

Appendix B

Draft Proposed Rule

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.; ID]

RIN 0648-AT08

Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act)

Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery;

Framework Adjustment 41

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 41 (FW 41) to the NE Multispecies Fishery Management Plan (FMP). FW 41 was developed by the New England Fishery Management Council (Council) to provide additional opportunities for vessels in the NE multispecies fishery to target relatively healthy stocks of groundfish in order to mitigate the economic and social impacts resulting from the effort reductions required by Amendment 13 to the FMP, and to harvest groundfish stocks at levels that approach optimum yield (OY). The proposed action would expand participation in the existing Closed Area (CA) I Hook Gear Haddock Special Access Program (SAP) to all NE multispecies limited access Days-at Sea (DAS) vessels using hook gear, and modify some of the management measures currently applicable to the Georges Bank (GB) Cod Hook Sector (Sector) vessels when declared into the

CA I Hook Gear Haddock SAP by including modification of the season, haddock total allowable catch (TAC), and restricting vessels to fishing only inside the SAP area on trips declared into the SAP. The intended effect of FW 41 is to provide fishing opportunities that would mitigate some of the negative economic and social impacts caused by the effort reductions in Amendment 13 and make management measures applicable to Sector and non-Sector vessels consistent to the maximum extent practicable while also avoiding the creation of a derby fishery in the SAP.

DATES: Comments must be received by [insert date 15 days from date of publication in the FEDERAL REGISTER].

ADDRESSES: Comments may be submitted by any of the following methods:

- ! E-mail: FW41@NOAA.gov. Include in the subject line the following: Comments on the Proposed Rule for Groundfish Framework 41.
- ! Federal e-Rulemaking Portal: <http://www.regulations.gov>.
- ! Mail: Paper, disk, or CD-ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope “Comments on the Proposed Rule for Groundfish Framework 41.”
- ! Fax: (978) 281-9135.

Copies of FW 41, its Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), and the Environmental Assessment (EA) are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, The Tannery B Mill 2, Newburyport, MA 01950.

NMFS prepared a summary of the IRFA, which is contained in the Classification section of the preamble of this proposed rule.

FOR FURTHER INFORMATION CONTACT: Brian Hooker, Fishery Policy Analyst, phone: (978) 281-9220, fax; (978) 281-9135.

SUPPLEMENTARY INFORMATION:

Background

In order to increase the fishing effort on, and yield from healthy stock, Amendment 13 to the FMP created a structure that allows for the development of programs to target healthy fish stocks using Category B DAS. Amendment 13 included four specific SAPs, only two of which were approved and implemented on May 1, 2004. The regulations implementing FW 40-A (69 FR 67780, November 19, 2004) also created opportunities to use Category B DAS, including the CA I Hook Gear Haddock SAP. However, due to insufficient controls on GB cod mortality, which could have led to undermining fishing mortality objectives necessary to end overfishing and rebuild the GB cod stock, the measures for non-Sector vessels proposed in FW 40-A were found to be inconsistent with National Standard 1 and section 303(a)(1)(A) of the Magnuson-Stevens Act, and were thus disapproved. Specifically, the portion of the FW 40-A CA I Hook Gear Haddock SAP pertaining to non-Sector vessels proposed to: Allow participants to fish in the SAP area using either an A or B DAS; count cod catch against the SAP's incidental cod TAC only when fishing on a B DAS; allow participants to fish both inside and outside the SAP area on the same trip under different gear restrictions; and allow non-DAS groundfish

vessels to participate in the SAP. In contrast, regulations pertaining to the Sector vessels were relatively straightforward in that all cod caught by Sector vessels counted toward the Sector's allocation of GB cod, and the same gear restrictions applied both inside and outside of the SAP area on a single trip. The purpose of this action is to revise the CA I Hook Gear Haddock SAP to allow participation by non-Sector vessels. This program will help mitigate the economic and social impacts caused by the fishing effort reductions adopted by Amendment 13.

