

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 amendment was Amendment 13, approved by the National Marine Fisheries Service in March, 2004 and effective on May 1, 2004. This amendment adopted a broad suite of management measures in order to achieve fishing mortality targets and meet other requirements of the M-S Act. Subsequent to Amendment 13, FW 40A was implemented November 19, 2004 in order to create opportunities to target healthy groundfish stocks.

3.2 *Purpose and Need for 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 included a reduction in fishing opportunities through limits on days-at-sea and additional gear requirements. These measures that were designed to reduce mortality where necessary are also expected to reduce fishing mortality on healthy stocks. As a result, 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 recognition of the **need** (mandated by the M-S Act) to achieve optimum yield from the Northeast Multispecies fishery, Amendment 13 also included provisions designed to help fishing businesses adapt

INTRODUCTION AND BACKGROUND

Brief History of the Northeast Multispecies Fishery Management Plan

to the effort reductions. These provisions included opportunities to fish selectively on healthy stocks as well as provisions that allowed the exchange of days-at-sea between vessels.

In order to meet mortality targets, Amendment 13 adopted changes to the days-at-sea (DAS) program used to control fishing effort. The amendment established the effective effort (DAS baseline) for each permit based on recent fishing history and then reduced the number of DAS that can be used to target any groundfish stock. As a result of this measure, some permits did not receive any DAS that can be used in the fishery. The amendment included two programs that allowed DAS to be exchanged between permits so that fishing businesses can adapt to the DAS reductions in the amendment. 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 proposed four specific programs, but only two were approved and implemented on May 1, 2004. Framework Adjustment 40A, submitted by the Council in July 2004 and implemented November 19, 2003, proposed two additional special access programs (SAPs) and a Category B (regular) DAS pilot program that were designed to harvest healthy stocks.

Since the implementation of Amendment 13, several issues have been raised concerning the overall approach to controlling effort. The **primary purpose** of this action is to improve the effectiveness of the Amendment 13 effort control program, including the opportunities developed to use effort to target healthy stocks and other measures that were adopted to facilitate adaptation to the amendment's effort reductions. The Council considered measures to clarify the DAS allocations and provide a small allocation to all permit holders, modify the DAS leasing and transfer programs, improve opportunities to target healthy stocks, and adjust the GB cod hook sector provisions in order to meet this purpose.

The **secondary purpose** of this action is to consider measures developed to address interactions between the herring fishery and regulated groundfish. This fishery is not allowed to fish for, possess, or land groundfish. Catches of groundfish that occur are wasted and do not contribute to optimum yield in the groundfish fishery.

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 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. Subsequent to Amendment 13, the Council submitted FW 40A to increase fishing opportunities on healthy stocks. Three programs were adopted by this action: a SAP to target GB haddock in the eastern U.S./CA area, a Category B (regular) DAS Pilot Program, and a SAP to target GB haddock using longlines in CAI.

INTRODUCTION AND BACKGROUND

Brief History of the Northeast Multispecies Fishery Management Plan

This action also considers measures designed to address interactions between the herring and groundfish fisheries. Herring fishing is managed under the Atlantic Herring FMP (implemented in 2000), which is closely coordinated with the Atlantic States Marine Fishery Commission's Interstate Fishery Management Plan (ISFMP) for Atlantic Herring. The first herring FMP written under the authority of the M-S Act was the Sea Herring FMP, implemented in December 1978. The Secretary of Commerce withdrew approval of this FMP in September 1982. In the absence of an FMP, fishing for Atlantic Herring in federal waters was managed through a Preliminary Management Plan that focused on foreign fishing and joint venture operations. An ISFMP was also adopted by ASMFC during this period. As a result of the lack of a final federal management plan, restrictions on herring fishing activity were often included as part of the groundfish management regulations adopted through the 1980s and 1990s.

In 1981, the Interim Groundfish Plan was adopted. This plan allowed the use of small mesh to target herring, mackerel and other species under the Optional Settlement Program. Participants could only catch a specified percentage of regulated groundfish (determined by the Regional Director) while in the program. Trawl and purse seine gear was not allowed in two seasonal closed areas on Georges Bank that were adopted to protect spawning groundfish. The Groundfish Plan, implemented in 1986, replaced the Optional Settlement Program with the Exempted Fisheries program. Vessels were allowed to use small mesh to target herring and mackerel using mid-water trawls in the Gulf of Maine (December through May only) and on Georges Bank (year round) with the bycatch of regulated species held at one percent. In addition, the plan allowed mid-water trawl gear to fish in three seasonal closed areas (two on Georges Bank and one in Southern New England) subject to the restriction that there was zero bycatch of regulated groundfish. The Council adopted Amendment 1 to the FMP in May 1987. This amendment eliminated the exempted fishery status of the mid-water trawl fishery for herring and mackerel, but allowed it to continue in the Gulf of Maine (December through May only) and on Georges Bank (year round) with the adoption of a bycatch possession limit of one percent of regulated species. While this change had little impact on the prosecution of the fishery, it simplified participation by removing the burden of exempted fishery sign-in and reporting requirements. Mid-water trawl gear only landed a small percentage of the total herring catch during this period.

