

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 648****[Docket No. 080521698–9067–02]****RIN 0648–AW87****Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Secretarial Interim Action**

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

**ACTION:** Temporary final rule; interim measures; request for comments.

**SUMMARY:** NMFS implements this final interim rule pursuant to its authority to issue interim management measures under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This action is intended to immediately reduce overfishing on certain stocks managed by the Northeast (NE) Multispecies Fishery Management Plan (FMP), without jeopardizing the likelihood that overfished stocks can achieve rebuilding objectives until long-term measures can be implemented under Amendment 16 to the FMP. Measures for the commercial fishery include an expanded differential days-at-sea (DAS) area in Southern New England (SNE), where a vessel will be charged 2 days for every day fished, and modified groundfish trip limits. In addition, this action maintains the scheduled fishing year (FY) 2009 DAS reduction included in the FMP, which results in an approximate 18-percent reduction in Category A DAS. For private recreational vessels fishing in the Exclusive Economic Zone (EEZ), and for federally permitted charter/party vessels, this action extends in time a seasonal prohibition on the possession of Gulf of Maine (GOM) cod, and prohibits the possession of SNE/Mid-Atlantic (MA) winter flounder. For federally permitted charter/party vessels, this action implements a trip limit for Georges Bank (GB) cod. In addition, this action implements measures to mitigate some of the negative, short-term economic impacts of the FMP by expanding the Closed Area I (CA I) Hook Gear Haddock Special Access Program (SAP); modifying the DAS Leasing Program, the Regular B DAS Program, and the DAS Transfer Program; continuing the Eastern U.S./Canada Haddock SAP; and implementing a reduction in the

haddock minimum size to 18 inches (45 cm) for both commercial and recreational vessels. This action also specifies management measures for the U.S./Canada Management Area for FY 2009. NMFS anticipates that the interim measures will need to be renewed upon the rule's expiration for an additional 185 days. Therefore, NMFS is requesting public comments on these measures; comments received will be considered during any subsequent action to extend this final interim rule.

**DATES:** Effective May 1, 2009, through October 28, 2009. Comments must be received by June 12, 2009.

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

- **Electronic Submissions:** Submit all electronic public comments via the Federal e-rulemaking portal: <http://www.regulations.gov>.
- **Mail:** Paper, disk, or CD-ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930–2276. Mark the outside of the envelope: “Comments on NE Multispecies Final Interim Rule.”
- **Fax:** (978) 281–9135.

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

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

NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which consists of the Initial Regulatory Flexibility Analysis (IRFA), public comments and responses, and the summary of impacts and alternatives contained in the Classification section of the preamble of this final rule. Copies of the small entity compliance guide are available from the Regional Administrator, NMFS, Northeast Regional Office, at the address noted above. Copies of the Environmental Assessment (EA) prepared for this rule may be found at the following Internet address: <http://www.nero.noaa.gov/nero/regs/frdoc/08/08MultiInterimEA.pdf>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted to the Northeast Regional Office and by e-mail to [David.Rostker@omb.eop.gov](mailto:David.Rostker@omb.eop.gov), or fax to (202) 395–7285.

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

**SUPPLEMENTARY INFORMATION:** A proposed interim rule was published in the **Federal Register** on January 16, 2009 (74 FR 2959), which includes detailed information on the background and reasons pertinent to the need to reduce fishing effort in the NE multispecies fishery for FY 2009. Comments on the proposed rule were accepted through February 17, 2009, which are summarized and responded to below. The FMP specifies the management measures for 12 species, and a total of 19 stocks of groundfish in Federal waters off the New England and Mid-Atlantic coasts. Species managed by the FMP are Atlantic cod, haddock, yellowtail flounder, pollock, American plaice, witch flounder, white hake, windowpane flounder, Atlantic halibut, winter flounder, ocean pout, and redfish. In 2008, the effectiveness of the management measures and the validity of the status determination criteria (biological reference points) were fully evaluated. This planned assessment of the biological reference points (Groundfish Assessment Review Meeting (GARM III)) was part of the FMP's biennial adjustment process to be used for setting fishery measures for FY 2009 (May 1, 2009–April 30, 2010), and was also part of the rebuilding strategy, which sought to evaluate the more fundamental scientific information mid-way through the rebuilding period for most stocks. Although the Council intended to meet a required May 1, 2009, implementation date for Amendment 16, due to the timing and the somewhat unanticipated results from GARM III (September 2008), the Council developed a revised Amendment 16 schedule, which, if approved, is now expected to be implemented on May 1, 2010. In addition, the Council voted on September 4, 2008, to request that NMFS implement an interim action for the duration of FY 2009, and recommended a specific suite of management measures for the interim action. As explained fully in Measure 12 under “Proposed Commercial Measures” of the proposed rule, NMFS did not propose the Council's recommendations in the proposed rule

because NMFS believed that the Council's recommended alternative would allow overfishing to continue for several stocks and not achieve rebuilding objectives.

A summary of the GARM III results that formed the basis for the proposed interim rule is in Table 1 below. Overfishing is occurring on stocks when the ratio of the fishing mortality rate (F) to the F that results in the maximum

sustainable yield (MSY) (F<sub>msy</sub>) is greater than 1.0, and a stock is overfished if the ratio of the biomass level (B) to the B that produces MSY (B<sub>msy</sub>) is equal to or less than 0.5.

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

Species	Stock	F <sub>msy</sub>	B <sub>msy</sub> (mt)	2007 Fishing mortality (2007 F/F <sub>msy</sub> )	2007 Biomass (2007 B/B <sub>msy</sub> )	Estimated 2008 fishing mortality
Cod .....	GB .....	0.2466	148,084	1.2	0.12	0.41
	GOM .....	0.237	58,248	1.9	0.58	0.300
Haddock .....	GB .....	0.350	158,873	0.49	2.05	0.083
	GOM .....	0.430	5,900	0.8	0.99	0.250
Yellowtail flounder .....	GB .....	0.254	43,200	1.1	0.22	0.130
	SNE/MA .....	0.254	27,400	1.6	0.13	0.120
	CC/GOM .....	0.239	7,790	1.7	0.25	0.289
American plaice .....	.....	0.190	21,940	0.5	0.51	0.099
Witch flounder .....	.....	0.200	11,447	1.5	0.30	0.296
Winter flounder .....	GB .....	0.260	16,000	1.1	0.31	0.131
	GOM .....	0.283	3,792	1.5	0.29	0.317
	SNE/MA .....	0.248	38,761	2.6	0.09	0.265
Redfish .....	.....	0.038	271,000	0.1	0.64	0.008
White hake .....	.....	0.125	56,254	1.2	0.35	0.065
Pollock* .....	.....	5.660	2.0	1.9	0.45	10.975
Windowpane* .....	North .....	0.500	1.4	3.9	0.38	1.96
	South .....	1.470	0.34	1.3	0.62	1.85
Ocean pout .....	.....	0.760	4.94	0.5	0.10	N/A
Atlantic halibut .....	.....	0.073	49,000	0.9	0.03	0.06

\* Pollock and windowpane flounder information was revised subsequent to GARM III in order to utilize 3-yr averages, and incorporate the fall survey data for pollock; pollock F<sub>msy</sub> is listed in terms of relative exploitation index (catch per centered 3-yr survey index).

N/A indicates an estimate of F in 2008 was unavailable for this stock.

Although NMFS' initial fishing mortality rate goals for the FY 2009 interim period are unchanged, based on public comment, NMFS is modifying several of the measures proposed in the proposed interim rule, and asking for public comment on the modified final rule. This decision to modify measures means that, even though substantial reductions in F will be achieved by this rule, overfishing will continue on certain stocks—notably GB cod, witch flounder, pollock, and northern windowpane flounder—during the duration of this interim action. Under section 305(c) of the Magnuson-Stevens Act, NMFS may implement an interim rule that reduces overfishing on overfished stocks, without necessarily ending overfishing. In this instance, the purpose of the interim rule is to reduce or end overfishing and help ensure that stocks rebuild consistent with Amendment 13 objectives for FY 2009, and to reduce overfishing on the three other stocks, which were recently identified as being overfished. The measures implemented through this rule will satisfy these objectives, while at the same time mitigating, to the extent practicable, the impacts on the fishing community. As indicated by the EA and

the comments received on the proposed rule, ending overfishing on all multispecies stocks in this interim rule would result in substantial negative consequences to the fishing industry. The Council is developing mitigating measures in Amendment 16, primarily through sector proposals, that should help to offset these negative consequences. The full range of possible mitigation measures cannot be implemented in this interim rule because they have not been fully developed and analyzed. While there is some decrease in the likelihood that GB cod and other stocks will rebuild within the time prescribed by the Amendment 13 rebuilding plan as a result of this final rule, the action should not significantly jeopardize the likelihood that Amendment 13's rebuilding objectives will be met, particularly given the short-term nature of this interim rule and the fact that additional measures will be implemented through Amendment 16. Therefore, in exercising the flexibility provided by section 305(c) of the Magnuson-Stevens Act, NMFS has determined that the modifications to the proposed rule as described below are justifiable because they are necessary to mitigate impacts

on the fishing industry to the extent practicable, without fatally jeopardizing the likelihood that overfished multispecies stocks will achieve their rebuilding objectives through Amendment 16 measures. The rationale for determining the extent of acceptable changes to the proposed rule follows.

Generally speaking, these final interim measures reduce overfishing to a lesser degree than the proposed interim action, as explained later in this preamble. This action includes several elements of the Council's proposed alternative, but contains additional measures to further protect stocks that are in the most critical condition, such as SNE/MA winter flounder. Management measures implemented under this action include: An expansion of the status quo 2:1 SNE Differential DAS Area measures; a witch flounder trip limit of 1,000 lb (453.6 kg) per DAS, up to 5,000 lb (2,268 kg) per trip; zero retention limits for SNE winter flounder (for both commercial and recreational vessels), northern windowpane flounder, and ocean pout; a 2-week extension of the seasonal prohibition on the retention of GOM cod for both private recreational and party/charter vessels, (i.e., revised to encompass

November through April 15); a bag limit of 10 GB cod per person per day for party/charter vessels operating in all areas; and mitigation measures that include modifications to the DAS Leasing, Transfer, and Regular B DAS Programs, expansion in area and season of the CA I Hook Gear Haddock SAP, renewal of the Eastern U.S./Canada Haddock SAP, and reduction of the haddock minimum fish size from 19 inches (48.3 cm) to 18 inches (45.7 cm) for both commercial and recreational vessels. This action does not implement the proposed expansion of the GOM Differential DAS Area (i.e., the Interim Differential DAS Area), or the proposed SNE Closure Area. In addition, this action maintains the Amendment 13 default measure for FY 2009, whereby Category A DAS are reduced by 18.2 percent, and maintains the status quo 2:1 GOM Differential DAS Area measures.

For reasons explained in the preamble to the proposed interim rule, the proposed fishing mortality targets were either Fmsy (for windowpane flounder, GOM winter flounder, GB winter flounder, witch flounder, pollock, GB haddock, GOM haddock, GOM cod, GB cod, American plaice, redfish, and ocean pout), or Frebuild (GB cod, GB yellowtail flounder, SNE/MA yellowtail flounder, Cape Cod (CC)/GOM yellowtail flounder, SNE/MA winter flounder, white hake, and Atlantic halibut). The proposed interim measures would not have achieved Frebuild for GB cod; however, they would have achieved Fmsy for this stock. The proposed measures also would not have achieved the Fmsy target for northern windowpane flounder, or the Frebuild target for SNE/MA winter flounder.

GARM III provided example estimates of Frebuild for overfished stocks, making assumptions about the rebuild period end-dates and the starting stock conditions at the beginning of the rebuilding periods. In doing so, GARM III assumed that the catch in FY 2008 will be the same as the catch in FY 2007. In contrast, for this interim action, an estimated catch in FY 2008 was used to recalculate the starting stock conditions in FY 2008, and the associated Frebuilds. For Amendment

16, the Council's Plan Development Team (PDT) estimated catch for the entire FY 2008 based upon an extrapolation of landings data for calendar year (CY) 2008 through June 2008. As explained further in the proposed interim rule preamble, this interim action relies on the PDT's estimated landings for FY 2008, and derived estimates of fishing mortality rates for CY 2008 and the recalculated Frebuilds. Because the measures implemented by this action will be effective in FY 2009, an estimate of fishing mortality in CY 2008 more closely represents the starting conditions of the remainder of the rebuilding periods. For GB yellowtail flounder, Frebuild was calculated utilizing an assumed catch in CY 2008 of 2,500 mt.

The target reductions for pollock and the two windowpane flounder stocks were revised from the proposed rule in order to be consistent with the other stocks. In the proposed rule, the target reductions for all stocks except these three were based upon an estimate of fishing mortality in 2008. In contrast, the target reductions for pollock and the two stocks of windowpane flounder were based upon the fishing mortality in 2007. Thus, this final rule utilizes a starting fishing mortality estimate in 2008 for all stocks. Because the estimate of fishing mortality in 2008 was greater than that observed in 2007 for these three stocks, the effect of this change is an increase in the percentage reduction necessary to reduce fishing mortality to Fmsy. For the calculation of F in 2008, for pollock, the PDT calculated an assumed catch in 2008 and for the windowpane flounder stocks, catch in 2008 was assumed to be equal to the catch in 2007.

In contrast to the proposed interim rule, which would not have attained the proposed interim goals for two stocks (i.e., SNE/MA winter flounder and Northern windowpane flounder), nor the updated Fmsy goal for pollock (which was updated after the proposed interim rule was published), management measures implemented through this final rule do not attain the stated goals for five stocks (SNE/MA winter flounder, Northern windowpane flounder, pollock, GB cod, and witch

flounder). However, for four of these five stocks, the rebuilding timeline extends beyond 2014 (a 2026 Amendment 13 end date for GB cod; and a 2017 Amendment 16 proposed end date for Northern windowpane flounder, witch flounder, and pollock). Because these four stocks have longer rebuilding timelines associated with them, additional time is available to ensure that the rebuilding goals of the FMP are met. However, to maintain the FMP rebuilding trajectories and to meet the statutory rebuild dates, the Council will need to consider whether further adjustments in fishing mortality are needed. If further adjustments are needed, the Council will need to account for this in future actions, possibly even in Amendment 16. Given the likely rebuilding schedules and the original justification for the expanded differential DAS counting area in the GOM and northern GB in the proposed interim rule (primarily to protect pollock and witch flounder), NMFS is not implementing the proposed expanded differential DAS counting area in this final rule, and is maintaining the status quo inshore GOM Differential DAS Area. The SNE Closure Area was included in the proposed interim rule primarily to protect SNE/MA winter flounder. Although this stock has a rebuilding timeline of 2014, given the concern raised by the public regarding the severe economic impacts that would be imposed by this closure area and the potential for this closure to lead to shifts in effort to other areas and other stocks, NMFS is instead implementing in this same area, slightly modified, a requirement for 2:1 differential DAS counting. To strictly control effort on SNE/MA winter flounder, NMFS is implementing a zero landing limit for SNE/MA winter flounder for both commercial and recreational vessels throughout the range of the stock. Table 2 identifies the 2009 target Fs as published in the proposed interim rule, and provides a comparison of the estimated fishing mortality reductions achieved for measures proposed in the proposed interim rule, and the measures implemented by this final interim rule.

TABLE 2—COMPARISON OF FISHING MORTALITY REDUCTIONS FOR THE PROPOSED AND FINAL INTERIM RULES

Species	Stock	2009 proposed F target	F reduction objective	F value for proposed interim action	F reduction achieved	F value for final interim action	F reduction achieved
Cod .....	GB .....	0.247 (Fmsy)	– 40%	0.208	– 49%	0.295	– 28%

TABLE 2—COMPARISON OF FISHING MORTALITY REDUCTIONS FOR THE PROPOSED AND FINAL INTERIM RULES—  
Continued

Species	Stock	2009 proposed F target	F reduction objective	F value for proposed interim action	F reduction achieved	F value for final interim action	F reduction achieved
Haddock	GOM	0.237 (Fmsy)	– 21%	0.203	– 32%	0.247	– 18%
	GB	0.350 (Fmsy)	322%	0.049	– 38%	0.062	– 25%
Yellowtail Flounder	GOM	0.430 (Fmsy)	72%	0.159	– 36%	0.205	– 18%
	GB	0.109 (Feb)	– 16%	0.109	– 16%	0.109	– 16%
	SNE/MA	0.072 (Feb)	– 38%	0.017	– 86%	0.073	– 39%
	CC/GOM	0.238 (Feb)	– 18%	0.174	– 40%	0.167	– 42%
American Plaice		0.190 (Fmsy)	92%	0.056	– 43%	0.084	– 15%
Witch Flounder		0.200 (Fmsy)	– 32%	0.167	– 44%	0.247	– 17%
Winter Flounder	GB	0.260 (Fmsy)	98%	0.108	– 18%	0.114	– 13%
	GOM	0.283 (Fmsy)	– 11%	0.286	– 10%	0.265	– 16%
	SNE/MA	0.000 (Feb)	– 100%	0.052	– 80%	0.100	– 62%
Redfish		0.038 (Fmsy)	375%	0.004	– 50%	0.007	– 13%
White Hake		0.084 (Feb)	29%	0.033	– 49%	0.054	– 17%
Pollock		5.660 (Fmsy)	– 51%	6.520	NA	9.342	– 19%
Windowpane Flounder	North	0.500 (Fmsy)	– 83%		NA	2.229	– 22%
	South	1.470 (Fmsy)	– 29%		NA	1.392	– 32%
Ocean Pout		7.600 (Fmsy)	NA		NA		
Atlantic halibut		0.044 (Feb)	– 27%		NA		

Because of the substantial changes made to the proposed interim measures, and the resulting changes in the expected Fs as a consequence of these changes, this final rule also implements revised target TACs and Incidental Catch TACs. The target TACs, and the Incidental TACs that are based on these targets, are specified as follows: For those stocks where the measures implemented by this rule are expected to reduce F to below the F target, the target TACs are set based on the estimated F achieved from the management measures in this action; for those stocks with Fs that are less than the proposed rule F targets, the target TACs will be set based on the proposed F targets. See Measure 3 under “Approved Commercial Measures” for further details on these final target TACs.

#### Management Measures

All measures in effect prior to May 1, 2009, including the scheduled default DAS reduction measures, that are not amended by this final interim rule, will remain in effect on and after May 1, 2009. This interim action implements management measures to reduce fishing mortality on the commercial and

recreational fisheries without compromising rebuilding objectives, and revises several management programs to mitigate the negative economic and social impacts. The interim action is intended to ensure consistency, to the extent practicable in an interim rule, with the national standards and required provisions of the Magnuson-Stevens Act. This action also specifies target TACs for all managed stocks, and annual specifications for stocks managed by the U.S./Canada Resource Sharing Understanding (Understanding). As is more fully discussed later in this document, these measures will result in both quantifiable and non-quantifiable reductions in fishing mortality for all of the NE multispecies stocks managed under the FMP.

The interim measures are designed to work in conjunction with the FMP to reduce fishing mortality and continue to maintain progress toward achieving the rebuilding requirements of the FMP. The analysis of this action presumes that the measures will be in effect throughout FY 2009, and that a subsequent management action (Amendment 16) will be implemented

on May 1, 2010. The FMP management measures include an FY 2009 default measure that will change the allocation ratio of Category A:B DAS from 55:45 to 45:55. This measure, because it is not an action implemented by this interim action, is not discussed specifically in the description of the interim measures that follow. In addition, this action continues existing measures in the FMP associated with the GOM Differential DAS Area, as discussed further below. NMFS anticipates that this interim action will be renewed upon its expiration for an additional 185 days, given that the Council does not anticipate the implementation of Amendment 16 until May 2010 and that the Council recommended that any interim action implemented by NMFS should be in effect for all of FY 2009. Several measures were modified from the proposed to the final rule based upon public comments received and further analysis of proposed measures, to mitigate the negative economic impacts of the management measures on the fishing industry and fishing communities without compromising long-term rebuilding of overfished stocks. Although these revisions will

result in less reduction to fishing mortality than the measures proposed, such changes should not undermine efforts to rebuild stocks within the established timeframes. Such measures will continue to reduce F on all stocks and eliminate overfishing on all but four stocks (pollock, GB cod, witch flounder, and northern windowpane flounder). Three of these stocks are newly classified as overfished (pollock, witch flounder, and northern windowpane flounder), and the rebuilding programs developed by the Council in draft Amendment 16 include rebuilding timelines extending to 2017. The rebuilding timeline for GB cod extends through 2026. Given this, there should be sufficient opportunity for future management actions to end overfishing and rebuild these stocks, as necessary. The following describes the measures implemented by this final interim rule.

#### *Approved Commercial Measures*

##### 1. Differential DAS Counting

This action maintains the existing differential DAS counting area in the GOM, as established in the FMP. However, in SNE, the existing SNE Differential DAS Area is replaced by the Interim SNE Differential DAS Area. This area includes waters between 40°30' and 41°30' N. lat., and west of 68°50' W. long. (i.e., west of the border of the Western U.S./Canada Area) to the shore, including all of Nantucket Sound and the Great South Channel. The Interim SNE Differential DAS Area is being implemented primarily as a means to reduce F on SNE winter flounder and SNE/MA yellowtail flounder.

