allocation from the areas ''safety margin'' for each pollutant to accommodate any further refinements that the MPO may need to make these projections. This allocation will still maintain the total emissions for the area at or below the attainment level for this maintenance area. In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before May 27, 2003.

ADDRESSES: All comments should be addressed to: Lynorae Benjamin at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Copies of the State submittal(s) are available at the following addresses for inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with appropriated office at least 24 hours before visiting day. Reference file FL-88 . The Region 4 office may have additional background documents not available at the other locations.

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. (Lynorae Benjamin, (404) 562–9040).

Florida Department of Environmental Protection, Air Resource Management Division, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Lynorae Benjamin, Air Quality Modeling and Transportation Section; Air Planning Branch; Air, Pesticides, and Toxics Management Division; Region 4 Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Ms. Benjamin's telephone number is (404) 562–9040. She can also be reached via electronic mail at *benjamin.lynorae@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules Section of this **Federal Register**.

Dated: April 15, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 03–10064 Filed 4–23–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL–060–200320(b); FRL–7486–9]

Approval and Promulgation of Implementation Plans: Revisions to the Alabama State Implementation Plan

AGENCY: Environmental Protection Agency (EPA)

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve miscellaneous revisions to the Alabama State Implementation Plan submitted on March 13, 2003, by the State of Alabama. The revisions include addition of rule of chapter 335–3–1–.15 regarding emission inventory reporting requirements for stationary sources, revision of chapter 335–3–3 regarding removal, handling and disposal of asbestos-containing material, revision of chapter 335–3–8 to make minor technical corrections, and revision of chapter 335–3–17 to incorporate changes made to the Federal regulations regarding transportation conformity. In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before May 27, 2003.

ADDRESSES: All comments should be addressed to: Sean Lakeman; Regulatory Development Section; Air Planning Branch; Air, Pesticides and Toxics Management Division; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW.; Atlanta, Georgia 30303–8960.

Copies of documents relative to this action are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Alabama Department of Environmental Management, 400 Coliseum Boulevard, Montgomery, Alabama 36110–2059.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman; Regulatory Development Section; Air Planning Branch; Air, Pesticides and Toxics Management Division; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW.; Atlanta, Georgia 30303–8960. Mr. Lakeman can also be reached by phone at (404) 562–9043 or by electronic mail at *lakeman.sean@epa.gov*.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules Section of this **Federal Register**.

Dated: April 15, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 03–10062 Filed 4–23–03; 8:45 am]

BILLING CODE 6560–50–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. ; I.D. 032103B]

RIN 0648–AQ72

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

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

ACTION: Proposed emergency rule; request for comments.

SUMMARY: NMFS proposes an emergency rule under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to implement measures intended to reduce overfishing on species managed under the NE Multispecies Fishery

Management Plan (FMP). This proposed rule would continue measures specified in the Settlement Agreement Among Certain Parties (Settlement Agreement), which were implemented as ordered by the U.S. District Court for the District of Columbia (Court) in a Remedial Order issued on May 23, 2002 (Order). These measures include: a freeze on days-at-sea (DAS) at the highest annual level used from fishing years 1996–2000 and a 20–percent cut from that level; a freeze on the issuance of new open access Hand-gear permits; gear restrictions; modifications and additions to closure areas; and restrictions on yellowtail flounder catch. In addition, this rule would implement a NE Multispecies DAS Leasing Program (Program), which is being proposed to mitigate impacts of these measures and to provide flexibility to some segments of the fishing industry. NMFS and two of the plaintiffs filed a motion with the Court requesting an extension of the August 22, 2003, implementation schedule until May 1, 2004. The Court granted an extension of the Court-ordered timeline for Amendment implementation until May 1, 2004. This emergency action is necessary to ensure that the regulations governing the NE multispecies fishery continue to be in compliance with the Court's Order.

DATES: Comments must be received no later than 5 p.m., local time, on May 27, 2003.

ADDRESSES: Written comments on the proposed emergency rule 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 Emergency Rule for Groundfish.'' Comments also may be sent via facsimile (fax) to (978) 281–9135. Comments will not be accepted if submitted via e-mail or Internet.

Requirements should be sent to the Regional Administrator and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer).

Written comments regarding the proposed collection-of-information Copies of this proposed rule, including the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) are available upon request from the Regional Administrator. The EA/RIR/IRFA is also accessible via the Internet at *http://www.nero.nmfs.gov*.

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

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2002, in response to the Order issued by the Court, NMFS published an interim final rule (67 FR 50292) that implemented management measures intended to reduce overfishing on species managed under the FMP and to implement the measures contained in the Settlement Agreement. Measures implemented on August 1, 2002, included: A freeze on DAS based on the highest annual level used from fishing years 1996–2000 and reduced by 20–percent; a freeze on the issuance of new open access Hand-gear permits; increased gear restrictions for certain gear types, including gillnets, hook-gear and trawl nets; modifications and additions to the closure areas; and limits on yellowtail flounder catch.

The Order specified that the management measures implemented by the August 1, 2002, interim rule must remain in effect until implementation of Amendment 13 to the FMP. Amendment 13 was initially scheduled to be in effect no later than August 22, 2003. However, due to the need for additional time to address unanticipated concerns related to NMFS' Northeast Fisheries Science Center's trawl survey and the new biological reference points developed for the NE multispecies stocks, NMFS and two of the plaintiffs filed a motion with the Court requesting an extension of the August 22, 2003, implementation schedule until May 1, 2004. On December 4, 2002, the Court granted an extension of the Court-ordered timeline for Amendment 13 implementation until May 1, 2004.

On January 22, 2003, NMFS published a notice of continuation of regulations in the **Federal Register** to inform the public that NMFS was continuing the interim regulations for a second 180–day period (ending July 27, 2003). Under section 305(c)(3)(B) of the Magnuson-Stevens Act, interim regulations implemented under section 305(c) are limited to two, consecutive 180–day periods. The Court subsequently granted an extension of the original schedule for implementation of Amendment 13 to May 1, 2004. However, because the Settlement Agreement specifies that the current management measures must remain in effect until Amendment 13 is implemented, and because the second 180–day period for the interim regulations expires on July 27, 2003, there is insufficient time to implement an action to continue the interim measures under the Magnuson-Stevens Act, except through the Secretary's emergency authority under section 305(c) of the Magnuson-Stevens Act.

In addition to continuing the August 1, 2002, measures specified in the Settlement Agreement and Order, NMFS proposes to implement a DAS leasing program under its emergency action authority (305(c) of the Magnuson-Stevens Act and 62 FR 44421, August 21, 1997) in order to mitigate the potential harm resulting from the continuation of the August 1, 2002, interim final rule measures. This proposed emergency rule would implement a DAS Leasing Program that would allow limited access NE multispecies vessels to lease their NE multispecies DAS. This Program would alleviate some of the negative economic and social impacts resulting from the reduced DAS allocations that would be continued as a result of this proposed rule. The Program would be designed to maintain conservation neutrality, i.e., maintain groundfish fishing effort close to the level that would be fished under the current management measures in the absence of a DAS Leasing Program.

Management Measures

This proposed rule would implement (i.e., continue) the following management measures, effective July 28, 2003, which are intended to reduce overfishing on all regulated species managed under the FMP, and to reduce the negative economic impact of the current DAS allocations.

