

Appendix II

Framework Adjustment 40B

Draft Proposed Regulations

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket Nr]

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

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement measures in Framework Adjustment 40B (FW 40B) to the NE Multispecies Fishery Management Plan (FMP). The Northeast Multispecies Fishery Management Plan (FMP) specifies the management measures for twelve groundfish species (cod, haddock, yellowtail flounder, pollock, plaice, witch flounder, white hake, windowpane flounder, Atlantic halibut, winter flounder, yellowtail flounder, ocean pout) off the New England and Mid-Atlantic coasts. These species - in some cases sub-divided into different stock areas - are harvested by commercial and recreational fishermen. The FMP has been updated through a series of amendments and framework adjustments. The most recent amendment, published as Amendment 13, was approved by the National Marine Fisheries Service in March, 2004 and became effective on May 1, 2004. This amendment adopted a broad sweep of management measures in order to achieve mortality targets and meet other requirements of the Magnuson-Stevens Act. Additional changes to the management program were implemented through Framework Adjustment 40A (FW 40A), implemented November 19, 2004.

For several stocks, the mortality targets adopted by Amendment 13 represented substantial reductions from existing levels. For other stocks, the targets were at or higher than existing levels and mortality could remain the same or even increase. Because most fishing trips in this fishery catch a wide range of species, it is impossible to

design measures that will selectively change mortality for individual species. As a result, the management measures adopted by the amendment to reduce mortality where necessary are also expected to reduce fishing mortality unnecessarily on other, healthy stocks. As a result of these lower fishing mortality rates, yield from healthy stocks is sacrificed and the management plan may not provide optimum yield - the amount of fish that will provide the greatest overall benefit to the nation.

In order to increase the fishing effort on and yield from healthy stocks, Amendment 13 created a structure that allows for the development of programs to target healthy stocks. The amendment also included four specific programs, but only two were approved and implemented on May 1, 2004. FW 40A adopted two programs that provided additional opportunities to target healthy stocks in order to achieve optimum yield. These programs will also mitigate the economic and social impacts caused by the effort reductions adopted by Amendment 13. FW 40A was implemented November 19, 2004.

The proposed action includes measures that are designed to improve the effort control program of Amendment 13 by modifying provisions of the DAS program. It also creates an additional program that allows vessels to use Category B DAS (both regular and reserve) to target haddock in the Gulf of Maine, and addresses concerns over interactions between herring fishing vessels and regulated groundfish.

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

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

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

at the address above and by email to [David Rotsker@omb-eop.gov](mailto:David.Rotsker@omb-eop.gov) or fax to (202) 395-7285.

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

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

SUPPLEMENTARY INFORMATION:

Background

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

In order to increase the fishing effort on and yield from healthy stocks, Amendment 13 created a structure that allows for the development of programs to target healthy stocks. The amendment also included four specific programs, but only two were approved and implemented on May 1, 2004. One of the primary management measures used by Amendment 13 to control fishing mortality is days-at-sea (DAS), which limit the time that vessels with limited access permits can fish for regulated groundfish. Amendment 13 categorized the DAS allocated to each permit as Category A, B (regular), B (reserve) or C DAS. Category A DAS can be used to target any regulated groundfish stocks, while Category B DAS are to be used only to target healthy groundfish stocks. Category C DAS cannot be used until some time in the future. The regulations implementing Amendment 13 only created one opportunity to use Category B DAS: a special access program designed to target Georges Bank yellowtail flounder in Closed Area II. Framework Adjustment 40A, implemented November 19, 2004 (69 FR 67780), created additional opportunities to use Category B DAS by adopting two Special Access Program (SAP) to target GB haddock and a pilot program designed for using Category B (regular) DAS outside of a SAP

Since the implementation of Amendment 13 and submission of FW 40A, 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.

Proposed Measures

The proposed action implements eleven specific management measures. A general description of these measures is provided below. For the specific details of each measure as well as the rationale for its adoption, refer to the implementing regulations.

