

3.0 INTRODUCTION AND BACKGROUND

3.1 *Background*

The primary statute governing the management of fishery resources in the Exclusive Economic Zone (EEZ) of the United States is the Magnuson-Stevens Fishery Conservation and Management Act (M-S Act). In brief, the purposes of the M-S Act are:

- (1) to take immediate action to conserve and manage the fishery resources found off the coasts of the United States;
- (2) to support and encourage the implementation and enforcement of international fishery agreements for the conservation and management of highly migratory species;
- (3) to promote domestic and recreational fishing under sound conservation and management principles;
- (4) to provide for the preparation and implementation, in accordance with national standards, of fishery management plans which will achieve and maintain, on a continuing basis, the optimum yield from each fishery;
- (5) to establish Regional Fishery Management Councils to exercise sound judgment in the stewardship of fishery resources through the preparation, monitoring, and revisions of such plans under circumstances which enable public participation and which take into account the social and economic needs of the States.

In New England, the New England Fishery Management Council (NEFMC) is charged with developing management plans that meet the requirements of the M-S Act. 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. Commercial and recreational fishermen harvest these species -in some cases sub-divided into different stock areas. 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 fishing mortality targets and meet other requirements of the M-S Act.

3.2 *Purpose and Need for the Action*

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. 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. FW 40A addresses a **need** (mandated by the M-S Act) to achieve optimum yield from the Northeast Multispecies fishery.

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

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primary purpose of this action is to adopt programs that will provide additional opportunities to target healthy stocks in order to achieve optimum yield. Without these programs, the fishery will not achieve optimum yield and the commercial fishing industry and communities will suffer economic losses. 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 this time. 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 only restricts the 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 with Canada 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. Without this change, the shifts in effort that may occur will prevent the fishery from achieving optimum yield because healthy stocks in the area will not be harvested and the shift in effort to other stocks may result in catches exceeding optimum levels.

3.3 Brief History of the Northeast Multispecies Fishery Management Plan

Groundfish stocks were managed under the M-S Act beginning with the adoption of a groundfish plan for cod, haddock, and yellowtail flounder in 1977. This plan relied on hard quotas (total allowable catches, or TACs), and proved unworkable. The quota system was rejected in 1982 with the adoption of the Interim Groundfish Plan, which relied on minimum fish sizes and codend mesh regulations for the Gulf of Maine and Georges Bank to control fishing mortality. The interim plan was replaced by the Northeast Multispecies FMP in 1986, which established biological targets in terms of maximum spawning potential and continued to rely on gear restrictions and minimum mesh size to control fishing mortality. Amendment 5 was a major revision to the FMP. Adopted in 1994, it implemented reductions in time fished (days-at-sea, or DAS) for some fleet sectors and adopted year-round closures to control mortality. A more detailed discussion of the history of the management plan up to Amendment up to 1994 can be found in Amendment 5 (NEFMC 1994). Amendment 7, adopted in 1996, expanded the DAS program and accelerated the reduction in DAS first adopted in Amendment 5. Since the implementation of Amendment 7, there have been a series of amendments and smaller changes (framework adjustments) that are detailed in Amendment 13 (NEFMC 2003). Amendment 13 was developed over a four-year period to meet the M-S Act requirement to adopt rebuilding programs for stocks that are overfished and to end overfishing. Amendment 13 also brought the FMP into compliance with other provisions of the M-S Act.

3.4 National Environmental Policy Act (NEPA)

NEPA provides a structure for identifying and evaluating the full spectrum of environmental issues associated with Federal actions, and for considering a reasonable range of alternatives to avoid or

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minimize adverse environmental impacts. This document is a combined framework adjustment to a fishery management plan and an environmental assessment (EA). An EA provides an analysis of a proposed action, the alternatives to that action that were considered, and the impacts of the action and the alternatives. An EA is prepared rather than an Environmental Impact Statement (EIS) when the impacts are not expected to be significant. The required NEPA elements for an EA are discussed in section 8.2.1. The evaluation that this action will not have significant impacts is in section 8.2.2, and the required Finding of No Significant Impact (FONSI) statement is included at the end of that section.

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Category B DAS Incidental Catch Total Allowable Catch (TACs)

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The proposed action is a suite of management measures that will:

- Adopt Total Allowable Catch (TAC) limits for stocks of concern (unhealthy stocks) that can be caught while using Category B DAS;
- Implement a pilot program for the use of Category B (regular) DAS;
- Implement a Special Access Program for two years to target GB haddock using hook gear in Closed Area I (CAI);
- Implement a Special Access Program to target GB haddock in and near CA II;
- Allow vessels to fish in both the Western U.S./Canada area and other areas on the same trip.

4.1 *Category B DAS Incidental Catch Total Allowable Catch (TACs)*

In order to ensure that any catch (landings and discards) of stocks of concern taken while using a Category B (regular or reserve) DAS does not threaten the mortality objectives of Amendment 13, catches of those stocks taken on a Category B DAS will be constrained by a “hard” incidental catch TAC. These TACs are based on a percentage of the overall TAC for the stock of concern. The percentages used, and the incidental catch TACs that result for FY 2004, 2005 and 2006, are shown in Table 1. The percentages can be changed by a future management action, and the actual incidental catch TACs will be re-calculated during the periodic adjustment process.

The incidental catch TACs will be allocated to programs developed to use Category B (regular or reserve) DAS where appropriate. The percentage of the TAC allocated to these programs can be adjusted through a management action such as a framework or amendment. The allocations proposed for this action are shown as percentages of the incidental catch TAC in Table 2.

	Percentage of Total Target TAC	Incidental Catch TAC		
		2004	2005	2006
GOM cod	Two	97	127	149
GB cod	Two	79	97	127
CC/GOM yellowtail	Two	18	25	21
Plaice	Five	185	181	151
White Hake	Two	77	76	76
SNE/MA Yellowtail	Five	35	99	166
SNE/MA Winter Flounder	Five	143	178	222
Witch Flounder	Five	259	350	383

Table 1 – Proposed incidental catch TACs for major stocks of concern (mt). TACs are for the fishing year.

