

NORTHEAST SEAFOOD COALITION

August 25, 2006

**TO: Patricia A. Kurkul
Regional Administrator, Northeast Region
National Marine Fisheries Service
Gloucester, MA 01930**

**RE: Comments on the Proposed Rule for Groundfish FW 42/Monkfish FW3
Docket No. 060606150-6150 (July 26, 2006)**

For the purpose of clarifying our positions early in the document, the following is a summary of the Northeast Seafood Coalition's (NSC) comments that are enclosed.

- NSC does not support or embrace the concept of differential counting in the context it is being used in the Gulf of Maine (GOM) and in this proposed action.
- 2 to 1 counting coupled with the default days at sea (DAS) changes equates to a 54% reduction in DAS in the differential area as compared to 8% outside the differential area. NSC maintains that these levels of disproportionate impacts were not adequately reported in a timely manner for consideration by the public.
- The NSC contends that the resulting loss of Optimum Yield (OY) on stocks not requiring reductions in this action is an unacceptable result.
- However, the NSC recognizes the current administrative limitations and, therefore consistent with our comments submitted for the Emergency Rule, **does not support any unnecessary continuation of 1.4 to 1 counting in areas that FW42 would otherwise relieve.** NSC recommends partial approval of FW42 and to limit differential counting at 1.4 to 1 in the areas designated in the proposed action and for 2006 only.
- NSC recommends that the New England Fishery Management Council (NEFMC) develop alternative measures specific to GOM cod for FY 2007 and 2008 if needed.
- NSC supports numerous provisions of FW42 including but not limited to: Modifications to the DAS transfer program, implementation of the default measures, changes to the gear requirements in SNE RMA, changes to the GB YT trip limit and management response guidance and combined trips to the Eastern US / CA area.
- The NSC strenuously maintains that the management response to Cape Cod / Gulf of Maine yellowtail flounder (CC/GOM YT) is completely out of balance with the biological requirements of the rebuilding program. The proposed action will cause catastrophic socio-economic losses that could have been avoided had ample time or any meaningful effort been expended to address the illogical results of the analytical methods.
- The 2006 Total Allowable Catch (TAC) of Cape Cod / GOM yellowtail is approx. 230,000 lbs less than the total landings and discards of each of the 2004 and 2005 fishing years. Stated otherwise, catch in 2006 must be reduced by 12% from 2005 to achieve target F for

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- CC/GOM YT. The management response to this is a 54% reduction in DAS and a 66% reduction in the possession limits.
- The NSC recommends an increase in the GB winter flounder trip limit to 7,500 lbs and to implement the TAC management strategy analyzed post submittal of FW42 in the event any parts of this framework are remanded to the NEFMC.
- The NSC supports the provision to allow in-season adjustment of trip limits.
- Overall, the Framework 42 process was frustrated by a lack of timely information beginning with the late release of GARM II and ending with two PDT created options that were first introduced to the public at the January 26th Groundfish Committee meeting just 6 days prior to the final vote of the NEFMC. Three major stocks were generally analyzed for the first time with stock specific measures, Georges Bank (GB) winter flounder, white hake and Cape Cod / GOM yellowtail flounder.
- The socio-economic impacts to the human environment coupled with the enormous sacrifice of yields resulting from an inadequate range of alternatives are of such magnitude that a full Environmental Impact Statement (EIS) should have been conducted. This action should not meet the standards of a Finding of No Significant Impact (FONSI).

Comment 1: Differential DAS Counting – Gulf of Maine

Federal Register Page: 71 FR 42545

Section: 648.82 “*Effort-control program for NE multispecies limited access vessels*”; paragraph (e)(2)(3)(A) “*Differential Category A DAS counting when fishing in the GOM Differential DAS Area.*”

Recommendations:

1. Make technical corrections to the underlying analyses of Cape Cod/Gulf of Maine Yellowtail Flounder (CC/GOM YT) and perform new analyses.
2. Reduce the differential DAS counting rate in the GOM Differential DAS Area from 2:1 to 1.4:1 for the remainder of Fishing Year (FY) 2006.
3. Replace differential DAS counting measure altogether with alternative management strategy for GOM cod in FY 2007 and FY 2008.

Explanation:

Recommendation 1. Make technical corrections to the underlying analyses of CC/GOM YT and perform new analyses.