The next change that affected mid-water trawl fisheries was implemented as part of Amendment 5 in 1994. One of the key elements of Amendment 5 was the requirement for a minimum mesh size in the Gulf of Maine and on Georges Bank. Vessels fishing with small mesh in these areas (including purse seine and mid-water trawl vessels fishing for herring and mackerel) were restricted to possessing 500 pounds or less of regulated groundfish. In addition, mid-water trawl vessels were allowed to fish year round in the Gulf of Maine. Purse seine and mid-water trawl vessels were not allowed in Closed Area I, Closed Area II, or the Nantucket Lightship Closed Area, which were still seasonal closed areas. Nine months after the adoption of Amendment 5, the Secretary of Commerce adopted emergency regulations to protect declining groundfish stocks (December 1994). These regulations adopted Closed Area I, II, and the Nantucket Lightship Closed Areas as year round closures without changing the prohibition on using mid-water trawls in the areas. The emergency action was adopted by the Council as Framework Adjustment 9.

Regulations for mid-water trawl and purse seine vessels were revised by Amendment 7, adopted in May 1996. After adoption of Amendment 5, a series of framework actions implemented seasonal restrictions on gillnet gear in the inshore Gulf of Maine in order to reduce harbor porpoise takes. Ultimately there were three closures along the coast: the Northeast Closure Area (August 15 – September 13), the Mid-coast Closure Area (November 1 through December 31) and the Massachusetts Bay Closure Area (March). Amendment 7 extended these closures to all gear capable of catching groundfish and specifically prohibited the use of mid-water trawls in these areas during the closures. At this point, mid-water trawls were thus prohibited from fishing along the Gulf of Maine coast during these closures and

INTRODUCTION AND BACKGROUND

National Environmental Policy Act (NEPA)

could not fish in CAI, CAII, or the NLCA. Another key element of Amendment 7 was a further change to the regulations governing small mesh fisheries. Two programs were created: a Certified Bycatch Fishery program that required verification of a bycatch of regulated species of five percent or less by weight, and a program for generally exempted gears. Exempted gears were exempted from the provisions of the FMP but were prohibited from possessing regulated groundfish. Purse seines and mid-water trawl vessels were included in this list. With the exception of mid-water trawl vessels, Amendment 7 said exempted gears were allowed to fish in closed areas, but the implementing regulations did not specify purse seine gear could fish in CAI, CII, or the NLCA. Amendment 7 stated that mid-water trawl vessels might be allowed into the closed areas through a future action after a review of observer data.

Framework Adjustment 18 reviewed the available data and proposed allowing mid-water trawl vessels into all groundfish closed areas. While this action was being developed, the Council modified the Mid-Coast Closure area by replacing it with a smaller closure on Jeffery's Ledge. Framework 18 reviewed observer data from six mackerel tows in the southern New England regulated mesh area and seven herring tows in the Gulf of Maine. None of the tows caught any regulated groundfish, though the mackerel tows caught small quantities of monkfish, other flounders, and other groundfish. Based on these data, mid-water trawl vessels were granted access to all groundfish closed areas in February 1998. Over the next several years, as additional groundfish closed areas were defined (the WGOM Closed Area and the Cashes Ledge Closed Area, as well as seasonal closures on Georges Bank and in the Gulf of Maine), all exempted gears (including mid-water trawls) were allowed access.

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 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. 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

4.0 PROPOSED ACTION

4.1 Introduction

A brief explanation of terminology as used in Council documents is appropriate because there has been some confusion in the past over the difference between an alternative, a measure, and an option. As used in this document, a *measure* is a completely detailed management proposal that accomplishes one specific task. There may be *options* for some of the details of the measure while the measure is being considered, but particular options must be selected when the proposed action decision is made. For some measures, the options may not be exclusive – more than one option may be selected. An *alternative* is a combination of measures that is being submitted as a package. Because many management measures interact with each other, alternatives must be defined so the impacts of the actions being considered can be evaluated and understood. Because the impacts on an alternative must be described and understood before a decision can be made, there is only a limited ability to mix and match measures when the Council selects the proposed action. Only measures that have minor impacts, or impacts that are not likely to interact with other measures – referred to as independent, or attendant, measures – can be freely moved between alternatives. The following matrix (Table 1) provides a quick reference to the *measures* that are being considered for each *alternative* in this action, including the proposed action. The independent measures are also identified. During development of this action, each measure was identified by an alphanumeric symbol so that similar measures in different alternatives can be readily identified.

The details of each measure are shown for the Proposed Action and in the discussion of Alternative 1 (see section 5.2). In the discussion of other alternatives, the measures are listed and only those measures with different elements than Alternative 1 are described in full.