With the exception of vessels fishing with hook gear in the Interim SNE Differential DAS Area, all NE multispecies vessels declared into and fishing under a NE multispecies Category A DAS within either the GOM or Interim SNE Differential DAS Areas for any portion of a trip will be charged at a rate of 2:1 for the entire trip. In other words, with the exception noted above, if a vessel declares into, and fishes in, either the GOM or Interim SNE Differential DAS Area for 10 hr, the vessel's DAS balance would be charged 20 hr. NE multispecies vessels declared into and fishing under a Category A DAS in the Interim SNE Differential DAS Area using hook gear will be charged DAS at a rate of 1:1, provided such vessels have only hook gear on board. The hook gear exception to the differential DAS counting rate is based upon data that indicate that the catch rate of winter flounder and yellowtail flounder, the primary species targeted by this measure, by hook gear is likely

to be very low and, in conjunction with a zero retention limit for SNE winter flounder, will not substantially affect F reductions achieved by this action.

A vessel will not be charged at the differential DAS rate if it declares into and transits to another area outside of one of the differential DAS areas. For example, if a vessel steams through the GOM Differential DAS Area on its way to and from the fishing grounds in the U.S./Canada Management Area, where DAS are not counted differentially, it will not be charged at the 2:1 rate for the parts of the trip spent steaming through the GOM Differential DAS Area. If a vessel declares and fishes both inside and outside of the GOM Differential DAS Area or the Interim SNE Differential DAS Area on the same trip, it will be charged differential DAS at a rate of 2:1 for the entire trip. This does not change the way that DAS are charged for vessels fishing in the GOM Differential DAS Area. However, charging differential DAS at a rate of 2:1 for the entire trip does represent a change in the way DAS are currently charged under the existing SNE Differential DAS Area implemented under FW 42. This change is based upon the revised area encompassed by the Interim Differential DAS Area, as further explained in the response to Comment 15.

Consistent with current regulations, vessels are required to declare their intent to fish in one or both of the differential DAS areas via the vessel monitoring system (VMS) prior to leaving port. However, the Administrator, Northeast Region, NMFS (Regional Administrator) currently has the authority to require the fishery to utilize the "call-in system" on a temporary basis instead of the VMS for DAS accounting if the vessel fishes inside/outside of the VMS demarcation line on the same trip, if the VMS system was down for an extended period of time, or for some other unforeseen circumstance. In such a circumstance, vessels fishing any portion of a trip inside one or both of the differential DAS areas will be charged at the rate of 2:1 for the entire trip.

The interaction of current groundfish and non-groundfish regulatory programs and the different DAS counting rules remain unchanged under this action (e.g., the cod running clock, DAS charging rules for Day gillnet vessels, the application of daily possession limits for certain stocks, the Eastern U.S./Canada Area rules, use of Regular B DAS, and monkfish/groundfish permitted vessels fishing under a NE multispecies DAS). For example, a vessel fishing in the GOM Differential

DAS Area for 25 hr that caught 1,600 lb (726 kg) of GOM cod (i.e., 2 day's worth) would not be required to submit the cod running clock form via VMS in order to account for the additional day's worth of cod harvested. In addition, a Day gillnet vessel declared into and fishing in the GOM Differential DAS Area would be charged DAS at a rate of 2:1 for any trip less than or equal to 3 hr in duration, or greater than 7.5 hr in duration and 15 hr for any trip greater than 3 hr, or less than or equal to 7.5 hr in duration. For vessels fishing in multiple geographic areas in which different rules apply (such as differential DAS counting and trip limits), the most restrictive rule would apply for the entire trip. The current regulations that allow monkfish Category C and D vessels to fish as a monkfish Category A or B vessel, and land monkfish under certain conditions, will still apply. As described in detail below under Item 9 "Mitigating Measures," the DAS rules that apply to monkfish Category C and D vessels fishing in the GOM Differential DAS Area are modified by this action to minimize any impact these measures may have on the ability of such vessels to fish for monkfish.

##### 2. Modified Trip Limits

Under this interim rule, NE multispecies vessels are not allowed to fish for, possess, or land more than 1,000 lb (453.6 kg) per DAS, up to 5,000 lb (2,268 kg) per trip of witch flounder. In addition, no retention of SNE winter flounder, northern windowpane flounder, or ocean pout is allowed. Vessels fishing for winter flounder or windowpane flounder in multiple stock areas are subject to the most restrictive possession limit for the pertinent species. In other words, if a vessel fishes in the SNE winter flounder stock area and the GB winter flounder stock area on the same trip, the vessel will be subject to the prohibition on retention of winter flounder for that trip. Lastly, as explained further under Measure 6 under "Approved Commercial Measures" of the preamble ("Annual Specifications for U.S./Canada Management Area"), a limit of 5,000 lb (2,268 kg) of GB yellowtail flounder per trip is specified. Modifications to trip limits are implemented as a means to reduce fishing mortality or increase yield because they are a management tool that can target particular stocks and are an important component of the current FMP.

##### 3. Specification of Target TACs

Target TACs are utilized in the FMP as one method of evaluating the success

of management measures and providing a way to make simple comparisons between different fishing years. Secondly, target TACs form the basis of calculating allocations of GB cod to sectors and the incidental catch TACs for the Special Management Programs. This final interim rule implements target TACs for FY 2009. The proposed rule indicated that the target TACs would be based upon either Fmsy or Frebuild for each stock. For stocks that were previously considered overfished, target TACs were proposed to be based upon Frebuild, with one exception for GB cod. For GB cod, the target TAC was proposed to be based upon Fmsy, for reasons specified in the proposed interim rule. In contrast, for stocks that have been newly classified as overfished based upon the results of GARM III, the target TACs were proposed to be based upon Fmsy. However, this final interim rule specifies target TACs based upon either the F<sub>target</sub> for each stock (i.e., Fmsy or Frebuild) or the F resulting from measures implemented by this action (i.e., estimated F), whichever is higher. For stocks where the estimated F is lower than the F<sub>target</sub>, implementing target TACs based upon the F<sub>target</sub> allows for increased yield. For stocks where the estimated F is higher than the F<sub>target</sub>, implementing target TACs based upon the estimated F more accurately reflects catch anticipated from measures implemented by this action. Table 3 lists the target TACs for FY 2009, based upon GARM III data, and an estimate of F for each stock during CY 2008.

TABLE 3—TARGET TACs (MT) FOR FY 2009

Species	Stock	Target TAC
Cod .....	GB .....	5,501
Cod .....	GOM .....	10,724

TABLE 3—TARGET TACs (MT) FOR FY 2009—Continued

Species	Stock	Target TAC
Haddock .....	GB .....	89,055
Haddock .....	GOM .....	1,564
Yellowtail flounder ...	GB .....	*1,617
Yellowtail flounder ...	SNE/MA ...	389
Yellowtail flounder ...	CC/GOM ..	860
Plaice .....	.....	3,214
Witch flounder .....	.....	1,129
Winter flounder .....	GB .....	2,004
Winter flounder .....	GOM .....	379
Winter flounder .....	SNE .....	0
Redfish .....	.....	8,614
White hake .....	.....	2,376
Pollock .....	.....	6,346
Windowpane flounder	North .....	581
Windowpane flounder	South .....	279
Halibut .....	.....	68

\* A hard TAC, set through a separate process described in Measure 5 of this preamble.

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

This final rule revises the specification of incidental catch TACs applicable to the Special Management Programs of the FMP for FY 2009, based upon the most recent scientific information. Incidental catch TACs are specified for certain stocks of concern for Special Management Programs in order to limit the amount of catch of stocks of concern that can be caught under such programs, and to fully account for fishing mortality. The incidental catch TACs apply to catch (landings and discards) caught under Category B DAS (either Regular or Reserve B DAS) on trips that end on a Category B DAS. The catch of stocks for which incidental catch TACs are specified on trips that start under a Category B DAS and then flip to a Category A DAS do not accrue toward such TACs.

A stock of concern is defined as a stock that is in an overfished condition

or subject to overfishing. Due to the revised status of stocks (GARM III) that is adopted under this action, an incidental catch TAC is no longer appropriate for American plaice, because it is no longer considered a stock of concern. Further, new incidental catch TACs are required for GOM winter flounder and pollock because they are now considered stocks of concern. The percentages that the TACs are based on remain unchanged, with the exception of witch flounder, which is reduced from 5 percent to 2 percent, due to its overfished status and the fact that the F and total catch need to be reduced. The incidental catch TACs for GOM winter flounder are set at 5 percent, based on the rationale described in Framework (FW) 40A to the FMP: If the recent catch levels are less than the expected future catch levels, and 2009 management measures are likely to achieve more than the required reduction in F, then the size of an incidental catch TAC relative to the size of the overall TAC is larger (set as a larger percent). The incidental catch TAC for pollock is set at 5 percent because of the prevalence of pollock catch in the Special Management Programs, and based upon the rationale cited above. The utility of the Special Management Programs would be severely constrained if the incidental catch TAC is set too low. The number of total incidental catch TACs is increased from the current number (8), to 10. Due to the severe F reduction necessary for the SNE/MA stock of winter flounder, no retention of this stock is allowed, and there is no incidental catch TAC specified (see additional discussion under Section 9 of this preamble, Mitigating Measures). The calculation of incidental catch TACs by stock based on the target TACs is shown in Table 4.

TABLE 4—INCIDENTAL CATCH TACs FOR FY 2009 (MT)

Stock	Percentage of total TAC	Target TAC	Incidental TAC
GB cod .....	2	5,501	110
GOM cod .....	1	10,724	107.2
GB yellowtail .....	2	1,617	32.3
CC/GOM yellowtail .....	1	860	8.6
SNE/MA yellowtail .....	1	389	3.9
Pollock .....	5	6,346	317.3
Witch flounder .....	2	1,129	22.6
GB winter flounder .....	2	2,004	40.1
White hake .....	2	2,376	47.5
GOM winter .....	5	379	19.0

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

Therefore, the percent allocations to this SAP are reduced for GB cod, GB yellowtail, and GB winter flounder, and the percent allocation to the Regular B DAS Program is increased due to higher participation in that program historically. Secondly, this rule provides the Regional Administrator the authority to modify the allocations among programs in-season, or prior to the beginning of the season, because it

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

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

Stock	Regular B DAS Program		Eastern U.S./Canada Haddock SAP		Closed Area I Hook Gear Haddock SAP	
	Current	New	Current	New	Current	New
GB Cod .....	50%	70%	34%	14%	16%	No change
GB Yellowtail flounder .....	50%	80%	50%	20%	.....	.....
GB Winter flounder .....	50%	80%	50%	20%	.....	.....
Pollock .....	None	90%	None	5%	None	5%
GOM Winter flounder .....	None	100%	.....	.....	.....	.....
GOM Cod .....	100%	100%	.....	.....	.....	.....
White hake .....	100%	100%	.....	.....	.....	.....
CC/GOM Yellowtail flounder .....	100%	100%	.....	.....	.....	.....
SNE/MA Yellowtail flounder .....	100%	100%	.....	.....	.....	.....
Witch flounder .....	100%	100%	.....	.....	.....	.....
Plaice .....	100%	None	.....	.....	.....	.....

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

Stock	Regular B DAS Program	Eastern U.S./Canada Haddock SAP	Closed Area I Hook Gear Haddock SAP
GB Cod .....	77	15.4	17.6
GOM Cod .....	107.2	na	na
GB Yellowtail flounder .....	25.8	6.5	na
CC/GOM Yellowtail flounder .....	8.6	na	na
SNE/MA Yellowtail flounder .....	3.9	na	na
Pollock .....	285.6	15.9	15.9
Witch flounder .....	22.6	na	na
GB Winter flounder .....	32.1	8.0	na
White hake .....	47.5	na	na
GOM Winter flounder .....	19.0	na	na

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

In consultation with the Council, NMFS annually implements management measures for the U.S./Canada Management Area through proposed and final rules. For FY 2009, because NMFS is implementing management measures for the entire fishery to reduce fishing mortality as described above, NMFS is including the specification of the TACs and other measures for the U.S./Canada

Management Area in this final interim rule in order to streamline the regulatory process.

The FMP specifies a procedure for setting annual hard TAC levels (i.e., the fishery or area closes when a TAC is reached) for Eastern GB cod, Eastern GB haddock, and GB yellowtail flounder in the U.S./Canada Management Area, which is described in the proposed interim rule. The specific justification for the FY 2009 TACs, which were based upon the most recent stock assessments, is also described in the

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

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

	GB Cod	GB Haddock	GB Yellowtail Flounder
Total Shared TAC .....	1,700	30,000	2,100
U.S. TAC .....	527 (31)	11,100 (37)	1,617 (77)

TABLE 7—FY 2009 U.S./CANADA TACs (MT) AND PERCENTAGE SHARES (IN PARENTHESES)—Continued

	GB Cod	GB Haddock	GB Yellowtail Flounder
Canada TAC .....	1,173 (69)	18,900 (63)	483 (23)

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

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

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

The regulations for the Understanding, promulgated by the final rule implementing Amendment 13, state that any overages of the GB cod, haddock, or yellowtail flounder TACs that occur in a given fishing year will be subtracted from the respective TAC in the following fishing year.

Therefore, should an analysis of the catch of the shared stocks by U.S. vessels indicate that an over-harvest occurred during FY 2008, the pertinent TAC will be adjusted downward in order to be consistent with the FMP and Understanding. Although it is very unlikely, it is possible that a very large over-harvest could result in an adjusted TAC of zero. If an adjustment to one of the FY 2008 TACs of cod, haddock, or yellowtail flounder is necessary, the public will be notified through publication in the **Federal Register** and through a letter to permit holders.

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

Based on the Council's vote to postpone the opening of the Eastern U.S./Canada Area for vessels fishing with trawl gear in FY 2008 from May 1, 2008, to August 1, 2008, and the success of this management measure in slowing the annual catch rate of cod during the early part of the year, NMFS is implementing this same measure for FY 2009. Thus, the FY 2009 opening of the Eastern U.S./Canada Area for trawl vessels will be August 1, 2009; more selective longline gear is allowed access during May through July. Such vessels will be limited to a cod catch of 5 percent of the cod TAC, or 26.4 mt. The objective of this action is to prevent

trawl fishing in the Eastern U.S./Canada Area during the time period when cod bycatch is likely to be very high. The goal of this measure is to prolong access to this area in order to maximize the catch of available cod, haddock, and yellowtail flounder.

Secondly, the Regional Administrator is implementing a possession limit of 5,000 lb (2,268 kg) per trip for GB yellowtail flounder. Although the regulations under § 648.86(a)(3)(iv)(C) indicate an initial trip limit of 10,000 lb (4,536 kg) at the beginning of a fishing year for GB yellowtail flounder, based on the yellowtail flounder catch rate from the U.S./Canada Management Area under a 5,000-lb (2,268-kg) trip limit during FY 2008, and analyses conducted by NMFS during FY 2007, a 5,000-lb (2,268-kg) trip limit is an appropriate trip limit to allow harvesting of the TAC, and to increase the likelihood that further restrictions during the fishing year to slow the catch rate will be unnecessary.

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

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

#### 6. Haddock TAC for the CA I Hook Gear Haddock SAP

Under this action, a haddock TAC for the CA I Hook Gear Haddock SAP is set based upon the GARM III stock assessment and a formula implemented in FW 42. The haddock TAC in a particular year is based upon the TAC that was specified for the SAP in 2004 (1,130 mt), scaled according to the size of the exploitable biomass of western GB haddock compared to the biomass size in 2004 (35,317 mt). The size of the western component of the GB haddock stock is estimated at 35 percent of the size of the total GB haddock stock. Because the 2009 exploitable biomass of haddock is 321,870 mt, the formula and



resultant TAC is as follows:

$((.35)(321,870)/35,317) \times 1,130 = 3,604.5$  mt. This action implements further modifications to this SAP, as discussed in Item 9 below.

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

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

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

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

#### 9. Mitigating Measures

##### *CA I Hook Gear Haddock SAP*

*Expansion.* For reasons explained in the Comments section below, this final rule implements modifications to the CA I Hook Gear Haddock SAP to expand its scope and change some of the restrictions in order to increase opportunity to access GB haddock and provide additional flexibility to vessels. The expansion has been determined to be consistent with the goals of the FMP. Specifically, this rule modifies the time period for the SAP from October through December, to May through January, and expands the area within CA I where vessels may fish to the east and south, to encompass the entire northern half of CA I. This rule eliminates the division of the SAP into two time periods, as well as the allocation of the haddock TAC to the two time periods. All limited access NE multispecies DAS vessels fishing with

hook gear may fish in the SAP at any time (provided the SAP is open), regardless of whether the vessel is enrolled in a sector or is in the "common pool." This final rule also implements a provision that was not included in the Council's alternative, which is a prohibition on the use of squid as bait when fishing in this SAP, in order to allow haddock to be targeted with increased likelihood that the catch rate of cod will be low. This prohibition is based upon analysis of experimental fishery data during the comment period for this action that indicated high bycatch of cod may occur when using squid as bait. This final rule also eliminates the requirement that vessels intending to participate in the SAP provide a yearly notification to the observer program in advance of the SAP season, because the removal of the sector and non-sector seasons for this SAP no longer make this notification necessary to assist in the deployment of observers. The requirement to notify the observer program 72 hr in advance of each trip is maintained. These measures were not included in the proposed rule and NMFS is soliciting comments on this aspect of the rule.

*Reduction of Haddock Minimum Size.* Under this interim action, the haddock minimum size is reduced to 18 inches (45 cm) for both the commercial and recreational fisheries in order to increase yield and decrease bycatch (as defined by the Magnuson-Stevens Act). Information from GARM III indicates that the GB stock is very large and is rebuilt, while the GOM stock is 99-percent rebuilt. Furthermore, a portion of the large 2003 year class of haddock is still below the current 19-inch (47.5-cm) minimum size. A reduced minimum size for haddock will allow vessels to retain more haddock, thereby increasing yield for this species. Other recreational measures are described under Measure 10 under "Approved Commercial Measures" of the preamble to this final interim rule.

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

remain unchanged, with the exception of the reallocation of the incidental catch TACs (see Table 5).

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

*Modifications to the Regular B DAS Program.* The Regular B DAS Program was designed to provide opportunities to target healthy stocks without threatening stocks for which a mortality reduction is required. The program allows the use of Regular B DAS under restrictions designed to minimize impacts of stocks of concern. Under this interim rule, in addition to the modifications implemented under Measure 5 under "Approved Commercial Measures" of the preamble to this final interim rule (Revisions to Incidental Catch TACs and Allocations to Special Management Programs), several revisions are made to the Regular B DAS Program in order to address the current status of stocks and necessary reductions to F, as well as to maintain the usefulness of the Regular B DAS Program. Under current regulations, the Regional Administrator has the authority to close the Regular B DAS Program if it is projected that continuation of the Regular B DAS Program would undermine the achievement of the objectives of the FMP. In addition to monitoring the incidental TACs proposed under Section 5 of the preamble, NMFS will closely monitor the level of discarding of stocks that are proposed to have zero retention, but for which there is no incidental TAC (i.e., SNE/MA winter flounder, northern windowpane flounder, and ocean pout) to ensure that fishing mortality objectives for all stocks are not jeopardized.

In order to prevent the quarterly incidental catch TACs from limiting the usefulness of the program, any quarterly

incidental catch TAC that remains uncaught from quarters one, two, and/or three will roll over into the subsequent quarter.

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

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

**DAS Leasing Program Modifications.** Under this rule, the current prohibition on leasing DAS between sector and common pool vessels is eliminated in order to increase flexibility and efficiency in the DAS leasing market. Secondly, the limit on the maximum number of DAS that a vessel sector and common-pool vessel may lease is eliminated. Amendment 13 implemented a restriction that a lessee may lease Category A DAS in an amount

up to the vessel's FY 2001 allocation (excluding carry-over DAS from the previous year, or additional DAS associated with obtaining a Large Mesh permit). This restriction is removed in order to increase flexibility and efficiency in the DAS leasing market. These mitigation measures, including the DAS Transfer Program modifications described below, will also enhance the likelihood of compliance with the measures by providing additional fishing opportunities.

**DAS Transfer Program Modifications.** Under this final rule, the DAS conservation tax is removed from the DAS Transfer Program. Specifically, the mandatory reduction of Category A and B DAS (20 percent), and Category C DAS (90 percent), will no longer apply when vessels participate in the DAS Transfer Program. The Council is expected to propose modifications to the DAS Transfer Program in Amendment 16 in order to provide an additional incentive to permanently transfer groundfish DAS, provide for parity of the DAS Transfer Program with the DAS Leasing Program, facilitate consolidation of permits, and provide flexibility for vessels to mitigate the negative impacts of DAS reductions and other management measures. NMFS is implementing this temporary modification to the program for the same reasons the Council is expected to propose such changes. The limited duration of the tax-free period (due to the limited duration of the proposed interim action) will limit the amount of any effect the change may have on increasing the overall DAS use rate.

**Monkfish DAS Rules to Mitigate Impacts of Groundfish Interim Action.** Because vessels with a limited access Monkfish Category C and D permit are required to concurrently use a groundfish DAS in most circumstances, the differential DAS requirements implemented by this final rule impact such vessels. Although vessels fishing under concurrent monkfish and groundfish DAS in a differential DAS area still utilize monkfish DAS at a 1:1 rate, the fact that their groundfish DAS are used at the rate of 2:1 indirectly limits the ability for such vessels to fish for monkfish in the future, because once a vessel runs out of groundfish DAS, their ability to fish under a monkfish-only DAS is limited. This final rule provides economic relief to groundfish vessels that also possess either a Category C or D monkfish permit by allowing these vessels to accrue a monkfish-only DAS while fishing for groundfish in a 2:1 differential DAS counting area.

