

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

[Docket No. 060209031-6092-02; I.D. 020606C]

RIN 0648-AU09

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

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

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

**SUMMARY:** NMFS implements this interim final rule pursuant to its authority to issue emergency measures under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This emergency action implements measures intended to reduce immediately the fishing mortality rate (F) on certain groundfish species to prevent overfishing and maintain the rebuilding programs of the Northeast (NE) Multispecies Fishery Management Plan (FMP). Specifically, this emergency action implements differential days-at-sea (DAS) counting for all groundfish vessels not participating in the U.S./Canada Management Area on Georges Bank (GB), reduced trip limits for certain species, and recreational possession restrictions, among other provisions. In addition, this action continues two programs that would otherwise expire by the end of the 2005 fishing year (FY) on April 30, 2006: The DAS Leasing Program and a modified Regular B DAS Program on GB. Due to the impact of these proposed measures on the monkfish fishery, this emergency action also limits participation of monkfish Category C, D, or F permits in the Regular B DAS Program and revises the method of calculating available monkfish-only DAS for Category C, D, F, G, or H monkfish vessels. Further, this action eliminates the daily and maximum trip limits for haddock for FY 2006. Also, because of the substantive nature of this emergency rule and the necessary shortened comment period on the proposed rule for this action, this rule is being implemented as an emergency interim action and seeks additional public comment. This action is intended to prevent overfishing while maintaining specific programs designed

to help mitigate the economic and social impacts of effort reductions under the FMP until more permanent management measures can be implemented through Framework Adjustment (FW) 42 to the FMP.

**DATES:** Effective May 1, 2006, through October 10, 2006, or until superseded by another final rule, whichever occurs first. Additional comments on this emergency interim action must be received by May 15, 2006.

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

- E-mail:

*MultsEmergency@NOAA.gov*. Include in the subject line the following: "Comments on the Proposed Rule for Groundfish Emergency Action."

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

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

- Fax: (978) 281-9135.

Copies of this rule, its Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis (IRFA), and the Environmental Assessment (EA) are available from Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. The Final Regulatory Flexibility Analysis (FRFA) consists of the IRFA, public comments and responses, and the summary of impacts and alternatives contained in the Classification section of the preamble of this emergency interim final rule. Copies of the small entity compliance guide are available from the Regional Administrator at the above address. The EA/RIR/IRFA prepared for this action are also accessible via the Internet at <http://www.nero.nmfs.gov>.

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

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

**SUPPLEMENTARY INFORMATION:**

**Background**

This interim final rule implements emergency measures, authorized by section 305(c) of the Magnuson-Stevens Act, intended to immediately reduce F on specific groundfish stocks beginning May 1, 2006, in order to maintain the rebuilding program established under Amendment 13 to the FMP. A proposed rule requesting public comment on this emergency action filed with the **Federal Register** on February 24, 2006, and published on March 3, 2006 (71 FR 11060). Public comments were accepted through March 9, 2006, as clarified through a correction to the proposed rule (71 FR 12669; March 13, 2006). A full discussion of the background of this emergency action was presented in the preamble to the proposed rule for this emergency action and is not repeated here. In summary, Amendment 13 established a biennial adjustment process to review the fishery and implement any changes necessary to ensure that the fishery continues to meet the Amendment 13 rebuilding objectives, including meeting the F targets for each year of the rebuilding program. The Groundfish Plan Development Team (PDT) of the New England Fishery Management Council (Council) utilized the results of the latest stock assessment, the August 2005 Groundfish Assessment Review Meeting (GARM II), to calculate estimates of the 2005 calendar year F for all groundfish stocks. This analysis indicated that  $F_{2005}$  for particular groundfish stocks, (*i.e.*, Gulf of Maine (GOM) cod, Cape Cod (CC)/GOM yellowtail flounder, Southern New England (SNE)/Mid-Atlantic (MA) yellowtail flounder, SNE/MA winter flounder, GB winter flounder, white hake, and GB yellowtail flounder) is, in some cases, substantially less than that observed for 2004, but still higher than the 2006 target F specified in the Amendment 13 rebuilding program. As a result, F for these stocks must be reduced at the start of FY 2006 on May 1, 2006. The Council began the development of measures in FW 42 to the FMP that would achieve the necessary F reductions for FY 2006. However, at its November 15-17, 2005, meeting, the Council announced that it was not able to complete FW 42 in time for NMFS to implement these measures by May 1, 2006. Although at its January 31-February 2, 2006, meeting the Council voted to adopt a suite of management measures under FW 42, it is not possible to implement these measures by May 1, 2006.

Therefore, pursuant to section 305(c) of the Magnuson-Stevens Act, this interim final rule implements measures

to immediately reduce F for specific groundfish stocks and prevent overfishing in the groundfish fishery for the start of FY 2006 on May 1, 2006, until long-term management measures adopted by the Council in FW 42, if approved by NMFS, can be implemented. Justification of this emergency action for ecological, economic, and social reasons is contained in the preamble of the proposed rule for this action and is not repeated here.

Although the management measures implemented by this emergency action do not, by themselves, achieve the full Amendment 13 F reductions for all groundfish stocks that require F reductions for FY 2006, this action, in combination with measures adopted by the Council in FW 42, are intended to achieve the necessary Amendment 13 F objectives. To ensure that the groundfish fishery meets the Amendment 13 rebuilding objectives, additional management measures through Secretarial action may be necessary during FY 2006, especially if FW 42 is implemented later than anticipated.

The primary objective of this emergency action is to put into place a suite of simple, interim management measures by the start of FY 2006 that would immediately and substantially reduce F on several groundfish stocks most in need of F reductions to maintain the Amendment 13 rebuilding program. Other objectives include: (1) Implementing management measures that are as fair and equitable to all vessels as possible, as well as easy to understand, implement, administer and enforce; (2) implementing measures that are similar to those adopted by the Council in FW 42, to the extent practicable, in order to minimize confusion and adjustment to those measures, if FW 42 is approved and implemented; and (3) minimizing the social and economic impacts of the emergency measures as much as practicable while still meeting the F reduction objectives.

Because of the intense interest in this action and because the comment period for the proposed action was necessarily short, NMFS is implementing this as an emergency interim final rule and will accept public comment on the measures implemented by this action through May 15, 2006.

#### **Management Measures Implemented by This Emergency Interim Final Rule**

All measures in effect prior to May 1, 2006, and not amended by this emergency action, remain in effect. The current management measures include

two default measures in Amendment 13 that were designed to go into place on May 1, 2006, unless certain conditions were met. One default measure for the revision of the allocation ratio of Category A:B DAS from 60:40 to 55:45, is not revised by this emergency action and will go into place on May 1, 2006. This measure, therefore, is not discussed specifically in the description of the measures implemented by this emergency action. However, the second default measure implemented by Amendment 13 (*i.e.*, differential DAS counting at a rate of 1.5:1 throughout the SNE/MA Regulated Mesh Area (RMA)) is revised by this emergency action, as described further below, and the revised measures, not the Amendment 13 default measure, will go into place on May 1, 2006.

A description of the management measures implemented by this emergency action follows.

#### *1. Differential DAS Counting*

Measures adopted by the Council in FW 42 rely upon reduced trip limits for GB winter flounder, GB yellowtail flounder, and white hake, rather than differential DAS counting, to achieve the necessary F reductions for these species during FY 2006. In response to public comment/concerns and further analysis, in order to more closely mirror the measures adopted by the Council in FW 42 and to more effectively achieve OY in the fishery, the differential DAS counting measure specified in the proposed rule for this action is revised to remove differential DAS counting for vessels participating in the U.S./Canada Management Area on GB and replace that proposed measure with trip limits for GB winter flounder and white hake adopted by the Council in FW 42 (see measures 5 and 6 below). This revision will allow vessels to more readily target healthy groundfish stocks on GB without compromising the rebuilding efforts of overfished stocks, particularly CC/GOM and SNE/MA yellowtail flounder stocks just outside the U.S./Canada Management Area along the South Channel. In addition to replacing the differential DAS counting measure on GB with trip limits for specific stocks needing F reductions for FY 2006, the Regional Administrator is able to exert additional controls that limit the F effects from potential redirected effort onto GB through the authority provided in the current regulations at § 648.85(a)(3)(iv) to modify access to the U.S./Canada Management Area, as well as trip limits for GB cod, GB haddock, and GB yellowtail flounder. This management strategy is consistent with the approach taken to restrict

participation in the Regular B DAS Program to the U.S./Canada Management Area, as described in the proposed rule for this action.

Therefore, under this emergency action, all NE multispecies Category A DAS used by a vessel issued a limited access NE multispecies DAS permit, with the exception noted below, will be charged at a rate of 1.4:1, unless the vessel is participating in the U.S./Canada Management Area. Any Category A DAS used by a groundfish vessel that declares its intent to fish, and fishes, exclusively within in the U.S./Canada Management Area will be charged at a rate of 1:1. A vessel fishing both inside and outside of the U.S./Canada Management Area on the same trip must abide by the more restrictive regulations in either area. With respect to DAS, this means that any vessel that declares its intent to fish some or all of its trip, or fishes some or all of its trip other than for transiting purposes, inside and outside of either the Eastern or the Western U.S./Canada Area on the same trip will be charged Category A DAS at the rate of 1.4:1 for the entire trip, whether or not the vessel actually harvests fish from outside of the U.S./Canada Management Area. A vessel intending to fish, or fishing, within the Eastern U.S./Canada Area that also elects to fish within the Western U.S./Canada Area on the same trip must declare its intent to do so via VMS and will be charged Category A DAS at a rate of 1:1 for the entire trip (see measure 11 for further details). A vessel intending to fish, or fishing both inside and outside of the Western or Eastern U.S./Canada Areas must declare its intent to do so via VMS prior to leaving the dock and/or prior to leaving the Eastern U.S./Canada Area, respectively, and will be charged NE multispecies Category A DAS at a rate of 1.4:1 for the entire trip. For example, a groundfish trawl vessel fishing exclusively in the GOM on a 5-day (120-hr) trip would be charged for 7 DAS (168 hr) (120 hr × 1.4) of DAS use. A groundfish trawl vessel fishing exclusively in the Western U.S./Canada Area on a 5-day (120-hr) trip would be charged for 5 days (120 hr) of DAS use. A groundfish trawl vessel that steams to and fishes both inside and outside of the Western U.S./Canada Area on a 5-day (120-hr) trip would be charged for 7 days (168 hr) (120 hr × 1.4) of DAS use. A groundfish trawl vessel fishing in the Eastern U.S./Canada Area that elects to fish in the Western U.S./Canada Area on the same trip of 5 days (120 hr) would be charged for 5 days (120 hr) of DAS use. For further examples of the impact of fishing inside and outside of the

Eastern U.S./Canada Area, refer to the description of measure 11, Eastern U.S./Canada Area Flexibility.

Day gillnet vessels not participating in the U.S./Canada Management Area will be charged at a rate of 1.4:1 for the actual hours used for any trip of 0–3 hours in duration, and for any trip of greater than 11 hours. For Day gillnet trips outside of the U.S./Canada Management Area of between 3 and 11 hours duration, vessels will be charged 15 hours. A Day gillnet vessel fishing inside of the U.S./Canada Management Area will be charged DAS at a rate of 1:1 for the actual hours used for any trip of 0–3 hours in duration, and for any trip of greater than 15 hours. For Day gillnet trips inside the U.S./Canada Management Area of between 3 and 15 hours duration, vessels will be charged 15 hours. A Day gillnet vessel fishing in the GOM or the Western U.S./Canada Area for 10 hours would be charged for 15 hours of DAS use; a Day gillnet vessel fishing in the GOM for 10 hours would be charged for 14 hours of DAS use (10 hours × 1.4). A Day gillnet vessel fishing exclusively within the Western U.S./Canada Area for 20 hours would be charged for 20 hours of DAS use.

A vessel issued a limited access monkfish Category C, D, F, G, or H permit and fishing under a monkfish DAS will have its NE multispecies DAS charged at a rate of 1.4:1 when fishing outside of the U.S./Canada Management Area on any trip or portion of a trip, but its monkfish DAS will continue to be charged at a rate of 1:1, regardless of area fished. Because differential DAS counting of NE multispecies DAS could result in a net allocation of NE multispecies Category A DAS that is less than the number of monkfish DAS allocated, a Category C, D, F, G, or H monkfish vessel may fish under a monkfish-only DAS when groundfish DAS are no longer available, provided the vessel fishes under the provisions of the monkfish Category A or B permit. The number of monkfish-only DAS that may be used by a vessel is equal to the difference between the number of its net monkfish DAS allocation and the number of its net NE multispecies Category A DAS allocation. See § 648.92(b)(2)(iv) for definitions of net monkfish DAS and net NE multispecies Category A DAS. For any vessel that fishes any of its allocated NE multispecies Category A DAS outside of the U.S./Canada Management Area and is, therefore, subject to differential counting of NE multispecies DAS at a rate of 1.4:1, the number of monkfish-only DAS that may be used by that vessel is increased by 0.286 DAS for every NE multispecies DAS charged

when fishing in the differential DAS area to adjust for differential DAS counting of NE multispecies DAS. This adjustment factor is equal to the rate at which monkfish-only DAS increase for each additional NE multispecies Category A DAS charged when fishing outside of the U.S./Canada Management Area at a rate of 1.4:1, using the formula: Monkfish-only DAS = Net Monkfish DAS Allocation – (Net Groundfish DAS Allocation ÷ 1.4). This adjustment is necessary to ensure that a monkfish Category C and D vessel is able to use its full allocation of monkfish DAS despite differential DAS counting of NE multispecies DAS. For example, if a vessel has an annual allocation of 40 monkfish DAS and 30 NE multispecies DAS, the vessel has an annual allocation of 10 monkfish-only DAS. If this vessel uses 2 NE multispecies DAS outside of the U.S./Canada Management Area, the vessel is actually charged 2.8 NE multispecies DAS (2 DAS × 1.4), and its monkfish-only DAS are adjusted upwards by 0.57 DAS (2 DAS × 0.286). If this same vessel fishes exclusively within the U.S./Canada Management Area, the vessel would not be allocated any additional monkfish-only DAS and would be allowed to use only 10 monkfish-only DAS. All groundfish DAS must be used before a vessel can use any available monkfish-only DAS.

The proposed rule for this emergency action inadvertently failed to specify how differential DAS counting would affect the current cod running-clock requirement. The current cod running-clock requirements at § 648.86(b)(1)(ii) and (b)(2)(ii) mandate that any vessel that has been called into only part of an additional 24-hour DAS block, and possesses an additional day's worth of cod on board must keep its DAS clock running until the appropriate amount of time has elapsed. This measure was intended to ensure that the proper number of DAS were charged for the amount of cod landed. For example, a vessel that fishes in the GOM for 25 hours and lands 1,200 lb (544 kg) of cod (2 DAS of cod), would have been required to keep its DAS clock running until 48 hours had elapsed to cover the amount of cod landed. Under this emergency action, the cod running-clock provision is revised to account for differential DAS counting. Vessels fishing any part of a NE multispecies DAS trip in an area requiring differential DAS counting and that are using a vessel monitoring system (VMS) must declare that they have caught an additional day's worth of cod via VMS. Vessels fishing any part of a NE multispecies DAS trip in an area

requiring differential DAS counting and that are not required to use VMS must call out of the DAS program upon landing and declare that they have caught an additional day's worth of cod via the Interactive Voice Response (IVR), or call-in system. Any trip of between 24–34 hours in duration will be charged 48 hours of DAS use because any trip of between 24–34 actual hours in duration, when charged at a rate of 1.4:1, calculates to less than the minimum of 48 hours of DAS use required to fully account for the amount of cod caught. For example, a trip that fished for 25 hours in the GOM could land up to 1,200 lb (544 kg) of GOM cod (2 day's worth), but would be charged 48 hours. This same trip, if charged at a rate of 1.4:1, would only be charged for 35 hours. Any trip greater than 34 hours would be charged at a rate of 1.4:1 for the entire trip. For example, a vessel that fished for 35 hours in the GOM could land up to 1,200 lb (544 kg) of GOM cod, but would be charged 49 hours (35 hours × 1.4 = 49 hours). Similarly, vessels fishing exclusively in the U.S./Canada Management Area under a Category A DAS for the entire trip will be required to declare that they have caught an additional day's worth of cod via VMS and will be charged additional DAS, rounded to the next whole DAS, at a rate of 1:1. For example, a vessel that fishes for 25 hours in the Western U.S./Canada Area could land up to 2,000 lb (907 kg) of GB cod (2 days' worth), but would be charged 48 hours. This strategy ensures that the original intent of the cod running-clock provision (*i.e.*, that vessels could land an additional day's worth of cod, provided they are charged up to an additional 24 hours of DAS use) is maintained, without compromising the conservation objectives of the differential DAS counting measure.

## 2. GOM Cod Trip Limit

For vessels operating under a NE multispecies DAS, the possession limit of GOM cod is reduced to 600 lb (272 kg) per DAS, up to 4,000 lb (1,814 kg) per trip. For vessels operating under the limited access NE multispecies Handgear A permit regulations, the GOM cod possession limit is reduced to 250 lb (113 kg) per trip. The GOM cod trip limit for vessels operating under the open access Handgear B provisions is maintained at 75 lb (34 kg) per trip.

## 3. GB Yellowtail Flounder Trip Limit

The GB yellowtail flounder trip limit is reduced to 10,000 lb (4,536 kg) per trip. The Regional Administrator may increase or decrease the GB yellowtail

flounder trip limit to ensure that the GB yellowtail flounder total allowable catch (TAC) in the U.S./Canada Management Area is not under- or overharvested during FY 2006, pursuant to the authority provided in the existing regulations.

#### 4. CC/GOM and SNE/MA Yellowtail Flounder Trip Limit

The CC/GOM and SNE/MA yellowtail flounder trip limits are revised as follows: 500 lb (227 kg) per DAS, up to 2,000 lb (907 kg) per trip during July, August, September, December, January, February, March, and April; 250 lb (113 kg) per trip during May, June, October, and November.

#### 5. GB Winter Flounder Trip Limit

Partially in response to public comment/concerns, the proposed emergency action was revised to include a trip limit for GB winter flounder of 5,000 lb (2,268 kg) per trip. This trip limit will serve as the primary means to achieve the necessary F reduction for this stock for FY 2006, rather than the differential DAS counting measure on GB in the proposed rule for this action.

#### 6. White Hake Trip Limit

Similar to the trip limit for GB winter flounder, partially in response to public comment/concerns, the proposed emergency action was revised to include a trip limit for white hake of 1,000 lb (454 kg) per DAS, up to 10,000 lb (4,536 kg) per trip. This trip limit would serve as the primary means to achieve the necessary F reduction for this stock for FY 2006, rather than the differential DAS counting measure on GB in the proposed rule for this action.

#### 7. Modified Regular B DAS Program

The Regular B DAS Pilot Program was originally implemented by the FW 40A final rule (69 FR 67780; November 19, 2004), and was intended to provide opportunities to use Regular B DAS outside of a special access program (SAP) (and outside of closed areas) to target stocks that can withstand additional fishing effort. This emergency action continues a modified Regular B DAS Program that allows eligible vessels to target healthy groundfish stocks (primarily GB haddock) under a NE multispecies Regular B DAS without compromising the objectives of this emergency action. Because stocks in the GOM and SNE RMAs require substantial F reductions for FY 2006, participation in the Regular B DAS Program is restricted to the U.S./Canada Management Area on GB. A vessel participating in the Regular B DAS Program trip may fish under a NE

multispecies Regular B DAS in the Eastern U.S./Canada Area and/or the Western U.S./Canada Area on the same trip, but may not fish in an approved SAP, in a closed area, or outside of the U.S./Canada Management Areas on the same trip.

All vessels issued a limited access NE multispecies permit and allocated Regular B DAS are eligible to participate in this program. To reduce F on monkfish resulting from the use of Regular B DAS, Category C, D, or F monkfish vessels may not use a NE multispecies Regular B DAS and a monkfish DAS under the Regular B DAS Program on the same trip. These vessels may still participate in the Regular B DAS Program, but they are required to fish under a NE multispecies DAS only and are subject to the incidental catch limits for monkfish when fishing under a NE multispecies Regular B DAS.

In order to limit the potential biological impacts of the program, only 500 Regular B DAS may be used during the first quarter of the calendar year (May through July), while 1,000 Regular B DAS may be used in subsequent quarters (August through October, November through January, and February through April). Only trips that were completed under a NE multispecies Regular B DAS (*i.e.*, trips that were not flipped to a Category A DAS) are counted towards the quarterly Regular B DAS limit. NMFS will administer the quarterly Regular B DAS maximum by monitoring the number of Regular B DAS accrued on trips that end under a Regular B DAS. Declaration of the trip through VMS does not serve to reserve a vessel's right to fish under a Regular B DAS. Once the maximum number of Regular B DAS are used in a quarter, the Regular B DAS Program will end for that quarter. These DAS are not allocated to individual vessels, but are used by participating vessels on a first-come, first-served basis. Regular B DAS used under this program accrue at the rate of 1 DAS for each calendar day, or part of a calendar day, fished. For example, a vessel that left on a trip 1 hour before midnight on one day, and fished until 1 hour after midnight on the next calendar day, would be charged 48 hours of B Regular DAS.

Vessels participating in this program must be equipped with an approved and operational VMS. The vessel owner or operator must notify the NMFS Observer Program at least 72 hours in advance of a trip in order to facilitate observer coverage. This notice must provide the following information: Vessel name, contact name for coordination of observer deployment, telephone number of contact, date, time,

and port of departure. Prior to departing on the trip, the vessel owner or operator must notify NMFS via VMS that the vessel intends to participate in the Regular B DAS Program. Vessels fishing in the Regular B DAS Program are required to report their catches of groundfish stocks of concern (*i.e.*, cod, yellowtail flounder, winter flounder, American plaice, white hake, witch flounder) daily through VMS, including the amount of fish kept and discarded, by statistical area fished. Vessels fishing for species managed by other fishery management plans, and not landing groundfish, are not subject to this reporting requirement.

Vessels fishing in this program are prohibited from discarding legal-sized regulated groundfish, and will be limited to landing no more than 100 lb (45.4 kg) of each groundfish species of concern (cod, American plaice, white hake, winter flounder, witch flounder, and yellowtail flounder) per DAS, unless further restricted (see below). Vessels fishing with trawl gear must use a haddock separator trawl when participating in this program. For vessels fishing with trawl gear, possession of flounders (all species, combined); monkfish (whole weight), unless otherwise specified below; and skates is limited to 500 lb (227 kg) each, and possession of lobsters is prohibited to ensure the proper utilization of the haddock separator trawl; a properly configured haddock separator trawl should not catch large quantities of these species. To further reduce the targeting of monkfish under this program, Category C, D, G and H monkfish vessels participating in this program are restricted by the monkfish incidental catch limits. In the Northern Fishery Management Area specified under the monkfish FMP, the limit is 400 lb (181 kg) tail weight per NE multispecies DAS, or 50 percent of the total weight of fish on board, whichever is less. In the Southern Fishery Management Area specified under the monkfish FMP, the incidental catch limit is 50 lb (23 kg) tail weight per NE multispecies DAS. Discarding of legal-sized monkfish is prohibited when fishing under this program. If a vessel harvests and brings on board legal-sized groundfish species of concern or monkfish in excess of these landing limits, the vessel operator must retain the excess catch, and notify NMFS via VMS in order to change its DAS category from a Regular B DAS to a Category A DAS ("DAS flip") prior to crossing the VMS demarcation line on its return trip to port. If a vessel flips from a Regular B DAS to a Category A

DAS, it will be charged Category A DAS at a rate of 1.4:1 for the entire trip if fishing any part of its trip outside of the U.S./Canada Management Area, or 1:1 if fishing exclusively within the U.S./Canada Management Area for the entire trip; will be subject to the possession and landing restrictions that apply to the fishery as a whole (*i.e.*, not the Regular B DAS Program limits); and may discard species to maintain compliance with possession and landing restrictions outside of the Regular B DAS Program.

In order to ensure that a vessel always has the ability to flip to a Category A DAS while fishing under a Regular B DAS (should it catch a groundfish species of concern in an amount that exceeded the trip limit), in the case of a vessel that fishes all of its DAS outside of the U.S./Canada Management Area, the number of Regular B DAS that may be used on a trip is limited to the number of Category A DAS that the vessel has at the start of the trip divided by 1.4. For example, if a vessel plans a trip under the Regular B DAS Program and has 5 Category A DAS available, the maximum number of Regular B DAS that the vessel could fish on that trip under the Regular B DAS Program would be 5 divided by 1.4, or 3.6 days. However, to ensure that there is an adequate amount of Category A DAS available should the vessel be required to “flip” its DAS, it is advisable that a vessel owner, when planning a Regular B DAS Program trip, fish a lower number of Regular B DAS than the required maximum number.

In order to limit the potential impact on F that the use of Category B DAS (Regular or Reserve) may have on groundfish stocks of concern, a quarterly incidental catch TAC is set for groundfish stocks of concern for each program allowing the use of Category B DAS (Regular or Reserve). This action adds GB winter flounder and GB yellowtail flounder to the list of groundfish stocks of concern, based on the results of GARM II, and allocates a

portion of the incidental TAC to the Regular B DAS Program, as specified in further detail below. The Regular B DAS Program quarterly incidental catch TACs are divided to correspond to the allocation of Regular B DAS among quarters, such that the 1st quarter (May–July) receives 13 percent of the incidental TACs, and the remaining quarters (August–October, November–January, and February–April) will each receive 29 percent of the incidental TACs. The specific TACs specified for this program has been proposed by a concurrent agency action, which published in the **Federal Register** on March 13, 2006 (71 FR 12665). If the incidental TAC for any one of these species were caught during a quarter (landings plus discards), use of Regular B DAS in the U.S./Canada Management Area are prohibited for the remainder of that quarter. Vessels would be able to once again use Regular B DAS under this program at the beginning of the subsequent quarter.

The Regional Administrator has the authority to prohibit the use of Regular B DAS for the duration of a quarter or fishing year, if it is projected that continuation of the Regular B DAS Program would undermine the achievement of the objectives of the FMP or the Regular B DAS Program, or if the level of observer coverage were insufficient to make such a projection.

*8. Redefinition of Incidental Catch TACs and Allocation to Special Programs*

Incidental catch TACs were first adopted in FW 40A in order to limit the catch of stocks of concern while vessels were using Category B DAS. As a result of groundfish assessments completed under GARM II, FW 42 proposes to modify the number of incidental catch TACs, as well as the size and allocation of such incidental catch TACs. FW 42 proposes the creation of two new stocks of concern (GB yellowtail flounder and GB winter flounder) and the specification of incidental catch TACs for these two species, as well as the modification of the size of the incidental

catch TACs with respect to the target TACs from which they are calculated (see Table 1). These incidental catch TACs limit the impact of the use of Category B DAS on stocks of concern.

Because FW 42 has been delayed, the definition of the two new stocks of concern, the creation of two new incidental catch TACs, and the reallocation of incidental catch TACs among special programs is implemented through this action (see Table 2) on an interim basis. Although this action does not impact many stocks of concern, in order to simplify the process of TAC specification for FY 2006, as well as reduce confusion in the industry, this action defines the incidental catch TACs for all stocks of concern, and allocates TAC among programs consistent with FW 42 proposals. This action does not specify values for TACs for FY 2006. A separate action will specify all TACs for the FMP for FY 2006 (Incidental Catch TACs, Target TACs, and U.S./Canada Management Area TACs for GB), as proposed in the **Federal Register** on March 13, 2006 (71 FR 12665).

TABLE 1.—DEFINITION OF INCIDENTAL CATCH TACs

Stock	Percentage of total target TAC
GB cod .....	2
GOM cod .....	1
GB yellowtail flounder .....	2
CC/GOM yellowtail flounder .....	1
SNE/MA yellowtail flounder .....	1
American plaice .....	5
Witch flounder .....	5
SNE/MA winter flounder .....	1
GB winter flounder .....	2
White hake .....	2

These incidental catch TACs will be distributed to the various programs that utilize Category B DAS and catch these stocks of concern. The incidental catch TACs are proposed to be distributed among the Category B DAS programs as indicated in Table 2:

TABLE 2.—DISTRIBUTION OF INCIDENTAL CATCH TACs FOR CATEGORY B DAS PROGRAMS

Stocks of concern	Regular B DAS program (percent)	Closed area hook gear haddock SAP (percent)	Eastern U.S./Canada haddock SAP (percent)
GB cod .....	50	16	34
GB yellowtail flounder .....	100	NA	NA
GB winter flounder .....	100	NA	NA
Witch flounder .....	100	NA	NA
American plaice .....	50	NA	50
White hake .....	50	NA	50

### 9. DAS Leasing Program

The DAS Leasing Program was implemented by Amendment 13 to help mitigate the economic and social impacts of effort reductions in the fishery, and will expire on April 30, 2006. This action continues the DAS Leasing Program, without change, to help mitigate the economic and social impacts resulting from the current FMP regulations that strictly limit fishing effort.

