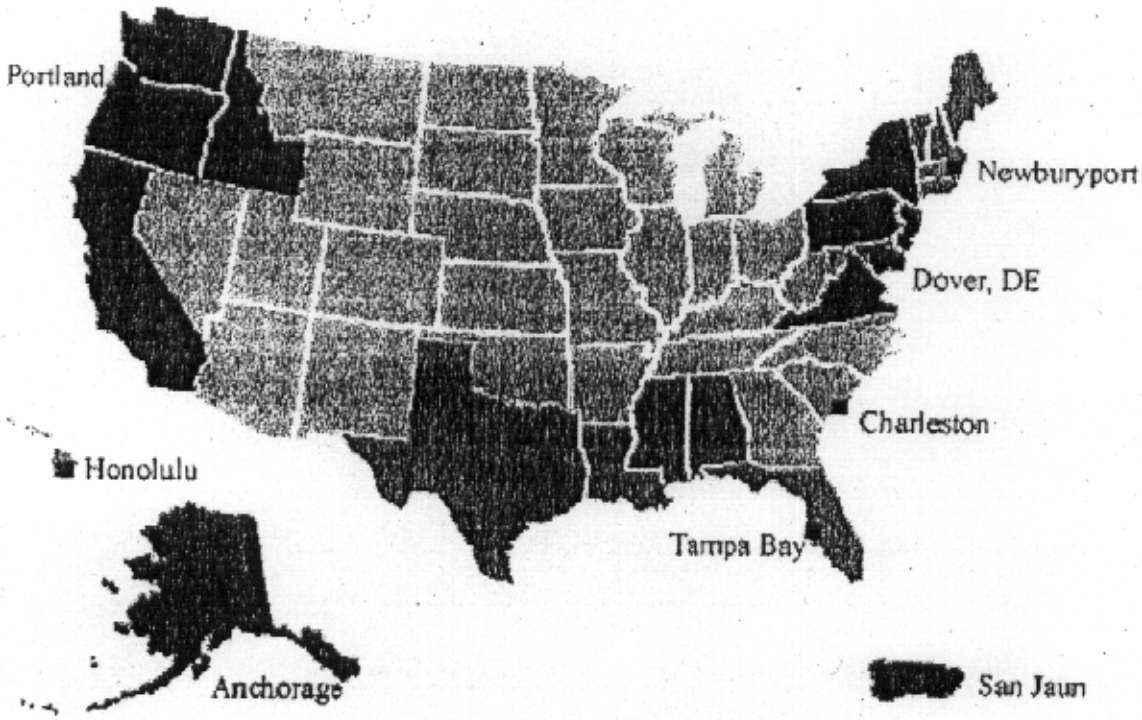
The United States is an Ocean Nation

The U.S. exclusive economic zone (EEZ) extends 200 nautical miles offshore, encompassing diverse ecosystems and vast natural resources, such as fisheries and energy and other mineral resources. The U.S. EEZ is the largest in the world, spanning over 13,000 miles of coastline and containing 3.4 million square nautical miles of ocean—larger than the combined land area of all fifty states. (A square nautical mile is equal to 1.3 square miles.)

U.S. states also have jurisdiction over a significant portion of the Great Lakes. This chain of freshwater lakes and its tributaries constitute the largest reservoir of fresh surface water on the planet, containing 6.5 quadrillion gallons of fresh water and covering an area of about 72,000 square nautical miles. The Great Lakes' U.S. coastline borders eight states and is roughly the same length as the entire Atlantic Coast.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FEDERAL REGISTER
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DEPARTMENT OF COMMERCE (DOC)
National Oceanic and Atmospheric Administration (NOAA)
National Marine Fisheries Service (NMFS)

50 CFR Chapter VI

[Docket No. 970728184-7184-01; I.D. 060997C]

Policy Guidelines for the Use of Emergency Rules

62 FR 44421

DATE: Thursday, August 21, 1997

ACTION: Policy guidelines for the use of emergency rules.

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[*44421]

SUMMARY: NMFS is issuing revised guidelines for the Regional Fishery Management Councils (Councils) in determining whether the use of an emergency rule is justified under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The guidelines were also developed to provide the NMFS Regional Administrators guidance in the development and approval of regulations to address events or problems that require immediate action. These revisions make the guidelines consistent with the requirements of section 305(c) of the Magnuson-Stevens Act, as amended by the Sustainable Fisheries Act.

DATES: Effective August 21, 1997.

FOR FURTHER INFORMATION CONTACT: Paula N. Evans, NMFS, 301/713-2341.
SUPPLEMENTARY INFORMATION:

Background

On February 5, 1992, NMFS issued policy guidelines for the use of emergency rules that were published in the Federal Register on January 6, 1992 *(57 FR 375)*. These guidelines were consistent with the requirements of section 305(c) of the Magnuson Fishery Conservation and Management Act. On October 11, 1996, President Clinton signed into law the Sustainable Fisheries Act (Public Law 104-297), which made numerous amendments to the Magnuson-Stevens Act. The amendments significantly changed the process under which fishery management plans (FMPs), FMP amendments, and most regulations are reviewed and implemented. Because of these changes, NMFS is revising the policy guidelines for the preparation and approval of emergency regulations. Another change to section 305(c), concerning interim measures to reduce overfishing, will be addressed in revisions to the national standards guidelines.

Rationale for Emergency Action

Section 305(c) of the Magnuson-Stevens Act provides for taking emergency action with regard to any fishery, but does not define the circumstances that would justify such emergency action. Section 305(c) provides that:

1. The Secretary of Commerce (Secretary) may promulgate emergency regulations to address an emergency if the Secretary finds that an emergency exists, without regard to whether a fishery management plan exists for that fishery;

2. The Secretary shall promulgate emergency regulations to address the emergency if the Council, by a unanimous vote of the voting members, requests the Secretary to take such action;

3. The Secretary may promulgate emergency regulations to address the emergency if the Council, by less than a unanimous vote of its voting members, requests the Secretary to take such action; and

4. The Secretary may promulgate emergency regulations that respond to a public health emergency or an oil spill. Such emergency regulations may remain in effect until the circumstances that created the emergency no longer exist, provided that the public has had an opportunity to comment on the regulation after it has been published, and in the case of a public health emergency, the Secretary of Health and Human Services concurs with the Secretary's action.

Policy

The NOAA Office of General Counsel has defined the phrase "unanimous vote," in paragraphs 2 and 3 above, to mean the unanimous vote of a quorum of the voting members of the Council only. An abstention has no effect on the unanimity of the quorum vote. The only legal prerequisite for use of the Secretary's emergency authority is that an emergency must exist. Congress intended that emergency authority be available to address conservation, biological, economic, social, and health emergencies. In addition, emergency regulations may make direct allocations among user groups, if strong justification and the administrative record demonstrate that, absent emergency regulations, substantial harm will occur to one or more segments of the fishing industry. Controversial actions with serious economic effects, except under extraordinary circumstances, should be done through normal notice-and-comment rulemaking.

The preparation or approval of management actions under the emergency provisions of section 305(c) of the Magnuson-Stevens Act should be limited to extremely urgent, special circumstances where substantial harm to or disruption of the resource, fishery, or community would be caused in the time it would take to follow standard rulemaking procedures. An emergency action may not be based on administrative inaction to solve a long-recognized problem. In order to approve an emergency rule, the Secretary must have an administrative record justifying emergency regulatory action and demonstrating its compliance with the national standards. In addition, the preamble to the emergency rule should indicate what measures could be taken [*44422] or what alternative measures will be considered to effect a permanent solution to the problem addressed by the emergency rule.

The process of implementing emergency regulations limits substantially the public participation in rulemaking that Congress intended under the Magnuson-Stevens Act and the Administrative Procedure Act. The Councils and the Secretary must, whenever possible, afford the full scope of public participation in rulemaking. In addition, an emergency rule may delay the review of non-emergency rules, because the emergency rule takes precedence. Clearly, an emergency action should not be a routine event.

Guidelines

NMFS provides the following guidelines for the Councils to use in determining whether an emergency exists:

Emergency Criteria

For the purpose of section 305(c) of the Magnuson-Stevens Act, the phrase "an emergency exists involving any fishery" is defined as a situation that:

(1) Results from recent, unforeseen events or recently discovered circumstances; and

(2) Presents serious conservation or management problems in the fishery; and

(3) Can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process.

Emergency Justification

If the time it would take to complete notice-and-comment rulemaking would result in substantial damage or loss to a living marine resource, habitat, fishery, industry participants or communities, or substantial adverse effect to the public health, emergency action might be justified under one or more of the following situations:

(1) Ecological-(A) to prevent overfishing as defined in an FMP, or as defined by the Secretary in the absence of an FMP, or (B) to prevent other serious damage to the fishery resource or habitat; or

(2) Economic-to prevent significant direct economic loss or to preserve a significant economic opportunity that otherwise might be foregone; or

(3) Social-to prevent significant community impacts or conflict between user groups; or

(4) Public health-to prevent significant adverse effects to health of participants in a fishery or to the consumers of seafood products.