For example, a limited access monkfish Category C or D vessel with 40 groundfish DAS and 31 monkfish DAS that fished under a monkfish DAS exclusively in a 2:1 differential DAS counting area for 20 days would use all of its 40 DAS groundfish allocation and, concurrently, 20 DAS of its monkfish allocation (because monkfish DAS are counted on a 1:1 basis in the differential DAS area). Thus, the vessel would have a remaining balance of 11 monkfish DAS, and zero groundfish DAS. Without a regulatory change that allows a vessel to accrue a monkfish-only DAS while fishing for groundfish in a 2:1 differential DAS area, once the vessel used up its groundfish DAS, the vessel would be unable to fish monkfish-only DAS and, in this example, the use of the 11 remaining monkfish DAS would have to be foregone. This action will restore the ability for the vessel to use its remaining 11 monkfish DAS, in this example, because the vessel would be eligible to receive up to a total of 20 monkfish-only DAS as a result of fishing in the 2:1 groundfish differential DAS area. Since the vessel in this example would only have 11 monkfish DAS left, its monkfish-only DAS would be capped at 11. This measure was not included in the proposed rule, and NMFS is soliciting comments on this provision.

#### 10. Recreational Measures

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

#### 11. Revised FY 2009 GB Cod TACs for Sectors

As highlighted above in Measure 3 under “Approved Commercial Measures” (“Specification of Target TACs”), this final interim rule revises several of the FY 2009 target TACs originally proposed for this action. Because the GB cod target TAC serves as the basis for calculating the GB cod TAC allocated to approved sectors, this final rule also revises the FY 2009 sector GB cod TAC allocations. Proposed rules specifying the 2009 GB cod TAC allocations for both the GB Cod Hook Sector and the GB Cod Fixed Gear Sector were published in the **Federal Register** on February 10, 2009 (74 FR 6564), and February 12, 2009 (74 FR 7029), respectively. These allocations were based upon an available U.S. share of the GB cod TAC of 3,506 mt, and the proposed interim rule listed the GB Cod Hook Gear Sector GB cod TAC as 284 mt (based upon an 8.09-percent share of the U.S. portion of the TAC), and the GB Cod Fixed Gear Sector GB cod TAC as 408 mt (based upon an 11.64-percent share of the U.S. portion of the TAC). Because this final interim rule revises the overall target TAC for GB cod from 3,506 mt to 4,328 mt, the GB cod allocations to these sectors are increased to 350.1 mt for the GB Cod Hook Sector and 503.8 mt for the GB Cod Fixed Gear Sector.

#### 12. Extension of the Deadline for Gillnet Designation

The current regulations at § 648.4(c)(2)(iii)(A) require vessels fishing with gillnet gear to make an annual designation as either a Day or Trip gillnet vessel when the vessel is issued or renews a limited access NE multispecies permit. Once a vessel has elected this designation, the vessel may not change its declaration for the remainder of the fishing year. As further explained in Measure 1 under “Approved Commercial Measures,” this designation dictates the manner in which DAS are counted for such vessels. Because these final interim measures will affect how DAS are counted during FY 2009, and because such measures were not known to the public until after many vessels had already selected a gillnet designation for FY 2009, this final interim rule allows a vessel owner to change the gillnet designation associated with his/her permit through June 12, 2009. This provides additional time for the vessel owner to review the final interim measures and revise the gillnet designation for his/her permit, if necessary.

#### Comments and Responses

Eighty-eight comments were received during the comment period on the proposed interim rule and accompanying EA, from 63 individuals, 11 commercial fishing organizations, 2 state senators, 8 U.S. Senators, 9 U.S. Congressmen, 2 state resource management agencies (Massachusetts Division of Marine Fisheries (DMF) and the Maine Department of Marine Resources (DMR)), 2 conservation organizations, 2 municipalities (New Bedford, MA, and East Hampton, NY), and the Council.

#### Legal Authority for Interim Action

*Comment 1:* Four members of the commercial fishing industry, two organizations representing the commercial fishing industry (Northeast Seafood Coalition and Westend Fisherman’s Association), an environmental organization (The Pew Environmental Group), and seven U.S. Senators stated that there is no legal requirement for interim measures to reduce fishing effort to the extent that the interim rule proposes to do.

*Response:* Section 305(c) of the Magnuson-Stevens Act authorizes the Secretary to implement interim measures to reduce or address overfishing if he/she finds that overfishing exists, as more fully explained elsewhere in this preamble. Guidelines to help clarify this authority (63 FR 24212; May 1, 1998) allow discretion and flexibility with respect to the scope and severity of the action. When proposing the interim measures, NMFS considered recent stock status and the need for substantial reductions in F to help ensure that overfished stocks remain on their Amendment 13 rebuilding trajectories. However, after review of public comments, NMFS has modified the management measures implemented under this final interim rule from those that were proposed, to target stocks in most immediate need of reductions; e.g., SNE winter flounder, and northern windowpane flounder; to reduce negative impacts on fishermen to the extent practicable in the context of this interim rule, without jeopardizing the likelihood of meeting rebuilding objectives of overfished multispecies stocks. Because NMFS is not implementing the proposed expanded differential DAS accounting in the GOM and northern portions of GB, and because this final interim rule replaces the SNE Closure Area with differential DAS counting, this final interim rule will result in smaller F reductions for several of the stocks than the proposed measures would have, and will not

provide as much assurance that rebuilding goals will be met for overfished stocks. However, these final interim measures should not impede progress of attaining FMP rebuilding objectives, provided adequate adjustments, if necessary, are made by the Council in future years. This is due, in part, to the fact that several overfished stocks have extended rebuilding periods (GB cod—2026, Atlantic halibut—2058, and CC/GOM yellowtail flounder—2023), which allows more time for the stocks to respond to management. In addition, the Council has adopted draft rebuilding programs in Amendment 16 for stocks recently classified as overfished (pollock, witch flounder, GB winter flounder, and northern windowpane flounder) that will likely set a rebuilding end-date as 2017 for these stocks. The measures implemented by this final interim rule do achieve substantial reductions in F for the targeted stocks, including a 62-percent reduction for SNE/MA winter flounder and a 39-percent reduction for SNE/MA yellowtail flounder.

#### Goal of Interim Action and Magnitude of Management Measures

*Comment 2:* Fifty-seven commenters, including commercial fishermen, commercial fishing organizations, municipalities, state fisheries organizations, and state senators questioned why such severe interim restrictions are necessary. Twenty commenters questioned NMFS’s justification and compliance with the Magnuson-Stevens Act, particularly National Standard (NS) 8. Many characterized the proposed interim rule as failing to balance the need to reduce overfishing and rebuild stocks with the need to maintain a viable fishery and infrastructure. Some claimed that NMFS is ignoring the provisions of the Magnuson-Stevens Act that provide flexibility to achieve an appropriate balance. Others asked what stocks have collapsed to warrant such extreme measures.

*Response:* Based upon the best available science (GARM III), NMFS believes substantial reductions in F are necessary for stocks in most need of protection in order to ensure that rebuilding objectives are not jeopardized. When determining final management measures for this rule, NMFS considered the requirements of the Magnuson-Stevens Act, including the minimization of adverse economic impacts, the status of stocks, and the requirements of the FMP. As stated in the proposed interim rule, NMFS’s goal for this interim action is to implement

measures to reduce overfishing, while addressing the need to help sustain fishing communities, without compromising rebuilding objectives and statutory rebuilding timelines. Relying on the additional flexibility inherent in implementing an interim rule under section 305(c) of the Magnuson-Stevens Act, as more fully explained elsewhere in this preamble, NMFS balanced the need to reduce overfishing and rebuild stocks with the need to minimize adverse impacts on fishing industry businesses and sustain fishing communities. However, based on public comments that the proposed management measures would create severe economic hardship, and further analysis of the impacts of several additional alternative combinations of management measures, NMFS is not implementing the proposed interim measures of 2:1 differential DAS counting in the GOM and northern GB area as this measure was primarily intended to reduce F on pollock and witch flounder. Given that there is no current rebuilding program for pollock, witch flounder, or northern windowpane flounder, and that the Amendment 16 rebuilding programs likely to be proposed for these stocks have a rebuilding timeline of 2017, NMFS believes that there is additional time for the Council to ensure that these, and other newly overfished stocks, are rebuilt as intended under Amendment 16. Further, given concern raised by the public regarding the severe economic impacts that would be imposed by the SNE Closure Area, NMFS is not implementing that proposed measure, but is instead implementing a modified 2:1 differential DAS counting area, with a zero landing limit for SNE winter flounder, to discourage effort on this stock. As stated in response to Comment 1 above, NMFS believes that, despite these revisions, the FMP rebuilding goals are still achievable, although additional restrictions may likely be necessary in the future to achieve the goals.

This action includes several measures intended to minimize the adverse economic impacts associated with effort reduction measures. These include a reduction in the haddock minimum size restriction, revisions to the DAS Leasing Program, elimination of the conservation tax in the DAS Transfer Program, continuation of the Eastern U.S./Canada Haddock SAP, modifications to the Regular B DAS Program, and expansion of the CA I Hook Gear Haddock SAP. As described in the EA associated with this action,

these measures should provide additional flexibility and fishing opportunity for vessels that would otherwise not be available.

In summary, in response to public comments, NMFS, within the limits associated with implementing an interim rule under section 305(c) of the Magnuson-Stevens Act, has made several changes from the proposed rule to mitigate negative economic impacts and address industry concerns regarding disproportionate impacts of particular measures, consistent with NS 8. As described in more detail under the description of management measures above, the principal changes from the proposed rule are as follows: (1) Replacement of the SNE Closure Area with 2:1 differential counting in this area; (2) expansion in time and area of the CA I SAP; (3) modification of the rules regarding monkfish DAS to mitigate unintended impacts of the existing GOM Differential DAS Area and the Interim SNE Differential DAS Area; and (4) modification of how vessels are charged DAS when fishing inside and outside of a differential DAS area on the same trip, i.e., vessels will be charged DAS based on the area that they are fishing in.

*Comment 3:* One commenter asked how NMFS can reconcile the magnitude of the impacts of this rule, based on the status of the stocks, with its October 2007 determination that there was not a fishery resource disaster.

*Response:* In 2007, Massachusetts, New Hampshire, and Maine requested that NMFS make a determination that there was a fishery resource disaster affecting them. NMFS denied those requests because the statutory requirements for such a finding were not met. Although the most recent stock assessments indicate that many groundfish stocks are overfished, several important stocks have recovered, or are close to recovery. The fact that substantial reductions in F are still necessary to rebuild stocks and eliminate overfishing is not inconsistent with the 2007 denial of the requests for a fishery resource disaster declaration. NMFS's response to the Commonwealth of Massachusetts included the following: "The National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS) has carefully analyzed the data regarding the Massachusetts groundfish fishery and also the provisions regarding a commercial fishery failure due to a fishery resource disaster under Magnuson-Stevens Act sections 312(a) and 315. Although we understand that there has been economic difficulty in the groundfish-dependent communities

of Massachusetts and we are very sympathetic, we find that your request for a determination of a commercial fishery failure due to a fishery resource disaster does not meet the requirements for such a finding under Sections 312 or 315 of the Magnuson-Stevens Act. Our latest research shows encouraging increases in most of the groundfish stocks including cod, haddock, and Georges Bank yellowtail. Even though fishing revenues show some declines, the commercial fishery itself, although diminished, has not failed."

#### **Evaluation of the Council Proposal for FY 2009**

*Comment 4:* Twenty-one commenters, including eight U.S. Senators and nine U.S. Congressmen, supported adoption of the Council's recommended interim measures. Some commenters questioned why NMFS disregarded the Council's proposal, noting their belief that the Council proposal is better for fishermen and the fish, and stating that the Council proposal would itself cause economic harm. Many commenters believed that the Council's proposal represents a better bridge to Amendment 16. Several commenters claimed that input controls such as DAS have failed to prevent overfishing and have increased discarding and foregone yield, with some supporting the TAC-payback provision of the Council's proposal, in particular. Three commenters suggested that NMFS implement a requirement for all groundfish vessels to submit daily catch reports through VMS as a means to improve reporting and move toward an output control management system.

*Response:* As explained in the response to Comment 2 above, NMFS's goal for the interim action is to reduce F on the groundfish stocks while minimizing economic impacts to the extent practicable, without jeopardizing rebuilding objectives. NMFS carefully considered the Council's recommended alternative, but ultimately rejected it for several reasons, the principal reason being that it would not have reduced F sufficiently to meet NMFS's goals for 7 of 12 stocks. As part of the EA, NMFS analyzed the no action alternative as a proxy for the Council's alternative using the closed area model (CAM). The results indicated that F reductions achieved by the Council's alternative would be insufficient for a number of stocks (7 of the 12 stocks requiring F reductions). Subsequent to the publication of the proposed interim rule, NMFS analyzed the Council's alternative and the results were essentially the same as the results of the analysis of the no action alternative.

After the end of the comment period, NMFS conducted additional analyses comparing the Council's proposed interim alternative, NMFS's proposed measures, and other alternatives. Based on those analyses, the loss of yield over time is greater for the measures recommended by the Council than for either the measures originally proposed by NMFS or those implemented by this final interim rule. Accordingly, the measures implemented by this interim action will preserve more TAC for more stocks in future years than those recommended by the Council. This aspect is important in the context of measures included in draft Amendment 16, as those measures rely heavily upon TACs to control the fishery in the form of sector allocations or annual catch limits and the associated accountability measures. Finally, deductions of TAC overharvests in the subsequent fishing year, as specified in the Council's proposal, are outside the possible scope of this interim action (or any subsequent interim action during FY 2009), because the effectiveness of interim actions is limited to a maximum of 366 days.

NMFS believes that an interim rule is not the appropriate means to transition toward a new management structure, or to implement novel management tools; it is intended to address short-term needs to end or reduce overfishing while the Council is developing longer-term measures for the fishery. NMFS cannot effectively implement new measures (such as an expanded VMS reporting requirement or sector management) to transition toward a new management system that has not yet been decided upon, nor can it build the foundation for a program that has not yet been selected by the Council. Although the Council has stated its intent to move toward an output-based management system, and NMFS is supportive of this goal, the current FMP controls fishing effort principally through DAS, in conjunction with trip limits and closures, and the Council will need to make transitions to different approaches through future amendments to the FMP.

#### Scientific Basis of Interim Action

*Comment 5:* Five commenters expressed concern about the quality of the data and underlying science and stock assessments used to develop the proposed interim rule. Specific comments related to the level of uncertainty due to the "retrospective patterns" associated with some stock assessments, and the stock size estimate for SNE/MA winter flounder.

*Response:* The scientific data upon which this interim action is based are

the most recent stock assessments, referred to as GARM III, which were conducted from November 2007 through August 2008. GARM III was a regional, scientific peer review process for the purpose of providing benchmark assessments for the 19 groundfish stocks managed under the FMP. The assessments included extensive peer review from independent scientists. Of the 14 groundfish stocks assessed in GARM III based on an analytical assessment model, 7 stocks exhibited retrospective patterns that were considered severe enough that an adjustment to the population numbers and fishing mortality in 2007 was deemed necessary before determining current stock status and generating stock projections. The largest retrospective patterns were observed in GB yellowtail flounder, GOM winter flounder, and SNE/MA winter flounder. NMFS agrees that further work on the nature and causes of retrospective patterns is required. Notwithstanding the concerns regarding retrospective patterns, GARM III represents the best available science, and its use is consistent with NS 2. This was confirmed in a February 17, 2009 Department of Commerce Inspector General's report.

#### Support for Proposed Measures for Interim Action

*Comment 6:* One commenter from an environmental organization (The Ocean Conservancy) supported the proposed interim rule and stated that it is consistent with the current management regime, comprehensive, and simple. The commenter noted that the measures fall short of preventing overfishing in some cases, advocated hard TAC backstops for stocks of concern to increase accountability, and suggested that the goal should be Rebuild for stocks that were newly declared overfished. The commenter also recommended that NMFS should take strong action in 2009, otherwise the measures necessary to rebuild stocks after allowing another year of overfishing will make the procedural and administrative changes outlined in draft Amendment 16 much harder to successfully implement. One member of the public believed that NMFS should reduce fishing effort more than proposed.

*Response:* NMFS agrees with the commenter that strong action is necessary for 2009, but disagrees that the goal for newly declared stocks should be Rebuild and that hard TAC backstops are appropriate for an interim action. Although NMFS set a goal of Fmsy in the proposed interim action for stocks recently declared overfished (witch flounder, GB winter flounder,

northern windowpane flounder, and pollock), the interim action provisions of the Magnuson-Stevens Act (section 305(c)) do not specifically require that an interim action end overfishing, but rather only reduce or address overfishing as more fully described elsewhere in this preamble. Despite that management measures in this final interim rule have been relaxed from what the proposed interim rule measures would have implemented, NMFS believes that the FMP rebuilding goals are still achievable, although additional restrictions in Amendment 16 or other actions will likely be necessary to achieve such goals.

NMFS analyzed a hard-TAC alternative, but rejected the alternative because: (1) It is likely that the TACs for at least two stocks (GB cod and pollock) would have resulted in fishery closures relatively early in each trimester; and (2) the complexity of a hard TAC management system and the associated cost and difficulties in its implementation to both the fishing industry and NMFS would make it impractical, if not impossible, to successfully and effectively implement in the short period of an interim action; and it would possibly be inconsistent with Magnuson-Stevens Act national standards and required provisions, because of disproportionate impacts on the fishing industry that could result from such a temporary, short-term action.

#### Safety Concerns

*Comment 7:* Four commenters, including nine U.S. Congressmen, and seven U.S. Senators, were concerned that the proposed interim rule did not adequately consider safety issues for small and mid-sized vessels. Specifically, they believed that the proposed differential DAS area in the GOM and GB, and the SNE Closure Area would create an incentive for vessels to steam to offshore fishing grounds or farther from their ports of departure and therefore be fishing in a less safe manner than if they were fishing closer to shore or their home port.

*Response:* As explained elsewhere in this preamble, based on public comment, this action does not implement the proposed expansion of the differential DAS counting in the GOM and GB, or the SNE Closure Area, and, therefore, largely addresses any safety issues associated with these two measures that the public may have been concerned about. Although NMFS is implementing 2:1 counting largely in the same area as the proposed SNE Closure Area (referred to in the rule as the "Interim SNE Differential DAS

Area”), this revision would not pose any additional safety concerns beyond those already associated with the status quo GOM Differential DAS Area. NMFS agrees that differential DAS areas are among the many factors that confront a vessel operator in trying to achieve a profitable fishing trip in a safe manner. However, modifications to the DAS Leasing and Transfer Programs implemented by this interim action may provide additional DAS necessary for vessels to fish within the differential DAS areas and remain closer to shore, reducing safety concerns associated with measures implemented by this action. Finally, because the Interim SNE Differential DAS Area abuts the coastline, similar to the status quo GOM Differential DAS Area, vessels that declare into this area will be required to burn 2 DAS for every 1 day fished, regardless of where they fish on that trip. This is consistent with the provisions of the GOM Differential DAS Area and is based upon the same rationale offered by the Council when the GOM Differential DAS Area was adopted under FW 42.

#### Mixed-Stock Exception

*Comment 8:* Four comments were received, including one from nine U.S. Congressmen, that suggested that NMFS should consider the mixed-stock exception in the NS 1 guidelines to prevent the depleted condition of one stock from influencing the management measures developed for other stocks, resulting in management measures that are overly restrictive and reduce yield.

*Response:* NMFS agrees that, under the current FMP, the depleted condition of some stocks result in management measures that impact non-depleted stocks due to the commingled nature of the fishery and the management tools used, particularly DAS. However, NMFS disagrees that reliance on the mixed-stock exception can provide relief in the current situation, due to the number and nature of the particular stocks that are driving the management measures, and the constraints and conditions on the use of the mixed-stock exception in NS 1. The mixed-stock exception provides a very limited exception, with strict criteria, for ending overfishing of certain stocks, but not for rebuilding requirements and statutory time requirements. In fact, the new NS 1 Guidelines do not allow the mixed-stock exception to be used for overfished stocks. The Magnuson-Stevens Act mandates rebuilding of overfished stocks in most cases within 10 years. FY 2009 marks the midpoint of most of the rebuilding plans implemented under Amendment 13. Data from GARM III

indicate that many of the 13 overfished stocks are substantially below biomass levels that can produce MSY such that substantial reductions in F are necessary to rebuild these stocks by the end of the rebuilding periods (*i.e.*, by 2014 for most stocks). Accordingly, these stocks are not eligible for the mixed-stock exception and, even if they were, continuing to subject such stocks to high levels of fishing effort would decrease the probability that these stocks will rebuild within the mandated timelines without substantial F reductions within the next few years.

Based on GARM III, the only stocks that are subject to overfishing, and not overfished, are GOM cod and the southern stock of windowpane flounder. Evaluation of whether these stocks would meet the threshold criterion for allowing overfishing does not make sense in this circumstance, because both stocks require relatively small F reductions (21 percent), compared with most of the other stocks. The current status of GOM cod and southern windowpane flounder is not causing a situation where management measures designed for these stocks are resulting in excessively restrictive measures on other stocks. Nevertheless, this interim rule will allow overfishing to continue for the duration of this interim action on GB cod, witch flounder, pollock, and northern windowpane flounder under authority found in section 305(c) of the Magnuson-Stevens Act, as is more fully explained elsewhere in this preamble. Thus, by allowing overfishing on these stocks, this final interim rule results in the same type of mitigation of negative impacts as would result if the mixed-stock exception were evoked.