PROPOSED ACTION
Introduction

Measure	Alternative					
	Proposed Action	No Action	One	Two	Three	Four
Measure A: DAS Leasing and Transfer Provisions						
A.1: Changes to the DAS leasing and transfer conservation tax	X Option 1		X	X		X
A.2: DAS Transfer Program Modifications			X		X	
Measure B: Incidental Catch TACs	X		X	X	X	X
Measure C: Special Access Programs						
C.1: GB Haddock Fishery SAP			X		X	X
C.2: WGOM Closed Area Rod/Reel SAP	X Option 1		X	X		X
C.3: CAII Yellowtail Flounder SAP	X		X	X	X	X
Measure D: Minimum effective effort allocation	X		X	X		
Measure E: GB Cod Hook Sector Allocation	X		X	X		
Measure F: Change to DAS Baseline Calculation	X Option 1		X	X	X	X
Independent Measures						
Measure G: Removal of tonnage from DAS transfer program restrictions (<i>Proposed</i>)						
Measure H: One-time Permit Baseline Characteristics Downgrade (<i>Proposed</i>)						
Measure I: DAS Credit for Standing by Entangled Whales (<i>Proposed</i>)						
Measure J: Herring Vessel Interactions With Regulated Groundfish (<i>Proposed – Option 4</i>)						
Measure K: Trip Gillnet Net Limitations (<i>Proposed</i>)						
Measure L: Category B DAS Observer Requirement						

Table 1 – Matrix of measures included in the proposed action and each alternative

PROPOSED ACTION

Changes to the DAS Leasing and Transfer Programs Conservation Tax (Measure A.1)

4.2 Changes to the DAS Leasing and Transfer Programs Conservation Tax (Measure A.1)

Amendment 13 adopted two programs that allow the transfer of DAS from one groundfish permit to another. The DAS leasing program allows the temporary transfer of Category A DAS for a period not to exceed one year. The DAS transfer program allows for the permanent transfer of Category A, B and C DAS from one permit to another. Both programs are subject to additional restrictions that limit the transfer of DAS to similarly sized vessels. In addition, under the DAS transfer program, the vessel losing DAS must exit all fisheries. Under the terms of the DAS transfer program, DAS that are transferred to another permit are reduced by a fixed percentage that is commonly referred to as a conservation tax. DAS transferred under the leasing program, however, are not subject to any such tax. The Council considered changes to the conservation tax for both the leasing and transfer programs.

This action changes the conservation tax for the DAS transfer program. Category A or B DAS that are transferred under the DAS transfer program will be reduced by twenty percent. Category C DAS will continue to be reduced by ninety percent. This action does not adopt a conservation tax for DAS transferred under the DAS leasing program

Rationale: This measure reduces the conservation tax for the DAS transfer program to make that program more attractive. This may increase the number of permanent transfers of DAS. Permanent transfers will provide more stability to the industry compared to the temporary transfers that take place through the leasing program.

4.3 Incidental Catch TACs (Measure B)

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 are constrained by a "hard" incidental catch TAC adopted by FW 40A. 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 2005 and 2006, are shown in Table 6.

The incidental catch TACs are 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. Since this action proposes to adopt one additional SAP, the allocations made in FW 40A must be revised to account for these additional programs. The allocations proposed for this action are shown as percentages of the incidental catch TAC in Table 7. These TACs will remain effective until changed through a future management action.

The GB cod incidental catch TAC is reduced by up to 10 percent in order to allow for the conduct of experiments. This TAC will be released to the Category B DAS programs on May 1 if no applications have been received to use this TAC. This creates a research set-aside of 9.7 mt in FY 2005 and 12.7 mt in FY 2006. Current estimates of the revised GB cod incidental catch TACs for FY 2005 and FY 2006 are shown in Table 8. Current estimates of the revised GOM cod incidental catch TACs for FY 2005 and 2006 are shown in Table 9.

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

PROPOSED ACTION

Incidental Catch TACs (Measure B)

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 for establishing the appropriate TACs was adopted by FW 40A. 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 rationale and development of the incidental catch TACs is explained in section 7.2 of FW 40A.

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.

FW 40A proposed incidental catch TACs for two SAPs (CAI Hook Gear Haddock SAP and the CAII Haddock SAP Pilot Program) and the Category B (regular) DAS Pilot Program. The CAI Hook Gear Haddock SAP was not approved for those vessels that would use the incidental catch TAC. Since this action proposes an additional SAP and a research set-aside for GB cod, the incidental catch TACs must be re-specified.