FW 41 proposes to provide access to the CA I Hook Gear Haddock SAP for all limited access NE multispecies DAS permit holders, including both Sector and non-Sector vessels. Working together, Sector and non-Sector vessel owners who plan to participate in the program have crafted an industry-based solution to avoid a derby (race to catch limited quota) fishery in the SAP. It is the intent of the Council that this solution does not constitute an allocation to any user group but solves the immediate problems of a derby. Further discussions of the CA I Hook Gear Haddock SAP should not be based on this current solution nor should this solution constitute a precedent for the development of SAPs, B DAS programs, or other quota allocations in the future. Further, it is the intent of the Council that none of the catch in the SAP be considered part of a vessel's catch history with respect to any future allocation of the overall haddock TAC.

Proposed Measures

CA I Hook Gear Haddock SAP

Non-Sector Vessels

FW 41 proposes to modify the CA I Hook Gear Haddock SAP by allowing access to this SAP when fishing under a B DAS (either Regular B or Reserve B) for vessels with a NE multispecies limited access DAS permit, provided the vessel fishes with demersal longline or tub trawl gear. In order to avoid a derby fishery, participation in the SAP for non-Sector vessels would be restricted to a participation period of November 16 - December 31 in the 2005 fishing year, unless otherwise notified by NMFS. The participation period would alternate each year between Sector and non-Sector participants such that in fishing year 2006 non-Sector vessels would fish during a participation period of October 1 - November 15. The currently approved haddock TAC of 1,000 mt for the SAP would be divided evenly into two quota periods such that the haddock TAC for each quota period is 500 mt. The SAP would close, though notification consistent with the Administrative Procedures Act, for the remainder of the fishing year to all participants when the Administrator, Northeast Region, NMFS (Regional Administrator) projects that the 1,000 mt haddock TAC (landings and discards) has been caught. The Regional Administrator shall adjust the start of the second participation period to the earliest practicable date if the 500 mt haddock quota for the first quota period is harvested prior to November 15. Additionally, the Regional Administrator shall adjust the 500 mt quota for the second participation period to account for under- or over-harvest of the 500 mt haddock quota (landings and discards) that occurred in the first participation period, not to exceed the overall 1,000 mt haddock TAC. Vessels fishing on a trip in which they have declared into the Regular B DAS Pilot Program would be prohibited from

fishing in this SAP on the same trip.

In order to ensure that any catch of GB cod taken while using a Category B DAS does not threaten mortality objectives of Amendment 13, non-Sector vessels in the CA I Hook Gear Haddock SAP would be allocated a portion of the GB cod incidental catch TAC. Should the research set-aside of 10 percent of the GB cod incidental catch TAC proposed in FW 40-B be approved, a GB cod incidental catch TAC of 14.4 percent would be set for non-Sector vessels fishing under a Category B DAS in this SAP. To accommodate these changes, the GB cod incidental catch TAC for the Regular B DAS Pilot Program and the Eastern U.S./Canada SAP would be reduced to 45 percent and 30.6 percent respectively. Should the research set-aside TAC not be approved in FW 40-B, the GB cod incidental catch TAC would be 50 percent, 34 percent, and 16 percent for the Regular B DAS Pilot Program, the Eastern U.S./Canada SAP, and CA I Hook Gear Haddock SAP, respectively. Additionally, for the 2005 fishing year the Regional Administrator may estimate any uncaught GB cod incidental catch TAC from the first quarter of the of the Regular B DAS Pilot Program and add that amount to the second quarter GB cod incidental catch TAC for the Regular B DAS Pilot Program. This action is necessary as the effective date for FW 41, if approved, may occur after the start of the Eastern U.S./Canada SAP, and the first period for the Regular B DAS Pilot Program. For the 2005 fishing year, this would leave the second period of the Regular B DAS Pilot Program to be reduced by 14 or 15.5 mt, with or without a research set-aside program, respectively. This in-season adjustment would only be done for the GB cod incidental catch TAC.

