

Appendix B  
Draft Proposed Rule



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket Nr]

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Framework Adjustment 40A

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement measures in Framework Adjustment 40A (FW 40A) to the NE Multispecies Fishery Management Plan (FMP). The Northeast Multispecies Fishery Management Plan (FMP) specifies the management measures for twelve groundfish species (cod, haddock, yellowtail flounder, pollock, plaice, witch flounder, white hake, windowpane flounder, Atlantic halibut, winter flounder, yellowtail flounder, ocean pout) off the New England and Mid-Atlantic coasts. These species - in some cases sub-divided into different stock areas - are harvested by commercial and recreational fishermen. The FMP has been updated through a series of amendments and framework adjustments. The most recent change, published as Amendment 13, was approved by the National Marine Fisheries Service in March, 2004 and became effective on May 1, 2004. This amendment adopted a broad sweep of management measures in order to achieve mortality targets and meet other requirements of the Magnuson-Stevens Act.

For several stocks, the mortality targets adopted by Amendment 13 represented substantial reductions from existing levels. For other stocks, the targets were at or higher than existing levels and mortality could remain the same or even increase. Because most fishing trips in this fishery catch a wide range of species, it is impossible to design measures that will selectively change mortality for individual species. As a result, the management measures adopted by the amendment to reduce mortality where necessary are also expected to reduce fishing mortality unnecessarily on other, healthy stocks. As a result of these lower fishing mortality rates, yield from healthy stocks is sacrificed and the management plan may not provide optimum yield - the amount of fish that will provide the greatest overall benefit to the nation.

In order to increase the fishing effort on and yield from healthy stocks, Amendment 13 created a structure that allows for the development of programs to target healthy stocks. The amendment also included four specific programs, but only two were approved and implemented on May 1, 2004. The primary purpose of FW 40A is to adopt programs that will provide additional opportunities to target healthy stocks in order to achieve optimum yield. These programs will also mitigate the economic and social impacts caused by the effort reductions adopted by Amendment 13.

The programs proposed in this action create opportunities for vessels to use additional DAS to target healthy stocks. Amendment 13 categorized the DAS for every permit into one of three groups: Category A DAS that can be used to target any groundfish stock, Category B DAS that can only be used to target healthy stocks, and Category C DAS that cannot be used at all. Category B DAS were further defined as either Category B (regular) or Category B (reserve) DAS. The proposed action creates programs that allow vessels to use Category B DAS (both regular and reserve). These programs either detail the specific time, area, and other requirements to use them in a Special Access Program, or SAP, or create a pilot program that allows limited use of these DAS with very low trip limits for unhealthy stocks.

A secondary purpose of this framework is to revise a measure adopted by Amendment 13 that is believed to be overly restrictive and that may unintentionally shift fishing effort onto unhealthy stocks. Amendment 13 adopted a system to coordinate management of cod, haddock, and yellowtail flounder on eastern Georges Bank. As part of this system, under certain conditions vessels are restricted to fishing in defined areas. There is a concern that this restriction is so onerous that vessels will not choose to fish in this area – where catches of healthy stocks of haddock, winter, and yellowtail flounder would predominate - and will instead fish in inshore areas on unhealthy stocks. This action proposes to change the restrictions that limit vessels to fishing only in this area so that they will use their effort to target the healthy stocks.

DATES: Comments must be received by [insert date 30 days after publication].

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, “Comments on the Proposed Rule for Groundfish Framework 40A.” Comments may also be sent via facsimile (fax) to (978) 281-9135. Comments will not be accepted if sent via e-mail or Internet.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule should be submitted to the Regional Administrator at the address above and by e-mail to [David.Rotsker@omb-eop.gov](mailto:David.Rotsker@omb-eop.gov), or fax to Administrator at the address above and by email to [David.Rotsker@omb-eop.gov](mailto:David.Rotsker@omb-eop.gov) or fax to (202) 395-7285.

Copies of FW 40A, its Regulatory Impact Review (RIR), the Preliminary Regulatory Flexibility Analysis, and the Environmental Assessment are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, The Tannery – Mill 2, Newburyport, MA 01950. NMFS Prepared an Initial Regulatory Flexibility Act Analysis, which is contained in the Classification section of this proposed rule.

FOR FURTHER INFORMATION CONTACT: Thomas Warren, Fishery Policy Analyst, phone: (978) 281-9347, fax: (978) 281-9135; email: [Thomas.warren@noaa.gov](mailto:Thomas.warren@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

The Council developed Amendment 13 in order to bring the FMP into conformance with all Magnuson-Stevens Act requirements, including ending overfishing and rebuilding all overfished groundfish stocks. Amendment 13 was partially approved by the Secretary of Commerce on March 18, 2004. A final rule implementing the amendment was published April 27, 2004 (69 FR 22906) and become effective May 1, 2004. Amendment 13 adopted a suite of management measures to reduce fishing mortality on stocks that are either overfished, or where overfishing is occurring. For several stocks, the mortality targets adopted by Amendment 13 represented substantial reductions from existing levels. For other stocks, the targets were at or higher than existing levels and mortality could remain the same or even increase. Because most fishing trips in this fishery catch a wide range of species, it is impossible to design measures that will selectively change mortality for individual species. As a result, the management measures adopted by the amendment to reduce mortality where necessary are also expected to reduce fishing mortality unnecessarily on other, healthy stocks. As a result of these lower fishing mortality rates, yield from healthy stocks is sacrificed and the management plan may not provide optimum yield - the amount of fish that will provide the greatest overall benefit to the nation.