PROPOSED ACTION
Incidental Catch TACs (Measure B)

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

Table 2 – Proposed incidental catch TACs for major stocks of concern (mt). TACs are for the fishing year

	Category B (regular) DAS Pilot Program	CAII Haddock SAP	WGOM Haddock SAP	Research Set-Aside
GOM cod	95	NA	5	NA
GB cod	59.4	30.6	NA	10
CC/GOM yellowtail	100	NA	NA	NA
Plaice	100	NA	NA	NA
White Hake	100	NA	NA	NA
SNE/MA Yellowtail	100	NA	NA	NA
SNE/MA Winter Flounder	100	NA	NA	NA
Witch Flounder	100	NA	NA	NA

Table 3 – Proposed allocation of incidental catch TACs for major stocks of concern to Category B DAS programs (shown as percentage of the incidental catch TAC)

	FY 2004	FY 2005	FY 2006
Category B (regular) DAS Pilot Program	52.1	57.6	75.5
CAII Haddock SAP	27	29.7	38.9
GB Cod research set aside	0	9.7	12.7

Table 4 – Current estimates of the GB cod incidental catch TACs for FY 2005 and 2006

	FY 2004	FY 2005	FY 2006
Category B (regular) DAS Pilot Program	97	120.7	141.5
WGOM Rod/Reel Haddock SAP	0	6.3	7.5

Table 5 – Current estimates of the GOM cod incidental catch TACs for FY 2005 and FY 2006

4.4 Special Access Programs (Measure C)

4.4.1 WGOM Closed Area Rod/Reel Haddock SAP (Measure C.2)

This SAP would allow hand-tended rod/reel commercial fishing vessels to target haddock inside the WGOM closed area. Participants are most likely to be smaller vessels that typically fish with handlines, longlines, or gillnets in the Gulf of Maine.

Rationale: This SAP is intended to provide an opportunity for vessels that fish in the GOM to use Category B DAS and mitigate the impacts of Amendment 13. As described in sections 6.4.2.3 and 6.4.2.4, landings and revenues of regulated groundfish by hook and line, gillnet, and longline vessels have not increased since FY 1996. Landings of regulated groundfish by hook and line were lower in FY 2003 than any year since 1996. This SAP provides a limited, small-scale opportunity for these vessels to benefit from the rebuilding haddock resource in the GOM as required by NSG 4 (recovery benefits must be allocated fairly among the sectors of the fishery). Consistent with section 3.4.5.1 of Amendment 13, the SAP includes strict requirements on the gear that can be used, the season for the fishery, and hard TACs to limit the catches of cod and haddock in order to prevent interference with the mortality objectives of Amendment 13.

The Council recognizes that the WGOM Closed Area Rod/Reel Haddock SAP is problematic because of limited data that support the suggestion that haddock can be targeted in this area without catching cod (see section 7.2.1). To address this concern, the Council adopted a very small cod bycatch limit, a limited season, allowed use of handgear only, adopted extensive reporting requirements (including the use of VMS), limits the SAP to a short trial period, and provides the Regional Administrator extensive authority to terminate the SAP. The Council views this SAP as critical to provide opportunities for hook fishermen in the GOM, a sector that data show has been severely impacted by the regulations since the adoption of low trip limits and has not yet benefited from rebuilding stocks. While the economic analysis suggests limited benefits from this program, many of the likely participants are small fishing operations and even modest revenue increases are important. If successful the season for this SAP could be modified in the future to increase the benefits returned. The selection of season, while raising safety concerns due to poor weather and the small size of the vessels likely to participate, was based on a need to provide the best opportunity to target haddock without catching cod. Safety concerns are mitigated to some extent by the fact most boats in this fishery are dayboats and are able to plan fishing for periods of better weather and because this SAP provides additional opportunities to fishermen.

4.4.1.1 General Provisions

Participants: Vessels with limited access multispecies permits (including Handgear A permits)

Rationale: Vessels possessing a commercial open access permit are not allowed to participate in this SAP because the number of permits is not controlled in any way.

Location: The Western Gulf of Maine Closed Area (see Figure 4)

PROPOSED ACTION
Special Access Programs (Measure C)

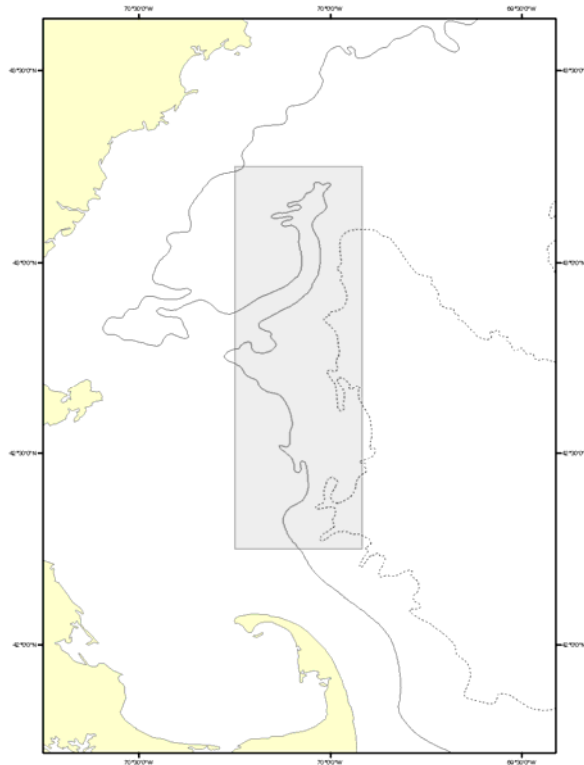


Figure 1 – WGOM Closed Area (shaded)

Haddock Catch Restrictions: This SAP is limited to 50 mt of haddock (kept and discarded). When the TAC is projected to be caught, participation in the SAP will be prohibited.