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Category B DAS Incidental Catch Total Allowable Catch (TACs)

	Category B (regular) DAS Pilot Program	CAI Hook Gear SAP	CAII Haddock SAP
GOM cod	100	NA	NA
GB cod	50	16	34
CC/GOM yellowtail	100	NA	NA
Plaice	100	NA	NA
White Hake	100	NA	NA
SNE/MA Yellowtail	100	NA	NA
SNE/MA Winter Flounder	100	NA	NA
Witch Flounder	100	NA	NA

Table 2 – Proposed allocation of incidental catch TACs for major stocks of concern to Category B DAS programs (shown as percentage of the incidental catch TAC)

Rationale: The management measures in Amendment 13 are designed to meet the mortality objectives of the amendment. They were evaluated on the basis of Category A DAS use only. Any used Category B DAS represent an increase in effort, and if the catch of stocks of concern from fishing on a Category B DAS is not controlled, it is possible that additional catches will threaten the mortality objectives of the amendment. If the use of Category B DAS is constrained by an incidental catch TAC, then the catches of stocks of concern resulting from Category B DAS will not threaten the Amendment 13 mortality objectives. Incidental catch TACs are not specified for ocean pout, southern windowpane flounder, and Atlantic halibut, three stocks of concern, because catches of these stocks are insignificant.

A two-tier approach is proposed for establishing the appropriate TACs. For some stocks, the Amendment 13 management measures are expected to reduce mortality more than is required, and the catch estimated in 2003 will be less than the 2004 TAC. These stocks are limited to five percent of the total TAC. For other stocks, the Amendment 13 measures are expected to more closely match the required mortality reduction, and the expected catch in 2003 is not less than the 2004 TAC. The incidental catch limit for these stocks is two percent of the overall TAC. This approach is explained in detail in section 7.2.

Where appropriate, the incidental catch TACs are allocated to the programs that use Category B (regular or reserve) DAS. An incidental catch TAC for a specific stock is only allocated to a program if there is likelihood that stock will be caught in the program. If an incidental catch TAC were defined for each program regardless if that stock were likely to be caught, it would add administrative complexity without providing any conservation benefit. For example, a program that takes place on Georges Bank need not be allocated a TAC for a stock that is only located in Southern New England. Similarly, a program limited to hook gear is not likely to need a TAC for yellowtail flounder, since they are rarely taken on hooks. For this action, allocations only need to be made for GB cod since this is the only major stock of concern caught in the two proposed Special Access Programs (SAPs). Data supporting this decision can be found in the analysis of biological impacts, sections 7.2.1.1, and includes the results from an experiment in CAI and haddock separator trawl experiments. The rationale for each allocation is explained in the sections describing each SAP.

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Category B (regular) DAS Pilot Program

4.2 Category B (regular) DAS Pilot Program

Amendment 13 categorized DAS into A, B (regular or reserve), and C DAS. While the amendment (as approved) specified the requirements for using Category A DAS, and created one Special Access Program (SAP) for the use of Category B DAS, the amendment did not adopt a program for using Category B (regular) DAS outside of a SAP. This alternative proposes a limited pilot program to test the Category B (regular) DAS concept.

Season: The Category B (regular) DAS pilot program will take place for six months in fishing year 2004 and six months in fishing year 2005. The program will be authorized for November, 2004 through October, 2005.

Rationale: By conducting this pilot program over a twelve-month period, the Council will collect information on whether this program can be pursued in any season. Ending the program in October, 2005, will provide the Council a limited opportunity to review the results of the program prior to making a decision on whether to extend the program into the future.

DAS Limit: The Category B (regular) DAS pilot program is limited to 1,000 Category B (regular) DAS in each quarter (a total of 4,000 Category B (regular) DAS). These DAS are not apportioned to individual permits. The number of DAS is based on the number of DAS on trips that finish as a Category B (regular) DAS – that is, if a DAS is “flipped” from a Category B DAS to a Category A DAS, it does not count against the limit of Category B (regular) DAS. The pilot program will end in each quarter when 1,000 Category B (regular) regular DAS are used. The pilot program could also be suspended in a quarter once the incidental TACs for stocks of concern have been met.

Rationale: Because this is a pilot program, the Council is using both a limit on DAS and an incidental catch TAC for stocks of concern to reduce the possibility that the program may have unforeseen impacts on Amendment 13 mortality objectives. This limit on DAS is a secondary control that will limit the damage that could result if it proves difficult to monitor the incidental catch TACs. The Council chose not to apportion the DAS to individual permits because of uncertainty over which vessels will choose to participate in this program. While there is a possibility this may create a derby to use the DAS, the information collected will help to design future Category B (regular) DAS programs.

DAS Counting:

(1) For the Category B (regular) DAS pilot program, Category B (regular) DAS will be charged at the rate of a full twenty-four hours for each calendar day fished.

Example:

- (a) A vessel fishing a trip of less than 24 hours on one calendar day is charged a full 24-hours of Category B (regular) DAS.
- (b) A vessel fishing a trip of 26 hours on two calendar days is charged a full 48-hours of Category B (regular) DAS.
- (c) A vessel fishing that leaves one minute before midnight and fished for one minute after midnight - fishing for two minutes on two different calendar days - is charged a full 48-hours of Category B (regular) DAS.

(2) DAS flipping: When a vessel begins its trip, it will notify NMFS that it is fishing on a Category B DAS. If a vessel exceeds the landing limit for a stock of concern, the operator must retain the excess catch and “flip” the DAS to a Category A DAS. This change must take place

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prior to the vessel crossing the VMS demarcation line enroute to port. (Once the DAS is “flipped” and the vessel is on a Category A DAS, it must comply with the landing limits that apply to Category A DAS). Category A DAS use is counted as under existing regulations and not on a calendar day basis.

(3) The number of Category B (regular) DAS that can be used on a trip cannot exceed the number of Category A DAS a vessel has at the start of the trip.

(4) A Category B DAS can be used to meet any requirement established by other FMPs to use a groundfish DAS to fish (for example, by a Monkfish Limited Access Category C or D permit holder using a monkfish DAS). Vessels must comply with all other requirements of that FMP (permits, landing limits, gear requirements, etc.).

Rationale: Counting DAS based on a calendar day simplifies calculating appropriate landing limits and minimizes the possibility that a number of short trips could quickly catch the incidental catch TAC. The DAS flipping provision provides a way for fishermen to land most, if not all, of their catch should they exceed the low possession limits required for using a Category B (regular) DAS. The requirement to have Category A DAS available at the start of a Category B (regular) DAS trip ensures the vessel has enough Category A DAS available to account for any landing limit overages. Allowing the use of a Category B (regular) DAS to meet requirements of other FMPs to use a groundfish DAS is in recognition of the fact that those FMPs have measures in place to control mortality and that Amendment 13 DAS restrictions were not designed to control mortality in other fisheries.