#### SNE Closure Area

*Comment 9:* Twenty-eight commenters supported the proposed SNE Closure Area, including three members of the public and four commercial fishermen. Although several commenters believed the proposed closure was a proactive measure, most stated that such a restriction was long overdue, and necessary to rebuild the SNE/MA stock of winter flounder. One commenter believed that the area between Nantucket and CA I is particularly important to protect. Commenters noted the importance of winter flounder to the ecosystem and observed that the SNE winter flounder stock used to support a vibrant fishery and was a source of employment for fishing communities. One commenter noted that a closure area would provide the best chance of recovery for the stock. Another commenter strongly supported the provision that would allow hook

vessels to fish in the closure area due to the selectivity of the gear, and noted that the closure area does not exclude fishermen, but only certain gear types. Five commenters who did not support the proposed SNE Closure Area suggested restrictions on the number or type of gillnets fished and the required use of specialized trawl gears in order to reduce catch of winter flounder. Some commenters expressed concerns such as an effort shift to targeting lobsters, and others acknowledged the economic hardship such a closure would cause. Suggestions for modification of the closure area included reducing the overall size and/or allowing more access, such as allowing groundfish vessels to use roundfish gillnets or tended roundfish gillnets (provided that winter flounder are not retained).

*Response:* NMFS agrees that the proposed SNE Closure Area would have afforded protection for winter flounder and served as an important factor in rebuilding the SNE/MA stock of winter flounder. Although the use of specialized gears may be effective in reducing the catch of flatfish, including winter flounder, a requirement for the use of specialized gear for an interim action (or limited duration) is not practical due to the cost of purchasing such gear and possible lack of availability. Further, this final action would implement a differential DAS area instead of a closure, and does not exclude gillnet or trawl gear. However, as explained in the response to Comment 10, below, NMFS is instead implementing an expanded differential DAS area in SNE to mitigate the economic impacts of the interim action without unnecessarily compromising efforts to rebuild overfished stocks. All commercial and recreational vessels fishing in the Interim SNE Differential DAS Area will be subject to a zero landing limit on SNE winter flounder to strictly control F for this stock.

*Comment 10:* Thirty-two commenters, including commercial fishing organizations, state fishery management organizations, and elected officials, did not support the proposed SNE Closure Area. The principal concern of 14 commenters was the anticipated economic impacts. Three commenters noted that the closure area is important fishing grounds for 16 vessels, and predicted a loss of 30 percent of income for fishermen, with a severe impact on the ports of Point Pleasant and Belford, NJ, where the majority of groundfish are landed in NJ. Several commenters noted that winter flounder is the only available groundfish off NJ, and stated that it is an important component of the

mix of species targeted. Their concern was heightened by the potential for cumulative negative impacts of the recent regulatory changes in other fisheries such as the Atlantic scallop fishery on such vessels. Two commenters expressed concern regarding the potential negative economic impact on the port of New Bedford, due to its reliance on winter flounder. Two commenters noted that there may be disproportionate impact on small, groundfish-dependent vessels with home ports near the proposed SNE Closure Area that are too small, or lack adequate manpower to transit long distances and fish in areas outside of the closure.

*Response:* Based on its economic analysis, NMFS agrees that groundfish-dependent vessels would be more severely impacted by the proposed interim measures than vessels that rely on groundfish for a lower percentage of their income, and that vessels that would have fished for groundfish in the area of the proposed SNE Closure Area would be substantially impacted if they fish with gillnets or trawl gear. For those vessels that would have been most impacted by the proposed interim rule, medium and large boats would be slightly more impacted than small vessels; but, in general, the analysis indicated that the impacts among small, medium, and large vessels would be similar. In order to mitigate impacts on vessels that fish in this geographic area, but still provide a substantial reduction in fishing mortality for SNE/MA winter flounder and other stocks in this area consistent with rebuilding objectives, NMFS is implementing 2:1 differential DAS counting instead of the proposed closure. In addition to differential DAS counting, all vessels will be prohibited from retaining winter flounder throughout the SNE winter flounder stock area. Vessels fishing with hook gear will not be charged DAS at the differential rate due to the low catch rates of winter flounder by hook gear.

Although this change from the proposed rule will not allow vessels to target or land winter flounder in this area, there is the potential for vessels to land other species, such as haddock, pollock, and cod. This would allow for at least some groundfish landings from all gears fishing in this area and reduce the economic impacts of the interim measures compared to those anticipated from the proposed measures. In addition, this change is likely to reduce the potential for effort shifts into other geographic areas or other fisheries by maintaining a smaller directed fishery within SNE. The estimated reduction in F resulting from this change will be

closer to the objectives of this action and reduce the amount of lost yield for several stocks, particularly GB haddock, SNE/MA yellowtail flounder, American plaice, and white hake.

*Comment 11:* Seven commenters, including DMR, the Monkfish Defense Fund, and the Garden State Seafood Association, expressed concern about potential harmful impacts that the proposed SNE Closure Area would have on vessels with limited access Monkfish Category C and D permits (those with both a limited access monkfish and a NE multispecies permit). The commenters stated that there is a robust monkfish fishery in the area, and asserted that the large mesh (10–12 inch (25–30 cm, respectively)) gear used does not catch winter flounder or yellowtail flounder in meaningful quantities. Further, some asserted that the impact on such vessels would be unfair because Category A and B vessels would still be allowed to fish in the area. One commenter was concerned about the proposed exemptions, which would allow other non-groundfish fisheries to occur in the proposed closure area.

*Response:* NMFS agrees that, as proposed, the SNE Closure Area would have negatively impacted vessels with a limited access Monkfish Category C or D permit, because, under current groundfish rules, such vessels may not fish in the SNE Monkfish and Skate Gillnet Exemption Area (which overlapped the proposed SNE Closure Area) unless they are fishing under a “monkfish only” DAS. Because this final rule does not implement the proposed SNE Closure Area, NMFS believes that negative impact on monkfish Category C and D vessels is greatly reduced. To avoid further negative impact on the monkfish fishery that could occur because Monkfish Category C and D vessels will use groundfish DAS at a higher rate in the differential DAS counting areas (both in the GOM and SNE), this final rule allows vessels to fish their additional monkfish DAS as “monkfish only” DAS. As explained in detail in Measure 9 under “Approved Commercial Measures” of the preamble to this rule (“Mitigating Measures”), Monkfish Category C and D vessels fishing in either the GOM Differential DAS Area or the Interim SNE Differential DAS Area will accrue a monkfish-only DAS at the rate of one monkfish DAS for every two groundfish DAS used in the differential areas.

The regulatory exemptions enable non-groundfish fisheries to continue to fish in the proposed closure area to continue, due to the nature of the exemptions and the restrictions

associated with the exemptions. Exempted fisheries are required to maintain an incidental catch of regulated species that is less than or equal to 5 percent of the weight of fish on board and must not jeopardize groundfish fishing mortality objectives. Further, the exemptions and exempted fisheries have strict limitations that minimize the potential for adversely impacting groundfish, including gear, area, and seasonal restrictions designed to decrease interaction with groundfish stocks. Because the closure area has been revised to a differential DAS counting area, the concern about allowing exempted fishery participants into the SNE Closure Area while groundfish vessels fishing with certain gears are excluded should be addressed.

*Comment 12:* Five commenters were concerned that the proposed SNE Differential DAS Area would be ineffective at achieving its objective of reducing fishing mortality on winter flounder, and instead suggested DAS or trip limits as a better means of controlling fishing effort. Some commenters believed that overfishing is not responsible for the depleted status of winter flounder, but instead attributed the low stock size to habitat loss; or predation by striped bass, spiny dogfish, or gray seals.

*Response:* NMFS acknowledges that the proposed SNE Closure Area would not have completely eliminated F on winter flounder, because the potential for unavoidable bycatch of winter flounder from other fisheries, although limited, would result in some level of fishing mortality on this stock. Both DAS and trip limits have advantages and disadvantages as management tools. DAS restrictions such as differential DAS counting will allow more fishing opportunity in the area than a closure, but, depending upon a vessel's DAS allocation and its ability to lease DAS, such measures may not cause a particular vessel to reduce its fishing effort in the geographic area proposed for the 2:1 DAS counting. Overall, however, such measures do reduce fishing effort and are effective at reducing F on stocks predominantly caught in a particular area. Trip limits can be effective at limiting a vessel's catch of a particular species, and may influence fishing behavior, but can cause regulatory discarding or high-grading. As explained in the response to Comment 10, NMFS modified the measures of this interim rule from those originally proposed. This final rule implements a differential DAS counting area in SNE in order to reduce F on SNE/MA winter flounder and other stocks in the area that also require



reductions in F. In addition, this rule implements a zero retention limit for SNE/MA winter flounder to further reduce F on this stock. Thus, in conjunction with the overall DAS reduction, NMFS has relied upon DAS and trip limits to reduce F on SNE winter flounder to the extent possible, short of the proposed closure area. Although this measure does not reduce fishing mortality on SNE/MA winter flounder to a level necessary for rebuilding (which is an F of zero), it does end overfishing on this stock. Further restrictions may be needed in Amendment 16 to reduce F in this stock to a level consistent with rebuilding objectives.

With respect to whether there are other factors responsible for the depleted status of the stock, the major non-fishing impact that has been identified and documented is a correlation between warmer winter/early spring water temperatures and increased predation on winter flounder larvae by Crangon shrimp and some other planktonic predators. These factors may have negatively impacted recruitment levels since the early 1990s. Notwithstanding environmental factors, fishing mortality has been, and remains at a level that is not sustainable, and not compatible with stock rebuilding. Thus, further reductions in fishing effort are necessary to rebuild this stock, as required by the Magnuson-Stevens Act.

#### Interim Differential DAS Area

*Comment 13:* Five comments, including one from a commercial fishery organization (Associated Fisheries of Maine), suggested that the DAS reduction proposed by the interim rule, including that from the Interim Differential DAS Area, is too drastic and that the Interim Differential DAS Area is larger than necessary to achieve the target fishing mortality reductions, resulting in loss of optimum yield (OY) in the fishery. One respondent indicated that, because the proposed Interim Differential DAS Area is so large, there would be no incentive for vessels to fish outside of the area, resulting in increased F on species within the area such as GOM cod.

*Response:* Because many of the stocks managed by the FMP co-occur, and much of the fishing gear used to harvest groundfish stocks is limited in its ability to selectively target particular stocks, it is very difficult to design management measures that precisely achieve different conservation objectives for every stock. Management measures designed to achieve a particular F reduction for one stock will likely achieve larger than necessary reductions in F for other stocks. DAS, one of the

principal tools of the FMP controlling fishing effort in the fishery, is a difficult and often blunt tool with which to target F reductions on specific stocks.

As explained elsewhere in this preamble, including in the response to Comments 2 and 10, NMFS is not implementing the proposed interim measures of an expanded differential DAS area in the GOM and northern portions of GB based upon public comment and additional analysis. Although the revised measures implemented by this final interim rule do not achieve the target F reductions for all stocks, these measures achieve substantial F reductions for all stocks, particularly those that are severely overfished, including SNE/MA winter flounder and SNE/MA yellowtail flounder. In addition, according to the analysis conducted to support this action, the measures implemented by this final interim rule are expected to result in more yield of all stocks than the measures included in the proposed interim rule. Finally, this analysis suggests that measures implemented by this final interim rule are not likely to result in additional shifts in effort and will not increase F on stocks such as GOM cod.

*Comment 14:* Ten comments, including those from two commercial fishery organizations (Northeast Seafood Coalition and Associated Fisheries of Maine), suggested that fishing effort will shift inshore because the size of the proposed Interim Differential DAS Area, which includes all of the GOM and northern portions of GB, limits the areas not subject to differential DAS counting. Four commenters indicated that this would increase fishing pressure on GOM cod, CC/GOM yellowtail flounder, and winter flounder stocks, as well as discards of other stocks, possibly resulting in more onerous regulations for FY 2010. One individual recommended that no changes should be made to existing differential DAS areas and believed that shifting effort inshore as part of the interim action would result in reduced yield of offshore stocks.

*Response:* As noted above in the discussion of Comment 13, this final interim rule does not implement the proposed Interim Differential DAS Area, but rather maintains the existing GOM Differential DAS Area and an expanded differential DAS area in SNE. Analysis of these measures utilized the CAM, which estimates shifts in fishing effort to maximize vessel profit in response to management measures. This analysis indicates that the measures implemented by this final interim rule would not increase F on inshore stocks,

but would continue to decrease F on GOM cod, CC/GOM yellowtail flounder, and GOM winter flounder. By maintaining the existing GOM Differential DAS Area closer to shore, yield of offshore stocks will not likely be reduced by this interim action.

NMFS acknowledges that more onerous restrictions may be necessary in FY 2010 and beyond to ensure that stocks rebuild within established rebuilding timeframes. However, even though the revised measures implemented by this final interim rule are less restrictive than those originally proposed and may not achieve Frebuild or Fmsy for all stocks, such measures continue to reduce F on all stocks and would help continue to rebuild overfished stocks.

*Comment 15:* One individual recommended that the interim action should be revised to only charge DAS at a rate of 2:1 for the time spent within the Interim Differential DAS Area, suggesting that VMS has the capacity to support such a measure, as reflected in the measures for the SNE Differential DAS Area implemented under FW 42.

*Response:* NMFS acknowledges that VMS has the capacity to identify the time a vessel spends in particular areas and could implement the recommendations made by the commenter. However, NMFS is concerned that failing to charge DAS at a rate of 2:1 for the entire trip, regardless of area fished, would undermine the effectiveness of this measure by allowing vessels to fish for short durations within the differential DAS areas on their return to port and, thereby, minimize the resulting DAS charge. This was the rationale provided in the Council's recommendation on how to count DAS in the GOM Differential DAS Area implemented under FW 42. As a result, this final interim rule does not change the manner in which the differential DAS counting rate is applied in the GOM, but adopts the same approach for the Interim SNE Differential DAS Area based upon the same rationale.

*Comment 16:* Three individuals, including one commercial fishery organization (Associated Fisheries of Maine), recommended that, in lieu of differential DAS counting in the GOM and northern portions of GB, the F objectives of the interim action would be better achieved by implementing trip limits on particular stocks, including witch flounder and pollock, and reducing the trip limit for GB cod. In addition, the representative from the DMR recommended implementing zero possession limits for SNE/MA winter



flounder, ocean pout, and both stocks of windowpane flounder.

*Response:* NMFS did not analyze an alternative that relies solely on trip limits instead of differential DAS counting in the GOM because it is unlikely that reliance upon trip limits alone would achieve the stated objectives for the stocks in the GOM. The Plan Development Team analyzed the daily trip limits that would be necessary to achieve the Amendment 16 rebuilding objectives for each stock. However, that analysis also incorporated a 24-hour minimum DAS charge in order to achieve the conservation objectives for each stock. Reliance upon a combination of measures, including DAS as the principal effort reduction measure, is necessary to achieve the F reductions required to rebuild overfished stocks as much as practicable in this interim action. Trip limits frequently result in regulatory discarding and must be balanced with other measures to minimize unnecessary bycatch, as mandated by the Magnuson-Stevens Act. This interim action implements a suite of measures, including both differential DAS counting and trip limits to reduce F and continue to rebuild overfished stocks.

One of the objectives of this interim action is to implement measures that are consistent, to the maximum extent practicable, with measures being considered in the Council's development of Amendment 16, the action that will follow this interim action. Mirroring the Amendment 16 measures will reduce uncertainty and impacts associated with transitioning from interim measures to the long-term management measures under Amendment 16. Draft effort-control measures currently included in Amendment 16 for non-sector vessels incorporate differential DAS counting in four large areas encompassing an area larger than the Interim Differential DAS Area and the SNE Closure Area originally proposed for this interim action. Although the draft Amendment 16 measures do not include a trip limit for witch flounder, this final interim rule implements a trip limit of 1,000 lb (453.6 kg) per DAS, up to 5,000 lb (2,268 kg) per trip of witch flounder to further reduce F on this stock based upon recommendations from the public and the Council. In addition, both draft Amendment 16 measures and this interim action include zero retention limits for SNE/MA winter flounder and northern windowpane flounder. This interim action also includes a zero possession limit for ocean pout. For southern windowpane flounder, the

GOM Differential DAS Area, in conjunction with the Interim SNE Differential DAS Area, is sufficient to achieve the necessary F reductions for this stock and a zero retention limit for this stock is unnecessary.

*Comment 17:* Two individuals, including one commercial fishery organization (Associated Fisheries of Maine) suggested that differential DAS counting is not needed in the Eastern U.S./Canada Area due to the existence of hard TAC management in the area.

*Response:* NMFS agrees that differential DAS counting is not necessary in the Eastern U.S./Canada Area. As noted above, this final interim rule does not implement the Interim Differential DAS Area, as proposed, and, when replacing the SNE Closure Area with 2:1 differential DAS counting, removed differential DAS counting from that area of the Interim SNE Differential DAS Area that overlapped with the U.S./Canada Management Area.

*Comment 18:* One commercial fisherman noted an error in the description of the economic impacts of the proposed measures in the preamble of the proposed interim rule. This commenter indicated that, for vessels fishing exclusively within the GOM, an 18-percent reduction in DAS combined with differential DAS counting at a rate of 2:1 would result in a 59-percent reduction in available DAS, not 36 percent, as stated in the preamble of the proposed interim rule.

*Response:* NMFS acknowledges this error in the preamble of the proposed rule, but notes that the impacts were correctly reported in the EA supporting this action. The Final Regulatory Flexibility Analysis developed for this action and summarized in this preamble correctly describes the revised impacts of this action.

#### CA I Hook Gear Haddock SAP

*Comment 19:* Eighteen commenters supported expanding the CA I Hook Gear Haddock SAP, as requested by the Council. Supporters noted that an expansion of the SAP would be an important means of mitigating the negative impacts of the interim action and enable more access to the healthy stock of GB haddock, while not undermining the status of GB cod. Some commenters noted the existence of pertinent data supporting the contention that the expanded SAP would be consistent with the FMP, and wondered whether an oversight by NMFS had resulted in its conclusions stated in the proposed rule. One commenter estimated that the economic benefits of the expanded SAP would be tens of millions of dollars, and another noted

that it offered mitigation with very little associated risk. One commenter noted that the SAP benefits vessels in the 40- to 50-ft (18–22-m) range, but not smaller vessels, due to the distance of the SAP from shore. Lastly, one commenter was confused by the calculation of the haddock TAC.

*Response:* Pertinent data that support expanding the CA I Hook Gear Haddock SAP as recommended were not available to NMFS prior to the publication of the proposed rule, but were brought to the attention of NMFS during the public comment period by the Cape Cod Commercial Hook Fishermen's Association. This information includes the results of research in CA I that has been reviewed by the Council's Research Steering Committee (RSC) and supported in its May 30, 2007, report. Although the RSC cautioned against the broad application of the results of this research outside of the season and areas tested, a review of the relevant research, including a review by the DMF, indicated that catch rates of haddock with hook gear using a range of baits was significantly higher than cod, and that the catch rates of species in the proposed expanded area are not higher than in the current SAP. Based on this information, NMFS is implementing revisions to the CA I Hook Gear Haddock SAP, including the expansion of both the season and the SAP area in this final interim rule. NMFS is also prohibiting the use of squid as bait, based upon recent research indicating that squid caught higher amounts of cod than any other bait, but is soliciting further comments on this prohibition. The expansion of this SAP will help mitigate some of the negative economic impacts of this action on vessels fishing with hook gear. The elimination of the rules separating sector and common-pool vessels into separate seasons will also provide additional flexibility for all participants. Finally, the calculation of the haddock TAC for this SAP is described in Measure 6 under "Approved Commercial Measures" of the preamble of this final interim rule. However, further explanation about the derivation of the formula used to calculate the haddock TAC for this SAP is available in the EA supporting FW 42 to the FMP.

*Comment 20:* One commercial fisherman requested that, because of the uncertainty associated with the final interim measures and when such measures would be made public, the final interim rule should allow gillnet vessels the opportunity to change the gillnet designation associated with their permit (i.e., as either a Day or Trip gillnet vessel) after the permit has been

issued, citing a similar allowance in a 2002 interim final rule.

*Response:* NMFS agrees with the commenter. Since gillnet vessel owners may have renewed their groundfish permits and selected a particular gillnet designation for FY 2009 without knowledge of the final interim measures, and because this designation is effective for the remainder of the fishing year and defines how gillnet vessels can operate, NMFS will allow a vessel owner that has already elected a gillnet designation prior to May 1, 2009, to change the gillnet designation associated with his/her permit through June 12, 2009. This will provide additional time for the vessel owner to review the final interim measures and revise the gillnet designation for his/her permit, if necessary.

*Comment 21:* Two commenters did not support the termination of the SNE Winter Flounder SAP because they asserted that the SAP works to reduce discarding in the summer flounder fishery in the spring and fall. Further, they suggested a requirement that vessels fishing in the SAP use mesh size consistent with the FMP.