Incidental Catch Restrictions: This SAP is restricted to an incidental catch (cod cannot be retained) TAC for GOM cod of five percent of the GOM cod incidental catch TAC. All cod caught in this SAP, whether on a DAS (any type) or not, will count against the incidental catch TAC. Participation in the SAP will be prohibited on the date projected that the TAC will be caught. The current estimate of this TAC for FY 2005 is 6.3 mt, and for FY 2006 is 7.5 mt.

Landing/Possession Limits:

- (1) Participants in this program are not allowed to retain any cod.
- (2) Landing limits for haddock and other species will be as specified in existing regulations.

Rationale: The prohibition on retaining cod will encourage fishing vessels to avoid catching any cod, reducing the likelihood the cod TAC will be caught and the SAP will be closed before the haddock TAC is reached.

PROPOSED ACTION

Special Access Programs (Measure C)

- Gear:** (1) Vessels can only use hand-tended rod/reel gear as defined in 50 CFR 648.2, with the exception that treble hooks cannot be used. (Mechanical jigging devices or “bandit” gear are not allowed, and all reels must be manual).
(2) Full circle hooks must be used when using bait.

Rationale: This SAP is limited to selective rod and reel fishing. For vessels using bait, the full circle hook will help reduce discard mortality.

Reporting Requirements:

- (1) All vessels participating in the SAP must be use an approved Vessel Monitoring System (VMS).
- (2) Vessel operators must notify NMFS through VMS when beginning a trip into the WGOM Closed Area Rod/Reel Haddock SAP.
- (3) Vessel operators must provide daily reports of catch (kept and discarded) of all regulated groundfish species, by statistical area, through VMS. These reports must be submitted in accordance with instructions issued by the RA.

Observer Coverage:

- (1) Vessel operators must provide the observer program three days (seventy-two hours prior to sailing) advance notice of a WGOM Rod/Reel Haddock SAP Trip.
- (2) Observer coverage will be sufficient to ensure the goals of the program are met.

Rationale: The observer program needs advance notice so that observers can be identified and meet the fishing vessels prior to departure.

Other Provisions:

- (1) The Regional Administrator may close this access program if the catch of cod to haddock exceeds a ratio of 1:2, by weight. Closure of the program will be announced through notice action consistent with the Administrative Procedures Act (APA).
- (2) Vessels may not fish in any other area while participating in the SAP.

Rationale: This program facilitates the targeting of GOM haddock by commercial vessels. This restriction will reduce the likelihood that party/charter vessels will get a commercial hand gear permit, fish in the access program for part of the year, and then fish in the closed area targeting cod with a party/charter permit for the remainder of the year.

Duration: This SAP will expire two years after implementation of this action, unless extended by the Regional Administrator. Any extension will be announced through a notice action consistent with the Administrative Procedures Act. The Regional Administrator will allow this SAP to continue if all of the following conditions are met:

- The monitoring and enforcement provisions of the SAP prove sufficient to reliably document the catch of cod and haddock.
- In each of the two years that the SAP is conducted, the catch of cod does not exceed the cod TAC and the catch of haddock does not exceed the haddock TAC.
- The ratio of cod to haddock catch is less than 1:2, by weight.

PROPOSED ACTION
Special Access Programs (Measure C)

Season: March and April

4.4.1.2 Provisions for Limited Access DAS Permit Holders

- (1) A vessel must elect to participate in this program for a minimum of seven days.
- (2) A vessel may not fish for groundfish or monkfish in any other area, and no groundfish or monkfish gear can be set in any other area, during the period that a vessel has elected to participate in this program.

Rationale: The requirement to sign-in to the program for a minimum of seven days will facilitate enforcement and encourage vessels to remove all other gear while in the program. The prohibition on setting gear in other areas while in the program also facilitates enforcement and administration of the program, making it easier to track the catch of vessels participating in the SAP.

4.4.2 Closed Area II Yellowtail Flounder SAP (Measure C.3)

The season for the CAII Yellowtail Flounder SAP is revised to July 1 through December 31. Vessels participating in this SAP will be limited to one trip per month. The yellowtail flounder landing limit for this SAP will be 10,000 pounds/trip unless adjusted by the Regional Administrator. Prior to June 1, the Regional Administrator, after consulting with the Council, will announce the number of trips authorized and the yellowtail flounder landing limit (not to exceed 30,000 pounds per trip). This announcement will be made as a notice action consistent with the Administrative Procedures Act.