1. A reduction in the conservation tax for DAS exchanged through the DAS transfer program. Amendment 13 adopted the DAS transfer program, which allows for the permanent exchange of DAS between vessels with limited access permits. Exchanges of DAS through this program are subject to a number of restrictions that govern what vessels can exchange DAS and what happens to the permits of the vessel that is selling DAS to another vessel. As adopted by Amendment 13, DAS that are permanently exchanged through the transfer program are subject to a forty percent conservation tax (Category A and B DAS). The proposed action would reduce that tax to twenty percent.

2. Changes to the Incidental Catch TACs. Current regulations include several programs that allow vessels to use Category B DAS to target healthy stocks. The catch of stocks of concern - that is, stocks that are overfished or are subject to overfishing - when using these DAS is controlled through the use of Incidental Catch TACs. This action modifies these TACs to account for an additional special access program and to provide for a research set-aside for Georges Bank cod. The total incidental catch TACs are not revised.

3. Western Gulf of Maine Closed Area Rod/Reel SAP. The proposed action implements a Special Access Program (SAP) to target haddock in the Western Gulf of Maine (WGOM) Closed Area using hand-operated rod and reel. Vessels fishing with bait must use circle hooks. Any jigs used in this SAP cannot have treble hooks. The SAP is only authorized for two months - March and April. The total catch (kept and discarded) of haddock is limited to fifty metric tons, while the catch of cod is limited to five percent of the Gulf of Maine cod incidental catch TAC. Vessels are not allowed to retain cod. Vessels must have a limited access multispecies permit to participate (including a Handgear A permit), must use a Vessel Monitoring System (VMS), are subject to several notification and reporting requirements, and cannot fish outside of the SAP on the same trip. Vessels with a limited access DAS permit must sign in to the SAP for a period of

at least seven days and cannot fish outside of the SAP while in enrolled.

4. Closed Area II Yellowtail Flounder SAP. Amendment 13 adopted a SAP to target yellowtail flounder in the southern half of Closed Area II (CAII) from June 1 through December 31. A total of 320 trips was authorized, with vessels limited to two trips per month. The possession limit for yellowtail flounder was set at 30,000 pounds. The proposed action modifies several of the provisions of this SAP. The total number of trips allowed will be set by the National Marine Fisheries Service after considering the Georges Bank yellowtail flounder TAC (set in accordance with the U.S./Canada Resource Sharing Understanding) and the amount of yellowtail flounder that will be caught outside of the SAP. (It is likely that this process will result in there not being any trips in the SAP in FY 2005). In addition, the SAP will not open until July 1, vessels will be limited to one trip per month, and the possession limit will be 10,000 pounds per trip. NMFS has the authority to increase the possession limit to 30,000 pounds per trip.

5. Minimum Effective Effort Allocation. Amendment 13 categorized the DAS allocated to each permit based on recent fishing history. As described above, only Category A and B DAS can be used. About 400 vessels did not receive any Category A or B DAS, and thus have no opportunity to fish for groundfish with their limited access permit. The proposed action will re-categorize ten Category C DAS as Category B (reserve) DAS for these permits. These DAS can only be used in specifically identified SAPs.

6. Georges Bank Cod Hook Sector. Amendment 13 established the GB Cod Hook Sector and allocates GB cod to the sector based on the history of the sector participants. As implemented, only permits with a past history of using hook gear can join the sector, and only cod landed using hook gear is used to determine the sector's cod allocation. The proposed action modifies these requirements by allowing any vessel to join the sector and all cod landings of sector participants, regardless of gear, will be used to determine the sector's allocation. Sector participants are required to use hook gear once in the sector and the maximum share of the GB cod TAC that the sector can obtain is twenty percent.

7. Removal of Tonnage from the DAS Transfer Program Requirements. Under existing regulations, in order to exchange DAS using the DAS transfer program implemented under Amendment 13, the permits selling and purchasing the DAS must have similar permit baseline characteristics for length, horsepower, and gross tonnage. The proposed action removes the requirement that tonnage must be compared, making the requirements for the transfer program similar to those for the DAS leasing program.