*Response:* The SNE/MA Winter Flounder SAP currently allows a limited access NE multispecies vessel fishing for summer flounder west of 72° 30' W. long. to retain up to 200 lb (91 kg) of winter flounder while not under a NE multispecies DAS, provided the vessel complies with various restrictions. Due to the severely depleted status of SNE/MA winter flounder, and the goal of reducing F to as close to zero as practicable, elimination of this SAP is justified. Although the SAP can be effective at reducing discarding, the SAP may also enable limited targeting of winter flounder. Vessels are more likely to modify their fishing practices and attempt to avoid encountering winter flounder if winter flounder possession is not allowed.

*Comment 22:* One commenter stated that NMFS should prepare an Environmental Impact Statement (EIS) in order to analyze the potential impacts of the alternatives considered, instead of an EA.

*Response:* NMFS believes that its analysis of the impacts of the alternatives complies with the National Environmental Policy Act (NEPA). NEPA provides a mechanism for identifying and evaluating environmental impacts associated with Federal actions, and for considering a reasonable range of alternatives to avoid or minimize adverse environmental impacts. As fully explained in the EA, NMFS concluded that the preparation of an EIS for this action is not necessary.

*Comment 23:* One commercial fisherman supported the delayed opening of the Eastern U.S./Canada Area until August 1.

*Response:* NMFS agrees that it is prudent and consistent with Council intent to delay the opening of the Eastern U.S./Canada Area for trawl gear until August 1, 2009. As fully explained in the proposed interim rule, a delayed opening of the Eastern U.S./Canada Area is intended to maximize the harvest of cod and other species from the area by reducing the catch rate of cod, and avoiding early closure of the area.

*Comment 24:* Three comments were received, including one from the GB Cod Fixed Gear Sector, one from the GB Cod Hook Sector, and one from a commercial fishery organization (Cape Cod Commercial Hook Fisherman's Association), requesting that the interim action include a provision that would allow the GB Cod Hook Sector to transfer or lease GB cod quota to the GB Cod Fixed Gear Sector. Respondents cited the substantially reduced FY 2009 target TAC for GB cod and the likelihood that the GB Cod Fixed Gear will catch its allocation of that stock and be shut down prior to the end of FY 2009.

*Response:* Under the current regulations, existing sectors are allocated a portion of the yearly GB cod TAC based upon the landings histories of participating vessels. A sector can only change its share of the GB cod TAC by adding or removing participating vessels from its roster. The draft measures in Amendment 16 include provisions that would allow the transfer of sector allocations of particular stocks, but these provisions have not been selected as a preferred alternative or formally adopted by the Council. As indicated in the response to Comment 4, NMFS believes that an interim rule is not the appropriate means to implement novel management tools such as sector quota trading; it is intended to address short-term needs to end or reduce overfishing while the Council is developing longer-term measures for the fishery. Moreover, as detailed above in Measure 12 under "Approved Commercial Measures" of this preamble, because this final interim rule revises the 2009 GB cod target TAC to reflect estimated F rather than Fmsy, the GB cod TAC allocations to both sectors will increase by 66.1 mt for the GB Cod Hook Sector and by 95.8 mt for the GB Cod Fixed Gear Sector. As a result, this revised measure should help address the concerns identified by the commenters.

## DAS Leasing

*Comment 25:* One commercial fisherman and one representative of the GB Cod Fixed Gear Sector opposed the removal of the DAS leasing cap, indicating that it would activate latent effort and undermine the intent of the interim action to reduce overfishing. In addition, the respondents objected to the apparent contradiction between drastically cutting DAS through allocation reductions and differential DAS counting, but increasing the access to DAS by allowing vessels to lease an unlimited number of DAS from other vessels.

*Response:* NMFS disagrees that the removal of the DAS leasing cap conflicts with the objectives of the interim action. The objectives of this interim action include ending overfishing and rebuilding overfished stocks. However, because effort reductions necessary to achieve the conservation objectives of this action impose substantial economic impacts on the groundfish fishery, another objective of this interim action is to mitigate the economic impacts of effort controls as much as practicable. Analysis supporting this action indicates that some vessels, particularly those with low DAS allocations and high expenses, will require additional DAS to remain economically viable. Because nearly 15 percent of vessels participating in the DAS Leasing Program in recent years were limited by the DAS leasing cap, eliminating this cap through the interim action would enable groundfish vessels greater opportunity to obtain additional DAS and remain economically viable. In conjunction with DAS reductions and differential DAS counting, the measures implemented by this interim action would not increase F on overfished stocks and would achieve both the conservation and mitigation objectives of this action.

*Comment 26:* Representatives of both the GB Cod Hook and Fixed Gear Sectors and one commercial fishery organization (Cape Cod Commercial Hook Fisherman's Association) supported changes to the DAS Leasing Program to allow sector vessels to lease DAS to and from non-sector vessels, citing the limited number of DAS available to sector vessels and the need to continue to acquire more DAS to operate under the DAS system until sectors could be allocated quota for all groundfish stocks under Amendment 16.

*Response:* NMFS agrees. Currently, sector effort is managed by a hard TAC on GB cod and by DAS for all other stocks. Accordingly, sectors are

impacted by DAS restrictions nearly as much as common pool vessels. As noted in the response to Comment 25, analysis supporting this interim action indicates that some vessels will need to acquire additional DAS to remain economically viable. Because the DAS Leasing Program already imposes size restrictions on which vessels can lease to and from one another, continuing to prohibit vessels participating in sectors from leasing to non-sector vessels limits the pool of DAS available for leasing, especially considering the fact that sectors are only restricted by hard TACs for one stock at this time. Therefore, in order to increase flexibility and efficiency in the DAS market and provide greater access to available DAS, this interim action allows groundfish DAS vessels to lease DAS to and from any other groundfish DAS vessel.

*Comment 27:* One commercial fishery organization (West End Fisherman's Association) recommended the interim action implement measures in the recreational fishery. One party/charter operator indicated that party/charter vessels fishing on multiple day trips will benefit from being able to take advantage of double bag limits for trips over 15 hours, but suggested that it was not supported by any analysis. This commenter also highlighted that previous efforts to impose such a bag limit on party/charter vessels was not included because it would have resulted in severe economic impacts to such operations and noted that similar measures are currently not being considered by the Council under Amendment 16. The party/charter operator further indicated that the decrease in size limit for haddock will not help party/charter vessels operating on GB, as most haddock are found in closed areas inaccessible to recreational vessels.

*Response:* The measures implemented by this interim action include restrictions on the recreational fishery, namely a daily GB cod bag limit for party/charter vessels and, for both private recreational vessels and party/charter vessels, extension of the closed season for GOM cod and a possession prohibition for SNE/MA winter flounder. NMFS disagrees that the GB cod bag limit for party/charter vessels is not supported by any analysis. In fact, the biological, economic, and social analyses supporting this provision are detailed in Sections 17.1, 17.2, and 17.3 of the EA supporting this action, respectively. The respondent is correct that the measures proposed under Amendment 16 may not include a similar provision, but that does not mean that the measures included in this

interim action are unnecessary. In fact, such measures are necessary to ensure a similar reduction in F on GB cod across both the commercial and recreational fisheries, consistent with the objectives of this action. Finally, despite the fact that charter/party vessels cannot access closed areas on GB, the reduced haddock size limit is expected to increase opportunities for recreational vessels to retain haddock in all areas open to such vessels. A similar size reduction for GOM haddock is proposed under Amendment 16 for consideration at public hearings.

*Comment 28:* One commenter stated that the proposed GB cod TAC was too low, and noted the economic impacts of a lower TAC.

*Response:* Typically, the size of the GB cod target TAC is set based upon a projection of the catch that will be associated with a particular F and stock size for a given year. As noted in Measure 3 under "Approved Commercial Measures" of this preamble, this final interim rule has changed the manner in which target TACs were calculated from that in the proposed rule. In the case of the GB cod target TAC for FY 2009, this target TAC is based upon the F expected to result from measures implemented by this action and the GARM III estimation of stock size for 2009 and is specified as 5,501 mt. Although this is an increase to the TAC specified in the proposed rule, it is a decrease in the size of the TAC relative to the past TACs. This is due to the reductions in F estimated to be achieved by measures implemented by this final interim rule. The estimated 2009 F is lower than the objective set during the first 5 years of the rebuilding period. Although the stock size is increasing, the relatively low estimated 2009 F results in a lower target TAC. The proposed rule incorrectly stated that the FY 2009 GB cod TAC would be 3,506 mt, because the Canadian TAC of 1,173 mt had been subtracted. The FMP precedent for specifying the GB cod target TAC is to specify the TAC that corresponds to the whole stock, including the Canadian portion of the TAC, resulting in a total GB cod target TAC of 5,501 mt (4,328 mt available to U.S. vessels, plus 1,173 mt available to Canadian vessels) for FY 2009.

*Comment 29:* Three commenters believed that the economic analysis underestimated the economic impacts, and noted specific concerns regarding the analysis of impacts on the states of New York and Maine. One commenter referenced a break-even analysis that NMFS had prepared, and noted that many vessels will not be able to break even. One commenter stated that the

revenue analysis is flawed, and one commenter noted that a 31-percent reduction in revenue is enough to destroy most small businesses.

*Response:* NMFS believes that the economic analysis provides sufficient information for decision makers to compare the potential economic impacts among alternatives in order to select an alternative that best complies with the Magnuson-Stevens Act. The aggregate economic impacts of the alternatives are included in the EA, including estimates of revenue reductions, by state, for each alternative. For each alternative, the estimated changes in groundfish trip revenue and total trip revenue are provided, and expressed as a percent change in revenue and the estimated revenue in dollars by state. As noted above, this final interim rule implements measures that are changed from those in the proposed rule. Therefore, the estimated economic impacts reported for the preferred alternative in the EA prepared for this action and summarized in this preamble reflect impacts associated with revised measures and will not be consistent with the impacts cited by the commenters. For example, the original analysis indicated that, for Maine groundfish vessels, the average total revenue would decline by 34 percent and the estimated total revenue would be \$12,277,101. However, the updated economic analysis based upon revised measures indicates that the impacts to Maine would be a 12.2-percent reduction in total revenue, and the revised estimate of total revenue would be \$16,419,523. This revised analysis indicates that, for New York, groundfish vessels would see a decline in average total revenue of about 4.2 percent (6 percent was estimated in the proposed rule), and the estimated total revenue would be \$13,710,083 (\$13,430,633 was estimated in the proposed rule) under the measures implemented by this final interim rule. Although the estimates of percentage reductions in the EA represent the best estimation of the relative amount of revenue reduction anticipated, the estimated revenue in dollars, by state, that would result from each alternative is an underestimation, because the analysis used only a subset of the total fishery data due to missing information.

Comparisons of past economic analyses of FMP management measures with the realized economic impacts have shown that the CAM tends to overestimate the economic impacts of management measures. NMFS acknowledges that an analysis of the short-term impacts on the regional economy was not conducted (input/

output model analysis). An input/output analysis provides an estimation of how changes in the economic activity of a particular industry would affect other industries from which it purchases and to which it sells goods and services. Thus, in addition to reductions in harvesting revenues, this analysis captures losses associated with the commercial fishing industry buying fewer inputs and the upstream losses that result from less product being available to local seafood dealers and processors. Such secondary and tertiary impacts are proportional to the direct impacts on the fishing industry (which have been estimated), and the lack of an input/output analysis does not prevent a reasonable and informed comparison of management alternatives.

The economic analysis for the measures implemented by this final interim rule indicates that the total reduction in groundfish trip revenue would be approximately 14.7 percent, or \$14.8 million. Based on the break-even analysis, NMFS agrees that some small businesses may not be able to remain profitable, and many will have to lease DAS in order to remain profitable. However, as stated above, the CAM tends to overestimate revenue reductions. Vessels typically modify their fishing behavior in response to new regulations, and increase fishing effort on other non-groundfish species. Some vessels will be able to lease additional DAS and continue fishing at a level that produces a similar amount of revenue as in the past, but at a reduced profit margin, while other vessels will either continue to fish at an economic loss, or cease fishing.

#### Changes From the Proposed Rule

NMFS has made several changes to the proposed rule, including changes as a result of public comment. Some of these changes are substantive changes, whereas others are administrative in nature, clarify new management measures, or correct inadvertent errors or omissions in the proposed rule. These changes are listed below in the order that they appear in the regulations.

In § 648.4, paragraph (c)(2)(iii)(C) is added to allow gillnet vessels that have already elected a gillnet designation as a Day or Trip gillnet vessel to change this designation through June 31, 2009.

In § 648.81, the proposed addition of paragraph (n) has been removed because the proposed SNE Closure Area is not implemented by this final interim rule.

In § 648.82, paragraph (e)(4) has been revised to retain the existing GOM Differential DAS Area, rather than implementing the proposed Interim

Differential DAS Area and to insert an additional Interim SNE Differential DAS Area. In addition, paragraph (e)(4)(iii) has been revised to include provisions for applying the differential DAS counting rate to vessels fishing in either the GOM Differential DAS Area or the Interim SNE differential DAS Area, including measures to reflect that NE multispecies vessels fishing with hook gear in the Interim SNE Differential DAS Area will not be charged DAS at a rate of 2:1.

In § 648.85, paragraph (a)(3)(viii) has been revised to reflect revised declaration requirements associated with declaring into one or both of the differential DAS areas defined under § 648.82(e)(4). Proposed revisions to paragraph (b)(7) of this section have been removed and paragraph (b)(7) has been suspended in its entirety. Instead, paragraph (b)(11) has been added in order to revise the CA I Hook Gear Haddock SAP regulations to expand the scope of the SAP in both season and area, eliminate the split in the season and TAC between sector and non-sector vessels, and prohibit the use of squid as bait. Paragraph (b)(10)(i)(F) has been revised to reflect the implementation of differential DAS counting in SNE. Paragraphs (b)(10)(v)(G) through (I) have been added to identify the GB yellowtail flounder, GB winter flounder, and GOM winter flounder stock areas, respectively, for the purposes of the Regular B DAS Program.

In § 648.86, paragraph (l) has been revised to include references the Interim SNE Differential DAS Area implemented under this final interim rule. In addition, paragraph (m) has been revised to reflect a new trip limit for witch flounder instead of a revised trip limit for white hake. The existing trip limit for white hake specified at § 648.86(e) will remain in effect.

In § 648.92, paragraphs (b)(1)(i), (b)(1)(iii)(A), (b)(2), and (b)(8)(v) have been suspended; and paragraphs (b)(1)(iii)(C), (b)(1)(vi), (b)(8)(vi), and (b)(10) have been added to mitigate the impacts of the interim management measures on the monkfish fishery.

In § 648.95, paragraph (h) has been suspended and paragraph (i) has been added to replace reference to paragraph § 648.92(b)(2), because that paragraph has been suspended, and to insert reference to the newly added § 648.92(b)(10).

#### Classification

NMFS has determined that the management measures implemented by this final interim rule are necessary for the conservation and management of the NE multispecies fishery, and are

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

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date for the measures implemented by this final interim rule. This final interim rule would immediately reduce fishing mortality for all stocks managed under the FMP in order to continue to rebuild overfished stocks. As a result of the January 23, 2009, February 17, 2009, and February 23, 2009, Federal Court Orders in the case of *Commonwealth of Massachusetts and State of New Hampshire v. Carlos M. Gutierrez* (Civil Action No.: 06-12110-EFH), several critical conservation measures in the NE multispecies fishery have been vacated for the latter portion of FY 2008. While the precise impacts of these Court Orders are unknown at this time, it is likely that the vacation of these measures, particularly restrictive trip limits and differential DAS counting, caused fishing mortality to increase on overfished stocks due to increased fishing effort. Because such increases in fishing effort occurred during peak spawning periods for particular overfished stocks, the impacts of these Court Orders could affect efforts to rebuild such stocks. As a result, it is imperative that interim measures designed to reduce fishing mortality on all groundfish stocks be implemented quickly. In order to avoid unnecessary confusion about which regulations are in effect, and, thereby, increase compliance with, and the effectiveness of, conservation measures implemented under this final interim rule, such measures must become effective by the start of the fishing year on May 1, 2009. While this final interim rule implements measures that will reduce fishing effort in the NE multispecies fishery, such measures are necessary to ensure long-term economic benefits associated with rebuilt stocks. Thus, it would be contrary to the public interest to delay the effectiveness of measures implemented by this final interim rule.

In addition, while NOAA believes there is sufficient support in the record to justify the changes between the proposed and final interim rule, NOAA nonetheless believes there is good cause to waive notice and opportunity to comment on these changes under 5 U.S.C. 553(b)(B). This good cause waiver is based upon the same reasons described above concerning the waiver of the 30-day delay in effective date.

An EA was prepared for this action that analyzed the environmental impacts of the measures being implemented, as well as alternatives to such measures. This EA was revised

since the publication of the proposed rule to include further analysis of several additional alternative combinations of management measures. A copy of the Finding of No Significant Impact for the EA prepared for this action is available from the Regional Administrator (see **ADDRESSES**).

This final interim rule has been determined to be significant for the purposes of Executive Order (E.O.) 12866.

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

#### **Final Regulatory Flexibility Analysis (FRFA)**

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), prepared this FRFA in support of the measures implemented by this final interim rule. The FRFA incorporates the updated economic impacts summarized in the IRFA, but revised this final interim rule to account for changes from the proposed rule measures implemented by this final action. A summary of the IRFA was published in the proposed rule for this action and is not repeated here. A description of why this action was considered, the objectives of, and the legal basis for this rule are contained in the preamble to the proposed and this final rule and are not repeated here. A copy of this analysis is available from the Regional Administrator (see **ADDRESSES**).

#### *Summary of the Issues Raised by Public Comments in Response to the IRFA*

*A Summary of the Assessment of the Agency of Such Issues, and A Statement of Any Changes Made From the Proposed Rule as a Result of Such Comments*

*Comment A:* One commenter estimated that the economic benefits of an expanded CA I Hook Gear Haddock SAP would be tens of millions of dollars and recommended that NMFS implement measures to expand this SAP.

*Response:* As highlighted in the response to Comment 19 above, NMFS has implemented several revisions to the CA I Hook Gear Haddock SAP through this final interim rule. Because this final interim rule would substantially increase both the size and extend the season of this SAP, it is unclear how such revisions would affect participation in this SAP. It is likely that participation would increase in both the number of participants and the number of fishing trips throughout the expanded

season. As a result, it is difficult to accurately predict the economic impacts associated with this measure.

Qualitatively, the economic impacts are likely to be positive, as this measure provides greater access to available haddock resources and at a higher catch rate than would otherwise be experienced outside of the SAP because of its location within CA I.

*Comment B:* As highlighted in Comment 29 above, three commenters believed that the economic analysis underestimated the economic impacts of the proposed measures, highlighted specific concerns regarding the analysis of impacts on New York and Maine, and noted that many vessels will not be able to break even. One commenter stated that the revenue analysis is flawed and one commenter noted that a 31-percent reduction in revenue is enough to destroy most small businesses.

*Response:* The response to Comment 29 explains that economic impacts were underestimated due to missing data and the fact that an analysis of secondary and tertiary economic impacts of the proposed measures on other industries that interact with the fishing industry was not conducted. However, when compared to assessments of economic impacts associated with previous actions, the estimated economic impacts to the directed fishery often overestimated realized impacts.

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

The Preferred Alternative would affect regulated entities engaged in commercial fishing for groundfish and entities that provide recreational fishing services to anglers. These entities include any vessel that has been issued either an open access or a limited access Federal permit under the FMP. During FY 2007, 2,822 vessels were issued commercial limited access and open access NE multispecies permits. Of these, only 739 actually landed groundfish. A total of 762 NE multispecies party/charter permits were issued during FY 2007. Additionally, limited access permit holders (1,525 during FY 2007) may take passengers for hire, but do not possess a party/charter permit, since the FMP prohibits issuing both an open access and a limited access permit to the same vessel. Of the 762 vessels issued an open access party/charter permit, only 128 reported taking at least one for-hire trip, and only 74 reported keeping groundfish on one or more trips.

The size standard for commercial fishing entities is \$4 million in sales, while the size standard for party/charter

operators is \$7 million in sales. Available data indicate that, based on 2005–2007 average conditions, median gross sales by commercial fishing vessels were just over \$200,000, and no single fishing entity earned more than \$2 million. Available data are not adequate to identify affiliated vessels, so each operating unit is considered a small entity for purposes of the RFA. For regulated party/charter operators, the median value of gross receipts from passengers was just over \$9,000, and did not exceed \$500,000 in any year during 2001 to 2007. Therefore, all regulated commercial fishing and all regulated party/charter operators are determined to be small entities under the RFA, and, accordingly, there are no differential impacts between large and small entities under this rule. The remaining discussion describes the number of regulated entities, the number of participating regulated entities, and the potential economic impacts on participating regulated entities for party/charter operators and for commercial fishing vessels.