Dated: August 14, 1997.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 97-22094 Filed 8-20-97; 8:45 am]

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DEPARTMENT OF COMMERCE (DOC)
National Oceanic and Atmospheric Administration (NOAA)
National Marine Fisheries Service (NMFS)

50 CFR Part 648

[Docket No. 060209031-6092-02; I.D. 020606C]
RIN 0648-AU09

Fisheries of the Northeastern United States; Northeast (NE) MultispeciesFishery; Emergency Secretarial Action; Extension

71 FR 59020

DATE: Friday, October 6, 2006

ACTION: Temporary rule; emergency action extended.

SUMMARY: NMFS continues management measures implemented by an April 13, 2006, emergency interim final rule that were set to expire on October 10, 2006. Specifically, this temporary rule continues differential days-at-sea (DAS) counting for all groundfish vessels not fishing exclusively within the U.S./Canada Management Area on Georges Bank (GB), reduced trip limits for certain species, and recreational possession restrictions, among other provisions. In addition, this action continues two programs that would otherwise have expired on April 30, 2006: The DAS Leasing Program and a modified Regular B DAS Program on GB. This action is necessary to continue measures that immediately reduce fishing mortality rates (F) on overfished groundfish stocks while maintaining specific programs designed to help mitigate the economic and social impacts of effort reductions under the NE Multispecies Fishery Management Plan (FMP). This action is intended to maintain the rebuilding programs established for the FMP until more permanent management measures can be implemented through Framework Adjustment (FW) 42 to the FMP.

DATES: The amendment to 648.14(bb)(23) in this rule is effective October 6, 2006. The expiration date of the emergency rule published April 13, 2006 *(71 FR 19348);* is extended to April 4, 2007, or until superseded by another final rule, whichever occurs first.

ADDRESSES: Copies of the Small Entity Compliance Guide, the Regulatory Impact Review (RIR), Final Regulatory Flexibility Analysis (FRFA), and the Environmental Assessment (EA) prepared for the April 13, 2006, emergency interim final rule are available from Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. These documents are also accessible via the Internet at http://www.nero.nmfs.gov .

Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this temporary rule should be submitted to the Regional Administrator at the address above and to David Rostker, Office of Management and Budget (OMB), by e-mail at David-Rotsker£omb.eop.gov, or fax to (202) 395-7285.

FOR FURTHER INFORMATION CONTACT:

Douglas W. Christel, Fishery Policy Analyst, (978) 281-9141, fax (978) 281-9135.

SUPPLEMENTARY INFORMATION: Amendment 13 to the FMP established a process whereby the NE multispecies complex is routinely evaluated to determine the status of groundfish stocks in relation to rebuilding objectives of the FMP. Changes to management measures necessary to achieve rebuilding objectives are made through biennial adjustments to the FMP. The latest stock assessment, the Groundfish Assessment Review Meeting (GARM II)

in August 2005, updated estimates of F and stock biomass for calendar year 2004. Based on GARM II and the resulting estimates of 2005 calendar year F's, additional management measures are necessary to reduce F on six groundfish stocks for the 2006 fishing year.

The New England Fishery Management Council (Council) developed management measures in FW 42 that are designed to achieve the necessary F reductions in the groundfish fishery for the next several fishing years, including the current 2006 fishing year (May 1, 2006, through April 30, 2007). However, because FW 42 could not be implemented by the start of the 2006 fishing year (FY) on May 1, 2006, and because several stocks required F reductions for the start of the 2006 fishing year to maintain the Amendment 13 rebuilding program, NMFS determined that the existing situation constituted an emergency, as unforeseen events could cause serious conservation and management problems unless addressed through immediate regulatory action. Accordingly, NMFS developed emergency management measures pursuant to the authority provided to the Secretary of Commerce in section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). A proposed rule justifying emergency action according to agency guidelines *(62 FR 44421;* August 21, 1997) and soliciting public comment on proposed emergency management measures published on March 3, 2006 *(71 FR 11060).* Based on additional analysis and public comment, the proposed measures were revised. Subsequently, an emergency interim final rule implementing revised emergency management measures published on April 13, 2006 *(71 FR 19348),* accepting further comments on the revised measures through May 15, 2006. Additional background for that action, an explanation of the [*59021] management measures implemented by that action, and responses to public comments received during the public comment period are contained in the preamble of the April 13, 2006, emergency interim final rule and are not repeated here. Comments received on the emergency interim final rule are addressed in this preamble, however.

In summary, measures implemented by the April 13, 2006, emergency interim final rule include differential DAS counting (i.e., counting each Category A DAS used at a rate of 1.4:1), restrictive trip limits for several species to reduce F on specific groundfish stocks (Gulf of Maine (GOM) cod, Cape Cod (CC)/GOM yellowtail flounder, GB winter flounder, and white hake), and the continuation of the DAS Leasing Program and a modified Regular B DAS Program to help mitigate the economic and social impacts of the emergency measures. These measures became effective on May 1, 2006, and remain in effect for a period of 180 calendar days, expiring on October 10, 2006, unless extended or superseded by the implementation of FW 42. A proposed rule to implement measures included in FW 42 published on July 26, 2006 *(71 FR 42522),* with public comments accepted through August 25, 2006.

Pursuant to section 305(c)(3)(B) of the Magnuson-Stevens Act, management measures implemented by the April 13, 2006, emergency interim final rule may be extended for an additional period of 180 days, provided the public has had the opportunity to comment on the emergency regulations. As noted above, the public has had two opportunities to comment on the emergency management measures. Because FW 42 has yet to be implemented, NMFS has determined that it is necessary to continue the measures implemented by the April 13, 2006, emergency interim final rule for an additional 180 days, or until FW 42 is implemented, to prevent overfishing and to maintain the Amendment 13 rebuilding programs. The impacts of continuing the management measures implemented by the April 13, 2006, interim final rule for the duration of FY 2006 (i.e., through April 30, 2007) have already been considered in the EA prepared for the emergency action.

Comments and Responses to the April 13, 2006, Emergency Interim Final Rule

Eighteen comments were received in response to the April 13, 2006, emergency interim final rule from 13 individuals, 2 fishing industry groups, 1 conservation group, and 1 state resource management agency (Maine Department of Marine Resources (DMR)). Only comments that were applicable to the proposed measures, including the analyses used to support these measures, are addressed in this preamble.

Differential DAS Counting

Comment 1: Three commenters, including the DMR, stated that differential DAS counting throughout the entire GOM Regulated Mesh Area (RMA) will not work, since it will force vessels to fish shorter trips and increase targeting of the more valuable inshore GOM cod stock, thereby increasing F on this stock. These commenters noted that FW 42 shows that vessels fishing shorter trips tend to land mostly cod and that vessels fishing on longer trips tend to land less cod and more of a mix of other species. The DMR specifically stated its support for the measures included in FW 42 and

suggested that the higher differential DAS counting rate in a smaller inshore area proposed in that rule would reduce incentives to target GOM cod.

Response: As indicated in the response to Comment 4 in the April 13, 2006, emergency interim final rule, the management measures implemented by that rule utilize differential DAS counting at a rate of 1.4:1 throughout the GOM, in conjunction with a reduced trip limit for GOM cod (i.e., 600 lb (272 kg) per DAS, up to 4,000 lb (1,814 kg) per trip), to minimize incentives to target GOM cod without subsequently increasing F or discards for this stock. Effort reductions such as differential DAS counting, in conjunction with trip limits, should decrease incentives to target GOM cod, as decreasing the available Category A DAS and reducing the GOM cod trip limit would make trips less profitable. The Closed Area Model (CAM) used to analyze the emergency measures incorporates profit maximization behavior into its assessment of F impacts. This model assumes that every vessel will attempt to fish in a manner that maximizes the profit of fishing operations, thereby modeling potential changes in fishing behavior to adapt to changing regulations. Although competing incentives may exist due to the emergency measures, the results of the CAM analysis indicate that the emergency measures are successful at achieving the necessary F reductions for GOM cod. Combined with the measures proposed in FW 42, the results of the CAM indicate that this emergency action will continue to rebuild GOM cod, despite potential changes in vessel behavior. These measures are intended as temporary stop-gap measures necessary only to immediately reduce F until long-term measures can be implemented through FW 42. Therefore, continuation of the emergency measures is an appropriate strategy to offer adequate short-term protection for this stock until a more targeted approach reducing F on the inshore components of this stock can be implemented through FW 42.

Comment 2: One commenter contended that this measure is unsafe in that it will force small vessels to fish further offshore in the U.S./Canada Management Area, where differential DAS do not apply.

Response: NMFS acknowledges that the lack of differential DAS counting within the U.S./Canada Management Area provides incentives for more vessels, including smaller vessels, to fish within this area. However, the emergency measures provide some means of mitigating these safety concerns by allowing vessels to fish inside and outside of the U.S./Canada Management Area on the same trip. This provision, referred to as "Eastern U.S./Canada Area Flexibility" in the emergency interim final rule, allows a vessel that begins a trip in the Eastern U.S./Canada Area to choose to fish outside of this area on the same trip. When this measure was originally proposed during the development of FW 42, the primary motivation was to allow a vessel to seek the safety of waters closer to shore, should weather conditions deteriorate. Therefore, while the safe operation of a fishing vessel is ultimately the responsibility of the master of the vessel, the emergency measures attempt to minimize the impact on vessel safety, to the extent practicable, without undermining the conservation objectives of this action.