In order to enable the NMFS Observer Program to administer the deployment of observers in the SAP, a vessel intending to participate in this SAP would be required to notify NMFS by September 1 of its intention to fish in the program that year. This provision was approved for Sector vessels under FW 40-A and would be extended to non-Sector vessels in FW 41. This information is intended to provide the NMFS Observer Program with an estimate of the total number of vessels that intend to participate in the SAP. If a vessel does not notify the NMFS Observer Program of its intent to participate in the SAP by the required date, it would not be allowed to participate in the SAP during that fishing year. Vessels would be required to notify the NMFS Observer Program by telephone at least 72 hours prior to leaving on a trip to the SAP, and would be required to provide the following information: Vessel name; contact name for coordination of observer deployment; telephone number of contact; and date, time and port of departure. The Regional Administrator would retain the authority to close the CA I Hook Gear Haddock Access Area for the duration of the season if the level of observer coverage is insufficient to project whether continuation of the SAP would undermine the achievement of the objectives of the FMP or the CA I Hook Gear Haddock SAP.

Non-Sector vessels participating in the SAP would be required to use Category B (either Regular B or Reserve B) DAS. Similar to the Sector vessels, all non-Sector vessels participating in this SAP would be required to be equipped with an approved Vessel Monitoring System (VMS). Vessels would be required to declare into the CA I Hook Gear Haddock SAP via VMS and specify whether Regular B

DAS or Reserve B DAS would be used, prior to leaving port on a trip into the SAP. All non-Sector vessels would be required to report their catches (landings and discards) of haddock and cod daily via VMS. Non-Sector vessels that have declared into the CA I Hook Gear Haddock SAP would be prohibited from fishing both inside and outside the SAP area on the same trip and while fishing in the SAP not be subject to a limit on the number of hooks fished. Further, non-Sector vessels would be prohibited from possessing gear other than demersal longline or tub trawl gear when declared into the CA I Hook Gear Haddock SAP. Non-Sector vessels would be subject to a cod possession limit of 1,000 lb (453.6 kg) per trip. Vessels would not be permitted to discard legal-sized cod prior to reaching the catch limit, and would be required to end their trip if the cod trip limit is exceeded. There is no flipping provision proposed for this SAP (i.e., vessels may not switch from using Category B to Category A DAS on a trip). For species other than cod, non-Sector vessels would be required to comply with the possession and trip limit restrictions currently specified in the regulations. When the Regional Administrator projects that either the cod incidental catch TAC, or the haddock TAC (landings and discards) has been caught for the CA I Hook Gear Haddock SAP, the SAP would close for the remainder of the fishing period.

Sector Vessels

There are two proposed changes to the current provisions for Sector vessels participating in the CA I Hook Gear Haddock SAP. Under this action, Sector vessels that have declared into the CA I Hook Gear Haddock SAP would be prohibited from

fishing both inside and outside the SAP area on the same trip, and Sector vessels would be restricted to a participation period of October 1 - November 15 in the 2005 fishing year. For subsequent fishing years, starting in fishing year 2006, the participation period would alternate each year between Sector and non-Sector participants so that in fishing year 2006, for example, Sector vessels would fish during a participation period of November 16 - December 31. The current haddock TAC of 1,000 mt for the SAP would be divided evenly into two quota periods such that the haddock TAC for each quota period is 500 mt. This action also proposes to remove the requirement that Sector vessels be required to pay for observer coverage. As stated previously, the Regional Administrator may adjust the start of the second participation period if the 500 mt haddock quota for the first participation period is harvested prior to November 15. Additionally, the Regional Administrator may adjust the 500 mt quota for the second participation period to account for under- or over-harvest of the 500 mt haddock quota (landings and discards) that occurred in the first participation period. Other provisions for Sector vessels fishing in the SAP would remain unchanged.

Classification

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List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated:

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 § 648.10, paragraphs (b)(3)(i)(C) and (D) are revised to read as follows:

§ 648.10 DAS notification requirements.

* * * * *

(b) * * *

(3) * * *

(i) * * *

(C) Fish under the Regular B DAS Pilot Program specified at § 648.85(b)(6);

or

(D) Fish in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7).

* * * * *

3. In § 648.85, paragraphs (b)(5)(ii), (b)(7)(i), (b)(7)(iii), (b)(7)(iv) and (b)(7)(v) are revised and paragraph (b)(7)(vi) is added to read as follows:

§ 648.85 Special management programs.