Target stocks: Category B (regular) DAS can be used to target healthy groundfish stocks – that is, those stocks that are not stocks of concern. A vessel operator is not required to identify the stock targeted when beginning a Category B (regular) DAS. A Category B (regular) DAS can also be used to target other, non-groundfish stocks, consistent with regulations implemented by other management plans. Based on analyses in Amendment 13, the list of regulated groundfish stocks that can be targeted is:

- GOM haddock
- Pollock
- Redfish
- GOM winter flounder
- GB haddock
- GB yellowtail flounder
- GB winter flounder

Rationale: This list identifies the stocks that, based on Amendment 13, can support additional fishing effort. This list is provided for information purposes only.

Incidental Catch TACs:

- (1) The use of Category B (regular) DAS, outside of a SAP, will be constrained by a “hard” incidental catch TAC for stocks of concern. These TACs are reduced by the amount of the total incidental catch TAC that is assigned to SAPs. All catches (landings and discards) of the stock of concern from a Category B (regular) DAS will be applied to this TAC. The incidental catch TACs will be equally apportioned to the four quarters for this pilot program. The TACs are shown by quarter in Table 8. The differences between Table 3 and Table 1 reflect the allocation of incidental catch TACs to Special Access Programs (SAPs) proposed by this action.

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	FY 2004 3 rd Quarter (November – January)	FY 2004 4 th Quarter (February – April)	FY 2005 1 st Quarter (May – July)	FY 2005 2 nd Quarter (August - October)
GOM cod	48.5	48.5	63.5	63.5
GB cod	19.75	19.75	24.25	24.25
CC/GOM yellowtail	9	9	12.5	12.5
Plaice	92.5	92.5	90	90
White Hake	38.5	38.5	38	38
SNE/MA Yellowtail	17.5	17.5	49.5	49.5
SNE/MA Winter Flounder	71.5	71.5	89	89
Witch Flounder	129.5	129.5	175	175

Table 3 – Proposed incidental catch TACs for the Category B DAS pilot program (mt)

- (2) With the exception of white hake, when projections indicate the TAC for a stock of concern will be caught in a quarter, the use of Category B (regular) DAS in the stock area will not be allowed. When the white hake incidental catch TAC is caught, the possession of white hake on a Category B DAS will be prohibited. The areas that will be closed to the use of Category B (regular) DAS when a TAC is caught for a specific stock are listed in Table 4 (based on current stock area definitions). These areas could change if stock areas are redefined.

Stock	Statistical Area
GOM Cod	510-515
GB Cod	520s, 530s, 540s, 561, 562, 600s
GB Haddock	520-526, 537-539, 551-562
GOM Haddock	510-515
GB Yellowtail Flounder	522,525,551,552,561,562
Cape Cod/GOM Yellowtail Flounder	510-515, 521
SNE/MA yellowtail flounder	526, 537-539, 611-639
American Plaice	500-526,533-539,541-543,551-562,600's
Witch Flounder	510-526, 551-562
Gulf of Maine Winter Flounder	510-515
GB Winter Flounder	522,525,551,552,561,562
SNE/MA Winter Flounder	521,526,537-539,600's
Acadian Redfish	500-562
White Hake	All areas
Pollock	464-562
Windowpane Flounder (North)	464-467,510-515,521- 525,542,543,551,552,561,562
Windowpane Flounder (South)	526,53-539,541,600's

Table 4 – Areas that will be closed to the use of Category B DAS when the incidental catch TAC is caught (see Figure 1).

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Category B (regular) DAS Pilot Program

Rationale: The incidental catch TACs are the primary control adopted to prevent this pilot program from affecting the mortality objectives of Amendment 13. TACs are divided equally between quarters to provide opportunities to vessels that may fish at different times of the year. Prohibiting the use of Category B (regular) DAS in a stock area when the incidental catch TAC is intended to reduce possible overages of the TAC. The sole exception to this requirement is white hake because of the extended range of that stock.

Landing limits:

(1) The landing limit for CC/GOM yellowtail flounder and SNE/MA yellowtail flounder is 25 lbs./DAS. The landing limit for Atlantic halibut is one fish of legal size per trip. The landing limit for any other stock of concern shown in Table 8 and including southern windowpane flounder and ocean pout is 100 lbs./DAS. The landing limit for any healthy stock is the same as under other provisions of Amendment 13.

(2) A vessel cannot discard legal sized groundfish while fishing on a Category B (regular) DAS in this pilot program. If a vessel exceeds the landing limit for a stock of a concern, the DAS must be “flipped” to a Category A DAS. Once the DAS is “flipped,” the vessel must comply with the landing limits for Category A DAS.

Rationale: The very low landing/possession limits are meant to encourage fishermen to develop selective ways of fishing for healthy stocks. As a further incentive, discards of legal size fish are prohibited and vessels must immediately “flip” the DAS if the catch limit is exceeded. Once on a Category A DAS, a vessel must comply with landing restrictions for Category A DAS.

Example: A vessel begins a planned twelve-hour trip using Category B DAS in the GOM. The vessel catches 900 lbs/ of legal-sized cod in one tow. All legal sized cod must be retained while on a Category B DAS. Since the vessel will only be underway for twelve hours, the vessel “flips” to a Category A DAS. It must discard 100 pounds of cod to comply with the Category A DAS landing limit. Alternatively, the vessel could remain underway longer to account for the cod overage.

Gear requirements: Vessels must comply with the Amendment 13 gear restrictions with respect to mesh size, numbers of nets, numbers of hooks, etc. There are no other gear requirements or restrictions for this pilot program. For example, a vessel could use a haddock separator trawl of unusual design, with a minimum mesh consistent with Amendment 13 requirements, while fishing on a Category B (regular) DAS.

Rationale: This provision provides fishermen flexibility to develop gear that can fish selectively as long as they do not use gear prohibited by Amendment 13.

Monitoring:

- (1) All vessels using a Category B (regular) DAS must use an approved Vessel Monitoring System (VMS).
- (2) The targeted level of observer coverage will be sufficient to ensure the program is working as designed.
- (3) Vessel operators must provide the observer program three days (72 hours before departure) advance notice of a Category B (regular) DAS trip. This notification will include reporting the broad area or areas (Gulf of Maine, Georges Bank, Southern New England/Mid-Atlantic) where the vessel plans to fish. The information on area to be fished will be used by NMFS only for planning observer coverage and a vessel operator is not limited to fishing in these

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- areas and need not provide an additional notification should plans for the area that will be fished change.
- (4) Vessels beginning a trip as a Category B (regular) DAS Pilot Program trip must report their catch of stocks of concern daily through VMS, whether a trip is completed as a Category B (regular) DAS trip or not. Catches will be reported as kept or discarded catch and must be reported by statistical area.