### 10. Eastern U.S./Canada Haddock SAP Pilot Program

This emergency action delays the opening of the Eastern U.S./Canada Haddock SAP Pilot Program from May 1 until August 1 and allocates a portion of the GB yellowtail flounder and GB winter flounder incidental catch TAC to the Eastern U.S./Canada Haddock SAP Pilot Program (see Table 2). Once any of these incidental catch TACs is caught, the use of Category B (Regular or Reserve) DAS in this SAP are prohibited. As explained above, the value of these new incidental catch TACs are being proposed through a concurrent agency action for implementation by May 1, 2006. Finally, possession of flounders (all species, combined); monkfish (whole weight); and skates is limited to 500 lb (227 kg) each, and possession of lobsters is prohibited to ensure the proper utilization of the haddock separator trawl in this SAP.

### 11. Eastern U.S./Canada Area Flexibility

This emergency action allows a vessel that begins a fishing trip in the Eastern U.S./Canada Area to choose to fish in other areas on the same trip. If a vessel chooses to fish outside of the Eastern U.S./Canada Area after fishing inside that area, the operator must notify NMFS via VMS either prior to leaving the dock, or prior to leaving the Eastern U.S./Canada Area on its return to port, and must comply with the most restrictive possession limits and DAS charge for the areas fished. A vessel electing to fish inside and outside of the Eastern U.S./Canada Area is charged Category A DAS at a rate of 1:1 for the entire trip, if fishing only within the Eastern and Western U.S./Canada Area; or at a rate of 1.4:1 for the entire trip, if the vessel fishes outside of the U.S./Canada Management Area at any time during the trip; and the vessel will not receive any steaming time credit. In addition, all cod and haddock caught on the entire trip is applied against the Eastern U.S./Canada Area TACs for these species; all yellowtail flounder caught is applied to the overall U.S./

Canada Management Area TAC for this species. For example, if a vessel elects to fish inside of the Eastern U.S./Canada Area and in the GOM on the same trip, the vessel would be charged Category A DAS at a rate of 1.4:1 for the entire trip (*i.e.*, dock to dock) and would have to abide by the more restrictive trip limits for CC/GOM yellowtail flounder (*i.e.*, 500 lb (227 kg) per DAS, up to 2,000 lb (907 kg) per trip) and GB cod in the Eastern U.S./Canada Area (*i.e.*, 500 lb (227 kg) per DAS, up to 5,000 lb (2,268 kg) per trip). Conversely, if a vessel elects to fish inside of the Eastern and Western U.S./Canada Area for the entire trip, the vessel would be charged Category A DAS at a rate of 1:1 for the entire trip (*i.e.*, dock to dock) and would have to abide by the more restrictive trip limits for GB cod in the Eastern U.S./Canada Area (*i.e.*, 500 lb (227 kg) per DAS, up to 5,000 lb (2,268 kg) per trip). The vessel must comply with reporting requirements for the Eastern U.S./Canada Area for the entire trip. A vessel is prohibited from fishing outside of the Eastern U.S./Canada Area on the same trip if it has already exceeded the restrictive possession limits for a particular species outside of the Eastern U.S./Canada Area. For example, if a vessel fishing in the Eastern U.S./Canada Area in June has already caught 500 lb (226.8 kg) of GB yellowtail flounder, the vessel operator would be prohibited from fishing in the GOM RMA or SNE/MA RMA on the same trip because the vessel has already exceeded the June SNE/MA and GOM yellowtail flounder possession limit of 250 lb per trip (113.4 kg per trip) proposed by this action. However, the vessel could continue to fish within the Western U.S./Canada Area for the remainder of the trip.

### 12. Recreational Restrictions

Private recreational vessels and vessels fishing under the charter/party regulations of the FMP are prohibited from possessing or retaining any cod from the GOM RMA from November 1–March 31. Also, the minimum size of cod for private recreational vessels and charter/party vessels fishing in the GOM is increased from 22 inches (56 cm) to 24 inches (61 cm) for the duration of this emergency action. Private recreational and charter/party vessels are allowed to transit the GOM RMA with cod caught from outside this area, provided all bait and hooks are removed from fishing rods and all cod are stored in coolers or ice chests.

### 13. Removal of the Haddock Trip Limits

FW 33 to the FMP, which became effective May 1, 2000 (65 FR 21658),

implemented the current haddock trip limit regulations at § 648.86(a). To ensure that haddock landings do not exceed the target TAC, FW 33 established a haddock trip limit of 3,000 lb (1,360.8 kg) per NE multispecies DAS and a maximum trip limit of 30,000 lb (13,608 kg) of haddock for the period May 1 through September 30; and 5,000 lb (2,268 kg) of haddock per DAS and 50,000 lb (22,680 kg) per trip from October 1 through April 30. To prevent the underharvest of the haddock TACs, the regulations at § 648.86(a)(1)(iii)(B) specify that, if the Regional Administrator projects that less than 75 percent of the haddock target TAC will be harvested in the fishing year, the trip limit may be adjusted or eliminated through publication of a notice in the **Federal Register**.

For FY 2006, the proposed U.S. portion of the target TAC for haddock (GB and GOM combined) is 36,588 metric tons (mt) (March 13, 2006; 71 FR 12665). Based on recent historical fishing practices and preliminary landings data, it is projected that less than 75 percent of the haddock target TAC for FY 2006 (27,441 mt) will be harvested by April 30, 2007, under the restrictive daily possession and trip limits. Furthermore, this projection indicates that eliminating the daily and maximum trip limits for haddock would not likely precipitate haddock landings reaching the U.S. portion of the Eastern U.S./Canada Area haddock TAC of 7,480 mt. Therefore, the Regional Administrator has determined that eliminating the 3,000-lb (1,360.8-kg) and 5,000-lb (2,268-kg) daily haddock possession limits, as well as the maximum trip limits of 30,000-lb (13,608-kg) and 50,000-lb (22,680-kg) for May 1 through September 30, 2005, and October 1, 2005, through April 30, 2006, respectively, will increase the likelihood that at least 75 percent of the target TAC will be harvested for FY 2006. The removal of the daily and maximum trip limits for haddock for FY 2006 through this emergency interim rule would provide additional sources of fishing revenue and regulatory relief to help mitigate some of the adverse economic impacts of continued effort reductions necessary in this emergency action. In order to prevent the TAC from being exceeded, the Regional Administrator will continue to monitor haddock landings and adjust the trip limit through publication of a notification in the **Federal Register**, pursuant to § 648.86(a)(1)(iii), if necessary.

### Comments and Responses

Forty-five comments were received during the comment period for the proposed rule for this action, including three from groups representing the fishing industry, two from groups representing conservation interests, five from elected officials, and one from the State of Maine Division of Marine Fisheries (State of Maine). Three comments were received after the comment period had closed (*i.e.*, after March 3, 2006) and were not considered. In addition, several commenters expressed concerns that were not relevant to the proposed action. Since these concerns were not directed at the proposed measures or other aspects of this emergency action, NMFS is not responding to these particular concerns in this preamble.

#### *Differential DAS Counting*

*Comment 1:* Twenty commenters indicated that the proposed action's broad approach to reducing F on all groundfish stocks through the use of differential DAS counting in all areas is inappropriate, especially considering that the catches of healthy stocks would also be reduced. These commenters stated that a targeted regional approach to reduce F would better address excessive F on some stocks without unnecessarily reducing F on healthy stocks.

*Response:* NMFS agrees that differential DAS counting on GB may unnecessarily reduce the ability to achieve OY from healthy groundfish stocks on GB. After further consideration, NMFS concludes that a more targeted approach is likely to reduce F on specific GB stocks without reducing the catch of healthy groundfish stocks. As discussed in further detail in the response to Comment 7, NMFS has decided to implement the proposed FW 42 trip limits for GB winter flounder and white hake (*i.e.*, 5,000 lb (2,268 kg) per trip and 1,000 lb (454 kg) per DAS, up to 10,000 lb (4,536 kg) per trip, respectively) and eliminate the differential DAS counting measure for vessels fishing under a NE multispecies DAS in the U.S./Canada Management Area under this emergency action. The management measures currently specified for the U.S./Canada Management Areas provide additional assurance that any potential redirected effort onto GB would not increase F on other overfished stocks such as GB cod and GB yellowtail flounder. Specifically, the current regulations require all vessels participating in the U.S./Canada Management Area to use VMS and submit daily catch reports for

GB cod, GB haddock, and GB yellowtail flounder. These stocks are managed by hard TACs (*i.e.*, the fishery is closed if the TAC is reached) on all or portions of these stocks within the U.S./Canada Management Area. Through VMS and daily catch reports, vessel activity and groundfish catch within the U.S./Canada Management Area can be effectively monitored. In addition, the U.S./Canada Management Area regulations provide the Regional Administrator with the authority to modify trip limits and access to the U.S./Canada Management Area to control effort in this area and to ensure that the TACs for cod, haddock, and yellowtail are not exceeded during the fishing year. Thus, this revision would allow vessels to achieve OY from healthy groundfish stocks from this area, while providing assurances that redirected effort onto GB would not result in excessive F for other groundfish stocks. In combination with the subsequent management measures proposed in FW 42, this emergency action will likely achieve all of the necessary F reductions for FY 2006, resulting in F rates that are consistent with the requirements of the Amendment 13 rebuilding schedule, without unnecessarily sacrificing yield from healthy groundfish stocks.

However, differential DAS counting is appropriate in the GOM and SNE/MA RMAs. As specified above, results of the most recent biennial adjustment process indicated that F on two groundfish stocks in both the GOM (cod and yellowtail flounder) and SNE/MA (yellowtail flounder and winter flounder) RMAs exceed the 2006 F targets specified in Amendment 13 and require substantial F reductions. Because the groundfish fishery is characterized as a commingled fishery, with many species concentrated in mixed assemblages, it is difficult to target management measures that affect one stock without also affecting other stocks. Therefore, the proposed emergency measures were developed over a broad geographic scale in order to ensure that stocks that need F reduction are adequately protected. Although these stocks are found in higher concentrations in somewhat localized areas, due to concerns over bycatch and discards, it is important that management measures protect these stocks throughout their entire range. In addition, the stocks in the GOM and SNE/MA RMAs, particularly the yellowtail flounder stocks, are severely overfished and require the greatest F reductions to maintain consistency with the Amendment 13 rebuilding

programs. Spawning stock biomass for both stocks continue to decline and F for SNE/MA yellowtail flounder continues to increase. Protecting these stocks throughout their entire range would be consistent with the National Standard 1 guidelines at § 600.310(f)(5), and would decrease the likelihood that these stocks would meet the Amendment 13 F objectives. Therefore, differential DAS counting for vessels fishing outside of the U.S./Canada Management Area, including throughout the entire GOM and SNE/MA RMAs, is implemented by this emergency interim rule.

*Comment 2:* Several commenters suggested that NMFS should implement management measures that specifically target those vessels that contributed the most to the high F's observed by the most recent stock assessment, and contend it would be unfair for all vessels, even those who did not target the overfished stocks, to bear the burden of additional restrictions. Ten commenters, including three industry groups and the State of Maine, asserted that the proposed differential DAS counting does not address the underlying problems causing the excessive F on some stocks, as an inshore fishery directing on GOM cod is maintained.

*Response:* All vessels that caught groundfish species, particularly GOM cod or CC/GOM and SNE/MA yellowtail flounder, contributed to the excessive F's observed in the recent stock assessment. The measures implemented by this emergency action treat the fishery as a whole and apply the necessary effort reductions in a fair and equitable manner to all fishery participants, consistent with National Standard 4 guidelines. This is consistent with the approach taken by NMFS in previous groundfish actions. The proposed measures are intended as a temporary stop-gap measure necessary only to immediately reduce F until long-term measures proposed in FW 42 can be implemented. During the development of FW 42, the Council considered several mechanisms to more specifically target the causes of excessive F in the groundfish fishery, including a 24-hour minimum DAS charge (Alternative 4) and an individual quota system (*i.e.*, "the industry proposal"). The Council ultimately chose not to pursue such targeted management strategies, electing to adopt a broader strategy through differential DAS counting instead. FW 42 relies upon a mandatory VMS requirement for all vessels fishing on a NE multispecies DAS and other measures to more directly address F on specific

groundfish stocks by implementing area-specific differential DAS counting measures. Given the limited time available to develop, review, and implement the management measures under this emergency action, it was not possible to implement area-specific differential DAS counting measures identical to those in FW 42 in time for the required May 1, 2006, implementation date. The FW 42 measures were not adopted by the Council until after the analysis for this emergency action was completed and because other regulatory requirements necessary to implement the area-specific measures in FW 42 would delay implementation of this action beyond May 1, 2006. Both the differential DAS counting strategies in this emergency action and those adopted by the Council in FW 42 maintain an inshore fishery for GOM cod to some degree. However, both actions attempt to minimize incentives to specifically target GOM cod. This emergency action utilizes differential DAS counting at a rate of 1.4:1 in the GOM, in combination with low trip limits for GOM cod, to minimize incentives to target GOM cod, while FW 42 relies upon a higher trip limit and differential DAS counting rate of 2:1 in a more confined area of the GOM. This emergency action takes the same basic approach toward achieving the necessary F reductions as FW 42, but applies the measures in a slightly different manner throughout the entire range of the GOM and SNE/MA groundfish stocks. Differential DAS counting for all Category A DAS used outside of the U.S./Canada Management Area, along with the trip limits implemented by this action, are designed to achieve the necessary F reductions for GOM cod, GB winter flounder, SNE/MA winter flounder, SNE/MA yellowtail flounder, and white hake, and will substantially reduce F on CC/GOM yellowtail flounder in FY 2006. This action, as implemented through this emergency interim rule, more closely resembles measures adopted under FW 42 than did the proposed measures, in that differential DAS counting will not apply to any Category A DAS used in the U.S./Canada Management Area on GB. This will provide the fishery more opportunity to achieve OY from healthy groundfish stocks while providing assurances that any redirected effort onto GB will not jeopardize the rebuilding of overfished stocks such as GB cod and GB yellowtail flounder, consistent with the requirements of National Standard 1.

*Comment 3:* One industry group suggested that the differential DAS counting measure, as proposed (*i.e.*, differential DAS counting in all areas) would encourage effort to shift to other areas. One environmental group disagreed, stating that the proposed management measures would prevent the redirection of effort.

*Response:* NMFS asserts that the management measures contained in the proposed rule for this action (*i.e.*, differential DAS counting in all areas) would have prevented the redirection of effort into other areas. While the measures originally proposed would have prevented overfishing and eliminated incentives to redirect effort into other areas, based on more recent analyses, NMFS has concluded that those measures would have unnecessarily reduced the catch of healthy groundfish stocks which may have hampered achieving OY from the fishery. Consistent with National Standard 1, NMFS has revised the proposed differential DAS counting measures to more effectively prevent overfishing and achieve OY in the fishery, while limiting the impacts of potential redirected effort. As described in further detail in the response to Comment 7, NMFS has eliminated differential DAS counting for vessels fishing in the U.S./Canada Management Areas on GB. Analysis of the impacts of this revision indicate that this action would achieve the necessary F reductions for several groundfish stocks. While more GB cod would be caught under this interim action than under the original proposed measures, F on GB cod is still reduced. GB cod mortality is consistent with the Amendment 13 F targets for FY 2006; thus, the Amendment 13 rebuilding trajectory is maintained. In addition, the potential of redirected effort onto GB due to this revision of the proposed action is mitigated by the current management restrictions of the U.S./Canada Management Area. These restrictions facilitate the effective monitoring of any additional effort by requiring vessels to use a VMS and submit daily catch reports. In addition, the Regional Administrator is authorized to modify trip limits and access to the U.S./Canada Management Area in order to ensure that the U.S./Canada Management Area TACs for GB cod, GB haddock, and GB yellowtail flounder are not exceeded during the fishing year. These provisions help ensure that the impacts of any redirected effort onto GB are accounted for and are limited. Any impacts resulting from the redirection of effort into other programs such as the

approved SAPs or the Regular B DAS Program is also limited by the regulations governing those individual programs and does not compromise the rebuilding objectives of this action or the fishery.

*Comment 4:* Nineteen commenters were concerned that counting DAS used at a rate of 1.4:1 in the entire GOM rather than for just a portion of the GOM will increase incentives to fish inshore on GOM cod, suggesting that the proposed action increases F on GOM cod, rather than reducing it. These commenters assert that vessels will fish closer to shore because of the high DAS cost to fish offshore. Further, they contend that vessels will take advantage of the reduced differential DAS counting rate in the inshore GOM during the emergency action, compared to the higher rate proposed under FW 42 (*i.e.*, 2:1), to maximize earnings during the summer months when fish are available and prices are high. Finally, one commenter claimed that the proposed differential DAS counting throughout the GOM violates National Standard 1 of the Magnuson-Stevens Act.

*Response:* The proposed differential DAS counting measure, in conjunction with the reduced trip limit for GOM cod (*i.e.*, 600 lb (272 kg) per DAS, up to 4,000 lb (1,814 kg) per trip), is intended to minimize incentives to target GOM cod without subsequently increasing discards or discard F. As explained further in Comment 16 below, some commenters, including the State of Maine, supported reducing the GOM cod trip limit to 400 lb/DAS if it would further reduce incentives to target GOM cod. While NMFS agrees that a reduced trip limit, in conjunction with differential DAS counting, will reduce incentives to target GOM cod, a lower trip limit than that proposed would likely result in excessive discards and discard F. As described in the Amendment 13 discussion of bycatch (Section 5.2.8 of the Amendment 13 Environmental Impact Statement), it is projected that fishermen with limited DAS available to fish, whether from reductions in allocations or differential DAS counting, would attempt to maximize their return on every trip and would attempt to convert any discards into landings. Effort reductions such as differential DAS counting proposed in this emergency action, in conjunction with the proposed trip limits, should decrease incentives to target GOM cod, as decreasing the available Category A DAS and reducing the GOM cod trip limit under this action will make trips less profitable and will decrease incentives for targeting cod.



NMFS acknowledges that the reduced differential DAS counting rate applied throughout the entire GOM as proposed may seem to provide incentives for offshore vessels to target inshore GOM cod. However, for the reasons stated above, NMFS contends that such incentives are minimized due to the reduced GOM cod trip limit. In addition, over the past 5 years, prices for cod in Boston during the months this action is likely to be in effect (*i.e.*, May through July) are the lowest of the year. Further, it is likely that inshore vessels will fish more of their allocated DAS under this emergency action due to the reduced differential DAS counting rate. In doing so, prices for GOM cod could possibly decrease further during the summer months than previously observed, further decreasing the profitability of targeting inshore GOM cod. Also, fishing a majority of allocated DAS at the beginning of the fishing year would minimize the potential to earn a steady income from groundfish throughout the year, as a vessel would have fewer DAS to fish for the remainder of the year. This would also limit a vessel's ability to capitalize on the historically higher prices offered for cod during the late fall through early spring months. As a result, there are fewer incentives for vessels to fish inshore on GOM cod under this emergency action. Furthermore, based on historical fishing practices, few trips were taken in the offshore GOM between May and July. During FY 2005, trips taken outside of the inshore GOM area proposed in FW 42 between May and July accounted for less than 5 percent of the trips taken in the GOM during FY 2005 to date. Because vessels that historically fish in the offshore portion of the GOM do not take many trips in this area between May and July, and because they would be charged DAS at a higher rate during this time, there are few incentives to increase fishing trips in the GOM during these months. Waiting to fish under the measures proposed in FW 42 (*i.e.*, no differential DAS counting in the offshore portion of the GOM) would allow these vessels to maximize the value of their DAS allocation. Finally, because this emergency action charges vessels participating in the U.S./Canada Management Area at a rate of 1:1 instead of the differential DAS counting rate of 1.4:1, there are actually incentives to fish outside of the GOM and within the U.S./Canada Management Area. Therefore, based on past fishing practices, historical market conditions, 1:1 DAS counting within the U.S./Canada Management Area, and the

potential incentives to wait until FW 42 is implemented, it is unlikely that offshore vessels would have sufficient incentive to change their previous fishing behavior to target inshore GOM cod under this emergency action.

Some commenters have suggested that vessels will wait to fish under the proposed FW 42 measures, while others contend that vessels will increase effort under the proposed emergency action. Because incentives to fish on GOM cod during this emergency action will vary among individual fishermen based on their DAS allocations, previous fishing practices, gear fished, target species, and market conditions, it is difficult to predict the behavior of individual fishermen operating under these emergency measures.

The Closed Area Model (CAM) attempts to incorporate profit maximization behavior into its assessment of F impacts of proposed measures. This model assumes that every vessel will attempt to fish in a manner that maximizes the profit of fishing operations, thereby modeling potential changes in fishing behavior to adapt to changing regulations. In doing so, the CAM attempts to estimate F effects base on anticipated behavior in response to the proposed measures. Although competing incentives may exist under this emergency action, the results of the CAM analysis indicate that the emergency measures are successful at achieving the necessary F reductions for GOM cod. Because the CAM already incorporated profit maximization behavior, the results of the CAM indicate that, should offshore effort shift to targeting inshore GOM cod under this emergency action in order to maximize returns from allocated DAS, the emergency measures would likely still be able to achieve the F reductions necessary to maintain the Amendment 13 rebuilding programs. Combined with the measures proposed in FW 42, this emergency action will continue to rebuild GOM cod, despite potential changes in vessel behavior.

Finally, the commenter who suggested that applying differential DAS counting throughout the GOM is not consistent with National Standard 1 did not offer a reason. Presumably, this commenter was concerned that the proposed measure would not allow for the achievement of OY. This emergency action is a emergency action intended to immediately reduce F on the necessary stocks for the start of FY 2006. This action is not required, by itself, to completely end overfishing and rebuild overfished stocks. However, this action does immediately and substantially reduce F on GOM cod, GB winter

flounder, SNE/MA winter flounder, SNE/MA yellowtail flounder, and white hake enough to achieve the rebuilding objectives of the FMP, which complies with National Standard 1 and other applicable law in that it ends overfishing and rebuilds overfished groundfish stocks within the required timeframe. The rebuilding strategy was designed to achieve OY, as reduced by social, economic, and ecological factors, and is consistent with the national standard guidelines at § 600.310. Because these emergency measures ensure that several groundfish stocks remain on the Amendment 13 rebuilding trajectory, they are consistent with National Standard 1.

*Comment 5:* Eight commenters, including two elected officials, suggested that the proposed differential DAS counting approach will reduce haddock landings by forcing offshore vessels to stop fishing until differential DAS counting in the offshore portion of the GOM is eliminated upon the implementation of FW 42. These commenters indicated that this would impact shoreside infrastructure and compromise domestic fish markets by reducing the domestic supply of fish.

*Response:* As described in the response to Comment 4, it is nearly impossible to accurately predict expected vessel behavior in relation to the measures in either this emergency action or FW 42. Further, there are conflicting incentives that make fishing during the emergency action more beneficial than waiting for the implementation of the proposed FW 42 measures for some vessels, but less beneficial for other vessels. It is unclear how fishermen will react to these measures, increasing the difficulty of projecting the impact to shoreside infrastructure. There is the possibility that some vessels would elect not to fish during the emergency action. This could reduce the supply of haddock and other groundfish species to domestic markets, encouraging fish processors to seek fish supply from other markets, both foreign and domestic.

While the differential DAS counting measure in this emergency action could reduce the amount of fish landed from the offshore GOM, the action is intended to maintain additional opportunities to fish in a manner that would result in a smaller DAS charge than if the vessel fished an equivalent length trip in the GOM under differential DAS counting. For instance, this action continues a modified Regular B DAS Program that would have otherwise expired. This allows vessels to target GB haddock and other healthy GB groundfish stocks while fishing

under a Regular B DAS. Category B DAS are not charged at the differential rate of 1.4:1, but are charged on a calendar day basis. Charging Category B DAS in this manner results in less of a DAS charge than differential DAS counting, particularly for longer trips. In addition, this action, as revised, does not implement differential DAS counting for vessels fishing in the U.S./Canada Management Area. Therefore, a vessel could fish in the U.S./Canada Management Area during this emergency action and avoid differential DAS counting. In addition, a vessel fishing in the Eastern U.S./Canada Area is not be charged for steaming time to and from this area. As a result, this action maintains several opportunities for vessels to continue to land groundfish species with less of a DAS charge than if the vessel fished exclusively in the offshore GOM. By providing these additional opportunities, it is intended that any disruption to the supply of fish would be minimized. Moreover, this emergency action is temporary in nature. Measures under FW 42 will likely become effective a few months after the start of the fishing year, if approved. Any disruptions to shoreside infrastructure thus would be temporary.

*Comment 6:* Four commenters recommended that NMFS allow VMS vessels, or vessels issued a letter of authorization (LOA), to fish under the proposed FW 42 measures. These commenters suggested that VMS and/or the LOA would facilitate the enforcement of area-specific differential DAS counting measures proposed in FW 42.

*Response:* NMFS has revised this emergency action to remove the differential DAS counting requirement for vessels participating in the U.S./Canada Management Area and implements the proposed FW 42 trip limits for GB winter flounder and white hake instead. This revision partially addresses the concerns expressed by these commenters in that it allows vessels already using VMS to fish under the proposed FW 42 measures when fishing in the U.S./Canada Management Area. Because the existing regulations for the U.S./Canada Management Area require vessels to use a VMS, vessels that do not already have a VMS unit must purchase and install one to take advantage of 1:1 DAS counting within the U.S./Canada Management Area.

It would not be appropriate to allow vessels using a VMS in the GOM or SNE/MA RMAs, or allow vessels that have been issued a LOA to fish under the proposed FW 42 measures. First, the measures adopted by the Council in FW

42 have not been formally determined to be consistent with the national standards of the Magnuson-Stevens Act or other applicable law. These measures are currently under review. Further, to date, NMFS has not solicited public input regarding the FW 42 measures through a proposed rule. Although several individuals have expressed support for the proposed FW 42 measures through comments on this emergency action (see Comment 9 below), there are others who do not agree with this management strategy. Because of the substantive and controversial nature of the proposed FW 42 measures, it is important to consider additional public comment on the proposed FW 42 measures prior to implementing such measures through this emergency action. While the use of VMS or a LOA may facilitate the enforcement and administration of the FW 42 area-specific measures, it is still very difficult to effectively enforce area-specific DAS requirements via an LOA. Enforcement of such a measure requires increased at-sea enforcement beyond that used to enforce the LOA for possession limits, because DAS are used as the primary effort control for the groundfish fishery. If DAS are not properly charged, the F objectives of the FMP may be exceeded. There are significant incentives to violate the conditions of the LOA due to difficulty enforcing such a provision, especially after Category A DAS are further reduced by the Amendment 13 default DAS reduction on May 1, 2006. Because of limited at-sea enforcement capability and incentives to avoid differential DAS counting, enforcement of the differential DAS counting areas proposed by FW 42 is problematic under a LOA.

*Comment 7:* One commenter indicated that the Amendment 13 default DAS reduction scheduled for implementation on May 1, 2006, should be able to sufficiently reduce F for GB winter flounder, while another individual claimed a trip limit would suffice. One commenter recommended that NMFS implement the trip limits for GB winter flounder and white hake adopted by the Council in FW 42. Four commenters contested that differential DAS counting on GB is unnecessary and compromises the ability of the fishery to maximize benefits of resources on GB, as required by National Standards 1 and 8. These individuals assert that there is no need for emergency action on many of the stocks on GB, especially GB winter flounder, as this stock is only marginally overfished. Eight individuals contend that differential DAS counting will significantly reduce catches of

healthy stocks, sacrificing yield from these stocks and failing to achieve OY for these stocks in violation of National Standard 1. Finally, one commenter supported the proposed differential DAS counting on GB, indicating that it will achieve F reductions for the stocks in need of F reductions and offers further protection and benefits for GB cod.

*Response:* The Amendment 13 default DAS reduction will reduce F on GB winter flounder by approximately 7 percent, GB yellowtail flounder by 5 percent, and white hake by just over 2 percent. Based on the results of GARM II, F on these stocks must be reduced by 46 percent, 40 percent, and 13 percent, respectively. As a result, the default measures are insufficient to achieve the necessary F reductions for these stocks. Therefore, additional measures need to be implemented in order to maintain the Amendment 13 rebuilding programs for specific stocks.

In a mixed-stock fishery, it is virtually impossible to reduce F, and therefore yield, from one stock without affecting the yield from another stock. Therefore, necessary F reductions on one stock will also result in F reductions on other stocks. NMFS first proposed differential DAS counting on GB because, at the time that the proposed emergency measures were developed and analyzed, the Council had not considered measures to achieve the necessary F reductions for GB winter flounder or white hake. The trip limits ultimately adopted by the Council in FW 42 were first proposed by the PDT in late January 2006 and were only considered by the Council at its February 1-2, 2006, meeting. Differential DAS counting on GB achieved the necessary F reductions for white hake and substantially reduced F on GB winter flounder, but at the expense of reduced yield from other healthy groundfish stocks. Final analysis on the proposed FW 42 measures was not completed until early March 2006. This analysis indicates that the proposed FW 42 measures, including the trip limits for GB winter flounder and white hake, achieve the necessary F reductions for GB winter flounder and white hake, while minimizing reductions in yield of healthy groundfish stocks on GB such as haddock, pollock, American plaice, and witch flounder.