8. One Time Permit Baseline Characteristics Downgrade. Under existing regulations, in order to lease DAS the permits involved in the transaction must have similar permit baseline characteristics for length and horsepower. In general, permits with smaller baseline characteristics have a larger pool of candidates with which to exchange DAS using the leasing program. Some permit holders have placed permits on vessels with physical characteristics that are smaller than the baseline characteristics of the permit. This limits the number of vessels that can be candidates for leasing DAS. The proposed action would allow these permit holders a one-time downgrade of the permit baseline characteristics to the physical characteristics of the vessel using the permit. This change is only used for the DAS leasing program and does not affect any other permit actions. In effect, if a permit holder exercises this option, the permit now has two baselines: one for leasing transactions and another that applies to all other permit transactions (upgrades, transfers, etc.). In addition, if the permit is moved to another vessel, the leasing baseline reverts to the permit baseline and cannot be downgraded again.

9. DAS Credit for Standing By Entangled Whales. Teams that attempt to free entangled large whales are often frustrated by an inability to relocate the whale after the initial report. In order to encourage reporting by fishing vessels, the proposed action provides a mechanism for a limited access groundfish vessel to obtain DAS credit for the time spent standing by a large entangled whale.

10. Herring Vessel Interactions With Regulated Groundfish. Recent reports of the catch of regulated groundfish in herring fishing vessels (most notably mid-water trawl vessels) have prompted an interest in gaining a better understanding of the scope of this problem. The proposed action requires vessels with a Category I herring permit

that fish in the Gulf of Maine or Georges Bank Regulated Mesh Areas to notify the NMFS observer program seventy-two hours before beginning a trip. In addition, if an observer is not provided for the trip, the vessel must notify NMFS enforcement via VMS prior to offloading the catch. These provisions are intended to improve the ability to place an observer on herring vessels and to monitor offloads.

11. Trip Gillnet Net Limitations. Prior to May 1, 2002, trip gillnet vessels did not have a regulatory limit on the number of nets that could be fished. These vessels must return all nets to port when ending a trip and were limited only by the number of nets that can be carried. Effort is thus limited by the size of the vessel as well as the number of DAS allocated, similar to the approach used for trawl gear. Net limits were first adopted for this group of vessels by the interim regulations adopted to implement a court order. Amendment 13 revised the number of nets that could be carried, but did not remove the limit completely. The proposed action removes the limit on the number of nets that can be used by trip gillnet fishing vessels.

In addition to these measures the proposed action does not make any changes to the calculation of a vessel's DAS baseline. As implemented, Amendment 13 determined a DAS baseline for each limited access DAS permit. The baseline was calculated as the maximum DAS used in any single fishing year during the period FY 1996 through FY 2001. Only years when a permit landed 5,000 pounds of regulated groundfish were considered, and the maximum allocation was capped by the permit's allocation in FY 2001. The Council considered, but did not adopt, removing the cap on the allocation. The proposed action does not change the DAS allocations implemented for FY 2004.

Classification

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

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

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

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

Reporting and Recordkeeping Requirements

The proposed measures under FW 40B include the following provisions requiring either new or revised reporting and recordkeeping requirements: (1) daily electronic reporting of kept and discarded catch while participating in the Western Gulf of Maine Closed Area Rod/Reel Haddock SAP; (2) Advance notice of planned participation in the Western Gulf of Maine Closed Area Rod/Reel Haddock SAP; (3) electronic reporting of the start of a trip participating in the Western Gulf of Maine Closed Area Rod/Reel Haddock SAP; (4) enrollment in the Western Gulf of Maine Closed Area Rod/Reel Haddock SAP by limited access DAS vessels for a period of at least seven days; (5) advance notice of a planned fishing trip in the Gulf of Maine or Georges Bank Regulated Mesh Areas by vessels with a Category I herring permit; (6) advance electronic reporting of a planned offload by vessels with a Category I herring permit that fished in the Gulf of Maine or Georges Bank Regulated Mesh Areas.