Rationale: These requirements improve the ability to monitor the program and enforce the incidental catch TACs. The VMS requirement will facilitate the use of the flipping provision – vessels can communicate the change before entering port, and enforcement agents can verify the catch upon arrival. The reporting requirements will enable NMFS to closely monitor the small incidental catch TACs and more accurately predict when they will be caught. Observer coverage is necessary to verify the catch rates for vessels on a Category B DAS. The no discard provision will encourage fisherman to fish selectively so that they can use Category B (regular) DAS.

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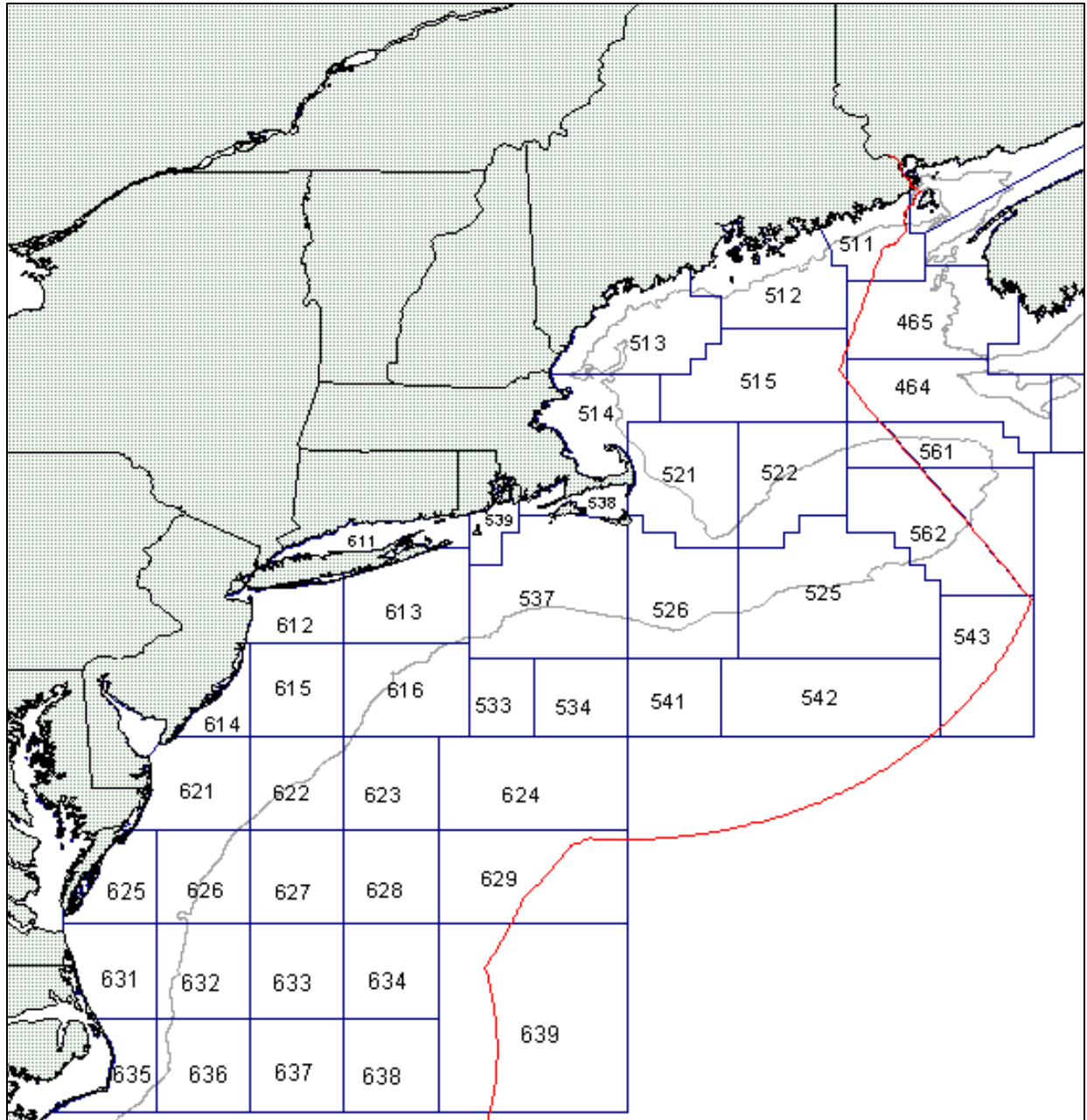


Figure 1 – Northeast Region statistical areas

4.3 *Special Access Programs*

4.3.1 Closed Area I Hook Gear/Haddock SAP

This SAP allows vessels using hook gear to target haddock in a small area of Closed Area I (CAI). There are two groups of possible participants: vessels that fish with hooks and are members of the Hook Sector, and vessels that fish with hooks that are not members of the hook sector. While the broad provisions of the SAP apply to both groups, there are some differences because the mortality controls for each sector differ. The Hook Sector is controlled through a hard TAC on GB cod for all fishing, while for vessels not in the sector catch is controlled through the use of effort controls.

Under this SAP, vessels not in the hook sector are allowed to use Category B DAS to target haddock in CAI. This increases the amount of fishing effort available to those vessels, since DAS are used to control the fishing effort of non-sector vessels. The primary control on fishing effort of the hook sector vessels is a hard TAC on the GB cod those vessels are allowed to harvest. Sector vessels get more fishing effort under the SAP if they are able to successfully target haddock without catching cod.

4.3.1.1 General Provisions

Participants: Vessels possessing a commercial multispecies permit.

Location: On implementation of FW 40A, this SAP will be allowed to take place in that part of CAI bounded by the following coordinates (see Figure 2):

41° 26' 58" N 69° 20' 17" W (13700/43820)
41° 29' 22" N 69° 08' 06" W (12625/43820)
41° 08' 52" N 68° 50' 18" W (13625/43680)
41° 06' 44" N 69° 03' 25" W (13700/43680)

Any changes to this area will be adopted through a future management action (framework adjustment or amendment).