In order to increase the fishing effort on and yield from healthy stocks, Amendment 13 created a structure that allows for the development of programs to target healthy stocks. The amendment also included four specific programs, but only two were approved and implemented on May 1, 2004. The primary purpose of FW 40A is to adopt programs that will provide additional opportunities to target healthy stocks in order to achieve optimum yield. These programs will also mitigate the economic and social impacts caused by the effort reductions adopted by Amendment 13.

One of the primary management measures used by Amendment 13 to control fishing mortality are days-at-sea (DAS), which limit the time that vessels with limited access permits can fish for regulated groundfish. Amendment 13 categorized the DAS allocated to each permit as Category A, B (regular), B (reserve) or C DAS. Category A DAS can be used to target any regulated groundfish stocks, while Category B DAS are to be used only to target healthy groundfish stocks. Category C DAS cannot be used until some time in the future. The regulations implementing Amendment 13 only created one opportunity to use Category B DAS: a special access program designed to target Georges Bank yellowtail flounder in Closed Area II. FW 40A creates additional opportunities to use Category B DAS.

#### Proposed Measures

FW 40A adopts measures that implement three programs that create opportunities to target healthy groundfish stocks: a Category B (regular) DAS Pilot Program, a Closed Area I Hook Gear Haddock Special Access Program (SAP), and a Closed Area II Haddock SAP. A description of the proposed management measures follows. FW 40A also relaxes restrictions on the area that can be fished by vessels fishing in the western U.S./Canada area.

#### 1. Combined Trips to the Western U.S./Canada Management Area

Regulations implementing Amendment 13 restrict vessels fishing in the western U.S./Canada area to only fishing in that area on a trip. FW 40A proposes to allow limited access multispecies vessels to fishing inside and outside the area on the same trip, but not in the eastern U.S./Canada area. Vessels must report catches of yellowtail flounder by statistical area when crossing into or out of the western U.S./Canada area, and are bound by the most restrictive landing limits for the area fished. They must comply with all other requirements for fishing in the western U.S./Canada area.

#### 2. Closed Area I Hook Gear Haddock SAP

This SAP creates an opportunity for vessels using longline or tub trawl gear to target haddock inside a specific area of Closed Area I. The season for this SAP is October 1 through December 31. Participation in the SAP will end if 1,000 mt of haddock are caught before the season ends. In addition, an incidental catch TAC is specified for GB cod and fishing in the SAP while on a Category B DAS will cease when this incidental catch TAC is projected to be caught.

Any vessel intending to participate in this SAP must notify NMFS by September 1; failure to make this notification will prevent a vessel from participating in this SAP. All vessels participating in this SAP must be equipped with an approved VMS. Vessels must provide NMFS notice of a planned trip in the SAP at least seventy-two hours in advance in order to facilitate observer coverage. In addition, vessels must notify NMFS via VMS when departing on a SAP trip

Specific requirements for the SAP differ for vessels that are members of the GB Cod Hook Sector and for those vessels that are not. Vessels not in the hook sector must report the catch of haddock and stocks of concern via VMS. For those vessels that are not members of the sector, they may use any type of DAS to participate in the SAP. If fishing on Category A DAS, vessels can fish inside the SAP area and outside the SAP area on the same trip. They are restricted to the gear limits for the other areas fished, and the cod landing limit is 500 lbs (226.8 kg) per DAS, for a maximum of 2,000 lbs. (907.2 kg) per trip, for limited access vessels. Vessels participating in the SAP using a Handgear A or handgear permit are restricted to the cod limits for those permits. Vessels must report the amount of haddock and stocks of concern caught when crossing the boundary into or out of the SAP area. Catches of cod on Category A DAS do not apply to the incidental catch cod TAC. Vessels fishing on a Category B DAS cannot fish outside the SAP area on the same trip and are subject to the same cod landing limit. Cod catches on all Category B DAS count against the incidental cod TAC. Vessels must report catches daily through VMS.

Vessels in the hook sector cannot fish outside the SAP area on the same trip. In addition, vessels in the hook sector cannot discard legal-sized cod and all cod caught count against the hook sector cod allocation. Daily catch reports for each vessel may be submitted by the sector manager rather than by individual vessels.