NMFS acknowledges that applying differential DAS counting on GB may reduce the yield of some healthy groundfish stocks, reducing the likelihood of achieving OY for those stocks. However, NMFS remains concerned about the potential for redirected effort onto GB. Although

many of the groundfish stocks on GB do not need immediate F reductions to comply with the Amendment 13 rebuilding programs, there are several stocks on GB that are seriously overfished with overfishing occurring, especially GB cod and GB yellowtail flounder. These stocks require careful management to ensure that they remain on the rebuilding schedules adopted in Amendment 13. If effort were to shift onto GB, there is the potential that this effort would increase F on GB cod, especially considering that only part of the GB cod stock within the Eastern U.S./Canada Area is managed by a hard TAC. In addition, considering that the proposed TAC for GB yellowtail flounder is 51 percent less than the 2005 TAC, increasing F on this stock would only cause additional future reductions in available catch. As a result, increasing F on either GB cod or GB yellowtail flounder could potentially undermine rebuilding efforts for these stocks. Therefore, it is important to ensure that redirected effort onto GB does not jeopardize efforts to protect these other overfished stocks on GB.

NMFS explored the feasibility of removing differential DAS counting on GB and implementing the proposed FW 42 trip limits for GB winter flounder and white hake instead. Without differential DAS counting in all areas, NMFS was concerned that redirected effort may substantially increase F on other overfished groundfish stocks, particularly on GB. Therefore, any option to remove differential DAS counting on GB would need to achieve the necessary F reductions for groundfish stocks on GB without leading to increased F on other overfished stocks. Because the GB RMA includes portions of the CC/GOM and SNE/MA yellowtail flounder stock areas, stocks that are severely overfished and require substantial F reductions in FY 2006, NMFS did not consider any options that could potentially increase effort and, therefore, F on these stocks. Because the U.S./Canada Management Area encompasses the vast majority of the waters within the GB RMA, but does not include any portion of the CC/GOM and SNE/MA yellowtail flounder stock areas, NMFS focused on analyzing options that would remove the differential DAS counting requirement for vessels fishing in the U.S./Canada Management Area. In addition, the current regulations governing the U.S./Canada Management Area provide greater assurance that any redirected effort would not increase the F on other overfished groundfish stocks, because a portion of the GB cod stock and the

entire GB yellowtail flounder stock is managed by a hard TAC within the U.S./Canada Management Area. Further, any vessel fishing in the U.S./Canada Management Area is required to use a VMS and submit daily catch reports. NMFS can more easily monitor groundfish catch from the U.S./Canada Management Area in an effort to more accurately project catch rates and more effectively assess the scale of potential redirected effort onto GB. In addition, pursuant to the regulations at § 648.85(a)(3)(iv)(D), the Regional Administrator has the authority to modify trip limits and access to the U.S./Canada Management Areas to ensure that TACs specified for these areas is not exceeded. This provides sufficient authority for the Regional Administrator to ensure that redirected effort does not compromise the rebuilding objectives of the FMP. As a result, NMFS analyzed two options to eliminate differential DAS counting on GB: (1) Eliminate differential DAS counting for the entire U.S./Canada Management Area; and (2) eliminate differential DAS counting from just the Eastern U.S./Canada Area. The results of preliminary analysis for these options indicated that either option would result in comparable ecological impacts to those from the original proposal to implement differential DAS counting throughout the entire GB RMA. Under each option, F, and, therefore, yield, would increase for some stocks, but decrease for others. For example, under the original proposal (*i.e.*, differential DAS counting in all areas), F of GB haddock would decrease by 17 percent. Under revised Option 1, F on GB haddock would decrease by only 5.6 percent, while F on GB haddock would decrease by nearly 24 percent under Option 2. Overall, revised Option 1 achieves greater ecological benefits than the original proposal. Option 1 would achieve the necessary F reductions for five stocks (GOM cod, GB winter flounder, SNE/MA winter flounder, SNE/MA yellowtail flounder, and white hake), while the original proposal would only achieve the necessary F reductions for three stocks (GOM cod, SNE/MA winter flounder, and white hake). Option 2 would not meet the necessary F reductions for GOM cod, CC/GOM yellowtail flounder, or GB winter flounder and would result in additional reductions in F for healthy stocks beyond the original proposal. In addition, revised Option 1 would not excessively reduce the potential yield from healthy groundfish stocks compared to the other two options. Economic analysis of these options

indicates that revised Option 1 would offer substantially fewer adverse economic impacts than the original proposal. For example, Option 1 would result in an estimated \$16.8 million in reduced groundfish sales, while the original proposal and Option 2 would result in an estimated \$22.6 million and \$21.6 million reduction in groundfish sales, respectively. Adverse economic impacts to most ports would be less under Option 1, as well. Because Option 1 would achieve the necessary F reductions for nearly all of the stocks requiring F reductions for FY 2006 and attempts to minimize reductions in the potential yield from healthy groundfish stocks, Option 1 more closely achieves OY, as required by National Standard 1, than either the original proposal or Option 2. Because Option 2 would not achieve the necessary F reductions, would further reduce yield from healthy groundfish stocks compared to the original proposal, and would result in greater economic impacts than Option 1 or the original proposal, full analysis of Option 2 was not developed. Option 1 has been fully analyzed and is summarized in an addendum to the EA prepared for this action. The original EA and the addendum to the EA are available from the Regional Administrator (see **ADDRESSES**).

The National Standard 8 guidelines indicate that, if two alternatives offer comparable conservation benefits, the one with the less adverse economic impacts would be the preferred alternative. As one industry group correctly points out, the measures adopted in FW 42 offer comparable conservation benefits and would result in less severe economic impacts than the proposed emergency measures. However, the measures in FW 42 were not adopted by the Council under FW 42 until its February 1, 2006, meeting, after the analysis for the proposed emergency action had been completed. Therefore, the FW 42 measures were not considered as an alternative for the proposed emergency action. As explained above, the ecological impacts of revised Option 1 are comparable to the impacts of the original emergency proposal while the adverse economic impacts of revised Option 1 are substantially less. As a result, NMFS is implementing revised Option 1 under this emergency action.

National Standard 8 requires that management actions, consistent with the conservation requirements, consider the importance of fishery resources to fishing communities to provide for their sustained participation in the fishery and, to the extent practicable, minimize the adverse economic impacts on these

communities. The EA prepared for this action, including the addendum prepared to describe the impacts to the fishery resulting from the options to remove differential DAS counting for vessels fishing in the U.S./Canada Management Area, contains a consideration of the importance of fishery resources to fishing communities, along with an estimate of the economic impacts to these communities. This emergency action minimizes the adverse economic impacts to such communities by eliminating differential DAS counting in the U.S./Canada Management Area and through the continuation of the DAS Leasing Program and a modified Regular B DAS Program on GB. The revised emergency action being implemented by this interim rule is consistent with National Standards 1 and 8 because it implements differential DAS counting in a manner that achieves the ecological objectives of this action and the FMP, while attempting to achieve OY on a continuing basis and minimizing the adverse economic impacts to fishing communities.

*Comment 8:* One individual claimed that the proposed differential DAS counting measure in the GOM that would charge DAS used at a rate of 1.4:1 is better than the proposed FW 42 differential DAS counting measure that would charge DAS used at a rate of 2:1. The commenter states that this measure would save the inshore fleet and would avoid safety concerns associated with the FW 42 measure because inshore vessels would not be forced to fish offshore under 1.4:1 DAS counting. He contends that, under FW 42, smaller inshore vessels would fish farther offshore to avoid differential DAS counting at a rate of 2:1. Two other commenters disagreed, indicating that the proposed emergency action would decrease safety relative to the proposed FW 42 measures because vessels would take undue risks, such as fishing in rougher weather to capitalize on higher fish prices.

*Response:* The emergency action does not present incentives for smaller vessels to take undue risks because the differential DAS counting rate is applied throughout the GOM RMA. A vessel would be charged exactly the same DAS rate, regardless of where it fishes. The expected duration of this emergency action, May through July or August, represents some of the best weather conditions of the year, including the months in which the lowest wind speeds are recorded on a yearly basis in the GOM, according to the analysis prepared for FW 40B to the FMP. Therefore, it is unlikely that vessels

would take undue risks by fishing in rougher weather under this emergency action because, with the exception of the potential for a tropical storm or hurricane, weather conditions over the expected duration of this action are typically the best conditions of the year. In addition, prices for GOM cod during May through July are, on average, the lowest prices of the year. Therefore, it is also unlikely that vessels would be more inclined to fish under adverse weather conditions during this emergency action due to expected higher prices. Therefore, NMFS concludes there are minimal safety concerns associated with the differential DAS counting measure in this interim rule.

*Comment 9:* Fifteen commenters suggested that NMFS should implement the preferred alternative adopted by the Council in FW 42. One commenter explicitly requested that NMFS implement the FW 42 measures instead of the proposed emergency measures to ensure a seamless transition to the FW 42 measures once FW 42 is implemented.

*Response:* One of the objectives of this emergency action is to implement management measures that mirror those adopted by the Council in FW 42 as much as practicable without compromising the conservation objectives of this action or the FMP. Some commenters indicated that the proposed measures closely resembled the measures adopted in FW 42, while others claimed that the proposed measures are dramatically different than the FW 42 measures. NMFS began to develop the proposed emergency measures immediately after the Council announced that it would not be able to complete FW 42 in time for a May 1, 2006, implementation date, which occurred at the Council's November 15, 2005, meeting. At that time, the Council had not fully developed many of the measures that were finally adopted by the Council, and the Council was just starting to explore the potential that discrete differential DAS counting areas would achieve the necessary F reductions for FY 2006. At the time, there was uncertainty whether the Council would even adopt differential DAS counting as the primary means of reducing F under FW 42. In order to implement emergency management measures by the start of FY 2006, NMFS could not wait until the Council voted to adopt measures in FW 42 at its February 1, 2006, meeting. NMFS attempted to anticipate and mirror many of the provisions proposed in FW 42 at the time work began on the development of the emergency

measures, including differential DAS counting, in order to minimize transition to the FW 42 measures, once implemented. However, given the uncertainty of which measures would be proposed by the Council in FW 42, and the limited time available to prepare and review the proposed emergency action in time for a May 1, 2006, implementation date, it was not possible to predict with certainty what measures the Council would ultimately adopt in FW 42.

Because of the potentially substantial effort reductions necessary under this emergency action, and the controversial nature of this action, NMFS attempted to provide for as much advanced notice and opportunity for public input as possible, without compromising the need to implement emergency measures by May 1, 2006. Although NMFS attempted every means possible to minimize the time it would take to develop the proposed emergency action, due to the time necessary to develop the proposed management measures, prepare the required analytical documents, and publish both a proposed and a final rule consistent with the Administrative Procedure Act, NMFS had to complete the development of the proposed action before the Council voted on FW 42.

Based on public comment, NMFS is removing the differential DAS counting requirement for vessels participating in the U.S./Canada Management Areas (see also Response to Comment 6). While not identical to the measures proposed under FW 42, this revision more closely mirrors them, without compromising the objectives of this action.

*Comment 10:* Ten commenters opposed the proposed differential DAS counting measures, advocating for counting DAS as a minimum of 24 hours instead. In addition, three commenters recommended extending the duration of the GOM Rolling Closures by two weeks.

*Response:* One of the objectives of this emergency action is to implement management measures that mirror those adopted by the Council in FW 42 as much as practicable without compromising the conservation objectives of this action or the FMP. One of the alternatives considered during the development of FW 42 (*i.e.*, Alternative 4) was a minimum 24-hour DAS charge. However, while some expressed support for this measure, claiming that it more accurately addressed the underlying problem in the fishery, the Council ultimately did not adopt this alternative because of concerns that this alternative would provide incentives for vessels to fish longer hours and with less crew to

maximize the benefits of each allocated DAS. In doing so, some felt that this alternative would cause safety problems. Because of these concerns and the fact that the Council did not adopt the minimum 24-hour DAS charge under FW 42, this emergency action did not consider that alternative. Regarding extending the GOM Rolling Closures by 2 weeks, there is no analysis to conclude that such a measure would help to achieve the conservation or management objectives of this emergency action. In addition, there may be safety concerns attached to this type of measure, as members of the fishing industry expressed safety concerns about the existing GOM Rolling Closures during the Council-sponsored safety meetings conducted in 2005. Moreover, the Council did not consider extending these closures under FW 42.

*Comment 11:* One commenter stated that the proposed measures would treat all fishermen equally.

*Response:* NMFS has determined that the emergency action is consistent with National Standard 4 guidelines to the extent practicable, taking into account conservation requirements and differences in impacts because of geographic location and stocks that need protection.

*Comment 12:* One industry group claimed that the proposed differential DAS counting strategy would reduce access to the monkfish resource in the monkfish Northern Fishery Management Area (NFMA), resulting in a linear loss of monkfish DAS.

*Response:* While the differential DAS counting measure implemented by this interim rule would result in some decreased opportunities to target monkfish in the NFMA over the No Action alternative, the emergency action attempts to mitigate such decreased opportunities by revising the manner in which monkfish-only DAS are counted to accommodate differential DAS counting. A linear loss of monkfish DAS would only occur if monkfish DAS were also charged at a rate of 1.4:1. The proposed action would only charge NE multispecies at a rate of 1.4:1, while monkfish DAS would still be charged at a rate of 1:1. Because NE multispecies DAS are charged at a higher rate when fishing outside of the U.S./Canada Management Area, there is the possibility that monkfish Category C, D, F, G, or H vessels (*i.e.*, those monkfish vessels that are also issued a limited access NE multispecies permit) would not have sufficient groundfish DAS to ensure that they could fish their full allocation of monkfish DAS. To accommodate this, this rule will allow

a Category C, D, F, G, or H monkfish vessel to fish under a monkfish-only DAS when groundfish DAS are no longer available, provided the vessel fishes under the provisions of the monkfish Category A or B permit. Assuming that such vessels fish all of their NE multispecies DAS outside of the U.S./Canada Management Area, the maximum number of monkfish-only DAS that a vessel would be allowed to fish is equal to its net monkfish DAS allocations (including carry-over DAS) minus its net NE multispecies Category A DAS allocation (including carry-over DAS), divided by 1.4. If such vessels fish some or all of their NE multispecies DAS in the U.S./Canada Management Area, the number of monkfish-only DAS would be less than this amount. For example, a vessel allocated 40 monkfish DAS and 20 NE multispecies DAS would be able to fish 20 monkfish-only DAS (*i.e.*,  $40 - 20$ ) under the current regulations, or 25.7 monkfish-only DAS ( $(40 - 20 \div 1.4)$ ). Without such a provision, these vessels would have even less of an opportunity to fish for monkfish in the NFMA because they would only be allowed to fish under monkfish-only DAS equal to the difference between their monkfish and NE multispecies DAS allocations. Accordingly, this emergency action offers greater opportunity to target monkfish in the NFMA than if differential DAS counting were implemented without the corresponding revision to the monkfish-only DAS calculation. NMFS acknowledges that some vessels, particularly trawl vessels that operate exclusively in the NFMA, would have less of an opportunity to fish for monkfish in the NFMA under this emergency action, as monkfish-only DAS can only be used in an exempted fishery in the NFMA. Currently, the only exempted fisheries in the NFMA require the use of gillnets. Trawl vessels would be able to fish with trawl gear in the Southern Fishery Management Area, but would be subject to the more restrictive monkfish regulations in this area, including a reduced monkfish DAS allocation.

*Comment 13:* One industry group asserts that the proposed differential DAS counting measure exceeds the scope of the ecological, social, and economic analyses prepared for Amendment 13 because the fishery is meeting the Amendment 13 F targets for the GB cod stock.

*Response:* GB cod is currently rebuilding along the Amendment 13 rebuilding trajectory. However, GB cod is still severely overfished and overfishing is still occurring. Because of this, NMFS is concerned that any

potential redirection of effort on GB cod could negatively affect the rebuilding progress of this stock. NMFS has revised this emergency action to remove the differential DAS counting requirement from vessels participating in the U.S./Canada Management Areas on GB. This revision allows greater access to the GB cod stock, but does so in a manner that minimizes the potential for redirected effort onto GB to adversely affect GB cod. Although the effects of this emergency action are beyond the scope of the ecological, economic, and social analyses prepared for Amendment 13, the additional impacts of this measure on GB cod have been evaluated in the EA prepared for this action. The impacts of the revision to eliminate differential DAS counting for vessels participating in the U.S./Canada Management Area are analyzed in an addendum to the EA that is also available from the Regional Administrator (see **ADDRESSES**).

#### *Trip Limits*

*Comment 14:* Four commenters supported the proposed trip limits for GOM cod, while two commenters opposed them. Supporters claim that the proposed trip limit of 600 lb (272 kg) per DAS will reduce incentives to target GOM cod under this action, especially when implemented with differential DAS counting in the GOM. Two proponents of this trip limit indicated support for a 400 lb (181 kg) per DAS trip limit on GOM cod, if it would further reduce incentives to target GOM cod. Those opposed to the proposed GOM cod trip limit did not offer specific rationale for their opposition, but expressed general support for the 800 lb (363 kg) per DAS GOM cod trip limit in conjunction with alternative management options considered during the development of FW 42, particularly the 24-hour minimum DAS alternative.

*Response:* Analysis prepared for this action indicates that a 600 lb (272 kg) per DAS GOM cod trip limit, along with differential DAS counting, will reduce incentives to target GOM cod and will provide the necessary F reductions for this stock during FY 2006. Although no explicit analysis was prepared regarding the 400 lb (181 kg) per DAS trip limit for GOM cod, analysis prepared for Amendment 13 indicates that such a trip limit would offer additional F reduction for this stock, but may also substantially increase the discard rate.

*Comment 15:* One commenter asserts that trip limits have resulted in increased bycatch F in the groundfish fishery. This commenter further states that the emergency action does not provide adequate rationale or justification for the use of trip limits,

measures the commenter claims have a history of failure, without sufficient back-up measures (see Comment 16 below) in violation of National Standards 1 and 9. However, this comment focused mainly on National Standard 9 issues, and did not explain why the commenter felt the proposed trip limits violated National Standard 1. Another commenter supported setting reasonable catch limits that take into consideration discards.

*Response:* There is sufficient rationale and justification provided in both the proposed/interim rule and the supporting EA that the proposed trip limit for GOM cod does not violate either National Standard 1 or 9. The rationale for the proposed GOM cod trip limit builds upon information in Amendment 13 to the FMP. The Amendment 13 discussion of bycatch (Section 5.2.8 of the Amendment 13 Environmental Impact Statement) projects that fishermen with limited DAS available to fish, whether from reductions in allocations or differential DAS counting, will attempt to maximize their return on every trip, and will attempt to convert any potential discards into landings. In doing so, effort reductions such as differential DAS counting proposed in this emergency action, in conjunction with the proposed trip limits, should contribute to reduced bycatch. Differential DAS counting and the reduced trip limit for GOM cod decrease the profitability of targeting GOM cod, thereby reducing discards. However, it is impossible to predict the behavior of fishermen given the varying and competing incentives that affect behavior under this emergency action and under FW 42. The national standard guidelines for National Standard 9 (§ 600.350) require an assessment of the amount and type of bycatch and bycatch F for proposed measures and that proposed measures should minimize bycatch and bycatch F to the extent practicable. The EA prepared for this action provides the required assessment of the amount and type of bycatch expected from the proposed trip limits. The proposed trip limits were incorporated into the CAM used to analyze changes in F for most of the proposed management measures. This analysis attempts to estimate F resulting from the expected behavior of vessels attempting to maximize profits in response to the proposed measures. This analysis indicated that the cumulative effect of the majority of proposed emergency measures would result in a 33.8-percent reduction in F for GOM cod, including discard F. In addition,

the EA includes a discussion concerning the trip limit analysis prepared for Amendment 13. Based on extrapolations from the Amendment 13 trip limit analysis, a proposed GOM cod trip limit of 600 lb (272 kg) per DAS is likely to offer a reduction in F of about 5 percent compared to the current 800 lb (363 kg) per DAS trip limit for GOM cod. Compared to the current trip limit, the proposed GOM cod trip limit is likely to increase the discard rate by approximately 10 percent. The proposed trip limit represents a balance between the conservation benefits of reducing incentives to target GOM cod and minimizing discards and allowing vessels to harvest and land GOM cod without compromising rebuilding efforts for this stock. Therefore, NMFS has determined that the trip limit for GOM cod, which is implemented through this emergency action, is reasonable and takes into account bycatch and discard concerns.

*Comment 16:* Three commenters recommended that NMFS implement additional provisions that would ensure the efficacy of the proposed trip limits for GOM cod and CC/GOM and SNE/MA yellowtail flounder. Two of these commenters recommended implementing a discard prohibition for GOM cod and CC/GOM and SNE/MA yellowtail flounder, along with requiring a vessel to immediately end its trip once it has reached its trip limit of cod or yellowtail flounder. The third commenter suggested that NMFS should adopt hard-TAC backstops for GOM cod and CC/GOM and SNE/MA yellowtail flounder stocks and promote selective gears to target healthy stocks without substantial bycatch of stocks of concern.

*Response:* Specific provisions such as those offered by the commenters potentially may increase the efficacy of trip limits under specific circumstances, particularly for vessels participating in a special management program (*i.e.*, approved SAPs or the Regular B DAS Program). Such provisions have been adopted by the Council for implementation under FW 42 for all groundfish vessels participating in any special management program. These programs are designed to allow vessels to target healthy groundfish stocks without catching substantial amounts of stocks of concern. The objective of these programs is to avoid overfished stocks, not target them. These programs are highly regulated and include hard TAC backstops, gear requirements, VMS, and other provisions that enhance the effectiveness of these programs and increase the likelihood that effort under these programs would not compromise the rebuilding efforts of overfished

stocks. In contrast, GOM cod, and CC/GOM and SNE/MA yellowtail flounder are managed under an overall target TAC for each species. While hard TACs might prove an effective means of ensuring that F targets for each stock are not exceeded during a fishing year, it would be impracticable to implement such hard TACs through an emergency action, because the hard TAC backstops would expire when the emergency action expires. In this case, the hard-TAC backstops would expire once FW 42 is implemented, sometime during the summer of 2006, which would provide very little benefit to these stocks if implemented under this emergency action. In addition, because conversion to a hard-TAC management regime would represent a substantial change from the effort-based (*i.e.*, DAS) strategies employed in the groundfish fishery to date, particularly for the GOM and SNE/MA stocks, hard TACs should be vetted through the Council process. Further, due to the discrete nature of special management programs, it is relatively easy to identify participants within these programs and enforce the discard prohibitions and trip termination requirements recommended by the commenters. However, it is much more difficult to identify vessels catching GOM cod or CC/GOM or SNE/MA yellowtail flounder, much less enforce such provisions, when applied to such vessels fishing outside of a special management program within broad geographic areas.

#### *Modified Regular B DAS Program*

*Comment 17:* One commenter indicated that the Regular B DAS Program requires near 100-percent observer coverage to work. This commenter stated that all DAS flips occurred on trips with observers, suggesting that this is an indicator of the failure of this program to encourage the selective harvesting of healthy groundfish stocks unless adequately monitored and controlled.

*Response:* Since the Regular B DAS Pilot Program was first implemented by FW 40A in November 2004, approximately 33 percent of groundfish trips into this program have been observed. The measures currently in place are sufficient to effectively monitor vessel operations in this fishery. The methodologies employed to monitor this program meet accepted standards of precision and accuracy. The assertion by the commenter that all DAS flips under the Regular B DAS Pilot Program occurred on trips with observers is incorrect. In fact, over the duration of the Regular B DAS Pilot Program, DAS flips during observed

trips accounted for only 41 percent of recorded DAS flips; over 59 percent of the DAS flips occurred during trips without an observer present. A better indicator of the success of this program is whether the incidental catch TACs for particular species were exceeded compared to the amount of healthy groundfish stocks landed. Substantial amounts of haddock (over 2 million lb, or 907,000 kg), pollock (over 730,000 lb, or 331,000 kg), and redfish (over 130,000 lb, or nearly 59,000 kg) were landed, and the incidental catch TAC for only one groundfish stock of concern (GB cod) was exceeded during only one quarter (May–July of 2005, Quarter 1 of FY 2005), by approximately 21,000 lb (9,532 kg), due to increased participation in this program during that quarter, unexpectedly high catch rates for GB cod, and trips with excessive discards. This suggests that the program is quite successful at facilitating the targeting of healthy groundfish stocks without compromising rebuilding efforts of overfished stocks. Because this program offers additional opportunities to target healthy stocks such as haddock, pollock, and redfish without substantially affecting groundfish stocks of concern, offering additional opportunities to use Regular B DAS in the fishery and necessary sources of fishing revenue, the proposed revised Regular B DAS Program is implemented through this emergency action.

*Comment 18:* Two commenters opposed the proposed modifications to the Regular B DAS Program, indicating that the regulations governing the Regular B DAS Pilot Program, as originally implemented under FW 40A, are sufficient to control F from this program. One of these individuals argued that restricting this program to the U.S./Canada Management Area and requiring all vessels to use a haddock separator trawl is in violation of National Standard 4 because such measures are not fair and equitable to all vessels, as some vessels would be required to purchase the haddock separator trawl and safety considerations prevent smaller vessels from traveling far offshore to use their Regular B DAS under this program. Two other individuals and the Maine Department of Marine Resources objected to the restriction of this program to the U.S./Canada Management Area on the grounds that vessels should be allowed to target healthy groundfish stocks in the GOM.

*Response:* The original intent of the Regular B DAS Pilot Program was to allow vessels to target healthy groundfish stocks in all areas. However, as highlighted above, stocks in

particular areas require additional reductions in F during FY 2006. Stocks such as GOM cod and CC/GOM and SNE/MA yellowtail flounder require substantial F reductions for FY 2006. Therefore, the objective of this action is to reduce F on these stocks through effort reductions in the GOM and SNE/MA RMAs. Because the use of Category B DAS represents additional effort in the fishery, it would be inappropriate to increase effort in these areas, especially during the early summer months when particularly vulnerable stocks are spawning, by allowing vessels to participate in the Regular B DAS Program in the GOM or SNE/MA RMA. In addition, the very small incidental catch TACs proposed for CC/GOM and SNE/MA yellowtail flounder for the first quarter of the fishing year (May–July) are extremely difficult to monitor and are likely to be exceeded after only a few trips into the program. For example, the proposed incidental catch TACs for these species is only 441 lb (200 kg) for CC/GOM yellowtail flounder and 1,746 lb (792 kg) for SNE/MA yellowtail flounder during the first quarter of FY 2006. It is likely that the quarterly incidental catch TAC for CC/GOM and SNE/MA yellowtail flounder would be caught in only a few trips, especially if participating vessels catch up to the maximum possession limit on a daily basis. At this rate, it would be very difficult for NMFS to administer this program in these stock areas during the first quarter of the fishing year and would likely result in the program exceeding these quarterly TACs before NMFS could close these stock areas. Once these incidental catch TACs are harvested, NMFS is required to close the relevant stock areas under the Regular B DAS Program for the remainder of the quarter. Therefore, exceeding these TACs would not only result in increased and unaccounted F on these stocks, but it would also close this program outside of GB within days of the start of the first quarter on May 1. As a result, the existing measures are not sufficient to control F on these stocks under this program, especially during the first quarter, requiring the additional protection offered by these emergency measures. Prior to the expiration of the Regular B DAS Pilot Program on October 31, 2005, very few groundfish vessels fished under this program to target healthy groundfish stocks outside of the GB. Between November 2004 and October 2005, only 82 trips were completed under the Regular B DAS Pilot Program in the GOM RMA, and only 8 were completed under this program in the SNE/MA RMA, out of

over 436 trips completed throughout all areas under this program. As a result, the vast majority of participants in this program have been fishing on GB.

Restricting the Regular B DAS Program to the U.S./Canada Management Area does not allocate fishing privileges among fishermen and, therefore, does not violate National Standard 4. All vessels have the ability to fish in this program, provided the vessel has installed an operational VMS and complies with the other requirements of the Regular B DAS Program. The fact that there may be differential impacts on fishers because of geographic or other practical matters is consistent with National Standard 4 guidelines, provided the measures in question are reasonably calculated to achieve conservation objectives. The U.S./Canada Management Area was adopted by the Council in Amendment 13, based on an informal agreement between the United States and Canada. The location of this area was based on the definition of stock areas under the Resource Sharing Agreement. As specified in further detail in the response to Comment 27, although the preamble of the proposed rule for this action inadvertently specified that all vessels must use a haddock separator trawl when participating in the Regular B DAS Program, the regulatory text indicated that only trawl vessels would be required to use a haddock separator trawl when participating in the Regular B DAS Program. Despite this inadvertent error in the preamble to the proposed rule, the requirement that trawl vessels utilize a haddock separator trawl is still consistent with National Standard 4 because it is reasonably calculated to promote conservation and would not constitute an allocation of fishing privileges to particular fishermen.