Regulated Mesh Areas (RMAs)

This proposed rule would continue the RMAs established by the August 1, 2002, interim rule for the Gulf of Maine (GOM), Georges Bank (GB), Southern New England (SNE) and Mid-Atlantic (MA) RMAs. The GOM RMA is the area north of the GOM cod exemption line, which is currently used to define the areas where the GOM cod and GB cod trip limits apply, and the GB RMA lies south of the GOM cod exemption line, and continues south to the EEZ for the areas east of 69° 00′ W. long. The SNE RMA would be defined as the area west of the GB RMA and east of a line beginning at the intersection of 74° 00′ W. long. and the south-facing shoreline of Long Island, NY, and running southward along the 74 00' W. long. line. The MA RMA would be defined as the area west of the SNE RMA. Specific management measures would apply, depending on the area fished. For the purposes of the exempted fishery programs already implemented under the FMP, the GOM/GB and SNE RMAs, as defined under Amendment 7 to the

FMP, would remain in effect and be referred to as ''Exemption Areas.≥

DAS Freeze

This proposed rule would continue the DAS baseline that was established for each vessel by the August 1, 2002, interim rule, based on the permit history of that vessel. This baseline is as follows: The used DAS baseline for a limited access permit would be calculated based on the highest number of DAS that a vessel(s) fished during any single fishing year among the 1996 through 2000 fishing years, which includes the period May 1, 1996, through April 30, 2001, not to exceed the vessel's current DAS allocation in any given year. For any vessel where the calculation of the baseline DAS results in a net amount of DAS less than 10, that vessel would be allocated a used DAS baseline of 10 DAS. Because vessel owners were already provided an opportunity to correct any errors regarding their current DAS baselines (under the August 1, 2002, interim rule), and the proposed DAS baseline would incorporate any corrections made, no additional opportunity to correct used DAS baseline allocations would be provided under this proposed rule.

DAS Effort Reduction

The proposed emergency measures would result in DAS allocations for the 2003 fishing year consistent with the 20–percent DAS reductions that were implemented by the August 1, 2002, interim rule (i.e., the current DAS allocations). That is, for the 2003 fishing year, each vessel's DAS allocation would be equal to that vessel's used DAS baseline, minus 20 percent of that vessel's used DAS baseline. Assuming that these measures become effective July 28, 2003, each vessel's DAS remaining for the 2003 fishing year would equal that vessel's used DAS baseline, minus 20 percent of that vessel's used DAS baseline, minus any DAS that the vessel fished during the period May 1 through July 27, 2003.

Freeze on Issuance of New Hand-gear Permits

Under this proposed rule, vessels that have never been issued an open access NE multispecies Hand-gear permit would be prohibited from obtaining a Hand-gear permit for the duration of this action.

Prohibition on Front-loading the DAS Clock

The term ''frontloading the DAS clock'' refers to the practice of vessel owners starting their DAS clock well in advance of the actual departure of the vessel. This proposed rule would continue the prohibition on frontloading. Under this prohibition, a vessel owner or authorized representative would be required to notify NMFS no earlier than 1 hour prior to the vessel leaving port to fish under the NE multispecies DAS program. A DAS would begin once the call has been received and a confirmation number is given. This measure would apply in all management areas.

Closed Area Additions/Modifications

This proposed rule would continue the closure areas established under the August 1, 2002, interim rule for the Western Gulf of Maine (WGOM) Area Closure, the Rolling Closure Areas, the Cashes Ledge Closure Area, and the GB Seasonal Closure Area. Exemptions to the GOM rolling closure areas, WGOM, Cashes Ledge Closure Area, and GB Seasonal Closure Area would remain the same as established under the August 1, 2002, interim rule. Charts of the proposed closure areas are available from the Regional Administrator upon request (see **ADDRESSES**).

Gear Restrictions

Trawl Vessels, When Fishing in the GOM, GB, or MA RMAs

Under this proposed rule, vessels fishing with otter trawl gear, and fishing any part of a NE multispecies DAS trip in the GOM, GB, or MA RMAs, would be required to fish with a minimum 6.5–inch (16.5–cm) diamond or square mesh codend. This requirement would apply only to the codend of the net; the minimum mesh-size for the remaining portion of the net would be 6.0–inch (15.24–cm) diamond mesh or 6.5–inch (16.5–cm) square mesh, or any combination thereof. The codend would be defined as follows: 25 meshes for diamond mesh, or 50 bars in the case of square mesh, from the terminus of the net for vessels 45 ft (13.7 m) in length and less; and 50 meshes for diamond mesh, or 100 bars in the case of square mesh, from the terminus of the net for vessels greater than 45 ft (13.7 m) in length.

Gillnet Vessels, When Fishing in the GOM RMA

Under this proposed rule, limited access multispecies vessels that obtain an annual designation as a Trip gillnet vessel, when fishing in the GOM RMA during any part of a trip under a multispecies DAS, would be required to fish with nets with a minimum of 6.5–inch (16.5–cm) mesh and would be restricted to 150 nets, with one tag fixed to each net. Multispecies vessels that obtain an annual designation as a Day gillnet vessel would be allowed to fish up to 100 nets, provided that, when fishing any part of a trip under a NE multispecies DAS in the GOM RMA, the vessel complies with the following specifications: When fishing with flatfish nets, vessels could fish no more than 100 nets, with a minimum mesh size of 7 inches (17.8 cm), with one tag affixed to each net; when fishing with roundfish nets, vessels would be restricted to fishing during July through February, and would be allowed to fish no more than 50 nets, with a minimum mesh size of 6.5 inches (16.5 cm), with two tags affixed to each net. Any tag not affixed to a net would have to be retained on the vessel and be immediately available for inspection.

Gillnet Vessels, When Fishing in the GB RMA

Under this proposed rule, limited access NE multispecies vessels that fish under a NE multispecies DAS with gillnet gear in the GB RMA at any time throughout the fishing year would be required to declare into the Day or Trip gillnet category. Vessels fishing under either the Day or Trip gillnet category in the GB RMA during any part of a trip under a NE multispecies DAS would be required to fish with nets with a minimum of 6.5–inch (16.5–cm) mesh and would be restricted from fishing more than 50 nets, with two tags fixed to each net.

Trawl Vessels, When Fishing in the SNE RMA

Under this proposed rule, when fishing any part of a NE multispecies DAS in the SNE RMA, otter trawl vessels would be required to fish with a minimum 7.0–inch (17.8–cm) diamond or 6.5–inch (16.5–cm) square mesh codend. This requirement would apply only to the codend of the net, which is defined as described above under the GOM and GB trawl mesh restrictions.

Gillnet Vessels, When Fishing in the SNE RMA

Under this proposed rule, limited access NE multispecies vessels that fish under a NE multispecies DAS with gillnet gear in the SNE RMA at any time throughout the fishing year would be required to declare into the Day or Trip gillnet category. Vessels fishing under either the Day or Trip gillnet category in the SNE RMA during any part of a trip under a NE multispecies DAS would be required to fish with nets with a minimum of 6.5–inch (16.5–cm) mesh, and would be restricted from fishing

more than 75 nets, with two tags fixed to each net.

Gillnet Vessels, When Fishing in the MA RMA

Under this proposed rule, limited access NE multispecies vessels that fish under a NE multispecies DAS with gillnet gear in the MA RMA would be allowed to fish the same type and number of nets as allowed prior to the implementation of the August 1, 2002, interim rule. That is, vessels would be allowed to continue to fish up to 160 nets. Vessels fishing under the monkfish DAS program would be limited to 150 nets.

Gillnet Vessels, When Fishing Under a Monkfish DAS

Under this proposed rule, any monkfish vessel that has a monkfish limited access Category C or D permit (i.e., a vessel that possesses both a monkfish and NE multispecies limited access permit) and that is fishing under a monkfish DAS, in all areas, would be restricted from fishing more than 150 nets, provided the vessel fishes with nets with a minimum mesh size of 10 inches (25.4 cm). Vessels would be required to affix one tag to each net. Category A and B monkfish vessels would be unaffected by these proposed measures.

Large-Mesh Vessel Permit Categories

Under this proposed rule, vessels that have a valid limited access NE multispecies Large Mesh Individual DAS category or a Large Mesh Fleet DAS category permit, when fishing in the GOM, GB, and SNE RMAs, with trawl nets or sink gillnets, would be required to fish with nets with a minimum mesh size of 8.5–inch (21.6–cm) diamond or square mesh throughout the entire net. Vessels fishing with trawl nets or sink gillnets when fishing in the MA RMA would be required to fish with nets with a minimum mesh size of 7.5–inch (19.0–cm) diamond or 8.0–inch (20.3–cm) square mesh throughout the entire net.