#### 3. Closed Area II Haddock SAP

This SAP created an opportunity for limited access DAS vessels to target haddock in and near Closed Area II while using a Category B DAS. The season for this SAP is May 1 through December 31. The pilot program will run for two years from the date of implementation. Participation in the SAP will end if the haddock or cod TAC for the eastern U.S./Canada management area is reached. In addition, an incidental catch TAC is specified for GB cod and participation in the SAP by vessels using a Category B DAS will cease when this incidental catch TAC is projected to be caught.

Vessels fishing in this SAP must have an approved VMS. Vessel owners or operators planning a trip in this SAP must notify NMFS seventy-two hours in advance in order to facilitate observer coverage, and must also notify NMFS via VMS when departing on a trip in this SAP. The cod landing limit is 1,000 lbs. (453.6 kg) per trip, regardless of trip length. Cod cannot be discarded while fishing on a Category B DAS. If a vessel exceeds the cod landing limit, the owner or operator must immediately notify NMFS via VMS and must change to a Category A DAS. At that point, the vessel must comply with all landing restrictions that apply to Category A DAS. Haddock landing limits are consistent with other limits in place. This measure also changes the cod landing limit for the Closed Area II Yellowtail Flounder SAP to 1,000 lbs. (453.6 kg) per trip so that the same limit applies if a vessel chooses to fish in both SAPs on the same trip.

#### 4. Category B (regular) DAS Pilot Program

This program creates an opportunity to use Category B (regular) DAS outside of a special access program. In addition, if successful this program will provide the Council information that will be used to design future Category B (regular) DAS programs. The pilot program will run for one year, from November 1, 2004 through October 31, 2005. The program will be limited to the use of 1,000 Category B (regular) DAS in each quarter (November through January, February through April, May through July, and August through October). These DAS will not be further allocated to individual vessels – they will be used on a first-come first served basis.

In addition to this limit on DAS, for each quarter a Total Allowable Catch (TAC) will be set for the primary stocks of concern that may be caught in this program (Georges Bank cod, Gulf of Maine cod, Cape Cod/Gulf of Maine yellowtail flounder, Southern New England/Mid-Atlantic yellowtail flounder, Southern New England/Mid-Atlantic winter flounder, witch flounder, plaice, and white hake). With the exception of white hake, if the TAC is caught for one of these species, participation in the Category B (regular) DAS program in that stock area will be prohibited until the next quarter. If the white hake TAC is caught, the possession of white hake will be prohibited until the next quarter.

In order to participate in this program, a vessel must be equipped with an approved Vessel Monitoring System (VMS). A vessel owner or operator must notify NMFS seventy-two hours in advance of a trip in order to facilitate observer coverage. This notice must include a preliminary notice of the broad area or areas (Gulf of Maine, Georges Bank, or Southern New England) that will be fished, but this notice does not restrict vessel activity and is only used to plan observer coverage. When departing on the trip, the vessel owner or operator must notify NMFS via VMS that it is participating in the Category B (regular) DAS pilot program. There are no specific area or gear requirements for participation, but vessels cannot fish in a SAP on the same trip, cannot fish in a rolling (seasonal) or year round closed area, and must comply with minimum gear requirements. While fishing on a Category B (regular) DAS in this program, DAS will be charged at the rate of DAS for each calendar day, or part of a calendar day, fished.

Vessels fishing in this program are limited to very low landing limits for stocks of concern, and cannot discard legal-sized regulated groundfish while on a Category B (regular) DAS. If a vessel exceeds the low landing limits, the vessel owner or operator must notify NMFS by VMS and must then change its DAS to a Category A DAS. Category A DAS will be charged against the vessel's allocation by the minute for the entire trip.

#### Classification

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

The Council prepared an Environmental Assessment for this action. This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

NMFS, pursuant to section 603 of the Regulatory Flexibility Act (RFA), prepared the initial regulatory flexibility analysis (IRFA). [fill in as appropriate]

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

*Reporting and Recordkeeping Requirements*

The proposed measures under FW 40A include the following provisions requiring either new or revised reporting and recordkeeping requirements: (1) daily electronic reporting of kept and discarded catch while participating in the Category B (regular) DAS pilot program, Closed Area I Hook Gear Haddock SAP, Closed Area II Haddock SAP; (2) Advance notice of planned participation in the Category B (regular) DAS pilot program, Closed Area I Hook Gear Haddock SAP, Closed Area II Haddock SAP in order to facilitate observer coverage; (3) electronic reporting of the start of a trip participating in the Category B (regular) DAS pilot program, Closed Area I Hook Gear Haddock SAP, Closed Area II Haddock SAP; (4) electronic notice of a change of DAS from a Category B DAS to a Category A DAS while participating in the Category B (regular) DAS pilot program or the Closed Area II Haddock SAP.

[Fill in estimated costs based on final PRA]

This rule contains collection of information requirements subject to review and approval by OMB under the Paperwork Reduction Act. These requirements have been submitted to OMB for approval. Public reporting burden for these collections of information are estimated to average as follows:

[Fill in based on PRA submission]

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

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

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Date

Signature

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

Part 648—Fisheries of the Northeastern United States

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

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

2. In § 648.2, new definitions for “Days-at-sea (DAS) flip” and “Incidental catch Total Allowable Catch (TAC)” are added in alphabetical order, to read as follows:

§ 648.2 Definitions

\* \* \* \* \*

*Days-at-sea (DAS) flip*, with respect to the Northeast Multispecies Fishery, means to notify NMFS that a vessel that began a trip on a Category B DAS is changing the trip to a Category A DAS.