[Fill in estimated costs based on final PRA]

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

[Fill in based on PRA submission]

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of collection of information, including through the use of automated collection techniques or other forms of information

technology. Send comments on these or any other aspects of the collection of information to NMFS and to OMB (see ADDRESSES).

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

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Date
Signature

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

Part 648—Fisheries of the Northeastern United States

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

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

2. In §648.9, revise paragraph (c) to read:

(c) ***

(1) ***

(ii) NMFS may initiate at its discretion, the transmission of a signal indicating the vessel's accurate position, at least twice per hour, 24 hours a day, for all NE multispecies DAS vessels that elect to fish with a

VMS specified in §648.10(b) or that are required to fish with a VMS as specified in §648.85(a), for each groundfish DAS trip that the vessel has elected to fish in the U.S./Canada Management Areas, and as specified in §648.85(b) for each groundfish trip that the vessel has elected to fish in either the CA II Yellowtail Flounder SAP, the CA I Hook Gear Haddock SAP, the Regular B DAS Pilot Program, the Eastern U.S./Canada Haddock SAP Pilot Program, or the WGOM Closed Area Rod/Reel Haddock SAP.

3. In §648.80, paragraphs (a)(1), (a)(4), (b)(2) and (c)(2) (d)(2) are revised to read as follows:

* * * * *

(a) ***

(1) ***

(iv) ***

(A) ***

(1) * * *

(2) [Reserved].

(3) * * *

(4) ***

(v) * * *

(A) * * *

(1) [Reserved].

(2) * * *

(b) ***

(1) ***

(2) ***

(iv) * * *

(A) ***

(1) [Reserved].

(2) ***

(c) ***

(1) ***

(2) ***

(v) * * *

(A) ***

(1) [Reserved].

(2) ***

(c) ***

(d) * * *

(2) When fishing under this exemption in the GOM/GB Exemption Area, as defined in paragraph (a)(16) of this section, and in the area described in §648.81(c)(1), the vessel has on board a letter of authorization issued by the Regional Administrator, and complies with all

restrictions and conditions thereof. Vessels with a Category 1 permit must notify NMFS seventy-two hours in advance of a trip in accordance with instructions issued by the Regional Administrator, and notify NMFS enforcement through VMS of the time and place of offload prior to crossing the VMS demarcation line at the end of a trip;

(3) * * *

(4) * * *

(5) * * *

(e) Purse seine gear exemption. Fishing may take place throughout the fishing year with purse seine gear of mesh size smaller than the applicable minimum size specified in this section, provided that:

(1) * * *

(2) When fishing under this exemption in the GOM/GB Exemption Area, as defined in paragraph (a)(16) of this section, the vessel has on board a letter of authorization issued by the Regional Administrator.

Vessels with a Category 1 permit fishing in the GOM or GB Regulated Mesh Areas must notify NMFS seventy-two hours in advance of a trip in accordance with instructions issued by the Regional Administrator, and notify NMFS enforcement through VMS of the time and place of offload

prior to crossing the VMS demarcation line at the end of
a trip;

4. In §648.82, paragraph (d) (2), (d) (3), (k) (4), and (l) (1)
are revised, and paragraph (m) is added, to read as
follows:

* * * * *

(d) * * *

(1) * * *

(2) * * *

(i) * * *

(ii) * * *

(A) * * *

(B) * * *

(1) * * *

(2) * * *

(3) * * *

(4) Any vessel with a DAS baseline that is zero DAS when
determined under paragraph (c) (1) of this section will be
allocated ten Category B (reserve) DAS. These DAS can only
be used in specific SAPs.

(3) ***

(i) * * *

(ii) Calculation. Category C DAS are defined as the difference between a vessel's used DAS baseline, as described in paragraph (c)(1) of this section, and the number of DAS allocated to the vessel as of May 1, 2001. If a vessel's used DAS baseline, as describe in paragraph (c)(1) of this section, is zero, then the number of Category C DAS will be reduced by ten (these DAS become ten Category B (reserve) DAS in accordance with paragraph (d)(2)(ii)(B)(4) of this section).