Comment 3: One commenter noted that replacement of differential DAS counting in the U.S./Canada Management Area with trip limits in the final emergency measures was an improvement over the proposed emergency measures, but remained strongly opposed to applying differential DAS counting in offshore areas of the GOM because it will increase F on GOM cod and will not achieve optimum yield (OY) in the fishery because of the excessive catch reductions of other, healthier stocks. One commenter stated that, because the differential DAS areas and the stock specific trip limits geographically overlap, the management measures in the emergency interim final rule far exceed what is necessary to reduce F on stocks of concern. Two commenters pointed out that the differential DAS counting measure proposed in FW 42 is specific to the stocks in need of an F [*59022] reduction and that the broad application of differential DAS implemented under the emergency action appear to intentionally impact as many vessels as possible rather than minimize economic impacts. These commenters assert that this is contrary to the decision made in the case of *Coastal Conservation Association (CCA) v. Gutierrez 2005 U.S. Dist LEXIS 40754* (M.D. Fla., October 18, 2005), and possibly in violation of National Standard 1 and National Standard 8. The commenter stated that NMFS did not adequately address this primary argument in its response to public comment on the proposed rule for this action.

Response: Contrary to assertions by the commenters, the emergency measures were never intended to impact as many vessels as possible. The broad approach taken by the emergency action is consistent with previous efforts by both the Council and NMFS to reduce effort on overfished stocks through blanket DAS reductions (i.e., differential DAS counting is equivalent to a reduction in available DAS). Such measures treat all vessels equally, as all vessels that caught groundfish, particularly GOM cod or CC/GOM and Southern New England (SNE)/Mid-Atlantic (MA) yellowtail flounder, have contributed to the excessive F's observed in the recent stock assessment. As further detailed in the response to Comment 4 below, this approach was intended to protect overfished stocks across their entire

geographic range, consistent with the National Standard 1 guidelines, and is justified in order to achieve the necessary F reductions.

As noted in the response to Comment 1 above, analysis of the emergency measures indicates that both differential DAS counting and trip limits are necessary to achieve the required F reductions for specific stocks in FY 2006. In addition, because the emergency measures achieve the necessary F reductions for five out of the six stocks requiring F reductions in FY 2006, the emergency measures prevent overfishing for nearly all stocks managed by the FMP. However, in a mixed-stock fishery, it is impossible to reduce F and, therefore, yield from one stock without also affecting the yield from another stock. Consequently, necessary mortality reductions on one stock will also result in unintended mortality reductions on other stocks. As a result, regardless of the measures implemented, measures designed to reduce F for overfished stocks such as GOM cod and CC/GOM and SNE/MA yellowtail flounder will likely lead to decreases in yield for other healthy stocks beyond what is necessary to maintain the Amendment 13 rebuilding programs. This is particularly the case with the continued reliance upon DAS as the primary effort control in the groundfish fishery, as DAS do not facilitate the selective reduction in effort on particular stocks.

While reductions in yield from healthier stocks are unintended, the emergency measures include provisions that are intended to facilitate the harvest of these stocks. The continuation of the DAS Leasing Program, along with the Eastern U.S./Canada Haddock Special Access Program (SAP) and a modified Regular B DAS Program through this temporary rule allow vessels greater opportunity to obtain additional DAS and the opportunity to utilize Category B DAS to fish for and target healthy groundfish stocks, respectively. In particular, the required use of the haddock separator trawl by trawl vessels fishing under the Regular B DAS Program, along with its associated performance standards, are intended to allow vessels to selectively target healthy groundfish stocks like haddock and pollock without catching substantial amounts of groundfish stocks of concern such as cod and flatfish species. Further, as outlined in the response to Comments 1 and 6 in the emergency interim final rule, the emergency measures were modified to adopt a more targeted approach that relied upon reduced trip limits for specific stocks on GB rather than differential DAS counting to achieve the necessary F reductions for this action. This was intended to reduce the impact of the emergency measures on other healthier stocks on GB and allow the fishery to better achieve OY. Thus, the emergency measures are consistent with National Standard 1 because they prevent overfishing while achieving OY from the fishery.

In contrast to the broad approach taken by the emergency interim final rule, FW 42 proposes a more targeted approach to reducing F for overfished stocks, by only counting DAS at a differential rate of 2:1 within discrete areas responsible for a majority of the landings for these stocks. In doing so, FW 42 would selectively reduce F on overfished stocks, while allowing vessels to target healthier stocks, without being charged differential DAS. NMFS believes that the use of a vessel monitoring system (VMS) is necessary to effectively administer and enforce the discrete differential DAS counting areas proposed under FW 42. However, NMFS could not implement the differential DAS counting areas proposed under FW 42, or a mandatory VMS requirement necessary to implement these measures, under the emergency action because there was insufficient time to develop the analysis of the information collection requirements associated with these provisions, as required by the Paperwork Reduction Act (PRA). The PRA requires that, before a Federal agency can implement regulations that require the public to submit information to the Federal Government, these information collection requirements must be approved by the Office of Management and Budget (OMB). OMB review of such information collections can take upwards of several months and are typically associated with proposed rulemaking. As a result, it was not possible to obtain approval for a mandatory VMS requirement necessary to implement the targeted approach towards differential DAS counting proposed by FW 42 during the time available to implement the emergency measures by the start of FY 2006 on May 1, 2006. In addition, because NMFS did not anticipate that further delays in the review and implementation of FW 42 would necessitate the extension of the emergency measures, the legal and administrative issues preventing the implementation of a mandatory VMS requirement still exist, as the OMB review of the information collections associated with a mandatory VMS requirement proposed by FW 42 is still pending. Therefore, NMFS cannot implement the area-specific differential DAS counting areas proposed under FW 42 through this temporary rule.

With respect to the CCA v. Gutierrez lawsuit, according to the commenters, the court found that because interim measures in the grouper fishery were not necessary to reduce overfishing for non-target species, the closure implemented in that fishery was "overbroad" in its scope. For similar reasons, the commenters believe that the emergency action differential DAS counting measure is "overbroad" because it reduces yield of stocks that are not subject to overfishing or are not overfished. According to the results of the latest stock assessment, only 5 of the 19 stocks managed by the FMP (pollock, redfish, witch flounder, GOM winter flounder, and northern windowpane

flounder) are not subject to overfishing or are not overfished, while most stocks are either overfished and/or subject to overfishing. Although 12 stocks are currently subject to overfishing, only 6 require interim measures to prevent overfishing and maintain the Amendment 13 rebuilding programs (GB yellowtail flounder is managed by a hard TAC and does not require [*59023] additional measures to reduce F). As a result, interim measures are necessary to prevent overfishing for these stocks, and the measures included in the emergency action and extended by this temporary rule achieve this objective. As discussed above, because the fishery has historically relied upon DAS as the primary effort control, reductions in yields from other stocks are unavoidable when reducing F for overfished stocks. However, the need to reduce F for the six stocks requiring F reductions for FY 2006 should accelerate efforts to rebuild the other six overfished stocks that do not need immediate reductions in F, thereby providing greater assurance that these stocks will be rebuilt within the required rebuilding period. Further, analysis indicates that the other primary management measure used to regulate the fishery (i.e., trip limits) is unable, by itself, to achieve the necessary F reductions for several of the overfished stocks targeted by this action. As a result, the differential DAS counting measure implemented by the emergency interim final rule is necessary and in keeping with earlier efforts to prevent overfishing for several overfished stocks requiring immediate F reductions to maintain the Amendment 13 rebuilding programs and to facilitate the rebuilding of other overfished stocks.

National Standard 8 requires that management measures, consistent with the conservation requirements of the Magnuson-Stevens Act, take into account the importance of fishery resources to fishing communities, provide for their sustained participation, and minimize the adverse economic impacts on such communities to the extent practicable. The emergency measures continue the DAS Leasing Program, the Eastern U.S./Canada Haddock SAP, and a modified Regular B DAS Program. These measures are intended to minimize the adverse economic impacts on fishing communities, to the extent practicable, by offering opportunities to obtain additional DAS, access closed areas, and use Regular B DAS. While differential DAS counting may adversely impact fishing vessels and communities, this measure is necessary to achieve the conservation objectives of this action. Failure to implement substantial effort reductions in this fishery would violate the conservation requirements of the Magnuson-Stevens Act, as overfishing would be allowed to continue. Thus, continuation of the differential DAS counting measure implemented by the emergency interim final rule mitigates adverse economic impacts to communities, to the extent practicable, without compromising the conservation requirements of the Magnuson-Stevens Act, and is consistent with National Standard 8.

Comment 4: A commenter remarked that, in response to public comment on the proposed rule for the emergency action, NMFS failed to recognize the commenter's initial request to exempt the entire GB RMA from differential DAS counting and chose to address only why a broad differential DAS counting was applicable in the GOM and MA RMAs.