#### *Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of This Final Interim Rule*

This final interim rule contains collection-of-information requirements that have previously been subject to review and approval by OMB under control number 0648–0202 and 0648.0212. Public reporting burden for these collections of information are estimated as follows:

1. VMS purchase and installation, OMB# 0648–0202 (1 hr/response);
2. VMS proof of installation, OMB# 0648–0202 (5 min/response);
3. Automated VMS polling of vessel position, OMB# 0648–0202 (5 sec/response);
4. Declaration of intent to participate in the Regular B DAS Program, or fish in the U.S./Canada Management Areas and any associated SAPs, and the DAS type to be used via VMS prior to each trip into the one of these programs, OMB# 0648–0202 (5 min/response);
5. Notice requirements for observer deployment prior to every trip into the Regular B DAS Program or the U.S./Canada Management Areas and associated SAPs OMB# 0648–0202, (2 min/response);
6. Standardized catch reporting requirements while participating in the Regular B DAS Program, the CA I Hook Gear Haddock SAP, or the U.S./Canada Management Area and its associated SAPs, OMB# 0648–0212 (15 min/response);
7. Standardized reporting of Universal Data I.D. while participating in the

Regular B DAS Program or fishing in the U.S./Canada Management Area, associated SAPs, and CA I SAP, OMB# 0648–0212 (15 min/response);

8. DAS “flip” notification via VMS for the Regular B DAS Program, OMB# 0648–0202 (5 min/response);

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

10. DAS Leasing Program application, OMB# 0648–0202 (10 min/response);

11. DAS Transfer Program application, OMB# 0648–0202 (10 min/response); and

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

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

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

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

David.Rostker@omb.eop.gov, or fax to 202–395–7285.

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

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

During the development of this final interim rule, NMFS considered and fully analyzed five alternatives, including the no action alternative, a differential DAS alternative, a DAS reduction and closed area alternative, the original proposed measures, and the measures implemented by this final interim rule. Three other alternatives were considered, but rejected, including the measures recommended by the Council, an expanded Regular B DAS Program alternative, and a hard TAC alternative. The reasons behind rejecting the Council’s preferred alternative are

explained in the preamble of the proposed interim rule and further discussed in the response to Comment 4 above. The expanded Regular B DAS Program alternative was rejected because it would have required vessels to use specialized nets that would have been costly to acquire. In addition, this alternative would have resulted in unnecessary loss of yield from several groundfish stocks. The hard TAC alternative was an attempt to increase the effectiveness of the Council’s recommended measures. However, this alternative was rejected because it would likely have resulted in early closure of the fishery and would have been complex, costly, and impractical to implement for the short duration of an interim action.

In response to comments emphasizing the economic impacts of the proposed measures, NMFS partially analyzed three additional alternatives that included various combinations of differential DAS areas, closure areas, and trip limits in order to minimize the economic impacts of this action without compromising the ability of the fishery to achieve the long-term rebuilding objectives in the FMP. One of these alternatives was selected as the preferred alternative for this action and is implemented by this final interim rule. As discussed in the responses to comments, the measures implemented by this final interim rule reduce F on all stocks, but do not achieve the F objectives for GB cod and witch flounder. However, this will not compromise the ability of the fishery to rebuild overfished stocks, provided additional measures to end overfishing and rebuild overfished stocks are implemented through future management actions, as necessary. While the no action alternative would result in the fewest economic impacts (a reduction of total trip revenue of approximately 7.7 percent, or \$12.2 million, and a reduction of groundfish trip revenue of 12.1 percent, or \$12.2 million), that alternative would also achieve the least amount of reduction in F. In contrast, the measures implemented by this final interim rule would result in substantially higher reductions in F for some stocks, while minimizing reductions in both groundfish and total revenue than the other alternatives considered. It is estimated that these measures would achieve much lower reductions in both total trip revenue (a reduction of 9.4 percent, or \$14.8 million) and groundfish trip revenue (a reduction of 14.7 percent, or \$14.8 million) when compared to the other three alternatives

considered, including the originally proposed measures (see the Classification section of the preamble of the proposed interim rule for a full discussion of the economic impacts associated with those alternatives). This is true across all states. This action is expected to result in positive economic impacts to vessels operating out of New Jersey due to the replacement of the existing SNE Differential DAS Area with the Interim SNE Differential DAS Area. In addition, the measures implemented by this action achieve a higher yield from several groundfish stocks as a result of higher landings than the other alternatives. As noted in the response to Comment 4, preserving future yield in the fishery becomes increasingly important as the fishery moves toward quota-driven management regimes such as sector management, as proposed in draft Amendment 16, and annual catch limits mandated by the recent revision to the Magnuson-Stevens Act.

In addition to revisions designed to continue to reduce overfishing, this action also implements a number of measures intended to mitigate the economic impacts of effort reductions associated with conservation measures. These measures include revisions to the DAS Leasing and Transfer Programs, modifications to the Regular B DAS Program, continuation of the Eastern U.S./Canada Haddock SAP, expansion of the CA I Hook Gear Haddock SAP in both area and season, and a reduction in the minimum size of haddock for both recreational and commercial vessels. Modifications to the DAS Leasing Program attempt to remove administrative barriers that would unnecessarily limit the ability of vessels to lease DAS to one another. This increases flexibility and efficiency in the program by providing greater opportunities for vessels to acquire and sell DAS to other similar-sized vessels. In addition, analysis indicates that 15 percent of vessels participating in the DAS Leasing Program were affected by the DAS leasing cap in FY 2007. Elimination of this cap through this final interim rule eliminates that restriction and will help enable vessels to acquire sufficient DAS to remain economically viable. Modifications to the DAS Transfer Program eliminate the DAS conservation tax. This is expected to encourage transfers and will likely result in more efficient operations, as vessel owners could combine DAS and other fishing permits from multiple vessels onto one operational platform. Revisions to the Regular B DAS Program, including the redistribution of incidental catch TACs and quarterly

TAC roll-over, are intended to increase the efficiency of the program and provide more opportunities for vessels to take advantage of this program. Because the original intent of the Regular B DAS Program was to encourage the selective harvest of healthy stocks while minimizing the catch of overfished stocks, increasing participation in this program is one additional means of accomplishing the dual objectives of this action: Ensuring continued progress toward rebuilding overfished stocks while mitigating the economic impacts to the extent practicable. Measures to expand the CA I Hook Gear Haddock SAP would also contribute toward achieving these two objectives by greatly increasing opportunities to harvest the abundant haddock resource on GB using gear proven to selectively harvest this stock, while minimizing the bycatch of cod. The extension of the season from 3 months to 9 months also enables vessels to take advantage of market conditions to maximize economic return on trips into this SAP. Finally, although slower growth rates delayed recruitment of recent large year classes of haddock into the fishery, most of these fish have reached sizes susceptible to capture by existing mesh sizes. This action reduces the minimum size limit for haddock from 19 inches (48.3 cm) to 18 inches (45.7 cm) to increase yield from this species and increase revenue in the groundfish fishery.

In summary, the measures implemented by this action attempt to strike a balance, under the authority of section 305(c) of the Magnuson-Stevens Act, between continuing efforts to reduce overfishing and rebuild overfished stocks and minimizing economic impacts to affected entities, as required by the Magnuson-Stevens Act and other applicable law. While this action does not implement measures that would, by themselves, achieve all of the mortality objectives outlined in the preamble, together with measures in draft Amendment 16 and potential future actions, these measures will assist the fishery to meet the requirements to rebuild overfished stocks and maintain participation of fishing communities in the groundfish fishery, as required by the Magnuson-Stevens Act, during the transition to more sustainable fishing practices in future years, without jeopardizing rebuilding objectives.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to

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

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 6, 2009.

James W. Balsiger,

Acting Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

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

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

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

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

■ 2. In § 648.4, paragraph (c)(2)(iii)(A) is suspended and paragraph (c)(2)(iii)(C) is added to read as follows:

#### § 648.4 Vessel permits.

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(iii) \* \* \*

(C) For vessels fishing for NE multispecies with gillnet gear, with the exception of vessels fishing under the Small Vessel permit category, an annual declaration as either a Day or Trip gillnet vessel designation as described in § 648.82(j). A vessel owner electing a Day or Trip gillnet designation must indicate the number of gillnet tags that he/she is requesting, and must include a check for the cost of the tags. For the 2009 fishing year, a vessel owner that has already elected this designation prior to May 1, 2009, may change this designation through June 12, 2009. For the 2009 fishing year only, a vessel may fish under more than one gillnet category. A permit holder letter will be sent to the owner of each eligible gillnet vessel, informing him/her of the costs associated with this tagging requirement and providing directions for obtaining tags. Incomplete applications, as described in paragraph (e) of this

section, will be considered incomplete for the purpose of obtaining authorization to fish in the NE multispecies gillnet fishery and will be processed without a gillnet authorization.

\* \* \* \* \*

■ 3. In § 648.14:

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

■ B. Paragraphs (c)(7), (23) through (26), (33), (39), (50), (51), (57) through (78), (81) through (83), (85), (86), (88), and (89) are suspended.

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

■ D. Paragraphs (a)(181) through (188), (c)(90) through (134), and (g)(6) and (7) are added.

The additions read as follows:

#### § 648.14 Prohibitions.

\* \* \* \* \*

(a) \* \* \*

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

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

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

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

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

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

(187) If fishing with trawl gear under a NE multispecies DAS in the Eastern U.S./Canada Area defined in § 648.85(a)(1)(ii), fail to fish with a haddock separator trawl, flounder trawl net, or Ruhle trawl, as specified in



§ 648.85(a)(3)(ix) and (b)(10)(iv)(j)(3), unless otherwise allowed under the Eastern U.S./Canada Haddock SAP rules in § 648.85(b)(8)(v)(E).

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

\* \* \* \* \*

(c) \* \* \*

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

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

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

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

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

(95) For vessels fishing in the NE multispecies DAS program under the provisions of § 648.10(c), the call-in system, fail to remain in port for the appropriate time specified in § 648.86(l)(1)(ii)(A), except for transiting purposes, provided the vessel complies with § 648.86(l)(3). For vessels fishing in the NE multispecies DAS program under the provisions of § 648.10(b), the

VMS system, fail to declare through VMS that insufficient DAS have elapsed in order to account for the amount of cod on board the vessel as required under § 648.86(l)(1)(ii)(B).

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

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

(98) Discard legal-sized NE regulated multispecies, ocean pout, Atlantic halibut, or monkfish while fishing under a Regular B DAS in the Regular B DAS Program, as described in § 648.85(b)(10)(iv)(E).

(99) If fishing under a Regular B DAS in the Regular B DAS Program, fail to comply with the DAS flip requirements of § 648.85(b)(10)(iv)(E) if the vessel harvests and brings on board more than the landing limit for a groundfish stock of concern specified in § 648.85(b)(10)(iv)(D), other groundfish specified under § 648.86, or monkfish under § 648.94.

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

(101) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), fail to comply with the VMS requirement specified in § 648.85(b)(10)(iv)(A).

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

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

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

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

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

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

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

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

(110) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(11), fail to comply with the requirements and conditions specified in § 648.85(b)(11)(iv), and (b)(11)(v) or (b)(11)(vi), whichever is applicable.

(111) If fishing in the CA I Hook Gear Haddock Access Area specified in § 648.85(b)(11)(ii), fail to comply with the requirements and conditions specified in § 648.85(b)(11)(iv), and (b)(11)(v) or (b)(11)(vi), whichever is applicable.

(112) Fish in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(11), outside of the season specified in § 648.85(b)(11)(iii).

(113) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(11), fail to comply with the DAS use restrictions specified in § 648.85(b)(11)(iv)(A), and (b)(11)(v)(A) or (b)(11)(vi)(A), whichever is applicable.

(114) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(11), fail to comply with the VMS requirements specified in § 648.85(b)(11)(iv)(B).

(115) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(11), fail to comply with the observer notification requirements specified in § 648.85(b)(11)(iv)(C).

(116) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(11), fail to comply with the VMS declaration requirement specified in § 648.85(b)(11)(iv)(D).

(117) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(11), fail to comply with the gear restrictions specified in § 648.85(b)(11)(iv)(E), and (b)(11)(v)(B) or (b)(11)(vi)(B), whichever is applicable.

(118) If fishing in the CA I Hook Gear Haddock SAP specified in



§ 648.85(b)(11), fail to comply with the landing limits specified in § 648.85(b)(11)(iv)(H), and (b)(11)(v)(C) or (b)(11)(vi)(C), whichever is applicable.

(119) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(11), fail to comply with the reporting requirement specified in § 648.85(b)(11)(v)(D) or (b)(11)(vi)(D), whichever is applicable.

(120) Fish in the CA I Hook Gear Haddock Access Area specified in § 648.85(b)(11)(ii), if that area is closed as specified in § 648.85(b)(11)(iv)(I) or (b)(11)(vi)(F).

(121) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(11), fish with squid as bait, as prohibited at § 648.85(b)(11)(iv)(J).

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

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

(124) If fishing under a NE multispecies Category A DAS in one or both of the differential DAS areas defined under § 648.82(e)(4)(i), fail to declare into one or both of the areas through VMS, as required under § 648.82(e)(4)(ii).

(125) If fishing under a NE multispecies Category A DAS in one or both of the differential DAS areas defined in § 648.82(e)(4)(i), and under the restrictions of one or more of the Special Management Programs under § 648.85, fail to comply with the most restrictive regulations.

(126) Possess or land more witch flounder than allowed under § 648.86(m).

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

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

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

(130) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), fail to use a haddock separator trawl as

described under § 648.85(a)(3)(ix)(A), or other approved gear as described under § 648.85(b)(10)(iv)(J).

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

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

(133) Fail to comply with the restrictions on fishing and gear specified in § 648.80(a)(3)(v), (a)(4)(v), (b)(2)(v), and (c)(2)(iv) if the vessel has been issued a limited access NE multispecies permit and fishes with hook-gear in areas specified in § 648.80(a), (b), or (c), unless allowed under § 648.85(b)(11)(iv)(F).

(134) Discard legal-sized NE regulated multispecies, ocean pout, or Atlantic halibut while fishing under a Special Access Program, as described in §§ 648.85(b)(3)(xi), 648.85(b)(11)(iv)(H) or 648.85(b)(8)(v)(I).

\* \* \* \* \*

(g) \* \* \*

(6) If the vessel is a private recreational fishing vessel, fail to comply with the seasonal GOM cod possession prohibition described in § 648.89(c)(1)(vi), or, if the vessel has been issued a charter/party permit or is fishing under charter/party regulations, fail to comply with the prohibition on fishing under § 648.89(c)(5)(v).

(7) If fishing under the recreational or charter/party regulations, fish for or possess cod caught in the GOM Regulated Mesh Area during the seasonal GOM cod possession prohibition under § 648.89(c)(1)(vi) or (c)(5)(v), or fail to abide by the appropriate restrictions if transiting with cod on board.

\* \* \* \* \*

#### § 648.80 [Amended]

■ 4. In § 648.80, paragraph (i) is suspended.

■ 5. In § 648.81, paragraph (b)(2)(iv)(B) is suspended, and paragraph (b)(2)(iv)(C) is added to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(iv) \* \* \*

(C) The vessel has declared into the Eastern U.S./Canada Area as specified in § 648.85(a)(3)(viii) and is transiting

CA II in accordance with the provisions of § 648.85(a)(3)(vii).

\* \* \* \* \*

#### ■ 6. In § 648.82:

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

■ B. Paragraphs (e)(4) and (5), and (j)(1)(iii)(E), (F), and (G) are added.

The additions read as follows:

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

\* \* \* \* \*

(e) \* \* \*

(4) *Differential DAS*. For a NE multispecies DAS vessel that intends to fish some or all of its trip, or fishes some or all of its trip other than for transiting purposes, under a Category A DAS in one or both of the differential DAS areas, as defined in paragraphs (e)(4)(i)(A) and (B) of this section, with the exception of Day gillnet vessels, which accrue DAS in accordance with paragraph (j)(1)(iii) of this section, each Category A DAS, or part thereof, shall be counted at the differential DAS rate described in paragraph (e)(4)(iii) of this section, and be subject to the restrictions defined in this paragraph (e).

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

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

(B) *Interim SNE Differential DAS Area*. The Interim SNE Differential DAS Area is defined by straight lines connecting the following points in the order stated (a chart depicting this area is available from the Regional Administrator upon request):

INTERIM SNE DIFFERENTIAL DAS  
AREA

Point	N. lat.	W. long.
SNECA1 .....	( <sup>1</sup> )	70°00'
SNECA2 .....	41°30'	70°00'
SNECA3 .....	41°30'	68°50'
SNECA4 .....	40°30'	68°50'
SNECA5 .....	40°30'	( <sup>2</sup> )

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

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

(ii) *Declaration.* A NE multispecies DAS vessel that intends to fish, or fishes under a Category A DAS in one of the differential DAS areas described in paragraph (e)(4)(i) of this section, must, prior to leaving the dock, declare through the VMS, in accordance with instructions to be provided by the Regional Administrator, that the vessel will fish in the GOM Differential DAS Area, the Interim SNE Differential DAS Area, or both areas. A DAS vessel that fishes in the Eastern U.S./Canada Area and intends to fish, or fishes, subsequently in one or both of the differential DAS areas under a Category A DAS, must declare its intention to do so through its VMS prior to leaving the dock at the start of the trip, or prior to leaving the Eastern U.S./Canada Area, as specified in § 648.85(a)(3)(viii)(A)(3).

(iii) *Differential DAS counting.*—(A) *Differential DAS counting when fishing in the GOM Differential DAS Area.* For a NE multispecies vessel that intends to fish, or fishes for some or all of its trip other than for transiting purposes under a Category A DAS in the GOM Differential DAS Area, each Category A DAS, or part thereof, shall be counted at the ratio of 2 to 1 for the entire trip, even if only a portion of the trip is spent fishing in the GOM Differential DAS Area. A vessel that has not declared its intent to fish in the GOM Differential DAS Area and that is not transiting, as specified in paragraph (e)(4)(v) of this section, may be in the GOM Differential DAS Area, provided the vessel's fishing gear is stowed in accordance with the provisions of § 648.23(b) for the entire time the vessel is in the area, and the vessel declares immediately upon entering the GOM Differential DAS Area, via VMS, that it is in the area. A vessel that fishes in both the GOM Differential Area and the Interim SNE Differential DAS Area on the same trip will be charged DAS at the rate of 2:1 for the entire trip.

(B) *Differential DAS counting when fishing in the Interim SNE Differential DAS Area.* With the exception of a vessel fishing with hook gear, a NE multispecies DAS vessel that intends to

fish or fishes some or all of its trip other than for transiting purposes under a Category A DAS in the Interim SNE Differential DAS Area shall have each Category A DAS, or part thereof, counted at the ratio of 2 to 1 for the entire trip, even if only a portion of the trip is spent fishing in the Interim SNE Differential DAS Area. Unless otherwise specified in paragraph (e)(4)(iii) of this section, a NE multispecies DAS vessel fishing with hook gear that intends to fish or fishes some or all of its trip other than for transiting purposes under a Category A DAS in the Interim SNE Differential DAS Area shall have each Category A DAS, or part thereof, counted at the ratio of 1 to 1 for the entire trip. A vessel that has not declared its intent to fish in the Interim SNE Differential DAS Area and that is not transiting, as specified in paragraph (e)(4)(v) of this section, may be in the Interim SNE Differential DAS Area, provided the vessel's fishing gear is stowed in accordance with the provisions of § 648.23(b) for the entire time the vessel is in the area and the vessel declares immediately upon entering the Interim SNE Differential DAS Area, via VMS, that it is in the area. A vessel that fishes in both the GOM Differential Area and the Interim SNE Differential DAS Area on the same trip will be charged DAS at the rate of 2:1 for the entire trip.

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

(v) *Transiting.* A vessel may transit either one or both of the differential DAS areas, as defined in paragraph (e)(4)(i) of this section, provided the gear is stowed in accordance with the provisions of § 648.23(b).

(5) *Regular B DAS Program 24-hr clock.* For a vessel electing to fish in the Regular B DAS Program, as specified at § 648.85(b)(10), and that remains fishing under a Regular B DAS for the entire fishing trip (without a DAS flip), DAS used shall accrue at the rate of 1 full DAS for each calendar day, or part of a calendar day fished. For example, a vessel that fished on one calendar day from 6 a.m. to 10 p.m. would be charged 24 hr of Regular B DAS, not 16 hr; a vessel that left on a trip at 11 p.m. on

the first calendar day and returned at 10 p.m. on the second calendar day would be charged 48 hr of Regular B DAS instead of 23 hr, because the fishing trip would have spanned 2 calendar days. For the purpose of calculating trip limits specified under § 648.86, the amount of DAS deducted from a vessel's DAS allocation shall determine the amount of fish the vessel can legally land. For a vessel electing to fish in the Regular B DAS Program, as specified at § 648.85(b)(10), while also fishing in one or both of the differential DAS areas defined in paragraph (e)(4) of this section, Category B DAS shall accrue at the rate described in this paragraph (e)(5), unless the vessel flips to a Category A DAS, in which case the vessel is subject to the pertinent DAS accrual restrictions of paragraph (e)(4)(iii) of this section for the entire trip. For vessels electing to fish in both the Regular B DAS Program, as specified in § 648.85(b)(10), and in the Eastern U.S./Canada Area, as specified in § 648.85(a), DAS counting will begin and end according to the DAS accounting rules specified in § 648.10(b)(2)(iii).

\* \* \* \* \*

(j) \* \* \*

(1) \* \* \*

(iii) \* \* \*

(E) A Day gillnet vessel fishing with gillnet gear that has elected to fish in the Regular B DAS Program, as specified in § 648.85(b)(10), under a Category B DAS, is subject to the DAS accrual provisions of paragraph (e)(5) of this section.

(F) A Day gillnet vessel fishing with gillnet gear under a NE multispecies Category A DAS, when not subject to differential DAS counting as specified under paragraph (e)(4) of this section, shall accrue 15 hr of DAS for each trip of more than 3 hr, but less than or equal to 15 hr. Such vessel shall accrue actual DAS time at sea for trips less than or equal to 3 hr, or more than 15 hr.