*Comment 19:* Two commenters supported the haddock separator trawl requirement for trawl vessels participating in this program, indicating that it would offer sufficient protection to groundfish stocks of concern. However, one commenter suggested that NMFS remove the haddock separator trawl requirement for this program, asserting that the haddock separator trawl has not been shown to work, that the Pilot Program implemented under FW 40A did not exceed any of the incidental catch TACs for stocks of concern, and that such a requirement eliminates opportunities to experiment with more effective gear, such as the rope trawl, under this program.

*Response:* The required use of a haddock separator trawl by trawl vessels participating in the Regular B DAS

Program offers further protection to groundfish stocks of concern under this emergency action. While data from the Eastern U.S./Canada Haddock SAP Pilot Program (the only program in which participants were required to use a haddock separator trawl) indicated that the haddock separator trawl did not perform consistently as well as the original experimental fishery used to justify this gear, it was still effective at reducing the catch of cod compared to the catch of haddock in this SAP. The haddock separator trawl is the only trawl gear shown through experimental research to reduce the catch of cod when targeting haddock. Hook gear has been demonstrated to allow vessels to effectively target haddock without catching substantial amounts of cod or other stocks of concern. As a result, hook gear may be used to target haddock under the revised Regular B DAS Program in this emergency action. While other gears are currently being tested, the results of these gear experiments have not yet been provided to NMFS or the Council. As a result, there is incomplete information to suggest that other gear, including the rope trawl suggested by one commenter, is capable of reducing the catch of cod or other stocks of concern as effectively as the haddock separator trawl. Contrary to what was suggested by the commenter, under the Regular B DAS Pilot Program, the incidental catch TAC for GB cod was exceeded during the first quarter of FY 2005. The haddock separator trawl, should reduce catch of GB cod, reducing the possibility that the quarterly incidental catch TAC will be exceeded under this program. In addition, by reducing the catch of GB cod, the haddock separator trawl requirement should extend the availability of the hard TAC for GB cod in the Eastern U.S./Canada Area, thereby increasing the opportunity to achieve OY for haddock during FY 2006. Both NMFS and the Council have expressed interest in facilitating research into selective fishing gears in order to more fully integrate the use of these gears into the management program. However, before approving the use of such gear, the Council has suggested that it would like to review the performance of such selective gears to determine their effectiveness at reducing bycatch of stocks of concern. While the original intent of the Regular B DAS Pilot Program was to facilitate the use of more selective gears and ways of fishing, the requirement that trawl vessels use a haddock separator trawl in the revised Regular B DAS Pilot Program implemented in this emergency

action should ensure that the Regular B DAS Program achieves the primary objective of this program, which is to facilitate the targeting of healthy groundfish stocks without catching substantial amounts of groundfish stocks of concern. Therefore, this emergency interim rule retains the haddock separator trawl requirement for trawl vessels participating in the Regular B DAS Program.

*Comment 20:* One commenter supported and one commenter opposed the trip limits on flatfish, skates, monkfish, and lobsters for vessels fishing with a haddock separator trawl in the proposed Regular B DAS Program because it would increase discards.

*Response:* The Regular B DAS Program is intended to allow vessels to target healthy groundfish stocks such as haddock without catching substantial amounts of groundfish stocks of concern, particularly cod and certain flatfish. The proposed restrictive trip limits on flatfish, skates, monkfish, and lobsters are the same as those proposed in FW 42, and are meant to encourage the proper use of the haddock separator trawl in the Regular B DAS Program. When properly used, the haddock separator trawl has proven effective at reducing the catch of cod, flounders, and other species while having little impact on the catch of haddock. However, when improperly configured, this net is capable of catching large amounts of bottom-dwelling species such as flatfish and skates. This measure increases the incentive for fishermen to configure the net properly, since only small amounts of flounders, monkfish, and skates can be landed when haddock separator trawls are required. In doing so, this requirement should reduce discards, as an improperly-configured net would require vessel operators to spend time sorting the catch and discard any fish in excess of the proposed trip limits.

#### *DAS Leasing Program*

*Comment 21:* Two commenters opposed continuing the DAS Leasing Program through this emergency action, indicating that leasing DAS undermines efforts to reduce F on overfished stocks. Four commenters expressed support for the DAS Leasing Program, offering that it provides necessary benefits to the fishing industry.

*Response:* The DAS Leasing Program provides benefits to fishermen that offset some of the economic and social impacts resulting from continued effort reductions in the groundfish fishery. Analysis prepared for this action indicates that the DAS Leasing Program may have resulted in a small increase in

landings when compared to a regime without DAS leasing. However, this was anticipated by Amendment 13 analysis and was within the projected results. The stocks for which the DAS Leasing Program contributed to the highest increase in landings (GOM haddock, GB haddock, pollock, redfish, witch flounder, and American plaice) are all considered healthy groundfish stocks that do not need F reductions as part of this action. The DAS Leasing Program provided regulatory relief that allowed lessee vessels, on average, to fish enough DAS to cover their overhead and crew expenses, resulting in economic benefits to the fishery. National Standards 5 and 8 require that management measures consider efficiency in the utilization of fishery resources and provide for the sustained participation of fishing communities, respectively. Consistent with these national standards, this emergency action continues the DAS Leasing Program in order to increase the efficient utilization of fishery resources and help provide a means of mitigating some of the economic impacts of effort reductions in the fishery to promote continued participation, without jeopardizing conservation objectives of this action or the FMP.

#### *Eastern U.S./Canada Haddock SAP Pilot Program*

*Comment 22:* One commenter supported the proposed revisions to the Eastern U.S./Canada Haddock SAP, while another opposed the delayed opening of this SAP, suggesting that it would reduce the chances of catching haddock in this SAP and create additional gear conflicts with offshore lobster vessels due to an expected increase in participants.

*Response:* The delayed start date of August 1 for this SAP was proposed by the Council's Groundfish Advisory Panel, a group of industry representatives that provide input into Council decisions. The intention of this provision is to avoid concentrations of GB cod in the SAP area during the early summer, thereby lowering the catch rates of GB cod in this SAP. High catch rates of GB cod in this SAP contributed to the early closing of the Eastern U.S./Canada Area on in FY 2005, and, therefore, access to the Eastern U.S./Canada Haddock SAP. A delayed opening would reduce the catch rate of GB cod, allowing vessels greater access to the available haddock resource throughout the season specified for this SAP. An informal agreement between offshore lobster vessels and groundfish vessels fishing on GB was reached during 2005 to minimize potential gear



conflicts between these two groups during the season specified for this SAP. NMFS encourages such cooperation among fishing sectors and hopes that the agreement between the offshore lobster fleet and the groundfish fleet can continue during FY 2006 and that similar informal agreements can be worked out to mitigate any potential gear conflicts that may arise in the future.

#### *Eastern U.S./Canada Area Flexibility*

*Comment 23:* Two commenters supported allowing vessels to fish inside and outside of the Eastern U.S./Canada Area on the same trip. However, one commenter opposed attributing any cod caught on such trips towards the Eastern U.S./Canada Area GB cod hard TAC, indicating that this would likely cause the premature closure of the Eastern U.S./Canada Area because of the attainment of the GB cod TAC.

*Response:* This measure was first developed to address a safety concern identified by the Council's safety meetings held in 2005 to allow vessels to fish closer to shore under worsening weather conditions. To prevent the misreporting of cod, haddock, and yellowtail flounder caught on trips inside and outside of the Eastern U.S./Canada Area, all cod, haddock, and yellowtail flounder will count toward the Eastern U.S./Canada Area TACs for each species. This provision is necessary to reduce incentives to utilize this flexibility in situations other than adverse weather conditions. This is a conservative approach that will help ensure the TACs are not exceeded.

#### *Recreational Restrictions*

*Comment 24:* One commenter indicated that the recreational fishery is not responsible for the excessive F observed on GOM cod. This individual suggested that the commercial sector caused such F and should, therefore, bear the responsibility for reducing F on GOM cod. Two other commenters supported the recreational measures.

*Response:* Both the recreational and commercial fishing sectors catch GOM cod and contribute to the mortality on GOM cod stocks. During the development of FW 42, the Council decided that both the recreational and commercial fishing sectors should take an equivalent proportionate reduction in F. According to GARM II, F on GOM cod needs to be reduced by 32 percent to maintain the Amendment 13 rebuilding program during FY 2006. The recreational measures in this emergency action were proposed by the Recreational Advisory Panel during the development of FW 42, and are

designed to achieve at least a 32-percent reduction in F on GOM cod from the recreational fishing sector.

*Comment 25:* One individual expressed concern over the potential administrative conflict between the existing regulations at § 648.82(f)(2) that require charter/party vessels intending to fish in any of the GOM closed areas (including the GOM rolling closure areas) to obtain a LOA and participate in the charter/party fishery for a minimum period of 3 months and the proposed seasonal GOM cod possession prohibition. This commenter indicated that the proposed seasonal GOM cod possession prohibition, in conjunction with the 3-month minimum participation period requirement of the LOA, would force vessels to obtain another LOA for the start of the next fishing year, as the beginning of the new charter boat season (presumably April 1) would only allow for 60 days of participation before the end of the fishing year. The commenter suggested that NMFS revise the minimum participation period under this emergency action.

*Response:* The proposed seasonal GOM cod possession prohibition for charter/party vessels would neither affect the minimum participation period for the charter/party LOA, nor affect the ability for charter/party vessels to obtain such a LOA at any time during the fishing year. The proposed measures allow charter/party vessels to obtain a LOA to fish within the GOM closed areas throughout the fishing year, provided such vessels do not possess GOM cod between November through March. The minimum participation period requirement was developed by the Council in FW 33 to the FMP to minimize the monitoring and enforcement difficulties associated with charter/party vessels fishing in the GOM closed areas on one trip and then fishing under the commercial fishing regulations on a subsequent trip. The concern at the time was that such vessels would retain any cod caught in the closed areas under the charter/party regulations to sell upon landing on a subsequent commercial fishing trip. The Council has not proposed any changes to this minimum participation period, as the original problem that such a minimum participation period addresses still exists. As a result, it would be inappropriate to revise the minimum participation period under this action. Further, current policy requires charter/party vessels to obtain a new LOA for the start of the next fishing year on May 1, to accurately document the number of LOAs that were issued in a particular fishing year.

Allowing vessels to continue the participation period of a LOA between fishing years would undermine this effort. As a result, no changes to the minimum participation period or the current LOA issuance policy were made in this emergency action.

#### *General Comments*

*Comment 26:* Three commenters opposed this emergency action, stating that NMFS cannot use emergency authority to implement management measures that would affect stocks that are not overfished and that do not need additional F reductions. Further, one commenter indicated that NMFS does not have the authority to address monkfish through an emergency action under the NE Multispecies FMP. However, one commenter felt that the proposed emergency action is necessary and appropriate, as it is important to maintain progress in the Amendment 13 rebuilding programs.

*Response:* Section 305(c) of the Magnuson-Stevens Act specifies that, if the Secretary "finds that an emergency or overfishing exists or that interim measures are needed to reduce overfishing for any fishery, he may promulgate emergency regulations or interim measures to address the emergency or overfishing, without regard to whether a fishery management plan exists for such fishery." As a result, NMFS, acting on behalf of the Secretary, does have the authority to implement measures to address an emergency in the groundfish fishery, including implementing regulations that would affect participants in the monkfish fishery. The need for emergency action is well specified in the preamble to the proposed rule for this action and in the EA prepared for this action. Stocks in need of F reductions for FY 2006 are located in all areas. In addition, while there are some stocks that do not need immediate F reductions to comply with the Amendment 13 rebuilding programs, several of these stocks, in particular, GB cod and GB yellowtail flounder, are severely overfished and overfishing is still occurring. Due to the commingled nature of the groundfish fishery, it is very difficult to design management measures that would reduce F on some groundfish stocks, but not others. As a result, regardless of the measures implemented, F on all stocks is likely to decline. Because of the identified need to reduce F on several groundfish stocks located in all areas managed by the NE Multispecies FMP, and because other stocks are still overfished with overfishing still occurring, it is entirely appropriate to promulgate emergency regulations

under the authority of section 305(c) of the Magnuson-Stevens Act. In addition, the preamble of the proposed rule indicated that overfishing continues in the monkfish fishery and that the pace of rebuilding has slowed. The EA prepared for this action demonstrates that the Regular B DAS Pilot Program implemented by FW 40A to the FMP was a substantial source of F for the monkfish fishery. Therefore, this emergency action eliminates the possibility that this program would be used to target monkfish, providing the necessary means to reduce overfishing for this fishery, as provided by the authority in section 305(c) of the Magnuson-Stevens Act.

*Comment 27:* One commenter offered that the haddock separator trawl should be required by all vessels fishing on GB.

*Response:* As noted in the response to Comment 18, the preamble of the proposed rule for this action inadvertently specified that all vessels must use a haddock separator trawl when participating in the Regular B DAS Program, but should have stated that only trawl vessels must use a haddock separator trawl in this program.

*Comment 28:* Two commenters felt that the proposed action would reward larger offshore vessels at the expense of smaller, inshore vessels.

*Response:* The proposed action does not specifically favor any one group over another. The agency's policy guidelines for implementing emergency rules indicates that such rules demonstrate compliance with all of the national standards. National Standard 4 guidelines require that management measures shall be fair and equitable to all fishermen to the extent possible in meeting FMP objectives. The approach to this emergency action is consistent with these guidelines.

*Comment 29:* One commenter expressed concern that the proposed measures are inconsistent with the measures considered by the Council.

*Response:* A majority of the measures in this emergency action are intended to be consistent with those adopted by the Council in FW 42. While specific aspects of the measures proposed by this emergency action differ with what the Council ultimately adopted in FW 42, the emergency measures follow the same principles as the Council did in adopting FW 42. For instance, in FW 42, the Council chose to adopt differential DAS counting as the main measure to reduce F in the GOM and SNE/MA RMAs. This emergency action also relies upon differential DAS counting in these areas, although applied throughout the GOM, and SNE/MA RMAs, as opposed

to discrete areas in the GOM and SNE/MA RMAs adopted in FW 42. In addition, this emergency action implements the GB winter flounder and white hake trip limits proposed in FW 42 in lieu of differential DAS counting for vessels operating in the U.S./Canada Management Area.

*Comment 30:* Four commenters did not support the approach taken by the proposed emergency action and instead proposed alternative management regimes, including the Northeast Seafood Coalition's recent "Industry Proposal" or the GOM Inshore Fisheries Conservation and Stewardship Plan that was previously considered during the development of Amendment 13.

*Response:* It would be inappropriate to implement either of these alternatives outside of the Council process. Such comprehensive alternative management regimes should be afforded careful consideration and extensive public debate concerning the possible implications of such shifts in management strategy that is provided by the Council process. The "industry proposal" was analyzed by the Groundfish PDT in late March 2006. This analysis concluded that this program would not meet the conservation objectives of the FMP. Although Amendment 13 contained a description of the GOM Inshore Fisheries Conservation and Stewardship Plan, no analysis regarding the impacts of this plan has been conducted to date.

*Comment 31:* One commenter contested that the EA prepared for this action did not consider a reasonable set of alternatives, asserting that the National Environmental Policy Act (NEPA) requires that at least one reasonable alternative in addition to the proposed action needs to be considered.

*Response:* NOAA Administrative Order 216-6 provides guidance on the environmental review procedures for complying with NEPA and the implementing regulations issued by the Council on Environmental Quality. This guidance requires that any EA prepared in the support of a management action must consider all reasonable alternatives, including the preferred action and the no action alternative. The EA prepared for this emergency action does consider a range of reasonable alternatives, including the preferred action and the no action alternative. The appropriate range of reasonable alternatives is generally those that meet the purpose and need for the action. The purpose of this action is to implement simple, short-term emergency management measures by the start of FY 2006 in order to immediately reduce F on several groundfish stocks to maintain

the Amendment 13 rebuilding programs and compliance with the Magnuson-Stevens Act. Further, the current regulations require that any management measures necessary to maintain the Amendment 13 rebuilding programs must be implemented by May 1, 2006. Because the measures adopted by the Council were not developed in time to meet the May 1, 2006, implementation date, emergency measures needed to be developed and analyzed prior to the Council's final vote on FW 42. Because any emergency measures would likely have differed with those finally adopted under FW 42, there is also a need to ensure that any proposed emergency management measures are consistent with those adopted under FW 42 to minimize confusion by the industry and facilitate adaptation to the FW 42 measures, if approved and implemented. Because of the rather narrow set of objectives for this emergency action, the range of reasonable alternatives was limited to those alternatives that would meet the purpose and need of this action. Other alternatives were considered for this emergency action but were not fully analyzed in the EA because they did not adequately address the purpose and need for this action. These other alternatives included area closures and a hard-TAC management regime. Based upon public comment, NMFS considered two additional management options for the elimination of differential DAS counting on GB. As discussed above in the response for Comment 7, NMFS prepared a preliminary analysis for these options. Based on this preliminary analysis, it was clear that only one option should be more thoroughly considered. A full analysis of this option was developed and included as an addendum to the original EA prepared for this action. Based upon this analysis, NMFS has revised the proposed emergency action to remove the differential DAS counting measure for those vessels participating in the U.S./Canada Management Area and implement the proposed FW 42 trip limits for GB winter flounder and white hake, instead. As a result, a reasonable range of alternatives considered for this action includes the revised proposed action, the original proposed action, and the no action alternative.

*Comment 32:* One elected official contested that welfare and economic issues have not been thought out properly.

*Response:* The analysis and consideration of the economic impacts of the emergency action are consistent with current agency guidance and applicable statutes regarding the

economic analysis of fishery management actions. The economic impact analysis contained in the EA prepared for this action presents a comprehensive evaluation of the expected economic impacts of the proposed measures. Although this economic analysis does not specifically address welfare issues, the economic impacts to fishing communities are detailed in the EA. Therefore, the economic analysis prepared for this action sufficiently addresses the economic issues associated with the proposed emergency action, as required by current analytical guidance and the Magnuson-Stevens Act.

*Comment 33:* One environmental group specified that the EA prepared for this action needs to state the probability that measures will achieve projected results.

*Response:* The biological analysis prepared for this action does specify the probability that measures will achieve the estimated reductions in F. Section 8.1.1.1 of the EA prepared for this action specifies that the estimated F reductions represent the median outcome that can be expected from the proposed measures. This means that the proposed measures have at least a 50-percent probability of achieving the specified results.

*Comment 34:* One individual requested that NMFS eliminate the haddock trip limit for the 2006 fishing year.

*Response:* The regulations at § 648.86(a)(1)(iii)(B) allow the Regional Administrator to adjust or eliminate the haddock trip limit per DAS or the maximum trip limit if it is projected that such revisions to the haddock trip limit are sufficient to allow the harvest of at least 75 percent of the target TAC, but not allow the target TAC to be exceeded during the fishing year. For FY 2006, the U.S. portion of the proposed target TAC for haddock (GB and GOM combined) for is 36,588 mt. A projection of haddock landings for FY 2006 indicated that less than 75 percent of the proposed target TAC for the 2006 fishing year would be harvested by the end of the fishing year on April 30, 2007, under the restrictive daily and maximum trip limits. This projection also concluded that elimination of the daily and maximum trip limits for haddock would not result in the 2006 target TAC for haddock being exceeded. Because eliminating the daily and maximum trip limits for haddock would facilitate the achievement of OY for the groundfish fishery, the daily and maximum trip limits for haddock are eliminated for the duration of this emergency action.

### Changes From the Proposed Rule

NMFS has made several changes to the proposed rule as a result of public comment, to correct inadvertent errors, and to further clarify specific measures. These changes are listed below in the order that they appear in the regulations.

In 648.14, additional paragraphs are suspended and others added to correct reference errors. Paragraphs (a)(179) and (180) are inserted to specify that vessels must submit an additional catch report for yellowtail flounder via VMS within 2 hours of crossing the border into or out of the Western U.S./Canada Area and are prohibited from fishing both inside and outside of this area unless this additional catch report is submitted.

In § 648.82, paragraphs (n)(2) and (s)(1)(iii) are revised to account for revisions to the way DAS are charged under this emergency interim rule. These revisions include specifying that Category A DAS will be charged at a rate of 1.4:1 for all vessels fishing outside of the U.S./Canada Management Area and not under the U.S./Canada Resource Sharing Understanding. Vessels fishing within the U.S./Canada Management Area and under the U.S./Canada Resource Sharing Understanding will be charged Category A DAS used at a rate of 1:1. Finally, language clarifying how DAS will be charged for vessels fishing within the Western U.S./Canada Area is inserted.

In § 648.85, paragraph (a)(3)(viii) is modified to clarify that a vessel intending to fish outside of either the Western or Eastern U.S./Canada Area must declare its intent to do so via VMS prior to leaving the dock and/or leaving the Eastern U.S./Canada Area, respectively.

In § 648.86, paragraphs (b)(1)(ii) and (b)(2)(ii) are revised to account for revisions to the cod running clock provision due to differential DAS counting under this action. In addition, paragraph (e) is revised, and paragraph (j) is added to implement trip limits for white hake and GB winter flounder, respectively.

In § 648.92, paragraph (b)(2)(iv) is revised to correct an inaccurate reference to § 648.92(b)(2)(ii) that should read § 648.92(b)(2)(v). In addition, language referring to the requirement that monkfish Category C or D vessels utilize their monkfish DAS, in conjunction with a NE multispecies DAS, before it can use any monkfish-only DAS is reinserted after being inadvertently omitted from the proposed rule. Finally, language clarifying how the calculation of

monkfish-only DAS is affected by differential DAS counting is inserted.

### Classification

The Regional Administrator has determined that the management measures implemented by this interim final rule are necessary for the conservation and management of the NE multispecies fishery, and are consistent with the Magnuson-Stevens Act and other applicable laws.

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

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

An EA was prepared for this action that analyzed the environmental impacts of the measures being implemented, as well as alternatives to such measures. An addendum to this EA was prepared which includes additional analysis describing the impacts of one other option considered by NMFS in order to implement the proposed FW 42 trip limits for GB winter flounder and white hake, and to eliminate differential DAS counting from the U.S./Canada Management Area on GB. The EA and the addendum to the EA considered the extent to which the impacts could be mitigated, and considered the objectives of the action in light of statutory mandates, including the Magnuson-Stevens Act. NMFS also considered public comments received during the comment period of the proposed rule. A copy of the Finding of No Significant Impact for the EA prepared for this action is available from the Regional Administrator (see **ADDRESSES**).

Pursuant to 5 U.S.C. 553(d)(3), the Assistant Administrator finds good cause to waive the 30-day delayed effectiveness for the measures implemented by this emergency interim final rule. As detailed above, due to the delayed development of FW 42, this emergency Secretarial action is necessary to implement measures that would immediately reduce F on certain stocks by the start of the fishing year on May 1. NMFS only became aware that FW 42 would be delayed at the November 2005 Council meeting. This delay limited the ability of NMFS to develop emergency management measures and prepare the relevant analyses to implement such measures, after consideration of public comment, in time to allow delayed effectiveness before the beginning of FY 2006. In addition, because the measures

included in FW 42 were not formally adopted by the Council until its meeting in late January 2006, it was not possible to develop management measures that exactly mirrored those adopted by the Council until the preparation of this interim final rule. This caused further delay in the preparation of this interim final rule. The current regulations require that any management measures necessary to reduce F for stocks that do not achieve the Amendment 13 F objectives for FY 2006 must be implemented by the start of FY 2006. Failure to waive the 30-day delay in effectiveness would prevent such measures from being implemented on May 1, 2006, allowing existing regulations to continue. According to the analysis prepared for this action, the existing regulations are not sufficient to reduce F on several groundfish stocks to meet the F objectives of the Amendment 13 rebuilding programs for FY 2006. The existing management measures would, therefore, allow for the continuation of overfishing on specific groundfish stocks such as GOM cod, CC/GOM and SNE/MA yellowtail flounder, GB winter flounder, and white hake, stocks in need of F reductions for the start of FY 2006.

#### Public Reporting Burden

This emergency action contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) that have been previously approved by OMB under control numbers 0648-0202, 0648-0212, and 0648-0475. Public reporting burden for these collections of information are estimated as follows:

1. GB cod research set-aside TAC request, OMB# 0648-0202 (30 min/response);
2. VMS purchase and installation, OMB# 0648-0202 (1 hr/response);
3. VMS proof of installation, OMB# 0648-0202 (5 min/response);
4. Automated VMS polling of vessel position, OMB# 0648-0202 (5 sec/response);
5. Declaration of intent to participate in the Regular B DAS Program or fish in the U.S./Canada Management Areas and associated SAPs and DAS to be used via VMS prior to each trip into the Regular B DAS Program or a particular SAP, OMB#0648-0202 (5 min/response);
6. Notice requirements for observer deployment prior to every trip into the Regular B DAS Program or the U.S./Canada Management Areas and associated SAPs OMB# 0648-0202, (2 min/response);
7. Daily electronic reporting of kept and discarded catch of stocks of concern and GB cod, GB haddock, and GB

yellowtail flounder while participating in the Regular B DAS Program or fishing in the U.S./Canada Management Areas and associated SAPs, respectively, OMB# 0648-0212 (15 min/response);

8. Daily electronic catch and discard reports of GB yellowtail flounder when fishing on a combined trip into the Western U.S./Canada Area, OMB# 0648-0212 (15 min/response);

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

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

11. 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).

These estimates include the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

The information collection for the declaration of the intent to fish inside and outside of the Eastern U.S./Canada Area is a modification of the DAS "flip" notification. When a vessel "flips" its DAS declaration from Category B DAS to Category A DAS, it is informing NMFS that it is changing the type of DAS being used for that trip. In a similar manner, a vessel would "flip" its area declaration from exclusively in the Eastern U.S./Canada Area to being able to fish inside and outside of the Eastern U.S./Canada Area on the same trip. Since the original information collection submission for the DAS flipping measure overestimated the number of DAS flips that would occur during a particular fishing year, this action reduces the burden associated with that measure and adds a burden for the declaration of the intent to fish inside and outside of the Eastern U.S./Canada Area by the same amount. In this manner, the burdens of both information collections are appropriately accounted for and the information collection submissions more accurately reflect vessel practices. To document this revision, the information collection previously approved by OMB under OMB# 0648-0202 is being revised by means of a worksheet, as authorized by consultation with OMB.

#### Final Regulatory Flexibility Analysis (FRFA)

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), prepared this FRFA in support of the measures for implementation through this emergency action. The FRFA

describes the economic impacts that this emergency action will have on small entities. The FRFA incorporates the economic impacts summarized in the Initial Regulatory Flexibility Analysis (IRFA) for the proposed rule, based upon the corresponding economic analysis of the EA and the addendum to the EA prepared for this action to reflect changes from the proposed rule to the final interim rule; the comment and response section of this interim rule; and the other analyses contained in the EA for this action. For the most part, those impacts are not repeated here. A copy of the IRFA, the FRFA, the RIR, the EA, and the addendum to the EA prepared for this action are available from NMFS, Northeast Regional Office and are available on the Northeast Regional Office Web site (see **ADDRESSES**). A description of why this action was considered, the objectives of, and the legal basis for this final rule are contained in the preamble to this rule, the preamble of the proposed rule for this action, and in the EA prepared for this action and are not repeated here. In summary, this rule implements measures to immediately reduce F on particular groundfish stocks for the start of FY 2006 on May 1, 2006. This action is necessary to maintain efforts to continue the rebuilding programs established under Amendment 13 and maintain compliance with the requirements of the Magnuson-Stevens Act. The DAS Leasing Program and a modified Regular B DAS Program are continued in this action to help offset some of the economic and social impacts of continued effort reductions in the groundfish fishery and to provide some means of regulating effort shifts caused by differential DAS counting in this action. The measures implemented by this action are necessarily limited in scope because they are intended only to provide sufficient temporary reduction in F for several groundfish stocks so as not to jeopardize the rebuilding programs of several groundfish stocks while NMFS and the Council implement more permanent management measures through FW 42.

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

NMFS received 45 comments on the proposed rule. Of these, only one related to the IRFA. A summary of the economic issues raised, and NMFS's responses, follow:

*Comment A:* One industry group claims that the EA prepared for this action ignores the biological and economic impacts of differential DAS counting on monkfish Category C and D vessels.