Response: The response to the commenter's initial request was contained in the response to Comment 7 in the emergency interim final rule. In that response, NMFS explained that it is not appropriate to eliminate differential DAS counting from the entire GB RMA. Portions of the GB RMA that lie outside of the U.S./Canada Management Area include portions of the CC/GOM and SNE/MA yellowtail flounder stock areas. Because these stocks are severely overfished and require substantial F reductions for FY 2006, NMFS believes it is necessary to ensure that effort, and therefore F on these stocks, does not increase as part of the emergency action. Allowing the entire GB RMA to be exempt from differential DAS counting would likely result in effort shifting into these areas because they are close to shore and would not charge DAS at the differential rate of 1.4:1, thereby increasing effort and F on portions of the CC/GOM and SNE/MA yellowtail flounder stocks, in addition to other stocks found on GB. However, the emergency action limits the potential for effort shifts to increase F on these stocks by exempting vessels from differential DAS counting only when fishing exclusively within the U.S./Canada Management Area. The provisions of the U.S./Canada Management Area enable the Regional Administrator to more effectively monitor and control effort shifts, providing greater assurance that redirected effort onto GB would not result in excessive mortality for other groundfish stocks. Further, as noted in the response to Comment 3 of this temporary rule, because NMFS could not implement a mandatory VMS requirement, effective administration and enforcement of differential DAS counting in specific areas was not possible via the emergency action. Thus, to effectively prevent overfishing and to ensure adequate protection of these stocks throughout their entire range, consistent with National Standards 1 and 3, it was necessary to implement differential DAS counting everywhere except the U.S./Canada Management Area.

Comment 5: A commenter noted that, in its reasoning for a broad application of differential DAS counting in the entire GOM RMA, NMFS's response to Comments 4 and 29 in the emergency interim final rule were contradictory and failed to provide adequate justification. In its response to Comment 4, when explaining why differential DAS accounting throughout the entire GOM RMA would not likely increase effort on inshore GOM cod, NMFS asserted that

vessels that historically fish outside of the GOM Differential DAS Area proposed in FW 42 do not take many trips in this area during May through July, the months that this action would likely be in effect (in FY 2005, less than 5 percent of the total trips were taken in this area) while, in its response to Comment 29, NMFS stated that, in its emergency action, it followed the same principles to reduce F when adopting differential DAS counting throughout the entire GOM RMA as the Council did when choosing measures to adopt differential DAS counting in portions of the GOM and SNE RMAs. The commenter contends that, if high catches of cod and yellowtail flounder are not of concern outside of the GOM Differential DAS Area proposed in FW 42, it would be counterproductive to extend the accounting system outside of this area.

Response: It appears that the commenter misinterpreted the response to Comment 29 in the emergency interim final rule to infer that NMFS supported the more targeted approach to reducing F for GOM cod proposed in FW 42, yet advocated for the broad approach to differential DAS counting detailed in the response to Comment 4 of that rule. In the response to Comment 29, NMFS explained that the emergency measures follow the same principles the Council used in developing FW 42 because both actions rely upon differential DAS counting and trip limits as the primary means of reducing fishing effort and, therefore, F on overfished stocks. The responses offered in the emergency interim final rule do not contradict one another. NMFS maintains that the rationale provided for implementing differential DAS counting everywhere outside of the U.S./Canada Management Area is valid, as described in the response to Comments 3 and 4 of this temporary rule. The responses to other comments in the emergency interim final rule reflect that NMFS is very concerned that redirected effort could reduce the effectiveness of measures intended to reduce F for specific stocks and undermine the conservation objectives of this action. [*59024]As a result, the emergency measures have attempted to minimize the impacts to F resulting from redirected effort as much as possible. This concern is heightened by additional comments on the emergency interim final rule (see Comments 1 and 2 in this temporary rule) indicating that effort would shift to areas where differential DAS counting is not applied. However, as noted in the responses to Comment 1 above, NMFS asserts that the differential DAS counting measure and other measures implemented by the emergency action offer adequate protection to overfished stocks and would achieve the necessary F reductions for nearly all of the stocks requiring F reductions in FY 2006.

CC/GOM Yellowtail Flounder Trip Limit

Comment 6: One commenter recommended that the monthly schedule of high and low trip limits for CC/GOM yellowtail flounder established under the final rule implementing Amendment 13 *(69 FR 22906,* April 27, 2006) be retained, allowing vessels to land 500 lb/DAS (226.8 kg/DAS), up to 2,000 lb/trip (907.2 kg/trip) in June, instead of the low trip limit of 250 lb/trip (113.4 kg/trip) implemented by the April 13, 2006, emergency interim final rule. This commenter stated that the higher trip limit in June would avoid discards caused by increased effort during this month and would maximize the balance of conservation and economic objectives for this action.

Response: This issue is moot, as June has passed and this action will expire prior to June 2007. However, FW 42 also proposes lower trip limits of 250 lb/DAS (113.4 kg/DAS), up to 1,000 lb/trip (453.6 kg/trip) throughout the entire fishing year. The trip limits implemented by the emergency interim final rule are expected to be superseded by measures approved in FW 42.

GB Winter Flounder Trip Limit

Comment 7: One commenter supported the 5,000-lb/trip (2,268-kg/trip) GB winter flounder trip limit implemented by the emergency interim final rule. One commenter suggested revising this trip limit to 10,000 lb/trip (4,536 kg/trip) to be consistent with the trip limit implemented for GB yellowtail flounder. The commenter suggested that the commingled nature of the two species and confusion caused by the different trip limits for these species will undermine compliance with this provision and will increase discards. In addition, the commenter suggested that the management of GB winter flounder should be consistent with the management of GB yellowtail flounder within the U.S./Canada Management Area, including allowing the Regional Administrator to modify the trip limits for GB winter flounder based on similar TAC triggers implemented for GB yellowtail flounder.

Response: A trip limit of 10,000 lb/trip (4,536 kg/trip) for GB winter flounder was never contemplated or analyzed by either this emergency action or FW 42. Therefore, the impacts of this revised trip limit are unknown. However, it is likely that this revised trip limit would not likely achieve the necessary F reductions for this stock based on the suite of measures implemented by the emergency interim final rule, as catch, and therefore, F on this stock would likely increase

due to the higher trip limit suggested by the commenter. Therefore, the suggested revised trip limit is inconsistent with the conservation objectives of this action and is not implemented through this temporary rule.

Amendment 13 provided the Regional Administrator with the authority to modify management measures necessary to ensure that the hard TACs associated with stocks managed under the U.S./Canada Resource Sharing Understanding (Understanding) (i.e., GB cod, GB haddock, and GB yellowtail flounder) are not over- or under-harvested during a fishing year. Because GB winter flounder is not a part of the Understanding, NMFS does not have the authority to incorporate this stock into the management regime designed to implement the Understanding. Moreover, because neither the emergency proposed rule, nor the emergency interim final rule proposed that GB winter flounder should be managed in a manner similar to GB yellowtail flounder within the U.S./Canada Management Area, NMFS does not have the authority to modify the trip limits and management strategy for this stock, as suggested, through this temporary rule. A subsequent action soliciting public comments on such a proposal would be necessary, which is beyond the scope of this temporary extension of emergency management measures.

White Hake Trip Limit

Comment 8: The DMR supported the trip limit implemented for white hake as the preferred method of reducing F for this species.

Response: NMFS supports the white hake trip limit as an integral component in a suite of measures necessary to effectively reduce F for this species and continues this measure through this temporary rule.

Recreational Restrictions

Comment 9: Ten commenters requested that the 24-inch (61.0-cm) minimum fish size on GOM cod be reinstated to 22 inches (55.9 cm), stating that many fish between 22 and 24 inches (55.9 cm and 61.0 cm) are currently being caught and must now be thrown back. These commenters contended that the impact of this measure to the charter/party fleet is equivalent to a 50 - 80 percent reduction in GOM cod landings, rather than the intended reduction. Several of these commenters stated that this measure, in combination with a seasonal closure area to protect GOM cod, is causing great economic hardship to the charter/party sector, since customers are going elsewhere to fish.

Response: Based on analysis conducted to support both the emergency action and FW 42, the recreational measures implemented by the emergency interim final rule are necessary to achieve similar F reductions for GOM cod (F on GOM cod needs to be reduced by 32 percent to maintain the Amendment 13 rebuilding program during FY 2006) from both the charter/party and private recreational fishing sector and the commercial fishing sector. This analysis indicates that such measures would reduce F on GOM cod for the charter/party industry by 23-40 percent, depending upon various assumptions of release mortality. Assuming that 50 percent of the fish caught would die upon release, these measures would reduce F on GOM cod by 23.5 percent from charter/party vessels. Assuming that no fish die upon release, these measures would reduce F by 40.8 percent from charter/party vessels. The economic impacts of such measures were considered by the emergency action and detailed in the accompanying EA. These provisions were recommended by the Council's Recreational Advisory Panel during the development of FW 42. During the development of these measures, the shortest possible seasonal prohibition and the smallest possible size limit that would achieve the necessary F reductions from this sector of the fishery were selected in lieu of reducing the recreational bag limit for GOM cod. Therefore, the recreational measures mitigate the economic impacts as much as practicable without compromising the conservation objectives of this action.

Comment 10: Six commenters suggested that the fish size for GOM cod should be increased to 23 inches (58.4 cm) for recreational vessels, with some commenting only in conjunction with [*59025] no seasonal closure, and two commenters suggesting that a 23-inch (58.4-cm) fish size should apply to both recreational and commercial vessels. One of these comments also suggested that the 24-inch (61.0-cm) fish size for GOM cod should apply to all sectors and in all areas.