- The relatively blunt FW42 management response (2:1 Differential DAS Counting for a large area of the Gulf of Maine) is being utilized to achieve only a relatively tiny one-year reduction of 235,000 pounds in the 2006 CC/GOM YT catch, which represents less than one-third of one percent of the total fishery. This management response will have a profound negative impact on literally hundreds of Northeast multispecies permit holders and force huge underharvests (waste) of the optimum yield of many other valuable and healthy stocks.

CPUE Inputs

- The stated objective of Amendment 13 (and FW42) management measures is to achieve stock-specific fishing mortality rate targets (Target F).
 - **The validity of the results of the CAM analysis to determine the effectiveness of FW42 management measures is directly dependent upon the validity of the CPUE values input to the model.**
- The FW42 CAM analyses used CPUE values derived from the VTR database for years 2001, 2002, 2003 & 2004.

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- This baseline CPUE period consists of 40 months (83.3 percent) during which there were virtually no CC/GOM YT-specific catch restrictions in place, and 8 months (16.7 percent) during which there were extreme Amendment 13 CC/GOM YT-specific catch restrictions in place. These restrictions were designed to achieve the Target F by reducing CC/GOM YT total catch by nearly 65 percent from the previous 4 year average.
- The CC/GOM YT-specific management measures in Amendment 13 were daily and trip catch limits specifically intended to create a strong incentive for fishermen to modify their fishing behavior to avoid areas of high CC/GOM YT density and move to areas of lower CC/GOM YT density. **Stated otherwise, the Amendment 13 CC/GOM YT management measures are specifically designed to substantially reduce CC/GOM YT CPUE from what it was during the very same years used as the baseline for the CAM.**
- There were no analogous stock-specific management measures for other stocks under Amendment 13 beyond the fishery-wide DAS reductions (with the exception of lowering the GB cod trip limit to 1,000 lbs).
- **Therefore, the CC/GOM YT CPUE values used in the FW42 CAM analyses generated inflated catch projections causing the perception that severe management measures were needed to produce the catch that would achieve Target F.**
- Indeed, it appears the PDT had difficulty in getting the CAM to produce a change in catch that would achieve the CC/GOM YT Target F. Several times during the FW42 process PDT representatives stated; “We can not get there on CC/GOM YT even if the trip limit were reduced to 100lbs”. The validity of this statement was questioned repeatedly considering the catch reduction needed to achieve Target F was only 14% from FY 2004.

Requested Technical Corrections & Analysis

- The projection model should be updated to reflect the 2005 actual catch and associated mortality rate along with the corrected TACs that would achieve the Target F of .26 for 2006, 2007 & 2008.
- Further, the CAM analyses used to project catch and evaluate relative changes in catch to achieve the Target F for CC/GOM YT under FW42 should be repeated using corrected CPUE values that reflect the changes in CPUE achieved by the Amendment 13 management measures.

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Recommendation 2. Reduce the differential DAS counting rate in the GOM Differential DAS Area from 2:1 to 1.4:1 for the remainder of Fishing Year 2006.

- The results of the technical corrections and new analyses recommended above should eliminate the need in FW42 for a stock-specific management response for CC/GOM YT. Therefore, the next stock in line requiring a mortality reduction is GOM cod, for which a 1.4:1 Differential DAS counting measure is sufficient to achieve the biological objectives for FY 2006.
- Preliminary information on the impacts of the Emergency Rule management measures (1.4:1 DAS counting; trip limit changes) indicates that the CC/GOM YT catch has been greatly reduced in the first quarter of FY 2006. The extent of this reduction is such that the CC/GOM YT mortality reduction objectives of FW42 are likely to be achieved prior to implementation of FW42. This also would eliminate the need for a CC/GOM YT-specific management response in FW42—ie. the differential DAS counting rate should be reduced from 2:1 to 1.4:1 for the remainder of FY 2006. This is irrespective of and in addition to the effects of the technical corrections to the CC/GOM YT analyses presented above
- It is further noted that the TAC for GOM COD will more than double during the FY 2007 and FY 2008 period. The differential DAS counting rate of 2:1 proposed in FW42 was for the purpose of achieving a relatively tiny reduction in catch of 235,000 pounds of CC/GOM YT in order to achieve the F-rate and TAC targets. **Continuation of the differential DAS counting at the rate of 1.4:1 for GOM cod for the remainder of FY 2006 should more than achieve any mortality reductions needed for CC/GOM YT in the FY 2007 and FY 2008 period.**

Recommendation 3. Replace the differential DAS counting measure altogether with an alternative management strategy for GOM cod in FY07 and FY08.