* * * * *

(k) * * *

(4) ***

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

(x) * * *

(xi) One-time downgrade of leasing baseline. A vessel owner can make a one-time downgrade to the vessel's baseline length and horsepower. The downgrade must be to the physical characteristics of the vessel. The downgrade remains in effect for the life of the DAS leasing program unless the permit is transferred to another vessel. These characteristics will only be used to determine eligibility for the exchange of DAS through the DAS leasing program, and will have no relevance to vessel replacement restrictions. The DAS leasing baseline permanently reverts to the baseline horsepower and length overall specifications associated with the permit as of January 29, 2004 if the permit is transferred to another vessel.

(1) * * *

(1) * * *

(ii) NE multispecies DAS may be transferred only to a vessel with a baseline main engine horsepower rating that is no greater than 20 percent of the baseline engine horsepower of the transferor vessel. NE multispecies DAS may be transferred only to a vessel with a baseline length overall that is no greater than 10 percent of the baseline length overall or the baseline gross registered tonnage,

respectively, of the transferor vessel. For the purposes of this program, the baseline horsepower and are those associated with the permit as of January 29, 2004.

(iii)* * *

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

(m) DAS credit for standing by an entangled large whale. A vessel that reports and stands by a large entangled whale can apply for a DAS credit for the time spent standing by the whale. The following procedures must be followed to receive this credit:

(1) The vessel operator must notify the appropriate authorities of the location of the entangled whale.

(2) Only one vessel at a time will receive credit for standing by the whale. It is permissible for one vessel to hand off the activity to a second vessel while waiting for the rescue team to arrive.

(3) The stand-by vessel must be available to answer questions on the condition of the animal, possible species identification, severity of entanglement, etc.

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

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

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

* * * * *

5. In §648.85, paragraph (b) (3) and (b) (5) are revised and paragraph (b) (9) is added to read as follows:

* * * * *

(b) * * *

(3) * * *

(iii) Season. Eligible vessels may fish in the Closed Area II Yellowtail Flounder SAP during the period July 1 through December 31.

(iv) * * *

(v) * * *

(vi) Number of trips per vessel. Unless otherwise authorized by the Regional Administrator as specified in paragraph (a) (3) (iv) (D) of this section, eligible vessels are restricted to one trip per month, during the season described in paragraph (b) (3) (iii) of this section.

(vii) (A) Maximum number of trips. Unless otherwise authorized by the Regional Administrator as specified in paragraph (a) (3) (iv) (D) of this section, the total number of trips by all vessels combined that may be declared into the Closed Area II Yellowtail Flounder SAP will be as established by the Regional Administrator for each fishing year prior to June 1. When determining the number of trips, the Regional Administrator will consider the available yellowtail flounder TAC under the U.S./Canada Resource Sharing Understanding, the potential catch of GB yellowtail flounder by all vessels fishing outside of the SAP, recent discard estimates in all fisheries that catch yellowtail flounder, and the expected number of participants.

(B) If the Regional Administrator determines that the available catch is insufficient to support 150 trips with a possession limit of 15,000 pounds of yellowtail flounder per trip, the Regional Administrator may choose not to authorize any trips into the SAP.

(viii) Trip limits. Unless otherwise authorized by the Regional Administrator as specified in paragraph (a) (3) (iv) (D) of this section, a vessel fishing in the CA II Yellowtail Flounder SAP may fish for, possess, and land up to 10,000 lb (4,536 kg) of yellowtail flounder

per trip. The Regional Administrator can adjust this limit to a maximum of 30,000 lb (13,608 kg) per trip after considering the factors listed in paragraph (vi) (a) of this section. Unless otherwise restricted, a NE multispecies vessel fishing any portion of a trip in the CA II Yellowtail Flounder SAP may not fish for, possess, or land more than 1,000 lb (453.6 kg) of cod per trip, regardless of trip length. A NE multispecies vessel fishing in the CA II Yellowtail Flounder SAP is subject to the haddock requirements described under §648.86(a), unless further restricted under paragraph (a) (3) (iv).