*Response:* NMFS acknowledges that the EA, including the IRFA, prepared for this action inadvertently failed to fully assess the biological and economic impacts of differential DAS counting on monkfish Category C, D, F, G, or H vessels. This was an oversight and has been addressed through updates to the EA included in an addendum to the original EA. However, the economic impacts analysis prepared for this action did include the affects of the proposed measures on total fishing revenue. Total fishing revenue includes impacts on revenue generated from the catch and subsequent sale of monkfish. As a result, the EA did include some assessment of the economic impacts of differential DAS counting on the monkfish fishery.

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

This interim final rule implements measures that have the potential to affect any vessel currently issued a limited access NE multispecies permit or an open access NE multispecies charter/party permit. However, for the purposes of determining impacts, only vessels that actually participated in an activity during FY 2004 that would be affected by the proposed action were considered for analysis. During FY 2004, a total of 1,002 permit holders had an allocation of Category A DAS. Limited access permit holders may participate in both commercial and party/charter activity without having a party/charter permit. In FY 2004, 705 entities participated in the commercial groundfish fishery and 6 participated in the party/charter fishery for GOM cod. Four of these entities participated in both commercial and party/charter activities, leaving a total of 707 unique vessels with an allocation of Category A DAS that may be affected by this action. Based on FY 2004 data, measures implemented by this rule would have a potential impact on a total of 3,216 limited or open access groundfish permit holders, of which less than one-third (976) actually participated in either a commercial or party/charter activity that would be affected by this action. Of these, 858 commercial fishing vessels are estimated to be affected, including 132 limited access monkfish Category C or D vessels that fished in the Regular B DAS Pilot Program during FYs 2004–2005.

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

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

The measures implemented by this emergency action include collection-of-information requirements subject to the PRA that have been previously approved by OMB under control numbers 0648–0202, 0648–0212, and 0648–0475. Measures implemented by this emergency action include the following provisions requiring either new or revised reporting and recordkeeping requirements: (1) VMS purchase and installation; (2) VMS proof of installation; (3) automated VMS polling of vessel position; (4) declaration of intent to participate in the Regular B DAS Program or fish in the U.S./Canada Management Area and associated SAPs and DAS to be used via VMS prior to each trip into the Regular B DAS Program or a particular SAP; (5) notice requirements for observer deployment prior to every trip into the Regular B DAS Program or the U.S./Canada Management Area and associated SAPs; (6) daily electronic reporting of kept and discarded catch of stocks of concern and GB cod, GB haddock, and GB yellowtail flounder while participating in the Regular B DAS Program or fishing in the U.S./Canada Management Area and associated SAPs, respectively; (7) daily electronic catch and discard reports of GB yellowtail flounder when fishing on a combined trip into the Western U.S./Canada Area; (8) DAS “flip” notification via VMS for the Regular B DAS Program; (9) DAS Leasing Program application; and (10) declaration of intent to fish inside and outside of the Eastern U.S./Canada Area on the same trip.

It is difficult to estimate accurately the total reporting and recordkeeping burden associated with this action since the frequency of participation in the Regular B DAS Program, the Eastern U.S./Canada SAP Pilot Program, the DAS Leasing Program, and fishing both inside and outside of the Eastern U.S./Canada Area on the same trip will be determined entirely by each vessel owner.

All participants in the Regular B DAS Program or the U.S./Canada Management Area and its SAPs must use VMS. All vessels that do not currently possess VMS must obtain one in order to participate in the programs implemented in this interim final rule. The cost of purchasing and installing VMS, along with the associated basic operational costs, have already been considered in previous analyses submitted in accordance with the PRA. Accordingly, the costs associated with the purchase, installation, and operation of VMS units are not summarized here. The new information-collection provisions associated with this emergency action involve the declaration of the intent to participate in these programs and the daily electronic reporting of catch and discards of fish by vessels electing to fish in the Regular B DAS Program, the Eastern U.S./Canada SAP Pilot Program, and vessels fishing both inside and outside of the Eastern U.S./Canada Area on the same trip. This information is required to be submitted via VMS. Participating vessels will pay the costs associated with such declarations. Since the costs for these submissions have previously been approved by the OMB, as specified above, there are no additional costs to the public associated with measures implemented by this emergency action. Only the minimum data to meet the requirements of the above data needs are requested from all participants. Since all of the respondents are small businesses, separate requirements based on the size of the business have not been developed.

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

Because this action largely builds on and amends Amendment 13 and subsequent framework actions, measures for which numerous alternatives were considered, and because of the focused objectives of this action, NMFS only fully considered two main alternatives for analysis: The proposed emergency action and the No Action alternative. Two other main

alternatives (area closures and a hard TAC alternative) were considered, but were rejected because they did not meet the objectives of this action. The area closure alternative included closing portions of the GOM RMA to reduce F on GOM cod and was rejected because these alternatives could have forced fishing effort to move into other RMAs; would have prohibited a majority of the fishing industry from operating in the GOM, resulting in significant economic impacts to the fishing industry operating in the GOM; and could have caused unnecessary impacts on healthy groundfish stocks, thereby reducing opportunities for vessels to target and generate revenue from these stocks and achieve OY. The hard-TAC alternative included hard TACs for species requiring F reductions for FY 2006, but were rejected because current data collection mechanisms do not allow for the complete, real-time catch monitoring that would be necessary for a hard-TAC alternative and because such an alternative would be inconsistent with measures adopted in FW 42. In response to public comment and other concerns, two additional options to the preferred alternative were considered to remove the differential DAS counting measure on GB. These two options to revise the preferred alternative consist of all of the measures included within the original preferred alternative, with the exception that the differential DAS counting measure was eliminated from the U.S./Canada Management Area on GB and replaced with the proposed FW 42 trip limits for GB winter flounder and white hake. The two additional options to modify the differential DAS counting measure include: (1) Eliminate differential DAS counting for the entire U.S./Canada Management Area, and (2) eliminate differential DAS counting from just the Eastern U.S./Canada Area. Preliminary analysis of these two options indicated that Option 1 would provide comparable and slightly better ecological benefits as the original preferred alternative or Option 2, with substantially fewer adverse economic impacts. For example, the original preferred alternative and Option 2 would achieve the necessary F reductions for three stocks (GOM cod, SNE/MA winter flounder, and white hake) while substantially reducing F, and, therefore, yield, from other healthy groundfish stocks. In contrast, the measures in Option 1 will achieve the necessary F reductions for four stocks (GOM cod, SNE/MA winter flounder, SNE/MA yellowtail flounder, and white hake), with fewer reductions in yield

from healthy groundfish stocks. The original preferred alternative and Option 2 would have resulted in a total reduction in groundfish sales of approximately \$22.6 million and \$21.6 million, respectively. However, the measures in Option 1 will result in a total reduction in groundfish sales of only \$16.8 million. As a result, NMFS is implementing measures in Option 1 as the revised preferred alternative, as they would achieve similar, if not better, ecological benefits than the original preferred alternative, but with far fewer adverse economic impacts, consistent with the objectives of this action, national standards, and other applicable law. The remainder of this discussion will focus on the ways in which this final rule, in implementing the revised preferred alternative, will minimize the adverse economic impacts on small entities. An addendum to the original EA prepared for this action was prepared that includes the full analysis of the impacts of Option 1 as the revised preferred alternative and is available from the Regional Administrator (see **ADDRESSES**).

Analysis prepared for this emergency action examined the impacts on the fishing industry that would result from the continuation of the current management measures (*i.e.*, the set of measures currently in place for the NE multispecies fishery through the October 14, 2005, implementation of measures contained in FW 41 (70 FR 54302; September 14, 2005)), along with the measures implemented by this emergency action and described in the **SUMMARY** section of the preamble. This analysis assumed that the measures implemented by this emergency action would remain in effect for the duration of FY 2006 (*i.e.*, through April 30, 2007). The No Action alternative is defined as the current management measures, including the two default measures implemented by Amendment 13 (a change in the ratio of Category A to Category B DAS from 60:40 to 55:45, and differential DAS counting at a rate of 1.5:1 in the SNE/MA RMA). The No Action alternative would retain the current trip limits for GOM cod and CC/GOM, GB, and SNE/MA yellowtail flounder. In addition, under the No Action alternative, the DAS Leasing Program and the Regular B DAS Pilot Program would expire on April 30, 2006, and the Eastern U.S./Canada Haddock SAP would expire on November 18, 2006.

The No Action alternative would result in fewer negative economic impacts than the measures implemented by this emergency action. However, the No Action alternative would not meet

the ecological objectives of this emergency action. In addition, specific measures included in this emergency action provide additional benefits beyond the No Action alternative. This emergency action implements programs that will provide small entities with additional fishing opportunities that are intended to mitigate some of the negative economic impacts resulting from the effort reductions implemented under Amendment 13 and this emergency action. This emergency action provides these additional fishing opportunities, including delaying the start date of the Eastern U.S./Canada Haddock SAP Pilot Program and continuing the DAS Leasing Program and a modified Regular B DAS Program, without compromising the Amendment 13 rebuilding programs. In addition, this emergency action also increases opportunities for vessels to more efficiently conduct fishing operations by allowing vessels to fish inside and outside of the Eastern U.S./Canada Area on the same trip.

The Eastern U.S./Canada Haddock SAP Pilot Program allows limited access NE multispecies vessels the opportunity to use Category A or Category B (Regular and Reserve) DAS to target haddock in a designated portion of the Eastern U.S./Canada Area. Most of the benefits will be limited to relatively large vessels, due to the offshore location of the SAP Pilot Program. Participating vessels will be subject to the existing requirements of the Eastern U.S./Canada Area, including use of a VMS, and a requirement to use a haddock separator trawl. Delaying the start date of this SAP beyond the spawning period for species caught under this SAP is intended to provide further protection for GB cod and GB yellowtail flounder by eliminating bycatch of these species under this SAP from May through July and to increase ex-vessel prices for fish landed, as lower prices are often observed during that period due to the poor condition of the fish as a result of recent spawning. The implementation of additional incidental catch TACs for GB winter flounder and GB yellowtail flounder may result in these TACs being caught early in the program, resulting in the prohibition on the use of Category B (Regular and Reserve) DAS in this SAP for the duration of the season. However, these TACs provide incentives to properly configure the haddock separator trawl and avoid catching such stocks, resulting in prolonging access to this program under a Category B DAS and increasing the probability that more of the available haddock TAC will be caught. Therefore,

these incidental catch TACs, in addition to delaying the start date for this SAP, may prolong access to this SAP, resulting in potentially higher ex-vessel prices, as landings of higher quality fish are spread out throughout the season, and a higher probability that the available haddock TAC can be harvested.

Total revenues from the use of Regular B DAS over the duration of the Pilot Program were conservatively estimated at \$10.4 million. This emergency action reduces the number of allowable Regular B DAS during quarter 1 to 500 DAS, while leaving the allowable Regular B DAS for quarters 2–4 at 1,000 DAS. In addition, this action restricts the use of Regular B DAS to the U.S./Canada Management Area, requires the use of a separator trawl, and designates both GB winter flounder and GB yellowtail flounder as stocks of concern with 100 lb (45 kg) per DAS trip limits. Although it could limit participation in the program, neither restricting the area for Regular B DAS, nor the separator trawl requirement is expected to necessarily change the potential earnings from the Regular B DAS Program. However, both GB yellowtail and winter flounders were important contributors to total Regular B DAS trips. Analysis of catch data on trips taken in the Pilot Program indicate that catch rates of stocks of concern may be too high, resulting in a closure of the area for Regular B DAS before even half of the allotted B DAS are used. This analysis suggests that potential revenues from the Regular B DAS Program may be reduced by more than two-thirds, to about \$3 million. Despite this reduction in potential revenues, the modified Regular B DAS Program implemented by this emergency action will result in some additional sources of fishing revenue for FY 2006. Since the Regular B DAS Pilot Program expired on October 31, 2005, the No Action alternative would yield no economic benefits from this program. Therefore, the modified Regular B DAS Program implemented by this emergency action is favorable when compared to the No Action alternative.

This emergency action allows vessels to fish inside and outside of the Eastern U.S./Canada Area on the same trip, which increases flexibility of vessel operations and reduces the risk of an unprofitable trip into the Eastern U.S./Canada Area. Without such flexibility, if a vessel does not locate a profitable amount of fish in the Eastern U.S./Canada Area, it would not have the option of fishing outside the area on the same trip. The No Action alternative would prohibit vessels from fishing

inside and outside of this area on the same trip, and would not reduce the risk of an unprofitable trip. Therefore, the measure implemented by this emergency action is favorable when compared to the No Action alternative, as it would increase the flexibility, and therefore profitability, of trips into the Eastern U.S./Canada Area.

Under this emergency interim rule, the DAS Leasing Program will be continued unchanged, although the differential DAS counting measure implemented by this rule will likely have an impact on the price of a leased DAS. Differential DAS counting means that a vessel that may want to lease DAS may need to lease a larger number of DAS to get in the desired actual fishing time. Despite this, the continuation of the DAS Leasing Program provides additional opportunities for vessels to fish compared to the No Action alternative, as the DAS Leasing Program would otherwise expire on April 30, 2006.

Finally, this action relieves a restriction by eliminating unnecessary daily and maximum trip limits for haddock for FY 2006. These limits were implemented to prevent the target TAC for haddock from being exceeded. The target TAC for haddock has not been exceeded since 1996. Eliminating these restrictions will allow the fishing industry to harvest at least 75 percent of the target TAC for haddock during FY 2006. Further, eliminating these restrictions will allow vessels to possess and land haddock in excess of the daily and maximum trip limits, thereby preventing biological waste and providing an opportunity to offset some of the adverse economic impacts resulting from the implementation of Amendment 13 and this emergency action.

Despite the fewer negative economic impacts likely to result from the No Action alternative, this alternative would not result in sufficient reductions in F for specific groundfish stocks necessary to maintain the rebuilding programs established under Amendment 13. As a result, the No Action alternative would not prevent overfishing, as required by the Magnuson-Stevens Act. While the measures implemented by this emergency action do not, by themselves, prevent overfishing, in conjunction with the measures adopted by the Council for implementation under FW 42, these measures will prevent overfishing and assist the fishery to meet the Amendment 13 rebuilding objectives during FY 2006, as required by the Magnuson-Stevens Act. The measures implemented by this emergency action

were selected because they meet statutory requirements, as well as the objectives of this action, and attempt to minimize the expected economic impacts as much as possible.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) 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. In conjunction with this rulemaking process, a small entity compliance guide was prepared. Copies of the guide will be sent to all holders of limited access NE multispecies permits. Copies of the guide can also be obtained from the Regional Administrator (see **ADDRESSES**) and is available on the Internet at <http://www.nero.noaa.gov>.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 7, 2006.

**John Oliver,**

*Deputy Assistant Administrator for Operations, 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, paragraphs (a)(1)(i)(A), (B), (E), (G), and (J); (a)(2)(i)(B), (E), (G), and (J); (a)(3)(i)(B), (E), (G), and (J); (a)(4)(i)(B), (E), (G), and (J); (a)(5)(i)(B), (E), (G), and (J); (a)(6)(i)(B), (E), (G), and (J); (a)(7)(i)(B), (E), (G), and (J); (a)(9)(i)(E), (G), and (J); (a)(12)(i)(B)(2), (E), (G), and (J); (a)(13)(i)(B) and (G); and (c)(2)(iii)(A) are suspended and paragraphs (a)(1)(i)(N) through (R); (a)(2)(i)(N), (P), and (Q); (a)(3)(i)(M) through (P); (a)(4)(i)(N) through (Q); (a)(5)(i)(M) through (P); (a)(6)(i)(M) through (P); (a)(7)(i)(M) through (P); (a)(9)(i)(O) through (Q); (a)(12)(i)(N) through (Q); (a)(13)(i)(O) and (P); and (c)(2)(iii)(C) are added to read as follows:

#### **§ 648.4 Vessel permits.**

(a) \* \* \*  
(1) \* \* \*  
(i) \* \* \*

(N) *Eligibility.* To be eligible to apply for a limited access NE multispecies permit, as specified in § 648.82, a vessel must have been issued a limited access NE multispecies permit for the preceding year, be replacing a vessel that was issued a limited access NE multispecies permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history; unless otherwise specified in this paragraph (a)(1)(i)(N). A vessel may apply for a limited access Handgear A permit described in § 648.82(u)(6), if it meets the criteria described under paragraphs (a)(1)(i)(N)(1), (2), and (3) of this section.

(1) The vessel must have been previously issued a valid NE multispecies open access Handgear permit during at least 1 fishing year during the fishing years 1997 through 2002; and

(2) The vessel must have landed and reported to NMFS at least 500 lb (226.8 kg) of cod, haddock, or pollock, when fishing under the open access Handgear permit in at least 1 of the fishing years from 1997 through 2002, as indicated by NMFS dealer records (live weight), submitted to NMFS prior to January 29, 2004.

(O) *Application/renewal restrictions.* All limited access permits established under this section must be issued on an annual basis by the last day of the fishing year for which the permit is required, unless a Confirmation of Permit History (CPH) has been issued as specified in paragraph (a)(1)(i)(R) of this section. Application for such permits must be received no later than 30 days before the last day of the fishing year. Failure to renew a limited access permit in any fishing year bars the renewal of the permit in subsequent years.

(P) *Replacement vessels.* With the exception of vessels that have obtained a limited access Handgear A permit described in § 648.82(u)(6), to be eligible for a limited access permit under this section, the replacement vessel must meet the following criteria and any other applicable criteria under paragraph (a)(1)(i)(F) of this section:

(1) The replacement vessel's horsepower may not exceed by more than 20 percent the horsepower of the vessel's baseline specifications, as applicable; and

(2) The replacement vessel's length, GRT, and NT may not exceed by more than 10 percent the length, GRT, and NT of the vessel's baseline specifications, as applicable.

(Q) *Consolidation restriction.* Except as provided for in the NE Multispecies DAS Leasing Program, as specified in § 648.82(t), and the NE Multispecies

DAS Transfer Program, as specified in § 648.82(l), limited access permits and DAS allocations may not be combined or consolidated.

(R) *Confirmation of permit history.* Notwithstanding any other provisions of this part, a person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has sunk, been destroyed, or transferred to another person, must apply for and receive a CPH if the fishing and permit history of such vessel has been retained lawfully by the applicant. To be eligible to obtain a CPH, the applicant must show that the qualifying vessel meets the eligibility requirements, as applicable, in this part. Issuance of a valid CPH preserves the eligibility of the applicant to apply for a limited access permit for a replacement vessel based on the qualifying vessel's fishing and permit history at a subsequent time, subject to the replacement provisions specified in this section. If fishing privileges have been assigned or allocated previously under this part, based on the qualifying vessel's fishing and permit history, the CPH also preserves such fishing privileges. A CPH must be applied for in order for the applicant to preserve the fishing rights and limited access eligibility of the qualifying vessel. An application for a CPH must be received by the Regional Administrator no later than 30 days prior to the end of the first full fishing year in which a vessel permit cannot be issued. Failure to do so is considered abandonment of the permit as described in paragraph (a)(1)(i)(K) of this section. A CPH issued under this part will remain valid until the fishing and permit history preserved by the CPH is used to qualify a replacement vessel for a limited access permit. Any decision regarding the issuance of a CPH for a qualifying vessel that has applied for or been issued previously a limited access permit is a final agency action subject to judicial review under 5 U.S.C. 704. Information requirements for the CPH application are the same as those for a limited access permit. Any request for information about the vessel on the CPH application form refers to the qualifying vessel that has been sunk, destroyed, or transferred. Vessel permit applicants who have been issued a CPH and who wish to obtain a vessel permit for a replacement vessel based upon the previous vessel history may do so pursuant to paragraph (a)(1)(i)(P) of this section.

(3) \* \* \*  
(i) \* \* \*

(N) *Application/renewal restrictions.* See paragraph (a)(1)(i)(O) of this section.

(O) *Replacement vessels.* See paragraph (a)(1)(i)(P) of this section.

(P) *Consolidation restriction.* See paragraph (a)(1)(i)(Q) of this section.

(Q) *Confirmation of Permit History.* See paragraph (a)(1)(i)(R) of this section.

\* \* \* \* \*  
(3) \* \* \*  
(i) \* \* \*

(M) *Application/renewal restrictions.* See paragraph (a)(1)(i)(O) of this section.

(N) *Replacement vessels.* See paragraph (a)(1)(i)(P) of this section.

(O) *Consolidation restriction.* See paragraph (a)(1)(i)(Q) of this section.

(P) *Confirmation of Permit History.* See paragraph (a)(1)(i)(R) of this section.

\* \* \* \* \*  
(4) \* \* \*  
(i) \* \* \*

(N) *Application/renewal restrictions.* See paragraph (a)(1)(i)(O) of this section.

(O) *Replacement vessels.* See paragraph (a)(1)(i)(P) of this section.

(P) *Consolidation restriction.* See paragraph (a)(1)(i)(Q) of this section.

(Q) *Confirmation of Permit History.* See paragraph (a)(1)(i)(R) of this section.

\* \* \* \* \*  
(5) \* \* \*  
(i) \* \* \*

(M) *Application/renewal restrictions.* See paragraph (a)(1)(i)(O) of this section.

(N) *Replacement vessels.* See paragraph (a)(1)(i)(P) of this section.

(O) *Consolidation restriction.* See paragraph (a)(1)(i)(Q) of this section.

(P) *Confirmation of Permit History.* See paragraph (a)(1)(i)(R) of this section.

\* \* \* \* \*  
(6) \* \* \*  
(i) \* \* \*

(M) *Application/renewal restrictions.* See paragraph (a)(1)(i)(O) of this section.

(N) *Replacement vessels.* See paragraph (a)(1)(i)(P) of this section.

(O) *Consolidation restriction.* See paragraph (a)(1)(i)(Q) of this section.

(P) *Confirmation of Permit History.* See paragraph (a)(1)(i)(R) of this section.

\* \* \* \* \*  
(7) \* \* \*  
(i) \* \* \*

(M) *Application/renewal restrictions.* See paragraph (a)(1)(i)(O) of this section.

(N) *Replacement vessels.* See paragraph (a)(1)(i)(P) of this section.

(O) *Consolidation restriction.* See paragraph (a)(1)(i)(Q) of this section.

(P) *Confirmation of Permit History.* See paragraph (a)(1)(i)(R) of this section.

\* \* \* \* \*  
(9) \* \* \*  
(i) \* \* \*

(O) *Replacement vessels.* (1) See paragraph (a)(1)(i)(P) of this section.



(2) A vessel ≥51 GRT that lawfully replaced a vessel <51 GRT between February 27, 1995, and October 7, 1999, that meets the qualification criteria set forth in paragraph (a)(9)(i)(A) of this section, but exceeds the 51 GRT vessel size qualification criteria as stated in paragraph (a)(9)(i)(A)(2) or (4) of this section, may qualify for and fish under the permit category for which the replaced vessel qualified.

(3) A vessel that replaced a vessel that fished for and landed monkfish between February 28, 1991, and February 27, 1995, may use the replaced vessel's history in lieu of or in addition to such vessel's fishing history to meet the qualification criteria set forth in paragraphs (a)(9)(i)(A)(1), (2), (3), or (4) of this section, unless the owner of the replaced vessel retained the vessel's permit or fishing history, or such vessel no longer exists and was replaced by another vessel according to the provisions in paragraph (a)(1)(i)(D) of this section.

(4) A vessel that replaced a vessel that fished for and landed monkfish between March 15 through June 15 in the years 1995 through 1998, may use the replaced vessel's history in lieu of, or in addition to, such vessel's fishing history to meet the qualification criteria set forth in paragraphs (a)(9)(i)(A)(6) and (7) of this section, unless the owner of the replaced vessel retained the vessel's permit or fishing history, or such vessel no longer exists and was replaced by another vessel according to the provision of paragraph (a)(1)(i)(D) of this section.

(P) Consolidation restriction. See paragraph (a)(1)(i)(Q) of this section.

(Q) Confirmation of permit history. See paragraph (a)(1)(i)(R) of this section.

\* \* \* \* \*

(12) \* \* \*

(i) \* \* \*

(N) For fishing years beyond the initial application year, the provisions of paragraph (a)(1)(i)(O) of this section apply.

(O) Replacement vessels. The provisions of paragraph (a)(1)(i)(P) of this section apply.

(P) Consolidation restriction. The provisions of paragraph (a)(1)(i)(Q) of this section apply.

(Q) Confirmation of permit history. The provisions of paragraph (a)(1)(i)(R) of this section apply.

\* \* \* \* \*

(13) \* \* \*

(i) \* \* \*

(O) Fishing years 2003 and beyond. For fishing years beyond the initial year, the provisions of paragraph (a)(1)(i)(O) of this section apply.

(P) Consolidation restriction. The provisions of paragraph (a)(1)(i)(Q) of this section apply.

\* \* \* \* \*

(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(s). 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. 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. Once a vessel owner has elected this designation, he/she may not change the designation or fish under the other gillnet category for the remainder of the fishing year. 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 § 648.10, paragraphs (b)(1)(vii); (b)(2)(i), (iii), and (iv); (b)(3)(i)(A) and (C); (b)(3)(ii) and (iii); (c)(1) and (3); and (f)(2) are suspended and paragraphs (b)(1)(x); (b)(2)(v) through (vii); (b)(3)(i)(E) and (F); (b)(3)(iv) and (v); (c)(6) and (7); and (f)(3) are added to read as follows:

§ 648.10 DAS notification requirements.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(x) A vessel electing to fish under the Regular B DAS Program, as specified in § 648.85(b)(10);

\* \* \* \* \*

(2) \* \* \*

(v) A vessel that has crossed the VMS Demarcation Line specified under paragraph (a) of this section is deemed to be fishing under the DAS program, unless the vessel's owner or authorized representative declares the vessel out of the scallop, NE multispecies, or monkfish fishery, as applicable, for a specific time period by notifying the Regional Administrator through the VMS prior to the vessel leaving port, or unless the vessel's owner or authorized representative declares the vessel will be fishing in the Eastern U.S./Canada

Area as described in § 648.85(a)(3)(viii) under the provisions of that program.

(vi) DAS counting for a vessel that is under the VMS notification requirements of this paragraph (b), with the exception of vessels that have elected to fish exclusively in the Eastern U.S./Canada Area on a particular trip, pursuant to § 648.85(a), begins with the first location signal received showing that the vessel crossed the VMS Demarcation Line after leaving port. DAS end with the first location signal received showing that the vessel crossed the VMS Demarcation Line upon its return to port. For those vessels that have elected to fish in the Eastern U.S./Canada Area pursuant to § 648.85(a)(2)(i), the requirements of this paragraph (b) begin with the first 30-minute location signal received showing that the vessel crossed into the Eastern U.S./Canada and end with the first location signal received showing that the vessel crossed out of the Eastern U.S./Canada Area upon beginning its return trip to port, unless the vessel elects to also fish outside the Eastern Area on the same trip, in accordance with § 648.85(a)(3)(viii)(A).

(vii) If the VMS is not available or not functional, and if authorized by the Regional Administrator, a vessel owner must provide the notifications required by paragraphs (b)(2)(ii), (v), and (vi) of this section by using the call-in notification system described under paragraph (c) of this section, instead of using the VMS specified in this paragraph (b).

\* \* \* \* \*

(3) \* \* \*

(i) \* \* \*

(E) Provide the notifications required by this paragraph (b), through VMS as specified under paragraph (b)(3)(v) of this section; or

(F) Fish under the Regular B DAS Program specified at § 648.85(b)(10);

\* \* \* \* \*

(iv) Unless otherwise required by paragraph (b)(1)(v) of this section, upon recommendation by the Council, the Regional Administrator may require, by notification through a letter to affected permit holders, notification in the Federal Register, or other appropriate means, that a NE multispecies vessel issued an Individual DAS or Combination Vessel permit install on board an operational VMS unit that meets the minimum performance criteria specified in § 648.9(b), or as modified as provided under § 648.9(a). An owner of such a vessel must provide documentation to the Regional Administrator that the vessel has installed on board an operational VMS

unit that meets those criteria. If a vessel has already been issued a permit without the owner providing such documentation, the Regional Administrator shall allow at least 30 days for the vessel to install an operational VMS unit that meets the criteria and for the owner to provide documentation of such installation to the Regional Administrator. A vessel that is required to use a VMS shall be subject to the requirements and presumptions described under paragraphs (b)(2)(ii) through (vii) of this section.

(v) A vessel issued a limited access NE multispecies, monkfish, Occasional scallop, or Combination permit may be authorized by the Regional Administrator to provide the notifications required by this paragraph (b) using the VMS specified in this paragraph (b). The owner of such vessel becomes authorized by providing documentation to the Regional Administrator at the time of application for an Individual or Combination vessel limited access NE multispecies permit that the vessel has installed on board an operational VMS unit that meets the minimum performance criteria specified in § 648.9(b), or as modified as provided under § 648.9(a). Vessels that are authorized to use the VMS in lieu of the call-in requirement for DAS notification shall be subject to the requirements and presumptions described under paragraphs (b)(2)(ii) through (vii) of this section. Those who elect to use the VMS do not need to call in DAS as specified in paragraph (c) of this section. Vessels that do call in are exempt from the prohibition specified in § 648.14(c)(2).