- **The Proposed Rule is unlikely to be effective in achieving the necessary fishing mortality rate reductions for the valuable GOM cod stock and may have the opposite effect of increasing such mortality for the following reasons.**
 - While the large cumulative impact of DAS reductions under this action will certainly force many Gulf of Maine (GOM) fishermen completely out of the business, fishermen that do attempt to remain economically viable in the groundfish fishery will be forced to focus their extremely limited DAS on those groundfish stocks with the highest value. The reality is that the stock with the highest value in the GOM is the GOM cod stock, which is one of the stocks of greatest biological concern. Prior to the Emergency Rule, GOM cod comprised a relatively small percentage of the catch of the vast majority of fishermen fishing in the GOM. This situation changed due to the 1.4 to 1 differential DAS counting measure in the current Emergency Rule. Many fishermen were forced to

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modify their basic fishing strategies to target high-valued cod. The proposed action to increase the differential counting to 2:1 will only make this cod-targeting situation worse and undermine any mortality reduction objectives of the proposed rule. This is completely inconsistent with the objectives of Amendment 13, this action and the MSA.

- Despite the great concern for the future status of the GOM cod stock, the differential DAS counting measures would actually impose the least restrictions on directed GOM cod fishing operations. Prior to the Emergency Rule, a small minority of the day-boat draggers and day gillnet vessels accounted for over 50% of the GOM cod landings. Like the Emergency Rule, this action will impact these sectors the least of all sectors in the fleet. The differential DAS counting measure in this action (as in the Emergency Rule), serves to encourage increased directed cod effort by vessels that had not previously directed exclusively on GOM cod as their strategy for financial survival.
- **The proposed 2:1 differential DAS counting measure in the GOM goes far beyond that which is necessary to achieve the necessary fishing mortality rate reductions and, therefore, will result in large, unnecessary underharvests (waste) of the optimum yield of many other important stocks at great economic loss to the region.**
 - For example, the total reduction in catch required to achieve the mortality reduction requirements for the CC/GOM YT stock is only approximately 235,000 lbs. This represents about one-third of one percent of the total actual annual yield in landings of the entire groundfish fishery, yet this relatively minimal reduction is a driving force behind the current action's differential DAS counting measures. This excessive, broad-brush management response is completely out of balance with the conservation need. Because so much yield from other stocks will go unutilized as a result, the current action is entirely inconsistent with the MSA including both National Standard 1 and the fundamental Purpose to maximize the benefits to this nation by achieving the optimum yield from our fishery resources.
- **NSC recommends implementation of an alternative management strategy for GOM cod in FY 2007 and FY 2008 that avoids the 'directed cod fishery' and 'loss of optimum yield' pitfalls associated with a differential DAS counting strategy.**
 - **It should be noted that the GOM cod TAC is projected to more than double over the FY 2007 and FY 2008 period. A prompt return to 1 to 1 counting will reduce the level of long term shifted effort that has focused exclusively on cod as a result of the 1.4 to 1 differential counting. The response to differential counting is that more fishermen are directing on cod exclusively and foregoing effort normally conducted on healthier stocks in order to mitigate time lost to differential counting.**
 - **The net effects of this situation are:**

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1. **an increase in the numbers of vessels directing on cod;**
 2. **no net reduction in cod landings from the level that was produced by vessels already engaged in the directed cod fishery prior to differential counting;**
 3. **a notable absence of other stocks in the daily VTR / landings normally associated with the daily limit of cod; and**
 4. **a near total cessation of fishing effort in the fishery that had previously yielded the healthier stocks over the last decade or more.**
- **This can best be described as a lose, lose scenario. NSC strongly suggests that a return to 1 to 1 counting in 2007 will have immensely positive social and economic results without a net increase in cod mortality beyond the proposed measures.**

Comment 2: Georges Bank Winter Flounder

Federal Register Page: 71 FR 42553

Section: 648.86(j) *NE Multispecies possession restrictions – GB Winter Flounder.*

Recommendation: Adjust the Georges Bank (GB) Winter Flounder trip limit to 7,500 lbs.