Hook-gear Vessels

Under this proposed rule, vessels that have a valid NE multispecies limited access permit would be prohibited from using de-hookers (crucifiers) with less than 6–inch (15.2–cm) spacing between the fairlead rollers. In addition, limited access Small-vessel permitted vessels and limited access permitted vessels that fish any part of a NE multispecies DAS trip in the GOM, GB or SNE RMAs would be required to use 12/0 or larger circle hooks on longline gear, and would be subject to a maximum number of rigged hooks on board the vessel. Specifically, vessels fishing in the GOM or SNE RMAs would be prohibited from possessing more than 2,000 rigged hooks, and vessels fishing in the GB RMA would be prohibited from possessing more than 3,600 rigged hooks.

Table 1 summarizes the proposed gear restriction measures for each gear sector when fishing in the various RMAs.

Table 1. Gear Restrictions by Regulated Mesh Areas.

	GOM	GB	SNE	Mid-Atl
MINIMUM MESH SIZE RESTRICTIONS FOR GILLNET GEAR				
NE Multispecies Day Gillnet Category*	July-February only: Roundfish nets 6.5" (16.5 cm) mesh; 50-net allowance; 2 tags/net	All nets 6.5" (16.5 cm) mesh; 50-net allowance; 2 tags/net	All nets 6.5" (16.5 cm) mesh; 75-net allowance; 2 tags/net	Roundfish nets 5.5" (14.0 cm) diamond or 6.0" (15.2 cm) square mesh; 80-net allowance; 2 tags/net
	Year-round: Flatfish nets 7.0" (17.8 cm) mesh; 100-net allowance; 1 tag/net			Flatfish nets 5.5" (14.0 cm) diamond or 6.0" (15.2 cm) square mesh; 160-net allowance 1 tag/net;
NE Multispecies Trip Gillnet Category*	All nets 6.5" (16.5 cm) mesh; 150-net allowance; 1 tag/net	All nets 6.5" (16.5 cm) mesh; 50-net allowance; 2 tags/net	All nets 6.5" (16.5 cm) mesh; 75-net allowance; 2 tags/net	All gillnet gear 5.5" (14.0 cm) diamond or 6.0" (15.2 cm) square mesh; No net limit; no tag requirement
Monkfish Vessels**	10" (25.4 cm) mesh/150-net allowance			
	1 tag/net			
MINIMUM MESH SIZE RESTRICTIONS FOR TRAWL GEAR				
Codend only mesh size*	6.5" (16.5 cm) diamond or square		7.0" (17.8 cm) diamond or 6.5" (16.5 cm) square	6.5" (16.5 cm) diamond or square
Large Mesh Category - entire net	8.5" (21.59 cm) diamond or square			7.5" (19.0 cm) diamond or 8.0" (20.3 cm) square
MAXIMUM NUMBER OF HOOKS AND SIZE RESTRICTIONS FOR HOOK-GEAR* **				
Limited access multispecies vessels	2,000 hooks	3,600 hooks	2,000 hooks	4,500 hooks (Hook-gear vessels only)
	No less than 6" (15.2 cm) spacing allowed between the fairlead rollers			
	12/0 circle hooks required for longline gear			N/A

* When fishing under a NE multispecies DAS
** Monkfish Category C and D vessels, when fishing under a monkfish DAS
*** When fishing under a NE multispecies DAS or when fishing under the Small-vessel permit

Cod Minimum Fish Size (Commercial vessels)

Under this proposed rule, the minimum size for cod that may be lawfully sold would be 22 inches (55.9 cm)(total length).

NE Multispecies Possession Restrictions

Yellowtail Flounder

This proposed rule would require enrollment in one of two authorization programs for any possession of yellowtail flounder, and would implement restrictions on the harvest of yellowtail flounder when fishing in the SNE and MA RMAs and in the GB RMA south of 40° 00' N. lat. From March 1 through April 30, 2004, all vessels would be subject to a possession and landing limit of 250 lb (113.4 kg) of yellowtail flounder per trip when

fishing any part of a trip in the SNE and MA RMAs north of 40° 00′ N. lat. In addition, from June 1 through February 28, all vessels would be subject to a possession and landing limit of 750 lb (340.3 kg) of yellowtail flounder per day, and a maximum trip limit of 3,000 lb (1,361.2 kg) per trip when fishing any part of the trip in the SNE and MA RMAs north of 40° 00′ N. lat. A vessel fishing for yellowtail flounder in the SNE and MA RMAs north of 40° 00′ N. lat. would be allowed to possess and land up to the seasonal yellowtail flounder allowable limits, provided the vessel does not fish south of 40° 00′ N. lat. and has on board a SNE/MA yellowtail flounder possession/landing authorization issued by the Administrator, Northeast Region, NMFS (Regional Administrator). Under this proposed rule, all vessels would be prohibited from possessing yellowtail flounder in the MA, SNE or GB RMAs unless fishing north of 40° 00′ N. lat., or unless the vessel is transiting areas south of 40° 00′ N. lat. and all fishing gear on board the vessel is properly stowed according to the regulations. Vessels fishing east or north of this area would not be subject to the yellowtail flounder possession limit restrictions, provided that the vessel does not fish west of the GB RMA and possesses on board a GOM/GB yellowtail flounder possession/landing authorization issued by the Regional Administrator. Vessels exempt from the yellowtail flounder possession limit requirements would be allowed to transit areas outside of the specific exempted area that they are fishing, provided that their gear is stowed in accordance with one of the provisions of § 648.23(b).

Hand-gear Permitted Vessels

Under this proposed rule, the cod, haddock and yellowtail flounder possession limit for vessels that have been issued a valid open access Hand-gear permit would continue to be set at 200 lb (90.7 kg), combined, per trip. Such vessels would not be required to obtain a yellowtail flounder possession/landing authorization in order to harvest yellowtail flounder, but would not be allowed to harvest yellowtail flounder south of 40° 00′ N. lat.

GB Cod Trip Limit

This proposed rule would continue the current method of how the DAS clock accrues for those vessels fishing in the GB RMA and harvesting GB cod, which is consistent with how the DAS clock accrues when fishing in the GOM RMA and harvesting GOM cod. That is, a vessel subject to this landing limit restriction could come into port with, and offload cod in excess of the landing limit, as determined by the number of DAS elapsed since the vessel called into the DAS program, provided that the vessel operator does not call out of the DAS program and does not depart from a dock or mooring in port until the rest of the additional 24–hr block of the DAS has elapsed, regardless of whether all of the cod on board is offloaded.

GOM Cod

This action would maintain the daily possession limit for GOM cod at 500 lb (227.3 kg) per DAS, with a maximum possession limit of 4,000 lb (1,818.2 kg) per trip.

Recreational and Charter/Party Vessel Restrictions

Under this proposed rule, the minimum size for cod and haddock that could be retained by a federally permitted charter/party vessel not on a DAS, or a private recreational vessel not holding a Federal permit and fishing in the EEZ, would be 23 inches (58.4 cm) total length. This proposed rule would also continue a cod and haddock bag (possession) limit for the charter/party recreational fishing sector when a vessel is fishing in the GOM RMA and not under a DAS. During the period April through November, each person on a charter/party vessel not fishing under a DAS would be allowed to possess no more than 10 cod or haddock, combined, per trip. For each trip during the period December through March, each person on a charter/party vessel not fishing under a DAS would be allowed to possess no more than 10 cod or haddock combined, no more than 5 of which may be cod. This action would continue the restriction of the cod possession limit for private recreational vessels by requiring that, when fishing in the GOM RMA during the period December through March, each person on a recreational vessel would be allowed to possess no more than 10 cod or haddock combined, no more than 5 of which may be cod. Cod and haddock harvested by recreational vessels with more than one person aboard could be pooled in one or more containers. Compliance with the possession limit would be determined by dividing the number of fish on board by the number of persons on board.

For a vessel that intends to charter/party fish in the GOM closed areas, this proposed rule would require that the vessel possess on board a letter of authorization (LOA) issued by the Regional Administrator. The LOA would be required for the entire fishing year if the vessel intends to fish in the year-round GOM closure areas, and for a minimum of 3 months if the vessel intends to fish in the seasonal GOM closure areas. Vessels could obtain an LOA by calling the NMFS Permit Office at 978–281–9370.