(4) ***

(5) Incidental TACs. Unless otherwise specified in this paragraph (b) (5), incidental TACs will be specified through the periodic adjustment process described in §648.90, and allocated as described in paragraph (b) (5) of this section, for each of the following stocks: GOM cod, GB cod, CC/GOM yellowtail flounder, American plaice, white hake, SNE/MA yellowtail flounder, SNE/MA winter flounder, and witch flounder. NMFS will send letters to limited access NE multispecies permit holders notifying them of such TACs.

(i) Stocks other than GB cod. With the exception of GB cod and GOM cod, the incidental TACs specified under

this paragraph (b) (5) shall be allocated to the Regular B DAS Pilot Program described in paragraph (b) (6) of this section.

(ii) GB cod. The incidental TAC for GB cod specified in this paragraph (b) (5), shall be subdivided as follows: 59.4 percent to the Regular B DAS Pilot Program, described in paragraph (b) (6) of this section; and 30.6 percent to the Eastern U.S./Canada Haddock SAP Pilot Program, described in paragraph (b) (8) of this section, and 10 percent to a research set-aside.

(iii) GOM cod. The incidental TAC for GOM cod specified in this paragraph (b) (5) shall be subdivided as follows: 95 percent to the Regular B DAS Pilot Program and 5 percent to the Western Gulf of Maine Rod/Reel Haddock SAP, described in paragraph (b) (9) of this section.

* * * * *

(9) Western Gulf of Maine Closed Area Rod/Reel Haddock SAP.

(i) Eligibility. Vessels issued a valid limited access NE multispecies permit, and fishing with hand operated rod and reel gear as specified in paragraph (b) (8) (v) (E) of this section, are eligible to participate in the Western Gulf of Maine Closed Area Rod/Reel Haddock

SAP, and may fish in the Western Gulf of Maine Closed Area, as described in paragraph 648.81(c) of this section, during the program duration and season specified in paragraphs (b)(9)(iii) and (iv) of this section, provided such vessels comply with the requirements of this section, and provided the SAP is not closed according to the provisions specified in paragraphs (b)(8)(v)(K) or (L) of this section. Limited access DAS vessels must sign-in to the program for a minimum period of seven days by notifying NMFS in accordance with instructions issued by the Regional Administrator. Copies of a chart depicting this area are available from the Regional Administrator upon request.

(ii) Western Gulf of Maine Closed Area Rod/Reel Haddock SAP Area. The Western Gulf of Maine Closed Area Rod/Reel Haddock SAP Area is the Western Gulf of Maine Closed Area as defined in 648.82(c).

(iii) Duration of program. The Western Gulf of Maine Closed Area Rod/Reel Haddock SAP is in effect from [insert date of publication] to [insert date two years after date of publication] unless extended by the Regional Administrator as discussed in paragraph (9)(iv)(L).

(iv) Season. Eligible vessels may fish in the Western Gulf of Maine Closed Area Rod/Reel Haddock SAP from March 1 through April 30.

(v) Program restrictions.

(A) DAS use restrictions. A vessel fishing in the Western Gulf of Maine Closed Area Rod/Reel Haddock SAP may elect to fish under a Category A or Category B DAS, in accordance with §648.82(d)(2)(i)(A) and the restrictions of this paragraph (b)(8)(v)(A).

(B) VMS requirement. A NE multispecies DAS vessel fishing in the Western Gulf of Maine Closed Area Rod/Reel Haddock SAP Area specified under paragraph (b)(9)(ii) of this section, must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§648.9 and 648.10.

(C) Observer notifications. For the purposes of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; areas to be fished; and date, time, and port of departure at least 72 hr prior to the beginning of any trip which it declares into the Western Gulf of Maine Closed Area Rod/Reel Haddock SAP Area specified in paragraph (b)(9)(ii) of this section, as required under

paragraph (b) (9) (v) (D) of this section, and in accordance with instructions provided by the Regional Administrator.

(D) VMS declaration. Prior to departure from port, a vessel intending to participate in the Western Gulf of Maine Closed Area Rod/Reel Haddock SAP must declare into the SAP via VMS and provide information on the type of DAS (Category A, Regular B, or Reserve B) that it intends to fish in accordance with paragraph (b) (9) (v) (A) of this section and instructions provided by the Regional Administrator.