Explanation:

Considering the cumulative effects of the emergency action and US / CA management of GB YT it seems sensible to consider the 7,500 lb trip limit supported in the FW42 analyses but reduced to be precautionary to the effects of removing the daily limit restriction.

Comment 3: DAS Leasing

Federal Register Page: 71 FR 42546

Section: 648.82(k) *Effort-Control Program for NE multispecies limited access vessels; DAS Leasing.* Also, see 71 FR 42539, “*Economic Impacts of the Proposed Rule*” regarding renewal of the DAS Leasing Program.

Recommendation: Do not apply the current limit on the total number of DAS a vessel can lease to those vessels fishing in areas subject to differential DAS counting. Instead, increase the maximum number of DAS a vessel can add to his allocation through leasing to the vessels baseline times the differential rate. (example: 1.4 x 88 +123.2 max. DAS acquired thru leasing)

Explanation:

The Agency claims that the proposed continuation of the DAS leasing program “*would continue to offer economic benefits that help offset the impacts of the effort reductions of Amendment 13 and those proposed by this action*”.

To the contrary, it is likely that in most cases leasing will not provide much relief for the following reasons.

- Due to the severe economic impacts of the Proposed Rule coupled with Amendment 13, many fishermen simply cannot afford the added cost of leasing DAS.
- There is a very limited pool of DAS available to the larger length/horsepower categories of vessels that will be insufficient to satisfy demand.
- The Proposed Rule would count leased DAS at the differential rate of 2 to 1 in the GOM Differential DAS Area. The breakeven DAS for vessels fishing in this area is closer to 88 DAS than 24 DAS. The leasing program limits a permit holder to its present allocation plus its old baseline. In other words, 48 DAS + 88 DAS is the maximum a fleet permit holder could attain through leasing. At 2:1 counting, this vessel would be left with only 68 fishing days even if it could secure the maximum leased DAS.
 - It is highly unlikely that there exists such a high quantity of DAS available for lease. This extreme example would require a permit holder to totally absorb the costs of leasing the entire DAS allocations of two or three additional permits in order to reach a DAS level that is below the usable baselines during the settlement agreement period. This level is generally insufficient to support a viable, mixed trip operation in the GOM area. Coupled with the added costs of leasing and the total lack of analysis sufficient to determine DAS availability, it is safe to say that the actual impacts of this Proposed Rule have not been adequately portrayed or evaluated in the Economic Analysis.
- The Agency correctly notes on page 71 FR 42539 “*It is possible, however, that the differential DAS counting in the inshore GOM may negatively affect the ability of vessels that fish in the area to compete effectively in the DAS leasing market.*” This presents a disproportionate negative impact on fishermen that, due to the size of their vessels and geographic location, are forced to fish in the GOM Differential DAS Area.

Comment 4: DAS Transfer Program

Federal Register Page: 71 FR 42546

Section: 648.82(l) *Effort-Control Program for NE multispecies limited access vessels; DAS Transfer Program.*

Recommendation:

- Implement DAS Transfer Program as proposed.

Explanation:

- The Northeast Seafood Coalition submitted a nearly identical version of this measure for consideration in FW 40b. Presumably, a variety of analytical and time limitations caused the proposal to be removed from FW40b and was later submitted by industry for this Framework action. NSC would note that one major difference in this version and the one submitted for FW40b is that the NSC version incorporated an option that would allow Zero conservation tax if non-groundfish endorsements were surrendered in a DAS transfer. However, the NSC option that allowed blending two permits by retaining non duplicate endorsements and accepting a 20% conservation tax is entirely represented by the proposed rule.

Comment 5: Cod Landing Limit

Federal Register Page: 71 FR 42547

Section: 648.85(a)(3)(iv) *Special Management Programs; Cod landing limit restrictions.*

Recommendation:

- Implement proposed modification of cod landing limits.

Explanation:

- The Proposed Rule would correctly eliminate the current onerous restriction that limits GB cod landings from the Eastern US/Canada Area to 5 percent of the total landings of all species on a trip.