\* \* \* \* \*

(c) \* \* \*

(6) Less than 1 hour prior to leaving port, for vessels issued a limited access NE multispecies DAS permit or, for vessels issued a limited access NE multispecies DAS permit and a limited access monkfish permit (Category C, D, F, G, or H), unless otherwise specified in this paragraph (c)(6), and, prior to leaving port for vessels issued a limited access monkfish Category A or B permit, the vessel owner or authorized representative must notify the Regional Administrator that the vessel will be participating in the DAS program by calling the Regional Administrator and providing the following information: Owner and caller name and phone number; vessel name and permit number; type of trip to be taken; port of departure; and that the vessel is beginning a trip. A DAS begins once the call has been received and a confirmation number is given by the

Regional Administrator, or when a vessel leaves port, whichever occurs first, unless otherwise specified in paragraph (b)(2)(iv) of this section. Vessels issued a limited access monkfish Category C, D, F, G, or H permit that are allowed to fish as a Category A or B vessel in accordance with the provisions of § 648.92(b)(2)(iv), are subject to the call-in notification requirements for limited access monkfish Category A or B vessels specified under this paragraph (c)(1) for those monkfish DAS where there is not a concurrent NE multispecies DAS.

(7) At the end of a vessel's trip, upon its return to port, the vessel owner or owner's representative must call the Regional Administrator and notify him/her that the trip has ended by providing the following information: Owner and caller name and phone number, vessel name, permit number, port of landing, and that the vessel has ended its trip. A DAS ends when the call has been received and confirmation has been given by the Regional Administrator, unless otherwise specified in paragraph (b)(2)(vi) of this section.

\* \* \* \* \*

(f) \* \* \*

(3) *Gillnet call-in.* Vessels subject to the gillnet restriction described in § 648.82(s)(1)(ii) must notify the Regional Administrator of the commencement date of their time out of the NE multispecies gillnet fishery using the procedure described in paragraph (f)(1) of this section.

■ 4. In § 648.14, paragraphs (a)(172), (c)(19), (c)(21) through (23), (c)(33) through (35), (c)(37), (c)(39), (c)(43), (c)(49) through (52), (c)(54) through (66), (c)(70), (c)(78), (c)(80), (y)(15), and (bb)(22) are suspended; and paragraphs (a)(173) through (178), (c)(81) through (116), (g)(4), (y)(22), and (bb)(23) are added to read as follows:

**§ 648.14 Prohibitions.**

\* \* \* \* \*

(a) \* \* \*

(173) If, upon the end of a fishing trip as specified under § 648.10(b)(2)(vi) or (c)(3), fail to offload regulated species subject to a landing limit based on a DAS fished under § 648.85 or § 648.86, as required by § 648.86(i).

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

(175) 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).

(176) When fishing inside and outside of the Eastern U.S./Canada Area, fail to abide by the most restrictive regulations that apply as described in § 648.85(a)(3)(viii)(A).

(177) If fishing inside the Eastern U.S./Canada Area and in possession of fish in excess of what is allowed under more restrictive regulations that apply outside of the Eastern U.S./Canada Area, fish within the CC/GOM or SNE/MA Yellowtail Flounder Areas on the same trip, as prohibited under § 648.85(a)(3)(viii)(A).

(178) Discard legal-sized yellowtail flounder prior to declaring the intent to fish inside and outside of the Eastern U.S./Canada Area on the same trip, in accordance with § 648.85(a)(3)(viii)(A).

\* \* \* \* \*

(c) \* \* \*

(81) Fail to comply with the exemption specifications as described in § 648.86(i)(4).

(82) Fail to declare, and be, out of the non-exempt gillnet fishery as required by § 648.82(s)(1)(ii), using the procedure specified in § 648.82(q).

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

(84) Fail to remain in port for the appropriate time specified in § 648.86(i)(1)(ii)(A), except for transiting purposes, provided the vessel complies with § 648.86(i)(3).

(85) Enter port, while on a NE multispecies DAS trip, in possession of more than the allowable limit of cod specified in § 648.86(i)(2)(ii) or (iii).

(86) Fail to remain in port for the appropriate time specified in § 648.86(i)(2)(iii)(A), except for transiting purposes, provided the vessel complies with § 648.86(i)(3).

(87) Lease NE multispecies DAS or use leased DAS that have not been approved for leasing by the Regional Administrator as specified in § 648.82(t).

(88) Provide false information on the application for NE multispecies DAS leasing, as required under § 648.82(t)(3).

(89) Act as lessor or lessee of NE multispecies DAS, if the vessels are not in accordance with the size restrictions specified in § 648.82(t)(4)(ix).

(90) Lease more than the maximum number of DAS allowable under § 648.82(t)(4)(iv).

(91) Lease NE multispecies DAS in excess of the duration specified in § 648.82(t)(4)(viii).

(92) If fishing under the cod trip limit specified in § 648.86(i)(2)(ii), fail to

obtain an annual declaration, or fish north of the exemption line specified in § 648.86(i)(4).

(93) Discard legal-sized regulated multispecies while fishing under a Regular B DAS in the Regular B DAS Pilot Program, as described in § 648.85(b)(10).

(94) If fishing under a Regular B DAS in the Regular B DAS Pilot 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).

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

(96) If fishing in the Eastern U.S./Canada Haddock SAP Pilot Area, discard legal-sized cod, GB winter flounder, or GB yellowtail flounder while fishing under a Category B DAS, as described in § 648.85(b)(8)(vii)(F).

(97) If fishing in the Eastern U.S./Canada Haddock SAP Pilot Area under a Category B DAS, fail to comply with the DAS flip requirements of § 648.85(b)(8)(viii)(I), if the vessel possesses more than the landing limit for cod, GB winter flounder, or GB yellowtail flounder specified in § 648.85(b)(8)(vii)(F).

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

(99) 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), and (I).

(100) 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).

(101) 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).

(102) 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).

(103) 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).

(104) 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).

(105) 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).

(106) 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).

(107) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), use a Regular B DAS in a stock area that has been closed, as specified in § 648.85(b)(10)(iv)(G).

(108) 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).

(109) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), use a Regular B DAS outside the U.S./Canada Management Area specified under § 648.85(a)(1), or after the program has closed, as required under § 648.85(10)(iv)(G) or (H).

(110) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), fail to use a haddock separator trawl as required by § 648.85(b)(10)(iv)(J) and described under § 648.85(a)(3)(iii)(A).

(111) Use a Regular B DAS and a monkfish DAS on the same trip, if issued a limited access Category C, D, or F monkfish permit and fishing in the Regular B DAS Program specified in § 648.85(b)(10).

(112) If issued a limited access monkfish Category C, D, or F permit and fishing in the Regular B DAS Program specified in § 648.85(b)(10), possess more than the incidental catch amounts of monkfish, as specified at § 648.94(b)(7).

(113) If fishing in the Regular B DAS Program specified in § 648.85(b)(10), discard legal-sized monkfish.

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

(115) Fish in the U.S./Canada Haddock SAP Pilot Program specified in § 648.85(b)(8), if the SAP Pilot Program is closed as specified in § 648.85(b)(8)(viii)(K) or (L).

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

\* \* \* \* \* (g) \* \* \*

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

\* \* \* \* \* (y) \* \* \*

(22) Fish for, possess, or land monkfish with or from a vessel that has had the length, GRT, or NT of such vessel or its replacement upgraded or increased in excess of the limitations specified in § 648.4(a)(9)(i)(O) and (F).

\* \* \* \* \* (bb) \* \* \*

(23) Possess, transfer, receive, sell, purchase, trade, or barter, or attempt to transfer, receive, purchase, trade, or barter, or sell more than 2,000 lb (907.2 kg) of Atlantic herring per trip from the GB haddock stock area defined in § 648.86(i)(6)(v)(B) following the effective date of any closure enacted pursuant to § 648.86(a)(3).

\* \* \* \* \*

■ 5. In § 648.53, paragraph (e) is suspended, and paragraph (i) is added to read as follows:

**§ 648.53 DAS allocations.**

\* \* \* \* \*

(i) *End-of-year carry-over for open area DAS.* With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(1)(i)(R) for the entire fishing year preceding the carry-over year, limited access vessels that have unused Open Area DAS on the last day of February of any year may carry over a maximum of 10 DAS, not to exceed the total Open Area DAS allocation by permit category, into the next year. DAS carried over into the next fishing year may only be used in Open Areas. DAS sanctioned vessels will be credited with unused DAS based on their unused DAS allocation, minus total DAS sanctioned.

■ 6. In § 648.80, paragraphs (a)(3)(vi), (a)(4)(i) through (iv), (b)(2)(i) through (iii) and (vi), and (c)(2)(ii) and (iii) are suspended, and paragraphs (a)(3)(viii), (a)(4)(vi) through (ix), (b)(2)(vii) through (x), and (c)(2)(vi) and (vii) are added to read as follows:

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

\* \* \* \* \*

(a) \* \* \*

(3) \* \* \*

(viii) *Other restrictions and exemptions.* Vessels are prohibited from

fishing in the GOM or GB Exemption Area as defined in paragraph (a)(17) of this section, except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (a)(5) through (7), (a)(9) through (14), (d), (e), (h), and (i) of this section; or if fishing under a NE multispecies DAS; or if fishing under the Small Vessel or Handgear A exemptions specified in § 648.82(u)(5) and (6), respectively; or if fishing under the scallop state waters exemptions specified in § 648.54 and paragraph (a)(11) of this section; or if fishing under a scallop DAS in accordance with paragraph (h) of this section; or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit, or if fishing as a charter/party or private recreational vessel in compliance with the regulations specified in § 648.89. Any gear on a vessel, or used by a vessel, in this area must be authorized under one of these exemptions or must be stowed as specified in § 648.23(b).

\* \* \* \* \*

(4) \* \* \*

(vi) *Vessels using trawls.* Except as provided in paragraph (a)(3)(viii) of this section, and this paragraph (a)(4)(vi), and unless otherwise restricted under paragraph (a)(4)(iii) of this section, the minimum mesh size for any trawl net, except midwater trawl, and the minimum mesh size for any trawl net when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the GB Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) diamond mesh or square mesh applied to the codend of the net as defined under paragraph (a)(3)(i) of this section, provided the vessel complies with the requirements of paragraph (a)(3)(vii) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(vii) *Vessels using Scottish seine, midwater trawl, and purse seine.* Except as provided in paragraph (a)(3)(viii) of this section, and this paragraph (a)(4)(vii), and unless otherwise

restricted under paragraph (a)(4)(iii) of this section, the minimum mesh size for any Scottish seine, midwater trawl, or purse seine, and the minimum mesh size for any Scottish seine, midwater trawl, or purse seine, when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the GB Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh applied throughout the net, or any combination thereof, provided the vessel complies with the requirements of paragraph (a)(3)(vii) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(viii) *Large-mesh vessels.* When fishing in the GB Regulated Mesh Area, the minimum mesh size for any trawl net, or sink gillnet, and the minimum mesh size for any trawl net, or sink gillnet, when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(u)(5), is 8.5-inch (21.6-cm) diamond or square mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(ix) *Gillnet vessels.* Except as provided in paragraph (a)(3)(viii) of this section and this paragraph (a)(4)(iv), for Day and Trip gillnet vessels, the minimum mesh size for any sink gillnet, and the minimum mesh size for any roundfish or flatfish gillnet when fishing in that portion of the GB Regulated Mesh Area that lies within the SNE Exemption Area, as described in paragraph (b)(10) of this section, that is not stowed and available for immediate use in accordance with § 648.23(b), when fishing under a DAS in the NE multispecies DAS program in the GB Regulated Mesh Area is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft

(0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(vii) *Vessels using trawls.* Except as provided in paragraphs (b)(2)(i) and (x) of this section, and unless otherwise restricted under paragraph (b)(2)(iii) of this section, the minimum mesh size for any trawl net, not stowed and not available for immediate use in accordance with § 648.23(b), except midwater trawl, on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the SNE Regulated Mesh Area is 6-inch (15.2-cm) diamond mesh or 6.5-inch (16.5-cm) square mesh, applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) square mesh or 7-inch (17.8-cm) diamond mesh applied to the codend of the net, as defined under paragraph (a)(3)(i) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

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

(ix) *Large-mesh vessels.* When fishing in the SNE Regulated Mesh Area, the minimum mesh size for any trawl net vessel, or sink gillnet, not stowed and not available for immediate use in accordance with § 648.23(b) on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(u)(4), is 8.5-inch (21.6-cm) diamond or square mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m)

× 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(x) *Other restrictions and exemptions.* Vessels are prohibited from fishing in the SNE Exemption Area, as defined in paragraph (b)(10) of this section, except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (b)(3), (b)(5) through (9), (b)(11), (c), (e), (h), and (i) of this section, or if fishing under a NE multispecies DAS, if fishing under the Small Vessel or Handgear A exemptions specified in § 648.82(b)(u)(5) and (u)(6), respectively, or if fishing under a scallop state waters exemption specified in § 648.54, or if fishing under a scallop DAS in accordance with paragraph (h) of this section, or if fishing under a General Category scallop permit in accordance with paragraphs (a)(11)(i)(A) and (B) of this section, or if fishing pursuant to a NE multispecies open access Charter/ Party or Handgear permit, or if fishing as a charter/party or private recreational vessel in compliance with the regulations specified in § 648.89. Any gear on a vessel, or used by a vessel, in this area must be authorized under one of these exemptions or must be stowed as specified in § 648.23(b).

\* \* \* \* \*

(c) \* \* \*  
(2) \* \* \*

(vi) *Vessels using Scottish seine, midwater trawl, and purse seine.* Except as provided in paragraph (c)(2)(vii) of this section, the minimum mesh size for any sink gillnet, Scottish seine, midwater trawl, or purse seine, not stowed and not available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the MA Regulated Mesh Area, shall be that specified in § 648.104(a). This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(vii) *Large-mesh vessels.* When fishing in the MA Regulated Mesh Area, the minimum mesh size for any trawl net vessel, or sink gillnet, not stowed and not available for immediate use in accordance with § 648.23(b), on a vessel or used by a vessel fishing under a DAS in the Large-mesh DAS program, specified in § 648.82(u)(4), is 7.5-inch (19.0-cm) diamond mesh or 8.0-inch (20.3-cm) square mesh, throughout the entire net. This restriction does not

apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

\* \* \* \* \*

■ 7. In § 648.82, paragraphs (a)(1), (b), (c)(1) and (2), (d) through (k), (l)(1)(iv) and (v), and (m) are suspended and paragraphs (a)(3), (c)(3) and (4), (d)(5) through (7), (l)(2)(viii) and (ix), and (n) through (w) are added to read as follows:

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

\* \* \* \* \*

(a) \* \* \*

(3) *End-of-year carry-over.* With the exception of vessels that held a Confirmation of Permit History, as described in § 648.4(a)(1)(i)(Q), for the entire fishing year preceding the carry-over year, limited access vessels that have unused DAS on the last day of April of any year may carry over a maximum of 10 DAS into the next year. Unused leased DAS may not be carried over. Vessels that have been sanctioned through enforcement proceedings will be credited with unused DAS based on their DAS allocation minus any total DAS that have been sanctioned through enforcement proceedings. For vessels with a balance of both unused Category A DAS and unused Category B DAS at the end of the previous fishing year (e.g., for the 2005 fishing year, carry-over DAS from the 2004 fishing year), Category A DAS will be carried over first, than Regular B DAS, than Reserve B DAS. Category C DAS cannot be carried over.

\* \* \* \* \*

(c) \* \* \*

(3) *Calculation of used DAS baseline.* For all valid limited access NE multispecies DAS vessels, vessels issued a valid Small Vessel category permit, and NE multispecies Confirmation of Permit Histories, a vessel's used DAS baseline shall be based on the fishing history associated with its permit and shall be determined by the highest number of reported DAS fished during a single qualifying fishing year, as specified in paragraphs (c)(3)(i) through (iv) of this section, during the 6-year period from May 1, 1996, through April 30, 2002, not to exceed the vessel's annual allocation prior to August 1, 2002. A qualifying year is one in which a vessel landed 5,000 lb (2,268 kg) or more of regulated multispecies, based upon landings reported through dealer reports (based on live weights of landings submitted to NMFS prior to

April 30, 2003). If a vessel that was originally issued a limited access NE multispecies permit was lawfully replaced in accordance with the replacement restrictions specified in § 648.4(a), then the used DAS baseline shall be defined based upon the DAS used by the original vessel and by subsequent vessel(s) associated with the permit during the qualification period specified in this paragraph (c)(3). The used DAS baseline shall be used to calculate the number and category of DAS that are allocated for use in a given fishing year, as specified in paragraph (v) of this section.

(i) Except as provided in paragraphs (c)(3)(ii) through (iv) of this section, the vessel's used DAS baseline shall be determined by calculating DAS use reported under the DAS notification requirements in § 648.10.

(ii) For a vessel exempt from, or not subject to, the DAS notification system specified in § 648.10 during the period May 1996 through June 1996, the vessel's used DAS baseline for that period will be determined by calculating DAS use from vessel trip reports submitted to NMFS prior to April 9, 2003.

(iii) For a vessel enrolled in a Large Mesh DAS category, as specified in paragraph (u)(4) of this section, the calculation of the vessel's used DAS baseline may not include any DAS allocated or used by the vessel pursuant to the provisions of the Large Mesh DAS category.

(iv) Used DAS will be counted as described under paragraph (n) of this section.

(4) *Correction of used DAS baseline.*

(i) A vessel's used DAS baseline, as determined under paragraph (c)(3) of this section, may be corrected by submitting a written request to correct the DAS baseline. The request to correct must be received by the Regional Administrator no later than August 31, 2004. The request to correct must be in writing and provide credible evidence that the information used by the Regional Administrator in making the determination of the vessel's DAS baseline was based on incorrect data. The decision on whether to correct the DAS baseline shall be determined solely on the basis of written information submitted, unless the Regional Administrator specifies otherwise. The Regional Administrator's decision on whether to correct the DAS baseline is the final decision of the Department of Commerce.

(ii) *Status of vessel's pending request for a correction of used DAS baseline.* While a vessel's request for a correction is under consideration by the Regional

Administrator, the vessel is limited to fishing the number of DAS allocated in accordance with paragraph (v) of this section.

\* \* \* \* \*

(1) \* \* \*

(2) \* \* \*

(viii) NE multispecies Category A and Category B DAS, as defined under paragraphs (v)(1) and (2) of this section, shall be reduced by 20 percent upon transfer.

(ix) Category C DAS, as defined under paragraph (v)(3) of this section, will be reduced by 90 percent upon transfer.

\* \* \* \* \*

(n) *Accrual of DAS.* (1) *Actual time.* Unless otherwise specified under this paragraph (n) and paragraph (s)(1)(iii) of this section, DAS shall accrue to the nearest minute and will be counted as actual time called, or logged into the DAS program.

(2) *Differential Category A DAS counting.* (i) *Vessels fishing outside of the U.S./Canada Management Area.* For any fishing trip, or part of a fishing trip, in which a NE multispecies declares vessel declares, pursuant to § 648.85(a)(3)(viii), that it 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 outside of the U.S./Canada Management Area defined at § 648.85(a), unless otherwise specified in paragraph (s)(1)(iii) of this section, each Category A DAS, or part thereof, shall be counted at the ratio of 1.4 to 1.0. For example, if a vessel fishes on a Category A DAS for 24 hr (1 DAS) outside of the U.S./Canada Management Area, 33.6 hr (24 hr × 1.4) will be deducted from that vessel's NE multispecies Category A DAS allocation. If a fishing trip in which a vessel fishes Category A DAS in the GOM and inside the Western U.S./Canada Area on the same trip lasts 120 hr (5 DAS), 168 hr (7 DAS) (120 hr × 1.4) will be deducted from that vessel's NE multispecies Category A DAS allocation.

(ii) *Vessels fishing in the U.S./Canada Management Area.* For any fishing trip in which a NE multispecies vessel declares, pursuant to § 648.85(a)(3)(viii), that it intends to fish, and fishes, under a Category A DAS exclusively within, other than for transiting to and from, the U.S./Canada Management Area defined at § 648.85(a), unless otherwise specified in paragraph (s)(1)(iii) of this section, each Category A DAS, or part thereof, shall be counted at the ratio of 1:1. For example, if a vessel declares its intent to fish exclusively within the Western U.S./Canada Area and the trip lasts for 120 hr (5 DAS) including

transiting time, 120 hr (5 DAS), will be deducted from that vessel's NE multispecies Category A DAS allocation. A fishing vessel that declares its intent to fish exclusively in the Eastern U.S./Canada Area and fishes a total of 24 hr exclusively in the Eastern U.S./Canada Area and, therefore, is not subject to differential DAS counting for the part of the trip used to a transit to and from the Eastern U.S./Canada Area, shall be charged NE multispecies Category A DAS at a 1:1 ratio only for that part of the trip in the Eastern U.S./Canada Area (i.e., 24 hours, or 1 DAS).

(3) *Regular B DAS Program 24-hr clock.* For any fishing trip which a NE multispecies vessel elects to fish in the Regular B DAS Program, as specified at § 648.85(b)(10), and remains fishing under a Regular B DAS for the entire fishing trip (without a DAS flip), DAS used will accrue at the rate of 1 full DAS for each calendar day, or part of a calendar day, fished. For example, a vessel that fishes on one calendar day from 6 a.m. to 10 p.m. would be charged 24 hours of Regular B DAS, not 16 hours; a vessel that leaves on a trip at 11 p.m. on the first calendar day and returns at 10 p.m. on the next calendar day would be charged 48 hours of Regular B DAS instead of 23 hours, 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 will determine the amount of fish the vessel may legally land.

(o) *Good Samaritan credit.* See § 648.53(f).

(p) *Spawning season restrictions.* A vessel issued a valid Small Vessel or Handgear A category permit specified under paragraphs (u)(5) or (6), respectively, of this section may not fish for, possess, or land regulated species from March 1 through March 20 of each year. Any other vessel issued a limited access NE multispecies permit must declare out and be out of the NE multispecies DAS program for a 20-day period between March 1 and May 31 of each calendar year, using the notification requirements specified in § 648.10. A vessel fishing under a Day gillnet category designation is prohibited from fishing with gillnet gear capable of catching NE multispecies during its declared 20-day spawning block, unless the vessel is fishing in an exempted fishery, as described in § 648.80. If a vessel owner has not declared and been out of the fishery for a 20-day period between March 1 and May 31 of each calendar year on or before May 12 of each year, the vessel is prohibited from fishing for,

possessing or landing any regulated species or non-exempt species during the period May 12 through May 31, inclusive.

(q) *Declaring DAS and blocks of time out.* A vessel's owner or authorized representative shall notify the Regional Administrator of a vessel's participation in the DAS program, declaration of its 120 days out of the non-exempt gillnet fishery, if designated as a Day gillnet category vessel, as specified in paragraph (s)(1)(iii) of this section, and declaration of its 20-day period out of the NE multispecies DAS program, using the notification requirements specified in § 648.10.

(r) [Reserved]

(s) *Gillnet restrictions.* A vessel issued a limited access NE multispecies permit may fish under a NE multispecies DAS with gillnet gear, provided the owner of the vessel obtains an annual designation as either a Day or Trip gillnet vessel, as described in § 648.4(c)(2)(iii), and provided the vessel complies with the gillnet vessel gear requirements and restrictions specified in § 648.80.

(1) *Day gillnet vessels.* A Day gillnet vessel fishing with gillnet gear under a NE multispecies DAS is not required to remove gear from the water upon returning to the dock and calling out of the DAS program, provided the vessel complies with the restrictions specified in paragraphs (s)(1)(i) through (iii) of this section. A vessel electing to fish under the Day gillnet designation must have on board written confirmation, issued by the Regional Administrator, that the vessel is a Day gillnet vessel.

(i) *Removal of gear.* All gillnet gear must be brought to port prior to the vessel fishing in an exempted fishery.

(ii) *Declaration of time out of the gillnet fishery.*—(A) During each fishing year, a vessel must declare, and take, a total of 120 days out of the non-exempt gillnet fishery. Each period of time declared and taken must be a minimum of 7 consecutive days. At least 21 days of this time must be taken between June 1 and September 30 of each fishing year. The spawning season time out period required by paragraph (p) of this section will be credited toward the 120 days time out of the non-exempt gillnet fishery. If a vessel owner has not declared and taken any or all of the remaining periods of time required to be out of the fishery by the last possible date to meet these requirements, the vessel is prohibited from fishing for, possessing, or landing regulated multispecies or non-exempt species harvested with gillnet gear, and from having gillnet gear on board the vessel that is not stowed in accordance with § 648.23(b), while fishing under a NE

multispecies DAS, from that date through the end of the period between June 1 and September 30, or through the end of the fishing year, as applicable.

(B) A vessel shall declare its periods of required time through the notification procedures specified in § 648.10(f)(3).

(C) During each period of time declared out, a vessel is prohibited from fishing with non-exempted gillnet gear and must remove such gear from the water. However, the vessel may fish in an exempted fishery, as described in § 648.80, or it may fish under a NE multispecies DAS, provided it fishes with gear other than non-exempted gillnet gear.

(iii) *Method of counting DAS.* Unless electing to fish in the Regular B DAS Program specified in § 648.85(a)(6), and therefore subject to the DAS accrual provisions of paragraph (n)(3) of this section; or fishing exclusively within the U.S./Canada Management Area specified at § 648.85(a)(1), and therefore subject to the DAS accrual provisions of paragraph (n)(2)(ii) of this section, a Day gillnet vessel fishing with gillnet gear under a NE multispecies Category A DAS, or under a NE multispecies Category B DAS in an approved SAP specified at § 648.85(b), shall accrue 15 hours of DAS for each trip of more than 3 hours, but less than or equal to 11 hours. For a trip less than or equal to 3 hours, or more than 11 hours, the ratio of Category A DAS used to time called into the DAS program will be 1.4 to 1.0.

(2) *Trip gillnet vessels.* When fishing under a NE multispecies DAS, a Trip gillnet vessel is required to remove all gillnet gear from the water before calling out of a NE multispecies DAS under § 648.10(c)(7). When not fishing under a NE multispecies DAS, a Trip gillnet vessel may fish in an exempted fishery with gillnet gear, as authorized under the exemptions in § 648.80. A vessel electing to fish under the Trip gillnet designation must have on board written confirmation issued by the Regional Administrator that the vessel is a Trip gillnet vessel.

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

(2) *Eligible vessels.*—(i) A vessel issued a valid limited access NE multispecies permit is eligible to lease Category A DAS to or from another such vessel, subject to the conditions and requirements of this part, unless the

vessel was issued a valid Small Vessel or Handgear A permit specified under paragraphs (u)(5) and (6) of this section, respectively, or is a valid participant in an approved Sector, as described in § 648.87(a). Any NE multispecies vessel that does not require use of DAS to fish for regulated multispecies may not lease any NE multispecies DAS.

(ii) DAS associated with a Confirmation of Permit History may not be leased.

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

(i) *Application information requirements.* An application to lease Category A DAS must contain the following information: Lessor's owner name, vessel name, permit number and official number or state registration number; Lessee's owner name, vessel name, permit number and official number or state registration number; number of NE multispecies DAS to be leased; total priced paid for leased DAS; signatures of Lessor and Lessee; and date form was completed. Information obtained from the lease application will be held confidential, according to applicable Federal law. Aggregate data may be used in the analysis of the DAS Leasing Program.

(ii) *Approval of lease application.* Unless an application to lease Category A DAS is denied according to paragraph (t)(3)(iii) of this section, the Regional Administrator shall issue confirmation of application approval to both Lessor and Lessee within 45 days of receipt of an application.

(iii) *Denial of lease application.* The Regional Administrator may deny an application to lease Category A DAS for any of the following reasons, including, but not limited to: The application is incomplete or submitted past the March 1 deadline; the Lessor or Lessee has not been issued a valid limited access NE multispecies permit or is otherwise not

eligible; the Lessor's or Lessee's DAS are under sanction pursuant to an enforcement proceeding; the Lessor's or Lessee's vessel is prohibited from fishing; the Lessor's or Lessee's limited access NE multispecies permit is sanctioned pursuant to an enforcement proceeding; the Lessor or Lessee vessel is determined not in compliance with the conditions and restrictions of this part; or the Lessor has an insufficient number of allocated or unused DAS available to lease. Upon denial of an application to lease NE multispecies DAS, the Regional Administrator shall send a letter to the applicants describing the reason(s) for application rejection. The decision by the Regional Administrator is the final agency decision.

(4) *Conditions and restrictions on leased DAS—(i) Confirmation of Permit History.* DAS associated with a confirmation of permit history may not be leased.

(ii) *Sub-leasing.* In a fishing year, a Lessor or Lessee vessel may not sub-lease DAS that have already been leased to another vessel. Any portion of a vessel's DAS may not be leased more than one time during a fishing year.