(E) Gear restrictions. Any multispecies vessel fishing in the Western Gulf of Maine Closed Area Rod/Reel Haddock SAP must hand-operated rod and reel gear. In addition, circle hooks must be used if using bait and no treble hooks can be used with jigs.

(F) Landing limits. Unless otherwise restricted, NE multispecies vessel fishing in the Western Gulf of Maine Closed Area Rod/Reel Haddock SAP may not fish for, possess, or land cod. A NE multispecies vessel fishing in the Western Gulf of Maine Rod/Reel Haddock SAP is subject to the haddock requirements described under §648.86(a), unless further restricted under paragraph (a) (3) (iv) of this section.

(G) Area fished. Vessels participating in this SAP may not fish outside the SAP area, and no gear may be set outside the SAP area while a limited access DAS vessel is participating in this program.

(H) Reporting requirements. The owner or operator of a vessel declared into the Western Gulf of Maine Closed Area Rod/Reel Haddock SAP, as described in paragraph (b) (9) of this section, must submit reports in accordance with the reporting requirements described in paragraph (a) (3) (v) of this section.

(I) Incidental cod TAC. The maximum amount of GB cod (landings and discards) that may be caught from the Western Gulf of Maine Closed Area Rod/Reel Haddock SAP in a fishing year, by all vessels fishing in the SAP regardless of DAS type used, as authorized in paragraph (b) (8) (v) (A) of this section, is the amount specified in paragraph (b) (5) (i) (B) of this section.

(J) Mandatory closure of Western Gulf of Maine Closed Area Rod/Reel Haddock SAP. When the Regional Administrator projects that the TAC allocation specified in paragraph (b) (9) (v) (H) of this in the SAP, NMFS shall prohibit all fishing in Western Gulf of Maine Closed Area Rod/Reel Haddock SAP, through notice in the Federal

Register, consistent with the Administrative Procedure Act.

(K) Discretionary closure of Western Gulf of Maine Closed Area Rod/Reel Haddock SAP. The Regional Administrator may close the Western Gulf of Maine Closed Area Rod/Reel Haddock SAP if the ratio of exceeds the ratio of 1:2, by weight. Closure under this provision will be announced in the Federal Register consistent with the Administrative Procedures Act.

(L) Extension of the Western Gulf of Maine Closed Area Rod/Reel Haddock SAP. The Regional Administrator will extend the Western Gulf of Maine Closed Area Rod/Reel Haddock SAP beyond the date in paragraph (9) (iii) of this section if all of the following conditions are met: monitoring and enforcement provisions prove sufficient to reliably document the catch of cod and haddock, the catch of cod and haddock does not exceed the respective TACs for these species, and the ratio of cod to haddock catch is less than 1:2, by weight.

6. In §648.87, paragraph (d) (1) is revised to read as follows:

* * * * *

(d) * * *

(1) * * *

(ii) Eligibility. All vessels with a valid limited access NE multispecies DAS permit are eligible to participate in the GB Cod Hook Sector.

(iii) TAC allocation. For each fishing year, the Sector's allocation of that fishing year's GB cod TAC, up to a maximum of 20 percent of the GB cod TAC, will be determined as follows:

(A) Sum of the total accumulated landings of GB cod by vessels identified in the Sector's Operation Plan specified under paragraph (b) (2) of this section, for the fishing years 1996 through 2001, regardless of gear used, as reported in the NMFS dealer database.

(B) Sum of total accumulated landings of GB cod made by all NE multispecies vessels for the fishing years 1996 through 2001, as reported in the NMFS dealer database.

(C) Divide the sum of total landings of Sector participants calculated in paragraph (d) (1) (iii) (A) of this section by the sum of total landings by all vessels calculated in paragraph (d) (1) (iii) (B) of this section. The resulting number represents the percentage of the total GB cod TAC allocated to the GB Cod Hook Sector for the fishing.

* * * * *