All other existing recreational measures would remain in effect, including the no-sale provision for all fish caught for both the party/charter and private recreational sectors when not fishing under a NE multispecies DAS. Table 2 summarizes the proposed party/charter and private recreational sector measures. NMFS is especially seeking comment on the recreational measures that would be implemented by this action.

TABLE 2. CHARTER/PARTY AND PRIVATE RECREATIONAL FISHING MEASURES.

	Minimum Fish Size, Inches Cod & Haddock[1]	Bag Limit (combined)	GOM Closure Exemption Authorization
Charter/party not on a DAS	23	*April-November*: 10 cod/haddock[2] *December-March*: 10 cod/haddock, no more than 5 which can be cod[2]	A minimum of 3 months, or duration of closure
Private Recreational	23	*Areas outside of GOM RMA*: 10 cod/haddock *GOM RMA*:10 cod/haddock, no more than 5 which can be cod, Dec.-Mar.	N/A

[1] All other minimum fish sizes remain unchanged.
[2] When fishing in the GOM RMA.

Observer Coverage

NMFS was ordered by the Court to expand for all gear sectors its observer coverage in the NE multispecies fishery by providing 5–percent coverage, or higher, if statistically necessary to monitor and collect information on bycatch, as well as other biological and fishery-related information. Additionally, NMFS was ordered, by May 1, 2003, to expand further its observer coverage to 10 percent for all gear sectors, or that level necessary to provide statistically reliable data. Regarding this issue, NMFS has determined that 5 percent observer coverage would provide sufficiently robust statistical data to assess the amount and type of bycatch in the NE multispecies fishery. This conclusion is based upon an analysis of the relative precision of discard estimates of 17 groundfish stocks, using observer coverage and landings data for the year 2000 (Northeast Fisheries Science Center, 2003).

NE Multispecies DAS Leasing Program

Under this proposed rule, NMFS would implement a program to allow limited access NE multispecies permit holders to lease NE multispecies DAS to one another, under the conditions and restrictions described below. For purposes of this Program, the term ''lease'' refers to the transfer of the use of DAS from one limited access NE multispecies vessel to another for no more than one fishing year (except if carried over). Implementation of the proposed Program on an emergency basis is necessary to provide the fishing industry with an opportunity to mitigate the potential economic harm caused by the continuation of the restrictive measures that would be implemented by the proposed action, while maintaining conservation neutrality. In addition, this program is designed to allow for efficient and effective administration by NMFS.

Vessels Eligible to Lease NE Multispecies DAS

All vessels with a valid limited access NE multispecies DAS permit would be eligible to lease NE multispecies DAS to or from another such vessel through the Program, unless otherwise noted below. Eligible vessels acquiring leased NE multispecies DAS would be termed the ''lessee,'' or transferee, and eligible vessels leasing-out NE multispecies DAS would be termed the ''lessor,'' or transferor. Although all eligible vessels would be allowed to lease NE multispecies DAS from another such vessel, vessels holding the minimum allocation of 8 DAS would be prohibited from leasing-out, or transferring, DAS under the Program. Prohibiting vessels with the minimum allocation of 8 DAS from leasing-out their DAS to another vessel would prevent previously inactive (latent) DAS from becoming active, since most of these vessels fished either zero DAS or close to zero DAS during the 1996–2000 qualification period. This restriction would be necessary to promote the conservation neutrality of the Program. For similar reasons, NE multispecies DAS associated with Confirmation of Permit Histories (CPH) would be prohibited from being activated for the sole purpose of leasing-out DAS to another vessel.

The proposed Program and its restrictions and conditions are described below:

NE Multispecies DAS Leasing Application

Under this proposed rule, an eligible vessel owner wanting to lease NE multispecies DAS would be required to submit a complete application to lease DAS (Application) at least 45 days prior to the time that the vessel intends to fish the leased DAS. (Vessels fishing with a vessel monitoring system would likely be able to receive notification of an approved lease agreement sooner than 45 days.) Upon approval of the Application by NMFS, the lessor and lessee would be sent written confirmation of the approved application. Leased DAS would be effective only during the fishing year for which they were leased, unless the vessel has carry-over DAS (see below). A vessel may lease to as many qualified vessels as desired, provided that all of the restrictions and conditions described in this proposed rule are complied with.

An Application may be submitted at any time throughout the fishing year, up until March 1. A complete application would consist of the following: Lessor's (transferor) owner name, vessel name, permit number and official number or state registration number; lessee's (transferee) owner name, vessel name, permit number and official number or state registration number; number of NE multispecies DAS to be leased; total price paid for the leased DAS; signatures of lessor and lessee; and date the form was completed. Information obtained from the Application would be held confidential in accordance with the Magnuson-Stevens Act and applicable regulations.

The Regional Administrator could reject an Application for any of the following reasons: The application is incomplete or submitted after the March 1 deadline; the lessor or lessee does not possess a valid limited access NE multispecies permit; the lessor's or lessee's DAS are under sanction; lessor's vessel is prohibited from fishing; the lessor's limited access multispecies permit is sanctioned; or the lessor has an insufficient number of allocated DAS available to lease. Upon denial of an Application, the Regional Administrator would send a letter to the applicants describing the reason(s) for application rejection. The decision by the Regional Administrator would be the final agency decision and there would be no opportunity to appeal the Regional Administrator's decision as specified in NMFS' regulations.

Sub-leasing and Carry-over Prohibition

Under this proposed rule, no sub-leasing of NE multispecies DAS would be allowed. This means that, once a lease application is approved by NMFS, the leased DAS could not be leased a second time, even if the lessee was prevented from fishing the leased DAS due to circumstances beyond his/her control (e.g., a vessel sinking). This restriction is necessary to ensure NMFS' ability to administer and account for all leased DAS in an efficient manner.

Under this proposed rule, eligible vessels would be allowed to carry over up to 10 DAS, regardless of whether these DAS were allocated or leased days, in order to promote safety at sea in the waning days of the fishing year. Thus, a vessel that purchased leased DAS that remained unused at the end of the fishing year would be allowed to carry over these leased DAS to the subsequent fishing year. To determine DAS fished for a given fishing year, a vessel's allocated DAS (as opposed to DAS that it acquired through lease) would be counted first for purposes of determining how many DAS remain for the fishing year. As an example, if a vessel was allocated 50 DAS and acquired an additional 20 DAS by leasing them from another vessel, that vessel would have 70 DAS that it could use during the fishing year. If that vessel, for whatever reason, used only 60 DAS during that year, NMFS would consider that the vessel's 50 allocated DAS were used first, and that 10 of the leased DAS were then used. The remaining 10 leased DAS that were unused would be carried over to the next fishing year.

Minimum and Maximum Leased DAS

This proposed rule would require that vessels lease a minimum of 5 NE multispecies DAS to any one vessel, or the full amount of the vessel's

remaining allocated DAS, whichever is less. For example, a vessel with 50 DAS could lease any number of DAS equal to 5 or more DAS to as many vessels as possible. If the vessel leased 6 DAS to eight vessels, leaving 2 DAS (i.e., 6 DAS x 8 = 48 DAS), the vessel could then lease its remaining 2 DAS to another vessel, since it only has 2 DAS left. Although setting a minimum increment at a level less than 5 DAS would provide additional flexibility to the industry, NMFS believes it would be administratively burdensome to process and monitor the increased number of leases that this may invite, particularly in the first year of implementation. Because, as a new Program, the actual administrative burden associated with the Program is unknown, NMFS has determined that a 5- DAS minimum for vessels applying to lease DAS would better enable NMFS to ensure it can effectively administer the Program. Nevertheless, NMFS is interested in soliciting public comment on the feasibility and flexibility of this restriction, to get a better idea of whether the 5–DAS minimum is appropriate. Under this proposed rule, there would be no maximum number of DAS a lessor could lease out to another vessel. Similarly, there would be no maximum number of DAS a lessee could receive. In addition, a lessor would be allowed to lease to multiple lessees, and a lessee could lease from multiple lessors. Vessel owners with more than one vessel with a valid limited access NE multispecies DAS permit would be allowed to lease NE multispecies DAS from one eligible vessel under their ownership to another, to allow the owner to optimize the number of DAS available for use by his/her vessels.