Response: According to analysis of the recreational measures prepared for both the emergency action and FW 42, a 23-inch (58.4-cm) minimum size limit for GOM cod, in combination with the seasonal GOM cod prohibition, would not achieve the necessary F reductions for the recreational fishing sector under most of the assumptions of discard mortality (see Section 7.2.1.1.3 of the EA prepared for FW 42). Thus, a 23-inch (58.4-cm) minimum size limit, without the

seasonal prohibition, as recommended by some commenters, would also not achieve the necessary F from the recreational fishing sector. The measures implemented to achieve a similar F reduction for GOM cod from the commercial fishing sector (e.g., differential DAS counting and default DAS reductions) achieve the necessary F reduction for this stock despite the smaller size limit allowed in the commercial fishery. Increasing the commercial size limit for GOM cod would likely exceed the necessary F reductions for this stock, based upon the existing suite of measures, and would impose unnecessary adverse economic impacts to the commercial vessels. The Council could elect to pursue this revision through a future management action, however. Finally, because GB cod does not require additional F reductions for FY 2006, it is not necessary to revise trip limits for this stock at this time, as it would cause unnecessary adverse economic impact to both the recreational and commercial fishing sectors without sufficient biological justification to further protect this stock.

Comment 11: One commenter pointed out that the long-term effect of the 24-inch (61.0-cm) minimum size measure is that vessels are now forced to fish on larger, breeding codfish and thereby harvest a larger percentage of the cod biomass due to the heavier fish.

Response: As discussed in the responses to Comments 9 and 10, the recreational measures implemented by the emergency interim final rule achieve the necessary F reduction for GOM cod from the recreational fishing sector. Assuming that F is maintained at the target levels established by Amendment 13, the GOM cod stock should rebuild, including increasing GOM cod biomass to levels consistent with the maximum sustainable yield, within the required rebuilding period, despite increasing landings of larger cod.

DAS Leasing Program

Comment 12: The DMR supported continuation of the DAS Leasing Program because it is the only way many vessels are able to acquire enough DAS to continue fishing.

Response: NMFS supports the continuation of the DAS Leasing Program because it is an important means by which the economic impacts of recent and continuing effort reductions in the fishery can be mitigated and has, therefore, continued this program under this temporary rule.

Regular B DAS Program

Comment 13: The DMR expressed concern that the emergency interim final rule prevents many smaller vessels from Maine from participating in the Regular B DAS Program because the program is limited to GB, even though it acknowledged and understood the reasons behind restricting this program to GB. The DMR supported the reduction in Category B (regular) DAS allocated to the first quarter of this program, along with the haddock separator trawl requirement and its associated gear performance incentives.

Response: The reasons for limiting participation in the Regular B DAS Program to the U.S./Canada Management Area on GB are detailed in the response to Comment 18 in the emergency interim final rule. NMFS continues to believe that concerns over the ability to effectively monitor and administer the Regular B DAS Program within the GOM and SNE RMAs, given the very small Incidental Catch TACs for specific stocks, warrant continued restriction of this program to the U.S./Canada Management Area at this time. While the Incidental Catch TACs for all groundfish stocks of concern in Quarters 2-4 of FY 2006 (i.e., August - April) are double what they were during the first quarter of FY 2006 (May - July), they are still very small (e.g., the Incidental Catch TAC for SNE/MA yellowtail flounder during Quarters 2-4 of the 2006 FY is 882 lb (400 kg)) and would be difficult to effectively monitor within the GOM and SNE/MA RMAs. As proposed, FW 42 would allow vessels to fish under the Regular B DAS Program in all RMAs. Therefore, smaller vessels may be able to fish under this program in all areas during FY 2006, provided FW 42 is approved as proposed.

NMFS believes that the reduced number of Category B (regular) DAS allocated to the first quarter of the FY in this program is necessary to ensure that additional fishing effort from this program does not compromise spawning aggregations of particularly vulnerable overfished stocks such as CC/GOM and SNE/MA yellowtail flounder. The haddock separator trawl requirement and its associated performance incentives provide added protection to groundfish stocks of concern by allowing trawl vessels to more selectively target healthier stocks under the Regular B DAS Program.

General Comments

Comment 14: One commenter contended that FW 42 violates several provisions of the Magnuson-Stevens Act and, therefore, is not approvable. Based on this contention, the commenter urged the Secretary to work with the Council and industry to promulgate alternative emergency measures for the remainder of the fishing year that more effectively meet the necessary F reductions while reducing adverse economic impact on the fishing industry.

Response: The measures proposed under FW 42 are currently under review by NMFS to determine whether they are consistent with the Magnuson-Stevens Act and other applicable law. Final determinations will be made prior to the publication of the final rule for that action. In the meantime, NMFS is required by the Magnuson-Stevens Act to prevent overfishing and ensure that stocks continue to rebuild, consistent with the other provisions of the Act. Therefore, interim management measures such as those implemented by the emergency interim final rule are necessary to reduce F immediately for six overfished stocks to maintain the Amendment 13 rebuilding programs.

The commenter suggested that NFMS work with the Council and industry to develop and implement more effective management measures than those proposed in FW 42, yet did not recommend particular measures that would be more effective than those in FW 42. The development of FW 42 incorporated input from conservation groups, fishing industry representatives, shoreside processors, and NMFS through public meetings and the solicitation of public comment in the proposed rule published for FW 42 *(71 FR 42522,* July 26, 2006). During the development of FW 42, the Council considered nine alternatives (including the industry proposal submitted to the Council in April) to manage the fishery and adopted the suite of measures proposed in FW 42. Therefore, NMFS has already worked with the Council and the fishing industry to develop measures that would achieve the biological objectives and minimize [*59026] adverse economic impact of fishing communities, as requested by the commenter. The Council adopted the measures proposed in FW 42 because it concluded that these measures represent the most effective means of achieving the necessary F reductions for FY 2006 and maintaining the Amendment 13 rebuilding plans.

Comment 15: One commenter supported the emergency measures, but expressed general concern about whether the emergency measures and the proposed FW 42 measures will be effective at achieving the necessary F reductions for 2006. This commenter suggested that NMFS consider implementing additional management measures to ensure that the F objectives are achieved for 2006, especially if implementation of FW 42 is further delayed.

Response: According to the analysis prepared for the emergency measures, because the fishery will be subject to two different sets of management measures during FY 2006, it is difficult to precisely determine the expected biological impacts from both the emergency action and measures proposed by FW 42. The EA prepared to support the emergency measures evaluated the combined biological impacts of the measures implemented by the emergency interim final rule and those proposed by FW 42. NMFS concluded that the emergency measures, in conjunction with those proposed under FW 42, will achieve the full F reductions necessary for FY 2006. This conclusion is based upon the assumption that the suite of measures adopted by the Council in FW 42 would achieve all of the required F reductions to maintain the Amendment 13 rebuilding programs, the fact that analyses under the CAM are conducted on an annual basis, and the fact that the effort-reduction strategy implemented by the emergency interim final rule (i.e., differential DAS counting) is similar to that adopted by the Council under FW 42. However, the EA cautioned that implementation of additional management measures by the Secretary of Commerce may be necessary to further reduce F and meet FMP requirements, especially if the implementation of FW 42 is delayed further than anticipated. NMFS will continue to monitor the fishery to determine if additional measures to maintain the Amendment 13 rebuilding programs are warranted.

Changes From the April 13, 2006, Emergency Interim Final Rule

The April 13, 2006, emergency interim final rule suspended the prohibition at 50 CFR 648.14(bb)(22) and added paragraph (bb)(23) to that section to correct a cross reference in paragraph (bb)(22) to reflect the regulations revised by the April 13, 2006, emergency interim final rule. The prohibition at § 648.14(bb)(22) was first implemented by a temporary emergency rule (June 13, 2005; *70 FR 34055)* and extended through June 6, 2006 (December 8, 2005; *70 FR 72934).* That prohibition was later incorporated into a revised prohibition at § 648.14(bb)(21) by the final rule implementing FW 43 to the FMP (August 15, 2006; *71 FR 46871).* Therefore, because the prohibition at § 648.14(bb)(22) expired on June 6, 2006, and was later incorporated into the prohibition at § 648.14(bb)(21) by the FW

43 final rule, the prohibition at § 648.14(bb)(23) implemented by the April 13, 2006, emergency interim final rule is no longer necessary and is removed by this temporary rule.

Classification

Pursuant to the procedures established to implement section 6 of E.O. 12866, the Office of Management and Budget has determined that this temporary rule is not significant.

The Regional Administrator has determined that the emergency management measures extended by this temporary rule are necessary for the conservation and management of the NE multispecies fishery, and are consistent with the Magnuson-Stevens Act and other applicable law. Relevant analyses and determinations required by applicable law, including the Regulatory Flexibility Act prepared for the April 13, 2006, emergency interim final rule, were summarized in the classification section of that rule and are not repeated here. An EA and a subsequent addendum to this EA were prepared for the emergency action implemented by the April 13, 2006, interim final rule. These analyses assessed the impacts of implementing the emergency measures for the entire FY 2006. Because the conditions that existed at the time this emergency action was implemented have not changed, the impacts of continuing emergency management measures through this temporary rule have already been considered. A copy of the EA and the Finding of No Significant Impact prepared for the emergency action are available from the Regional Administrator (see ADDRESSES).