*Incidental catch Total Allowable Catch (TAC)*, with respect to the Northeast Multispecies Fishery, means the amount of catch (both kept and discarded) of a regulated groundfish stock of concern that can be taken by vessels fishing on Category B DAS.

\* \* \* \* \*

3. Amend § 648.82 as follows:

a. Revise paragraph (d)(2) to read:

\* \* \*

(i) *Regular B DAS--(A) Restrictions on use.* Beginning [insert implementation date of Final Rule], Regular B DAS can only be used either in an approved SAP or in the Category B (regular) DAS pilot program as specified in § 648.85.

\* \* \*

b. Add paragraph (e)(3) as follows:

\* \* \* \* \*

(3) Category B (regular) DAS used in the Category B (regular) DAS Pilot Program described in § 648.85 will accrue at the rate of one full DAS for each calendar day, or part of a calendar day, fished.

\* \* \* \* \*

4. Amend § 648.85 as follows:

a. Amend paragraph (a) as follows:

\* \* \* \* \*

(3) \* \* \*

(i) \* \* \*

(ii) *Declaration.* All NE multispecies DAS vessels that intend to fish in the U.S./Canada Management Area under a groundfish DAS must, prior to leaving the dock, declare the specific U.S./Canada Management Area described in paragraphs (a)(1)(i) or (ii) of this section, or the specific SAP, described in paragraph (b) of this section, within the U.S./Canada Management Area, through the VMS, in accordance with instructions to be provided by the Regional Administrator. A vessel fishing under a NE multispecies DAS in the eastern U.S./Canada Management Area may not fish, during that same trip, outside of the declared area, and may not enter or exit the declared area more than once per trip. A vessel fishing under a NE multispecies DAS in the western U.S./Canada Management Area may choose to restrict its trip to that area, or to fish in the western U.S./Canada Management Area and outside the U.S./Canada Management area on the same trip, subject to the provisions in paragraphs (iv)(C) and (v)(B) of this section. A vessel cannot fish in both the eastern and western U.S./Canada Management Area on the same trip. Vessels other

than NE multispecies DAS vessels are not required to declare into the U.S./Canada Management Areas. For the purposes of selecting vessels for observer deployment, a vessel fishing in either of the U.S./Canada Areas specified in paragraph (a)(1) of this section, must provide notice to NMFS of the vessel name, contact name for coordination of observer deployment, telephone number for contact, date, time and port of departure, at least seventy-two hours prior to the beginning of any trip which it declares into the U.S./Canada Area as required under this paragraph (a)(3)(ii).

(iii) \* \* \*

(iv) \* \* \*

(A) \* \* \*

(B) \* \* \*

(C) Yellowtail flounder landing limit—

(1) \* \* \*

(2) \* \* \*

(3) \* \* \*

(4) *Yellowtail flounder landing limit for vessels fishing both inside and outside the Western U.S./Canada Management Area on the same trip.* If a vessel notifies NOAA Fisheries that it will fish inside the western U.S./Canada Management Area and outside the U.S./Canada Management Area on the same trip, it is bound by the most restrictive yellowtail flounder landing limit for the area fished.

(D) \* \* \*

(E) \* \* \*

(v) *Reporting.* (A) The owner or operator of a NE multispecies DAS vessel must submit reports through 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 be submitted in 24-hr intervals for each day beginning at 0000 hours and ending at 2400 hours. The reports must be submitted by 0900 hours of the following day. For vessels that have declared into the Eastern U.S./Canada Area in accordance with paragraph (a)(3)(ii) of this section, the reports must include at least the following information: Total lb/kg of cod, haddock and yellowtail flounder kept and total lb of cod, haddock, and yellowtail flounder discarded. For vessels that have declared into the Western U.S./Canada Area in accordance with paragraph (a)(3)(ii) of this section, the reports must include at least the following information: Total lb/kg of yellowtail flounder kept and total lb/kg of yellowtail flounder discarded.

(B) In addition to the reporting requirements in (v)(A), a vessel that has notified NMFS that it will fish inside the Western U.S./Canada Management Area and outside the Western U.S./Canada Management Area on the same trip must submit reports through the VMS, in accordance with instructions to be provided by the Regional Administrator, when crossing the boundary into or out of the Western U.S./Canada Management Area. The reports must be submitted within one hour of crossing the boundary and must include at least the following information: total lb/kg of yellowtail flounder kept by statistical area and total lb/kg of yellowtail flounder discarded by statistical area since the last catch report.