Adjustments to Leased DAS

Several of the stocks managed under the FMP are considered overfished. To help ensure that fishing effort is not increased under the proposed Program, an adjustment factor would be applied to leased DAS when DAS are being leased from a smaller horsepower class vessel to a larger horsepower class vessel (that is, from a vessel with less fishing power to one with more fishing power). For the purposes of the Program, all limited access NE multispecies DAS permit holders would be classified according to the baseline horsepower associated with that permit as of April 24, 2003. Thus, if the lessee vessel were in a higher horsepower category than the lessor vessel, the lessee would receive a fraction of the DAS leased, based on the relative horsepower classes of the two vessels (see Table 3). Conversely, if the lessee vessel were in the same or a lower horsepower category than the lessor vessel, the lessee would be allowed to use the full amount of DAS leased.

TABLE 3. ADJUSTMENT FACTORS FOR DAS LEASES.

		Lessor Vessel (seller vessel) Horsepower Class					
		0–175	176–250	251–324	325–400	401–65	651 +
Lessee Vessel (buyer vessel) Horse-power Class	0–175	1.00	1.00	1.00	1.00	1.00	1.00
	176–250	0.80	1.00	1.00	1.00	1.00	1.00
	251–324	0.70	0.88	1.00	1.00	1.00	1.00
	325–400	0.58	0.73	0.83	1.00	1.00	1.00
	401–650	0.49	0.61	0.70	0.84	1.00	1.00
	651 +	0.36	0.45	0.52	0.62	0.74	1.00

For example, if Vessel A, a 176–250 horsepower class vessel, leases 10 NE multispecies DAS to Vessel B, a vessel in the 325–400 horsepower class, Vessel B would receive 7.3 DAS (10 x 0.73). Using these same horsepower class vessels, if Vessel B leases 10 DAS to Vessel A, Vessel A would receive 10 DAS.

Leasing Restrictions for Hook-gear Permitted Vessels

This rule proposes that limited access NE multispecies Hook-gear permitted vessels (Category D) be allowed to lease NE multispecies to and from other limited access Hook-gear permitted vessels only. This restriction is being proposed because current regulations prohibit limited access Hook-gear permitted vessels from using gear other than hook-gear.

History of DAS Use and Landings

Because, in the future, DAS use and landing history may be used to determine fishing rights, the proposed Program includes provisions for how such history will be accounted for. For ease of administration, under this proposed Program, history of leased DAS use would be presumed to remain with the lessor vessel, and landings resulting from the leased DAS use would be presumed to be attributed to the lessee vessel. However, the history of used leased DAS would be presumed to remain with the lessor only if the lessee actually fished the leased DAS in accordance with the DAS notification program specified at § 648.10. For purposes of DAS-use history, DAS allocated to the vessel would be considered to be the first DAS to be used, followed by the leased DAS. For example, if a vessel had an allocation of 50 DAS, leased an additional 20 DAS, and actually used a total of 60 DAS during the fishing year, the lessor of the 20 DAS would be attributed with 10 DAS, for purposes of its DAS-use history, because the lessee vessel would have used its 50 allocated DAS first, then 10 of the 20 DAS it acquired from the lessor.

Under the proposed Program, history of fish landings would be presumed to be attributed to the vessel that actually landed the fish (lessee). Attributing landings history to the lessor would be inconsistent with the current vessel reporting system used for all other fisheries in the Northeast Region, and would be extremely difficult and costly for NMFS to implement.

In the case of multiple lessors, the leased DAS actually used would be attributed to the lessors based on the order in which such leases were approved by NMFS. For example, if lessee Vessel A has 50 allocated DAS, leases 10 DAS from lessor Vessel B on August 1, and leases another 10 DAS from lessor Vessel C on August 5, then the first 50 DAS used by lessee Vessel A during that fishing year would be attributed to lessee Vessel A, the next 10 DAS would be attributed to lessor Vessel B, and the next 10 DAS would be attributed to lessor Vessel C, for purposes of DAS-use history. If lessee Vessel A used only 60 DAS during the fishing year, then lessor Vessel C would not be attributed with DAS use for the DAS it leased to Vessel A during the fishing year for which the DAS were leased (these DAS could be attributed to

Vessel C in the subsequent fishing year, if they are carried over and used). In cases where a horsepower adjustment factor is applied to leased DAS, the number of DAS attributed to the lessor for those leased DAS used would be the actual number of DAS leased, prior to the calibration reduction. For example, suppose Vessel A leased 10 DAS from Vessel B and, because Vessel A is in a larger horsepower category than Vessel B, the 10 leased DAS were reduced to 8.8 DAS that could actually be fished. If the 8.8 leased DAS were fished by Vessel A, then Vessel B would still be credited with 10 DAS used for that year, for purposes of its DAS use history.

Termination of NE Multispecies DAS Leasing Program

Under this proposed rule, the Regional Administrator would maintain the authority to terminate acceptance of new applicants to the Program if, due to unanticipated impacts, she determines that the goals of reducing fishing mortality or increasing economic opportunity would be seriously undermined by allowing the continuance of leasing of DAS. If such a determination is made, the public would be notified through rulemaking consistent with the Administrative Procedure Act (APA), and would be based upon information including, but not limited to, projected landings, patterns of DAS use, or information obtained from the leasing program.

Monkfish Category C and D Vessels

Similar to the August 1, 2002, interim rule measures, a vessel with both a limited access NE multispecies permit and a limited access monkfish permit (monkfish Category C or D vessels) for which the NE multispecies DAS reductions proposed under this proposed emergency rule would result in the vessel having more allocated monkfish DAS than NE multispecies DAS, the vessel would be allowed to fish under a monkfish-only DAS when multispecies DAS are no longer available, provided the vessel fishes under the provisions of the monkfish Category A or B permit, or unless otherwise noted below. Under this proposed rule, monkfish Category C and D vessels that have remaining monkfish-only DAS at the time of implementation of this emergency rule, and that have submitted a NE Multispecies DAS Leasing Application that has been approved by NMFS, would be required to fish their available ''monkfish-only'' DAS in conjunction with their leased NE multispecies DAS, to the extent that the vessel has NE multispecies DAS available. This is consistent with the original intent of the Monkfish Fishery Management Plan (Monkfish FMP).

Under this proposed rule, if a monkfish Category C or D vessel leases DAS to another vessel, the vessel is required to forfeit a monkfish DAS for each NE multispecies DAS that the vessel leases, equal in number to the difference between the number of remaining multispecies DAS and the number of unused monkfish DAS at the time of the lease. For example, if a lessor vessel, which had 40 unused monkfish DAS and 47 allocated multispecies DAS, leased 10 of its multispecies DAS, the lessor would forfeit 3 of its monkfish DAS (40 monkfish DAS - 37 multispecies DAS = 3) because it would have 3 fewer multispecies DAS than monkfish DAS after the lease. The Monkfish FMP specifies that monkfish Category C and D vessels must fish a NE multispecies DAS concurrently with a monkfish DAS. Not deducting monkfish DAS in a situation where NE multispecies DAS are leased (transferred) would allow monkfish and NE multispecies DAS to be fished independently. This could create a significant effort increase in the monkfish fishery.

Other Proposed Modifications to Regulations

For the 2002 fishing year, vessels electing a Day or Trip gillnet designation were allowed to change their designation prior to September 1, 2002. This exemption applied only to the 2002 fishing year and would therefore be eliminated by this proposed rule.

In the August 1, 2002 interim rule, the Cashes Ledge Area Closure regulations omitted a reference to transiting, under a listing of allowable exemptions to the closure, and would therefore be corrected by this proposed rule.

Classification

This rule has been determined to be significant for purposes of Executive Order 12866.