The Assistant Administrator for Fisheries, NOAA (AA) finds good cause under U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment on this action. This action would continue emergency measures implemented on April 13, 2006, for up to 180 days beyond the current expiration date of October 10, 2006. The conditions prompting the initial emergency action still remain, as FW 42 has not been implemented to date. Immediate reductions in F for several stocks are needed to achieve the rebuilding programs implemented by Amendment 13. In addition, there were two opportunities to comment on the emergency measures continued by this temporary rule, including the March 3, 2006, proposed rule and the April 13, 2006, emergency interim final rule. Therefore, the AA finds that it would be impracticable and contrary to the public interest to delay the implementation of these measures by providing additional opportunities for public comment.

The AA also finds good cause under U.S.C. 553(d)(3) to waive the delayed effectiveness of this temporary rule. A 30-day delayed effectiveness period would allow overfishing to continue on specific stocks. Continued overfishing of these stocks would likely require more restrictive management measures in the future to ensure that stocks continue to rebuild according to the Amendment 13 rebuilding programs. Therefore, a full 30-day delayed effectiveness would be impracticable and contrary to the public interest, because it would: (1) Prevent the agency from immediately reducing mortality on overfished groundfish stocks to maintain the Amendment 13 rebuilding programs; (2) result in continued overfishing of severely depleted groundfish stocks, potentially leading to more restrictive management measures in the future; (3) allow two special management programs designed to help mitigate the economic and social impacts of continued effort reduction in the groundfish fishery to expire (i.e., the DAS Leasing Program and the Regular B DAS Program); and (4) further delay the implementation of measures necessary to minimize incentives to fish in an unsafe manner in the Eastern U.S./Canada Area.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirement

This emergency rule continues collection-of-information requirements subject to the Paperwork Reduction Act (PRA) that have been previously approved by OMB under control numbers 0648-0202, 0648-0212, and 0648-0475. These requirements include: (1) Vessel Monitoring System (VMS) purchase and installation (1 hr/response); (2) VMS proof of installation (5 min/response); (3) automated VMS polling of vessel position (5 sec/ [*59027] response); (4) declaration of intent to participate in the Regular B DAS Program or fish in the U.S./Canada Management Area and associated SAPs and DAS to be used via VMS prior to each trip into the Regular B DAS Program or a particular SAP (5 min/response); (5) notice requirements for observer deployment prior to every trip into the Regular B DAS Program or the U.S./Canada Management Area and associated SAPs (2 min/response); (6) daily electronic reporting of kept and discarded catch of stocks of concern and GB haddock while participating in the Regular B DAS Program or fishing in the U.S./Canada Management Area and associated SAPs (15 min/response); (7) daily electronic catch and discard reports of GB yellowtail flounder when fishing on a combined trip into the Western U.S./Canada Area (15 min/response); (8) DAS "flip" notification via VMS for the Regular B DAS Program, (5 min/response); (9) DAS

Leasing Program application (10 min/response); and (10) declaration of intent to fish inside and outside of the Eastern U.S./Canada Area on the same trip (5 min/response). The public's reporting burden for the collection-of-information requirements includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information requirements. Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to 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.

Dated: October 2, 2006.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 648 is 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 § 648.14, paragraph (bb)(23) is removed and reserved.

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DEPARTMENT OF COMMERCE (DOC)
National Oceanic and Atmospheric Administration (NOAA)
National Marine Fisheries Service (NMFS)

50 CFR Part 648

[Docket No. 060301058-6109-02; I.D. 022306A]
RIN 0648-AU13

Fisheries of the Northeastern United States; Northeast Multispecies Fishery;Total Allowable Catches for the Northeast Multispecies Fishery for Fishing Year2006

71 FR 25095

DATE: Friday, April 28, 2006

ACTION: Temporary rule; specifications.

SUMMARY: The following 2006 fishing year (FY) Total Allowable Catches (TACs) are implemented for the Northeast (NE) Multispecies Fishery Management Plan (FMP). Hard (i.e., the fishery or area closes when a TAC is reached) TACs for Eastern Georges Bank (GB) cod, Eastern GB haddock, and GB yellowtail flounder in the U.S./Canada Management Area; target TACs for all NE regulated multispecies; and hard Incidental Catch TACs for groundfish stocks of concern. The intent of this action is to provide for the conservation and management of groundfish management under the NE Multispecies Fishery Management Plan (FMP).

DATES: The U.S./Canada TACs as identified in Table 1 of this rule are effective May 1, 2006, through April 30, 2007. The target TACs as identified in Table 3 of this document and the Incidental Catch TACs as identified in Table 4 are effective May 1, 2006, through October 25, 2006.

ADDRESSES: Copies of the Transboundary Management Guidance Committee's (TMGC) 2005 Guidance Document and copies of the Environmental Assessment (EA) of the 2006 TACs (including the Regulatory Impact Review and Final Regulatory Flexibility Analysis (FRFA)) may be obtained from NMFS at One Blackburn Drive Gloucester, MA 01930; telephone (978) 281-9315. NMFS prepared a summary of the FRFA, which is contained in the Classification section of this final rule.

FOR FURTHER INFORMATION CONTACT: Thomas Warren, Fishery Policy Analyst, (978) 281-9347, fax (978) 281-9135, e-mail Thomas.Warren£NOAA.gov.

SUPPLEMENTARY INFORMATION: A proposed rule for this action was published on March 13, 2006, *(71 FR 12665)* with public comments accepted though April 12, 2006. A detailed description of the administrative process used to develop the TACs was contained in the preamble of the proposed rule and is not repeated here. The FMP specifies procedures for setting three types of TACs: (1) Annual hard (i.e., the fishery or area closes when a TAC is reached) TACs for Eastern GB cod, Eastern GB haddock, and GB yellowtail flounder; (2) target TACs for all regulated groundfish stocks; and (3) hard Incidental Catch TACs for groundfish stocks of concern.

Hard TACs

The regulations governing the annual development of hard TACs for the U.S./Canada Management Area species (§ 648.85(a)(2)) were implemented through the final rule for Amendment 13 to the FMP *(69 FR 22906;* April 27, 2004) in order to be consistent with the U.S./Canada Resource Sharing Understanding (Understanding), which is an informal understanding between the United States and Canada that outlines a process for the management of the shared GB

groundfish resources. The Understanding specifies an allocation of TAC for these three stocks for each country, based on a formula that considers historical catch percentages and current resource distribution.

On September 15, 2005, the Council accepted the recommendations of the TMGC for the FY 2006 TACs for GB cod, GB haddock, and GB yellowtail flounder. The recommended 2006 TACs were based upon the most recent stock assessments (Transboundary Resource Assessment Committee (TRAC) Status Reports for 2005), and the fishing mortality strategy shared by both the U.S. and Canada. The strategy is to maintain a low to neutral risk of exceeding the fishing mortality limit reference (F[ref] = 0.18, 0.26, and 0.25 for cod, haddock, and yellowtail flounder, respectively). That is, when stock conditions are poor, fishing mortality rates (F) should be further reduced to promote rebuilding.

This action implements the following hard TACs for GB: 374 mt of GB cod, 7,480 mt of GB haddock, and 2,070 mt of GB yellowtail flounder. The FY 2006 haddock and yellowtail flounder TACs represent decreases from FY 2005 TAC levels (by 1 percent and 51 percent, respectively), and the FY 2006 cod TAC represents a 44-percent increase from the FY 2005 TAC (Tables 1 and 2).

Table 1.--FY 2006 U.S./Canada TACs (mt) and Percentage Shares (In Parentheses)

	GB Cod	GB Haddock	GB Yellowtail flounder
Total Shared TAC	1,700	22,000	3,000
U.S. TAC	374 (22)	7,480 (34)	2,070 (69)
Canada TAC	1,326 (78)	14,520 (66)	930 (31)

Table 2.--2005 U.S./Canada TACs (mt) and Percentage Shares (in Parentheses)

	GB Cod	GB Haddock	GB Yellowtail flounder
Total Shared TAC	1,000	23,000	6,000
U.S. TAC	260 (26)	7,590 (33)	4,260 (71)
Canada TAC	740 (74)	15,410 (67)	1,740 (29)

[*25096]

The regulations implementing Amendment 13, at § 648.85(a)(2)(ii), state: "Any overages of the [U.S./Canada] GB cod, haddock, or yellowtail flounder TACs that occur in a given fishing year will be subtracted from the respective TAC in the following fishing year." Therefore, should an analysis of the catch of the shared stocks by U.S. vessels indicate that an overage occurred during FY 2005, the pertinent TACs will be adjusted downward in order to be consistent with the FMP and the Understanding. The analysis is expected to be complete on or about August 2006. If an adjustment to one of the FY 2006 TACs for Eastern GB cod, Eastern GB haddock, or GB yellowtail flounder is necessary, the public will be notified through rulemaking consistent with the Administrative Procedure Act and through a letter to permit holders.