(vi) \* \* \*

b. Amend paragraph (b) as follows:

\* \* \* \* \*

(3) *Closed Area II Yellowtail Flounder SAP*

\*\*\*\*\*

(viii) *Trip limits.* Unless otherwise authorized by the Regional Administrator as specified in paragraph (a)(3)(iv)(D) of this section, a vessel fishing in the Closed Area II Yellowtail Flounder SAP may fish for, possess and land up to 30,000 lb (13,608.2 kg) of yellowtail flounder per trip, and may not possess more than 1,000 pounds of cod per trip, regardless of trip length. This cod limit applies for the entire trip if any part of the trip is fished in the Closed Area II Yellowtail Flounder SAP.

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(4) *Closed Area I Hook Gear Haddock SAP.* Vessels issued a valid limited access NE multispecies DAS permit, a Handgear Category A permit, or an open-access handgear permit are eligible to participate in the Closed Area I Hook Gear Haddock SAP, and may fish in the Closed Area I Hook Gear Haddock Access area, as described in paragraph (b)(4)(ii) of this section, for the period specified in paragraph (b)(5)(iii) of this section, when fishing under a NE multispecies DAS, consistent with requirements of Handgear A or handgear permit requirements, or consistent with the operating requirements of an authorized sector, provided such vessels comply with the requirements of this section. Copies of a chart depicting this area are available from the Regional Administrator upon request.

(ii) *Closed Area I Hook Gear Haddock Access Area.* The Closed Area I Hook Gear Haddock Access Area the area defined by straight lines connecting the following points, as defined by latitude and longitude, in the order stated.

CLOSED AREA I HOOK GEAR HADDOCK ACCESS AREA

Point	N. Lat.	W. Long.
Hook1	41° 25'58" N.	69° 20'17" W.
Hook2	41° 29'22" N.	69° 08'06" W.
Hook3	41° 8'52" N.	68° 50'18" W.
Hook4	41° 6'44" N.	69° 3'25" W.

(iii) *Season.* Eligible vessels may fish in the Closed Area I Hook Gear Haddock SAP October 1 through December 31.

(iv) *VMS requirement.* All NE multispecies vessels in the CAI Hook Gear Haddock Access Area Areas described in paragraph (b)(5)(ii) of this section must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(v) *Declaration.* Vessel owners or operators must notify NMFS, in accordance with instructions provided by the Regional Administrator, of intent to participate in the CAI Hook Gear SAP by September 1. Failure to provide this notice precludes participation. For the purposes of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name, contact name for coordination of observer deployment, telephone number for contact, date, time and port of departure, and special access program to be fished, at least seventy-two hours prior to the beginning of any trip which it declares into the Special Access Program as required under this paragraph (b)(4)(v). Prior to and within one hour of departure from port, a vessel intending to participate in the Closed Area I Hook Gear Haddock SAP must declare into this area through the VMS and advise what category of DAS will be used, in accordance with instructions provided by the Regional Administrator. In addition to fishing in the Closed Area I Hook Gear Haddock SAP, a limited access vessel that is not a member of the GB Cod Hook Sector described in §§648.87(d)(1) may also declare its intent to fish in the area outside of the CAI Hook Gear Haddock Access Area, as defined in paragraph (b)(4)(ii) of this section, on the same trip provided the vessel fishes in this area under the most restrictive provisions of either the CAI Hook Gear Haddock SAP or other area fished, and the vessel uses a Category A DAS.

(vi) *Haddock Total Allowable Catch.* Participation in this access program will cease for the rest of the fishing year if/when the Regional Administrator projects that 2,204,622.6 lb (1,000 mt) of haddock have been caught (including both kept and discarded haddock).

(vii) *GB Cod Incidental Catch TAC.* (A) Participation in this access program by limited access vessels that are using Category B DAS and are not members of the GB Hook Sector, and by vessels with a Handgear A or handgear permit, will cease when the Regional Administrator projects that these vessels will catch (including both kept and discarded haddock) the incidental catch TAC assigned to this SAP for the fishing year. These TACs will be specified during the periodic adjustment process described in §648.90. The incidental catch TAC for this SAP will be sixteen percent of the GB cod incidental catch TAC. The initial incidental catch TACS are:

Fishing Year	Cod TAC
2004	27,778.2 lb (12.6 metric tons)
2005	34,171.7 lb (15.5 mt)
2006	44,753.8 (20.3 mt)

(B) All cod caught (kept or discarded) by limited access vessels using a Category B DAS that are not members of the GB Cod Hook Sector, and by Handgear A or handgear permit holders, will be applied to the GB cod incidental catch TAC.

(viii) *Landing limits.* (A) Unless a participant in an authorized sector, a limited access DAS vessel fishing any part of a trip in the Closed Area I Hook Gear Haddock SAP may fish for, possess and land up to 500 lb (226.8.2 kg) of cod per day-at-sea, to a maximum of 2,000 lb (907.2 kg) per trip. The maximum trip length in the SAP is four DAS for all vessels that are not in the GB Hook Sector.