When determining the number of trips and the appropriate trip limit, the Regional Administrator will consider the following factors:

- The available yellowtail flounder TAC under the US/CA Resource Sharing Understanding
- The potential catch of GB yellowtail flounder by all vessels (all gears) fishing outside of the SAP
- Recent discard estimates in all fisheries that catch yellowtail flounder
- Expected number of participants in the SAP

After consideration of these factors, the Regional Administrator will authorize the number of trips and appropriate trip limit that will provide for achieving but not exceeding the GB yellowtail flounder TAC and will result in a low risk of catching the GB yellowtail flounder TAC before the end of the fishing year. If the Regional Administrator determines that the available catch is not enough to support 150 trips with a trip limit of 15,000 lbs. of yellowtail flounder, the Regional Administrator may choose not to authorize any trips into the area.

The catch for this TAC should be based on the best estimate of the difference between the TAC and the catch that will be taken while fishing outside of the SAP on Category A DAS. Recent catches (landings and discards, all fisheries) have averaged about 3,750 mt. Based on this information, the suggested formula for determining the appropriate number of trips for FY 2005 is:

$$(TAC - 4,000 \text{ mt}) / 10,000 \text{ lbs.}$$

This formula can be revised by the Regional Administrator if it is determined that the catch outside of the SAP will be different than the 4,000 mt assumed by the formula, or if the Regional

PROPOSED ACTION

Minimum Effective Effort Allocation (Measure D)

Administrator adjusts the landing limit. Factors to consider in adjusting the landing limit include the amount of fish available to the SAP, the number of participants, and the risk that catch of yellowtail flounder from all fisheries will exceed the TAC.

All other provisions for this SAP remain the same.

Rationale: The CAII Yellowtail Flounder SAP is designed to help attain OY on the GB yellowtail flounder stock. As implemented in Amendment 13, the SAP was limited to a specific number of trips with no provisions for an adjustment if stock conditions change. This measure provides the Regional Administrator the ability to adjust the number of trips if the GB yellowtail flounder TAC changes, and provides guidance so that the catch on the SAP is unlikely to result in closure of the eastern US/CA area due to catching the GB yellowtail flounder TAC. This will make it unlikely that the SAP will interfere with the harvest of other species in this area (in particular GB haddock), since the eastern US/Canada area will close if the GB yellowtail flounder TAC is caught. This change will also reduce the possibility that the GB yellowtail flounder TAC will be exceeded, since some yellowtail flounder may be discarded in the Western U.S./Canada area after the TAC is reached.

The SAP, as adopted in Amendment 13, begins on June 1. This date conflicts with spawning months for yellowtail flounder on Georges Bank. In addition to the concerns over interfering with spawning fish, fish quality is poor and there is lower demand (and consequently lower prices) as a result. Changing the programs starting date by one month will increase the benefits of this program because higher quality fish will be landed at a better price. Limiting participating vessels to one trip per month will help to extend the season, as will reducing the landing limit to 10,000 pounds per trip. The Regional Administrator is granted authority to prevent the SAP from taking place if the available catch is not sufficient to support a minimum number of trips with a trip limit of 15,000 lbs.

4.5 Minimum Effective Effort Allocation (Measure D)

For any permit that was not allocated any Category A or B DAS under the provisions of Amendment 13, ten of the permit's Category C DAS will be re-categorized to ten Category B (reserve) DAS. If these DAS are carried over into a following fishing year, they remain Category B (reserve) DAS. These DAS can only be used in the following existing or proposed SAPs (consistent with any other provisions for these SAPs):

- WGOM Closed Area Rod/Reel Haddock SAP (proposed in this action)
- CAI Hook Gear Haddock SAP (implemented through FW 40A)

Rationale: Under Amendment 13 provisions, roughly 400 vessels did not receive any Category A or B DAS. As a result, the future access of these vessels to the groundfish fishery is in doubt, and they cannot currently access the fishery. By providing a minimum of ten Category B (reserve) DAS to all vessels, these vessels are provided a limited opportunity to participate in some existing SAPs (albeit at a very low effort level) and have more hope of future participation as stocks rebuild. They can only participate in SAPs that do not have a DAS flip provision, since this provision requires that vessels have Category A DAS available. At present, only one SAP is authorized for all vessels that does not include the DAS flip provision, and a second SAP is authorized for vessels in the GB cod hook sector.

4.6 GB Cod Hook Sector Revisions (Measure E)

To determine the share of GB cod allocated to the GB hook sector, member's GB cod landings during the qualification period will be used, regardless of the gear used that produced those landings. The sector's overall share remains capped at a maximum of twenty percent of the overall target TAC.

Any vessel is eligible to join the sector, regardless of type of gear used in the past. Fishermen in the sector, however, must use hook gear.