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

vessel fishing in the Interim SNE Differential DAS Area for 8 actual hr would be charged 16 hr of DAS, or if fishing for 5 actual hr, would be charged 15 hr of DAS.

\* \* \* \* \*

■ 7. In § 648.83, paragraph (a)(1) and (a)(3) are suspended and paragraph (a)(4) is added to read as follows:A

**§ 648.83 Multispecies minimum fish sizes.**

(a) \* \* \*

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

**MINIMUM FISH SIZES (TL) FOR COMMERCIAL VESSELS**

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

\* \* \* \* \*

■ 8. In § 648.85:

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

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

■ C. Paragraphs (a)(3)(v)(D), (E), and (F); (a)(3)(viii) and (ix); (b)(8)(v)(E)(3); (b)(8)(v)(M) and (N); and (b)(9), (10), and (11) are added.

The additions read as follows:

**§ 648.85 Special management programs.**

\* \* \* \* \*

(a) \* \* \*

(3) \* \* \*

(v) \* \* \*

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

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

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

\* \* \* \* \*

(viii) *Declaration.* To fish in the U.S./Canada Management Area under a groundfish DAS, a NE multispecies DAS vessel, prior to leaving the dock, must

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

(A) A vessel fishing under a NE multispecies DAS in the Eastern U.S./Canada Area may fish both inside and outside of the Eastern U.S./Canada Area on the same trip, provided it complies with the most restrictive DAS counting, trip limits, and reporting requirements for the areas fished for the entire trip, and provided it complies with the restrictions specified in paragraphs (a)(3)(viii)(A)(1) through (4) of this section. On a trip when the vessel operator elects to fish both inside and outside of the Eastern U.S./Canada Area, all cod, haddock, and yellowtail flounder caught on the trip shall count toward the applicable hard TAC specified for the U.S./Canada Management Area.

(1) The vessel operator must notify NMFS via VMS any time prior to leaving the dock at the start of the trip or prior to leaving the Eastern U.S./Canada Area (including at the time of initial declaration into the Eastern U.S./Canada Area) that it is also electing to fish outside the Eastern U.S./Canada Area. With the exception of vessels participating in the Regular B DAS Program and fishing under a Regular B DAS, once a vessel that has elected to fish outside of the Eastern U.S./Canada Area leaves the Eastern U.S./Canada Area, Category A DAS shall accrue from the time the vessel crosses the VMS demarcation line at the start of its fishing trip until the time the vessel crosses the demarcation line on its return to port, in accordance with § 648.10(b)(2)(iii).

(2) The vessel must comply with the reporting requirements of the U.S./Canada Management Area specified under paragraph (a)(3)(v) of this section for the duration of the trip.

(3) If the vessel fishes or intends to fish in one or both of the differential DAS areas defined under § 648.82(e)(4)(i), it must declare its intent to do so prior to leaving the Eastern U.S./Canada Area (including at the time of initial declaration into the Eastern U.S./Canada Area), and must not have exceeded the CC/GOM or SNE/

MA yellowtail flounder trip limits, specified in § 648.86(g), for the respective areas.

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

(B) A vessel fishing under a NE multispecies DAS in the Western U.S./Canada Area may fish inside and outside the Western U.S./Canada Area on the same trip, provided it complies with the most restrictive regulations applicable to the area fished for the entire trip (*e.g.*, the possession restrictions specified in paragraph (a)(3)(iv)(C)(4) of this section), and the reporting requirements specified in paragraph (a)(3)(v) of this section.

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

(ix) *Gear requirements.* NE multispecies vessels fishing with trawl gear in the Eastern U.S./Canada Area defined in paragraph (a)(1)(ii) of this section, unless otherwise provided in paragraphs (b)(8) and (b)(10) of this section, must fish with a Ruhle trawl, as described in paragraph (b)(10)(iv)(j)(1) of this section, or a haddock separator trawl or a flounder trawl net, as described in paragraphs (a)(3)(ix)(A) and (B) of this section (all three nets may be onboard the fishing vessel simultaneously). Gear other than the Ruhle trawl, haddock separator trawl, or the flounder trawl net as described in paragraph (a)(3)(ix) of this section, or gear authorized under paragraphs (b)(8) and (b)(10) of this section, may be on board the vessel during a trip to the Eastern U.S./Canada Area, provided the gear is stowed according to the regulations at § 648.23(b). The description of the Ruhle trawl, the haddock separator trawl, and the flounder trawl net in paragraph (b)(10)(iv)(j)(1) of this section and in this paragraph (a)(3)(ix) may be further specified by the Regional Administrator through publication of such specifications in the **Federal Register**,

consistent with the requirements of the Administrative Procedure Act.

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

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

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

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

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

(2) A two-seam, low-rise net constructed with mesh size in compliance with § 648.80(a)(4), with the exception that the top panel of the net contains a section of mesh at least 10 ft (3.05 m) long and stretching from selvedge to selvedge, composed of at least 12-inch (30.5-cm) mesh that is

inserted no farther than 4.5 meshes behind the headrope.

(b) \* \* \*  
(8) \* \* \*  
(v) \* \* \*  
(E) \* \* \*

(3) *Approval of additional gear*. The Regional Administrator may authorize additional gear for use in the Eastern U.S./Canada Haddock SAP in accordance with the standards and requirements specified at paragraph (b)(10)(iv)(j)(2) of this section.

\* \* \* \* \*

(M) *Incidental TACs*. The maximum amount of GB cod, and the amount of GB yellowtail flounder, GB winter flounder, and pollock, both landings and discards, that may be caught when fishing in the Eastern U.S./Canada Haddock SAP Program in a fishing year by vessels fishing under a Category B DAS, as authorized in paragraph (b)(8)(v)(A) of this section, is the amount specified in paragraphs (b)(9)(ii), (iii), and (iv) of this section, respectively.

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

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

(i) *Stocks other than GB cod, GB yellowtail flounder, GB winter flounder, and pollock*. With the exception of GB cod, GB yellowtail flounder, GB winter flounder, and pollock, the Incidental Catch TACs specified under this paragraph (b)(9) shall be allocated to the Regular B DAS Program described in paragraph (b)(10) of this section.

(ii) *GB cod*. The Incidental TAC for GB cod specified under this paragraph

(b)(9) shall be subdivided as follows: 70 percent to the Regular B DAS Program described in paragraph (b)(10) of this section; 16 percent to the CA I Hook Gear Haddock SAP described in paragraph (b)(7) of this section; and 14 percent to the Eastern U.S./Canada Haddock SAP described in paragraph (b)(8) of this section.

(iii) *GB yellowtail flounder and GB winter flounder*. Each of the Incidental Catch TACs for GB yellowtail flounder and GB winter flounder specified under this paragraph (b)(9) shall be subdivided as follows: 80 percent to the Regular B DAS Program described in paragraph (b)(10) of this section; and 20 percent to the Eastern U.S./Canada Haddock SAP described in paragraph (b)(8) of this section.

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

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

(ii) [Reserved]

(iii) *Quarterly Incidental Catch TACs*. The Incidental Catch TACs specified in accordance with paragraph (b)(9) of this section shall be divided into quarterly catch TACs as follows: The first quarter shall receive 13 percent of the Incidental Catch TACs and the remaining three quarters shall each receive 29 percent of the Incidental Catch TACs. When the Regional Administrator projects that there is uncaught TAC in quarters one, two, or

three, the uncaught TAC will be added to the TAC allocated for the subsequent quarter. Uncaught TAC at the end of the fishing year will not be added to allocations in subsequent fishing years. NMFS shall send letters to all limited access NE multispecies permit holders notifying them of such TACs and any adjustments to such TACs.

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

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

(C) *VMS declaration.* To participate in the Regular B DAS Program under a Regular B DAS, a vessel must declare into the Program via VMS prior to departure from port, in accordance with instructions provided by the Regional Administrator. A vessel declared into the Regular B DAS Program cannot fish in an approved SAP described under this section on the same trip. Mere declaration of a Regular B DAS Program trip does not reserve a vessel's right to fish under the Program, if the vessel has not crossed the VMS demarcation line.

(D) *Landing limits.* Unless otherwise specified in this paragraph (b)(10)(iv)(D), a NE multispecies vessel fishing in the Regular B DAS Program described in this paragraph (b)(10), and fishing under a Regular B DAS, may not land more than 100 lb (45.5 kg) per DAS, or any part of a DAS, up to a maximum of 1,000 lb (454 kg) per trip of any of the following species/stocks from the areas specified in paragraph (b)(10)(v) of this section: Cod, pollock, white hake, witch flounder, GB winter flounder, GB yellowtail flounder, and southern windowpane flounder; and may not land more than 25 lb (11.3 kg)

per DAS, or any part of a DAS, up to a maximum of 250 lb (113 kg) per trip of CC/GOM or SNE/MA yellowtail flounder. In addition, trawl vessels that are required to fish with a haddock separator trawl or Ruhle trawl, as specified under paragraph (b)(10)(iv)(J) of this section, and other gear that may be required in order to reduce catches of stocks of concern as described under paragraph (b)(10)(iv)(J) of this section, are restricted to the following trip limits: 500 lb (227 kg) of all flatfish species (American plaice, witch flounder, winter flounder (GOM or GB), windowpane flounder (south), and yellowtail flounder), combined; 500 lb (227 kg) of monkfish (whole weight); 500 lb (227 kg) of skates (whole weight); and zero possession of lobsters, ocean pout, SNE/MA winter flounder, and windowpane flounder (north), unless otherwise restricted by § 648.94(b)(3).

(E) *No-discard provision and DAS flips.* A vessel fishing in the Regular B DAS Program under a Regular B DAS may not discard legal-sized regulated species, Atlantic halibut, or monkfish, unless otherwise specified in this paragraph (b)(10)(iv)(E). This prohibition on discarding does not apply to ocean pout, windowpane (north), or SNE winter flounder, or in areas or times where the possession or landing of regulated species is prohibited. If such a vessel harvests and brings on board legal-sized regulated NE multispecies, or Atlantic halibut unless exempted, as specified in this paragraph (b)(10)(iv)(E), in excess of the allowable landing limits specified in paragraph (b)(10)(iv)(D) of this section, or § 648.86, the vessel operator must notify NMFS immediately via VMS to initiate a DAS flip from a B DAS to an A DAS. Once this notification has been received by NMFS, the vessel shall automatically be switched by NMFS to fishing under a Category A DAS for its entire fishing trip. Thus, any Category B DAS that accrued between the time the vessel declared into the Regular B DAS Program at the beginning of the trip (i.e., at the time the vessel crossed the demarcation line at the beginning of the trip) and the time the vessel declared its DAS flip shall be accrued as Category A DAS, and not Regular B DAS. After flipping to a Category A DAS, the vessel is subject to the applicable trip limits specified under § 648.86 or paragraph (a) of this section and may discard fish in excess of the applicable trip limits.

(F) *Minimum Category A DAS and B DAS accrual.* For a vessel fishing under the Regular B DAS Program, the number of Regular B DAS that may be used on a trip cannot exceed the number of Category A DAS that the vessel has at

the start of the trip. If a vessel is fishing any part of a trip in one or both of the differential DAS areas, as described in § 648.82(e)(4)(i), the number of Regular B DAS that may be used on a trip cannot exceed the number of Category A DAS that the vessel has at the start of the trip divided by two. For example, if a vessel plans a trip under the Regular B DAS Program into the Interim SNE Differential DAS Area and has 10 Category A DAS available at the start of the trip, the maximum number of Regular B DAS that the vessel may fish under the Regular B DAS Program is 5. A vessel fishing in the Regular B DAS Program for its entire trip shall accrue DAS in accordance with § 648.82(e)(5).

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

(H) *Closure of Regular B DAS Program and quarterly DAS limits.* Unless otherwise closed as a result of the harvest of an Incidental Catch TAC as described in paragraph (b)(10)(iv)(G) of this section, or as a result of an action by the Regional Administrator under paragraph (b)(10)(vi) of this section, the use of Regular B DAS shall, in a manner consistent with the Administrative Procedure Act, be prohibited when 500 Regular B DAS have been used during the first quarter of the fishing year (May–July), or when 1,000 Regular B DAS have been used during any of the remaining quarters of the fishing year, in accordance with § 648.82(e)(5).

(I) *Reporting requirements.* The owner or operator of a NE multispecies DAS vessel must submit catch reports via

VMS in accordance with instructions provided by the Regional Administrator, for each day fished when declared into the Regular B DAS Program. The reports must be submitted in 24-hr intervals for each day, beginning at 0000 hr and ending at 2400 hr. The reports must be submitted by 0900 hr of the following day. For vessels that have declared into the Regular B DAS Program in accordance with paragraph (b)(10)(iv)(C) of this section, the reports must include at least the following information: Statistical area fished; total pounds of cod, haddock, yellowtail flounder, winter flounder, witch flounder, pollock, and white hake kept; date fish were caught; and VTR serial number, as instructed by the Regional Administrator. Daily reporting must continue even if the vessel operator is required to flip, as described under paragraph (b)(10)(iv)(E) of this section.

(j) *Gear requirement.*—(1) Vessels fishing with trawl gear in the Regular B DAS Program must use a haddock separator trawl or Ruhle trawl, as described under paragraphs (a)(3)(iii)(A) and (b)(10)(iv)(j)(3) of this section, respectively, or other type of gear, if approved, as described under this paragraph (b)(10)(iv)(j). Other gear may be on board the vessel, provided it is stowed when the vessel is fishing under the Regular B DAS Program. Vessels fishing with gillnet gear in the Regular B DAS Program may not use a low profile (“tie-down” type) gillnet.

(2) *Approval of additional gear.* At the request of the Council or Council’s Executive Committee, the Regional Administrator may authorize additional gear for use in the Regular B DAS Program, through notice consistent with the Administrative Procedure Act. The proposed gear must satisfy standards specified in paragraphs (b)(10)(iv)(j)(2)(i) or (ii) of this section in a completed experiment that has been reviewed according to the standards established by the Council’s research policy before the gear can be considered and approved by the Regional Administrator. Comparisons of the criteria specified in this paragraph (b)(10)(iv)(j)(2) will be made to an appropriately selected control gear.

(i) The gear must show a statistically significant reduction in catch of at least 50 percent (by weight, on a trip-by-trip basis) of each regulated species stock of concern, unless otherwise allowed in this paragraph (b)(10)(iv)(j)(2)(i), or other non-groundfish stocks that are overfished or subject to overfishing identified by the Council. This requirement does not apply to regulated species identified by the Council as not

being subject to gear performance standards; or

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

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

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

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

(iii) Mesh size in all other sections must be consistent with mesh size requirements specified under § 648.80 and meet the following minimum specifications: Each mesh in the square, square side panels, and second bottom belly must be 31.5 inches (80 cm); each mesh in the first and second top belly, the first belly side panels, and the third

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

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

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

(vi) The sweep must include rockhoppers of various sizes, which are arranged along the sweep in size order, graduated from 16-inch (40-cm) diameter in the sweep center down to 12-inch (30-cm) diameter at the wing ends. There must be six or fewer 12- to 16-inch (30- to 40-cm) rockhopper discs over any 10-ft (3.0-m) length of the sweep. The 12- to 16-inch (30- to 40-cm) discs (minimum size) must be spaced evenly, with one disc placed approximately every 2 ft (60 cm) along the sweep. The 12- to 16-inch (30- to 40-cm) discs must be separated by smaller discs, no larger than 3.5 inches (8.8 cm) in diameter.

(v) *Definition of incidental TAC stock areas.* For the purposes of the Regular B DAS Program, including the stocks

that may not be retained by vessels as specified under § 648.86, the species stock areas are defined in paragraphs (b)(10)(v)(A) through (I) of this section. Copies of a chart depicting these areas are available from the Regional Administrator upon request.

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

#### GULF OF MAINE COD STOCK AREA

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

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

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

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

#### GEORGES BANK COD STOCK AREA

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

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

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

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

#### CC/GOM YELLOWTAIL FLOUNDER STOCK AREA

Point	N. lat.	W. long.
CCGOM1 .....	43°00'	(1)
CCGOM 2 .....	42°20'	70°00'
CCGOM 3 .....	42°20'	66°00'
CCGOM 4 .....	42°10'	66°00'

#### CC/GOM YELLOWTAIL FLOUNDER STOCK AREA—Continued

Point	N. lat.	W. long.
CCGOM 5 .....	42°10'	65°50'
CCGOM 6 .....	42°00'	65°50'
CCGOM 7 .....	42°00'	65°40'
CCGOM 8 .....	40°30'	65°40'
CCGOM 9 .....	39°00'	65°40'
CCGOM 10 .....	(2)	.....
CCGOM 11 .....	35°00'	(3)
CCGOM 12 .....	35°00'	(4)
CCGOM 13 .....	(3)	.....

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

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

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

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

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

#### SNE/MA YELLOWTAIL FLOUNDER STOCK AREA

Point	N. lat.	W. long.
SNEMA1 .....	40°00'	74°00'
SNEMA2 .....	40°00'	72°00'
SNEMA3 .....	40°30'	72°00'
SNEMA4 .....	40°30'	69°30'
SNEMA5 .....	41°00'	69°30'
SNEMA6 .....	41°00'	69°00'
SNEMA7 .....	41°30'	70°00'
SNEMA8 .....	39°00'	70°00'
SNEMA9 .....	41°00'	70°00'
SNEMA10 .....	41°00'	70°30'
SNEMA11 .....	41°30'	70°30'
SNEMA12 .....	(1)	72°00'
SNEMA13 .....	(2)	72°00'
SNEMA14 .....	(3)	73°00'
SNEMA15 .....	40°30'	73°00'
SNEMA16 .....	40°30'	74°00'
SNEMA17 .....	40°00'	74°00'

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

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

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

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

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

Point	N. lat.	W. long.
SNEW1 .....	(1)	70°00'
SNEW2 .....	42°20'	70°00'

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

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

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

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

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

#### WINDOWPANE FLOUNDER NORTHERN STOCK AREA

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

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

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

(G) *GB yellowtail flounder stock area*. The GB yellowtail flounder stock area, for the purposes of the Regular B DAS Program, is the area defined as the U.S./Canada Management Areas, as specified in paragraphs (a)(1)(i) and (ii) of this section.

(H) *GB winter flounder stock area*. The GB winter flounder stock area, for the purposes of the Regular B DAS Program, is the area defined as the U.S./Canada Management Areas, as specified in paragraphs (a)(1)(i) and (ii) of this section.

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



## GOM WINTER FLOUNDER STOCK AREA

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

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

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

(vi) *Closure and in-season modification to the Regular B DAS Program.* The Regional Administrator, based upon information required under §§ 648.7, 648.9, 648.10, or this paragraph (b)(10)(vi), and any other relevant information, in a manner consistent with the Administrative Procedure Act, may prohibit the use of Regular B DAS, modify possession restrictions, or implement other measures, including a partial closure for the Regular B DAS Program, for the duration of a quarter or fishing year, if it is projected that continuation of the Regular B DAS Program would undermine the achievement of the objectives of the FMP or Regular B DAS Program. Reasons for modification or termination of the program include, but are not limited to, the following: Inability to constrain catches to the Incidental Catch TACs; evidence of excessive discarding; a significant difference in flipping rates between observed and unobserved trips; or insufficient observer coverage to adequately monitor the program.

(11) *CA I Hook Gear Haddock SAP.*—  
(i) *Eligibility.* Vessels issued a valid limited access NE multispecies DAS permit are eligible to participate in the CA I Hook Gear Haddock SAP, and may fish in the CA I Hook Gear Haddock Access Area, as described in paragraph (b)(11)(ii) of this section, for the season specified in paragraph (b)(11)(iii) 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 under paragraph (b)(11)(iv)(I) or (b)(11)(vi)(F) of this section. Copies of a chart depicting this area are available from the Regional Administrator upon request.

(ii) *CA I Hook Gear Haddock Access Area.* The CA I Hook Gear Haddock Access Area is the area defined by straight lines connecting the following points in the order stated:

## CA I HOOK GEAR HADDOCK ACCESS AREA

Point	N. lat.	W. long.
Hook 1 .....	41°09'	68°30'
Cl4 .....	41°30'	68°30'
Cl1 .....	41°30'	69°23'
Hook 2 .....	41°04'	69°01'

(iii) *Season.* The overall season for the CA I Hook Gear Haddock SAP is May 1 through January 31.

(iv) *General program restrictions.* General program restrictions specified in this paragraph (b)(11)(iv) apply to all eligible vessels as specified in paragraph (b)(11)(i) of this section. Further program restrictions specific to Sector and non-Sector vessels are specified in paragraphs (b)(11)(v) and (vi) of this section.

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

(B) *VMS requirement.* An eligible NE multispecies DAS vessel fishing in the CA I Hook Gear Haddock SAP specified in this paragraph (b)(11) must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(C) *Observer notifications.* For the purpose 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 that it declares into the CA I Hook Gear Haddock SAP, as required in paragraph (b)(11)(iv)(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 CA I Hook Gear Haddock SAP must declare into the SAP via VMS, and indicate the type of DAS that it intends to fish. A vessel declared into the CA I Hook Gear Haddock SAP may fish only on a declared trip in the CA I Hook Gear Haddock Special Access Area described under paragraph (b)(11)(ii) of this section.