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) that describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of the preamble and in the SUMMARY section of the preamble and in the IRFA. For management measures that continue the Settlement Agreement, gross revenue in the absence of reliable cost data is considered to be a proxy for profitability. For leasing of DAS, profitability is estimated using a break-even analysis. A summary of the analysis follows:

The IRFA considered three alternatives: The proposed emergency action, the No Action alternative, and a Hard TAC alternative. Analysis of the proposed emergency action examined the impacts on industry that would result from the continuation of the current management measures (Settlement Agreement), with implementation of a days-at-sea (DAS) leasing program. Analysis of the No Action alternative examined the impacts on industry that would result from implementation of the management measures that were in place for the 2001 fishing year (prior to implementation of the Court Order) and allowing fishing inside the WGOM Area Closure. Analysis of the hard TAC alternative examined the impacts to the industry that would result from a hard TAC system that achieved similar fishing mortality reductions as the proposed emergency action. The economic impacts of the first two alternatives were analyzed and described according to the type of management measure as follows: (a) Commercial measures that were modeled (DAS restrictions, area closures, and trip limits); (b) commercial measures that were not modeled (changes to the open access hand gear category, prohibition on frontloading, prohibition on de-hooker use, mesh size restrictions, and limitations on the number of gillnets and hooks); and (c) recreational measures (private recreational vessel and party/charter). The hard TAC alternative is a fundamentally different type of management scheme and the economic impacts were examined in a qualitative manner.

All commercial vessels with a multispecies permit had gross receipts less than $3.5 million, the SBA size standard for defining a small versus large commercial fishing business (3,894 multispecies vessels) (Environmental Assessment of the Settlement Agreement, June 2002). Therefore, there would be no disproportionate economic impacts between small and large entities.

The proposed measures would impact all limited access permit holders (1,383), all open access Hand gear-only permit holders (2,973), and all party/charter operators (1,028 open access permit holders). Based upon the June 2002 Environmental Assessment, the number of participating vessels that may be affected by any one or more of the proposed measures is about 37 percent of the total number of those eligible to participate in some component of the multispecies fishery.

The DAS allocations implemented under the August 2002 rule would continue under the proposed emergency action. The reductions in 2002 DAS allocations impacted all permit categories. There were 1,383 limited access permits with baseline DAS allocations for the 2002 fishing year. Of these permits, 343 received the minimum allocation of 8 DAS. A total of 71, 180 DAS were allocated for the fishing year; a reduction of 45.7 percent compared to the final fishing year 2001 allocations.

The relative reduction in DAS allocations varied by permit category. The total reduction for individual allocation vessels (category A) was 21.7 percent, as compared with 49 percent for category B and 65.9 percent for Category D. Reductions in total DAS allocations for FY 2002 were larger for small vessels (less than 50 ft (15.2 m)), than for medium or large vessels. New York and New Jersey were the two states with the largest reduction in fishing year 2002 DAS allocations. In contrast, under the No Action alternative, the DAS allocations would be markedly larger, with the potential for DAS use to increase above that which was recorded for the 2001 fishing year.

Relative changes to gross revenue were calculated based upon an estimation that DAS use in fishing year 2003 would range from 25 percent to 35 percent less than the number of DAS used during the 2001 fishing year. The estimated revenue loss for the 84 most affected vessels would be 21.3 percent or greater for an assumed 25 percent reduction in DAS, and would be 25 percent for an assumed 35 percent reduction in DAS. For vessels in the 25th to 50th percentile, the estimated revenue loss range from 19.7 percent to 11.5 percent for a 35 percent reduction in DAS use. Revenue loss for the least affected vessels would be no more than 1.5 percent. Relative dependence upon groundfish revenue is an important factor among the various factors that may determine the severity of the impact of the proposed measures on a particular vessel. The greater a vessel's dependence upon groundfish for annual fishing income, the greater the revenue loss is likely to be. The No Action alternative would result in no negative impacts or slightly positive impacts, in comparison with the proposed measures.

With respect to gross annual revenue earned during the 2001 fishing year (pre-settlement agreement), the proposed measures would have the largest adverse economic impacts on vessels in Maine, New Hampshire, and Massachusetts, but among these states, the estimated impacts would be similar. The No Action alternative would have positive economic impacts on vessels that fish in the GOM and fish in the Western Gulf of Maine specifically. The least adverse economic impacts would be for those vessels from states bordering the Gulf of Maine, and for small gillnet vessels or large hook vessels.

A break even analysis was conducted that estimated a total of 86 vessels that would not have enough DAS to cover overhead costs. The analysis further concluded that if vessels were to make a minimum crew share payment of $25,000 per person, there would be 268 vessel that would be able to cover overhead costs, but would not have enough DAS to make this minimum labor payment. However, at this relatively low crew payment, DAS leasing could make it possible for vessels to redistribute DAS so that all vessels could operate profitably.

Leasing of DAS would provide individual vessel owners an opportunity to offset and mitigate the impact of the DAS reductions that were implemented in August, 2002 that would be continued under the preferred alternative. On a scale of the fishery as a whole, the aggregate supply of groundfish is not expected to differ under a DAS leasing program, however, changes in the distribution of landings could result in increases in supply in one port while supplies in other ports may decline. Although it is difficult to predict the number of vessels that would participate in a DAS leasing program, two analyses were conducted. The first analysis identified the number of vessels whose fishing year 2002 DAS allocations would not be sufficient to pay fixed costs plus provide a minimum payment to the vessel crew. Under the leasing program, fewer vessels will actually fish, but the profits for all vessels will be higher than if days at sea leasing were not allowed, and all vessels fished their allocation. Vessels which choose to lease all their DAS can greatly enhance their profit, because the owner is getting all the revenue from the lease without incurring any costs, and in particular not having to pay labor costs. Under the analytical scenario where all vessels can fish up to 100 or 150 days, the average profit level for vessels which lease DAS from other vessels is projected to increase from 31 percent to 60 percent (depending on gear sector) compared to what they would earn if they only fished their allocation. These vessels would fish on average from 97 to 149 days, and would lease on average between 37 and 94 days, at an average cost of between $ 724 and $ 1,153 per day. At the same time the number of vessels actively fishing would decline from 41 to 67 percent. Average profit for the vessels which don't fish under this scenario and instead lease all their DAS is projected to increase approximately from 38 percent to 305 percent compared to what they would earn from fishing their allocation of DAS.

The required changes to mesh size were estimated to affect 424 trawl vessels fishing in the GOM or GB area and 221 trawl vessels the fished in the SNE area. The average cost to replace the cod end was estimated to be $1,250. The mesh changes were estimated to affect 18 day boat gillnet vessels that used tie-down nets fished in the GOM. The average cost to these vessels to replace their nets was $7,794. The mesh changes were estimated to affect 31 day boat gillnet vessels that used stand-up nets that fished in the GOM. The average cost to these vessels to replace their nets was $9,300. The mesh changes were estimated to affect 25 trip gillnet vessels that fished in the GOM. The average cost to these vessels to replace their nets was $18,352. The mesh changes were estimated to affect 32 gillnet vessels that fished in either GB or SNE. The average cost to these vessels to replace their nets was $8,800.

The required changes to gear limits would affect 30 bottom longline vessels, 72 day gillnet vessels, and 24 trip gillnet vessels. The average revenue loss for these vessels was estimated to be $21,400.

Under the proposed measures, individuals that provide passenger services to recreational anglers (charter/party vessels) will also be directly affected. Economic impacts are expected to be minimal since the relationship between changes in bag and possession limits and passenger demand has historically been weak. Following implementation of a reduction in minimum fish size in 1997, the number of passengers on charter/party vessels increased.

Relative to the proposed measures, the No Action alternative would mitigate most of the adverse economic impacts associated with the proposed action. In general, gross fishing incomes would increase particularly for vessels operating in the GOM and would have particularly beneficial impact on small vessels and gillnet vessels in general. However, the No Action alternative also would result in unacceptably high increases in fishing mortality rates that could compromise the rebuilding of several GOM stocks, GOM cod in particular. For this reason the No Action alternative would not meet the

regulatory objectives for this Emergency Action.