Comment 6: Regular B DAS Program

Federal Register Page: 71 FR 42548

Section: 648.85 (d)(v)(6)(d) *Special Management Programs; Landing limits*

Recommendation 1: Remove the redundant and excessive provision that would establish a 'maximum limit of 500 lb of all flatfish species combined' for vessels fishing in the Regular B DAS Program.

Explanation:

This provision is not justified based upon 4 quarters of operating the B Regular DAS Pilot Program in which incidental TACs were only approached in one instance on GB cod. It would be redundant and cause much confusion in the regulations to overlap this new restriction on top of the existing incidental hard TACs and conservative landing limits (100lbs per DAS up to a maximum of 1,000 lbs per trip) for the same species. There are no apparent conservation or management purposes or objective that would support this additional restriction on the specified flatfish species.

It does appear that the proposed 500lb limit has its basis in the performance standards for the haddock separator trawl otherwise under consideration, and that this 500 lb limit was simply overlaid on top of the existing incidental hard TACs and possession limits that have largely been effective if not too conservative.

In contrast, the experience to date with the separator trawl has shown that it does not meet these performance standards. The only broad based experience the US fleet has had with the Haddock Separator Trawl was in the Eastern Area Pilot SAP that had no bycatch TACs on any stocks of concern with the exception of GB Cod. The result was that the incidental catch of flounder, monkfish and lobsters was actually greater in total than the catch of the target species; GB haddock. The real protection for the stocks of concern is already built into the Regular B DAS Program in the form of the incidental hard TACs and low daily possession limits, which are proven by the Program's performance to date.

The Regular B DAS Program has established hard TACs for the incidental catch of all stocks of concern in addition to limits on total DAS use in the Program. NSC firmly believes that incidental TACs allocated to the Regular B DAS Program should offer opportunity and incentive for fishermen to modify their gear to reduce incidental catch of stocks of concern. Instead, the proposed action would force fishermen to focus on flipping their B DAS to A DAS when these arbitrary performance standards are exceeded. NSC fails to see the logic in simply mandating a gear to work by imposing an unproven performance standard on a proven program that already has tremendous protections and backstops.

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Recommendation 2: The 500lbs monkfish possession limit should be removed from this section. Monkfish measures for the Regular B DAS Program are addressed in another section of this Proposed Rule, and so this measure is confusing and redundant.

Recommendation 3: Retain the prohibition on lobster retention in the Regular B DAS Program. This is justified and has not been addressed elsewhere.

Recommendation 4: Increase the 100 lb bycatch daily possession limits in the Regular B DAS Program to levels that are proportionate to the actual incidental hard TAC allocations for each stock of concern and the number of DAS in the quarter based on information on catch rates and TAC utilization learned from the Pilot Program.

Explanation:

The proposed continuation of the arbitrary and unduly conservative 100 lb incidental daily possession limits in the Regular B DAS Program will frustrate the Program and its ability to mitigate the adverse economic impacts of this action, and guarantee strong stocks will remain underutilized.

There has been extensive discussion since the start of the B Regular Pilot Program about the flip rates in the program. NSC continues to stress the flip rate is a direct result of the very low incidental daily possession limits that were deliberately yet arbitrarily established for the purpose of simplifying the Pilot Program. The purpose and intent was to learn from data gleaned from the Pilot Program to aid in the design of a permanent Regular B DAS Program.

FW42 deliberations have since resolved that any incidental TACs assigned to relevant programs, including the B Regular Pilot Program, are to be treated as true allocations taken from the total TAC for each stock. Because these incidental TAC allocations are managed as hard TACs, NSC expects the industry to receive the benefits of being allowed to fully utilize these incidental hard TACs. This would substantially reduce flip rates and improve US utilization of strong haddock, pollock and redfish stocks and help mitigate the adverse economic impacts of this Proposed Rule. These three stocks have been dramatically under-yielded and this situation is destined to worsen as A day allocation have become further restricted.

Comment 7: Regular B DAS Program

Federal Register Page: 71 FR 42549

Section: 648.85(j) *Special Management Programs; Trawl gear requirement.*

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Recommendation: Remove the requirement to use only the Haddock Separator Trawl when fishing in the Regular B DAS Program.