Rationale: When Amendment 13 implemented the GB Cod Hook Sector, it specified that vessels entering the sector only bring their history of fish caught by hooks into the sector. The general rules for a sector adopted by Amendment 13, however, provide that the members of the sector bring all their catch history into the sector, regardless of how caught. This measure will make the allocation decisions for the GB cod hook sector consistent with those of any other sector that forms in the future. It will probably increase the allocation of cod to the sector.

4.7 Change to DAS Effective Effort Calculation (Measure F)

No changes are made by this action to the DAS allocations or default measures implemented by Amendment 13. A permit's effective effort (baseline allocation) is based on the maximum number of DAS used in any fishing year between 1996 and 2001, limited by the permit's allocation in FY 2001. Only years in which at least 5,000 pounds of regulated groundfish were landed are considered in this calculation.

Rationale: This measure keeps the DAS allocations as implemented for FY 2004 under Amendment 13. The Council considered two options that would have removed the restriction that Amendment 13 DAS are limited by a permit's allocation in FY 2001. The Council did not adopt either of these options and decided to keep allocations and the future default DAS reductions as implemented by Amendment 13.

4.8 Removal of the Tonnage Criterion for the DAS Transfer Program (Measure G)

Vessels can only transfer DAS under the DAS transfer program if the vessel baseline characteristics of the two permits involved fall within the guidelines for the vessel permit upgrade restrictions for length and horsepower. Tonnage of the two vessels will not be considered.

Rationale: Under the current provisions of the DAS transfer program, DAS can only be transferred between vessels between vessels whose permit baseline characteristics fall within the vessel permit upgrading restrictions for length, horsepower, and tonnage. This measure removes the requirement that vessels fall within the tonnage permit upgrade restrictions. This makes the requirements of the DAS transfer program more similar to the requirements for the DAS leasing program.

4.9 Permit Baseline Characteristics Downgrade (Measure H)

Solely for the purposes of the DAS leasing program, permit holders are allowed to make a one-time downgrade of the baseline characteristic of their permit (length, horsepower). Only one downgrade is allowed for each permit, and all vessel characteristics associated with the DAS Leasing Program Baseline must be changed to match the characteristics of the vessel that is currently using the permit. A

PROPOSED ACTION

DAS Credit for Standing By Entangled Whales (Measure I)

downgraded DAS leasing baseline would remain in effect until the DAS leasing program expires (i.e., until April 30, 2006 unless the Council extends the DAS leasing program). This new permit baseline will only be used for the DAS leasing program. This downgrade does not change a permit's multispecies baseline that is used for vessel upgrades, DAS transfers, etc.

If, after the permit's leasing baseline is downgraded, the permit is placed on another vessel in accordance with the vessel replacement regulations, the DAS Leasing Program Baseline would change to the permit's original DAS Leasing Program Baseline as of January 29, 2004 (i.e. the original DAS Leasing Program Baseline implemented under Amendment 13).

Under current regulations, the vessel using a permit can be replaced, but any increase in length, horsepower, gross and net tonnage is limited. Horsepower can only be changed once, and length, gross, and registered tonnage can only be changed once. The proposed measure does not change the replacement vessel restrictions – that is, if the permit was placed on an “upgraded” vessel, it cannot be placed on a second upgraded vessel after the baseline characteristics are downgraded. Conversely, if the permit has never been placed on an upgraded vessel, the permit retains its eligibility for an upgrade.

Rationale: Exchanges of DAS under the DAS leasing program are limited by a vessel's permit baseline characteristics. For vessels with “large” characteristics, this limits the number of candidate permits with which to conduct an exchange. In some cases, vessels are actually smaller than the permit baseline attached to the vessel. This measure would allow permit owners to make a one-time downgrade of their permit so that the permit baseline matches the characteristics of the vessel currently using the permit. All characteristics would have to be downgraded to the actual physical characteristics of the vessel currently using the permit, and this change cannot be reversed. This measure will facilitate use of the DAS leasing programs for those vessels and will reduce the amount of latent fishing capacity inherent in those permits.

Allowing any increase in fishing capacity resulting from a downgraded leasing baseline being used on a larger replacement vessel would compromise the conservation neutrality of this measure inconsistent with the intent of the measure and the objectives of Amendment 13. Reinstatement of the original leasing baseline if a vessel is replaced would be consistent with Amendment 13 and would result in no additional impacts beyond those assessed in Amendment 13. This measure would also be relatively easy to administer and result in fewer complications to the vessel replacement program.