Target TACs

Target TACs for regulated groundfish species are implemented pursuant to § 648.90(a)(2), which requires the Council to develop target TACs as part of the process used to periodically adjust management measures as necessary, and to develop new target TACs based upon the most recent scientific information. Although target TACs for FY 2006 were specified by Amendment 13, it is necessary to revise the values of the FY 2006 TACs, based upon more recent scientific information (Assessment of 19 Northeast Groundfish Stocks through 2004; Northeast Fisheries Science

Center Reference Document 05-13 (GARM II, completed in August 2005)). The Council recently submitted to NMFS a management action that would make necessary management measure adjustments (Framework Adjustment (FW) 42) to the FMP, including proposed target TACs for regulated species for FY 2006, 2007, and 2008 (with the exception of U.S./Canada TACs). However, because the Council could not develop FW 42 in time to implement the management measures by May 1, 2006, the target TACs that the framework propose for FY 2006, if approved, could not be implemented in time for the start of the fishing year. Although many of the target TACs are used only as a means of evaluating the effectiveness of the management measures of the FMP, a delay in the specification of target TACs would impact two aspects of the FMP in a substantive manner (i.e., the GB Cod Hook Sector (Sector) and the special management programs). The annual allocation of GB cod to the Sector (provided the Sector is approved for FY 2006) is calculated as a percentage of the GB cod target TAC. If specification of the GB cod target TAC were delayed past May 1, it would not be possible to specify a GB cod allocation for the Sector in a timely manner. Reliance upon the current FY 2005 GB cod target TAC to calculate the Sector's allocation would not be utilizing the best available information. The GB Cod Hook Sector is dependent upon the timely and accurate specification of the GB cod target TAC in order for the Sector to operate and generate revenue.

In addition, a delay in the specification of target TACs would impact the specification of hard Incidental Catch TACs because Incidental Catch TACs are calculated as a percentage of the target TAC for 10 groundfish stocks of concern. If incidental TACs cannot be established according to best scientific information available, special management programs that are dependent on these incidental TACs would operate, if approved, without adequate restrictions on the catch of stocks of concern.

Therefore, in order to avoid this management void, this action implements target TACs under Secretarial emergency authority, as permitted under sec. 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), and as consistent with the emergency criteria defined in *62 FR 44421* (August 21, 1997). This emergency action arises from "unforeseen events or recently discovered circumstances" that would present "serious conservation or management problems" if the emergency action is not implemented. Specifically, as more fully discussed above, this emergency action is justified on ecological grounds in that fishing under TACs inconsistent with the best scientific information available would result in harvests that would likely jeopardize meeting conservation objectives of the FMP. The target TACs being implemented were developed by the Council's Groundfish Plan Development Team (PDT) and are consistent with those proposed in the FW 42 document. The target TACs (see Table 3) are calculated from projections of future catches, using recent assessment data, and the Amendment 13 target F rates.

Table 3.--Target TACs (mt) for FY 2006

Species	Stock	FY 2006 target TACs	TAC composition
Cod	GB	7,458	E *
	GOM	5,146	C *
Haddock	GB	49,829	E
	GOM	1,279	A
Yellowtail Flounder	GB	2,070	D *
	SNE/MA	146	B *
	CC/GOM	650	B *
American plaice		3,666	B *
Witch flounder		5,511	A *
Winter flounder	GB	1,424	A *
	GOM	* *	C
	SNE/MA	2,481	C *
Redfish		1,946	A
White hake		2,056	A *
Pollock		12,005	E
Windowpane flounder	North	389	A
	South	173	A
Ocean pout		38	A
Atlantic halibut		NA	NA

A--Commercial Landings.

B--Commercial Landings and Discards.

C--Commercial Landings, Discards, and Recreational Harvest.

D--Commercial Landings and Discards (U.S. portion of U.S./Canada TAC).

E--Commercial Landings (U.S. and Canada).

* Stock of Concern for Which an Incidental Catch TAC as a Subset of the Target TAC is also proposed (Table 4).

* * GARM II did not develop a TAC for GOM winter flounder because of uncertainties in the assessment.

Note: Proposed TACs for GB cod and GB haddock include Canadian landings.

Incidental Catch TACs

This action implements FY 2006 Incidental Catch TACs pursuant to the regulations at § 648.85(b)(5). The regulations require that Incidental Catch TACs be developed as part of the process that periodically adjusts management measures based upon the most recent scientific information. FW 40-A *(69 FR 67780;* November 19, 2004) implemented Incidental Catch TACs in order to strictly limit the potential for the use of Category B DAS to cause excessive fishing mortality on groundfish stocks of concern. For the NE multispecies fishery, a stock of concern is defined as "a stock that is in an overfished condition, or that is subject to overfishing." FW 40-A implemented Incidental Catch TACs for the following eight stocks, based upon the stock status data that were used in the development of Amendment 13: Gulf of Maine (GOM) cod, GB cod, Cape Cod (CC)/GOM yellowtail flounder, American plaice, white hake, Southern New England (SNE)/Mid-Atlantic (MA) yellowtail flounder, SNE/MA winter flounder, and witch flounder. FW 40-A also implemented percentage allocations of the Incidental Catch TACs among special programs (for the Regular B DAS Pilot Program; Closed Area I Hook Gear Haddock Special Access Program (SAP); and the Eastern U.S./Canada Haddock SAP Pilot Program) and specified values for those Incidental Catch TACs for portions of FY 2004. FW 40-B *(70 FR 31323;* June 1, 2005) and FW 41 *(70 FR 54302;* September 14, 2005) further modified the percentage allocation of the Incidental Catch TACs among Category B DAS programs.

In addition to the FY 2006 target TACs proposed in FW 42, the Council also adopted FY 2006 Incidental Catch TACs under this same action. However, as with the target TACs for all regulated species, because the Council could not develop FW 42 in time to implement the management measures by May 1, 2006, the Incidental Catch TACs proposed by the FW 42 for FY 2006, if approved, would not be implemented in time for the start of the fishing year. Implementation of Incidental Catch TACs in a timely manner is necessary to enable Category B DAS programs to operate based upon the best available science. If the Incidental Catch TACs are not revised, the fishing mortality may be excessive. Therefore, this action specifies the Incidental Catch TACs, as proposed in FW 42, under Secretarial emergency authority, consistent with the Emergency Criteria and Justification defined in *62 FR 44421* (August 21, 1997) due to recent, unforeseen events, and the need to allow the Category B DAS programs to operate in a timely fashion according to best scientific information available.

In addition to specifying Incidental Catch TACs for the eight stocks noted above (as implemented by FW 40-A), this action also implements additional Incidental Catch TACs for GB yellowtail flounder and GB winter flounder, based on new information from the GARM II report that concluded that overfishing is occurring on these stocks. This action is consistent with the Council's recommendations in FW 42. All 10 Incidental Catch TACs were developed by the PDT and are consistent with those proposed in the FW 42 document. These Incidental Catch TACs are derived from the target TACs, and are based upon percentages proposed by the Council in FW 42.

Table 4.--FY 2006 Incidental Catch TACs (mt)

Stock	Percentage of total target TAC	FY 2006 incidental catch TAC

GB Cod	Two	122.6
GOM cod	One	51.5
GB yellowtail flounder	Two	41.4
CC/GOM yellowtail flounder	One	6.5
SNE/MA yellowtail flounder	One	1.5
American plaice	Five	183.3
Witch flounder	Five	275.6
SNE/MA winter flounder	One	24.8
GB winter flounder	Two	28.5
White hake	Two	41.1

Comments and Responses

Two comments on the proposed rule were received during the comment period.

Comment 1: The Council noted that the target TACs, as originally calculated by the PDT and listed in the proposed rule, contained errors for GOM cod due to the use of some incorrect data in the projection of this TAC.

Response: The GOM cod target TAC and the GOM cod Incidental Catch TAC have been corrected. The correction resulted in a target TAC and Incidental Catch TAC that are slightly greater (larger by 159 mt and 1.6 mt, respectively) than those included in the proposed rule.

Comment 2: One individual did not support the proposed TACs due to the belief that allocation of TACs to a particular segment of the population represents a form of stealing from the American people.

Response: The allocation of TACs to the groundfish fishery is consistent with the national standards and other requirements of the MSA, and contribute to maximizing benefits to the Nation.

Classification

This final rule is published pursuant to 50 CFR part 648 and has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared a FRFA, which incorporates the IRFA and this final rule, and describes the economic impact that this action may have on small entities. No comments on the economic impacts of the TACs were received. [*25098]

The specification of hard TACs for the U.S./Canada shared stocks of Eastern GB cod, Eastern GB haddock, and GB yellowtail flounder is necessary in order to ensure that the fishing mortality levels for these shared stocks are achieved in the U.S./Canada Management Area (the geographic area on GB defined to facilitate management of stocks of cod, haddock, and yellowtail flounder that are shared with Canada). A full description of the objectives and legal basis for the TACs is contained in the preamble of the proposed rule.

Under the Small Business Administration (SBA) size standards for small fishing entities ($3.5 million), all permitted and participating vessels in the groundfish fishery are considered to be small entities. Gross sales by any one entity (vessel) do not exceed this threshold. Therefore, this action does not have a disproportionate impact between large and small entities. The maximum number of small entities that will be affected by the TACs is approximately 1,000 vessels, i.e., those with limited access NE multispecies DAS permits, that have an allocation of Category A or B DAS. Realistically, however, the number of vessels that choose to fish in the U.S./Canada Management Area, and that therefore will be subject to the associated restrictions, including hard TACs, will be substantially less.