* * * * *

(b) * * *

(5) * * *

(ii) GB cod. The incidental TAC for GB cod specified in this paragraph (b)(5), shall be subdivided as follows: 50 percent to the Regular B DAS Pilot Program, described in paragraph (b)(6) of this section; 16 percent to the CA I Hook Gear Haddock SAP, described in paragraph (b)(7) of this section; and 34 percent to the Eastern U.S./Canada Haddock SAP Pilot Program, described in paragraph (b)(8) of this section, or as reduced by any approved research set-aside program.

* * * * *

(7) * * *

(i) Eligibility. Vessels issued a valid limited access NE multispecies DAS permit are eligible to participate in the CA I Hook Gear Haddock SAP, and may fish in the CA I Hook Gear Haddock Access Area, as described in paragraph (b)(7)(ii) of this section, for the season specified in paragraph (b)(7)(iii) 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 under paragraphs (b)(7)(iv)(H) or (b)(7)(vi)(F) of this section. Copies of a chart depicting this area are available from the Regional Administrator upon request.

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(iii) Season and quota periods. The overall season for the CA I Hook Gear Haddock SAP is October 1 through December 31. To avoid a derby fishery the season is divided into two quota periods, one quota period for Sector vessels, and the other quota period for non-Sector vessels. For the 2005 fishing year the participation period for Sector vessels is October 1 through November 15 and the participation

period for non-Sector vessels is November 16 through December 31. For the 2006 fishing year and beyond, the participation period will alternate between Sector and non-Sector vessels such that in fishing year 2006 the participation period for non-Sector vessels is October 1 through November 15 and the participation period for Sector vessels is November 16 through December 31. The Regional Administrator may adjust the start of the second quota period if the haddock TAC for the first quota period specified in paragraph (b)(7)(iv)(F) of this section is harvested prior to November 15.

(iv) General program restrictions. General program restrictions specified in this paragraph (b)(7)(iv) apply to all eligible vessels as specified in paragraph (b)(7)(i) of this section. Further program restrictions specific to Sector and non-Sector vessels are specified in paragraphs (b)(7)(v) and (vi) of this section, respectively.

(A) DAS use restrictions. A vessel fishing in the CA I Hook Gear Haddock SAP may not initiate a DAS flip. A vessel is prohibited from fishing in the CA I Hook Gear Haddock SAP while making a trip under the Regular B DAS Pilot Program described under paragraph (b)(6) of this section.

(B) VMS requirement. An eligible NE multispecies DAS vessel fishing in the CA I Hook Gear Haddock SAP specified in this paragraph (b)(7) 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. To be eligible to participate in the CA I Hook Gear Haddock SAP, a vessel must notify the NMFS Observer Program by September 1 of its intent to participate in that year. In addition, 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; and date, time, and port of departure at least 72 hr prior to the beginning of any trip that it declares into the CA I Hook Gear Haddock SAP, as required in paragraph (b)(7)(iv)(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 CA I Hook Gear Haddock SAP must declare into the SAP via VMS, and provide information on the type of DAS that it intends to fish. A vessel declared into the CA I Hook Gear Haddock SAP may fish only in the CA I Hook Gear Haddock Special Access Area described under (b)(7)(ii) of this section.

(E) Gear restrictions. A vessel declared into and fishing in the CA I Hook Gear Haddock SAP may fish with and possess on board demersal longline gear or tub trawl gear only.

(F) Haddock TAC. The maximum total amount of haddock (landings and discards) that may be caught in the CA I Hook Gear Haddock SAP area is 1,000 mt. The 1,000 mt is further divided as follows: 500 mt for the October 1 - November 15 participation period, and 500 mt for the November 16 - December 31 participation period as specified in paragraph (b)(7)(iii) of this section. The Regional

Administrator shall adjust the 500 mt quota for the second participation period to account for under- or over-harvest of the 500 mt haddock quota (landings and discards) that occurred in the first participation period, not to exceed the overall 1,000 mt haddock TAC.

(G) Trip restrictions. Vessels are prohibited from fishing outside of the SAP on the same fishing trip on which they are declared into the CA I Hook Gear Haddock SAP.

(H) Mandatory closure of CA I Hook Gear Haddock Access Area. When the Regional Administrator projects that the haddock TAC specified in paragraph (b)(7)(iv)(F) of this section has been caught, NMFS shall close, through rulemaking consistent with the Administrative Procedure Act, the CA I Hook Gear Haddock Access Area to all eligible vessels as specified in paragraph (b)(7)(i) of this section.