Relative to the proposed measures and the no action alternative, the hard TAC alternative would have a more severe adverse economic impact because of the severe consequences of closing down fisheries when a TAC is reached. In any event, neither the No Action alternative nor the Hard TAC alternative are viable because they were not agreed upon in the Settlement Agreement ordered by the Court to be implemented.

If DAS leasing was implemented, the economic impact resulting from other proposed measures would be minimized. Under the leasing program, fewer vessels would actually fish, but the profits for all vessels would be higher than if days at sea leasing were not allowed, and all vessels fished their allocation. Vessels choosing to lease all their DAS to other vessels could greatly enhance their profitability, because owners would be getting all the revenue from the lease without incurring any costs, and in particular not having to pay labor costs.

This action does not duplicate, overlap or conflict with other Federal rules and takes into consideration the monkfish regulations in order to be consistent with the objectives of the Monkfish Fishery Management Plan.

There are no recordkeeping requirements associated with this action. There is one reporting requirement that would require lessors and lessees to complete and submit an application to NMFS to transfer DAS.

This rule contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. Public reporting burden for completion of the application form for vessel owners choosing to lease NE multispecies DAS is estimated to average 5 minutes per response. This proposed rule also contains previously-approved collection-of-information requirements that have been approved under OMB control number 0648–0202. Public reporting requirements for these requirements are 15 minutes for a request for a change in permit category and 5 minutes for an annual declaration as either a Day or Trip gillnet vessel. The response time estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information. Public comment is sought regarding: whether the proposed collection-of-information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimates; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS and OMB (see **ADDRESSES**).

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: April 21, 2003.

Rebecca Lent,

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

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 § 648.2, new definitions for ''DAS Lease,'' ''DAS Lessee,'' ''DAS Lessor,'' and ''Sub-lease'' are added in alphabetical order, to read as follows:

§ 648.2 Definitions.

* * * * *

DAS Lease, with respect to the NE multispecies limited access fishery, means the transfer of the use of DAS from one limited access NE multispecies vessel to another limited access NE multispecies vessel for a period not to exceed the 2003 fishing year, unless the leased DAS qualify as carry-over DAS.

DAS Lessee, with respect to the NE multispecies limited access fishery, means the NE multispecies limited access vessel owner and/or the associated vessel that acquires the use of DAS from another NE multispecies limited access vessel.

DAS Lessor, with respect to the NE multispecies limited access fishery, means the NE multispecies limited access vessel owner and/or the associated vessel that transfers the use of DAS to another NE multispecies limited access vessel.

* * * * *

Sub-lease, with respect to the NE multispecies fishery, means the leasing of DAS that have already been leased to another vessel.

* * * * *

3. In § 648.4, paragraphs (a)(1)(i)(G), (a)(1)(i)(I)(*2*) and (c)(2)(iii) are revised to read as follows:

§ 648.4 Vessel permits.

* * * * *

(a) * * *

(1) * * *

(i) * * *

(G) Consolidation restriction. Except as provided for in the NE Multispecies DAS Leasing Program, as specified in § 648.82(m), limited access permits and DAS allocations may not be combined or consolidated.

* * * * *

(I) * * *

(*2*) The owner of a vessel issued a limited access multispecies permit may request a change in permit category, unless otherwise restricted by paragraph (a)(1)(i)(I)(1) of this section. The owner of a limited access multispecies vessel eligible to request a change in permit category must elect a category upon the vessel's permit application and will have one opportunity to request a change in permit category by submitting an application to the Regional Administrator within 45 days of the effective date of the vessel's permit. If such a request is not received within 45 days, the vessel owner may not request a change in permit category and the vessel permit category will remain unchanged for the duration of the fishing year. A vessel may not fish in more than one multispecies permit category during a fishing year.

* * * * *

(c) * * *

(2) * * *

(iii) An application for a limited access NE multispecies permit must also contain the following information: For vessels fishing for NE multispecies with gillnet gear, with the exception of vessels fishing under the Small Vessel permit category, an annual declaration as either a Day or Trip gillnet vessel designation as described in § 648.82(k). A vessel owner electing a Day or Trip gillnet designation must indicate the number of gillnet tags that he/she is requesting and must include a check for the cost of the tags. A permit holder letter will be sent to the owner of each eligible gillnet vessel informing him/her of the costs associated with this tagging requirement and directions for obtaining

tags. Once a vessel owner has elected this designation, he/she may not change the designation or fish under the other gillnet category for the remainder of the fishing year. Incomplete applications, as described in paragraph (e) of this section, will be considered incomplete for the purpose of obtaining authorization to fish in the NE multispecies gillnet fishery and will be processed without a gillnet authorization.

* * * * *

4. In § 648.14, paragraph (c)(3) is revised, and paragraphs (c)(34) through (42) are added to read as follows:

§ 648.14 Prohibitions.

* * * * *

(c) * * *

(3) Combine, transfer, or consolidate DAS allocations, except as provided for under the NE Multispecies DAS Leasing Program as specified under § 648.82(m).

* * * * *

(34) Lease NE multispecies DAS or use leased DAS that have not been approved for leasing by the Regional Administrator as specified under § 648.82(m).

(35) Provide false information on the application for NE multispecies DAS leasing, as required under § 648.82(m)(4).

(36) Act as lessor of NE multispecies DAS, if the vessel's current allocation is 8 DAS, as determined under § 648.82(l).

(37) Lease NE multispecies DAS to or from vessels other than Hook-gear limited access NE multispecies vessels (Category D), if the vessel is permitted with a NE multispecies limited access Hook-gear permit (Category D).

(38) Sub-lease NE multispecies DAS.

(39) Accrue DAS use history through use of leased DAS as specified under § 648.82(m)(6).

(40) Lease NE multispecies DAS to a vessel that does not have a valid limited access multispecies permit.

(41) Lease NE multispecies DAS associated with a Confirmation of Permit History.

(42) Lease NE multispecies DAS if the number of unused allocated DAS is less than the number of DAS requested to be leased.

5. In § 648.81, paragraph (h)(1) is revised to read as follows:

§ 648.81 Multispecies closed areas.

* * * * *

(h) * * *

(1) No fishing vessel or person on a fishing vessel may enter, fish in, or be in, and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in, or on board a vessel in the area known as the Cashes Ledge Closure Area, as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (d) and (h)(2) of this section:

* * * * *

6. In § 648.82, paragraph (a)(1) is revised, paragraph (l)(3) is removed, and paragraph (m) is added to read as follows:

§ 648.82 Effort-control program for multispecies limited access vessels.

(a) * * *

(1) *End-of-year carry-over*. With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(1)(i)(J) for the entire fishing year preceding the carry-over year, NE multispecies limited access vessels that have unused allocated DAS, or unused leased DAS, on the last day of April of any year may carry over a maximum of 10 DAS into the next year. DAS sanctioned vessels will be credited with unused DAS based on their DAS allocation minus the total DAS sanctioned.

* * * * *

(m) *NE Multispecies DAS Leasing Program*—(1) *Program Description*. Eligible NE multispecies vessels, as specified in paragraph (m)(2) of this section, may lease NE multispecies DAS to and from other eligible NE multispecies vessels, in accordance with the restrictions and conditions of this section. This program will be administered by NMFS, whereby the Regional Administrator will have final approval over a NE multispecies DAS leasing request.

(2) *Eligible Vessels and Vessel Owners*. All vessels with a valid limited access NE multispecies permit are eligible to lease NE multispecies DAS to or from another such vessel, except as specified in paragraphs (m)(2)(i) through (iii) of this section.

(i) Vessels allocated the minimum allocation of only 8 DAS, as calculated in accordance with § 648.82(l), may not act as a lessor, but may act as a lessee.

(ii) Vessel owners in possession of a confirmation of permit history may not activate their limited access NE multispecies permit for the sole purpose of acting as a lessor.

(iii) Vessels that possess a limited access Hook-gear permit may lease NE multispecies DAS to and from other limited access Hook-gear vessels only.

(3) *Application to lease NE multispecies DAS*. Eligible vessels wanting to lease DAS must submit a completed application on an appropriate form obtained from the Regional Administrator. The application must be signed by both lessor and lessee and submitted to the Regional Office at least 45 days before the date on which the applicant desires to have the leased DAS effective. The Regional Administrator will notify the applicant of any deficiency in the application pursuant to this section. Applications may be submitted at any time throughout the fishing year up until March 1. Eligible vessel owners may submit multiple lease applications throughout the application period.