(B) A vessel with a Handgear A permit or a handgear permit fishing any part of a trip in the Closed Area I Hook Gear Haddock SAP may fish for, possess and land up to the cod limit specified for that permit category in 648.82(b)(6) or 648.88(a)(1), respectively.

(ix) *Area fished.* Eligible vessels that have declared a trip into the Closed Area I Hook Gear Haddock SAP and other areas as specified under paragraph (b)(4)(v) of this section may not enter or exit the area more than once per trip. A vessel that is using a Category B DAS to fish in the Closed Area I Hook Gear Access area may not fish or set gear outside of the area on the same trip.

(x) *Gear requirements.* Vessels must fish with longline or tub trawl gear while participating in the Closed Area I Hook Gear Haddock SAP. If a limited access DAS vessel is only fishing in the Closed Area I Hook Gear Access Area, there is no limit on the number of hooks but vessels must comply hook size requirements specified in §648.80(a)(4)(v). Vessels fishing in the Closed Area I Hook Gear Access area and outside the area are limited to the lowest number of hooks for the area fished. Vessels fishing with Handgear A or open-access handgear permit are limited to the number of hooks for tub-trawls specified in §648.88(a)(2).

(xi) *Reporting Requirements.* The owner or operator of a NE multispecies vessel that is not a member of the GB Cod Hook Sector must submit reports through the VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished when declared into the Closed Area I Hook Gear Haddock SAP. The reports must be submitted in 24-hr intervals for each day beginning at 0000 hours and ending at 2400 hours. The reports must be submitted by 0900 hours of the following day. For vessels that have declared into the Closed Area I Hook Gear Haddock SAP in accordance with paragraph (b)(4)(iii) of this section, the reports must include at least the following information: Total lb/kg, kept and discarded, of haddock and regulated groundfish stocks of concern as identified by the Regional Administrator. If a vessel that is not a participant in the GB Cod Hook Sector is fishing both in the Closed Area I Hook Gear Access area and outside the area on the same trip, a catch report must also be submitted when entering or exiting the area in accordance with instructions provided by the Regional Administrator. These reports must be submitted within one hour of entering or exiting the Closed Area I Hook Gear Access area.

(xii) *Additional Requirements for Vessels in the GB Hook Sector.* For vessels that participate in the GB Cod Hook Sector described in §648.87(d)(1), the following provisions apply:

(A) All cod catches (including cod kept and discarded) will count towards the sector GB cod allocation.

(B) Discarding of legal-sized cod is prohibited.

(C) Instead of the reporting requirements specified in (b)(5)(xi), daily catch reports, by vessel, can be provided by a responsible official designated by the sector.

(D) A vessel that has declared a trip into the Closed Area I Hook Gear Access area may not fish or have gear set outside of the area during the SAP trip.

(5) *Closed Area II Haddock SAP Pilot Program.* (i) Vessels issued a valid limited access NE multispecies DAS permit are eligible to participate in the Closed Area II Haddock SAP, and may fish in the Closed Area II Haddock Access area, as described in paragraph (b)(5)(ii) of this section, for the period specified in paragraph (b)(5)(iii) of this section, when fishing under a NE multispecies DAS or consistent with the operating requirements of an authorized sector, provided such vessels comply with the requirements of this section. Copies of a chart depicting this area are available from the Regional Administrator upon request.

(ii) *Closed Area II Haddock Access Area.* The Closed Area II Haddock Access Area is the area defined by straight lines connecting the following points in the order stated.

#### CLOSED AREA II HADDOCK ACCESS AREA

Point	N. Lat.	W. Long.
CII3	42° 22' N	67° 20' W. (1)

CIH1	42° 20' N.	67° 20' W.
CIH2	42° 20' N.	67° 40' W.
CIH3	41° 10' N.	67° 40' W.
CIH4	41° 10' N.	67° 20' W.
CIH5	42° 10' N.	67° 20' W.
CIH6	42° 10' N.	67° 10' W. (1)

(1) U.S./Canada maritime boundary

(iii) *Season.* Eligible vessels may fish in the Closed Area II Haddock SAP May 1 through December 31.

(iv) *VMS requirement.* All NE multispecies DAS vessels in the CAII Haddock Access Area Areas described in paragraph (b)(5)(ii) of this section must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(v) *Declaration.* For the purposes of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name, contact name for coordination of observer deployment, telephone number for contact, date, time and port of departure, and special access program to be fished, at least seventy-two hours prior to the beginning of any trip which it declares into the Special Access Program as required under this paragraph (b)(5)(v). Prior to and within one hour of departure from port, a vessel intending to participate in the Closed Area II Haddock SAP must declare into this area through the VMS and advise what category of DAS will be used, in accordance with instructions provided by the Regional Administrator. In addition to fishing in the Closed Area II Haddock SAP, a vessel, on the same trip, may also declare its intent to fish in the eastern U.S./Canada management area outside of the CAII Haddock Access Area, as defined in paragraph (a)(1)(ii) of this section, and/or in the CAII Yellowtail Flounder SAP area defined in paragraph 648.85(b)(3), as long as those areas remain open to fishing.