(E) *Gear restrictions.* A vessel declared into and fishing in the CA I Hook Gear Haddock SAP may fish with and possess on board demersal longline gear or tub trawl gear only, unless

further restricted as specified under paragraph (b)(11)(v)(B) of this section.

(F) *Haddock TAC.*—(1) *Allocation and distribution.* The maximum total amount of haddock that may be caught (landings and discards) in the CA I Hook Gear SAP Area in any fishing year is based upon the size of the TAC allocated for the 2004 fishing year (1,130 mt live weight), adjusted according to the growth or decline of the western GB (WGB) haddock exploitable biomass (in relationship to its size in 2004), according to the following formula:  $\text{BiomassYEAR X} = (1,130 \text{ mt live weight}) \times (\text{Projected WGB Haddock Exploitable BiomassYEAR X} / \text{WGB Haddock Exploitable Biomass2004})$ . The size of the western component of the stock is considered to be 35 percent of the total stock size, unless modified by a stock assessment. The Regional Administrator shall specify the haddock TAC for the SAP, in a manner consistent with applicable law.

(2) *[Reserved]*

(G) *Trip restrictions.* A vessel is prohibited from deploying fishing gear outside of the CA I Hook Gear Haddock SAP Area on the same fishing trip on which it is declared into the CA I Hook Gear Haddock SAP, and must exit the SAP if the vessel exceeds the applicable landing limits described in paragraph (b)(11)(iv)(H) of this section.

(H) *Landing limits.* For all eligible vessels declared into the CA I Hook Gear Haddock SAP described in paragraph (b)(11)(i) of this section, landing limits for NE multispecies other than cod, which are specified at paragraphs (b)(11)(v)(C) and (b)(11)(vi)(C) of this section, are as specified at § 648.86. Unless otherwise specified in this part, such vessels are prohibited from discarding legal-sized regulated NE multispecies, Atlantic halibut, and ocean pout, and must exit the SAP and cease fishing if any trip limit is achieved or exceeded.

(I) *Mandatory closure of CA I Hook Gear Haddock Access Area.* When the Regional Administrator determines that the haddock TAC specified in paragraph (b)(11)(iv)(F) of this section has been caught, NMFS shall close, through rulemaking consistent with the Administrative Procedure Act, the CA I Hook Gear Haddock SAP Area as specified in paragraph (b)(11)(ii) of this section, to all eligible vessels.

(J) *Bait restriction.* A vessel declared into and fishing in the CA I Hook Gear Haddock SAP is prohibited from using squid as bait when participating in the CA I Hook Gear Haddock SAP.

(v) *Sector vessel program restrictions.* In addition to the general program restrictions specified at paragraph



(b)(11)(iv) of this section, the restrictions specified in this paragraph (b)(11)(v) apply only to Sector vessels declared into the CA I Hook Gear Haddock SAP.

(A) *DAS use restrictions.* Sector vessels fishing in the CA I Hook Gear Haddock SAP may use Category A, Regular B, or Reserve B DAS, in accordance with § 648.82(d).

(B) *Gear restrictions.* A vessel enrolled in the Sector is subject to the gear requirements of the Sector Operations Plan as approved under § 648.87(d).

(C) *Landing limits.* A Sector vessel declared into the CA I Hook Gear Haddock SAP described in paragraph (b)(11)(i) of this section is subject to the cod landing limit in effect under the Sector's Operations Plan as approved under § 648.87(d).

(D) *Reporting requirements.* The owner or operator of a Sector vessel declared into the CA I Hook Gear Haddock SAP must submit reports to the Sector Manager, with instructions to be provided by the Sector Manager, for each day fished in the CA I Hook Gear Haddock SAP Area. The Sector Manager shall provide daily reports to NMFS, including at least the following information: Total pounds of haddock, cod, yellowtail flounder, winter flounder, witch flounder, pollock, and white hake kept; total pounds of haddock, cod, yellowtail flounder, winter flounder, witch flounder, pollock, and white hake discarded; date fish were caught; and VTR serial number, as instructed by the Regional Administrator. Daily reporting must continue even if the vessel operator is required to exit the SAP as required under paragraph (b)(11)(iv)(F) of this section.

(E) *GB cod incidental catch TAC.* There is no GB cod incidental catch TAC specified for Sector vessels declared into the CA I Hook Gear Haddock SAP. All cod caught by Sector vessels fishing in the SAP count toward the Sector's annual GB cod TAC, specified in § 648.87(d)(1)(iii).

(vi) *Non-Sector vessel program restrictions.* In addition to the general program restrictions specified in paragraph (b)(11)(iv) of this section, the restrictions specified in this paragraph (b)(11)(vi) apply only to non-Sector vessels declared into the CA I Hook Gear Haddock SAP.

(A) *DAS use restrictions.* Non-Sector vessels fishing in the CA I Hook Gear Haddock SAP may use Regular B or Reserve B DAS, in accordance with § 648.82(d)(2)(i)(A) and (d)(2)(ii)(A). A non-Sector vessel is prohibited from using A DAS when declared into the SAP.

(B) *Gear restrictions.* A non-Sector vessel declared into the CA I Hook Gear Haddock SAP is exempt from the maximum number of hooks restriction specified in § 648.80(a)(4)(v).

(C) *Landing limits.* A non-Sector vessel declared into the CA I Hook Gear Haddock SAP described in paragraph (b)(11)(i) of this section may not land, fish for, or possess on board more than 1,000 lb (453.6 kg) of cod per trip. A non-Sector vessel is not permitted to discard legal-sized cod prior to reaching the landing limit, and is required to end its trip if the cod trip limit is achieved or exceeded.

(D) *VMS declaration.* Prior to departure from port, a vessel intending to participate in the CA I Hook Gear Haddock SAP must declare into the SAP via VMS, and indicate the type of DAS that it intends to fish. A vessel declared into the CA I Hook Gear Haddock SAP may fish only on a declared trip in the CA I Hook Gear Haddock Special Access Area described under paragraph (b)(11)(ii) of this section.

(E) *Incidental catch TACs.* The maximum amount of GB cod and pollock (landings and discards) that may be cumulatively caught by non-Sector vessels from the CA I Hook Gear Haddock Access Area in a fishing year is the amount specified under paragraphs (b)(9)(ii) and (iv) of this section, respectively.

(F) *Mandatory closure of CA I Hook Gear Haddock Access Area due to catch of any incidental catch TAC.* When the Regional Administrator determines that either the GB cod or pollock incidental catch TAC specified in paragraph (b)(11)(vi)(E) of this section has been caught, NMFS shall close, through rulemaking consistent with the Administrative Procedure Act, the CA I Hook Gear Haddock Access Area to all non-Sector fishing vessels.

\* \* \* \* \*

■ 9. In § 648.86, paragraph (b) is suspended; and paragraphs (l), (m), and (n) are added to read as follows:

**§ 648.86 NE multispecies possession restrictions**

\* \* \* \* \*

(l) *Cod.*—(1) *GOM cod landing limit.*

(i) Except as provided in paragraphs (l)(1)(ii) and (l)(4) of this section, or unless otherwise restricted under § 648.85, a vessel fishing under a NE multispecies DAS may land only up to 800 lb (362.9 kg) of cod during the first 24-hr period after the vessel has started a trip on which cod were landed (e.g., a vessel that starts a trip at 6 a.m. may call out of the DAS program at 11 a.m. and land up to 800 lb (362.9 kg), but the vessel cannot land any more cod on a

subsequent trip until at least 6 a.m. on the following day). For each trip longer than 24 hr, a vessel may land up to an additional 800 lb (362.9 kg) for each additional 24-hr block of DAS fished, or part of an additional 24-hr block of DAS fished, up to a maximum of 4,000 lb (1,814.4 kg) per trip (e.g., a vessel that has been called into the DAS program for more than 24 hr, but less than 48 hr, may land up to, but no more than, 1,600 lb (725.7 kg) of cod). A vessel that has been called into only part of an additional 24-hr block of a DAS (e.g., a vessel that has been called into the DAS program for more than 24 hr, but less than 48 hr) may land up to an additional 800 lb (362.9 kg) of cod for that trip, provided the vessel complies with the provisions of paragraph (l)(1)(ii) of this section. Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) A vessel that has been called into or declared into only part of an additional 24-hr block may come into port with and offload cod up to an additional 800 lb (362.9 kg), provided that the vessel operator, with the exception of vessels fishing in one or both of the two differential DAS areas under the restrictions of § 648.82(e)(4), complies with the following:

(A) For a vessel that is subject to the VMS provisions specified under § 648.10(b), the vessel declares through VMS that insufficient DAS have elapsed in order to account for the amount of cod onboard and, after returning to port, does not depart from a dock or mooring in port, unless transiting as allowed under paragraph (l)(3) of this section, until the rest of the additional 24-hr block of the DAS has elapsed, regardless of whether all of the cod on board is offloaded (e.g., a vessel that has been in the DAS program for 25 hr prior to crossing the VMS demarcation line on the return to port may land only up to 1,600 lb (725.7 kg) of cod, provided the vessel does not declare another trip or leave port until 48 hr have elapsed from the beginning of the trip).

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

may land only up to 1,600 lb (725.6 kg) of cod, provided the vessel does not call out of the DAS program or leave port until 48 hr have elapsed from the beginning of the trip).

(2) *GB cod landing and maximum possession limits.* (i) Unless otherwise restricted under § 648.85 or the provisions of paragraph (l)(2)(ii) of this section, or unless exempt from the landing limit under paragraph (l)(1) of this section as authorized under the Sector provisions of § 648.87, a NE multispecies DAS vessel may land up to 1,000 lb (453.6 kg) of cod per DAS, or part of a DAS, provided it complies with the requirements specified at paragraph (l)(4) of this section and this paragraph (l)(2). A NE multispecies DAS vessel may land up to 1,000 lb (453.6 kg) of cod during the first 24-hr period after such vessel has started a trip on which cod were landed (e.g., a vessel that starts a trip at 6 a.m. may call out of the DAS program at 11 a.m. and land up to 1,000 lb (453.6 kg) of cod, but the vessel cannot land any more cod on a subsequent trip until at least 6 a.m. on the following day). For each trip longer than 24 hr, a vessel may land up to an additional 1,000 lb (453.6 kg) of cod for each additional 24-hr block of DAS fished, or part of an additional 24-hr block of DAS fished, up to a maximum of 10,000 lb (4,536 kg) of cod per trip (e.g., a vessel that has been called into the DAS program for more than 24 hr, but less than 48 hr, may land up to, but no more than, 2,000 lb (907.2 kg) of cod). A vessel that has been called into only part of an additional 24-hr block of a DAS (e.g., a vessel that has been called into the DAS program for more than 24 hr, but less than 48 hr) may land up to an additional 1,000 lb (453.6 kg) of cod for that trip, provided the vessel complies with the provisions of paragraph (l)(2)(ii) of this section. Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) A vessel that has been called into or declared into only part of an additional 24-hr block may come into port with and offload cod up to an additional 1,000 lb (453.6 kg), provided that the vessel operator, with the exception of vessels fishing in one or both of the differential DAS areas under the restrictions of § 648.82(e)(4), complies with the following:

(A) For a vessel that has been authorized by the Regional Administrator to utilize the DAS call-in system as specified under § 648.10(c), in lieu of VMS, the vessel does not call out of the DAS program as described under § 648.10(c)(3) and does not depart from

a dock or mooring in port, unless transiting, as allowed in paragraph (l)(3) of this section, until the rest of the additional 24-hr block of DAS has elapsed, regardless of whether all of the cod on board is offloaded (e.g., a vessel that has been called into the DAS program for 25 hr at the time of landing may land only up to 2,000 lb (907.2 kg) of cod, provided the vessel does not call out of the DAS program or leave port until 48 hr have elapsed from the beginning of the trip.)

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

(3) *Transiting.* A vessel that has exceeded the cod landing limit as specified in paragraphs (l)(1) and (2) of this section, and that is, therefore, subject to the requirement to remain in port for the period of time described in paragraphs (l)(1)(ii)(A) and (l)(2)(ii)(A) of this section, may transit to another port during this time, provided that the vessel operator notifies the Regional Administrator, either at the time the vessel reports its hailed weight of cod, or at a later time prior to transiting, and provides the following information: Vessel name and permit number, destination port, time of departure, and estimated time of arrival. A vessel transiting under this provision must stow its gear in accordance with one of the methods specified in § 648.23(b) and may not have any fish on board the vessel.

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

(i) *Declaration.* With the exception of vessels declared into the U.S./Canada Management Area, as described under § 648.85(a)(3)(viii), a NE multispecies DAS vessel that fishes or intends to fish south of the line described in this

paragraph (l)(4)(i) under the cod trip limits described under paragraph (l)(2) of this section, must, prior to leaving the dock, declare its intention to do so through the VMS, in accordance with instructions to be provided by the Regional Administrator. In lieu of a VMS declaration, the Regional Administrator may authorize such vessels to obtain a letter of authorization. If a letter of authorization is required, such vessel may not fish north of the exemption area for a minimum of 7 consecutive days (when fishing under the NE multispecies DAS program), and must carry the authorization letter on board.

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

(m) *Witch flounder.* Unless otherwise restricted under this part, a vessel issued a NE multispecies DAS permit, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions may land up to 1,000 lb (453.6 kg) of witch flounder per DAS, or any part of a DAS, up to 5,000 lb (2,268.1 kg) per trip.

(n) *Zero retention stocks.*—(1) *SNE winter flounder.* Vessels issued a NE multispecies permit may not fish for, possess, or land winter flounder caught in the SNE/MA winter flounder stock area, as defined in § 648.85(b)(10)(v)(E). Vessels may transit this area with GOM or GB winter flounder on board the vessel, provided that gear is stowed in accordance with the provisions of § 648.23(b). Vessels fishing for winter flounder in multiple stock areas are subject to the most restrictive winter flounder possession limit.

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

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

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

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

\* \* \* \* \*

(b) \* \* \*

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

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

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

(c) \* \* \*

(1) \* \* \*

(vi) *Seasonal GOM cod possession prohibition*. Persons aboard private recreational fishing vessels fishing in the GOM Regulated Mesh Area specified under § 648.80(a)(1) may not fish for, possess, or land any cod from November 1 through April 15. Private recreational vessels in possession of cod caught outside the GOM Regulated Mesh Area may transit this area, provided all bait and hooks are removed from all fishing rods, and any cod on board has been gutted and stored.

\* \* \* \* \*

(5) *Charter/party vessels*. Charter/party vessels are subject to the following possession limit restrictions:

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

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

such fillet shall be deemed to be from one whole fish.

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

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

(v) *Seasonal GOM cod possession prohibition*. Persons aboard charter/party fishing vessels fishing in the GOM Regulated Mesh Area specified under § 648.80(a)(1) may not fish for or possess any cod from November 1 through April 15. Charter/party vessels in possession of cod caught outside the GOM Regulated Mesh Area may transit this area, provided all bait and hooks are removed from all fishing rods, and any cod on board has been gutted and stored.

\* \* \* \* \*

(f) *SNE/MA winter flounder retention prohibition*. Private recreational and charter/party vessels fishing in the SNE/MA winter flounder stock area, as defined in § 648.85(b)(10)(v)(E), may not fish for, possess, or land winter flounder. Recreational vessels in possession of winter flounder caught outside of the SNE/MA winter flounder may transit this area, provided all bait and hooks are removed from all fishing rods, and any winter flounder on board has been stored.

■ 11. In § 648.92, paragraphs (b)(1)(i), (b)(1)(iii)(A), (b)(2), and (b)(8)(v) are suspended; and paragraphs (b)(1)(iii)(C), (b)(1)(vi), (b)(8)(vi), and (b)(10) are added to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(iii) \* \* \*

(C) Vessels that change their DAS declaration from a NE multispecies Category A DAS to a monkfish DAS during the course of a trip remain subject to the NE multispecies DAS usage requirements (i.e., use a NE multispecies Category A DAS in conjunction with the monkfish DAS) described in paragraph (b)(10)(i) of this section.

\* \* \* \* \*

(vi) *General provision*. Limited access monkfish permit holders shall be

allocated 31 monkfish DAS each fishing year to be used in accordance with the restrictions of this paragraph (b), unless otherwise restricted by paragraph (b)(1)(ii) of this section or modified by § 648.96(b)(3), or unless the vessel is enrolled in the Offshore Fishery Program in the SFMA, as specified in paragraph (b)(1)(iv) of this section. The annual allocation of monkfish DAS shall be reduced by the amount calculated in paragraph (b)(1)(v) of this section for the research DAS set-aside. Limited access NE multispecies and limited access sea scallop permit holders who also possess a limited access monkfish permit must use a NE multispecies or sea scallop DAS concurrently with each monkfish DAS utilized, except as provided in paragraph (b)(10) of this section, unless otherwise specified under this subpart F.

\* \* \* \* \*

(8) \* \* \*

(vi) *Method of counting DAS*. A vessel fishing with gillnet gear under a monkfish DAS shall accrue 15 hr of monkfish DAS for all trips less than or equal to 15 hr in duration. Such vessels shall accrue monkfish DAS based on actual time at sea for trips greater than 15 hr in duration. A vessel fishing with gillnet gear under only a monkfish DAS is not required to remove gillnet gear from the water upon returning to the dock and calling out of the DAS program, provided the vessel complies with the requirements and conditions of paragraphs (b)(8)(i)–(vi) of this section. A vessel fishing with gillnet gear under a joint monkfish and NE multispecies DAS, as required under § 648.92(b)(10)(i), that is declared as a trip gillnet vessel under the NE Multispecies FMP, must remove its gillnet gear from the water prior to calling out of the DAS program, as specified at § 648.82(j)(2).

\* \* \* \* \*

(10) *Category C, D, F, G, or H limited access monkfish permit holders*—(i) Unless otherwise specified in paragraph (b)(10)(ii) of this section, each monkfish DAS used by a limited access NE multispecies or scallop DAS vessel holding a Category C, D, F, G, or H limited access monkfish permit shall also be counted as a NE multispecies or scallop DAS, as applicable, except when a Category C, D, F, G, or H vessel with a limited access NE multispecies DAS permit has an allocation of NE multispecies Category A DAS, specified under § 648.82(d)(1), that is less than the number of monkfish DAS allocated for the fishing year May 1 through April 30. Under this circumstance, the vessel may fish under the monkfish limited

access Category A or B provisions, as applicable, for the number of DAS that equal the difference between the number of its allocated monkfish DAS and its allocated NE multispecies Category A DAS. For such vessels, when the total allocation of NE multispecies Category A DAS has been used, a monkfish DAS may be used without concurrent use of a NE multispecies DAS, provided that the vessel fishes under the regulations pertaining to a Category B vessel and does not retain any regulated NE multispecies. For example, if a monkfish Category D vessel's NE multispecies Category A DAS allocation is 20, and the monkfish allocation is 31, the vessel may use up to 11 of its monkfish DAS without concurrently using a groundfish DAS ( $31 - 20 = 11$ ), after all 20 NE multispecies Category A DAS are used. In addition, Category C and D vessels that are fishing in one or both of the 2:1 differential DAS areas specified in § 648.82(e)(4)(i) shall accrue monkfish-only DAS to account for those monkfish DAS that are "lost" as a result of fishing in the differential DAS area (resulting from the use of groundfish DAS at a higher rate). These vessels shall accrue monkfish-only DAS at a rate of 1 monkfish DAS for every 2 NE

multispecies DAS used in the differential area (2:1 rate). These monkfish-only DAS may later be used without concurrent use of a NE multispecies DAS, provided that the vessel fishes under the regulations pertaining to a Category A or Category B vessel and does not retain any regulated NE multispecies. A vessel holding a Category C, D, F, G, or H limited access monkfish permit may not use a NE multispecies Category B Regular DAS under the NE Multispecies Regular B DAS Program, as specified under § 648.85(b)(10), in order to satisfy the requirement of this paragraph (b)(10)(i) to use a NE multispecies DAS concurrently with a monkfish DAS.

(ii) *Category C, D, F, G, or H vessels that lease NE multispecies DAS.*—(A) A monkfish Category C, D, F, G, or H vessel that has "monkfish-only" DAS, as specified in paragraph (b)(2)(i) of this section, and that leases NE multispecies DAS from another vessel pursuant to § 648.82(k), is required to fish its available "monkfish-only" DAS in conjunction with its leased NE multispecies DAS, to the extent that the vessel has NE multispecies DAS available.

(B) A monkfish Category C, D, F, G, or H vessel that leases DAS to another vessel(s), pursuant to § 648.82(k) must

forfeit a monkfish DAS for each NE multispecies DAS that the vessel leases, equal in number to the difference between the number of remaining NE multispecies DAS and the number of unused monkfish DAS at the time of the lease. For example, if a lessor vessel that had 31 unused monkfish DAS and 35 allocated NE multispecies DAS leased 10 of its NE multispecies DAS to another vessel, the lessor would forfeit 6 of its monkfish DAS ( $10 - (35 \text{ NE multispecies DAS} - 31 \text{ monkfish DAS}) = 6$ ).

\* \* \* \* \*

■ 12. In § 648.95, paragraph (h) is suspended and paragraph (i) is added to read as follows:

**§ 648.95 Offshore Fishery Program in the SFMA.**

\* \* \* \* \*

(i) *DAS usage by NE multispecies or sea scallop limited access permit holders.* A vessel issued a Category F permit that also has been issued either a NE multispecies or sea scallop limited access permit, and is fishing on a monkfish DAS, is subject to the DAS usage requirements specified in § 648.92(b)(10).

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