Rationale: This area matches the boundaries of an experimental fishery that demonstrated hook gear can catch haddock without catching large amounts of cod. The area can be changed in the future, but a change will require a management action so that impacts on groundfish and other species can be evaluated.

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Figure 2 – Initial CAI hook gear haddock SAP area (shaded)

Season: October 1 through December 31. Any changes to the season will be adopted through a future management action.

Rationale: The SAP is limited to the months that are consistent with the experimental fishery because catch rates could be different outside this period. Changes may be made through future management actions after considering impacts on groundfish and other species.

Haddock catch limitation: 1,000 mt. If 1,000 mt of haddock will be caught before the season ends, participation in this SAP will be terminated until the following fishing year.

Rationale: Amendment 13 management measures were designed to meet mortality objectives for groundfish stocks, with the major control being limitations on the use of Category A DAS. Because this SAP provides an opportunity to fish outside of the Category A DAS program, the catch of haddock must be controlled so that it does not result on overfishing of GB haddock. As discussed in section 7.2.1.1, this allocation provides an opportunity for hook fishermen to catch haddock while preventing the catch from causing overfishing.

Gear: All vessels must use longline gear (defined as longlines or tub trawls).

Rationale: The experiment used to justify this SAP did not have a sufficient number of trips using rod/reel to evaluate whether this gear can successfully avoid cod.

Declarations :

- (1) All vessels participating in this SAP must use an approved Vessel Monitoring System (VMS).
- (2) Vessels must declare their intent to fish in the SAP at the beginning of the trip through the use of an approved VMS. Vessels must identify the type of DAS being using for that trip.

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- (3) If a vessel is participating in the SAP while using a Category B (regular or reserve) DAS, it is not allowed to fish outside the area of the SAP on the same trip and no gear may be set outside the SAP area while fishing in the SAP.
- (4) All vessels (both hook sector and other vessels) must declare their intent to participate in the SAP by September 1 (this provision will be adjusted by the RA for fishing year 2004 because the final regulations may not be published by September 1, 2004). The vessel does not need to specify when trips will be taken in the SAP area with this declaration. This declaration will facilitate planning for the observer program by identifying the pool of vessels that may be SAP participants. If a vessel does not make this declaration, it cannot participate in the SAP during that fishing year.
- (5) Vessels must notify the observer program three days in advance (72 hours before departure) of a trip in this SAP.
- (6) A vessel cannot fish in this SAP while making a trip under the Category B (regular) DAS Pilot Program.

Rationale: These requirements facilitate monitoring of the SAP to ensure that the TACs are not exceeded. The VMS requirement makes it easier to verify that vessels are fishing in the SAP area, and it provides the vessels an easier way to provide catch reports and notify NMFS of their participation in the SAP. Preventing vessels from fishing outside the SAP while on a Category B (Regular) DAS makes it easier to attribute catches to the SAP. The requirement to notify intent to participate in the SAP by September 1 facilitates planning for the observer program, while the requirement to notify the observer program three days in advance provides time for an observer to reach the departure port. Vessels are not allowed to participate in both the Category B (regular) DAS Pilot Program and this SAP on the same trip because to do so would complicate enforcement and administration since the programs have different requirements.

Observer Coverage: The targeted level of observer coverage will be sufficient to ensure the program is working as designed.

Rationale: Observer coverage is necessary to provide estimates of catch (both kept and discarded). The level of coverage necessary depends on that necessary to reduce sampling error to an acceptable level, and sufficient to prevent changes in behavior when observers are present. As information is collected through the program, the level of coverage may be adjusted (increased or decreased) as necessary.

4.3.1.2 Requirements for Vessels in the Hook Sector

Incidental catch restrictions: All cod caught by members of the GB hook sector in this SAP will be counted against the hook sector GB cod allocation.

Rationale: Under the sector provisions of Amendment 13, a group of vessels that forms a sector is given a portion of the resource to harvest. Since the quota they are given limits their harvest, the members of the sector can devise their own measures to control catches rather than be subject to the same effort controls as vessels not in the sector. For example, vessels in the GB hook sector may decide not to fish under DAS restrictions. Counting all cod caught against the sector's cod allocation prevents the sector's cod catch from threatening mortality objectives.

Observer coverage: If funding is not available, the hook sector will pay the additional funding required for specified levels of observer coverage for its vessels.

Rationale: The hook sector has developed a plan to fund additional observer coverage if necessary so that their access to this SAP will not be constrained by a lack of federal observer funding. Preliminary information from the sector is that a fee will be charged for each pound of fish in order to fund necessary observer coverage.

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Possession Limits:

- (1) All cod of legal size must be landed (i.e. there is a 100 percent retention requirement for legal sized cod).
- (2) Landing/possession limits for haddock and other species cannot exceed that required under Amendment 13 regulations.

Rationale: The requirement to land all legal sized cod prevents discards from threatening mortality objectives of Amendment 13, and eliminates the possibility that vessels will engage in high-grading of cod. By requiring full-retention of cod, selective fishing practices are encouraged: the more successful the sector is in avoiding cod in the SAP, the more fishing effort they will be able to use. Sector vessels cannot exceed the landing limits for other species specified by Amendment 13, but could be limited to lower landing limits if the sector chooses to adopt the same.

Landings monitoring: The Hook Sector will implement a system of real-time landings monitoring as a requisite to formation of the sector. The sector manager will provide NMFS with daily reports of cod and haddock landings. All vessels participating in the program must use a VMS.

Rationale: The hook sector has developed a system to provide reports to NMFS of landings and will use that system rather than report through VMS. (Because cod cannot be discarded, it is not necessary to report the catch as kept or discarded).

4.3.1.3 Requirements for Vessels not in the Hook Sector:

Incidental Catch Restrictions: The catch (landings and discards) of GB cod will be limited to a “hard” incidental catch TAC of 16 percent of the total GB cod incidental catch TAC. Current estimates of this limit are shown in Table 9 for FY 2004 through 2006. Only cod caught on a Category B (regular or reserve) DAS will count against this incidental catch TAC. When this TAC is caught, vessels that are not in the hook sector cannot participate in the SAP while using a Category B DAS. TACs will be recalculated every two years during the periodic adjustment process.