(iii) *Carry-over of leased DAS.* Leased DAS that remain unused at the end of the fishing year may not be carried over to the subsequent fishing year by the Lessor or Lessee vessel.

(iv) *Maximum number of DAS that can be leased.* A Lessee may lease Category A DAS in an amount up to such vessel's 2001 fishing year allocation (excluding carry-over DAS from the previous year, or additional DAS associated with obtaining a Large Mesh permit). For example, if a vessel was allocated 88 DAS in the 2001 fishing year, that vessel may lease up to 88 Category A DAS. The total number of Category A DAS that the vessel could fish would be the sum of the 88 leased DAS and the vessel's 2004 allocation of Category A DAS. Any leased DAS used are subject to differential DAS accounting as described under paragraphs (n) and (t) of this section.

(v) *History of leased DAS use and landings.* Unless otherwise specified in this paragraph (t)(4)(v), history of leased DAS use will be presumed to remain with the Lessor vessel. Landings resulting from a leased DAS will be presumed to remain with the Lessee vessel. For the purpose of accounting for leased DAS use, leased DAS will be accounted for (subtracted from available DAS) prior to allocated DAS. In the case of multiple leases to one vessel, history of leased DAS use will be presumed to remain with the Lessor in the order in

which such leases were approved by NMFS.

(vi) *Monkfish Category C, D, F, G and H vessels.* A vessel that possesses a valid limited access NE multispecies DAS permit and a valid limited access monkfish Category C, D, F, G or H permit and leases NE multispecies DAS to or from another vessel is subject to the restrictions specified in § 648.92(b)(2).

(vii) *DAS Category restriction.* A vessel may lease only Category A DAS, as described under paragraph (v)(1) of this section.

(viii) *Duration of lease.* A vessel leasing DAS may only fish those leased DAS during the fishing year in which they were leased.

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

(x) *Leasing by vessels fishing under a Sector allocation.* A vessel fishing under the restrictions and conditions of an approved Sector allocation, as specified in § 648.87(b), may not lease DAS to or from vessels that are not participating in such Sector during the fishing year in which the vessel is a member of that Sector.

(xi) *One-time downgrade of DAS Leasing Program baseline.* For the purposes of determining eligibility for leasing DAS only, a vessel owner may elect to make a one-time downgrade to the vessel's DAS Leasing Program baseline length and horsepower as specified in paragraph (t)(4)(ix) of this section to match the length overall and horsepower specifications of the vessel that is currently issued the permit.

(A) *Application for a one-time DAS Leasing Program baseline downgrade.* To downgrade the DAS Leasing Program baseline, eligible NE multispecies vessels must submit a completed application form obtained from the Regional Administrator. An application to downgrade a vessel's DAS Leasing Program baseline must contain at least the following information: Vessel owner's name, vessel name, permit number, official number or state

registration number, current vessel length overall and horsepower specifications, an indication whether additional information is included to document the vessel's current specifications, and the signature of the vessel owner.

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

(u) *Permit categories.* All limited access NE multispecies permit holders shall be assigned to one of the following permit categories, according to the criteria specified. Permit holders may request a change in permit category, as specified in § 648.4(a)(1)(i)(I)(2). Each fishing year shall begin on May 1 and extend through April 30 of the following year. Beginning May 1, 2004, with the exception of the limited access Small Vessel and Handgear A vessel categories described in paragraphs (u)(5) and (6) of this section, respectively, NE multispecies DAS available for use will be calculated pursuant to paragraphs (c) and (v) of this section.

(1) *Individual DAS category.* This category is for vessels allocated individual DAS that are not fishing under the Hook Gear, Combination, or Large-mesh individual categories. Beginning May 1, 2004, for a vessel fishing under the Individual DAS category, the baseline for determining the number of NE multispecies DAS available for use shall be calculated based upon the fishing history associated with the vessel's permit, as specified in paragraph (c)(3) of this section. The number and categories of DAS that are allocated for use in a given fishing year are specified in paragraph (v) of this section.

(2) *Hook Gear category.* To be eligible for a Hook Gear category permit, the vessel must have been issued a limited access multispecies permit for the preceding year, be replacing a vessel that was issued a Hook Gear category permit for the preceding year, or be replacing a vessel that was issued a Hook Gear category permit that was issued a Confirmation of Permit History. Beginning May 1, 2004, for a vessel fishing under the Hook Gear category, the baseline for determining the number of NE multispecies DAS available for use shall be calculated based upon the fishing history associated with the vessel's permit, as specified in paragraph (c)(3) of this section. The number and categories of DAS that are allocated for use in a given fishing year are specified in paragraph (v) of this section. A vessel fishing under this category in the DAS program must meet or comply with the gear restrictions specified under § 648.80(a)(3)(v), (a)(4)(v), (b)(2)(v) and (c)(2)(iv) when fishing in the respective regulated mesh areas.

(3) *Combination vessel category.* To be eligible for a Combination vessel category permit, a vessel must have been issued a Combination vessel category permit for the preceding year, be replacing a vessel that was issued a Combination vessel category permit for the preceding year, or be replacing a vessel that was issued a Combination vessel category permit that was also issued a Confirmation of Permit History. Beginning May 1, 2004, for a vessel fishing under the Combination vessel category, the baseline for determining the number of NE multispecies DAS available for use shall be calculated based upon the fishing history associated with the vessel's permit, as specified in paragraph (c)(3) of this section. The number and categories of DAS that are allocated for use in a given fishing year are specified in paragraph (v) of this section.

(4) *Large Mesh Individual DAS category.* This category is for vessels allocated individual DAS that are not fishing under the Hook Gear, Combination, or Individual DAS categories. Beginning May 1, 2004, for a vessel fishing under the Large Mesh Individual DAS category, the baseline for determining the number of NE multispecies DAS available for use shall be calculated based upon the fishing history associated with the vessel's permit, as specified in paragraph (c)(3) of this section. The number and categories of DAS that are allocated for use in a given fishing year are specified in paragraph (v) of this section. The number of Category A DAS shall be



increased by 36 percent. To be eligible to fish under the Large Mesh Individual DAS category, a vessel, while fishing under this category, must fish under the specific regulated mesh area minimum mesh size restrictions, as specified in paragraphs (a)(3)(iii), (a)(4)(iii), (u)(2)(iii), and (c)(4)(ii) of § 648.80.

(5) *Small Vessel category*—(i) *DAS allocation*. A vessel qualified and electing to fish under the Small Vessel category may retain up to 300 lb (136.1 kg) of cod, haddock, and yellowtail flounder, combined, and one Atlantic halibut per trip, without being subject to DAS restrictions, provided the vessel does not exceed the yellowtail flounder possession restrictions specified under § 648.86(g). Such vessel is not subject to a possession limit for other NE multispecies. Any vessel may elect to switch into this category, as provided in § 648.4(a)(1)(i)(I)(2), if the vessel meets or complies with the following:

(A) The vessel is 30 ft (9.1 m) or less in length overall, as determined by measuring along a horizontal line drawn from a perpendicular raised from the outside of the most forward portion of the stem of the vessel to a perpendicular raised from the after most portion of the stern.

(B) If construction of the vessel was begun after May 1, 1994, the vessel must be constructed such that the quotient of the length overall divided by the beam is not less than 2.5.

(C) Acceptable verification for vessels 20 ft (6.1 m) or less in length shall be USCG documentation or state registration papers. For vessels over 20 ft (6.1 m) in length overall, the measurement of length must be verified in writing by a qualified marine surveyor, or the builder, based on the vessel's construction plans, or by other means determined acceptable by the Regional Administrator. A copy of the verification must accompany an application for a NE multispecies permit.

(D) Adjustments to the Small Vessel category requirements, including changes to the length requirement, if required to meet fishing mortality goals, may be made by the Regional Administrator following framework procedures of § 648.90.

(ii) [Reserved]

(6) *Handgear A category*. A vessel qualified and electing to fish under the Handgear A category, as described in § 648.4(a)(1)(i)(N), may retain, per trip, up to 250 lb (113.4 kg) of cod, one Atlantic halibut, and the daily limit for other regulated species as specified under § 648.86. The cod trip limit will be adjusted proportionally to the trip limit for GOM cod (rounded up to the

nearest 50 lb (22.7 kg)), as specified in § 648.86(i). For example if the GOM cod trip limit specified at § 648.86(i) doubled, then the cod trip limit for the Handgear A category would double. Qualified vessels electing to fish under the Handgear A category are subject to the following restrictions:

(i) The vessel must not use or possess on board gear other than handgear while in possession of, fishing for, or landing NE multispecies, and must have at least one standard tote on board.

(ii) A vessel may not fish for, possess, or land regulated species from March 1 through March 20 of each year.

(iii) Tub-trawls must be hand-hauled only, with a maximum of 250 hooks.

(v) *DAS categories and allocations*.

For all valid limited access NE multispecies DAS permits, and NE multispecies Confirmation of Permit Histories, beginning with the 2004 fishing year, DAS shall be allocated and available for use for a given fishing year according to the following DAS Categories (unless otherwise specified, "NE multispecies DAS" refers to any authorized category of DAS):

(1) *Category A DAS*. Unless determined otherwise, as specified under paragraph (v)(4) of this section, calculation of Category A DAS for each fishing year is specified in paragraphs (v)(1)(i) through (iii) of this section. An additional 36 percent of Category A DAS will be added and available for use for participants in the Large Mesh Individual DAS permit category, as described in paragraph (u)(4) of this section, provided the participants comply with the applicable gear restrictions. Category A DAS may be used in the NE multispecies fishery to harvest and land regulated multispecies stocks, in accordance with all of the conditions and restrictions of this part.

(i) For the 2004 and 2005 fishing years, Category A DAS are defined as 60 percent of the vessel's used DAS baseline specified under paragraph (c)(3) of this section.

(ii) For the 2006 through 2008 fishing years, Category A DAS are defined as 55 percent of the vessel's used DAS baseline specified under paragraph (c)(3) of this section.

(iii) Starting in fishing year 2009, Category A DAS are defined as 45 percent of the vessel's used DAS baseline specified under paragraph (c)(3) of this section.

(2) *Category B DAS*. Category B DAS are divided into Regular B DAS and Reserve B DAS. Calculation of Category B DAS for each fishing year, and restrictions on use of Category B DAS, are specified in paragraphs (v)(2)(i) and (ii) of this section.

(i) *Regular B DAS*—(A) *Restrictions on use*. Regular B DAS can only be used by NE multispecies vessels in an approved SAP or in the Regular B DAS Program as specified in § 648.85(b)(10). Unless otherwise restricted under the Regular B DAS Program as described in § 648.85(b)(10)(i), vessels may fish under both a Regular B DAS and a Reserve B DAS on the same trip (*i.e.*, when fishing in an approved SAP as described in § 648.85(b)).

(B) *Calculation*. Unless determined otherwise, as specified under paragraph (v)(4) of this section, Regular B DAS are calculated as follows:

(1) For the 2004 and 2005 fishing years, Regular B DAS are defined as 20 percent of the vessel's DAS baseline specified under paragraph (c)(3) of this section.

(2) For the 2006 through 2008 fishing years, Regular B DAS are defined as 22.5 percent of the vessel's DAS baseline specified under paragraph (c)(3) of this section.

(3) Starting in fishing year 2009, and thereafter, Regular B DAS are defined as 27.5 percent of the vessel's DAS baseline specified under paragraph (c)(3) of this section.

(ii) *Reserve B DAS*—(A) *Restrictions on use*. Reserve B DAS can only be used in an approved SAP, as specified in § 648.85.

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

(1) For the 2004 and 2005 fishing years, Reserve B DAS are defined as 20 percent of the vessel's DAS baseline specified under paragraph (c)(3) of this section.

(2) For the 2006 through 2008 fishing years, Reserve B DAS are defined as 22.5 percent of the vessel's DAS baseline specified under paragraph (c)(3) of this section.

(3) Starting in fishing year 2009, and thereafter, Reserve B DAS are defined as 27.5 percent of the vessel's DAS baseline specified under paragraph (c)(3) of this section.

(3) *Category C DAS*—(i) *Restriction on use*. Category C DAS are reserved and may not be fished.

(ii) *Calculation*. Category C DAS are defined as the difference between a vessel's used DAS baseline, as described in paragraph (c)(3) of this section, and the number of DAS allocated to the vessel as of May 1, 2001.

(4) *Criteria and procedure for not reducing DAS allocations and modifying DAS accrual*. The schedule of reductions in NE multispecies DAS, and the modification of DAS accrual specified under paragraph (n)(2) of this

section, shall not occur if the Regional Administrator:

(i) Determines that one of the following criteria has been met:

(A) That the Amendment 13 projected target biomass levels for stocks targeted by the default measures, based on the 2005 and 2008 stock assessments, have been or are projected to be attained with at least a 50-percent probability in the 2006 and 2009 fishing years, respectively, and overfishing is not occurring on those stocks (*i.e.*, current information indicates that the stocks are rebuilt and overfishing is not occurring); or

(B) That biomass projections, based on the 2005 and 2008 stock assessments, show that rebuilding will occur by the end of the rebuilding period with at least a 50-percent probability, and the best available estimate of the fishing mortality rate for the stocks targeted by the default measures indicates that overfishing is not occurring (*i.e.*, current information indicates that rebuilding will occur by the end of the rebuilding period and the fishing mortality rate is at or below Fmsy).

(ii) Determines that all other stocks meet the fishing mortality rates specified in Amendment 13; and

(iii) Publishes such determination in the **Federal Register**, consistent with Administrative Procedure Act requirements for proposed and final rulemaking.

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

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

(2) Only one vessel at a time may receive credit for standing by an entangled whale. A vessel standing by an entangled whale may transfer its stand-by status to another vessel while waiting for an authorized response team to arrive, provided it notifies the USCG and the Center for Coastal Studies, or another organization authorized by the Regional Administrator, of the transfer. The vessel to which stand-by status is transferred must also notify the USCG and the Center for Coastal Studies or another organization authorized by the

Regional Administrator of this transfer and comply with the conditions and restrictions of this part;

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

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

\* \* \* \* \*

■ 8. In § 648.85, paragraphs (a)(3)(ii); (a)(3)(iv)(C)(1), (2) and (4); (a)(3)(v); (b)(5) and (6); (b)(7)(iv)(A); (b)(7)(v)(A); (b)(7)(vi)(A); and (b)(8)(i), (iv), and (v) are suspended; the introductory text of paragraph (a)(3)(iii) is revised; and paragraphs (a)(3)(iv)(C)(5) through (7), (a)(3)(viii) and (ix), (b)(7)(iv)(J), (b)(7)(v)(F), (b)(7)(vi)(G), (b)(8)(vi), (vii) and (viii), and (b)(9) and (10) are added to read as follows:

**§ 648.85 Special management programs.**

(a) \* \* \*

(3) \* \* \*

(iii) NE multispecies vessels fishing with trawl gear in the Eastern U.S./Canada Area defined in paragraph (a)(1)(ii) of this section must fish with a haddock separator trawl or a flounder trawl net, as described in paragraphs

(a)(3)(iii)(A) and (B) of this section (both nets may be onboard the fishing vessel simultaneously). Other types of fishing gear may be on 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 haddock separator trawl and flounder trawl net in paragraph (a)(3)(iii) of this section 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.

\* \* \* \* \*

(iv) \* \* \*

(C) \* \* \*

(5) *Initial yellowtail flounder landing limit.* The initial yellowtail flounder possession limit for the U.S./Canada Area is 10,000 lb (4,536 kg) per trip. A separate yellowtail flounder trip limit for the Closed Area II Yellowtail Flounder SAP is specified under paragraph (b)(3)(viii) of this section. The trip limits specified under this paragraph, or paragraph (b)(3)(viii) of this section, may be adjusted by the Regional Administrator pursuant to paragraphs (a)(3)(iv)(C)(3) and (6) of this section.

(6) *Authority to further restrict yellowtail flounder landing limits.* Unless further restricted by the initial yellowtail flounder landing limit as specified by paragraph (a)(3)(iv)(C)(5) of this section, when the Regional Administrator projects that 70 percent of the TAC allocation for yellowtail flounder specified under paragraph (a)(2) of this section will be harvested, NMFS shall implement and/or adjust, through rulemaking consistent with the Administrative Procedure Act, the yellowtail flounder trip limit for vessels fishing in both the Western and Eastern U.S./Canada Area to 1,500 lb (680.4 kg) per day, and 15,000 lb (6,804.1 kg) per trip.

(7) *Yellowtail flounder landing limit for vessels fishing both inside and outside the Western U.S./Canada Area on the same trip.* A vessel fishing both inside and outside of the Western U.S./Canada Area on the same trip, as allowed under paragraph (a)(3)(viii)(B) of this section, must comply with the most restrictive landing limits that apply to any of the areas fished, for the entire trip.

\* \* \* \* \*

(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 Area.

(A) A vessel fishing under a NE multispecies DAS in the Eastern U.S./Canada Area may fish both inside and outside the Eastern 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 and the requirements of paragraphs (a)(3)(viii)(A)(1) and (2) of this section and does not discard legal-sized yellowtail flounder. If a vessel is fishing inside the Eastern U.S./Canada Area, and possesses yellowtail flounder in excess of what is allowed in either the CC/GOM Yellowtail Flounder Area or the SNE/MA Yellowtail Flounder Area, as defined in § 648.86(g), it may not fish outside of the Eastern U.S./Canada Area on the same trip. On trips 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 will count toward the applicable hard TAC specified for the U.S./Canada Management Area.

(1) The vessel operator must notify NMFS via VMS that it is electing to fish outside the Eastern U.S./Canada Area either prior to leaving the dock, or prior to leaving the Eastern U.S./Canada Area. Category A DAS shall accrue for the entire duration of the trip, regardless of whether the vessel began its trip under a Category A or Category B DAS. If a vessel fishing within the Eastern U.S./Canada Area declares its intent to fish exclusively within the Eastern and Western U.S./Canada Areas on the same trip, pursuant to paragraph (a)(3)(viii) of this section, Category A DAS shall accrue in accordance with §§ 648.10(b)(2)(v) and 648.82(n)(2)(ii). If a vessel fishing within the Eastern U.S./Canada Area declares its intent to fish within the Eastern U.S./Canada Area and outside of the U.S./Canada Management Area on the same trip, Category A DAS shall accrue in accordance with §§ 648.10(b)(2)(v) and 648.82(n)(2)(i).

(2) The vessel must comply with the reporting requirements of the U.S./Canada Management Area specified

under § 648.85(a)(3)(ix) for the duration of the trip.

(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 declares its intent to do so via VMS prior to leaving the dock in accordance with instructions to be provided by the Regional Administrator, and 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 § 648.85(a)(3)(ix). Category A DAS shall accrue in accordance with the regulations at § 648.82(n)(2)(ii) if the vessel fishes outside of the U.S./Canada Management Area on the same trip.

(ix) *Reporting.* The owner or operator of a NE multispecies DAS vessel must submit reports via the VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished when declared into either of the U.S./Canada Management Areas. The reports must include at least the information specified in paragraphs (a)(3)(ix)(A) and (B) of this section, depending on area fished. The reports must be submitted in 24-hr intervals for each day, beginning at 0000 hr and ending at 2400 hr, and must be submitted by 0900 hr of the following day.

(A) *Eastern U.S./Canada Area.* For a vessel declared into the Eastern U.S./Canada Area in accordance with paragraph (a)(3)(viii) of this section, the reports must include at least the following information: Total pounds of cod, haddock and yellowtail flounder kept; and total pounds of cod, haddock, and yellowtail flounder discarded.

(B) *Western U.S./Canada Area.* For a vessel declared into the Western U.S./Canada Area in accordance with paragraph (a)(3)(viii) of this section, the reports must include at least the following information: Total pounds of yellowtail flounder kept and total pounds of yellowtail flounder discarded. In addition to these reporting requirements, a vessel that has declared that it intends to fish both inside and outside of the Western U.S./Canada Area on the same trip, in accordance with paragraph (a)(3)(viii) of this section, must report via VMS the following information when crossing the boundary into or out of the Western U.S./Canada Area: Total pounds of yellowtail flounder kept, by statistical area, and total pounds of yellowtail

flounder discarded, by statistical area, since the last daily catch report.

\* \* \* \* \*

(b) \* \* \*

(7) \* \* \*

(iv) \* \* \*

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

(v) \* \* \*

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

(vi) \* \* \*

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

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

(I) *Mandatory closure of CA I Hook Gear Haddock Access Area due to catch of GB cod incidental catch TAC.* When the Regional Administrator determines that the GB cod incidental catch TAC specified in paragraph (b)(7)(vi)(H) 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.

(8) \* \* \*

(vi) *Eligibility.* A vessel issued a valid limited access NE multispecies DAS permit, and fishing with trawl gear as specified in paragraph (b)(8)(viii)(E) of this section, is eligible to participate in the Eastern U.S./Canada Haddock SAP Pilot Program, and may fish in the Eastern U.S./Canada Haddock SAP Area, as described in paragraph (b)(8)(ii) of this section, during the program duration and season specified in paragraphs (b)(8)(iii) and (vii) of this section, provided such vessel complies with the requirements of this section, and provided the SAP is not closed according to the provisions specified in paragraphs (b)(8)(viii)(K) or (L) of this section. Copies of a chart depicting this area are available from the Regional Administrator upon request.

(vii) *Season*. Eligible vessels may fish in the Eastern U.S./Canada Haddock SAP Pilot Program only from August 1 through December 31.

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

(1) If fishing under a Category B DAS, a vessel is required to comply with the no discarding and DAS flip requirements specified in paragraph (b)(8)(viii)(I) of this section, and the minimum Category A DAS requirements of paragraph (b)(8)(viii)(J) of this section.

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

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

(4) A vessel that elects to fish in multiple areas, as described in this paragraph (b)(8)(viii)(A), must fish under the most restrictive trip provisions of any of the areas fished for the entire trip.

(B) *VMS requirement*. A NE multispecies DAS vessel fishing in the Eastern U.S./Canada Haddock SAP Program specified under paragraph (b)(8)(vi) 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.

(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; areas to be fished; and date, time, and port of departure at least 72 hours prior to the beginning of any trip that it declares into the Eastern U.S./Canada Haddock SAP Program specified in paragraph (b)(8)(vi) of this section, as

required under paragraph (b)(8)(viii)(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 Eastern U.S./Canada Haddock SAP must declare into the SAP via VMS and provide information on the type of DAS (Category A, Regular B, or Reserve B) that it intends to fish, and on the areas within the Eastern U.S./Canada Area that it intends to fish, in accordance with paragraph (b)(8)(viii)(A) of this section and instructions provided by the Regional Administrator.

(E) *Gear restrictions*. A NE multispecies vessel fishing in the Eastern U.S./Canada Haddock SAP Pilot Program must use one of the haddock separator trawl nets authorized for the Eastern U.S./Canada Area, as specified in paragraph (a)(3)(iii)(A) of this section. Other types of fishing gear may be on the vessel when participating on a trip in the Eastern U.S./Canada Haddock SAP Program, provided the other gear is stowed in accordance with § 648.23(b).

(F) *Landing limits*. Unless otherwise restricted, a NE multispecies vessel fishing any portion of a trip in the Eastern U.S./Canada Haddock SAP Pilot Program may not fish for, possess, or land more than 1,000 lb (453.6 kg) of cod, per trip, regardless of trip length. A NE multispecies vessel fishing in the Eastern U.S./Canada Haddock SAP Pilot Program is subject to the haddock requirements described under § 648.86(a), unless further restricted under paragraph (a)(3)(iv) of this section. A NE multispecies vessel fishing in the Eastern U.S./Canada Haddock SAP Pilot Program, and fishing under a Category B DAS, may not land more than 100 lb (45.5 kg) per DAS, or any part of a DAS, of GB yellowtail flounder or GB winter flounder, and no more than 500 lb (227 kg) of all flounder species, combined. Possession of monkfish (whole weight), and skates is limited to 500 lb (227 kg) each and possession of lobsters is prohibited.

(G) *Reporting requirements*. The owner or operator of a vessel declared into the Eastern U.S./Canada Haddock SAP, as described in paragraph (b)(8) of this section, must submit reports in accordance with the reporting requirements described in paragraph (a)(3)(ix) of this section.

(H) *Incidental TACs*. The maximum amount of GB cod, GB yellowtail flounder, and GB winter flounder (landings and discards) that may be caught when fishing in the Eastern U.S./Canada Haddock SAP Program in a fishing year, by a vessel fishing under a

Category B DAS, as authorized in paragraph (b)(8)(viii)(A) is the amount specified in paragraph (b)(9)(ii) and (iii), respectively.

(I) *No discard provision and DAS flips*. A vessel fishing in the Eastern U.S./Canada Haddock SAP Pilot Program under a Category B DAS may not discard legal-sized cod, yellowtail flounder, or winter flounder. If a vessel fishing under a Category B DAS harvests and brings on board more legal-sized cod, yellowtail flounder, or winter flounder than the landing limits specified under paragraph (b)(8)(viii)(F) of this section, the vessel operator must notify NMFS immediately via VMS to initiate a DAS flip to Category A DAS. For a vessel that notifies NMFS of a DAS flip, the Category B DAS that have accrued between the time the vessel started accruing Category B DAS at the beginning of the trip (*i.e.*, at the time the vessel crossed into the Eastern U.S./Canada Area at the beginning of the trip) and the time the vessel declared its DAS flip will be accrued as Category A DAS, and not Category B DAS, according to the regulations at § 648.82(n)(2). Once such vessel has initiated the DAS flip and is fishing under a Category A DAS, the prohibition on discarding legal-sized cod, yellowtail flounder, and winter flounder no longer applies.

(J) *Minimum Category A DAS*. To fish under a Category B DAS, the number of Category B DAS that can be used on a trip cannot exceed the number of available Category A DAS that the vessel has at the start of the trip divided by 1.4.

(K) *Mandatory closure of Eastern U.S./Canada Haddock SAP Pilot Program*. When the Regional Administrator projects that one or more of the TAC allocations specified in paragraph (b)(8)(viii)(H) of this section has been caught by vessels fishing under Category B DAS, NMFS shall prohibit the use of Category B DAS in the Eastern U.S./Canada Haddock SAP Pilot Program, through notice 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 Pilot Program.

(L) *General closure of the Eastern U.S./Canada Haddock SAP Area*. The Regional Administrator, based upon information required under § 648.7, 648.9, 648.10, or 648.85, and any other relevant information may, through rulemaking consistent with the Administrative Procedure Act, close the Eastern U.S./Canada Haddock SAP Pilot Program for the duration of the season, if it is determined that continuation of

the Eastern U.S./Canada Haddock SAP Pilot Program would undermine the achievement of the objectives of the FMP or the Eastern U.S./Canada Haddock SAP Pilot Program.

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

(i) *Stocks other than GB cod, GB yellowtail flounder and GB winter flounder.* With the exception of GB cod, GB yellowtail flounder and GB winter flounder, the incidental 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 in this paragraph (b)(9), shall be subdivided as follows: 50 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 34 percent to the Eastern U.S./Canada Haddock SAP Pilot Program, described in paragraph (b)(8) of this section.

(iii) *GB yellowtail flounder and GB winter flounder.* The incidental TACs for GB yellowtail flounder and GB winter flounder specified under this paragraph (b)(9) shall be subdivided as follows: 50 percent to the Regular B DAS Program, described in paragraph (b)(10) of this section; and 50 percent to the Eastern U.S./Canada Haddock SAP Pilot Program, described in paragraph (b)(8) of this section.

(10) *Regular B DAS Program—(i) Eligibility.* A vessel issued a valid limited access NE multispecies DAS permit and allocated Regular B DAS is eligible to participate in the Regular B DAS Program in the area specified in paragraph (b)(10)(ii) of this section, and may elect to fish under a Regular B DAS, provided it complies 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), or paragraph (b)(10)(vi) of this section. An eligible vessel is 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. An eligible vessel may fish under the Regular B 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. A Category C, D, or F monkfish vessel may only participate in this program if fishing under a NE multispecies DAS only (*i.e.*, a Category C, D, or F monkfish vessel may not use a Regular B DAS and a monkfish DAS on the same trip under the Regular B DAS Program).

(ii) *Scope of the program.* Fishing under this program may occur only in the geographic area defined for the U.S./Canada Management Areas, described under paragraph (a)(1), of this section.

(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 TACs and the remaining quarters shall receive 29 percent of the quarterly TACs each. NMFS shall send letters to limited access NE multispecies permit holders notifying them of 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 a vessel 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; 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.

(C) *VMS declaration.* To participate in the Regular B DAS Program under a Regular B DAS, a vessel must declare into the Program via the 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.

(D) *Landing limits.* 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: Cod, American plaice, white hake, witch flounder, ocean pout, winter flounder, yellowtail flounder and windowpane flounder, with a maximum limit of 500 lb (227 kg) of all flatfish species (American plaice, witch flounder, winter flounder, windowpane flounder and yellowtail flounder), combined. Possession of monkfish (whole weight), and skates is limited to 500 lb (227 kg) per trip each and possession of lobsters is prohibited, unless otherwise restricted by § 648.94(b)(7).

