on the vessel category. Assuming that additional A DAS were re-allocated to the fishery, individual vessels may realize these net returns. However, net returns may not be uniform within each vessel category because of the variation in number of A DAS that would be expected to return to the fishery (i.e., 0.02 to 52.69 A DAS). Individual vessels would also need to consider other variables in combination with their allocated A DAS to determine the likelihood of exact changes in vessel profitability. The preferred alternative as analyzed within Amendment 13 assumes the DAS usage cap is in place and the NE multispecies fishery is operating based on the DAS allocation procedure specified in the final rule for Amendment 13. In this case, the establishment of a DAS usage cap, as set forth in the final rule, would neither affect the costs of current fishing operations for individual vessels, nor would it impose any additional compliance costs on NE groundfish vessels. DAS allocations to individual vessels would remain unchanged, giving each vessel the same opportunity to earn revenues as they exist in the present fishery. In addition, there would be no change to individual vessel profitability resulting from the maintenance of the present DAS schedule. Furthermore, the NE multispecies fleet has been operating under a DAS usage cap for the past two years as a result of a series of interim and emergency actions taken by NMFS resulting from the Conservation Law Foundation v. Evans litigation (67 FR 50292, August 1, 2002; 68 FR 2919, January 22, 2003; and 68 FR 38234, June 27, 2003). Individual vessels have received reduced DAS allocations based on this cap and have already experienced economic impacts that would be similar to those resulting from the existence of the DAS usage cap for the 2004 fishing season.

Implementing the DAS cap (i.e., capping the DAS baseline at a vessel's 2001 allocation) is critical in order to be consistent with the intent of the Council's goal of fishing capacity reduction. Allowing vessels to have a baseline DAS allocation that exceeds the level of recent historic allocation is counter to the stated goal of Amendment 13's alternatives to control capacity. The non-selected alternative

would also have the potential of slowing rebuilding efforts and would lead to additional DAS reductions in future years, thus resulting in greater adverse economic impacts. Finally, operating the fishery without a DAS usage cap and inserting the extra effort back into the fishery would not be consistent with Amendment 13 and the goals and objectives the Magnuson-Stevens Act and its national standards. A Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA, a Summary of the Assessment of the Agency of such Issues, and a Statement of any Changes made in the Proposed Rule as a Result of such Comments.

NMFS received thirteen comments on the proposed interim rule. Of these, two comments dealt with economic impacts to small entities (vessels) resulting from the management measures in the proposed interim rule and one comment specifically disagreed with the conclusions of the IRFA. NMFS responded to the comment regarding the IRFA in the response to Comment 4 specified above. NMFS addressed the two comments regarding the economic impacts to small entities in the FRFA analysis in the preamble of this final rule.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 3, 2004.

Rebecca Lent,

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

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

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

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

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

■ 2. In § 648.82, paragraph (c)(1) introductory text is republished to read as follows:

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

\* \* \* \* \*

(c) *Used DAS baseline*—(1) *Calculation of used DAS baseline.* For all valid limited access NE multispecies DAS vessels, vessels issued a valid small vessel category permit, and NE multispecies Confirmation of Permit Histories, beginning with the 2004 fishing year, a vessel's used DAS baseline shall be based on the fishing history associated with its permit and shall be determined by the highest

number of reported DAS fished during a single qualifying fishing year, as specified in paragraphs (c)(1)(i) through (iv) of this section, during the 6-year period from May 1, 1996, through April 30, 2002, not to exceed the vessel's annual allocation prior to August 1, 2002. A qualifying year is one in which a vessel landed 5,000 lb (2,268 kg) or more of regulated multispecies, based upon landings reported through dealer reports (based on live weights of landings submitted to NMFS prior to April 30, 2003). If a vessel that was originally issued a limited access NE multispecies permit was lawfully replaced in accordance with the replacement restrictions specified in § 648.4(a), then the used DAS baseline shall be defined based upon the DAS used by the original vessel and by subsequent vessel(s) associated with the permit during the qualification period specified in this paragraph (c)(1). The used DAS baseline shall be used to calculate the number and category of DAS that are allocated for use in a given fishing year, as specified in paragraph (d) of this section.

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[FR Doc. 04-26950 Filed 12-3-04; 2:54 pm]

BILLING CODE 3510-22-S

#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 021101264-3016-02; I.D. 120304C]

#### Fisheries of the Northeastern United States; Atlantic Herring Fishery; Total Allowable Catch Harvested for Management Area 1B

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

**ACTION:** Closure of directed fishery for Management Area 1B.

**SUMMARY:** NMFS announces that 95 percent of the Atlantic herring total allowable catch (TAC) allocated to Management Area 1B (Area 1B) for 2004 is projected to be harvested by 0001 hrs local time, December 8, 2004. Therefore, effective 0001 hours, December 8, 2004, federally permitted vessels may not fish for, catch, possess, transfer or land more than 2,000 lb (907.2 kg) of Atlantic herring in or from Area 1B per trip or calendar day until January 1, 2005, when the 2005 period TAC becomes available, except for transiting purposes