Fishing Year	TAC
2004	12.6
2005	15.5
2006	20.3

Table 5 – Proposed GB cod incidental catch TACs for the CAI hook gear haddock SAP (mt)

Rational: This incidental catch TAC prevents cod catch while fishing in this sector from threatening rebuilding objectives. The allocation of 16 percent of the GB cod incidental catch TAC is similar to the percentage of GB cod landed by hook gear in recent years. Any cod caught on a Category A DAS have been accounted for by the design of Amendment 13 management measures and thus do not need to count against the incidental catch TAC.

Possession limits:

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- (1) The cod landing limit for vessels participating in this SAP is 500 lbs./DAS with a maximum of 2,000 lbs./trip. This landing limit applies for the entire trip of any vessel participating in the SAP, whether using a Category A or Category B (regular and reserve) DAS.
- (2) Possession/landing limits for haddock and other species will be the same as required under Amendment 13 regulations.

Rationale: Analysis in section 7.2.1.1 shows that during the experimental fishery, cod catch rarely exceeded 500 lbs./DAS. Setting the landings limit at this level will encourage vessels to avoid cod while not increasing regulatory discards.

Observer coverage: Vessels not in the hook sector will not be required to pay for additional observer coverage if federal funding is not available.

Rationale: Unlike the hook sector, a mechanism has not been developed by the Council for these vessels to fund observers. It is not clear how a lack of observer funding will affect vessels not in the hook sector.

Gear: For a vessel using Category B (regular or reserve) DAS to fish in this SAP, there are no limits on the number of hooks that can be set while fishing in the SAP. For a vessel using a Category A DAS, the vessel is limited to setting the number of hooks authorized by Amendment 13.

Rationale: Since the catch of cod and haddock while on a Category B DAS is limited by TACs, gear restrictions would merely impose unnecessary inefficiencies for fishermen that are using a Category B DAS. Because vessels on a Category A DAS can fish both inside and outside the SAP, and the management program relies on effort controls outside the SAP area, vessels fishing on a Category A DAS must comply with all effort control restrictions, including gear limitations.

Trip length: Vessels may fish a maximum of four DAS in the SAP area on a single trip.

Rationale: This provision allows vessels to make multi-day trips, but by limiting the length of trips it spreads out the effort among more vessels.

Other provisions :

- (1) Vessels that participate in this SAP using a Category A DAS may fish in the SAP area and in open areas outside the SAP area on the same trip. When the regulations for the SAP and the open area differ, a vessel using a Category A DAS is bound by the more restrictive measures for the entire trip. Vessels fishing on a Category A DAS must report their catch of haddock and stocks of concern via VMS daily while in the SAP area, and when leaving the SAP area. Catches of haddock and stocks of concern will be reported as kept or discarded (estimated). (While catches of stocks of concern on a Category A DAS are not limited by an incidental catch TAC, reporting requirements are kept the same for both Category A and B DAS to simplify administration and compliance).
- (2) Vessels that participate in this SAP using a Category B (regular or reserve) DAS may not fish outside the SAP area on the same trip. They may not have any gear set outside the SAP area while participating in the SAP.
- (3) Vessels must report their catch of haddock and stocks of concern daily through VMS when fishing on a Category B DAS. Catches of haddock and stocks of concern will be reported as kept or discarded (estimated).

Rationale: Because the SAP area is a small area and Amendment 13 severely restricts the number of Category A DAS each permit has available, vessels using a Category A DAS are allowed to fish in the

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SAP and outside the SAP on the same trip. In order to do so, however, they must comply with the more restrictive regulations for the area fished. Vessels on a Category B DAS are not allowed to fish inside and outside the SAP area on the same trip because it would make it more difficult to attribute catches to the appropriate TACs. Daily reporting via VMS will facilitate monitoring of the TAC.

4.3.2 Closed Area II Haddock SAP Pilot Program

The area subject to the U.S./Canada understanding is well offshore. DAS reductions adopted in Amendment 13 may discourage U.S. fishermen from transiting to this area. A possible result is that U.S. fishermen would not harvest their share of haddock (there are very low limits on GB cod catches due to the need to rebuild that stock, so it is unlikely a SAP will be needed to harvest the U.S. allocation of cod). This SAP facilitates taking of the U.S. share of haddock as allocated under the U.S./Canada Resource Sharing Understanding. Only vessels with limited access permits will be allowed to participate in this program. Limits on where fishermen can fish on these trips are intended to prevent confusion attributing catches to a particular stock, and because vessels are not charged DAS when outside of the area. Allowing fishing in the northern part of CAII is designed to provide access to haddock. The requirement to use either a haddock separator trawl or a flounder net will reduce cod bycatch. In any case, the U.S./Canada understanding includes a hard TAC on GB cod taken in this area, so participation in this SAP will not harm cod rebuilding as long as catches (both landings and discards) can be adequately monitored. Vessels are still allowed to fish in the eastern U.S./Canada area outside CAII while on a Category A DAS and not participating in a SAP.

Location: The following coordinates bound this SAP, as shown in Figure 3.

42° 22' N 67° 20' W (U.S./Canadian maritime boundary)
42° 20' N 67° 20' W
42° 20' N 67° 40' W
41° 10' N 67° 40' W
41° 10' N 67° 20' W
42° 10' N 67° 20' W
42° 10' N 67° 10' W (U.S./Canadian maritime boundary)

Rationale: The area proposed for this SAP is larger than that proposed in Amendment 13 for a similar SAP. This larger area will provide more flexibility to fishing vessels participating in the SAP area.

Season: May 1 through December 31. The program will expire at the end of the month two years after the effective date of the regulations implementing Framework 40A. The Council may choose to renew this SAP in a future action.

Rationale: The SAP allows fishing through most of the year but does not allow fishing during the key periods for groundfish spawning. While part of the area can be fished under a Category A DAS from January through May (the area outside CAII), because the SAP is not allowed during this period there will be less effort available (no Category B DAS can be used) and fishing will not take place in the small area north of CAII that is north of the cod HAPC. The Council approved this SAP for two years so the impacts of the program can be evaluated and, if necessary, program requirements can be adjusted.