4.10 DAS Credit for Standing By Entangled Whales (Measure I)

Limited access groundfish vessels may be provided a DAS credit for standing by an entangled whale. The requirements for receiving this credit are as follows:

- (1) The vessel must notify the appropriate organization of the entangled whale (current guidance advises mariners to contact the U.S. Coast Guard or the Center for Coastal Studies). The vessel must also be in contact with the Center for Coastal Studies, either directly or through the Coast Guard.
- (2) Only one vessel at a time will receive credit for standing by the whale. It is permissible for a vessel to hand off the activity to a second vessel while waiting for the rescue team to arrive. Additional vessels could also receive credit for standing by the whale.
- (3) Ideally, the vessel would remain on scene until the rescue team arrives, but this may not be possible in all circumstances. The stand-by vessel must be available to answer questions on the

PROPOSED ACTION

Herring Vessel Interactions With Regulated Groundfish (Measure J)

condition of the animal, possible species identification, severity of entanglement, gear information, etc.

(4) Credit will be granted for a verified report whether or not the rescue team arrives on scene or a rescue is attempted.

(5) This provision applies to all species of live whale, whether alive or dead.

(6) The permit holder or his representative must submit a request to NMFS NERO for a DAS credit. After a review of the circumstances, NMFS will notify the permit holder of any adjustment that is made, or explain the reasons that an adjustment is not made.

Rationale: In 2003 there were thirty-four confirmed reports of large whale entanglements and only nine whales disentangled. Attempts were not made on eleven whales because they could not be relocated after the initial report. With the DAS reductions in Amendment 13, groundfish fishing vessels are reluctant to take the time to provide information on entangled whales because they lose valuable DAS time while standing-by. This measure will provide a limited DAS credit to vessels that report and stand-by entangled whales. The credit is given whether the whale is alive or dead since valuable information can be obtained from a carcass on the cause of death, condition of the whale, etc. – information that is especially important for northern right whales.

4.11 Herring Vessel Interactions With Regulated Groundfish (Measure J)

Herring purse seine and mid-water (both single and paired trawls) are allowed to fish in all regulated mesh areas. Recently obtained information suggests that herring vessels catch regulated groundfish.

Herring fishing vessels with Category 1 herring permits that catch or intend to catch herring in the Georges Bank or Gulf of Maine Regulated Mesh areas (see Figure 2) must call NMFS and request an observer at least 72 hours in advance of any herring fishing trip in these areas. If NMFS is unable to provide an observer and an observer waiver is granted, the vessel must notify NMFS enforcement via VMS of the time and place of landing prior to crossing the VMS demarcation line so that enforcement agents can attempt to observe the offload.

Rationale: There is insufficient information available to estimate regulated groundfish discard rates in the herring fishery and determine if groundfish bycatch in the herring fishery is a concern. This option will facilitate collection of additional information through increased observer coverage and witnessing of offloads by enforcement. It is recognized that enforcement agents will not be able to witness every offload due to resource limitations, but the notification requirement will make it possible for more offloads to be observed. In addition to these requirements, the Council will ask NMFS to have observers record information on footrope height above the bottom and document the reason for any tows not brought on board the vessel.

PROPOSED ACTION
Removal of Net Limit for Trip Gillnet Vessels (Measure K)

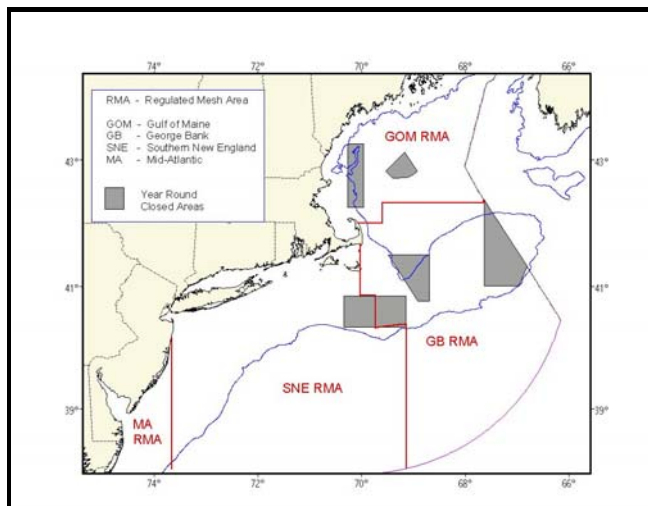


Figure 2 – Northeast Multispecies Regulated Mesh Areas, with year-round mortality closures

4.12 Removal of Net Limit for Trip Gillnet Vessels (Measure K)

The restriction on the number of nets that can be carried by trip gillnet vessels fishing in any regulated mesh area is removed. As is currently required, trip gillnet vessels must remove all gillnets from the water and carry those nets on board when returning to port.

Rationale: Trip gillnet vessel fishing effort is controlled through the use of DAS and the physical ability of the vessels to carry nets. The net limit is an additional restriction on effort that is unnecessary. In order to enforce the net limitation adopted by Amendment 13, trip gillnet vessel operators must use net tags on their nets. Trip gillnet vessels often change their target species while at sea from groundfish to monkfish. Since they are provided a limited number of net tags, this means they must change the net tags while at sea. This is difficult to do. Removing the net restriction will remove the requirement for the net tags and will make it easier for these vessels to target a mix of species on a trip, rather than focus on groundfish.