(i) *Application information requirements*. An application to lease NE multispecies DAS must contain the following information: Lessor's owner name, vessel name, permit number and official number or state registration number; lessee's owner name, vessel name, permit number and official number or state registration number; number of NE multispecies DAS to be leased; total priced paid for leased DAS; signatures of lessor and lessee; and date form was completed. Information obtained from the lease application will be held confidential, and will be used only in summarized form for management of the fishery.

(ii) *Approval of lease application*. Unless an application to lease NE multispecies DAS is denied according to paragraphs (m)(3)(iii) and (vii) of this section, the Regional Administrator shall issue confirmation of application approval to both lessor and lessee within 45 days of receipt of an application.

(iii) *Denial of lease application*. The Regional Administrator may reject an application to lease NE multispecies DAS for the following reasons: The application is incomplete or submitted past the March 1 deadline; the lessor or lessee does not possess a valid limited access NE multispecies permit; the lessor's or lessee's DAS are under sanction; the lessor's vessel is prohibited from fishing; the lessor's limited access multispecies permit is sanctioned; or; the lessor has an insufficient number of allocated or unused DAS available to lease. Upon denial of an application to lease NE multispecies DAS, the Regional Administrator shall send a letter to the applicants describing the reason(s) for application rejection. The decision by the Regional Administrator would be the final agency decision and there would be no opportunity to appeal the Regional Administrator's decision.

(4) *Restrictions on leased DAS use*.—(i) *Sub-leasing*. A vessel that has leased DAS may not sub-lease these same DAS to another vessel.

(ii) *Carry-over of leased DAS*. Leased DAS that remain unused at the end of the fishing year may be carried over to

the subsequent fishing year in accordance with the restrictions specified in paragraph (a)(1) of this section.

(iii) *Minimum number of DAS that can be leased.* Vessels may lease NE multispecies DAS only in blocks of 5 DAS or more, or the full amount of a vessel's remaining allocated DAS, whichever is less.

(iv) *Adjustments to leased DAS.* An adjustment factor, in accordance with Table A below, shall be applied to leased DAS where DAS are being leased from a smaller horsepower class vessel to a larger horsepower class vessel. For the purposes of this program, all limited access NE multispecies DAS permit holders are classified according to the baseline horsepower associated with that permit as of April 24, 2003. If the lessee vessel is in a larger size horsepower category than the lessor vessel, then the lessee will receive a fraction of the DAS leased based on the horsepower class of the two vessels, as specified in Table A below. Conversely, if the lessee vessel is in the same or a smaller size horsepower category than the lessor vessel, the lessee vessel will be allowed to use the full amount of DAS leased.

TABLE A. ADJUSTMENT FACTORS FOR DAS LEASES.

		Lessor Vessel (seller vessel) Horsepower Class					
		0–175	176–250	251–324	325–400	401–65	651 +
Lessee Vessel (buyer vessel) Horsepower Class	0–175	1.00	1.00	1.00	1.00	1.00	1.00
	176–250	0.80	1.00	1.00	1.00	1.00	1.00
	251–324	0.70	0.88	1.00	1.00	1.00	1.00
	325–400	0.58	0.73	0.83	1.00	1.00	1.00
	401–650	0.49	0.61	0.70	0.84	1.00	1.00
	651 +	0.36	0.45	0.52	0.62	0.74	1.00

For example, if Vessel A, a 176–250 horsepower class vessel, leases-out 1 NE multispecies DAS to Vessel B, a vessel in the 325–400 horsepower class, Vessel B will receive 0.73 DAS (1 x 0.73), or approximately three-quarters of a DAS. Using these same horsepower class vessels, if Vessel A leases-out 5 DAS to Vessel B, Vessel B will receive 3.65 DAS (5 x 0.73).

(v) *History of leased DAS use and landings.* Unless otherwise specified in paragraph (v) of this section, history of leased DAS use will be presumed to remain with the lessor vessel and landings resulting from a leased DAS will be presumed to remain with the lessee vessel, i.e., the vessel landing the fish. History of leased DAS use will be presumed to remain with the lessor only if the lessee actually fished the leased DAS legally (i.e., in accordance with the DAS notification program specified at § 648.10). For the purpose of accounting for leased DAS use, allocated DAS will be accounted for prior to leased DAS. In the case of multiple leases to one vessel, history of leased DAS use will be presumed to remain with the lessor in the order in which such leases were approved by NMFS. In cases where an adjustment factor is applied to leased DAS, as described in paragraph (m)(3)(iv)of this section, the number of used DAS presumed to remain with the lessor will be the actual number of DAS leased, prior to the adjustment factor reduction.

(vi) *Monkfish Category C and D vessels.* A vessel that possesses a valid limited access monkfish Category C or D permit and leases NE multispecies DAS to another vessel is subject to the restrictions specified in § 648.92(b)(2).

(vii) *Termination of NE Multispecies DAS Leasing Program.* The Regional Administrator may terminate acceptance of new applicants to the NE Multispecies DAS Leasing Program if he/she determines that the goals of reducing fishing mortality or increasing economic opportunity may be undermined by allowing the continued leasing of DAS. Such a determination shall be based upon all information available, including, but not limited to, projected landings, patterns of DAS use, and information obtained from the leasing program. The termination of accepting new applicants to the NE Multispecies DAS Leasing Program shall be made in accordance with the Administrative Procedure Act.

7. In § 648.92, paragraph (b)(2)(ii) is revised and paragraph (b)(2)(iii) is added to read as follows:

§ 648.92 Effort-control program for monkfish limited access vessels.

* * * * *

(b) * * *

(2) * * *

(ii) *Beginning May 1, 2003.* Unless otherwise specified in paragraph (b)(2)(iii) of this section, each monkfish DAS used by a limited access NE multispecies or scallop vessel holding a Category C or D limited access monkfish permit shall also be counted as a NE multispecies or scallop DAS, as applicable, except when a Category C or D vessel that has an allocation of NE multispecies DAS under § 648.82(l) that is less than the number of monkfish DAS allocated for the fishing year May 1 through April 30, that vessel may fish under the monkfish limited access Category A or B provisions, as applicable, for the number of DAS that equal the difference between the number of its allocated monkfish DAS and the number of its allocated multispecies DAS. For such vessels, when the total allocation of NE multispecies DAS has been used, a monkfish DAS may be used without concurrent use of a NE multispecies DAS. (For example, if a monkfish Category D vessel's NE multispecies DAS allocation is 30, and the vessel fished 30 monkfish DAS, 30 NE multispecies DAS would also be used. However, after all 30 NE multispecies DAS are used, the vessel may utilize its remaining 10 monkfish DAS to fish on monkfish, without a NE multispecies DAS being used, provided that the vessel fishes under the regulations pertaining to a Category B vessel and does not retain any regulated NE multispecies.)

(iii) *Category C and D vessels that lease NE multispecies DAS.* (1) A monkfish Category C or D vessel that has ''monkfish-only'' DAS, as specified in paragraph (b)(2)(ii) of this section, and that leases NE multispecies DAS from another vessel pursuant to § 648.82(m), is required to fish its available ''monkfish-only'' DAS in conjunction with its leased NE multispecies DAS, to the extent that the vessel has NE multispecies DAS available.

(2) A monkfish Category C or D vessel which leases DAS to another vessel(s), pursuant to § 648.82(m), is required to forfeit a monkfish DAS for each NE

multispecies DAS that the vessel leases, equal in number to the difference between the number of remaining multispecies DAS and the number of unused monkfish DAS at the time of the lease. For example, if a lessor vessel, which had 40 unused monkfish DAS and 47 allocated multispecies DAS, leased 10 of its multispecies DAS, the lessor would forfeit 3 of its monkfish DAS (40 monkfish DAS - 37 multispecies DAS = 3) because it would have 3 fewer multispecies DAS than monkfish DAS after the lease.

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