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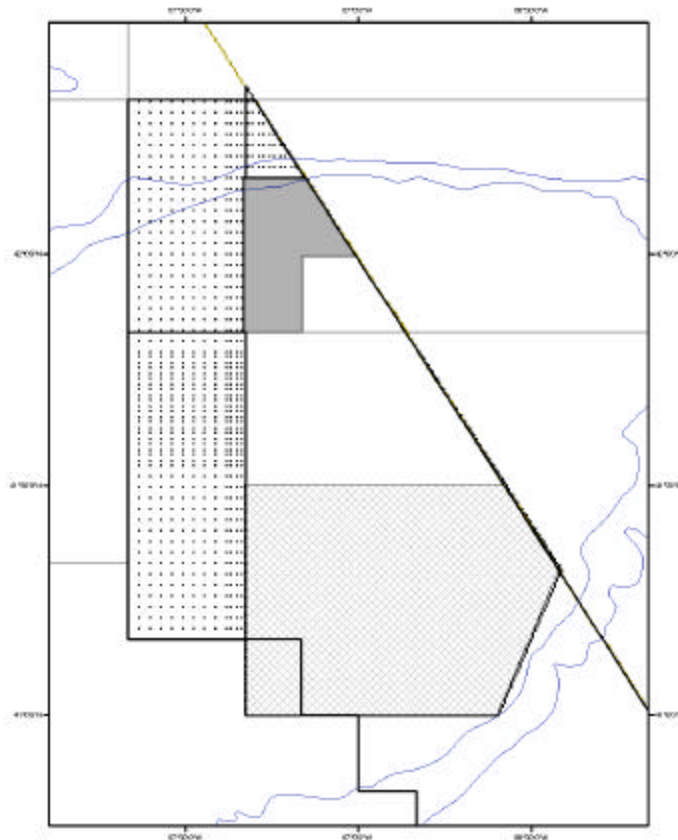


Figure 3 – Closed Area II haddock SAP area (stippled). Crosshatched area is the CAII yellowtail flounder SAP area; shaded area is the cod Habitat Area of Particular Concern (HAPC).

Haddock catch restrictions : All haddock caught in this SAP are counted against the U.S. share of eastern GB haddock as allocated under the U.S./Canada Resource Sharing Understanding. Consistent with that understanding, fishing for groundfish in the SAP area while under a groundfish DAS (as well as fishing for haddock and cod under a groundfish DAS in the entire eastern U.S./Canada area) is prohibited when the haddock TAC is caught.

Rationale: Amendment 13 adopted a U.S./Canada Resource Sharing Understanding that controls catches in statistical area 561 and 562 through a hard TAC. All catches – including those from the SAP – are applied against this TAC. Amendment 13 allows limited fishing in this area under the CAII yellowtail flounder SAP if the cod and haddock TAC is taken, but all other fishing on a groundfish DAS is prohibited.

Incidental catch restrictions :

- (1) All cod caught (landings and discards) in this SAP are counted against the U.S. share of eastern GB cod TAC as allocated under the U.S./Canada Resource Sharing Understanding. Consistent with the understanding, fishing on a groundfish DAS in the SAP area is prohibited

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in the eastern U.S./Canada area when the cod TAC is caught (with the exception of vessels participating in the CAII Yellowtail Flounder SAP).

- (2) Cod caught in this SAP while using Category B (regular or reserve) DAS are counted against the incidental GB cod TAC. All cod caught on a SAP trip – regardless of location caught – will be applied against this TAC. This SAP is allocated 34 percent of the GB cod incidental TAC. When this TAC is projected to be caught, vessels cannot participate in this SAP while using a Category B (regular or reserve) DAS.

Fishing Year	TAC
2004	27
2005	33
2006	43

Table 6 – CAII haddock SAP incidental cod TAC. (TACs are rounded to the nearest mt)

Rationale: Amendment 13 adopted a U.S./Canada Resource Sharing Understanding that controls catches in statistical area 561 and 562 through a hard TAC. All catches – including those from the SAP – are applied against this TAC. Amendment 13 allows limited fishing in this area under the CAII yellowtail flounder SAP if the cod and haddock TAC is taken, but all other fishing on a groundfish DAS is prohibited. The cod incidental catch TAC will prevent this SAP from threatening mortality objectives for this stock as a result of vessels shifting effort from this area to other areas. The amount of the incidental GB cod TAC allocated to this program divides the TAC evenly between the two proposed SAPs and the Category B (regular) DAS Pilot Program.

Landing/Possession Limits :

- (1) The cod possession limit for vessels fishing in the CAII Haddock SAP and the CAII Yellowtail Flounder SAP is 1,000 lbs./trip, regardless of trip length. This possession limit applies for the entire trip of a vessel that participates in one of these two SAPs.
- (2) Vessels are not allowed to discard legal sized cod while participating in the CAII Haddock or Yellowtail Flounder SAPs on a Category B (regular or reserve) DAS. If a vessel exceeds the possession limit while using a Category B DAS for these SAPs, it must “flip” to a Category A DAS, notifying NMFS through VMS. Vessels may continue to fish in the eastern U.S./Canada area after flipping to a Category A DAS and must comply with any landing limits that apply to a Category A DAS.
- (3) The number of Category B DAS that can be used on a trip cannot exceed the number of Category A DAS available to the vessel at the start of the trip.
- (4) Landing limits for haddock and other species will be the same as required under Amendment 13 regulations.

Rationale: The possession limit is set at a level that will deter vessels from targeting cod without increasing discards. Requiring vessels to “flip” to a Category A DAS will further reduce discards, as vessels will be able to retain more of their cod catch and can still finish a fishing trip. The possession limit is applied to both the CAII Haddock SAP and the CAII Yellowtail Flounder SAP, simplifying administration and compliance of cod limits for trips that participate in both SAPs.

Gear: Vessels fishing in the SAP must use gear that has been demonstrated not to catch significant amounts of cod. At implementation of this framework, the only gear authorized for participation in this SAP is trawl gear using a haddock separator trawl or a flounder net as described in 50 CFR 648.85(a)(3)(iii)(A) and (B). The Regional Administrator may expand the list of gear allowed to

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participate in this SAP based on the results of an experimental fishery that demonstrates the gear can be fished without catching significant amounts of cod. For the purposes of this SAP, this means the gear must demonstrate that it performs similar to the performance of the haddock separator trawl. The RA will implement changes to the authorized gear by publishing a proposed rule describing the gear and providing an opportunity for public comment prior to a final rule.

Rationale: Because of the need to carefully control cod catches in order to comply with the U.S./Canada Resource Sharing Understanding, only gear that demonstrates low cod catch rates can be allowed in this SAP. In order to treat different gear types equitably, the demonstrated performance must be similar to that of a haddock separator trawl.

Observer Coverage: The target level of observer coverage will be sufficient to ensure the goals of the program are met. The industry will not be required to fund additional observer coverage.