Explanation:

The Eastern Area Pilot SAP required use of the Haddock Separator Trawl and so it provides a basis for understanding the utility of this gear. That SAP did not have any restrictions on any stocks of concern with the exception of GB Cod which is managed by a hard TAC. The results of this SAP were that zero trips were flipped on unobserved trips, and the ‘bycatch’ of flounders, monkfish and lobsters in gross weight exceeded that of the target stock; GB haddock. These results are profoundly inconsistent with the performance standards set for this gear and raises serious questions as to the effectiveness of this gear to achieve such arbitrary performance standards.

Although it is clear that current performance standards must be reevaluated, NSC supports the concept of setting legitimate performance standards for this trawl gear. However, NSC strongly opposes the proposed mandate to use the Haddock Separator Trawl exclusively when fishing in the B Regular program for three compelling reasons:

- The Category B DAS Pilot Program operated for four quarters without exceeding any of the incidental hard TACs for stocks of concern. The Program achieved an overall performance result in terms of the ratio of target stocks to stock of concern that far exceeded the performance standards intended for the separator trawl. This was achieved without any gear requirements such as are being proposed.
- The separator trawl requirement is wasting a valuable incentive and opportunity for gear technology improvements that would result from voluntary gear modifications and side-by-side comparisons conducted by the fleet.
- Fishermen from Rhode Island have been achieving outstanding results with a rope trawl configuration that has been used voluntarily and successfully for years and is currently achieving impressive results in a research program.

Comment 8: SNE Regulated Mesh Area Trawl Codend Mesh Requirements

Federal Register Page: 71 FR 42544

Section: 648.80 (b)(2)(i) *NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing*

Recommendation: Adopt the proposed change.

Explanation: The 7” requirement for diamond mesh created an unnecessary disincentive to utilize diamond mesh cod ends that would otherwise offer conservation benefits to flounder stocks. It is consistent with the remainder of the region to allow 6 ½” diamond or square.

Comment 9: Vessel Monitoring System (VMS)

Federal Register Page: 71 FR 42541

Section: 648.10 *DAS and VMS notification requirements*

Recommendation: Delay implementation of this provision until start of FY 2008 unless differential counting in the GOM is reduced to 1.4 to 1 for 2006 only.

Explanation: This provision provides little cost benefits to the industry since the B regular program, SAPs and other progressive access strategies have not been adequately advanced or developed to facilitate widespread utility. This provision does nothing more than add an potentially insurmountable capital and recurring expense to operations that will be paralyzed by differential counting of DAS.

The NSC proposed several management strategies for FW42 including the Cod Cap, the CCYT and GB Winter Flounder TAC management concepts that would have incorporated a cost / benefit to the industry by promoting the use of VMS to improve management and industry access to the resource. These programs, had they been developed for implementation, may have offered economic and management incentives sufficient to justify the expense of purchase and operating costs.

As articulated in comments 6 & 7 above, the B regular program has taken several large and disturbing steps backwards and away from the originally intended concept. This has caused the utility of the program to become far more exclusive than even the pilot program which makes the investment in VMS an even more difficult expense to justify.

Regrettably, for these compelling reasons, the NSC cannot support this provision at this time.

Comment 8: Violations of MSA National Standards

National Standard 1: *“Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.”*

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- FW42 will not prevent overfishing of one of the most important stocks of concern and potential economic value to the region: Gulf of Maine (GOM) cod. The 2:1 differential DAS counting measure (as well as the 1.4:1 counting measures in the Emergency Rule) presents the vast majority of GOM ‘small-boat’ fishermen with 3 options: 1) go out of business; 2) try to fish outside (further offshore) of the differential counting area putting their lives at risk; or 3) revise their fishing/business strategy to target only the most valuable stock on average which is GOM cod in order to maximize the revenue per DAS and survive financially. Many fishermen will chose option 3 and cause overfishing of GOM cod.
- FW42 will not achieve and will, in fact, prevent this fishery from achieving the optimum yield. The differential DAS counting rate of 2:1 was proposed for the purpose of achieving a relatively tiny, one-year reduction in CC/GOM YT catch of 235,000 pounds. This conservation savings represents less than one-third of 1 percent of the total fishery yet it will require a massive sacrifice in yield and economic benefit by an inordinate number of fishermen. And, inexplicably, it would apply this differential counting rate for a full three years even though the CC/GOM YT stock and TAC is projected to more than double during FY 2007 and FY 2008. Consequently, the differential DAS counting measure proposed in FW42 for the GOM will cause enormous underharvests (waste) of the optimum yield of many other NE multispecies stocks including some of the strongest stocks that were the economic foundation of Amendment 13. The ‘optimum yield’ is defined to be that which will provide the greatest overall benefit to the nation and FW42 fails substantially to achieve this objective.