(E) *No-discard provision and DAS flips.* A vessel fishing in the Regular B DAS Program under a Regular B DAS may not discard legal-sized regulated groundfish or monkfish. This prohibition on discarding does not apply in areas or times where the possession or landing of such groundfish or monkfish is prohibited. If such a vessel harvests and brings on board more legal-sized regulated groundfish or monkfish than the applicable maximum landing limit per trip specified under paragraph (b)(10)(iv)(D) of this section, the vessel operator must notify NMFS immediately via VMS to initiate a DAS flip. Once this notification has been received by NMFS, the vessel will automatically be switched by NMFS to fishing under a Category A DAS. For a vessel that notifies NMFS of a DAS flip, the Category B DAS that have accrued between the time the vessel started accruing Regular B DAS 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 it DAS flip will be accrued as Category A DAS, and not Regular B DAS. Once such vessel has initiated the DAS flip and is fishing under a Category A DAS, the prohibition on discarding legal-sized regulated groundfish and monkfish no longer applies. A vessel that has declared a DAS flip will be subject to the most restrictive landing restrictions specified under paragraph (a)(3)(iv) of this section and paragraph § 648.86. Category C, D, or F monkfish vessels that have declared a DAS flip will be subject to the monkfish possession limits at § 648.94(b)(3).

(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 can be used on a trip cannot exceed the number of Category A DAS divided by 1.4 that the

vessel has available at the start of the trip. The vessel will accrue DAS in accordance with § 648.82(n)(3).

(G) *Restrictions when 100 percent of the incidental catch TAC is harvested.* When the Regional Administrator determines, and provides notification through rulemaking consistent with the Administrative Procedure Act, that 100 percent of one or more of the quarterly incidental TACs specified under paragraph (b)(10)(iii) of this section is projected to have been harvested, Regular B DAS may not be used in the Regular B DAS Program for the duration of the calendar quarter. The closure of the Regular B DAS Program will occur even if the quarterly incidental TACs for other stocks have not been completely harvested.

(H) *Closure of Regular B DAS program and quarterly DAS limits.* Unless otherwise closed as a result of the harvest of an incidental 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)(v) of this section, when the Regional Administrator determines, and provides notification through rulemaking consistent with the Administrative Procedure Act, that 500 Regular B DAS have been used during the May–July quarter, or when 1,000 Regular B DAS have been used during any other calendar quarter of the fishing year, in accordance with § 648.82(n)(3), Regular B DAS may not be used for the duration of the calendar quarter.

(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 weight (lb/kg) of cod, yellowtail flounder, American plaice, white hake, winter flounder, and witch flounder kept; and total weight (lb/kg) of cod, yellowtail flounder, American plaice, white hake, winter flounder, and witch flounder discarded. All NE multispecies permit holders will be sent a letter informing them of the statistical areas.

(J) *Trawl Gear Requirement.* Vessels fishing with trawl gear in the Regular B DAS Program must use a haddock separator trawl as described under paragraph (a)(3)(iii)(A) of this section.

(v) *Closure of the Regular B DAS Program.* The Regional Administrator, based upon information required under §§ 648.7, 648.9, 648.10, or 648.85, and any other relevant information, may, through rulemaking consistent with the Administrative Procedure Act, prohibit the use of Regular B DAS for the duration of a quarter or fishing year, if it is projected that continuation of the Regular B DAS Program would undermine the achievement of the objectives of the FMP or Regular B DAS Program.

\* \* \* \* \*

■ 9. In § 648.86, paragraphs (b) and (g)(1) and (2) are suspended; paragraph (e) is revised; and paragraphs (g)(4) and (5), (i), and (j) are added to read as follows:

**§ 648.86 Multispecies possession restrictions.**

\* \* \* \* \*

(e) *White hake.* Except when fishing under the recreational and charter/party restrictions specified under § 648.89, or unless otherwise restricted as specified

in §§ 648.82(u)(5), and 648.88(c), a qualified vessel issued a NE multispecies permit and fishing with an open access Handgear B permit, or a limited access Handgear A permit, or a vessel fishing under a NE multispecies DAS, or a vessel fishing under a monkfish DAS when fishing under the limited access monkfish Category C or D permit provisions may land or possess on board only up to 500 lb (226.8 kg) per DAS, or any part of a DAS, up to a maximum possession limit of 5,000 lb (2,268.1 kg) per trip of white hake.

\* \* \* \* \*

(g) \* \* \*

(4) *Cape Cod/GOM yellowtail flounder possession limit restrictions.* Except when fishing under the recreational and charter/party restrictions specified under § 648.89, or unless otherwise restricted as specified in §§ 648.82(u)(5), and 648.88(c), a qualified vessel issued a NE multispecies permit and fishing with an open access Handgear B permit, or a vessel fishing under a limited access Handgear A permit, or a vessel fishing under a NE multispecies DAS, or a vessel fishing under a monkfish DAS when fishing under the limited access monkfish Category C or D permit provisions, may fish for, possess and land yellowtail flounder in or from the Cape Cod/GOM Yellowtail Flounder Area described in paragraph (g)(4)(i) of this section, only as provided for and allowed under the requirements and trip limits specified in paragraph (g)(4)(ii) of this section.

(i) *Cape Cod/GOM Yellowtail Flounder Area.* The Cape Cod/GOM Yellowtail Flounder Area (copies of a chart depicting the area is available from the Regional Administrator upon request), is the area defined by straight lines connecting the following points in the order stated:

**CAPE COD/GOM YELLOWTAIL FLOUNDER AREA**

Point	N. Latitude	W. Longitude
SYT13 .....	( <sup>1</sup> )	70° 00'
SYT12 .....	41° 20'	70° 00'
SYT11 .....	41° 20'	69° 50'
SYT10 .....	41° 10'	69° 50'
SYT9 .....	41° 10'	69° 30'
SYT8 .....	41° 00'	69° 30'
SYT7 .....	41° 00'	68° 50'
USCA1 .....	42° 20'	68° 50'
USCA12 .....	42° 20'	67° 40'
NYT1 .....	43° 50'	67° 40'
NYT2 .....	43° 50'	66° 50'
NYT3 .....	44° 20'	66° 50'
NYT4 .....	44° 20'	67° 00'
NYT5 .....	( <sup>2</sup> )	67° 00'

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

<sup>2</sup> East facing shoreline of Maine.

(ii) *Requirements.* A vessel fishing in the Cape Cod/GOM Yellowtail Flounder Area must comply with the following requirements:

(A) The vessel must possess on board a yellowtail flounder possession/landing authorization letter issued by the Regional Administrator. To obtain this exemption letter the vessel owner must make a request in writing to the Regional Administrator.

(B) The vessel may not fish inside the SNE/MA Yellowtail Flounder Area, for a minimum of 7 consecutive days (when fishing with a limited access Handgear A permit, under the NE multispecies DAS program, or under the monkfish DAS program if the vessels is fishing under the limited access monkfish Category C or D permit provisions), unless otherwise specified in paragraph (g)(3) of this section. A vessel subject to these restrictions may fish any portion of a trip in the portion of the GB, SNE, and MA Regulated Mesh Areas outside

of the SNE/MA Yellowtail Flounder Area, provided the vessel complies with the possession restrictions specified under this paragraph (g). A vessel subject to these restrictions may transit the SNE/MA Yellowtail Flounder Area, provided its fishing gear is stowed in accordance with § 648.23(b).

(C) During the periods May through June, and October through November, the vessel may land or possess on board only up to 250 lb (113.6 kg) of yellowtail flounder per trip.

(D) During the periods July through September, and December through April, the vessel may land or possess on board only up to 500 lb (226.8 kg) of yellowtail flounder per DAS, or any part of a DAS, up to a maximum possession limit of 2,000 lb (907.2 kg) per trip.

(5) *SNE/MA yellowtail flounder possession limit restrictions.* Except when fishing under the recreational and charter/party restrictions specified under § 648.89, or unless otherwise

restricted as specified in §§ 648.82(u)(3) and (u)(5), and 648.88(c), a qualified vessel issued a NE multispecies permit and fishing with an open access Handgear B permit, or a vessel fishing under a limited access Handgear A permit, or a vessel fishing under a NE multispecies DAS, or a vessel fishing under a monkfish DAS when fishing under the limited access monkfish Category C or D permit provisions, may fish for, possess and land yellowtail flounder in or from the SNE/MA Yellowtail Flounder Area described in paragraph (g)(5)(i) of this section, only as provided for and allowed under the requirements and trip limits specified in paragraph (g)(5)(ii) of this section.

(i) *SNE/MA Yellowtail Flounder Area.* The SNE/MA Yellowtail Flounder Area (copies of a chart depicting the area is available from the Regional Administrator upon request), is the area defined by straight lines connecting the following points in the order stated:

SNE/MID-ATLANTIC YELLOWTAIL FLOUNDER AREA

Point	N. Latitude	W. Longitude
SYT1 .....	38° 00'	(1)
SY2 .....	38° 00'	72° 00'
SY3 .....	39° 00'	72° 00'
SY4 .....	39° 00'	71° 40'
SY5 .....	39° 50'	71° 40'
USCA2 .....	39° 50'	68° 50'
SYT7 .....	41° 00'	68° 50'
SYT8 .....	41° 00'	69° 30'
SYT9 .....	41° 10'	69° 30'
SYT10 .....	41° 10'	69° 50'
SYT11 .....	41° 20'	69° 50'
SYT12 .....	41° 20'	70° 00'
SYT13 .....	(2)	70° 00'

<sup>1</sup> East facing shoreline of Virginia.

<sup>2</sup> South facing shoreline of Cape Cod, MA.

(ii) *Requirements.* A vessel fishing in the SNE/MA Yellowtail Flounder Area must comply with the following requirements:

(A) The vessel must possess on board a yellowtail flounder possession/landing authorization letter issued by the Regional Administrator. To obtain this exemption letter the vessel owner must make a request in writing to the Regional Administrator.

(B) The vessel may not fish in the Cape Cod/GOM Yellowtail Flounder Area for a minimum of 7 consecutive days (when fishing with a limited access Handgear A permit, under the NE multispecies DAS program, or under the monkfish DAS program if the vessel is fishing under the limited access monkfish Category C or D permit provisions), unless otherwise specified in paragraph (g)(3) of this section. A vessel subject to these restrictions may

fish any portion of the GB, SNE, and MA Regulated Mesh Areas outside of the Cape Cod/GOM Yellowtail Flounder Area, provided the vessel complies with the possession restrictions specified under this paragraph (g). A vessel subject to these restrictions may transit the Cape Cod/GOM Yellowtail Flounder Area, provided its fishing gear is stowed in accordance with § 648.23(b).

(C) During the periods May through June, and October through November, the vessel may land or possess on board only up to 250 lb (113.6 kg) of yellowtail flounder per trip.

(D) During the periods July through September, and December through April, the vessel may land or possess on board only up to 500 lb (226.8 kg) of yellowtail flounder per DAS, or any part of a DAS, up to a maximum possession limit of 2,000 lb (907.2 kg) per trip.

\* \* \* \* \*

(i) *Cod—(1) GOM cod landing limit.*

(i) Except as provided in paragraphs (i)(1)(ii) and (i)(4) of this section, or unless otherwise restricted under § 648.85, a vessel fishing under a NE multispecies DAS may land only up to 600 lb (272.2 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 600 lb (272.2 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 600 lb (272.2 kg) for each additional 24-hr block of DAS fished, or part of an additional 24-hr block of DAS fished, up to a maximum of 4,000 lb (1,818.2 kg) per trip (e.g., a vessel that has been called into the DAS program for more than 24 hr, but less than 48 hr,

may land up to, but no more than 1,200 lb (544.4 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 600 lb (272.2 kg) of cod for that trip, provided the vessel complies with the provisions of paragraph (i)(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 accrued only part of an additional 24 hr block on a fishing trip, may come into port with and offload cod up to an additional 600 lb (272.2 kg), provided that the vessel notifies NMFS that it has an additional day's worth of cod on board as instructed by the Regional Administrator, and, if the vessel is not using a VMS, calls out of the DAS program as described under § 648.10(c)(7). Any such vessel shall be charged DAS rounded up to the next whole DAS, based upon the beginning of the trip. Any vessel subject to differential DAS counting and returning to port on a trip greater than 34 hours in duration with an additional day's worth of cod on board shall be charged DAS pursuant to the differential DAS counting provisions specified at § 648.82(n)(2). For example, a vessel that has been called into the DAS program for 25 hr, at the time of landing, may land up to 1,200 lb (544.4 kg) of cod and would be charged 48 hours of DAS use. A vessel subject to differential DAS counting due to fishing outside of the U.S./Canada Management Area that has been called into the DAS program for 35 hr, at the time of landing, may land only up to 1,200 lb (544.4 kg) of cod and would be charged 49 hr of DAS use (35 hours x 1.4).

(2) *GB cod landing and maximum possession limits.* (i) Unless as provided under § 648.85, or under the provisions of paragraph (i)(2)(iii) of this section for vessels fishing with hook gear, for each fishing year, a vessel that is exempt, pursuant to paragraph (i)(4) of this section, from the landing limit described in paragraph (i)(1) of this section, and fishing under a NE multispecies DAS may land up to 1,000 lb (453.6 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 1,000 lb (453.6 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 1,000 lb (453.6 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 10,000 lb (4536 kg) per trip (e.g., a vessel that has been called into the DAS program for 48 hr or less, but more than 24 hr, may land up to, but no more than 2,000 lb (907.2 kg) of cod). A vessel that has called into only part of an additional 24-hr block of a DAS (e.g., a vessel that has 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 of cod for that trip provided the vessel complies with paragraph (i)(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 accrued only part of an additional 24 hr block on a fishing trip, may come into port with and offload cod up to an additional 1,000 lb (453.6 kg), provided that the vessel notifies NMFS that it has an additional day's worth of cod on board as instructed by the Regional Administrator, and, if the vessel is not using a VMS, calls out of the DAS program as described under § 648.10(c)(7). Any such vessel shall be charged DAS rounded up to the next whole DAS, based upon the beginning of the trip. Any vessel subject to differential DAS counting and returning to port on a trip greater than 34 hours in duration with an additional day's worth of cod on board shall be charged DAS pursuant to the differential DAS counting provisions specified at § 648.82(n)(2). For example, a vessel that has been called into the DAS program for 25 hr, at the time of landing, may land up to 2,000 lb (907.2 kg) of cod and would be charged 48 hours of DAS use. A vessel subject to differential DAS counting due to fishing outside of the U.S./Canada Management Area that has been called into the DAS program for 35 hr, at the time of landing, may land only up to 2,000 lb (907.2 kg) of cod and would be charged 49 hr of DAS use (35 hours x 1.4).

(iii) [Reserved]

(3) *Transiting.* A vessel that has exceeded the cod landing limit as specified in paragraphs (i)(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 (i)(1)(ii)(A) and (i)(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 (i)(1) of this section when fishing south of a line beginning at the Cape Cod, MA, coastline at 42°00' N. lat. and running eastward along 42°00' N. lat. until it intersects with 69°30' W. long., then northward along 69°30' W. long. until it intersects with 42°0' N. lat., then eastward along 42°20' N. lat. until it intersects with 67°20' W. long., then northward along 67°20' W. long. until it intersects with the U.S.-Canada maritime boundary, provided that it does not fish north of this exemption area for a minimum of 7 consecutive days (when fishing under the NE multispecies DAS program), and has on board an authorization letter issued by the Regional Administrator. Vessels exempt from the landing limit requirement may transit the GOM/GB Regulated Mesh Area north of this exemption area, provided that their gear is stowed in accordance with one of the provisions of § 648.23(b).

(j) *GB winter flounder.* Except when fishing under the recreational and charter/party restrictions specified under § 648.89, or unless otherwise restricted as specified in §§ 648.82(u)(5), and 648.88(c), a qualified vessel issued a NE multispecies permit and fishing with an open access Handgear B permit, a vessel fishing under a limited access Handgear A permit, a vessel fishing under a NE multispecies DAS, or a vessel fishing under a monkfish DAS when fishing under the limited access monkfish Category C or D permit provisions may not possess or land more than 5,000 lb (2,268.1 kg) per trip of GB winter flounder.

\* \* \* \* \*

10. In § 648.89, paragraphs (b)(1), (c)(1)(i) and (c)(2)(i) are suspended and paragraphs (b)(3) and (4), (c)(1)(v) and (vi), and (c)(2)(v) and (vi) are added to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(3) *Minimum fish sizes.* Unless further restricted under paragraph (b)(4) 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 (58.4 cm)
Haddock .....	19 (48.3 cm)
Pollock .....	19 (48.3 cm)
Witch flounder (gray sole).	14 (35.6 cm)
Yellowtail flounder .....	13 (33.0 cm)
Atlantic halibut .....	36 (91.4 cm)
American plaice (dab)	14 (35.6 cm)
Winter flounder (blackback).	12 (30.5 cm)
Redfish .....	9 (22.9 cm)

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

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

(v) Unless further restricted by the Seasonal GOM Cod Possession Prohibition specified under paragraph (c)(1)(vi) of this section, each person on a private recreational vessel may possess up to 10 cod per day, in, or harvested from the EEZ.

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

(2) \* \* \*

(v) Unless further restricted under paragraph (c)(2)(vi) of this section, each person on the vessel may possess up to 10 cod per day.

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

\* \* \* \* \*

■ 11. In § 648.91, paragraphs (c)(1)(i), (ii), and (iv) are suspended, and paragraphs (c)(1)(v) through (vii) are added to read as follows:

**§ 648.91 Monkfish regulated mesh areas and restrictions on gear and methods of fishing.**

\* \* \* \* \*

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

(v) *Trawl nets while on a monkfish DAS*. Except as provided in paragraph (c)(1)(vi) of this section, the minimum mesh size for any trawl net, including beam trawl nets, used by a vessel fishing under a monkfish DAS is 10-inch (25.4-cm) square or 12-inch (30.5-cm) diamond mesh throughout the codend for at least 45 continuous meshes forward of the terminus of the net. The minimum mesh size for the remainder of the trawl net is the regulated mesh size specified under § 648.80(a)(3), (a)(4), (b)(2)(vii), or (c)(2)(I) of the Northeast multispecies regulations, depending upon, and consistent with, the NE multispecies regulated mesh area being fished.

(vi) *Trawl nets while on a monkfish and NE Multispecies DAS*. Vessels issued a Category C, D, F, G, or H limited access monkfish permit and fishing with trawl gear under both a monkfish and NE multispecies DAS are subject to the minimum mesh size allowed under regulations governing mesh size at § 648.80(a)(3), (a)(4), (b)(2)(vii), or (c)(2)(I) of the Northeast multispecies regulations, depending upon, and consistent with, the NE multispecies regulated mesh area being fished, unless otherwise specified in this paragraph (c)(1)(vi). Trawl vessels participating in the Offshore Fishery Program, as described in § 648.95, and that have been issued a Category F monkfish limited access permit, are subject to the minimum mesh size specified in paragraph (c)(1)(v) of this section.

(vii) *Authorized gear while on a monkfish and scallop DAS*. Vessels issued a Category C, D, F, G, or H limited access monkfish permit and fishing under a monkfish and scallop DAS may only fish with and use a trawl net with a mesh size no smaller than that specified in paragraph (c)(1)(v) of this section.

\* \* \* \* \*

■ 12. In § 648.92, paragraphs (a)(1), (b)(2)(i) through (iii) are suspended, and paragraphs (a)(3), (b)(2)(iv) and (v) are added to read as follows:

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

(a) \* \* \*

(3) *End-of-year carry-over*. With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(1)(i)(R) for the entire fishing year preceding the carry-over year, limited access vessels that have unused DAS on the last day of April of any year may carry over a maximum of 10 unused DAS into the next fishing year. Any DAS that have been forfeited due to an enforcement proceeding will be deducted from all other unused DAS in determining how many DAS may be carried over.

\* \* \* \* \*

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

(iv) Unless otherwise specified in paragraph (b)(2)(v) 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 monkfish vessel with a limited access NE multispecies DAS permit has a net annual allocation of NE multispecies Category A DAS, specified under § 648.82(d)(1), that is less than its net annual allocation of monkfish DAS. Under this circumstance, the number of monkfish-only DAS is equal to the difference between its net allocated monkfish DAS and its net allocated NE multispecies Category A DAS, unless modified by paragraphs (b)(2)(iv)(A), (B), and (C) of this section to account for differential DAS counting of NE multispecies DAS. When the total number of NE multispecies Category A DAS has been used, the vessel may utilize its monkfish-only DAS without concurrent use of a NE multispecies DAS, provided the vessel fishes under the provisions applicable to limited access monkfish Category A and B vessels. For the purposes of paragraph (b)(2)(iv) of this section, net allocated monkfish DAS is defined as the sum of the vessel's allocated monkfish DAS, plus its monkfish carry-over DAS, minus any monkfish DAS deducted from that vessel due to a DAS sanction, minus any forfeited monkfish DAS due to leasing of NE multispecies Category A DAS, pursuant to paragraph (b)(2)(v) of this section. For the purposes of paragraph (b)(2)(iv) of this section, net allocated NE multispecies Category A DAS is defined as the sum of the vessel's NE multispecies DAS allocated, pursuant to § 648.82, plus NE multispecies carry-over DAS, minus any NE multispecies DAS deducted from that vessel due to a DAS sanction, minus DAS leased to another vessel,

pursuant to § 648.82(t), plus any NE multispecies DAS leased from another vessel, pursuant to § 648.82(t).

(A) *Monkfish Category C, D, F, G, or H vessels fishing exclusively outside the U.S./Canada Management Area.* To adjust for differential DAS counting of NE multispecies DAS charged when fishing outside of the U.S./Canada Management Area, as specified at § 648.82(n)(2)(i), the number of monkfish-only DAS that may be used by a monkfish Category C, D, F, G, or H vessel that fishes all of its allocated NE multispecies DAS exclusively outside of the U.S./Canada Management Area, as defined at § 648.85(a), is calculated using the following formula: Monkfish-only DAS = Net Allocated Monkfish DAS Allocation - (Net Allocated NE Multispecies Category A DAS ÷ 1.4). For example, if a limited access monkfish Category D vessel has net allocations of 40 monkfish DAS and 30 NE multispecies Category A DAS and fishes all of its allocated NE multispecies Category A DAS exclusively outside of the U.S./Canada Management Area, the number of monkfish-only DAS that may be used by this vessel is equal to 18.57 DAS (40 monkfish DAS - (30 NE multispecies Category A DAS ÷ 1.4)).

(B) *Monkfish Category C, D, F, G, or H vessels fishing both inside and outside of the U.S./Canada Management Area.* To adjust for differential DAS counting of NE multispecies DAS on a trip in which a vessel fishes inside and outside of the U.S./Canada Management Area on the same trip, for each NE multispecies DAS charged when fishing outside of the U.S./Canada Management Area, as specified at § 648.82(n)(2)(i), limited access monkfish Category C, D, F, G, or H vessels shall be allocated an additional 0.286 monkfish-only DAS for every NE multispecies Category A DAS that vessel used outside of the U.S./Canada Management Area. For example, if a vessel has an annual allocation of 40 monkfish DAS and 30 NE multispecies Category A DAS, the vessel has an annual allocation of 10 monkfish-only DAS. If this vessel uses 2 NE multispecies Category A DAS outside of the U.S./Canada Management Area, the vessel would actually be charged 2.8 NE multispecies Category A DAS (2 × 1.4 = 2.8 DAS), and its monkfish-only DAS would be adjusted upward by 0.57 DAS (2 × 0.286 = 0.57 DAS). If this same vessel fishes the remainder of its NE multispecies Category A DAS (i.e., 28 DAS) exclusively within the U.S./Canada Management Area, the vessel would not accrue any additional monkfish-only DAS. Therefore, this vessel's total allocation of monkfish-only DAS for the fishing year would be

10.57 DAS (10 DAS + 0.57 DAS). This adjustment factor is equal to the rate at which monkfish-only DAS increase for each additional NE multispecies Category A DAS used outside of the U.S./Canada Management Area at a rate of 1.4:1, using the formula: Monkfish-only DAS = Net Monkfish DAS Allocation - (Net Groundfish DAS Allocation ÷ 1.4).

(C) *Monkfish Category C, D, F, G, or H vessels fishing exclusively within the U.S./Canada Management Area.* No adjustment of monkfish-only DAS is required for a vessel fishing exclusively within the U.S./Canada Management Area throughout the fishing year because such a vessel is not charged at a differential rate for any NE multispecies Category A DAS used. For example, if a limited access monkfish Category D vessel has net allocations of 40 monkfish DAS and 30 NE multispecies Category A DAS and fishes all of its allocated NE multispecies Category A DAS exclusively within the U.S./Canada Management Area, the number of monkfish-only DAS that could be used by this vessel is equal to 10 DAS (40 Allocated Monkfish DAS - 30 Allocated NE Multispecies Category A DAS).

(v) *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)(iv) of this section, and that leases NE multispecies DAS from another vessel pursuant to § 648.82(t), 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(t), is required to 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, which had 40 unused monkfish DAS and 47 allocated NE multispecies DAS, lease 10 of its NE multispecies DAS, the lessor would forfeit 3 of its monkfish DAS (40 monkfish DAS - 37 NE multispecies DAS = 3) because it would have 3 fewer multispecies DAS than monkfish DAS after the lease.

\* \* \* \* \*

■ 13. In § 648.94, paragraphs (b)(3) and (c)(3)(I) are suspended, and paragraphs

(b)(7) and (c)(3)(iii) are added to read as follows:

**§ 648.94 Monkfish possession and landing restrictions.**

\* \* \* \* \*

(b) \* \* \*  
(7) *Category C, D, F, G, and H vessels fishing under the multispecies DAS program—(i) NFMA—(A) Category C and D vessels.* There is no monkfish trip limit for a Category C or D vessel that is fishing under a NE multispecies DAS exclusively in the NFMA, except for vessels participating in the Regular B DAS Program, as specified in § 648.85(b)(10)(iv)(D). Category C and D vessels participating in the Regular B DAS Program are subject to the incidental catch limit specified in paragraph (c)(1)(i) of this section.

(B) *Category F, G, and H vessels.* Vessels issued a Category F, G, or H permit that are fishing under a NE multispecies DAS in the NFMA are subject to the incidental catch limit specified in paragraph (c)(1)(i) of this section.

(ii) *SFMA—(A) Category C, D, and F vessels.* If any portion of a trip is fished only under a NE multispecies DAS, and not under a monkfish DAS, in the SFMA, a Category C, D, or F vessel may land up to 300 lb (136 kg) tail weight or 996 lb (452 kg) whole weight of monkfish per DAS if trawl gear is used exclusively during the trip, or 50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight per DAS if gear other than trawl gear is used at any time during the trip, except for vessels participating in the Regular B DAS Program, as specified in § 648.85(b)(10)(iv)(D). Category C and D vessels participating in the Regular B DAS Program are subject to the incidental catch limit specified in paragraph (c)(1)(ii) of this section.

(B) *Category G and H vessels.* Vessels issued a Category G or H permit that are fishing under a NE multispecies DAS in the SFMA are subject to the incidental catch limit specified in paragraph (c)(1)(ii) of this section. Category G and H vessels participating in the Regular B DAS Program are subject to the incidental catch limit specified in paragraph (c)(1)(ii) of this section.

(iii) *Transiting.* A vessel that harvested monkfish in the NFMA may transit the SFMA and possess monkfish in excess of the SFMA landing limit provided such vessel complies with the provisions of § 648.94(e).

\* \* \* \* \*

(c) \* \* \*  
(3) \* \* \*

(iii) A vessel issued a valid monkfish incidental catch (Category E) permit or a limited access monkfish permit

(Category A, B, C, D, F, G, or H) fishing in the GOM or GB RMAs, or the SNE RMA east of the MA Exemption Area boundary with mesh no smaller than specified at §§ 648.80(a)(3)(i), (a)(4)(vi), and (b)(2)(vii), respectively, while not on a monkfish, NE multispecies, or scallop DAS, may possess, retain, and land monkfish (whole or tails) only up to 5 percent (where the weight of all monkfish is converted to tail weight) of the total weight of fish on board. For the

purpose of converting whole weight to tail weight, the amount of whole weight possessed or landed is divided by 3.32.

\* \* \* \* \*

■ 14. In § 648.95, paragraph (e)(3) is suspended, and paragraph (e)(5) is added to read as follows:

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

\* \* \* \* \*

(e) \* \* \*

(5) A vessel issued a Category F permit that is fishing on a monkfish DAS is subject to the minimum mesh size requirements applicable to limited access monkfish Category A and B vessels, as specified under § 648.91(c)(1)(v) and (c)(1)(iii), as well as the other gear requirements specified in paragraphs (c)(2) and (c)(3).

\* \* \* \* \*

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