Rationale: Observer coverage is necessary to provide estimates of catch (both kept and discarded). The level of coverage necessary depends on that necessary to reduce sampling error to an acceptable level, but also so that it is sufficient to prevent changes in behavior when observers are present. As information is collected through the program, the level of coverage may be adjusted (increased or decreased) as necessary.

Other provisions:

- (1) The Regional Administrator can adjust possession limits, months authorized, and gear requirements if necessary to control (increase or decrease) the catch to the TACs authorized under the U.S./Canada Resource Sharing Understanding.
- (2) A vessel participating in this SAP and using any type of DAS (Category A or Category B (regular or reserve)) can fish in the haddock SAP area, in the CAII yellowtail flounder SAP area, or outside the SAP areas but in the eastern U.S./Canada area on the same trip, as long as the areas are open to fishing.
- (3) A vessel fishing in the CAII Haddock SAP area but not participating in the CAII yellowtail flounder SAP can transit the CAII yellowtail flounder SAP area as long as gear is properly stowed in accordance with current regulations and the vessel provides notice of the transit to NMFS via VMS.
- (4) As specified by Amendment 13, vessels fishing in the entire eastern U.S./Canada area are not charged DAS for steaming time both to and from the area.
- (5) Vessels must comply with reporting requirements for fishing in the U.S./Canada Resource Sharing Understanding Area as specified in Amendment 13.
- (6) Vessel operators must provide the observer program three days (72 hours before departure) advance notice of a CAII haddock SAP trip.
- (7) A vessel must notify NMFS via VMS when beginning a trip to the SAP. The vessel must identify the type of DAS being used on the trip (Category A, Category B (regular), or Category B (reserve)).

Rationale: These provisions provide flexibility to the NMFS in implementing this program, consistent with the measures adopted for the U.S./Canada Resource Sharing Understanding adopted by Amendment 13. They also clarify the ability of vessels to move within the eastern U.S./Canada area while participating in SAPs in the area. Fishermen will only make the long transit to this area if they have the flexibility to move within the area to search for fish. If they are confined to small zones in the eastern U.S./Canada area, there is too great a risk they will not be able make a profitable trip.

4.4 Combined Trips to the Western U.S./Canada Area

Vessels can fish both inside the western U.S./Canada area and outside the western U.S./Canada area on the same trip (but not in the eastern U.S./Canada area) (Figure 4). This practice is called fishing a “combined” trip. If a vessel fishes both inside and outside the area on the same trip, it is bound by the more restrictive regulations for the area fished. In addition, the vessel must report its catch by statistical area via VMS. Reports must be submitted daily and when crossing the boundary between the Western U.S./Canada area and other areas.

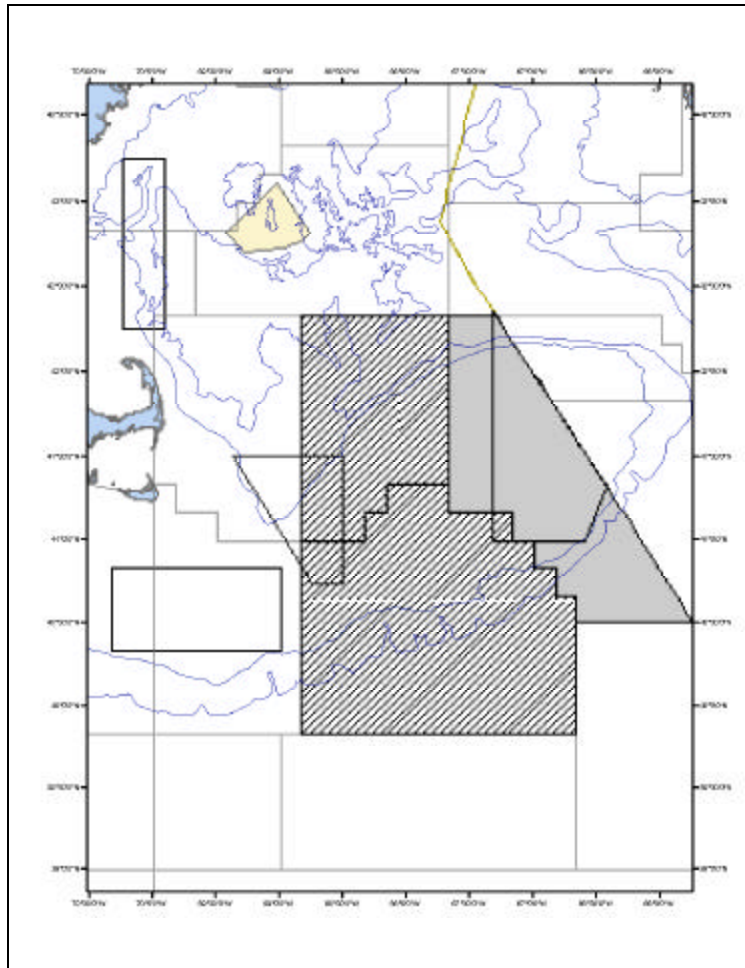


Figure 4 – Western U.S./Canada Area (cross hatched) and eastern U.S./Canada area (shaded)

Rationale: The regulations implementing Amendment 13 do not allow vessels fishing in the western U.S./Canada area from fishing outside that area on the same trip. This restriction unnecessarily restricts fishing operations on Georges Bank. Vessels have historically fished the entire area on the same trip as they search for fish. For example, vessels targeting haddock – a healthy stock and one that the Council is trying to encourage vessels to target - often fish the entire length of the northern boundary of CAI. Half of this northern boundary is within the western U.S./Canada area, while half is outside this area. Under existing regulations, vessels are not able to fish along the entire boundary, but must choose which area they will stay in. Other vessels fish on Stout’s Swell (inside the Western U.S./Canada Area)

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and Wright Swell on the same trip. Trawlers and gillnetters fishing these two areas target monkfish on Stout's and pollock on Wright without catching yellowtail flounder in these deep-water areas. The Council is concerned that faced with this restriction, vessels will avoid the western U.S./Canada area in order to have more flexibility in their fishing operations. Finally, the Council is concerned that restricting vessels to the to the Western U.S./Canada area may result in unsafe vessel operations. Vessels facing bad weather may continue to fish or "ride out" bad weather in this area rather than move closer to shore.

The proposed measure provides fishermen some flexibility to fish in a wider area, while addressing concerns over monitoring the U.S./Canada Resource Sharing Understanding TAC for GB

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Combined Trips to the Western U.S./Canada Area

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