(vi) *Haddock and Cod Total Allowable Catch.* Participation in this access program will cease for the remainder of the fishing year if/when the Regional Administrator projects that the haddock or cod Total Allowable Catch defined in §648.85(a)(2) has been caught (including both kept and discarded fish).

(vii) *GB Cod Incidental Catch TAC.* (A) Participation in this access program by vessels that are using Category B DAS will cease when the Regional Administrator projects that vessels participating in the SAP using Category B DAS will catch (including both kept and discarded fish) the incidental catch TAC assigned to this SAP for the fishing year. These TACs will be specified during the periodic adjustment process described in §648.90. The incidental catch TAC for this SAP will be thirty-four percent of the GB cod incidental catch TAC. The initial incidental catch TACS are:

Fishing Year	Cod TAC
2004	59,524.8 lb (27 metric tons)
2005	72,752.5 lb (33 mt)
2006	94,798.8 lb (43 mt)

(B) All cod caught (kept or discarded) by limited access vessels participating in this SAP while using a Category B DAS will be applied to the GB cod incidental catch TAC, regardless of whether it is caught in the CAII Haddock SAP area or outside of the area.

(viii) *Landing limits.* (A) A vessel fishing any portion of a trip in the Closed Area II Haddock SAP may fish for, possess and land up to 1,000 lb (453.6kg) of cod per trip, regardless of trip length.

(B) A vessel fishing any portion of a trip in the Closed Area II Haddock SAP cannot discard legal sized cod while fishing on a Category B DAS.

(C) If a vessel exceeds the landing limit specified in §(b)(4)(viii)(1) while using a Category B DAS, the vessel owner or operator must notify NOAA Fisheries via VMS according to instructions issued by the Regional Administrator that the vessel has exceeded the cod landing limit and is changing its DAS to a Category A DAS. The entire trip will be charged against the vessel's Category A DAS allocation. Once fishing on a Category A DAS, the vessel owner and operator must comply with all landing limits that apply to the area fished.

(ix) *Area fished.* Vessels participating in the Closed Area II Haddock SAP pilot program may fish in any part of the eastern U.S./Canada area that is open to fishing subject to the most restrictive requirements for the area being fished.

(x) *Gear requirements.* (A) Vessels must use gear that has been demonstrated to minimize the catch of cod while participating in the Closed Area II Haddock SAP. The following gear is authorized:

(1) Haddock separator trawl described in §(a)(3)(iii)(A).

(2) Flounder net as described in §(a)(3)(iii)(B).

(3) Reserved.

(B) The Regional Administrator is authorized to approve the use of other gear if it is demonstrated that the gear performs similarly to a haddock separator trawl. The Regional Administrator will provide notice of possible approval through a proposed rule and after reviewing public comments will authorize additional gear through a final rule.

(xi) *Reporting Requirements.* The owner or operator of a NE multispecies DAS vessel must submit reports through the VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished when declared into the Closed Area II Haddock SAP. The reports must be submitted in 24-hr intervals for each day beginning at 0000 hours and ending at 2400 hours. The reports must be submitted by 0900 hours of the following day. For vessels that have declared into the Closed Area II Haddock SAP Pilot Program in accordance with paragraph (b)(5)(iii) of this section, the reports must include at least the following information: Total lb/kg of cod, haddock and yellowtail flounder kept and total lb of cod, haddock, and yellowtail flounder discarded.

(xii) *Duration.* The Closed Area II Haddock SAP Pilot Program will expire at the end of the month two years after [insert date of publication of Final Rule].

(6) *Category B (regular) DAS Pilot Program.* Vessels issued a valid limited access NE multispecies DAS permit are eligible to participate in the Category B (regular) DAS Pilot Program for the period specified in paragraph (b)(6)(iii) of this section provided such vessels comply with the requirements of this section.

(ii) *Category B (regular) DAS Pilot Program Access Area.* (A) The Category B (regular) DAS pilot program area includes all areas open to fishing on a multispecies DAS, unless restricted by the provisions of paragraph (vii) below.

(B) A vessel participating in the Category B (regular) DAS Pilot Program cannot fish in a Special Access Program during the same trip.

(iii) *Season.* Eligible vessels may fish in the Category B (regular) DAS pilot program November 1, 2004 through October 31, 2005, subject to the requirements of this section.

(iv) *VMS requirement.* All NE multispecies DAS vessels in the Category B (regular) DAS Pilot Program must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(v) *Declaration.* For the purposes of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name, contact name for coordination of observer deployment, telephone number for contact, date, time and port of departure, and planned fishing area or areas (Gulf of Maine, Georges Bank, or Southern New England/Mid-Atlantic) at least seventy-two hours prior to the beginning of any trip which it declares into the Category B (regular) DAS Pilot Program as required under this paragraph (b)(6)(v). (The declaration of planned fishing area does not restrict the vessel's fishing locations and is only used to plan observer coverage). Prior to and within one hour of departure from port, a vessel intending to participate in the Category B (regular) DAS Pilot Program must declare the start of a Category B (regular) DAS trip.

