

flounder, combined, is necessary to ensure continued protection of those stocks.

*Comment 7:* Two commenters did not support the method used to calculate the NE multispecies DAS baseline implemented under the August 1, 2002, interim final rule, which was proposed to continue under this rule. One commenter suggested that, instead of a 20-percent DAS reduction from the baseline level, all vessels should have their DAS reduced by an equal number of days. Although not related to method by which days-at-sea are calculated, one commenter suggested that NE multispecies limited access DAS permit holders be compensated for lost DAS.

*Response:* The DAS baseline was chosen as a compromise to lessen impact on vessels as much as possible during a short-term interim period while Amendment 13 is being developed. NMFS recognizes that for some vessel owners the criterion may result in more severe impacts than for others. For such a broadly based measure, some differences in individual impacts are unavoidable. The conservation benefits of having a reduced overall cap on the amount of effort available for this fishery, on balance, justifies the freeze for this interim period, despite the more severe impacts on a few vessel owners. To help mitigate these impacts, in August, 2002, the President and Congress signed an Act that allocated funds to provide 12 million dollars in economic assistance to fishing communities of New England affected by federal restrictions. Amendment 13 is considering various alternative methods that define DAS baselines.

*Comment 8:* One commenter requested that the western border of the SNE RMA, which was redesignated by the Settlement Agreement, be returned to its original location. The commenter stated that it was not represented during the Settlement Agreement negotiations, and that the redesignation has been detrimental to some members of the industry, especially during January to June.

*Response:* NMFS acknowledges that re-designation of the western border of the SNE RMA from 72° 30' W. long. to 74° 00' W. long. altered the area of the SNE RMA and may have particularly impacted vessels fishing under a NE multispecies DAS in this re-designated area. Although the particular challenges facing fishers in this area may be unique, the implementation of the measures consistent with the Settlement Agreement made the minimum mesh requirements more restrictive in all the RMAs. Thus, NMFS believes the

continuance of the mesh size restrictions is justifiable, based on the overfished status of many stocks managed under the NE Multispecies FMP, and the positive impacts that may result from an increase in mesh size (e.g., improved spawning success and recruitment).

*Comment 9:* One commenter suggested that the Settlement Agreement management measures should be discontinued, due to the lack of a public process during the development of the measures.

*Response:* When implementing the August 1, 2002, interim action, NMFS was responding to a Court decision, in which the Court adopted the Settlement Agreement. In order to involve the public and solicit comment on the proposed rule, NMFS provided a 30-day comment period for the August 1, 2002, interim final rule and the proposed emergency rule published on April 24, 2003. In addition, the public had an opportunity to comment on the proposed emergency rule measures at the May 20, 2003, New England Fisheries Management Council meeting. Although the public was not involved in the development of the Settlement Agreement, NMFS has, to the extent possible, taken into consideration public comments and made alterations to the proposed measures.

*Comment 10:* Two conservation organizations, The Ocean Conservancy and Oceana, supported extension of the Settlement Agreement management measures, but were concerned that NMFS concluded that a 5 percent level of observer coverage is sufficient.

*Response:* NMFS agrees that it is appropriate and necessary to continue the majority of the Settlement Agreement measures until such time that Amendment 13 is implemented. The level of observer coverage is a result of NMFS' internal deliberations related to the adequacy of observer coverage and is neither specified in the regulations nor a part of this rulemaking. Pursuant to the Court Order NMFS was required to provide 10 percent observer coverage for all gear sectors, effective May 1, 2003, unless it was able to establish by the most reliable and current scientific information available that such increase was not necessary. NMFS' Northeast Fisheries Science Center conducted an analysis of the relative precision of discard estimates for the NE multispecies fishery and concluded that a 5 percent level of observer coverage on all trips fished under a NE multispecies DAS would provide sufficiently robust statistical data to assess and estimate the

amount and type of bycatch in the NE multispecies fishery.

*Comment 11:* The State of Maine's Department of Marine Resources supported the continuance of the measures specified in the Settlement Agreement, urged that no changes to the regulations be made, and stated that Amendment 13 is the appropriate vehicle for resolution of outstanding issues.

*Response:* As discussed above, NMFS is continuing most of the measures contained in the Settlement Agreement. The measures in the emergency proposed rule that were changed in this final emergency rule were limited to management measures for the haddock fishery, which is not subject to overfishing and where there are inequities between fishery sectors.

*Comment 12:* One commenter suggested that the requirement for Day gillnet vessels to take 120 days out of the fishery be modified to allow blocks to be taken in 3 to 7-day increments, and one commenter suggested that the commercial haddock limit be removed and therefore, there is not a sufficient basis to make such a change to the measures.

*Response:* These suggested changes were not analyzed or contained in the emergency proposed rule for this short term interim set of measures, and therefore, there is no justification in the record that such a change to these measures should be made.

### Changes to the Proposed Interim Rule

The following changes to the proposed emergency rule are based upon public comment, and NMFS' decision to extend the comment period on the DAS Leasing Program. The changes listed below are in the order that they appear in the regulations.

In § 648.2, proposed new definitions pertaining to the DAS Leasing Program are removed to reflect that the DAS Leasing Program is not being implemented by this final emergency rule.

In § 648.4, the proposed modification to the consolidation restriction is removed to reflect that the DAS Leasing Program is not being implemented by this final emergency rule.

In § 648.14, the proposed prohibitions pertaining to the DAS Leasing Program are removed to reflect that the DAS Leasing Program is not being implemented by this final emergency rule.

In § 648.82(a)(1), the proposed modification to the DAS carry-over restrictions are removed to reflect that the DAS Leasing Program is not being