(v) Sector vessel program restrictions. (A) Gear restrictions. Vessels enrolled in the Sector are subject to the gear requirements of the Sector Operations Plan as approved under § 648.87(d).

(B) Landing limits. Sector vessels fishing in the CA I Hook Gear Haddock SAP Area described in paragraph (b)(7)(ii) of this section are subject to the cod landing limit in effect under the Sector's Operations Plan as approved under § 648.87(d). For all eligible vessels declared into the CA I Hook Gear Haddock SAP Area described in paragraph (b)(7)(ii) of this section, landing limits for haddock and other regulated multispecies remain as specified under § 648.86.

(C) Reporting requirements. The owner or operator of a vessel participating

in the Sector, as described under § 648.87(d)(1), and declared into the CA I Hook Gear Haddock Area, must submit reports to the Sector Manager, with instructions to be provided by the Sector Manager, for each day fished, when declared into the CA I Hook Gear Haddock Area. The Sector Manager will provide daily reports to NMFS including at least the following information: Total weight (lb/kg) of cod and haddock kept, and total weight (lb/kg) of cod and haddock discarded.

(D) GB cod incidental catch TAC. There is no GB cod incidental catch TAC specified for Sector vessels fishing in the CA I Hook Gear Haddock SAP. All cod caught by Sector vessels fishing in the SAP count toward the Sector's annual GB cod TAC, specified in § 648.87(d)(1)(iii).

(E) DAS use restrictions. Sector vessels fishing in the CA I Hook Gear Haddock SAP may use A, Regular B, or Reserve B DAS, in accordance with § 648.82(d)(2)(i)(A).

(vi) Non-Sector vessel program restrictions. (A) DAS use restrictions. Non-Sector vessels are prohibited from using A DAS when declared into the SAP. Non-Sector vessels fishing in the CA I Hook Gear Haddock SAP may use Regular B or Reserve B DAS, in accordance with § 648.82(d)(2)(i)(A).

(B) Gear restrictions. Non-Sector vessels are exempt from the maximum number of hooks restriction specified in § 648.80(a)(4)(v). Non-Sector vessels are prohibited from possessing gear other than demersal longline or tub trawl gear on board their vessel when declared into the CA I Hook Gear Haddock SAP as specified under (b)(7)(iv)(D) of this section.

(C) Landing limits. Non-Sector vessels fishing in the CA I Hook Gear Haddock Access Area described in paragraph (b)(7)(ii) of this section may not land more than 1,000 lb (453.6 kg) of cod per trip. For all eligible vessels declared into the CA I Hook Gear Haddock SAP area described in paragraph (b)(7)(ii) of this section, landing limits for haddock and other regulated multispecies remain as specified under § 648.86.

(D) Reporting requirements. The owner or operator of a non-Sector vessel declared into the CA I Hook Gear Haddock Area, as described in paragraph (b)(7)(ii) of this section, must submit reports via VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished when declared into the CA I Hook Gear Haddock Access Area. The reports must be submitted in 24-hr intervals for each day, beginning at 0000 hr and ending at 2400 hr. The reports must be submitted by 0900 hr of the following day. For all non-Sector vessels that have declared into the CA I Hook Gear Haddock Access Area in accordance with paragraph (b)(7)(iv)(D) of this section, the reports must include at least the following information: Total weight (lb/kg) of cod and haddock kept, and total weight (lb/kg) of cod and haddock discarded.

(E) GB cod incidental catch TAC. The maximum amount of GB cod (landings and discards) that may be caught by non-Sector vessels from the CA I Hook Gear Haddock Access Area in a fishing year is the amount specified under paragraph (b)(5)(ii) of this section.

(F) Mandatory closure of CA I Hook Gear Haddock Access Area due to catch

of GB cod incidental catch TAC. When the Regional Administrator projects that the GB cod incidental catch TAC specified in paragraph (b)(7)(vi)(F) of this section has been caught, NMFS shall close, through rulemaking consistent with the Administrative Procedure Act, the CA I Hook Gear Haddock Access Area to all non-Sector fishing vessels.

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