(vi) *Effort Controls.* (A) Participation in the Category B (regular) DAS pilot program is limited to 1,000 Category B (regular) DAS in each quarter. Only the DAS used on trips that end on a Category B (regular) DAS will count against this total.

(B) For the Category B (regular) DAS Pilot Program, a vessel will be charged one Category B (regular) DAS for each calendar day, or part of a calendar day, fished.

(vii) *Incidental Catch TACs.* (A) Participation in this access program by vessels will cease in specified areas when the Regional Administrator projects that vessels participating in the program will catch (including both kept and discarded fish) the incidental catch TACs assigned to this program for the appropriate quarter. These TACs will be specified during the periodic adjustment process described in §648.90. The incidental catch TACs, and the statistical areas that will be closed when a stock specific TAC is projected to be caught, are:

	FY 2004 3 <sup>rd</sup> Quarter (November – January)	FY 2004 4 <sup>th</sup> Quarter (February – April)	FY 2005 1 <sup>st</sup> Quarter (May – July)	FY 2005 2 <sup>nd</sup> Quarter (August- October)	Areas to be closed
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GOM cod	48.5	48.5	63.5	63.5	510-515
GB cod	19.75	19.75	24.25	24.25	520s, 530s, 540s, 600s
CC/GOM yellowtail	9	9	12.5	12.5	510-515, 521
Plaice	92.5	92.5	90	90	500-526,53- 539,541- 543,551- 562,600's
White Hake	38.5	38.5	38	38	See paragraph (b)(7)(vii)(2)
SNE/MA Yellowtail	17.5	17.5	49.5	49.5	526, 537- 539, 611-639
SNE/MA Winter Flounder	71.5	71.5	89	89	521,526,537 -539,600's
Witch Flounder	129.5	129.5	175	175	510-526, 551-562

(B) When the white hake incidental catch TAC is caught, vessels participating in the Category B (regular) DAS Pilot Program cannot retain white hake.

(viii) *Landing limits.* (A) A vessel fishing in the Category B (regular) DAS Pilot Program must comply with the following landing limits:

Cod, plaice, white hake, witch flounder, ocean pout, windowpane flounder: 100 lbs.(45.4 kg) per DAS to a maximum of 1,000 lbs.(454 kg) per trip.

Atlantic halibut: A vessel issued a NE multispecies permit under §648.4(a)(1) and participating in the Category B (regular) DAS Pilot Program may land or possess on board no more than one Atlantic halibut per trip, provided the vessel complies with other provisions of this part.

(B) A vessel fishing in the Category B (regular) DAS Pilot Program that will fish outside of the U.S./Canada Area on any part of the trip must also comply with the following landing limits:

Yellowtail flounder: 25 lbs.(11.3 kg) per DAS to a maximum of 250 lbs.(113 kg) per trip

(C) A vessel fishing in the Category B (regular) DAS Pilot Program that will fish in the Southern New England RMA on any part of a trip must also comply with the following landing limits

Winter flounder: 100 lbs.(45.4 kg) per DAS to a maximum of 1,000 lbs.(454 kg) per trip

(D) A vessel fishing in the Category B (regular) DAS Pilot Program cannot discard legal-sized regulated groundfish while fishing on a Category B (regular) DAS.

(E) If a vessel exceeds any of the landing limits specified in §(b)(8)(viii)(1) or (2) while using a Category B (regular) DAS, the vessel owner or operator must notify NOAA Fisheries via VMS according to instructions issued by the Regional Administrator that the vessel has exceeded a Category B (regular) DAS landing limit and is changing its DAS to a Category A DAS. This notification must be provided before the vessel crosses the VMS demarcation line specified in § 648.10(a) enroute port. The entire trip will be charged against the vessel's Category A DAS allocation, counted as specified in §648.83(e). Once fishing on a Category A DAS, the vessel owner and operator must comply with all landing limits that apply to the area fished.

(F) For the purposes of this Pilot Program, if a vessel has been issued a letter of authorization issued under the provisions of §§ 648.86(b)(4), 648.86(g)(1), or 648.86(g)(2), the areas that can be fished under the terms of that letter will be used to determine the Category B (regular) DAS landing limits that apply for the entire trip.

(ix) *Area fished.* Vessels participating in the Category B (regular) DAS Pilot Program may fish in any area that is open to fishing for groundfish, but must observe all year-round and rolling (seasonal) closed areas.

(x) *Gear requirements.* Vessels must comply with the gear requirements specified in §648.80.

(xi) *Reporting Requirements.* The owner or operator of a NE multispecies DAS vessel must submit reports through the VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished that begins in the Category B (regular) DAS Pilot Program. The reports must be submitted

in 24-hr intervals for each day beginning at 0000 hours and ending at 2400 hours. The reports must be submitted by 0900 hours of the following day. The reports must include at least the following information: total lb/kg kept and discarded of each stock of concern, as identified by the Regional Administrator, by statistical area.

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