National Standard 2: *“Conservation and management measures shall be based upon the best scientific information available.”*

- FW42 management measures are designed to meet the fishing mortality reductions identified in an updated stock assessment issued by NMFS in September 2005. As explained in detail under Comment (1) in this document, if implemented as proposed, FW42 will not be based upon the best available scientific information available for two reasons:
 1. technical issues in the underlying analyses for CC/GOM YT indicate there is no need for the onerous 2:1 differential DAS counting management measure proposed in FW42; and
 2. irrespective and in addition to the technical problems in the CC/GOM YT analyses, the management measures implemented in the Emergency Rule will have already achieved the mortality rate reduction objectives of FW42 prior to implementation of FW42.
- In addition, serious questions have been brought to the attention of the Agency separately from these comments by non-Agency scientists concerning the validity of the “Closed Area

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Model” used in the process of developing the biological objectives (fishing mortality rate targets) in FW42.

National Standard 3: *“To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.”*

- The Northeast multispecies complex of groundfish stocks are highly interrelated in a number of biological and physical ways, but are not managed as a unit or in sufficiently close coordination. Instead, these stocks are, in effect, managed individually through individual stock-specific fishing mortality rate targets and management measures such as TACs, time-area closures and trip limits, etc. set forth in Amendment 13 and this proposed action. The overall biological objective of Amendment 13 is to achieve and sustain *simultaneously* biomass targets that will produce the maximum sustainable yield from each individual stock. And, these biomass targets reflect the highest biomass levels ever observed for each stock over the history of this fishery. This is ecosystem madness. It not only guarantees the failure of NE multispecies management, it also arguably violates the underlying premise of National Standard 3. This underlying premise is the recognition of the interrelation of stocks in an ecosystem—especially in ecosystems as highly dynamic, poorly understood and unpredictable as the Gulf of Maine and Georges Bank.

National Standard 4: *“Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.”*

- FW42 arguably discriminates against residents of MA and NH. FW42 applies a 2:1 differential DAS counting strategy to the primary fishing grounds in the Gulf of Maine in order to reduce mortality on the CC/GOM YT and GOM cod stocks. This strategy applies only to a specific area in the Gulf of Maine-- the primary fishing grounds where the vast majority of MA and NH inshore fishermen operate.
- In Massachusetts, approximately 250 of the 523 total resident vessels will incur a 54 percent reduction in DAS as a consequence of FW42. In New Hampshire, all or nearly all of its 47 vessels will incur the same devastating impact. This represents an unacceptable, inequitable distribution of the conservation burden and an inequitable allocation of fishing privilege (access the resource). Vessels of a size and horsepower that are unable to fish beyond/offshore of the proposed 2:1 GOM Differential DAS Area will, in effect, shoulder a conservation burden that is nearly 6 times greater than those other fishermen that can fish

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outside of this area. And, permit upgrading restrictions prevent such inshore vessel owners from getting larger vessels.

National Standard 8: *“Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.”*

- FW42 does not provide for the sustained participation of fishing communities along the Gulf of Maine, particularly in MA and NH. Loss of fishing opportunity and yield will cause vessels to go out of business which will, in turn, cause the loss of shoreside fishery infrastructure and the economic and social collapse of fishery-dependent communities along north and south shores of MA, and all of NH. FW42 does not minimize adverse economic impacts on such communities because more targeted alternatives that more effectively achieve the optimum yield; are based on the best scientific information available; and are non-discriminatory, could be developed.

National Standard 10: *“Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.”*

- The proposed 2:1 differential DAS counting measure will strongly encourage fishermen to try to fish outside and further offshore of the DAS counting area in order to derive greater economic return from their DAS allocations and survive financially. This will put fishermen’s lives at risk, particularly the many small, inshore vessels disproportionately affected by this measure.