For FY 2004 (May 2004 through April 2005), 155 individual vessels fished in the U.S./Canada Management Area. From May 1, 2005 through February 9, 2006, 156 vessels fished in the U.S./Canada Management Area. Although it is

difficult to predict the number of vessels that would fish in the U.S./Canada Management Area in FY 2006, the number is likely to be similar to, if not smaller than, the number of vessels that fished in the area during FY 2004 or 2005. Furthermore, additional fishing effort controls are proposed for FY 2006 that are likely to decrease fishing effort.

The economic impacts of the TACs are difficult to predict due to several factors that affect the amount of catch, as well as the price of the fish. Due to the newness of these regulations (May 2004; Amendment 13 to the FMP), there is relatively little historic data, and limited information about the specific fishing patterns or market impacts that may be caused by this hard TAC management system. In general, the rate at which yellowtail flounder is caught in the Eastern and Western U.S./Canada Area, and the rate at which cod is caught in the Eastern U.S./Canada Area, will determine the length of time the Eastern U.S./Canada Area will remain open. The length of time the Eastern U.S./Canada Area is open will determine the amount of haddock that is caught.

The amount of GB cod, haddock, and yellowtail flounder landed and sold will not be equal to the sum of the TACs, but will be reduced as a result of discards (discards are counted against the hard TAC), and may be further reduced by limitations on access to stocks that may result from the associated rules. Fishing derby behavior may result in a reduction to the market value of fish. The overall economic impact of the FY 2006 U.S./Canada TACs will likely be different from the economic impacts of the FY 2005 TACs due to the reduced yellowtail flounder TAC, and may result in reduced revenue. Although the FY 2006 cod TAC represents an increase from FY 2005, the FY 2006 haddock and yellowtail TACs represent decreases from FY 2005. For yellowtail flounder, the decrease is substantial. Based on the estimates in the EA, revenue from cod and haddock caught in the Eastern U.S./Canada Area may increase from FY 2005 to 2006 (up to 43 percent and 74 percent, respectively), and revenue from yellowtail flounder in the U.S./Canada Management Area may decline by 51 percent. According to the analysis, the overall change in revenue from FY 2005 to 2006 for the 3 species combined could amount to a 36 percent decline (or approximately $3.8 million), although it is difficult to predict future fishing patterns, and there are factors that may mitigate the decline in overall revenue. For example, there could be an increase in yellowtail flounder price, as well as the potential for increased opportunity to harvest haddock from the Eastern U.S./Canada Area. If the larger GB cod TAC results in a longer period of time that the Eastern U.S./Canada Area is open, and if vessels attempt to, and are successful in avoidance of cod, the Eastern U.S./Canada Area may be opened for a longer period of time in FY 2006 than it was in FY 2005, resulting in additional revenue from haddock.

Although unlikely, a downward adjustment to the hard TACs specified for FY 2006 could occur after the start of the fishing year, if it is determined that the U.S. catch of one or more of the shared stocks during FY 2005 exceeded the relevant TACs specified for FY 2005.

Three alternatives for hard TACs were considered for FY 2006: The hard TACs implemented by this final rule, the status quo TACs, and the no action alternative. No other TAC alternatives were considered because of the need to be consistent with the FMP and the best scientific information available. The process for establishing TACs is based on the best scientific information available designed to yield only one set of TACs. The TACs implemented by this action will have more of an economic impact than the status quo TACs. Adoption of the status quo TACs, however, would not be consistent with the FMP because the status quo TACs do not represent the best available scientific information. Although the no action alternative (no TACs) would not constrain catch in the U.S./Canada Management Area, and therefore would likely provide some additional fishing opportunity, the no action alternative is not a reasonable alternative because it is inconsistent with the FMP in both the short and long term. The FMP requires specification of hard TACs in order to limit catch of shared stocks to the appropriate level (i.e., consistent with the Understanding and the FMP). As such, the no action alternative would likely provide less economic benefit to the industry in the long term than the TACs implemented by this final rule.

The hard TACs do not modify any collection of information, reporting, or recordkeeping requirements. The hard TACs do not duplicate, overlap, or conflict with any other Federal rules.

Three alternatives for target TACs were considered for FY 2006: The target TACs implemented by this final rule, the status quo TACs, and the no action alternative (previously specified TACs, based on previous scientific information). No other target TAC alternatives were considered for the same reason that no other TAC alternatives were considered for the FY 2006 U.S./Canada Management Area TACs described above. The direct economic impacts of the target TACs are minimal. The most substantive impact on potential fishing effort will be to provide a larger TAC allocated to the Sector than under the Status Quo Alternative. The amount of cod allocated to the Sector is directly affected by the

size of the GB cod target TAC, and therefore has the potential for an economic impact on the Sector. Based on the amount of GB cod TAC caught by the Sector in FY 2004 and 2005 (less than the TAC), an increase in the amount of cod allocated to the Sector is not likely to impact the amount of cod landed by the Sector. Factors other than the size of the Sector's cod allocation appear to be limiting the amount of catch and revenue. In FY 2004, the Sector caught approximately 20 percent of its allocation. During FY 2005, through March 2006, the Sector caught 27 percent of its allocation.

The indirect economic impacts of the target TACs are potentially more [*25099]significant than the direct impact because they are used to set the Incidental Catch TACs, which may cause the closure of a SAP or prohibition on the use of Regular B DAS in particular stock areas in the Regular B DAS Program. The harvest of Incidental Catch TACs curtail the opportunities to use Category B DAS. Six of the 10 Incidental Catch TACs will decrease in FY 2006, compared to the FY 2005, Status Quo TACs. The small size of some of the Incidental Catch TACs may have a negative economic impact. Most of the Incidental Catch TACs under the Status Quo and No Action Alternatives would have less of a negative economic impact because they are larger and would be less constraining to the fishery. Based on the proposed FY 2006 Incidental Catch TACs and the FY 2004 catch (Quarter 1) in the Regular B DAS Pilot Program, it is likely that five of the quarterly Incidental Catch TACs will be reached, causing a closure of the program prior to the end of the quarter. During FY 2005, the catch under the Regular B DAS Pilot Program represented substantial percentages of the amount of cod, haddock, and yellowtail flounder caught in the U.S./Canada Management Area. It is difficult to determine whether the changes in Incidental Catch TACs will result in reduced revenue or whether vessels will be able to compensate for such changes by modifying their fishing strategies. It is possible that the FY 2006 Incidental Catch TACs may result in a decline in revenue by reducing fishing opportunity. However, it is possible that vessels that participate in the Regular B DAS Pilot Program would make up for any losses in fishing opportunity in the Regular B DAS Pilot Program by instead fishing under a Category A DAS. Vessels that historically do not use their full allocation of Category A DAS could increase the relative percentage of DAS used, or lease additional DAS.

There is good cause under *5 U.S.C. 553*(d)(3), to waive the 30-day delay in effective date because doing otherwise may compromise full and effective management of the FMP. If the 30-day delay in effective day is not waived, the hard TACs, target TACs, and Incidental Catch TACs would not be in effect at the beginning of the fishing year (May 1, 2006). Such a delay in implementation would impact the fishery in several different ways, depending upon the type of TAC under consideration.

Implementation of the hard TAC after the beginning of the fishing year would prevent NMFS from being able to prevent the possible overharvest of some or all of the stocks managed by a hard TAC. Most notably, in the case of Eastern GB cod, because the size of the TAC is relatively small, and the possibility that the catch rate of cod could be high during the month of May, it is likely that the TAC could be reached and exceeded during the 30-day delay in effectiveness period. If no Eastern GB cod TAC is in place, the Regional Administrator would be unable to take action to stop fishing on this stock. Failure to stop fishing on this stock when the TAC is caught would undermine the GB cod rebuilding schedule of the FMP. Furthermore, any resulting TAC overages must be deducted from the following year's TAC, which would result in a negative economic impact to the fishery for FY 2007.

Implementation of the target TAC after the beginning of the fishing year would also have an impact on the Sector, if that Sector is approved for FY 2006. The Sector must be allocated a hard cod TAC in order to for its members to fish. Because the Sector's cod TAC is calculated as a percentage of the target TAC for GB cod for the fishery as a whole, a delay in the implementation of the target TAC for GB cod would delay the potential allocation of cod to the Sector. Members of the Sector would not be able to fish until the GB cod target TAC is specified, and would lose fishing opportunity and income.

A delay in the implementation of the Incidental Catch TACs after the beginning of the fishing year would affect the Regular B DAS Program in a similar way. Incidental Catch TACs are calculated as a percentage of the target TACs for stocks of concern. The Incidental Catch TACs for stocks of concern represent a maximum amount that may be caught by vessels fishing in the Regular B DAS Program under a Regular B DAS. The Incidental Catch TACs are critical to the limiting the maximum amount of fishing mortality that could occur on stocks of concern by vessels fishing in the Regular B DAS Program. If the specification of the Incidental Catch TACs were delayed, the Regional Administrator would be required to close the Regular B DAS Program until such TACs are specified. The closure of that program would result in the loss of fishing opportunity and income for the industry.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Northeast Regional Office, and the guide will be sent to all holders of limited access DAS permits for the NE multispecies fishery. The guide and this final rule will be posted on the NMFS NE Regional Office Web site at http://www.nero.noaa.gov and will also be available upon request.

Dated: April 26, 2006.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

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